

Volume 39  
Number 24  
September 1, 2022  
Pages 759 - 2506

# The Oklahoma Register

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Oklahoma  
Secretary of State  
Office of Administrative Rules



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**Brian Bingman,**  
**Secretary of State**  
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**THE OKLAHOMA REGISTER** is an official publication of the State of Oklahoma. It is published semi-monthly on the first working day of the month and on the first working day following the 14th day of the month under the authority of 75 O.S., Sections 250 et seq. and OAC 655:10-15-1. The rules of the State of Oklahoma are codified and published in the *Oklahoma Administrative Code*.

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**CITE MATERIAL PUBLISHED IN THE OKLAHOMA REGISTER** by the volume and the beginning page number of the document in the *Register*. For example: 36 *Ok Reg* 256.

**SUBSCRIPTION RATES** for the *Register* are \$500.00 per year for the printed issues and \$300.00 per year for the CD-ROM issues, payable in advance. When available, individual printed issues may be purchased for \$20.00 plus the cost of postage, payable in advance. Make checks payable to "Secretary of State." Send subscription requests, change of address notices, and undelivered copies to: Secretary of State, Office of Administrative Rules, 421 NW 13th Street, Suite 210, Oklahoma City, OK 73103.

**INFORMATION ABOUT THIS PUBLICATION** may be obtained by contacting the OAR by mail at Oklahoma Secretary of State, Office of Administrative Rules, 421 NW 13th Street, Suite 210, Oklahoma City, OK 73103, by email at [oar@sos.ok.gov](mailto:oar@sos.ok.gov), or by phone at (405) 521-4911. Information may also be obtained by visiting the OAR's office, located in Suite 220, Colcord Center, 421 NW 13th Street, Oklahoma City, between 8:00 a.m. and 5:00 p.m., Monday through Friday.

This publication is issued and printed by the Secretary of State as authorized by 75 O.S., Section 255. 28 copies have been prepared and distributed at a cost of \$1546.58. Copies have been deposited with the Oklahoma Department of Libraries, Publications Clearinghouse.

ISSN 0030-1728



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State Board of <b>MEDICAL</b> Licensure and Supervision . . . . .	435	<b>SOUTHERN</b> Growth Policies Board . . . . .	680
<b>MEDICAL</b> Technology and Research Authority of Oklahoma . . . . .	440	Oklahoma <b>SOYBEAN</b> Commission ( <i>abolished 7-1-97</i> ) . . . . .	685
Board of <b>MEDICOLEGAL</b> Investigations . . . . .	445	Board of Examiners for <b>SPEECH-LANGUAGE</b> Pathology and Audiology (Formerly: Board of Examiners for <b>SPEECH</b> Pathology and Audiology) . . . . .	690
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<b>MILITARY</b> Planning Commission, Oklahoma Strategic . . . . .	457	Oklahoma <b>STUDENT</b> Loan Authority . . . . .	700
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Board of Regents of <b>MURRAY</b> State College ( <i>exempted 11-1-98</i> ) . . . . .	470	Oklahoma Commission for <b>TEACHER</b> Preparation ( <i>merged under</i> <i>Office of Educational Quality and Accountability 7-1-14 - See Title</i> <i>218</i> ) . . . . .	712
Oklahoma State Bureau of <b>NARCOTICS</b> and Dangerous Drugs Control . . . . .	475	<b>TEACHERS'</b> Retirement System . . . . .	715
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Oklahoma State Board of Examiners for <b>LONG-TERM</b> Care Administrators (Formerly: Oklahoma State Board of Examiners for <b>NURSING</b> Home Administrators) . . . . .	490	Oklahoma <b>TOURISM</b> and Recreation Department . . . . .	725
Board of Regents of <b>OKLAHOMA</b> City Community College ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	495	Department of <b>TRANSPORTATION</b> . . . . .	730
Board of Regents of <b>OKLAHOMA</b> Colleges ( <i>exempted 11-1-98</i> ) . . . . .	500	Oklahoma <b>TRANSPORTATION</b> Authority ( <i>Name changed to</i> Oklahoma <b>TURNPIKE</b> Authority <i>11-1-05</i> ) - <i>See</i> Title 731	
Board of Examiners in <b>OPTOMETRY</b> . . . . .	505	Oklahoma <b>TURNPIKE</b> Authority (Formerly: Oklahoma <b>TRANSPORTATION</b> Authority AND Oklahoma <b>TURNPIKE</b> Authority) - <i>See</i> also Title 745 . . . . .	731
State Board of <b>OSTEOPATHIC</b> Examiners . . . . .	510	State <b>TREASURER</b> . . . . .	735
<b>PARDON</b> and Parole Board . . . . .	515	Board of Regents of <b>TULSA</b> Community College ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	740
Oklahoma <b>PEANUT</b> Commission . . . . .	520	Oklahoma <b>TURNPIKE</b> Authority ( <i>Name changed to Oklahoma</i> <b>TRANSPORTATION</b> Authority <i>11-1-99 - no rules enacted in this</i> <i>Title - See</i> Title 731) . . . . .	745
Oklahoma State <b>PENSION</b> Commission . . . . .	525	Oklahoma <b>UNIFORM</b> Building Code Commission . . . . .	748
State Board of Examiners of <b>PERFUSIONISTS</b> . . . . .	527	Board of Trustees for the <b>UNIVERSITY</b> Center at Tulsa ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	750
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Board of Commercial <b>PET</b> Breeders ( <i>abolished 7-1-12 - See Title</i> <i>35</i> ) . . . . .	532	<b>UNIVERSITY</b> Hospitals Trust . . . . .	753
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Board of <b>PODIATRIC</b> Medical Examiners . . . . .	545	Oklahoma <b>USED</b> Motor Vehicle and Parts Commission . . . . .	765
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State Board for <b>PROPERTY</b> and Casualty Rates ( <i>abolished 7-1-06; see also Title 365</i> ) . . . . .	570		
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Department of <b>CENTRAL</b> Services (Formerly: Office of <b>PUBLIC</b> Affairs; <i>consolidated under</i> Office of Management and Enterprise Services <i>8-26-11 - See Title 260</i> ) . . . . .	580		

<b>Agency</b>	<b>Title</b>	<b>Agency</b>	<b>Title</b>
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Oklahoma <b>WATER</b> Resources Board . . . . .	785	Department of <b>WILDLIFE</b> Conservation . . . . .	800
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# Notices of Rulemaking Intent

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

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

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

## **TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL**

*[OAR Docket #22-701]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 2. Incorporation by Reference

252:100-2-3 [AMENDED]

Appendix Q. Incorporation by Reference [REVOKED]

Appendix Q. Incorporation by Reference [NEW]

### **SUMMARY:**

The Department of Environmental Quality (Department or DEQ) is proposing to revoke and replace Oklahoma Administrative Code (OAC) 252:100, Appendix Q, Incorporation by Reference. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q. The gist of these rule proposals and the underlying reason for the rulemaking is to incorporate the latest changes to EPA regulations, primarily those relating to the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 C.F.R. Parts 60, 61, and 63.

### **AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through 2-5-117.

Oklahoma Uniform Permitting Act; 27A O.S. §§ 2-14-101 through 2-14-304.

### **COMMENT PERIOD:**

Written comments may be submitted to the contact person from September 1, 2022, through October 3, 2022. Oral comments may be made at the October 5, 2022 Air Quality Advisory Council meeting and at the November 8, 2022 Environmental Quality Board meeting.

### **PUBLIC HEARINGS:**

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, October 5, 2022, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102.

If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Tuesday, November

8, 2022, in the Marty Lewis Public Safety Building at the Gordon Cooper Technology Center, One John C. Bruton Blvd., Shawnee, OK 74804.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 and 27A O.S. § 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 C.F.R. Part 70 and 27A O.S. § 2-5-112(B)(9).

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

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

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

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, or reviewed online at <https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/>.

### **RULE IMPACT STATEMENTS:**

Pursuant to 75 O.S. § 303(D), a rule impact statement was prepared and is available on the DEQ website at <https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/>. Copies may also be obtained from the Department by calling the contact person listed below.

### **CONTACT PERSON:**

The contact person for this proposal is Melanie Foster, Environmental Programs Manager, who can be reached by phone at (405) 702-4100. Please email written comments to [AQDRuleComments@deq.ok.gov](mailto:AQDRuleComments@deq.ok.gov). Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: Melanie Foster. The Air Quality Division fax number is (405) 702-4101.

### **PERSONS WITH DISABILITIES:**

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4177. For the hearing impaired, the TDD relay number

## Notices of Rulemaking Intent

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is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

*[OAR Docket #22-701; filed 8-3-22]*

### **TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY CHAPTER 15. SINGLE FAMILY MORTGAGE LOAN PROGRAM**

*[OAR Docket #22-696]*

#### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

#### **PROPOSED RULES:**

Subchapter 1. General Provisions

330:15-1-1. Purpose [AMENDED]

Subchapter 7. Participating Lenders

330:15-7-2. Qualifications of Participating Lenders in each Program [AMENDED]

Subchapter 9. Bonds

330:15-9-9. Trustee action to be taken [AMENDED]

#### **SUMMARY:**

The amended Single Family Mortgage Program Rules provide for important updates to the single-family mortgage loan program administered by OHFA. The proposed amendments provide for updates to definitions, statutory references, and the administration of the program. In addition, the proposed amendments update the list of eligible participating lenders in the mortgage loan program while allowing for continuous mortgage originations which may or may not be associated with a mortgage revenue bond program.

#### **AUTHORITY:**

Board of Trustees of OHFA; Amended Trust Indenture of OHFA and Bylaws of OHFA

#### **COMMENT PERIOD:**

Persons wishing to present their views orally or in writing may submit written or oral comments to Valenthia Doolin at Oklahoma Housing Finance Agency on or before October 18, 2022. Written comments will be accepted until 4:00 p.m. on October 18, 2022. Written comments should be sent to Oklahoma Housing Finance Agency, Post Office Box 26720, Oklahoma City, Oklahoma 73126-0720, Attn: Valenthia Doolin or via telephone at (405) 419-8156.

#### **PUBLIC HEARING:**

A public hearing will be held: October 19, 2022 at 10:00 A.M., at the offices of OHFA located at Oil Center 2601 NW Expressway, 12<sup>th</sup> Floor, Oklahoma City, Oklahoma 73112. All interested persons are invited to attend and present their views.

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

OHFA requests that all business entities provide OHFA on or before October 18, 2022, in dollar amounts, if possible, the level of costs (indirect or direct including reporting, record

keeping, etc.) expected to be incurred due to compliance with the proposed amendments.

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

A copy of the proposed rule changes will be posted to the OHFA website at [www.ohfa.org](http://www.ohfa.org). You may also request an emailed attachment of the proposed Rules. Printed copies of the Rules may be obtained by contacting Valenthia Doolin, at the Oklahoma Housing Finance Agency, Post Office Box 26720, Oklahoma City, Oklahoma 73126-0720, (405) 419-8156. Persons requesting more than one (1) copy of these proposed rules will be charged \$5.00 per copy

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

A rule impact statement will be prepared and made be obtained from OHFA at the above address or on the website at [www.ohfa.org](http://www.ohfa.org), beginning September 1, 2022.

#### **CONTACT PERSON:**

Valenthia Doolin, (405) 419-8156,  
[valenthia.doolin@ohfa.org](mailto:valenthia.doolin@ohfa.org)

*[OAR Docket #22-696; filed 8-1-22]*

### **TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 15. PHYSICIAN ASSISTANTS**

*[OAR Docket #22-703]*

#### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

#### **PROPOSED RULES:**

Subchapter 1. General Provisions

435:15-1-1.1. Definitions [AMENDED]

Subchapter 3. Licensure of Physician Assistants

435:15-3-1. Qualification; application [AMENDED]

435:15-3-13. ~~Supervising~~ Delegating physician; ~~alternatives~~ [AMENDED]

435:15-3-17. Continuing education for renewal [AMENDED]

435:15-3-19. Locum tenens [REVOKED]

Subchapter 5. Regulation of Practice

435:15-5-10. Prescriptions [AMENDED]

435:15-5-11. Discipline [AMENDED]

Subchapter 11. ~~Prescriptive and~~ Dispensing Authority ~~Guidelines and Drug Formulary~~

435:15-11-1. Prescriptive and dispensing authority [AMENDED]

435:15-11-2. Drug formulary [AMENDED]

#### **SUMMARY:**

The proposed revisions make amendments in the level of supervision of PAs by expanding the current exceptions to the current MD/PA supervision ratio of one physician up to six (6) mid-level practitioners in any combination. The proposed revisions also make amendments to the prescription authority by, including but not limited to, allowing PAs to prescribe Schedule II drugs while removing the limitation of writing



prescriptions only "on site" and authorizing prescriptions for non-controlled medications to be written for up to a 90-day supply with three refills. The rules also eliminate the requirement for an inclusive formulary relating to the prescribing ability of PAs. Additionally, the rules set forth application and practice agreement requirements and revoke the requirements for practicing locum tenens in Oklahoma in harmony with current law.

**AUTHORITY:**

59 O.S. § 519, et seq.; Oklahoma Board of Medical Licensure and Supervision

**COMMENT PERIOD:**

Persons wishing to present their views in writing may do so by October 3, 2022 at the following address: Oklahoma Board of Medical Licensure and Supervision, Attn: Barbara Smith, 101 NE 51st Street, Oklahoma City, Oklahoma 73105 or via email at bsmith@okmedicalboard.org.

**PUBLIC HEARING:**

A public hearing will be held at 9:00 a.m. on Wednesday, October 5, 2022 at the Oklahoma Board of Medical Licensure and Supervision, 101 NE 51st Street, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 9:05 a.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Oklahoma Board of Medical Licensure and Supervision website at [www.okmedicalboard.org](http://www.okmedicalboard.org) under the Physician Assistant tab or you may request a copy in person at 101 NE 51st Street, Oklahoma City, Oklahoma.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be prepared and will be available in the Oklahoma Board of Medical Licensure and Supervision office at the address listed above and on the Board's website at [okmedicalboard.org](http://okmedicalboard.org) under the Physician Assistant tab after September 15, 2022.

**CONTACT PERSON:**

Lyle R. Kelsey, Executive Director, (405) 962-1400, [lkelsey@okmedicalboard.org](mailto:lkelsey@okmedicalboard.org)

*[OAR Docket #22-703; filed 8-5-22]*

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# Emergency Adoptions

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

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

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

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

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

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

[OAR Docket #22-697]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 3. General Provider Policies  
Part 3. General Medical Program Information  
317:30-3-57.1 [AMENDED]  
Part 6. Out-Of-State Services  
317:30-3-90 [AMENDED]  
(Reference APA WF # 22-03)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; The Social Security Act § 1905(a)(30) and 1905(gg)(3); 42 C.F.R. § 431.52; The Oklahoma Medicaid State Plan

### ADOPTION:

June 22, 2022

### EFFECTIVE:

Immediately upon Governor's approval

### APPROVED BY GOVERNOR:

August 2, 2022

### EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to the clinical trials and out-of-state services policy to avoid violation of federal law or regulation or other state law. The approval of the emergency rule would allow the Oklahoma Health Care Authority (OHCA) to implement and align new and current rules with the Social Security Act § 1905 (a) (30) and 1905 (gg) (3), 42 C.F.R. § 431.52 and the Oklahoma Medicaid State Plan. Additionally, the agency requests emergency approval of revisions to its dental out-of-state services policy to protect the public health, safety, or welfare. There are some areas in Oklahoma, like the Oklahoma panhandle, where there is a dental provider shortage or no dental provider at all so the revisions will make it easier for SoonerCare members receive services. The approval of the emergency rule would allow for members to travel up to one hundred miles (100) from the Oklahoma border to receive dental services without requiring prior authorization from the OHCA.

### GIST/ANALYSIS:

These emergency revisions are necessary to strike outdated language and add new language to the formerly named "Clinical Trials" policy OAC

317:30-3-57.1. To comply with new federal guidelines this policy will be renamed "Coverage of routine services in relation to clinical trials" and restructured to address qualifying clinical trials criteria, clinical trials determination standards, routine patient costs, and excluded items. Importantly, new language will be added that states that the Oklahoma Health Care Authority will provide a coverage determination decision for requested and medically necessary routine services within 72-hours for a member participating in a qualifying clinical trial. Revisions to the out-of-state services policy, at OAC 317:30-3-90, will also add language to assure that clinical trials will be provided in accordance with federal requirements and that clinical trials do not follow all of the out-of-state policy requirements. Further revisions will add a clause regarding the override for prior authorizations that are related to lodging and meals services when they are provided in accordance with an approved clinical trial. Finally, revisions will add language that allows for a SoonerCare member to travel up to one hundred miles (100) from the Oklahoma border to receive dental services.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 3. GENERAL MEDICAL PROGRAM INFORMATION

#### 317:30-3-57.1. Clinical trials~~Coverage of routine services in relation to clinical trials~~

~~(a) **Definition.** A clinical trial is a federally funded study that is either being conducted under an Investigational New Drug (IND) application or is exempt from having an IND application and helps to prevent, detect, or treat cancer or a life-threatening illness, injury, or disease.~~

~~(b) **Medical necessity.** Clinical trials must be determined to be medically necessary for the individual affected member. Documentation in the member's plan of care should support the medical necessity of the clinical trial for the affected individual member and that the clinical trial is for the medical~~

## Emergency Adoptions

purposes only. Requests for clinical trials in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation/requirements.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2). An OHCA approved clinical trial must include the following:

(1) The clinical trial does one (1) of the following for the treatment of cancer or a life-threatening illness, injury, or disease:

- (A) Tests how to administer a health care service;
- (B) Tests responses to a health care service;
- (C) Compares effectiveness of a health care service; or
- (D) Studies new uses of a health care service.

(2) The clinical trial is approved and funded by one (1) of the following:

- (A) Research facilities that have an established peer review program that has been approved by the National Institutes of Health Center (NIH);
- (B) The Centers for Disease Control and Prevention;
- (C) The Agency for Health Care Research and Quality (AHRQ);
- (D) The Centers for Medicare and Medicaid Services (CMS);
- (E) The United States Department of Veterans Affairs (VA);
- (F) The United States Department of Defense (DOD);
- (G) The Food and Drug Administration;
- (H) The United States Department of Energy; or
- (I) Research entities that meet the eligibility criteria for a support grant from a NIH center.

(3) Is conducted in a facility where the personnel have training and expertise needed to provide the type of care required and there is written protocol for the approved clinical trial;

(4) Complies with appropriate federal regulations regarding the protection of human subjects; and

(5) For full guidelines, please refer to [www.okhea.org/mau](http://www.okhea.org/mau).

(d) **Routine care costs.**

(1) The following are included in routine care costs for approved clinical trials and by a SoonerCare contracted provider:

- (A) Costs that are required for the administration of the investigational item or service and are not a covered benefit of the clinical trial;
- (B) Costs regarding the appropriate monitoring of the effects from the item or service; and
- (C) Costs that are necessary for the prevention, diagnosis or treatment of medical complications for a

non-covered item or service that was provided in the clinical trial.

(2) The following are excluded from routine care costs in approved clinical trials:

- (A) The investigational item or service;
- (B) Items or services that the study gives for free;
- (C) Items or services that are only utilized when determining if the individual is eligible for the clinical trial;
- (D) Items or services that are used only for data collection or analysis;
- (E) Evaluations that are designed to only test toxicity or disease pathology;
- (F) Experimental, investigational, and unproven treatments or procedures and all related services provided outside of an approved clinical trial; and
- (G) Any non-FDA approved drugs that were provided or made available to the member during the approved clinical trial will not be covered after the trial ends.

(3) Applicable plan limitations for coverage for out-of-network and out-of-state providers will apply to routine care costs in an approved clinical trial.

(4) Applicable utilization management guidelines will apply to routine care costs in an approval clinical trial.

(e) **Experimental and investigational.** SoonerCare does not cover for medical, surgical, or other health care procedures, which are considered experimental or investigational in nature.

(a) **Coverage.** The Oklahoma Health Care Authority (OHCA) will cover routine patient costs provided under a qualifying clinical trial to an eligible member. The OHCA does not:

- (1) Determine eligibility for participation in any research study; or
- (2) Reimburse for any costs associated in the research study, other than for routine patient costs for clinical studies, as defined in this Section and in the Oklahoma Medicaid State Plan.

(b) **Qualifying clinical trials criteria.**

(1) Clinical trial, as adopted from the National Institute of Health (NIH) definition, means a research study in which one (1) or more human subjects are prospectively assigned to one (1) or more interventions, which may include placebo or other control, to evaluate the effects of those interventions on health-related biomedical or behavioral outcomes.

(2) Pursuant to Section 1905(a)(30) and 1905(gg) of the Act, as amended and added by Division CC, Title II, Section 210 of the Consolidated Appropriations Act, 2021 (Public Law 116-260, Section 210), qualifying clinical trial means a clinical trial, in any clinical phase of development, that is conducted in relation to the prevention, detection, or treatment of any serious or life-threatening disease or condition and is described in any of the following clauses:

- (A) The clinical trial is approved, conducted, or supported (which may include funding through in

kind contributions) by one (1) or more of the following:

- (i) The National Institutes of Health (NIH);
- (ii) The Centers for Disease Control and Prevention (CDC);
- (iii) The Agency for Healthcare Research and Quality (AHRQ);
- (iv) The Centers for Medicare and Medicaid Services (CMS);
- (v) A cooperative group or center of any of the entities described above or of the Department of Defense or the Department of Veteran Affairs;
- (vi) A qualified non-governmental research entity identified in guidelines issued by the National Institutes of Health for center support grants, including guidelines issued after the date of these rules; or
- (vii) Any of the following if the clinical trial has been reviewed and approved through a system of peer review that the Secretary determines to be comparable to the system of peer review of studies and investigations used by the National Institutes of Health and assures unbiased review of the highest scientific standards by qualified individuals with no interest in the outcome of the review:
  - (I) The Department of Veterans Affairs;
  - (II) The Department of Defense; or
  - (III) The Department of Energy.

(B) The clinical trial is conducted pursuant to an investigational new drug exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act or an exemption for a biological product undergoing investigation under section 351(a)(3) of the Public Health Service Act.

(C) The clinical trial is a drug trial that is exempt from being required to have an investigational new drug exemption or an exemption for a biological product undergoing investigation.

(3) Serious disease or condition, as adopted from 21 C.F.R. § 312.300, means a disease or condition associated with morbidity that has substantial impact on day-to-day functioning. Short-lived and self-limiting morbidity will usually not be sufficient, but the morbidity need not be irreversible, provided it is persistent or recurrent. Whether a disease or condition is serious is a matter of clinical judgment, based on its impact on such factors as survival, day-to-day functioning, or the likelihood that the disease, if left untreated, will progress from a less severe condition to a more serious one.

(4) Life-threatening disease or condition, as adopted from 21 C.F.R. § 312.300, means a stage of disease in which there is reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment.

(c) **Clinical trials determination standards.** Pursuant to Section 1905(a)(30) and 1905(gg) of the Act, as amended and added by Division CC, Title II, Section 210 of the Consolidated

Appropriations Act, 2021 (Public Law 116-260, Section 210, the OHCA will expedite and complete a coverage determination for routine services under this Section within seventy-two (72) hours of receiving the required attestation as described below. The OHCA will maintain the following standards in any coverage determination under this section:

(1) **Attestation.** The health care provider and principal investigator for the qualifying clinical trial must submit a standardized form attestation to the OHCA regarding the appropriateness of the qualifying clinical trial for the individual member.

(2) **Expedited determination.** Upon receiving the completed required attestation, the OHCA will expedite and complete a coverage determination under this Section within seventy-two (72) hours. All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to meet at least one (1) definition in subsection (b)(3)-(4) above for the terms "serious disease or condition" or "life-threatening disease or condition".

(3) **Geographic and network allowance.** The OHCA will determine coverage under this Section without limitation on the geographic location or network affiliation of the health care provider treating the individual member or the principal investigator of the qualifying clinical trial.

(4) **Protocols and proprietary documentation.** The OHCA will determine coverage under this Section without requiring the submission of the protocols of the qualifying clinical trial or any other documentation that may be proprietary or determined by the Secretary to be burdensome to provide.

(5) **Documentation of serious or life-threatening disease or condition.** In determining coverage under this Section, the OHCA will consider existing or newly offered documentation that the individual member has been diagnosed with or is suffering from one (1) or more serious or life-threatening diseases or conditions that are the subject of the qualifying clinical trial as shown in the attestation.

(d) **Routine patient costs.**

(1) **Included items and services.** Routine patient costs include any item or service provided to Medicaid-eligible members under the qualifying clinical trial, including:

(A) Any item or service provided to prevent, diagnose, monitor, or treat complications resulting from participation in the qualifying clinical trial, to the extent that the provision of such items or services to the member would otherwise be covered outside the course of participation in the qualifying clinical trial under the Oklahoma Medicaid State Plan or waiver, including a demonstration project under section 1115 of the Act; and

(B) Any item or service required solely for the provision of the investigational item or services that is the subject of the qualifying clinical trial, including the administration of the investigational item or service.

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(2) **Excluded items and services.** The following items and services are excluded from routine patient costs in qualifying clinical trials:

- (A) Any investigational item or service that is:
- (i) The subject of the qualifying clinical trial; and
  - (ii) Not otherwise covered outside of the clinical trial under the Oklahoma Medicaid State Plan or waiver, including a demonstration project under section 1115 of the Act; and
- (B) Any item or service that is:
- (i) Provided to the member solely to satisfy data collection and analysis for the qualifying clinical trial and is not used in the direct clinical management of the member; and
  - (ii) Not otherwise covered under the Oklahoma Medicaid State Plan or waiver, including a demonstration project under section 1115 of the Act.

### PART 6. OUT-OF-STATE SERVICES

#### 317:30-3-90. Out-of-state services

(a) Consistent with Section 431.52 of Title 42 of the Code of Federal Regulations (C.F.R.), an eligible SoonerCare member who is a resident of Oklahoma but who is temporarily out of state, may receive services from an out-of-state provider to the same extent that he or she would receive such services in Oklahoma, if:

(1) Medical services are needed for a medical emergency, as determined by the attending physician or other provider (M.D., D.O., P.A., or A.P.R.N), or a dentist [Doctor of Dental Surgery (DDS), or Doctor of Medicine in Dentistry (DMD)]. For any provider, who is not contracted at the time the services are provided, documentation as requested from the Oklahoma Health Care Authority (OHCA) of the emergency must be submitted, including, but not limited to, emergency room reports, medical histories, discharge summaries, and all other relevant medical reports.

(2) Medical services are needed and the member's health would be endangered if he or she were required to return to Oklahoma for medical care and treatment, as determined by the attending physician or other provider (M.D., D.O., P.A., or A.P.R.N), or a dentist [Doctor of Dental Surgery (DDS), or Doctor of Medicine in Dentistry (DMD)]. For any provider, who is not contracted at the time the services are provided, documentation of the nature and possible extent of the endangerment must be submitted as requested from the OHCA.

(3) The Oklahoma Health Care Authority's (OHCA) Chief Medical Officer (CMO), or his or her designee, determines, on the basis of medical advice, that the needed medical services, or necessary supplemental resources, are more readily available in the state where the member is located at the time of needing medical treatment. Prior

authorization must be obtained from the OHCA's CMO, or his or her designee, before the services are rendered; ~~or,~~

~~(4) The customary or general practice for members residing in a particular locality within Oklahoma is to use medical resources in another state, and the member is using a provider that is contracted with the OHCA.~~

(b) Per 42 C.F.R. § 431.52, if it is the customary or general practice for SoonerCare members who are residing in a particular locality within Oklahoma to use medical or dental resources in another state, reimbursement is available for services furnished in another State to the same extent that reimbursement for services is furnished within Oklahoma boundaries. The services being rendered must be provided by a provider who is contracted with the OHCA and must be appropriately licensed and in good standing with the state in which they practice.

~~(A1)~~ Except for out-of-state inpatient psychiatric services, no prior authorization is necessary for services provided in accordance with paragraph ~~(a)(4)(b)~~, above, if the member obtains them from an out-of-state provider that is:

~~(iA)~~ Located in a border state (Arkansas, Colorado, Kansas, Missouri, New Mexico, or Texas) within fifty (50) miles of the Oklahoma border, with exceptions for dental services. The OHCA will allow the member to travel up to one hundred (100) miles of the Oklahoma border to receive dental services; and

~~(ii)~~ Contracted with the OHCA;

~~(iiiB)~~ Provided, however, that nothing in this paragraph shall be interpreted to eliminate or otherwise affect a prior authorization requirement established by any other OHCA rule, including, but not limited to, Oklahoma Administrative Code (OAC) 317:30-3-31, that would have to be met if the health care-related good and/or service were provided in Oklahoma.

~~(B2)~~ In all other instances, prior authorization must be obtained from the OHCA's CMO, or his or her designee, before the services are rendered.

(c) Clinical trials, either in-state or out-of-state, will need to adhere to any federal regulations which provides for certain exceptions to OHCA's out-of-state policy. For the full clinical trials policy, please refer to OAC 317:30-3-57.1.

~~(b)~~ Except as provided in subsections (a)(1),(a)(2) ~~and (a)(4)(A), (b)(1) and (c)~~, above, SoonerCare will not pay for any services furnished by an out-of-state provider unless prior authorization has been obtained from the OHCA's CMO, or his or her designee, before the services are rendered. Prior authorization for out of state services must be obtained in all instances in which the member is located in Oklahoma at the time the services are determined to be medically necessary.

(1) As part of this authorization process, the following documents must be submitted to the OHCA's CMO, or his or her designee:

(A) Documents sufficient to establish the "medical necessity" of the services requested, as that term is defined by OAC 317:30-3-1(f). See also OAC 317:30-3-31, Prior authorization for health care-related goods and services. Examples of such documents may include, but are not limited to, Histories of

Present Illnesses (HPIs), physical exams, laboratory reports, imaging reports, progress notes, hospital charts, and/or other relevant medical records; and (B) Documents sufficient to establish that the health care needs of the member cannot be met in Oklahoma. Such documents shall include, but not be limited to, a letter from the referring provider that contains:

- (i) A clear presentation of the member's medical condition and diagnosis for which out-of-state treatment is requested, including a summary of treatment to date that is supported by the documents in paragraph ~~(b)~~(c)(1)(A), above;
- (ii) Names of physicians and/or facilities in Oklahoma that the member has previously been referred to for diagnosis and/or treatment;
- (iii) Physicians consulted by the attending physician relative to diagnosis and/or availability of recommended treatment in Oklahoma;
- (iv) Recommended treatment or further diagnostic work; and
- (v) Reasons why medical care cannot be provided in Oklahoma or the next closest location outside Oklahoma.

(C) Except for emergency medical, behavioral health cases, and as provided in subsections (a)(1),(a)(2) and (b)(1), above, prior authorization requests for out-of-state services must be made in writing with all the necessary documents that show medical necessity and details of the services provided, including but not limited to, relevant medical history, description of services and procedures to be performed, Histories of Present Illnesses (HPIs), physical exams, laboratory reports, imaging reports, and received by the OHCA at least ten (10) calendar days prior to the date services are to be provided in another state or at the discretion of the CMO or his/her designee.

- (i) Emergency medical, ~~or~~ behavioral health, and dental cases must be identified as such by the physician or provider in the prior authorization request.
- (ii) Any telephone request for prior authorization of out-of-state services will only be accepted in emergency situations, and must be promptly followed by a written request.

(2) Prior authorization requirements for medically necessary lodging, transportation, and/or meals assistance associated with out-of-state services are established in other OHCA rules, including, but not limited to, OAC 317:30-3-92 and 317:30-5-327.1. In accordance with federal regulations, exceptions to prior authorization requirements will be made for members who are participating in a clinical trial that require out-of-state medically necessary services. For the full clinical trials policy, please refer to OAC 317:30-3-57.1.

(ee) The ~~restrictions~~ limitations established in subsections (a) through ~~(b)~~(c), above, shall not apply to children who reside

outside of Oklahoma and for whom the Oklahoma ~~Department~~ of Human Services (OKDHS) makes Title IV-E adoption assistance payments or Title IV-E foster care maintenance payments.

~~(df)~~ Denials of requests for prior authorization may be appealed in accordance with OAC 317:2-1-2(d)(1)(C).

~~(eg)~~ Out-of-state providers shall, upon request by authorized OHCA representatives, make available fiscal and medical records as required by applicable federal regulations, OHCA rules, and the Provider Agreement. Such records shall be made available for review by authorized OHCA representatives at the OHCA's address in Oklahoma City, Oklahoma.

*[OAR Docket #22-697; filed 8-3-22]*

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

*[OAR Docket #22-698]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 5. Individual Providers and Specialties  
Part 9. Long-Term Care Facilities  
317:30-5-136.1 [AMENDED]  
**(Reference APA WF # 22-10)**

**AUTHORITY:**  
The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; The Oklahoma Medicaid State Plan

**ADOPTION:**  
June 22, 2022

**EFFECTIVE:**  
Immediately upon Governor's approval

**APPROVED BY GOVERNOR:**  
August 2, 2022

**EXPIRATION:**  
Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**  
N/A

**INCORPORATIONS BY REFERENCE:**  
N/A

**FINDING OF EMERGENCY:**  
The Agency requests emergency approval of rule revisions to the Pay-for-Performance program policy in order to avoid violation of federal law or regulation or other state law. The approval of the emergency rule would allow the Oklahoma Health Care Authority (OHCA) to implement and align new and current rules with the Medicaid State Plan.

**GIST/ANALYSIS:**  
These emergency revisions are necessary to remove outdated language and add new language to the Long-Term Care (LTC) Pay-for-Performance (PFP) program payment criteria section. These policy revisions will align with the proposed Oklahoma Medicaid State Plan. The overall purpose of the proposed rule revisions will be to maintain compliance with federal requirements and continuity of processes.

**CONTACT PERSON:**  
Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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

# Emergency Adoptions

UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 9. LONG-TERM CARE FACILITIES

#### 317:30-5-136.1. Pay-for-Performance (PFP) program

(a) **Purpose.** The PFP program was established through Oklahoma State Statute, Title 56, Section 56-1011.5 as amended. PFP's mission is to enhance the quality of life for target citizens by delivering effective programs and facilitating partnerships with providers and the community they serve. The program has a full commitment to the very best in quality, service and value which will lead to measurably improved quality outcomes, healthier lifestyles, greater satisfaction and confidence for our members.

(b) **Eligible providers.** Any Oklahoma long-term care nursing facility that is licensed and certified by the Oklahoma State Department of Health (OSDH) as defined in Oklahoma Administrative Code (OAC) 317:30-5-120.

(c) **Quality measure care criteria.** To maintain status in the PFP program, each nursing facility shall submit documentation as it relates to program metrics quarterly or upon the request of the Oklahoma Health Care Authority (OHCA). The program metrics can be found on the OHCA's PFP website or on PFP/Quality of Care (QOC) data collection portal. If any quality metric, listed below, is substituted or removed by Centers of Medicare and Medicaid Services (CMS), an alternative quality metric may be chosen with the support of participating partners. For the period beginning October 1, 2019 and until changed by amendment, qualifying facilities participating in the PFP program have the potential to earn an average of the five dollars (\$5.00) quality incentive per Medicaid patient per day. Facility(s) baseline is calculated annually and will remain the same for the twelve (12) month period. Facility(s) will meet or exceed five-percent (5%) relative improvement or the CMS' national average each quarter for the following metrics:

- (1) Decrease percent of high risk/unstageable pressure ulcers for long-stay residents.
- (2) Decrease percent of unnecessary weight loss for long-stay residents.
- (3) Decrease percent of use of anti-psychotic medications for long-stay residents.
- (4) Decrease percent of urinary tract infection for long-stay residents.

(d) **Payment.** Payment to long-term care facilities for meeting the metrics will be awarded quarterly. A facility may earn a minimum of one dollar and twenty-five cents (\$1.25) per Medicaid patient per day for each qualifying metric. A facility receiving a scope and severity tag deficiency of "I" or greater related to a targeted quality measure in the program is disqualified from receiving an award related to that measure for that quarter from the Oklahoma State Department of Health will forfeit the PFP incentive for the quarter out of compliance.

(1) **Distribution of payment.** OHCA will notify the PFP facility of the quality reimbursement amount on a quarterly basis.

(2) **Penalties.** Facilities shall have performance review(s) and provide documentation upon request from OHCA to maintain program compliance. Program payments will be withheld from facilities that fail to submit the requested documentation within fifteen (15) business days of the request.

(3) **Timeframe.** To qualify for program reimbursement by meeting a specific quality measure, facilities are required to provide metric documentation within thirty (30) days after the end of each quarter to the OHCA.

(e) **Appeals.** Facilities can file an appeal with the Quality Review Committee and in accordance, with the grievance procedures found at OAC 317:2-1-2(c) and 317:2-1-17.

[OAR Docket #22-698; filed 8-3-22]

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

[OAR Docket #22-699]

#### RULEMAKING ACTION:

EMERGENCY adoption

#### RULES:

Subchapter 5. Individual Providers and Specialties

Part 58. ~~Non-Hospital Based Hospice~~

317:30-5-530 [AMENDED]

317:30-5-531 [AMENDED]

Part 110. Indian Health Services, Tribal Programs, And Urban Indian Clinics (I/T/Us)

317:30-5-1096 [AMENDED]

(Reference APA WF # 22-08)

#### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Title 42 of the Code of Federal Regulations Section 435.119

#### ADOPTION:

June 22, 2022

#### EFFECTIVE:

Immediately upon Governor's approval

#### APPROVED BY GOVERNOR:

August 2, 2022

#### EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to its current non-hospital based hospice policy to protect the public health, safety, or welfare. The approval of the emergency rule will allow the Oklahoma Health Care Authority (OHCA) to provide hospice care services as a covered benefit for the adult expansion population as described per the Code of Federal Regulations (CFR) Title 42 Section 435.119.

#### GIST/ANALYSIS:

These emergency revisions are necessary to add hospice services as a covered benefit for members eligible as expansion adults, described in the Code of Federal Regulations (C.F.R.) Title 42 Section 435.119. The proposed



rule will outline hospice coverage, eligibility, reimbursement, provider qualifications/requirements, and prior authorization requirements.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 58. NON-HOSPITAL-BASED HOSPICE

317:30-5-530. Eligible providers

Non-Hospital-Affiliated Hospice entities must be appropriately licensed and have a contract with the Oklahoma Health Care Authority to provide Hospice services.

- (a) Providers of hospice services will meet applicable state and federal licensing requirements and meet Medicare certification requirements to provide hospice services.
(b) Providers of hospice services will enter into a contractual agreement with the State Medicaid Agency, Oklahoma Health Care Authority (OHCA).

317:30-5-531. Coverage for adults

There is no coverage for hospice services provided Medicaid eligible adults except for the hospice provision provided through the ADvantage Waiver.

- (a) Definition. Hospice care is a comprehensive, holistic program of palliative and/or comfort care and support provided to the member and his/her family when a physician certifies that the member has a terminal illness and has a life expectancy of six (6) months or less.
(1) Hospice services must be related to the palliation and management of the member's illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills.
(2) Hospice care is performed under the direction of a physician as per the member's plan of care in an approved hospital hospice facility, in-home hospice program, or nursing facility.
(b) Eligibility. Coverage for hospice services is provided to Medicaid eligible expansion adults only.
(1) Expansion adults defined by 42 Code of Federal Regulations § 435.119 who are age nineteen (19) or older and under sixty-five (65), at or below one hundred thirty-three percent (133%) of the federal poverty level (FPL), and who are not categorically related to the aged, blind, or disabled eligibility group are eligible for hospice services.
(2) Hospice care eligibility requires physician certification that the member is terminally ill and includes a

medical prognosis with a life expectancy of six (6) months or less if the illness runs its normal course. The terminal prognosis also must be supported by clinical documentation in the medical record.

(3) For information regarding hospice provision provided through waivers, refer to Oklahoma Administrative Code (OAC) 317:30-5-763, 317:30-5-1200, and 317:30-5-1202.

- (c) Covered services. Hospice care services can include but not limited to:
(1) Nursing care;
(2) Physician services (e.g., physicians employed or working under arrangements made with the hospice);
(3) Medical equipment and supplies;
(4) Drugs for symptom control and pain relief;
(5) Home health aide services;
(6) Personal care services;
(7) Physical, occupational and/or speech therapy;
(8) Medical social services;
(9) Dietary counseling; and
(10) Grief and bereavement counseling to the member and/or family are required but are not reimbursable.
(d) Prior authorization. All services must be prior authorized, and a written plan of care must be established before services are rendered. For medical review purposes, all hospice services will be authenticated in accordance with OAC 317:30-3-30.
(e) Service election.
(1) The member or member's legal guardian or authorized representative must sign an election statement, choosing hospice care instead of routine medical care with the objective to treat and cure the member's terminal illness, and by doing so waives his or her right to other Medicaid benefits, except for care not related to the terminal illness and care provided by the attending physician.
(2) Once the member, legal guardian, or member's authorized representative has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness.
(f) Service revocation.
(1) Hospice care services may be revoked by the member, legal guardian, or authorized representative at any time.
(2) Upon revoking the election of Medicaid coverage of hospice care for a particular election period, the member resumes Medicaid coverage of the benefits waived when hospice care was elected.
(3) The member may at any time elect to receive hospice coverage for any other hospice election periods for which he or she is eligible.
(g) Service frequency. Hospice care services:
(1) Are available for an initial two (2) ninety-day (90-day) certification periods. After the two (2) initial ninety-day (90-day) periods, a member is allowed an unlimited number of sixty-day (60-day) certification periods during the remainder of the member's lifetime. Each certification period requires a new prior authorization.

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- (2) Require a hospice physician or nurse practitioner to have a face-to-face encounter with the member to determine if the member's terminal illness necessitates continuing hospice care services. The encounter should take place prior to the one hundred eightieth (180<sup>th</sup>) day recertification and each subsequent recertification thereafter; and attest that such visit took place.
- (h) **Documentation.** Initial documentation requirements for requesting services, documentation requirements for continuation of services, and the full hospice guidelines can be found at OHCA's website, <https://oklahoma.gov/ohca>.
- (i) **Reimbursement.**
- (1) SoonerCare shall provide hospice care reimbursement:
- (A) For each day that an individual is under the care of a hospice, the hospice will be reimbursed an amount applicable to the level, type and intensity of the services furnished to the individual for that day in accordance with the Oklahoma Medicaid State Plan.
- (B) For independent physician direct services in accordance with the Oklahoma Medicaid State Plan.
- (2) Through the Oklahoma Medicaid State Plan, the OHCA established payment amounts for the following categories:
- (A) **Routine hospice care.** Member is at home and not receiving hospice continuous care.
- (B) **Continuous home care.** Member is not in an inpatient facility and receives hospice on a continuous basis at home; primarily consisting of nursing care to achieve palliation and management of acute medical symptoms during a brief period of crisis only as necessary to maintain the terminally ill patient at home. If less skilled care is needed on a continuous basis to enable the person to remain at home, this is covered as routine hospice care.
- (C) **Inpatient respite care.** Member receives care in an approved inpatient facility on a short-term basis for respite.
- (D) **General inpatient care.** Member receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management that cannot be managed at home.
- (E) **Nursing facility (NF)/intermediate care facilities for individuals with intellectual disabilities (ICF/IID) care.** Member receives hospice care in a NF or ICF/IID. Hospice nursing facility or ICF/IID room and board per diem rates are reimbursed to the in-home hospice provider at a rate equal to 95% of the skilled nursing facility rate. The hospice provider is responsible for passing the room and board payment through to the NF or ICF/IID. If Medicare is the primary payer of hospice benefits, OHCA will only reimburse the hospice provider for coinsurance and deductible amounts per the Oklahoma Medicaid State Plan and will continue to pay the room and board to the nursing facility.
- (F) **Service intensity add-on.** Member receives care by a registered nurse (RN) or social worker

when provided in the last seven (7) days of his/her life.

(G) **Other general reimbursement items.**

- (i) **Date of discharge.** For the day of discharge from an inpatient unit, the appropriate home care rate is to be paid unless the patient dies as an inpatient. When the patient is discharged as deceased, the inpatient rate, either general or respite, is to be paid for the discharge date.
- (ii) **Inpatient day cap.** Payments to a hospice for inpatient care must be limited according to the number of days of inpatient care furnished to Medicaid patients. During the twelve-month (12-month) period beginning October 1 of each year and ending September 30, the aggregate number of inpatient days (both for general inpatient care and inpatient respite care) may not exceed twenty percent (20%) of the aggregate total number of days of hospice care provided to all Medicaid recipients during that same period. This limitation is applied once each year, at the end of the hospices' cap period.
- (iii) **Obligation of continuing care.** After the member's Medicare hospice benefit expires, the patient's Medicaid hospice benefits do not expire. The hospice must continue to provide the recipient's care until the patient expires or until the member revokes the election of hospice care.

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

#### 317:30-5-1096. Off-site services

I/T/U covered services provided off-site or outside of the I/T/U setting, including but not limited to hospice services, mobile clinics, or places of residence, are compensable at the OMB rate when billed by an I/T/U that has been designated as a Federally Qualified Health Center. The I/T/U must meet provider participation requirements listed in OAC 317:30-5-1088. I/T/U off-site services may be covered if the services rendered were within the provider's scope of practice and are of the same integrity of services rendered at the I/T/U facility.

[OAR Docket #22-699; filed 8-3-22]

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

[OAR Docket #22-700]

RULEMAKING ACTION:  
EMERGENCY adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties  
 Part 110. Indian Health Services, Tribal Programs, And Urban Indian Clinics (I/T/Us)  
 317:30-5-1094 [AMENDED]  
 (Reference APA WF # 22-07)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 42 CFR 440.130(d); Section 1115 of the Social Security Act

**ADOPTION:**

June 22, 2022

**EFFECTIVE:**

Immediately upon Governor's approval

**APPROVED BY GOVERNOR:**

August 2, 2022

**EXPIRATION:**

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Agency requests emergency approval of rule revisions to its current Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/U) policy. These emergency revisions protect the public health, safety, or welfare by allowing I/T/Us to be reimbursed the outpatient Office of Management and Budget (OMB) rate for rendered residential substance use disorder (SUD) services. The higher reimbursement rate will encourage the provision of these services, thus allowing SoonerCare members increased access to SUD treatment in these facilities.

**GIST/ANALYSIS:**

These emergency revisions are necessary to reflect that I/T/U providers will be reimbursed the outpatient Office of Management and Budget (OMB) rate for rendered residential substance use disorder (SUD) services. This policy change aligns with the authority in the Oklahoma Medicaid State Plan and with current business practices.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

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

**317:30-5-1094. Behavioral health services provided at I/T/Us**

(a) **Inpatient behavioral health.** Services are covered when provided in accordance with a documented individualized service plan developed to treat the identified behavioral health needs. ~~Inpatient psychiatric service providers must meet the requirements and applicable limitations, restrictions, or prior authorization requirements set forth in Oklahoma Administrative Code (OAC) 317:30-5-95 through 317:30-5-97.~~

~~(1) The provision of inpatient psychiatric services by Indian Health Services (IHS) facilities are reimbursed at the OMB inpatient encounter rate. Inpatient psychiatric services provided by non-IHS facilities are reimbursed at the established per diem or DRG rate.~~

~~(2) For the provision of residential substance use disorder (SUD) treatment services, I/T/U facilities must be contracted as residential SUD service providers and meet the requirements found at OAC 317:30-5-95.43 through 317:30-5-95.49. Residential SUD treatment services will be reimbursed at the OMB outpatient encounter rate.~~

~~(1) Inpatient psychiatric service providers must meet the requirements and applicable limitations, restrictions, or prior authorization requirements set forth in Oklahoma Administrative Code (OAC) 317:30-5-95 through 317:30-5-97.~~

~~(2) The provision of inpatient psychiatric services by Indian Health Services (IHS) facilities are reimbursed at the OMB inpatient encounter rate. Inpatient psychiatric services provided by non-IHS facilities are reimbursed at the established per diem or DRG rate.~~

(b) **Outpatient behavioral health.** Services are covered when provided in accordance with a documented individualized service plan developed to treat the identified mental health needs and/or SUD. Outpatient behavioral health services are reimbursed at the I/T/U outpatient encounter rate unless otherwise noted in the section.

(1) A full description of services may be found at OAC 317:30-5-241 and 317:30-5-241.5(d), 317:30-5-241.7. Services may include, but are not limited to:

- (A) Mental health and/or substance use assessment/evaluation and testing;
- (B) Service plan development;
- (C) Crisis intervention services;
- (D) Medication training and support;
- (F) Individual/interactive psychotherapy;
- (G) Group psychotherapy;
- (H) Family psychotherapy;
- (I) Medication-assisted treatment (MAT) services and/or medication; and
- (J) Peer recovery support specialist (PRSS) services.

(2) In order to support access to behavioral health services, these services may be provided in settings outside of the I/T/U. Offsite services must take place in a confidential setting.

(3) For the provision of behavioral health related case management services, I/T/U facilities must be fully contracted with the Oklahoma Health Care Authority (OHCA) as an outpatient behavioral health agency. The provision of these services is considered to be outside of the I/T/U encounter and will be paid at the current FFS rate. Contracted behavioral health case management providers must comply with the requirements found at OAC 317:30-5-241.6 and are responsible for obtaining all necessary prior authorizations, if needed.

(4) For the provision of psychosocial rehabilitation services, I/T/U facilities must be fully contracted with the

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OHCA as an outpatient behavioral health agency. The provision of these services is considered to be outside of the I/T/U encounter and will be paid at the current FFS rate. Contracted psychosocial rehabilitation service providers must comply with the requirements found at OAC 317:30-5-241.3 and are responsible for obtaining all necessary prior authorizations, if needed.

(5) Services provided by behavioral health practitioners, such as, licensed clinical social workers (LCSW), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral health practitioners (LBHP), licensed alcohol and drug counselors (LADC), and licensure candidates are not eligible for direct reimbursement as practitioners. Services provided by the aforementioned practitioners are compensable only when billed by their OHCA-contracted employer and when provided in those clinical settings in

which they are currently approved to render services. Licensure candidates must meet the requirements contained in OAC 317:30-5-240.3.

(6) Behavioral health services must be billed on an appropriate claim form using the appropriate procedure code and guidelines. The time indicated on the claim form must be the time actually spent with the member.

(c) **Residential substance use disorder (SUD).** For the provision of residential SUD treatment services, I/T/U facilities must be contracted as SoonerCare providers and meet the requirements found at OAC 317:30-5-95.43 through 317:30-5-95.49. Residential SUD treatment services will be reimbursed at the OMB outpatient encounter rate.

[OAR Docket #22-700; filed 8-3-22]

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# Permanent Final Adoptions

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

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

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

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

## TITLE 5. OKLAHOMA ABSTRACTORS BOARD CHAPTER 11. ADMINISTRATION OF ABSTRACTORS ACT

[OAR Docket #22-532]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 7. Application for Permit to Develop Abstract Plant  
5:11-7-2. Renewal of permit to develop abstract plant [AMENDED]

### AUTHORITY:

Oklahoma Abstractors Board; 1 § 1-22 B. et. seq.

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

December 29, 2021

### COMMENT PERIOD:

February 3 through March 3, 2022

### PUBLIC HEARING:

March 15, 2022

### ADOPTION:

March 15, 2022

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

March 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

November 1, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The adopted revisions to Chapter 11 place timelines for the completion of building an abstract plant to eliminate "placeholder" plant permits that might prevent someone from seeking a permit in that county.

### CONTACT PERSON:

Katherine Smith, Oklahoma Abstractors Board, 421 NW 13<sup>th</sup> St., Suite 180, Oklahoma City, OK 73103, or Katherine.Smith@abstract.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2022:**

### SUBCHAPTER 7. APPLICATION FOR PERMIT TO DEVELOP ABSTRACT PLANT

#### 5:11-7-2. Renewal of permit to develop abstract plant

(a) A permit holder shall actively pursue development of the abstract plant. In the initial period of development, a minimum of one-half of the total available records must be indexed within three (3) years from the issue date of the permit. Plants currently under development as of the effective date of the rule shall also be required to have indexed a minimum of one-half of the total available records within three (3) years following their next renewal date. Failure of new or existing permit holders to complete the required indexing may result in the non-renewal and revocation of their permit. In the event of extenuating circumstances for non-completion, the Board may consider allowing additional time at the Board's discretion. The remainder of plant development shall be completed within two (2) years of the initial period. Failure to complete plant development by the end of this final period may result in the non-renewal and revocation of the permit. In the event of extenuating circumstances for non-completion, the Board may consider allowing additional time at the Board's discretion. ~~Failure to do so may result in revocation of permit or non-renewal by the board.~~

(b) Board action on renewal application. The application for the renewal of a permit to develop an abstract plant shall be considered by the Board at the next meeting after receipt of the application and completion of the review.

(1) In the event a motion is made to not renew a permit, the matter may be set down as a show cause matter at the next Board meeting. The permit holder shall be notified of the matter at least ten (10) days prior to the meeting date. Notice of the date, time, and place of the meeting at which the application for renewal and information will be considered by the Board shall be provided to the permit holder. The notice shall include a statement of facts or conduct which warrant non-renewal of the permit.

(2) Presentation before the Board.

(A) At the meeting where the application for renewal is being considered the permit holder shall be limited to thirty (30) minutes to present information in support of the application. Other persons wanting to provide comments regarding the application collectively shall be limited to thirty (30) minutes to present information. Additional time may be granted by the chairman upon good cause shown.

(B) The order of presentation of information regarding the application and opposition shall be established by the chairman.

(3) Criteria.

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(A) The Board shall consider the following factors in arriving at its decision:

- (i) compliance with the Act and Rules;
- (ii) payment of applicable fees;
- (iii) adequacy of county records bond; and
- (iv) activity of the permit holder in pursuit of the construction of the plant.

(B) The Board may consider other factors deemed relevant to the consideration of the application for renewal including additional information not obtained during the review.

(4) Decision of the Board. After consideration and action by the board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the permit holder.

*[OAR Docket #22-532; filed 7-5-22]*

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

*[OAR Docket #22-639]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

- Subchapter 3. Requirements to practice Public Accountancy  
10:15-3-3. [REVOKED]
- Subchapter 18. Computer-Based Examination  
10:15-18-3. [AMENDED]  
10:15-18-8. [AMENDED]  
10:15-18-9. [AMENDED]
- Subchapter 21. Reciprocity  
10:15-21-1. [AMENDED]  
10:15-21-3. [AMENDED]  
10:15-21-6. [AMENDED]
- Subchapter 25. Permits  
10:15-25-2. [AMENDED]  
10:15-25-3. [AMENDED]
- Subchapter 30. Continuing Professional Education  
10:15-30-2. [AMENDED]  
10:15-30-3. [AMENDED]  
10:15-30-5. [AMENDED]
- Subchapter 33. Peer Review  
10:15-33-4. [AMENDED]  
10:15-33-7. [AMENDED]
- Subchapter 43. Attest Engagements performed in accordance with Government Auditing Standards  
10:15-43-2. [REVOKED]

**AUTHORITY:**

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

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

October 11, 2021

**COMMENT PERIOD:**

November 1, 2021 through December 3, 2021

**PUBLIC HEARING:**

December 6, 2021

**ADOPTION:**

February 18, 2022

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

February 28, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

November 1, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The majority of the rule revisions this year involve removing the ability to apply for a Public Accountant (PA) license. The rule changes on this topic are contained in the following Sections: 10:15-3-3; 10:15-18-3; 10:15-18-8; 10:15-18-9; 10:15-21-1; 10:15-21-3; and 10:15-21-6. Out of approximately 11,000 Oklahoma Accountancy Board registrants, only thirteen are PAs. The rest are Certified Public Accountants (CPAs) and it has been over ten years since the last PA license was issued. Due to lack of interest in the credential, the Board wishes to remove the ability to obtain a new PA license while continuing to regulate those PAs that still exist. Changes to 10:15-25-2, 10:15-25-3, and 10:15-30-5 cleans up outdated language from when the Board transitioned from biennial registrant reporting to annual birth-month reporting. Changes to 10:15-30-2 and 10:15-30-3 removes outdated language as the exam credit hours awarded now depends on the delivery method. The changes to 10:15-33-4(d) is to remove ineffective regulation as the Board does not have jurisdiction over suspended firms. The removal of 10:15-33-4(f), 10:15-33-4(g), and 10:15-43-2 are to remove unnecessary regulation per the Governor's Executive Order 2020-03. The changes to 10:15-33-7 are to allow the Board to set a contract rate for Peer Review Oversight Committee members that will attract more interest given the high qualification standards and to change the membership requirements.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2022:**

### SUBCHAPTER 3. REQUIREMENTS TO PRACTICE PUBLIC ACCOUNTANCY

#### 10:15-3-3. License as a public accountant [REVOKED]

~~A license may be issued to a qualified applicant only after:~~

- ~~(1) The examination has been satisfactorily completed;~~
- ~~(2) Evidence, by means established in Title 59, Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character;~~
- ~~(3) Documentation has been provided that the licensure applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as described in Title 59, Section 15.9.E of the Act. Work experience must have been obtained within the four (4) years immediately prior to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided in a format prescribed by the Board. If the work experience is denied, the applicant may~~

file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the requirements under this section have been met. Any evidence submitted by the applicant shall be in documentary form, and

~~(4) Evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board has been provided.~~

### SUBCHAPTER 18. COMPUTER-BASED EXAMINATION

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

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

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

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

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

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

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

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

#### 10:15-18-8. Content of examinations

The examination for certification as a certified public accountant shall be the AICPA Uniform Certified Public Accountant Examination. ~~The examination for licensing as a public accountant shall be parts of the AICPA Uniform Certified Public Accountant Examination.~~

#### 10:15-18-9. Notification of grade

Each candidate shall be advised of the grade earned in each test section for which the candidate was examined. The names of candidates who have been granted credit for all test sections of the CPA ~~and PA~~ examination will be made public after the grades have been certified in accordance with Board policy.

### SUBCHAPTER 21. RECIPROCITY

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

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

- (1) written proof of test scores received on all examinations from the examining jurisdiction;
- (2) written information that the applicant met or currently meets all Oklahoma requirements for eligibility as provided by statute, §15.13, Title 59, Oklahoma Statutes and these rules;
- (3) a current certificate of good standing from the jurisdiction who issued the certificate ~~or license~~ upon which the reciprocal certificate ~~or license~~ is based;
- (4) written proof of having met all Oklahoma continuing professional educational requirements for those applicants seeking a permit to practice public accounting;
- (5) evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board; and
- (6) evidence, by means established in Section 15.9 of the Act, is obtained to substantiate that the applicant is of good ~~moral~~ character.

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

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

(d) The filed application of an active duty military personnel or their spouse shall be processed expeditiously and the requested certificate ~~or license~~ shall be issued within thirty (30)

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days, assuming the eligibility requirements are met. In addition, pursuant to the Military Service Occupation, Education, and Credentialing Act, the reciprocal application fee shall be waived for an active duty military personnel or their spouse.

### 10:15-21-3. Evaluation of qualifications

Evaluation and approval or denial of the application for a reciprocal certificate ~~or license~~ shall be performed by the Executive Director or his or her designee.

### 10:15-21-6. Payment of fee

Each application for a reciprocal certificate ~~or license~~ shall be accompanied by all applicable fees.

## SUBCHAPTER 25. PERMITS

### 10:15-25-2. Dates of issuance and expiration

(a) Permits renewed on a timely basis shall bear a date of issue of ~~July 1~~ the first day of the month after the registrant's birth month for individuals and ~~June~~ July 1 for firms except sole proprietorships. All other permits, except for (d) and (e) below, shall bear a date of issue based on the date the acceptable application for a permit is received in the Board office.

(b) Except for sole proprietorships, firm permits renewed on a timely basis shall bear a date of issuance of July 1 and shall expire on the following June 30.

(c) Sole proprietorship firm permits shall bear the same date of issuance and expiration as the sole proprietor's individual permit.

(d) When the Board has granted an extension, the date of issuance will be determined on a case by case basis.

(e) If an application for a permit which has been returned to the holder for correction or completion of information is returned to the Board in an acceptable format within thirty (30) calendar days of the first denial, the permit shall bear the date on which the permit application was first received in the office of the Board. Failure to resubmit an acceptable application within the thirty-day period shall cause the permit to be dated with the date the acceptable application is received in the Board office.

(f) Effective January 1, 2010, individual permits renewed on a timely basis shall bear the date of the first day of the month immediately following the individuals' birth months and shall expire the following year on the last day of the individuals' birth months.

### 10:15-25-3. Individual permit

(a) Any registrant engaged in the practice of public accounting, regardless of whether such services are rendered for compensation, must have a permit, except for a licensed attorney providing tax services who does not display the certificate or license and does not have any reference thereto on professional stationery, business cards, or printed or electronic format. However, for purposes of this section, an individual

may not be considered to be in the practice of public accounting if the individual performs an incidental amount of non-compensated services for immediate family members. An individual who meets the definition of retired or inactive status as defined in the Code or the Act is not considered to be in the practice of public accounting. In order to obtain a permit, an individual must have a valid certificate or license, be properly registered, pay all applicable fees, and comply with the continuing education requirements.

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

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

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

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

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

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

## SUBCHAPTER 30. CONTINUING PROFESSIONAL EDUCATION

### 10:15-30-2. Required CPE for issuance of an original permit

Certificate and license holders applying for their first permit to practice public accounting must report a minimum of forty (40) hours of CPE earned within the previous calendar year or within 365 days immediately preceding the date of the application and shall also provide evidence of the successful completion of the AICPA Ethics Examination or its equivalent as determined by the Board before a permit will be issued. If the ethics examination course is to be counted toward the CPE required for the permit, it must have been completed during the same period as the remaining CPE reported to obtain the permit. Any ethics course meeting the requirements for issuance of an original permit: must have been passed with a score of 90% or above.

~~(1) must be one course which has been recommended for at least eight (8) hours of CPE credit by the course provider; and~~



~~(2) must have been passed with a score of 90% or above.~~

**10:15-30-3. Required CPE for issuance of a lapsed permit**

Certificate and license holders previously holding a permit to practice public accounting must report a minimum of forty (40) hours of CPE earned within the previous calendar year or within 365 days immediately preceding the date of the application and shall also provide evidence of the successful completion of the AICPA Ethics Examination or its equivalent as determined by the Board before a permit will be issued. If the ethics examination course is to be counted toward the CPE required for the permit, it must have been completed during the same period as the remaining CPE reported to obtain the permit. Any ethics course meeting the requirements for the renewal of a lapsed permit: must have been passed with a score of 90% or above.

~~(1) must be one course which has been recommended for at least eight (8) hours of CPE credit by the course provider; and~~

~~(2) must have been passed with a score of 90% or above.~~

**10:15-30-5. Reporting and documentation by certificate and license holders**

(a) Certificate and license holders not otherwise exempt must complete one hundred twenty (120) hours of qualifying CPE within a rolling three (3) calendar year period. A certificate or license holder's rolling three (3) calendar year period begins January 1 in the year the certificate or license holder was required to earn CPE. A minimum of twenty (20) hours of acceptable CPE, shall be completed each calendar year. Effective January 1, 2009, four hours of professional ethics must be completed within each rolling three (3) calendar year period.

(b) Each certificate or license holder shall annually report CPE for the preceding calendar year or claim an exemption to the CPE requirement for the preceding calendar year. This reporting shall take place in conjunction with the filing of the certificate or license holder's annual registration renewal based on the certificate or license holder's birth month.—~~The Board shall provide a schedule for purposes of transitioning to the new staggered annual birth month renewal/reporting dates.~~

(c) The professional ethics requirement as mandated in this section may be met by courses from other licensed professional disciplines that relate directly to the practice of public accounting, such as law or securities and may be met by courses on ethical codes in jurisdictions other than Oklahoma.

(d) CPE hours claimed for credit may be claimed only for the compliance period in which the course was completed and credit granted.

(e) Each letter or certificate of completion shall include the date of completion of the seminar or course as evidenced by:

- (1) Date the in-attendance course was completed;
- (2) Date a self-study course was completed and evidenced by the date of certified mailing or date of facsimile transmission to the program sponsor;

(3) Date an internet self-study course is transmitted to the program sponsor.

(f) At the time of completing each course, or within sixty (60) days thereafter, the certificate or license holder shall obtain a letter or certificate attesting to completion of the course from the sponsor of the course. Such letters or certificates shall be retained for a period of five (5) years after the end of the calendar year in which the program is completed and shall include the specific information set forth in the Board's CPE Standards in 10:15-32-6(a).

(g) Participants in CPE programs shall also retain descriptive material for five (5) years which reflects the content of a course in the event the participant is requested by the Board to substantiate the course content. Examples of such descriptive materials might include:

- (1) course descriptions;
- (2) course outlines; and
- (3) course objectives.

(h) If a certificate or license holder's main area of employment is industry and the certificate or license holder holds a permit to practice, at least seventy-two (72) hours of the one hundred twenty (120) hour requirement within a rolling three (3) calendar year period of the qualifying CPE completed by the certificate or license holder shall be in subjects related to the practice of public accounting and shall earn a minimum of eight (8) hours in the areas of taxation, accounting or assurance per calendar year.

(i) Effective January 1, 2011, if a certificate or license holder is actively involved in the supervision or review of compilation engagements for third party reliance, the certificate or license holder must complete a minimum of four (4) credits of CPE in the subject area of compilation engagements in each calendar year. This requirement shall be waived if:

- (1) the certificate or license holder works for a public accounting firm currently enrolled in a peer review program with an approved sponsoring organization; or
- (2) the certificate or license holder is a sole proprietorship currently enrolled in a peer review program with an approved sponsoring organization.

**SUBCHAPTER 33. PEER REVIEW**

**10:15-33-4. Enrollment and participation**

(a) Participation in the program is required of each firm holding a permit from the Board that performs any services which require a peer review as provided in Section 15.30 of the Oklahoma Accountancy Act.

(b) Firm enrollment is required as follows:

(1) An existing firm required to participate under subsection (a) shall enroll in the peer review program of an approved sponsoring organization within one (1) year from the performance of services that require a peer review. The firm shall adopt the peer review due date assigned by the sponsoring organization, and must notify the Board of the date within thirty (30) days of its assignment. In addition, the firm shall schedule and begin an additional peer review within three (3) years of the previous peer

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review due date, or earlier as may be required by the sponsoring organization. It is the responsibility of the firm to anticipate its needs for peer review services in sufficient time to enable the reviewer to complete the peer review by the assigned review due date.

(2) An existing firm that subsequently begins providing services as set forth in subsection (a) shall notify the Board of the change in status within thirty (30) days and provide the Board with enrollment information within twelve (12) months of the date the services were first provided and have a peer review within eighteen (18) months of the year end of the engagement performed. This provision shall also apply to any new firm that provides the services set forth in subsection (a).

(c) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the succeeding firm. Any dispute of the sponsoring organization's determination shall be resolved by the Board. The succeeding firm shall retain its peer review status and the peer review due date.

~~(d) Any firm having a permit suspended, that held a permit from the Board at the time it provided any service requiring a peer review must enroll in a Board approved peer review program as provided in subsection 10:15-33-4(a) or submit a peer review report as provided in subsection 10:15-33-6(a).~~

(ed) The Board will accept extensions granted by the sponsoring organization to complete a peer review, provided the Board is notified by the firm within thirty (30) days of the date that an extension is granted.

~~(f) A firm that has been rejected by a sponsoring organization for whatever reason shall notify the Board of:~~

- ~~(1) Name of sponsoring organization rejecting the enrollment;~~
- ~~(2) Reasons for the rejection;~~
- ~~(3) Name of subsequently selected sponsoring organization.~~

~~(g) A firm choosing to change to another sponsoring organization may do so only once a final acceptance letter has been issued indicating that all outstanding corrective actions have been completed and outstanding fees paid.~~

### 10:15-33-7. Peer review oversight committee

(a) The Board shall appoint a Peer Review Oversight Committee for the purpose of:

- (1) Monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with peer review minimum standards;
- (2) Reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review minimum standards; and
- (3) Reporting to the Board on the conclusions and recommendations reached as a result of performing functions in paragraphs (A) and (B) of this subsection.

(b) The Peer Review Oversight Committee shall consist of three (3) members nominated by the Chair and approved by the Board, none of whom is a current member of the Board. Subsequent committee members shall serve three (3) year terms.

~~Compensation, if any, of Peer Review Oversight Committee members shall be set annually by the Board, not to exceed One Hundred Fifty Dollars (\$150.00) per hour. Each member of the Peer Review Oversight Committee must be active in the practice of public accounting at a supervisory level or above in the accounting or auditing function while serving on the committee or any employee involved at a supervisory level or above in an audit function of a state or local government. The member or member's firm or consulting clients must be enrolled in an approved practice/monitoring program and have received an unmodified or a pass report on its most recently completed peer review. A majority of the committee members must satisfy the qualifications required of system peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews.~~

(1) No more than one Peer Review Oversight Committee member may be from the same firm.

(2) A Peer Review Oversight Committee member may not concurrently serve as a member of the AICPA's or any state's CPA society ethics or peer review committee.

(3) A Peer Review Oversight Committee member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence or has a conflict of interest. The Board may appoint alternate committee member(s) to serve in these situations.

(c) Information concerning a specific firm or reviewer obtained by the Peer Review Oversight Committee during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the Board. Reports submitted to the Board will not contain information concerning specific registrants, firms or reviewers.

(d) As determined by the Board, the Peer Review Oversight Committee shall make periodic recommendations to the Board, but not less than annually, as to the continuing qualifications of each sponsoring organization as an approved sponsoring organization.

(e) The Peer Review Oversight Committee may:

(1) Establish and perform procedures for ensuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews or other standards as approved by the Board and the rules promulgated herein by the Board;

(2) Review remedial and correction actions prescribed that address the deficiencies in the reviewed firm's system of quality control policies and procedures;

(3) Monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(4) Establish a report acceptance process, which facilitates the exchange of viewpoints among committee members and sponsoring organization; and

(5) Communicate to the Board on a recurring basis:

(A) Problems experienced by the enrolled registrants in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(B) Problems experienced in the implementation of the peer review program; and

- (C) A summary of the historical results of the peer review program.
- (f) Committee members shall become disqualified to serve on Peer Review Oversight Committee if any of the provisions that qualify the committee member no longer exist or by majority vote of the Board.

**SUBCHAPTER 43. ATTEST ENGAGEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

**10:15-43-2. Evaluation of registrations [REVOKED]**  
 Evaluation of qualifications and approval of registrations shall be performed by the Board or its designee.

*[OAR Docket #22-639; filed 7-19-22]*

**TITLE 25. OKLAHOMA AERONAUTICS COMMISSION  
 CHAPTER 15. OAC GRANT AIRPORT CONSTRUCTION PROGRAM**

*[OAR Docket #22-471]*

**RULEMAKING ACTION:**  
 PERMANENT final adoption  
**RULES:**  
 25:15-1-3 [AMENDED]  
 25:15-1-4 [AMENDED]  
**AUTHORITY:**  
 Oklahoma Aeronautics Commission; 3 O.S. Section 85  
**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
 March 10, 2022  
**COMMENT PERIOD:**  
 February 2, 2022 through March 4, 2022  
**PUBLIC HEARING:**  
 March 7, 2022  
**ADOPTION:**  
 March 9, 2022  
**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
 March 10, 2022  
**APPROVED BY GOVERNOR'S DECLARATION:**  
 Approved by Governor's declaration on June 21, 2022  
**FINAL ADOPTION:**  
 June 21, 2022  
**EFFECTIVE:**  
 September 11, 2022  
**SUPERSEDED EMERGENCY ACTIONS:**  
 n/a  
**INCORPORATIONS BY REFERENCE:**  
 n/a  
**GIST/ANALYSIS:**

The proposed permanent rules will update the planning and programming process to establish the Commission's newly introduced Loan Program. The airport construction program projects section will now identify a hangar as an acceptable new construction project with a new subsection providing special selection criteria and requirements necessary to be considered for the program. A scrivener's error is also being corrected in this section. The programming implementation airport grant program requirements and procedures have been updated throughout to include the new loan program. The information regarding state level of participation and required matches will establish the funding options for hangar construction projects. A new subsection

on hangar loan application project information will detail the application process. Change orders have been updated to include hangar projects. The grant agreement terms and conditions have been updated to include loans and address the penalty should a sponsor fail to submit timely loan payments.

All of these changes to the permanent rules are necessary to establish the Commission's new Loan Program.

**CONTACT PERSON:**

Michelle Bouziden, Grants Administrator, Oklahoma Aeronautics Commission, 110 N. Robinson, Suite 200, Oklahoma City, OK 73102, (405) 604-6912.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**25:15-1-3. Planning**

(a) **Planning and Programming Process.**

(1) The Commission staff shall, in consultation with airport sponsors, prepare and maintain the Oklahoma Airport System Plan. The Commission shall adopt and approve changes to the plan.

(2) The Commission staff shall assist publicly owned, publicly used airports in identifying airport needs and deficiencies. Airport sponsors eligible to participate in grant or loan programs are sponsors of publicly owned, public use airports included in the Oklahoma Airport System Plan. The Commission staff shall, in consultation with each airport sponsor, prepare and maintain an airport development worksheet for each airport included in the Oklahoma Airport System Plan. The airport development worksheet shall be reviewed and updated at least once every three years. The airport development worksheet shall identify the capital projects needed at the airport over a 20 year planning horizon, together with the estimated cost, construction type, objective code, and airport component for each project. The identified projects shall be consistent with the service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan.

(3) The Commission staff shall, in consultation with airport sponsors, prepare and update annually the Airport Construction Program. The Commission shall approve the Airport Construction Program.

(b) **Airport Construction Program Content.**

(1) The Airport Construction Program shall contain a list of proposed State and FAA funded projects that can be implemented with forecast revenues within the five year programming horizon.

(2) Projects included for an airport in the Airport Construction Program shall be consistent with service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan.

(3) The Airport Construction Program shall show the proposed sources of funding for each project.

(4) The Airport Construction Program shall show the proposed implementation schedule for each project.

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- (5) The Airport Construction Program shall include other priorities, policies, and procedures as adopted by the Commission.
- (c) **Airport Construction Program Projects.**
- (1) To be included in the Airport Construction Program a project must be eligible to receive airport grant or loan funding from OAC. To be eligible a project must be conducted on active public-use areas of an airport or to support those public-use areas of an airport. Types of projects considered eligible are listed below:
- (A) Maintenance: this type of work is limited to pavement maintenance of runways, taxiways, and aprons and can include routine cleaning, filling, or sealing of cracks/joints, maintenance of pavement drainage systems, patching pavement, and remarking of the above mentioned pavement areas. Items not considered maintenance are applying herbicide to prevent grass encroachment, mowing of airport grass, FOD sweeping, replacing light bulbs, replacing light fixtures due to damage from a manmade source, re-topping of trees that had been previously topped in an OAC project, and other similar type activities.
- (B) Rehabilitation: this type of work is a more comprehensive restoration of an item to its original functionality. Items such as pavement sealcoats, overlays, replacement of an entire set of lighting fixtures would be considered rehabilitation.
- (C) Reconstruction: this type of work is a complete restoration of an item to its original functionality once it has reached the end of its useful life. This results in a virtually new piece of pavement, electrical system, or building.
- (D) New Construction/Installation: this type of work would construct new pavement such as a runway widening or extension, hangar taxiway area, or apron expansion, or construct new structures such as a terminal building or hangar, or construct new drainage structures to support the removal of water from the airport. This work item would also include the installation of new navigational aids that weren't previously at an airport such as a precision approach path indicator, runway edge lighting, omnidirectional approach light system, weather observation system, or similar item.
- (E) Planning/Design: this type of work includes the engineer design and associated support work with any of the eligible project types. This could also include planning projects such as master plans, airport layout plans, specialty planning studies, and obstruction/approach surveys.
- (F) Off-airport: this type of work is typically for the support of on-airport operations. This work item could include items such as obstruction removal, land acquisition, drainage improvements, relocation of roads and utilities, installation of navigational aids, or similar projects.
- (2) The following are three basic tests that must be met to determine if a project is justified for inclusion in the Airport Construction Program:
- (A) The project advances OAC policy laid out in 3 O.S. § 85 and the adopted Oklahoma Airport System Plan. The basic goals and objectives in these policies include airport safety, security, and capacity, meeting FAA or OAC standards, preserving and improving airport infrastructure that is for the use and benefit of the public, airport planning, and other similar projects.
- (B) OAC must determine if there is an actual need for the project at the airport within the five-year horizon.
- (C) The project scope is appropriate. OAC must determine that all the elements of the project are necessary to obtain the project scope's overall goal. Any elements that do not meet this criteria must stand on their own separate merit and justification.
- (3) For hangar construction projects, special selection criteria and requirements will be implemented to include the following:
- (A) Preference will be given to hangar projects which will support new businesses, expansion/enhancement of existing on-airport businesses, and new aircraft being brought to the state. Preference will also be given to hangar projects which help an airport sponsor increase their based aircraft for potential inclusion into the NPIAS or to attain classified status within the NPIAS.
- (B) An airport sponsor must show a valid hangar waiting list for those potential occupants of the hangars to be constructed.
- (C) Airport sponsors will need to provide a plan to charge fair market aeronautical rates for hangars that are constructed as a part of this program.
- (34) For a project to be considered for inclusion in the Airport Construction Program, the airport sponsor must submit a letter of interest to the Commission detailing the basic scope and estimated cost of the project that they want to have included in the Airport Construction Program.
- (d) **Airport Construction Program Development.**
- (1) The Airport Construction Program lists projects for which expenditures are expected to begin within the five year programming horizon.
- (2) On a two-year cycle, the Commission staff shall update the NPIAS needs database and the ADWS database (for Non-NPIAS airports). To update the Commission's database, sponsors will use FAA's Overall Development Objective (ODO) data sheet for each requested project.
- (3) The Commission staff shall evaluate projects in the NPIAS and ADWS databases and recommend projects for inclusion in the Airport Construction Program based on:
- (A) Airport system development priorities, policies, and procedures adopted by the Commission and/or the FAA.
- (B) Multi-year on-going projects that are currently identified in the approved Airport Construction

Program will be given higher priority during the development of the Airport Construction Program.

(C) The airport's pavement condition index, pavement life-cycle consideration as developed by the pavement management program.

(D) The National Priority Rating System developed by FAA and included in FAA's Order 5100.39 titled "Airports Capital Improvement Plan".

(E) The amount of aviation activity, the types of airplanes served, the numbers of based airplanes at the airport, and the population included in the airport's service area.

(F) Other factors as may be relevant (for example, the services provided at the airport, the sponsor's demonstrated ability to maintain and operate the airport, the sponsor's ability to address safety inspection deficiencies, etc.)

(G) An emergency project request, with verifiable justification, may be submitted to the Commission for inclusion in the Airport Construction Program at any time.

(4) The five year programming horizon of the Airport Construction Program shall be broken down into three general time periods (Appendix A): near-term program, transition year, and the extended program.

(A) Near-term program: This shall be the current year plus years two and three. Projects in this time period are considered to be of low flexibility.

(B) Transition year: This shall be year four. Projects in this time period are considered to be of moderate flexibility.

(C) Extended program: This shall be year five. Projects in this time period are considered to be flexible.

**25:15-1-4. Programming Implementation Airport Grant and Loan Program Requirements and Procedures**

(a) **Contingency.** Implementation of an airport grant program or loan program is contingent upon funding being available to the Commission for this purpose.

(b) **Notification to Proceed.**

(1) As funding becomes available, the Commission staff shall send a notification letter to each airport sponsor that has a capital project included in the approved Airport Construction Program as described in 25:15-1-3.

(2) The notification letter shall:

(A) Advise the airport sponsor of the proposed cost sharing for the project and identify project development items eligible for funding.

(B) Authorize or direct the airport sponsor to:

(i) confirm in writing within 30 days the airport sponsor's intention to proceed with the project as programmed;

(ii) select an engineering consultant and provide a copy of the contract entered into with the consultant;

(iii) prepare project plans and specifications and to coordinate the project design with the Commission staff;

(iv) prepare to meet the federal and state administrative requirements depending upon the proposed funding sources;

(v) provide updated project costs after the final design is completed;

(vi) proceed to bid when directed by the Commission staff; and

(vii) submit a grant application for the Commission's consideration and approval.

(c) **Grant Application or Loan Application; General Information.**

(1) The airport sponsor shall submit a complete grant or loan application for a capital project for:

(A) Reimbursement of the cost of planning and engineering; and/or

(B) Reimbursement for the cost of construction based on the bids received by the airport sponsor.

(2) The airport sponsor's administrative official must sign the grant or loan application form(s). If the administration and/or operation of the airport is performed by a Trust, the Chairman of the Trust must also sign the grant or loan application.

(3) The Commission shall consider all grant or loan applications in accordance with 25:15-1-3(c).

(4) Reimbursement for the cost of engineering is contingent upon submission of the final set of plans and specifications to the Commission staff.

(d) **Grant or Loan Application; Funding Information.**

(1) Each airport sponsor must state in its application that it has on hand funds to pay all estimated costs of the proposed project that are not borne by the Commission or any other state or federal agency. As part of this requirement, each airport sponsor is required to provide written verification in the grant or loan application (designated as Exhibit E) to the Commission that the airports sponsor's share of the project has been deposited in an account that will be used for defraying the costs of the project.

(2) If any of the funds for the project are to be furnished by another state or federal agency, the airport sponsor must provide evidence that the funds are available with the grant or loan application.

(e) **Information Regarding State Level of Participation and Required Matches.**

(1) For state grants, the maximum level of participation for the Commission shall not exceed 95 percent.

(2) For FAA grants for projects identified in the Commission's Airport Construction Program, the Commission may provide half of the match that is required from the airport sponsor.

(3) For FAA grants for projects identified in the Commission's Airport Construction Program, the Commission may provide supplemental state grant funding for project items. The maximum level of participation for the Commission in such supplemental funding shall not exceed 95 percent.

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- (4) For non-primary entitlement (NPE) grants or special earmarks, the Commission will not provide half the match that is required from the airport sponsor. If NPE grant funds are transferred from other airport sponsors to an airport sponsor for a project identified in the Commission's Airport Construction Program, the Commission may assist with half of any required match from the receiving airport sponsor so long as it will save the Commission state funds.
- (5) For terminal building projects, the Commission's maximum cost-share level shall be 50 percent and shall not exceed \$500,000.
- (6) For hangar construction projects, the Commission may provide funding via grant or loan.
- (A) For state grants the Commission's maximum cost-share level of participation shall be 30 percent and shall not exceed \$300,000.
- (B) For state loans the Commission's maximum cost-share level of participation shall be 60 percent and shall not exceed \$600,000.
- (f) **Grant Application; Project Information.** The airport sponsor will provide the following information:
- ~~(1) The airport sponsor will provide the following information:~~ The airport sponsor shall submit an Airport Layout Drawing or project sketch (designated as Exhibit A) indicating the location of the proposed construction work with all grant applications.
- ~~(A) The airport sponsor shall submit an Airport Layout Drawing or project sketch (designated as Exhibit A) indicating the location of the proposed construction work with all grant applications.~~
- ~~(B) The airport sponsor shall submit final project plans and specifications with the grant application (designated as Exhibit B).~~
- ~~(C) The airport sponsor shall submit a project narrative with the grant application describing the items of airport development for which the airport sponsor is requesting assistance (designated as Exhibit B-1).~~
- ~~(D) The airport sponsor shall submit a line-item project cost list with the grant application that provides a detailed cost breakdown of the project (designated as Exhibit B-2). This list will be based on the bid awarded by the airport sponsor. The amounts on this list are considered not to be exceeded amounts without prior approval. Any expenditure over these line-item amounts will not be considered for reimbursement unless approval has been received as described in 25:15-1-4(gh).~~
- ~~(E) The airport sponsor shall submit the engineering contract for the project scope and the project engineering fees with the grant application (designated as Exhibit B-3).~~
- ~~(F) The Sponsor will submit a certification stating compliance with FAA standards unless an approved Modification to Standards for state standards has been received from the appropriate funding agency.~~
- ~~(G) The airport sponsor shall submit the contract for on-site construction observations (designated Exhibit B-4).~~
- ~~(H) The airport sponsor shall provide a signed statement in the grant application that the airport sponsor is not currently in default to any state agency for any obligation related to the development, operation or maintenance of the airport (designated as Exhibit C).~~
- ~~(I) The airport sponsor shall provide a signed statement with the grant application that the airport sponsor will not award any contract to any contractor who is currently suspended or disbarred by any federal agency, the Oklahoma Department of Central Services or the Oklahoma Department of Transportation for the project contemplated under the grant application (designated as Exhibit C-1).~~
- ~~(J) The airport sponsor shall provide an affidavit with the grant application that states the person signing is the administrative official for the sponsor, that the sponsor has not provided any compensation, donation or gift to an officer or employee of the state in procuring the grant, that any employee of the state compensated by the airport sponsor involved in the development of the grant will not provide any services in the project, and that this project will not result in any duplication of previous grant requests or awards (designated as Exhibit C-2).~~
- (g) **Hangar Loan Application; Project Information.** The airport sponsor will provide the following information:
- (1) The airport sponsor shall submit an Airport Layout Drawing or project sketch (designated as Exhibit A) indicating the location of the proposed construction work with all loan applications.
- (2) The airport sponsor shall submit final project plans and specifications with the loan application (designated as Exhibit B).
- (3) The airport sponsor shall submit a project narrative with the loan application describing the items of airport development for which the airport sponsor is requesting assistance (designated as Exhibit B-1).
- (4) The airport sponsor shall submit a line-item project cost list with the loan application that provides a detailed cost breakdown of the project (designated as Exhibit B-2). This list will be based on the bid awarded by the airport sponsor. The amounts on this list are considered not to be exceeded amounts without prior approval. Any expenditure over these line-item amounts will not be considered for reimbursement unless approval has been received as described in 25:15-1-4(h).
- (5) The airport sponsor shall submit the engineering contract for the project scope and the project engineering fees with the loan application (designated as Exhibit B-3).
- (6) The Sponsor will submit a certification stating compliance with FAA standards unless an approved Modification to Standards for state standards has been received from the appropriate funding agency.
- (7) The airport sponsor shall submit the contract for on-site construction observations (designated Exhibit B-4).
- (8) The airport sponsor shall provide a signed statement in the loan application that the airport sponsor is not currently in default to any state agency for any obligation

related to the development, operation or maintenance of the airport (designated as Exhibit C).

(9) The airport sponsor shall provide a signed statement with the loan application that the airport sponsor will not award any contract to any contractor who is currently suspended or disbarred by any federal agency, the Oklahoma Department of Central Services or the Oklahoma Department of Transportation for the project contemplated under the loan application (designated as Exhibit C-1).

(10) The airport sponsor shall provide an affidavit with the loan application that states the person signing is the administrative official for the sponsor, that the sponsor has not provided any compensation, donation or gift to an officer or employee of the state in procuring the loan, that any employee of the state compensated by the airport sponsor involved in the development of the loan will not provide any services in the project, and that this project will not result in any duplication of previous grant or loan requests or awards (designated as Exhibit C-2).

(11) The airport sponsor shall provide a signed Loan Agreement with the loan application that confirms the airport sponsor agrees to the terms established in the Loan Agreement.

(A) The interest rate will be determined by the Commission at the time a loan is issued but will be more competitive than what is available in the traditional loan market and allow for the Commission to recover costs associated with administering the loan.

(B) The payback period for a hangar loan will be over 10 years with annual payments.

(C) The first payment will be due no later than the end of the month beginning two months after completion and final acceptance of the project and continuing every year in that same month for the length of the loan.

(gh) Change Orders. As described in 25:15-1-4(f) and 25:15-1-4(g) the B-2 form lists line-item project costs that cannot be exceeded. During the course of the construction of a project, change orders and/or supplemental agreements may be necessary to increase or decrease bid or line-item amounts and quantities due to unknown or unforeseen circumstances. A change order and/or supplemental agreement shall be sent to the Commission along with a request to amend the approved grant's B-2 line-item or bid item.

(1) For change orders and/or supplemental agreements that will not increase the Commission's overall share for the project the Director may approve such an amendment to the grant application. Change orders and/or supplemental agreements approved by the Director shall be presented to the Commission at its next regular or special business meeting stating the reasons for the change order and/or supplemental agreement with such information as the Commission may require.

(2) For change orders and/or supplemental agreements involving a total increase to the Commission's overall share for the project not to exceed Ten Thousand Dollars

(\$10,000) the Director may approve such an amendment to the grant application. Change orders and/or supplemental agreements approved by the Director shall be presented to the Commission at its next regular or special business meeting stating the reasons for the change order and/or supplemental agreement with such information as the Commission may require.

(3) For change orders and/or supplemental agreements involving a total increase to the Commission's overall share for the project in excess of Ten Thousand Dollars (\$10,000) the Commission may approve such an amendment to the grant application.

**(hi) Grant or Loan Application; Height Hazard Zoning and Land Use.** Each airport sponsor shall indicate within the application that it has taken action to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and take-off of aircraft, and assuring the protection or control of the aerial approaches to the airport (designated as Exhibit D). The adoption and enacting of these zoning regulations is outlined in Title 3, Section 103 through 116, of the Oklahoma State Statutes.

**(ij) Grant or Loan Application; Assurances.** The airport sponsor, upon signing the grant or loan application, agrees to the following assurances:

(1) Upon the approval of the grant or loan by the Commission, the capital project will be completed within a maximum of two years.

(2) The airport sponsor agrees to the following conditions regarding the users of the airport:

(A) Neither the airport sponsor nor the occupant of any of the airport facilities shall discriminate against any person or a class of persons in the use of any facility provided to the public on airport property.

(B) The airport sponsor shall operate the airport in such a manner that the airport is open to all types and classes of users and establish such non-discriminatory conditions required for the safe and efficient operation of the airport.

(C) Any agreement, contract, lease or other arrangement that the airport sponsor enters into shall include provisions that such services meet the demands of all users of the airport, that services shall be provided on a non-discriminatory basis, that charges for goods and services shall be fair and reasonable, that services allow any user of the airport to perform any and all services to their own aircraft, and that essential facilities will be operated in a manner that these facilities shall be available to all users of the airport. In addition, if the airport sponsor provides any or all of these services, the airport sponsor agrees to the same provisions.

(3) The airport sponsor certifies that it has the legal authority to carry out all provisions of the grant or loan application in conformity with State and Federal Statutes, Acts, and Regulations.

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(4) The airport sponsor shall reserve sufficient powers and authority when entering into any transaction or arrangement to perform any of the covenants expressed in the grant or loan application.

(5) The airport sponsor shall provide the following minimum essential facilities: a landing area and an aircraft parking area.

(6) The airport sponsor shall agree to properly maintain the airport under the following conditions:

(A) The airport sponsor will operate and maintain the airport and all facilities to meet the needs of all users of the airport.

(B) The airport sponsor shall not permit the airport to be used for an activity that would impede or obstruct aeronautical activity.

(C) The airport sponsor shall appropriate the funds required to properly maintain the airport to prevent deterioration of the facilities. Failure to have a documented pavement maintenance program shall be cause for the Commission to disqualify the airport sponsor for additional funds. In addition, failure to have a documented pavement maintenance program shall be considered a breach of these assurances.

(7) The airport sponsor shall maintain an updated Airport Layout Plan that has been prepared in accordance with the FAA's regulations and shall not make any alterations to the airport other than those outlined in the approved Airport Layout Plan, or approved by the FAA or the Commission in writing.

(8) The Commission shall prepare a financial report of income and expenditures of all project funds. All project records shall be maintained by the airport sponsor for not less than three (3) years from the final acceptance of the project by the Commission, and the airport sponsor shall provide access to these records upon request of the Commission or the FAA. This provision shall in no way affect any requirement imposed upon the airport sponsor by the Oklahoma Open Records Act or any other state or federal law. These records shall include such documentary evidence as invoices, cost estimates, payrolls, vouchers, cancelled checks or warrants, and receipts for cash payments that support each item of project costs. The final 10% of state grant or loan funds will not be released until a satisfactory financial report has been completed and accepted by the Commission staff.

(9) The Commission shall not pay or be obligated to pay for any work on the project that has been incurred prior to the grant or loan application being submitted to and awarded by the Commission except for planning and/or engineering costs incurred pursuant to submitting a completed grant or loan application. In addition, any funds approved by the Commission shall only be used for project costs identified in the grant or loan application unless approval has been obtained as described in 25:15-1-4(g).

(jk) **Grant or Loan Agreement; Terms and Conditions.** Upon the approval of Commission, the completed grant or loan application shall constitute an agreement between the

Commission and the airport sponsor. Both the Commission and the airport sponsor are bound to all the requirements of the grant or loan agreement. In addition, all grants or loans of the Commission shall be subject to the following terms and conditions:

(1) The time period of the grant or loan agreement between the airport sponsor and the Commission shall be twenty (20) years from the date of the airport sponsor's acceptance and/or the life of the improvements contemplated under the grant or loan application.

(2) The airport and all visual navigational aids shall be under the control of and maintained by the airport sponsor for the period covered by the grant or loan agreement.

(3) For the purposes of the grant or loan agreement, the airport sponsor must have title free and clear of any reversionary interest, lien, easement, lease, or other encumbrance for all property to be constructed on during the grant or loan agreement. If the property is leased, the airport sponsor asserts that the lease will be maintained no less than the time period of the grant or loan agreement, and in both circumstances, asserts that the property will not be used for any purpose other than the operation of the airport. In addition, airport property as defined in the airport layout plan cannot be transferred by the airport sponsor without the written approval of the Commission.

(4) The airport and all visual navigational aids shall be made available to all classes of aeronautical users without discrimination by airport sponsor with adequate access at all times.

(5) The airport sponsor will not grant or permit, either directly or indirectly, any exclusive right to any person, firm or corporation for any aeronautical activities, and will terminate any existing exclusive rights now existing before accepting a grant from the Commission.

(6) The airport sponsor shall complete the project in accordance with FAA's standard specifications unless prior written modification to standards has been approved by the FAA (for federally funded projects) or the Commission (for state only projects). The airport sponsor shall provide the following reports to the Commission:

(A) A weekly progress report using the appropriate FAA form;

(B) A copy of all acceptance tests shall be provided by the acceptance testing laboratory as soon as they are available; and

(C) An acceptance test summary report shall be provided to the Commission upon completion of the project.

(7) The airport sponsor, upon request, shall provide annual statements of airport revenues and expenses.

(8) The airport sponsor shall comply with the Municipal Airports Act, Title 3, Section 65, and the provisions thereafter, of the Oklahoma State Statutes, specifically Section 65.12, that requires that revenues from airport operations be deposited in a separate fund and used exclusively for the airport.

(9) All airport development using grant or loan funds shall be consistent with the Airport Layout Plan approved



by the FAA. A copy of the approved Airport Layout Plan, with any modifications, will be filed with the Commission.

(10) The airport sponsor shall comply with all applicable provisions of Title 61 of the Oklahoma State Statutes which governs competitive bidding for public construction contracts.

(11) The airport sponsor shall provide a tabulation of all bids signed by the Engineer-of-record for the project with the grant or loan application.

(12) The airport sponsor shall operate lighting for the airport when such lighting is included in the project.

(13) The Commission and/or the state are not parties to any contract entered into by the airport sponsor to accomplish the project.

(14) The airport sponsor shall understand and agree that should the airport sponsor fail to abide by all of the terms and conditions of the grant or loan agreement, then the funds provided by the Commission shall be withdrawn. In addition, the airport sponsor shall notify the Commission of any delays or problems with the project and request an extension or deviation from the Commission.

(15) The airport sponsor shall understand and agree that should the airport sponsor fail to submit timely loan payments during the course of the 10 year loan payback period, the airport sponsor will be prohibited from receiving any additional grants or loans until such payments are made and may have existing federal and state projects programmed in the 5-year Airport Construction Program delayed or removed.

**(kl) Grant or Loan Agreement; Payments.**

(1) The airport sponsor shall request reimbursement for project costs from the Commission on a monthly basis upon initiation of the project. The Commission shall reimburse the sponsor only for bid items at the bid unit price. The Commission will only process the request for reimbursement when accompanied by the following documentation:

- (A) For federal participation grants, a copy of a FAA Invoice Summary Worksheet and a Cost Distribution Worksheet based upon the line items in the executed grant or loan.
- (B) For non-federal participation grants, an Invoice Summary Worksheet based upon line items in the executed grant or loan.
- (C) Copies of all vendor invoices.
- (D) A construction quantities report from the primary contractor signed by the Engineer-of-record.
- (E) All test invoices.

(2) The Commission shall process the monthly requests for reimbursement until 90% of the grant or loan awarded by the Commission is expended or 90% of the Commission's total project cost is expended in the event the project comes in under budget. The final 10% will be released upon the completion of the following items:

(A) The summary of acceptance testing report and if required by the specifications, the calculated lot-wise percentage within limits (PWL) of the project. The report shall document the results of all acceptance tests performed, the construction lot, location of the material tested and the quantity represented.

(B) A report submitted by the Resident Inspector or Engineer-of-Record detailing those acceptance tests that were out-of-tolerance and include the pay reductions applied and reasons for accepting any out-of-tolerance material.

(C) All final acceptance and close-out forms for the project have been submitted to the Commission.

(D) For federal participation grants, a copy of the final signed FAA form SF 271 Outlay Report.

(E) A satisfactory financial report has been completed by the Commission.

**(4m) Endorsement by the Commission:**

(1) Upon receipt of the fully executed and complete grant or loan application, the Commission staff shall verify compliance with the terms of the notification letter.

(2) If the grant or loan application is found to be in compliance with the terms of the notification letter, the Commission staff shall forward the grant or loan application to the Commission for action.

(3) If the Commission approves the grant or loan application, the Commission staff shall communicate that approval to the airport sponsor with authorization to proceed.

(4) If the Commission staff finds that the grant or loan application is not in compliance with the terms of the notification letter, the Commission staff shall notify the airport sponsor of the non-compliance and suggest possible remedies.

(5) Upon receipt of the Commission staff's finding of non-compliance, the airport sponsor may:

- (A) Modify the grant or loan application to bring it into compliance with the terms of the notification letter; or
- (B) State the reason that the airport sponsor believes it is in compliance and request that the grant or loan application be forwarded to the Commission for action; or
- (C) Agree that it is not in compliance and request that the grant or loan application be forwarded to the Commission as is.
- (D) Request the grant or loan application not be forwarded to the Commission.

(6) The Commission staff shall notify the airport sponsor of the Commission's action.

[OAR Docket #22-471; filed 6-24-22]

# Permanent Final Adoptions

## TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[*OR Docket #22-561*]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 10. Requirements for Department Programs  
35:1-10-6. Date of federal regulations incorporated [NEW]

### AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; and 2 O.S. §§ 1-2, 2-2, and 2-4(A)(2)

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

November 7, 2021

### COMMENT PERIOD:

December 2, 2021, and ending January 6, 2022

### PUBLIC HEARING:

January 6, 2022

### ADOPTION:

January 26, 2022

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

February 1, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

#### Incorporated standards:

7, 9, 21 and 40 CFR (2021 Version)

#### Incorporating rules:

35:1-10-6

#### Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 N. Lincoln Blvd, Oklahoma City, OK 73152-8804, phone: (405) 522-5803.

#### GIST/ANALYSIS:

The proposed rules provide for current citations to the Code of Federal Regulations.

#### CONTACT PERSON:

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, 2800 N. Lincoln Blvd, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

### SUBCHAPTER 10. REQUIREMENTS FOR DEPARTMENT PROGRAMS

### 35:1-10-6. Date of federal regulations incorporated

When reference is made to Titles 7, 9, 21, or 40 CFR it means, unless otherwise specified, the Code of Federal Regulations (2021 Revision).

[*OR Docket #22-561; filed 7-7-22*]

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

[*OR Docket #22-562*]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
35:10-1-3. Handbook and publication editions [AMENDED]  
Subchapter 17. Open Dating [REVOKED]  
35:10-17-1. Open dating for perishable and semi-perishable commodities [REVOKED]

### AUTHORITY:

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

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

November 7, 2021

### COMMENT PERIOD:

December 2, 2021, and ending January 6, 2022

### PUBLIC HEARING:

January 6, 2022

### ADOPTION:

January 26, 2022

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

February 1, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

#### Incorporated standards:

Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2022 Edition), Handbook 130 "Uniform Laws and Regulations" (2022 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation, and Publication 14 (2021 Edition).

#### Incorporating rules:

35:10-1-3

#### Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 N. Lincoln Blvd, Oklahoma City, OK 73152-8804, phone: (405) 522-5803.

#### GIST/ANALYSIS:

The proposed rule amendments update handbook and publication references and revoke obsolete language.

#### CONTACT PERSON:

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

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

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

- (1) Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2020/2022 Edition).
(2) Handbook 130 "Uniform Laws and Regulations" (2020/2022 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation."
(3) Handbook 133 "Checking the Net Contents of Packaged Goods" (2020 Edition).
(4) Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (2019 Edition).
(5) Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (1996 Edition).
(6) Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2010 Edition).
(7) Publication 14 (2020/2021 Edition).
(8) Publication 12 (1991 Edition).
(9) Federal Grain Inspection Service Moisture Handbook (2006 Edition).

SUBCHAPTER 17. OPENDATING [REVOKED]

35:10-17-1. Open dating for perishable and semi-perishable commodities [REVOKED]

The Board adopts the "Uniform Open Dating Regulation" as adopted by National Conference on Weights and Measures and published in Handbook 130, "Uniform Laws and Regulations", supplements, and revisions.

[OAR Docket #22-562; filed 7-7-22]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 13. FUEL ALCOHOL [REVOKED]

[OAR Docket #22-563]

RULEMAKING ACTION: PERMANENT final adoption

RULES:

- 35:13-1-1. Incorporation by reference of federal distilled spirits for fuel use regulations [REVOKED]
35:13-1-2. Deleted regulations [REVOKED]
35:13-1-3. Definitions [REVOKED]

- 35:13-1-4. Permit required [REVOKED]
35:13-1-5. Inspections [REVOKED]
35:13-1-6. Fuel alcohol fees [REVOKED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 7, 2021

COMMENT PERIOD:

December 2, 2021, and ending January 6, 2022

PUBLIC HEARING:

January 6, 2022

ADOPTION:

January 26, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 1, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 12, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments revoke all rules in Chapter 13 to comply with the repeal of statutory authority for enforcement of the Fuel Alcohol program.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:

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

The Distilled Spirits for Fuel Use regulations found in Title 27 of the Code of Federal Regulations (CFR) 2020 Revision), Part 19.661 et seq. for the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:13-1-2.

35:13-1-2. Deleted regulations [REVOKED]

The following sections of the Code of Federal Regulations governing distilled spirits for fuel use of the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau incorporated by reference under 35:13-1-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 27 CFR §§ 19.669, 19.670, 19.699, and 19.700 (2020 Revision).

# Permanent Final Adoptions

## 35:13-1-3. Definitions [REVOKED]

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

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

- (1) "~~Commodities~~" means ~~nonperishable whole grains or seeds.~~
- (2) "~~Producer~~" means ~~any person planting, raising, growing, or harvesting commodities.~~

## 35:13-1-4. Permit required [REVOKED]

(a) Any person engaging in the production of alcohol for use as a motor fuel shall obtain a permit from the Department.

(b) Any medium or large alcohol fuel producer that receives commodities from grain producers who do not receive compensation for the grain at the time of delivery or title is not transferred at the time of delivery shall obtain a public warehouse charter to operate a public commodity storage warehouse pursuant to the Oklahoma Public Warehouse and Commodity Storage Indemnity Act.

(c) Any person permitted pursuant to this section shall submit a copy of any annual report required by the federal law as incorporated by reference in this chapter to the Department no later than January 30 of each calendar year.

## 35:13-1-5. Inspections [REVOKED]

(a) The Department may inspect any facility to determine compliance with the Oklahoma Fuel Alcohol Act.

(b) The inspection shall include but not be limited to inspections of the equipment at the facility and records.

## 35:13-1-6. Fuel alcohol fees [REVOKED]

The permits issued for the fuel alcohol program shall have the following annual fees:

- (1) Alcohol Fuel Producer Permit (Small) shall be \$25.00;
- (2) Alcohol Fuel Producer Permit (Medium) shall be \$100.00; and
- (3) Alcohol Fuel Producer Permit (Large) shall be \$250.00.

[OAR Docket #22-563; filed 7-7-22]

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

[OAR Docket #22-564]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Provisions
- 35:15-1-2. Definitions [AMENDED]
- Subchapter 5. Biological Products and Laboratories

35:15-5-1. Biological products [AMENDED]

Subchapter 11. Importation of Animals

Part 13. Equine Piroplasmiasis

35:15-11-52. Definitions [AMENDED]

35:15-11-53. Testing for Equine Piroplasmiasis [AMENDED]

Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets

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

35:15-13-7. Specific approval of livestock auction markets [AMENDED]

Subchapter 15. Equine Infectious Anemia (EIA)

Part 11. Requirements for Equidae Entering Oklahoma

35:15-15-111. General requirements for Equidae entering Oklahoma [AMENDED]

Subchapter 16. Contagious Equine Metritis

35:15-16-1. Incorporation by reference [AMENDED]

Subchapter 19. Poultry Regulations

35:15-19-4. Import and exhibition poultry [AMENDED]

35:15-19-8. Infectious ~~Laryngo~~ ~~Trachietis~~ Laryngotracheitis (ILT) [AMENDED]

Subchapter 36. Scrapie

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

35:15-36-2. Deleted regulations [AMENDED]

Subchapter 44. Farmed Cervidae

35:15-44-19. Entry and export requirements [AMENDED]

Subchapter 47. Chronic Wasting Disease (CWD) in Cervids

Part 7. Interstate Movement Requirements

35:15-47-18. Minimum CWD requirements for interstate movement of cervids [AMENDED]

### AUTHORITY:

Okl. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 6-1 et seq., 2 O.S. § 6-91 et seq., 2 O.S. § 6-121 et seq., 2 O.S. § 6-131 et seq., 2 O.S. § 6-141 et seq., 2 O.S. § 6-281 et seq., 2 O.S. § 6-501 et seq., 2 O.S. § 6-601 et seq., and 2 O.S. § 9-130 et seq.

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

November 7, 2021

### COMMENT PERIOD:

December 2, 2021, and ending January 6, 2022

### PUBLIC HEARING:

January 6, 2022

### ADOPTION:

January 26, 2022

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

February 1, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

#### Incorporated Standards:

9 CFR (2020 Revision), Section 93-301 and USDA VS Guidance Document 13406.1 (2013) Revision, and 9 CFR Parts 77, 79 and 81 (2021 Revision) unless otherwise specified.

#### Incorporating Rules:

35:15-16-1

35:15-36-1

35:15-36-2

35:15-44-19

35:15-47-18

#### Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5803.

#### GIST/ANALYSIS:

The proposed rule amendments add and modify definitions; modify registration requirements of certain biological products; require testing of certain equine for Piroplasmiasis; conform language; modify requirements

for livestock auction markets; modify requirements for equidae entering Oklahoma; update citations to the Code of Federal Regulations; modify requirements for importation of poultry; update obsolete language; and provide penalty for late submission of certain license fees.

**CONTACT PERSON:**

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, 2800 Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 35:15-1-2. Definitions

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

**"Accredited veterinarian"** means a veterinarian approved by the United States Department of Agriculture (USDA) to perform functions required for state or cooperative state and federal animal disease control and eradication programs.

**"Animal disease traceability"** means the ability to trace an animal to its site of application of official identification and/or premises of origin as set out in 9 CFR Parts 71, 77, 78, 86, et al. Traceability for Livestock Moving Interstate; Final Rule.

**"Approved tagging site"** means a premises, authorized by APHIS, State, or Tribal animal health officials, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

**"Backtag"** means a USDA approved identification system consisting of a tag of special tough paper, bearing identification codes relating to origin of animals, which are stuck to animals a few inches from the midline and just behind the shoulder with very strong glue. The backtag is designed as temporary identification for easy reading in livestock auction markets to help trace the origin of livestock in Department investigations.

**"Certificate of veterinary inspection"** means an official document or its electronic equivalent approved by the chief livestock official of the state of origin issued by an accredited veterinarian at the point of origin of a shipment of animals that includes the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the animal; sufficient identifying marks or tags to positively identify each animal; purpose of shipment; and the results of all required tests. It shall also include a record of a physical examination of the animal verifying that each animal is free from visible evidence of any contagious, infectious, or communicable diseases and that the animals do not originate from an area of quarantine,

infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance. The term certificate of veterinary inspection shall also include an official health certificate, an official certificate, or a certificate.

**"Commuter herd"** means all ~~cattle~~ livestock under common ownership or supervision, that are located on one (1) or more premises in two (2) or more states and there is an inter-change or interstate movement of animals between premises in those states as part of the normal farming, breeding or ranching operation without a change of ownership. A commuter herd agreement shall be completed and approval of commuter herd status shall be obtained from each chief animal health official of all states in which the herd resides.

**"Consignment sale"** means a sale of livestock in which multiple sellers' livestock are auctioned or sold to multiple buyers. A consignment sale shall not include a licensed livestock auction market but shall include a production sale with guest consignors.

**"Designated epidemiologist"** means an epidemiologist selected by the State Veterinarian who has been designated to perform those functions necessary for the classification of livestock suspected to be infected with a particular disease, based on an evaluation of test results and consideration of the animal and herd history, as well as other epidemiological factors.

**"Livestock special sale"** means a consignment, ~~production~~ swap meet, or farm sale, other than a regular livestock auction or production sale, where livestock are sold.

**"Livestock special sale permit"** means a permit from the Animal Industry Services Division to hold a consignment, swap meet, or farm sale.

**"Official identification"** means any official method of identification approved by USDA, as described by 9 C.F.R. § 86.1, or the State Veterinarian. Official identification for specific species may be further defined within the applicable section of the Oklahoma Administrative Code. Backtags shall not be considered official identification unless the animal is shipped directly to slaughter. The term "official ear tag" is synonymous with "official identification."

**"Owner-Shipper statement"** means a statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of animals covered by the statement; the species of animal covered; the name and address of the owner at the time of the movement; the name and address of the shipper; and the identification of each animal, as required by the regulations, unless the regulations or other documentation approved by the Department specifically provide that the identification does not have to be recorded.

**"Production sale"** means a sale in which livestock that belongs to a single owner or seller and is intended for breeding or exhibition use is offered for sale or sold to multiple buyers at the same time.

**"Quarantine"** means a written notice or order issued by an authorized agent of the Department showing the boundaries of the area or premise affected, the animals restricted, and conditions, if any. No livestock held under quarantine may be moved or released without a written permit or quarantine release signed by an authorized agent.

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**"Resident herd of origin"** means a group of livestock that have been maintained as a herd or flock on the same premises for at least four (4) months.

**"Special sale permit"** means a permit from the Animal Industry Services Division to hold a consignment, production, farm, or special sale.

**"State animal health official"** means the state animal health official, or designee, who is responsible for the livestock and poultry disease control and eradication programs in a state.

## SUBCHAPTER 5. BIOLOGICAL PRODUCTS AND LABORATORIES

### 35:15-5-1. Biological products

(a) No biological product used in the treatment of livestock or any other species of animals shall be manufactured, produced, transported, distributed, sold, offered for sale, or used in Oklahoma unless the biological product has been:

- (1) Licensed or permitted by the United States Veterinary Biologics Division of the United States Department of Agriculture;
- (2) Produced in an establishment licensed by the United States Veterinary Biologics Division of the United States Department of Agriculture; and
- (3) Approved by the Oklahoma Department of Agriculture, Food, and Forestry.

(b) Biological products prepared by any person solely for the treatment of livestock or any other species of animals of such person or prepared solely for treatment of livestock or any other species of animals under a veterinary-client-patient relationship in the course of the state licensed professional practice of veterinary medicine by such person shall be exempt from (a) and (d) of this section if used as follows:

- (1) Permission is obtained from the State Veterinarian in the form of a one (1) year memorandum of understanding between the Department and the persons owning the livestock or any other species of animals;
- (2) An authorized agent of the Board may inspect and monitor the application of the product and verify the proper handling, cleaning, and disinfection of equipment utilized in the application.

(c) John's (Paratuberculosis) vaccine is expressly prohibited in Oklahoma without prior approval of the Department. This approval may be obtained only after a written agreement is developed between the producer, attending veterinarian, and state regulatory officials. A plan of herd management, vaccination, and any restrictions shall be a part of this agreement.

(d) Each biological product manufactured, produced, distributed, sold, offered for sale or used in Oklahoma or delivered for transportation or transported in intrastate or interstate commerce shall be registered with the Department on an annual basis.

(e) Each person registering biological products shall pay an annual registration fee of Two Hundred Dollars (\$200.00) for each biological product registered.

- (1) The Department may require the submission of the complete formula of any biological product.

(2) Trade secrets and formulations submitted with the registration shall be kept confidential.

(3) Autogenous biologics shall be registered individually by the specific microorganisms (seed) which make up the composition of the vaccine.

(f) If it appears to the Department that the composition of the biological product is adequate to warrant the proposed claims and if the biological product, its labeling, and other material required to be submitted comply with the requirements of this section, then the biological product shall be registered.

(g) Additional registration of a biological product shall not be required in the case of a biological product shipped from one location within Oklahoma to another location within Oklahoma if the location is operated by the same person.

(h) All biological product registrations shall expire on March 20 of each year but may be renewed by the Department. Any person who fails to renew a biological product by March 20 of each year shall pay a penalty of an additional Two Hundred Dollars (\$200.00).

(i) Any biological product that contains any living organism and is produced pursuant to subsection (b) may be used with prior written notice to the Department. Notice shall be provided for each day the person intends to utilize the biological product and shall contain the name of the person prescribing the biological product, the specific location where the biological product will be used, and the reason for using the biological product.

(j) No person shall sell or offer for sale an unregistered biological product or an expired biological product.

(k) The term "biological product" shall mean all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, including antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of livestock or any other species of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term biological products includes but is not limited to vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components that are of natural or synthetic origin, or that are derived from synthesizing or altering various substances or components of substances such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies. The term shall not include any product identified and regulated as a pesticide by the Department.

(1) A product's intended use shall be determined through an objective standard dependent upon factors such as representations, oral or written claims, packaging, labeling, or appearance.

(2) The term "analogous products" shall include the following:

(A) Substances, at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of livestock or any other species of animals and which are similar in function to biological products in that they act, or are intended to

act, through the stimulation, supplementation, enhancement, or modulation of the immune system or immune response;

(B) Substances, at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of livestock or any other species of animals through the detection or measurement of antigens, antibodies, nucleic acids, or immunity; or

(C) Substances, at any stage of production, shipment, distribution, or sale, which resemble or are represented as biological products intended for use in the treatment of livestock or any other species of animals through appearance, packaging, labeling, claims (either oral or written), representations, or through any other means.

(l) The term "treatment" shall mean the prevention, diagnosis, management, or cure of diseases of livestock or any other species of animals.

(m) The term "unregistered biological product" shall mean a biological product that has not been registered with the Department or a biological product that has been previously registered with the Department but the registration has lapsed.

(n) The term "expired biological product" shall mean a biological product which exceeds the expiration date established by the manufacturer.

SUBCHAPTER 11. IMPORTATION OF ANIMALS

PART 13. EQUINE PIROPLASMOSIS

35:15-11-52. Definitions

The following words and phrases shall have the following meanings:

"Equine Piroplasmosis reactor" means any Equidae that tests positive for Equine Piroplasmosis from either B. caballi or T. equi but has not been confirmed by NVSL.

"Exposed" means all Equidae in the same herd as a Piroplasmosis positive animal or had recent direct and sustained contact with a Piroplasmosis animal.

"High risk premises" means premises where transmission of Equine Piroplasmosis is known or suspected to have occurred or has the potential to occur, through either natural tick borne transmission or high risk management practices and as determined by the State Veterinarian.

"Low risk premises" means premises where transmission of Equine Piroplasmosis has not been demonstrated or suspected to have occurred and has a low potential to occur, through either natural tick borne transmission or management practices and as determine by the State Veterinarian risk.

"Negative Equidae" means Equidae that show a negative result to a competitive enzyme-linked immunosorbent assay (c-ELISA) test for Equine Piroplasmosis or have been classified negative by the designated epidemiologist, based on history, supplemental tests, or other epidemiological evidence.

"Positive Equidae" means Equidae that show a positive result to for Equine Piroplasmosis by the National Veterinary

Services Laboratories (NVSL) on the complement fixation (CF) test or competitive enzyme-linked immunosorbent assay (c-ELISA) test.

"Racetrack facility" means a premises used to conduct live horse racing events and is not limited to facilities licensed by the Oklahoma Horse Racing Commission.

"Suspect case" means an Equidae with clinical signs consistent with Equine Piroplasmosis, a history of exposure, or an inconclusive test.

35:15-11-53. Testing for Equine Piroplasmosis

(a) All racing Quarter horses, Paint horses, and Appaloosas entering a racetrack facility shall have proof of a negative Piroplasmosis test (T. equi) within the past twelve (12) months.

(b) All official samples collected from Equidae for Piroplasmosis testing shall be collected by a state or federal veterinarian, an accredited veterinarian, or an authorized agent of the Board. ~~Samples shall be submitted to an approved lab within 30 days of collection.~~

(1) The State Veterinarian, a state or federal veterinarian, an authorized agent of the Board, or an accredited veterinarian acting under authority of the State Veterinarian may cause an official test to be conducted on any Equidae known or suspected to be infected with or exposed to Piroplasmosis.

(2) If the owner refuses or neglects to comply with the testing requirements, the Equidae shall be quarantined and the movement of any Equidae from the premises shall be prohibited.

(3) The State Veterinarian may provide and require supervision for collection of test samples submitted by an accredited veterinarian.

(4) Any person providing erroneous or fictitious information shall be in violation of these rules.

(5) Any person altering, defacing, or falsifying information on a test chart, permit, certificate of veterinary inspection, or any form associated with the Piroplasmosis program shall be in violation of these rules.

(~~b~~c) All Equidae epidemiologically determined to have been exposed to a Piroplasmosis positive animal shall be quarantined and tested by a state or federal veterinarian, an accredited veterinarian, or an authorized agent of the Board.

(1) Test results for suspect cases and reactor Equidae shall be confirmed by NVSL.

(2) Positive results shall be confirmed by NVSL.

(3) Exposed Equidae that test negative shall be retested at least thirty (30) calendar days from last exposure to a Positive Equidae.

(4) Epidemiologic data may be considered in the testing requirements for Exposed Equidae and affected herds.

(~~e~~d) Release of quarantine.

(1) No Equidae held under quarantine shall be moved or released until a written permit or quarantine release signed by an authorized agent has been executed.

(2) Exposed Equidae may be released from quarantine after obtaining a negative test a minimum of thirty (30) calendar days from the last exposure.

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- (3) Epidemiologic data may be considered in the release of the quarantine.
- (~~d~~e) Foals born to positive mares are considered exposed and shall be tested because Equine Piroplasmosis hemoparasites may be transmitted in utero or at parturition.
- (1) Foals under six (6) months of age may carry maternal antibodies to infection but may not be infected. Therefore, seropositive foals without other evidence of infection via PCR or blood smears shall be retested after waning of maternal antibodies.
- (2) Foals shall be kept in quarantine until weaned or separated from the mare and until tested negative for Equine Piroplasmosis (at a minimum of six (6) months of age) at NVSL.

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

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

- (a) Any person owning, operating, conducting, or maintaining a livestock auction market shall be required to employ a livestock auction market veterinarian for auctions selling cattle, horses, swine, or other species as determined by the state veterinarian.
- (b) ~~Both the~~ The buyer's and seller's invoices invoice shall include the ~~owner's~~ buyer's name and address and a description of the ~~cattle~~ livestock as to breed, color, and sex, and age. ~~Invoices for swine shall show the predominate breed and shall show them to be feeding, breeding, or slaughter swine.~~
- (c) The seller's invoice shall include the seller's name and address and a description of the livestock as to breed, color, and sex.
- (d) The livestock auction market veterinarian or sale company shall not be responsible for results of any tests that are conducted properly or for any reactor animals or responder animals found in the market.
- (~~d~~e) Refusal or failure to comply with ~~the~~ Department rules shall be just cause for the revocation or suspension of the livestock auction market license.
- (~~e~~f) No person owning, operating, conducting, or maintaining a livestock auction market shall allow any of the following animals to leave the livestock auction market unless it is individually identified by an official identification with an exception for weak cattle or cattle that pose a greater than normal risk of being injured or injuring a person:
- (1) All beef cattle eighteen (18) months of age or older, except terminal fed steers and heifers, going directly to a feedlot or slaughter which will not be reintroduced into the breeding herd;
  - (2) All dairy cattle;
  - (3) All "M" branded cattle including any commingled cattle, and
  - (4) All roping, exhibition, event, and rodeo cattle.

- (~~f~~g) Weak cattle or cattle that pose a greater than normal risk of being injured or injuring a person may be sold with a back tag and slaughter only tag to be transported directly to slaughter.
- (~~g~~h) The owner or operator of the livestock auction market shall keep records of each animal consigned or delivered to the livestock auction market for a period of five (5) years for disease traceback purposes, including but not limited to, the following:
- (1) "Drive-in" or any other documents identifying the backtag, owner's name and address, and license tag of mode of transportation;
  - (2) Any records kept pursuant to the Livestock Auction Market Act;
  - (3) Records of any official identification applied to the animal or already existing with the animal;
  - (4) Any records available regarding the purchaser of the animals; and
  - (5) Records of official identification that are sufficiently legible and accurate to facilitate successful tracebacks.
- (~~h~~i) Each livestock auction market shall sign and have on record with the Department the most current livestock market contract for each of the species sold at the market.
- (~~i~~j) The livestock auction market shall make the above records available to Department personnel when requested on non-sale days. In an emergency, records may be requested and shall be made available to Department personnel regardless of sale schedule.
- (~~i~~) ~~Each livestock auction market shall sign and have on record with the Department the most current livestock market contract for each of the species sold at the market.~~

#### 35:15-13-7. Specific approval of livestock auction markets

- (a) No livestock auction market shall be specifically approved until proper application is made and a determination is made by the State Veterinarian that Department regulations and standards are met.
- (b) ~~Each livestock auction market shall have a packer buyer present at each sale.~~
- (~~e~~) All animals received at the livestock auction market shall be considered in interstate commerce and be handled in accordance with interstate regulations.
- (~~e~~c) All cattle, bison, horses, swine or other species, as determined by the State Veterinarian, shall be visually inspected by the livestock auction market veterinarian prior to sale for diseased conditions such as cattle scab, sheep scab, Actinomyces (lump jaw), Carcinomas (cancer eye), Infectious Rhinitis (bull nose) or any other infectious, contagious, or communicable disease.
- (~~e~~d) Any animal determined to be diseased by the livestock auction market veterinarian shall be sold direct to slaughter or quarantined for treatment pursuant to the judgment of the livestock auction market veterinarian.
- (~~f~~e) Each market shall furnish and maintain in good repair sufficient equipment suitable for restraining animals for careful inspection, testing, tagging, branding, and other treatments and procedures ordinarily required in providing livestock



sanitary service at markets. The equipment shall be covered or housed so that necessary work can take place during inclement weather.

(gf) The appointment and termination of the livestock auction market veterinarian by the livestock auction market is subject to approval of both state and federal officials.

(hg) Failure or neglect to perform any of the functions in this section shall be cause for withdrawal of the approval.

(ih) Each livestock auction market shall sign and have on record with the Board the most current livestock market contract for each of the species sold at the market.

**SUBCHAPTER 15. EQUINE INFECTIOUS ANEMIA (EIA)**

**PART 11. REQUIREMENTS FOR EQUIDAE ENTERING OKLAHOMA**

**35:15-15-111. General requirements for Equidae entering Oklahoma**

(a) All test eligible Equidae entering Oklahoma for any purpose other than consignment to a veterinarian's clinic or livestock auction market shall be accompanied by one of the following:

(1) A record of a negative official test for EIA conducted within the previous twelve (12) months and an Extended Equine Certificate of Veterinary Inspection.

(2) A record of a negative official test for EIA conducted within the previous twelve (12) months and a certificate of veterinary inspection.

(3) An equivalent certificate as approved by the State Veterinarian.

(4) A certificate of veterinary inspection, when in compliance with the terms of a Memorandum of Understanding which allows for testing upon arrival.

(5) A copy of a VS Form 10-11 shall be considered an official record of test when accompanied by a properly completed certificate of veterinary inspection.

(6) An exception to import test requirements may be issued by the Department. To qualify for the exception, the person seeking the exception shall:

(A) Apply for an entry permit during the Department's office hours. ;

(B) Obtain a certificate of veterinary inspection issued no more than thirty (30) calendar days prior to entry;

(C) Test the Equidae for EIA within thirty (30) days after entry; and

(D) Immediately quarantine the Equidae entering Oklahoma pursuant to this subsection until the Equidae is tested negative for EIA.

(b) ~~An Extended Equine Certificate of Veterinary Inspection shall be accepted from states participating in the Extended Equine Certificate of Veterinary Inspection program.~~

**SUBCHAPTER 16. CONTAGIOUS EQUINE METRITIS**

**35:15-16-1. Incorporation by reference**

(a) The contagious equine metritis regulation found in Title 9 of the Code of Federal Regulations (CFR) (~~2020~~2021 Revision), Section 93-301 and USDA VS Guidance Document 13406.1 (2013) Revision are hereby adopted in their entirety.

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

**SUBCHAPTER 19. POULTRY REGULATIONS**

**35:15-19-4. Import and exhibition poultry**

(a) Domesticated fowl including chickens, turkeys, game chickens, game birds, or waterfowl over four (4) months of age and intended for breeding, meat, or egg production purposes shall not be imported into the state unless they:

(1) Have originated from a National Plan source which is U.S. pullorum-typhoid clean or equivalent with a NPIP 9-3, or

(2) Have passed a negative agglutination test for reportable salmonella groups within ninety (90) days prior to import and have received a Certificate of Veterinary Inspection within thirty (30) days.

(b) All poultry under four (4) months of age, including baby chicks, started chicks, turkey poults, started poults, other newly hatched domestic poultry, game chickens, game birds, ~~and~~ waterfowl, ~~except those intended for immediate slaughter,~~ and hatching eggs shipped, brought into, or offered for sale in Oklahoma, except those intended for immediate slaughter, shall have:

(1) ~~Have originated from a hatchery or premise operating under the supervision of the poultry disease control authority of the state of origin, and their disease classification shall be negative or clean. Each container of products shall bear an official label showing the name and address of the shipper, the authority under which the testing for disease was done, and the disease control and eradication class and/or classes of the product. The use of this label shall be approved by the official state agency or livestock disease control official of the state of origin. In addition, an official form shall be properly executed showing the name and address of both the consignee and the consignor and the disease control authority for which the testing was done and classification of the product.~~ NPIP Pullorum-Typhoid clean breeder flock and shall be accompanied by a NPIP VS Form 9-3 or an APHIS VS form 17-6;

(2) Have an approved commuter flock agreement on file with the state of origin and ODAFF; or

(3) Have obtained an entry permit prior to shipment.

(c) Exhibition poultry are subject to the following:

(1) Any poultry or other domestic fowl being exhibited in Oklahoma shall be free of visible evidence of disease, and

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(2) Have passed a negative test for reportable salmonella groups within ninety (90) days prior to exhibition, with the results recorded on an official form from the state of origin certifying that the testing was done by a permitted tester of that state, or

(3) Have originated from negative or clean flocks authoritatively participating in the disease control and eradication phases of the National Poultry Improvement Plan or NPIP approved state plan, and

(4) Be from flocks not known to be infected with reportable salmonella groups.

(5) Poultry qualifying under 2 or 3 may be imported without an official health certificate if accompanied by an approved state or NPIP form.

(6) All exhibition poultry shall be identified by an official leg or wing band unless they originate from a negative or clean flock authoritatively participating in the National Poultry Improvement Plan or NPIP approved state plan.

(7) Application of official leg or wing bands shall not be required for birds tested on the exhibition premise for a specific event. Birds tested and not identified with an official leg or wing band shall be tested prior to entering any future exhibitions.

(d) All persons holding poultry exhibitions in Oklahoma shall obtain a permit from the State Veterinarian prior to the exhibition. Those persons holding multiple exhibitions at the same location may apply for a permit by listing the dates and times of all exhibitions scheduled during a fiscal year beginning July 1 and ending June 30. The permittee shall be responsible for maintaining a list of the names and addresses of all exhibitors for each exhibition. The permittee shall keep these records and make them available to any authorized agent for inspection or photocopying for at least one (1) year after the date of the exhibition.

### **35:15-19-8. Infectious Laryngo ~~Trachietis~~Laryngotracheitis (ILT)**

~~(a) Tissue culture vaccine or vector vaccine for Infectious Laryngo Trachietis shall only be used in breeding flocks with the permission of the State Veterinarian.~~

~~(1) Permission shall be in the form of a Memorandum of Understanding between the State Veterinarian and the breeder.~~

~~(2) The Memorandum shall be effective for five (5) years and may include an option for renewal.~~

~~(b) Chick Egg Embryo Origin (CEO) vaccine, tissue culture vaccine, or vector vaccine for Infectious Laryngo Trachietis Laryngotracheitis shall only be used in broilers with the permission of the State Veterinarian by a signed Memorandum of Understanding in specific outbreak situations.~~

~~(e) The conditions of any Memorandum of Understanding shall be at the sole discretion of the State Veterinarian.~~

## SUBCHAPTER 36. SCRAPIE

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

Regulations of the United States Department of Agriculture concerning scrapie in sheep and goats found at 9 CFR Part 79 (~~2020~~2021 Revision) are adopted by reference with the exception of the deleted regulations specified in 35:15-36-2.

### **35:15-36-2. Deleted regulations**

The following sections of the Federal regulations governing scrapie in sheep and goats (9 CFR, Part 79 et seq.) (~~2020~~2021 Revision) of the USDA incorporated by reference under 35:15- 36-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 79.6 and 79.7.

## SUBCHAPTER 44. FARMED CERVIDAE

### **35:15-44-19. Entry and export requirements**

(a) Import of cervidae shall be accompanied by a Certificate of Veterinary Inspection and a Cervidae Import Permit approved or provided by the Department.

(1) The import permit shall be valid for thirty (30) days from approval.

(2) Cervidae Import Permit applications shall be submitted to the Department no less than three (3) working days prior to the scheduled shipment.

(b) Cervidae shall have two forms of identification. One (1) of these two (2) forms of identification shall be official identification.

(c) The State Veterinarian or designee may require a brucellosis test of any cervidae subject to the provisions of this subchapter.

(d) All cervidae shall meet the tuberculosis testing provisions found at 9 CFR Part 77 (~~2020~~2021 Revision).

(e) All cervidae, within the genera *Odocoileus*, *Cervus*, and *Alces* and their hybrids, shall originate from a chronic wasting disease certified herd from a county where no chronic wasting disease has been confirmed in native cervidae populations.

## SUBCHAPTER 47. CHRONIC WASTING DISEASE (CWD) IN CERVIDS

### **PART 7. INTERSTATE MOVEMENT REQUIREMENTS**

### **35:15-47-18. Minimum CWD requirements for interstate movement of cervids**

(a) Regulations of the United States Department of Agriculture concerning the interstate movement of cervidae found at 9 CFR Part 81 (~~2020~~2021 Revision) are adopted by reference.

(b) Caribou and Reindeer shall meet all interstate movement regulations that apply to cervidae found at 9 CFR Part 81 (~~2020~~2021 Revision).

[OAR Docket #22-564; filed 7-7-22]

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

[OAR Docket #22-565]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 8. Cotton Seed Bug Quarantine [NEW]
  - 35:30-8-1. Establishment of quarantine [NEW]
  - 35:30-8-2. Regulated area [NEW]
  - 35:30-8-3. Regulated articles [NEW]
  - 35:30-8-4. Conditions governing movement [NEW]
  - 35:30-8-5. Movement for scientific purposes [NEW]
- Subchapter 17. Combined Pesticide
  - Part 1. Commercial and Non-Commercial Categories of Pesticide Application
    - 35:30-17-1.3. Commercial pesticide applicator license renewal [NEW]
  - Part 3. Certification, Conduct of Examinations, and Recertification
    - 35:30-17-4. Examination of applicants for certification [AMENDED]
    - 35:30-17-6. Recertification [AMENDED]
  - Part 6. Pesticidal Product Producing Establishments
    - 35:30-17-13. Incorporation by reference of federal pesticide producing establishment regulations [AMENDED]
  - Part 8. Pesticide Registrations and Permits
    - 35:30-17-17.4. Spray adjuvant [NEW]
  - Part 9. Minimum Standards for Contracts and Keeping of Records
    - 35:30-17-21. Records required for pesticide applications and restricted use pesticide sales [AMENDED]
  - Part 11. Standards for Application of Pesticide
    - 35:30-17-25. Pesticide application by certified applicators, service technicians, and private applicators
  - Part 21. Standards for Disposal of Pesticide and Pesticide Containers
    - 35:30-17-89.1. Incorporation by reference of federal pesticide management and disposal regulations [AMENDED]
- Subchapter 24. Oklahoma Industrial Hemp Program
  - 35:30-24-11.1. Allowable testing thresholds [NEW]
- Subchapter 25. Seed
  - 35:30-25-15. Schedule of seed program fees [AMENDED]
  - 35:30-25-16. Marijuana seed [NEW]
- Subchapter 29. Fertilizer
  - Part 5. Licenses and Complaints
    - 35:30-29-51. Fertilizer license and schedule of fertilizer fees [AMENDED]
- Subchapter 37. Nursery Stock Sales
  - 35:30-37-13. Prohibited sale of noxious weeds [NEW]

**AUTHORITY:**

Okla. Const., Art. 6, § 31; 2 O.S. § 2-4(A)(2); State Board of Agriculture; 2 O.S. § 3-81 et seq.; 2 O.S. § 8-1 et seq.; and 2 O.S. § 8-41.1 et seq.

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

November 7, 2021

**COMMENT PERIOD:**

December 2, 2021, and ending January 6, 2022

**PUBLIC HEARING:**

January 6, 2022

**ADOPTION:**

January 26, 2022

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

February 1, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated Standards:**

40 CFR Parts 156, 140, 165, 167, and 169 et seq. (2021 Revision) unless otherwise specified.

**Incorporating Rules:**

35:30-17-13

35:30-17-89.1

**Availability:**

8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5803.

**GIST/ANALYSIS:**

The proposed rule amendments establish a cotton seed bug quarantine; provide for regulation of certain areas and articles; provide for movement of certain articles under certain circumstances; provide for commercial pesticide applicator license renewal; modify certain examination and recertification requirements; update citations to the Code of Federal Regulations; provide requirements for labeling of spray adjuvants; modify minimum standards for keeping of certain records; provide definitions; provide allowable testing thresholds for hemp and processed hemp; prohibiting certain processing of certain hemp and providing for violation; modify seed program fees; provide for sale of marijuana seed; provide penalty for late renewal of specialty fertilizer registration; and prohibit sale of certain noxious weeds.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 8. COTTON SEED BUG QUARANTINE**

**35:30-8-1. Establishment of quarantine**

The State Board of Agriculture does hereby establish an external quarantine for the cotton seed bug (*Oxycarenus hyalinipennis*).

**35:30-8-2. Regulated area**

Regulated articles from the State of California, and any other state or foreign country known to be infested with the cotton seed bug (*Oxycarenus hyalinipennis*) shall be quarantined.

**35:30-8-3. Regulated articles**

The following shall be regulated pursuant to this quarantine:

- (1) All plant and plant parts of the family Malvaceae including, but not limited to, nursery stock and other living, dead, cut, or fallen fruit, fruiting structures, or seeds;

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- (2) All life stages of the cotton seed bug (*Oxycarenus hyalinipennis*); and
- (3) All equipment used for the production and transportation of cotton.

## **35:30-8-4. Conditions governing movement**

(a) All regulated articles originating from quarantined areas are prohibited entry into or transition through the State of Oklahoma unless the articles are:

- (1) Accompanied by a phytosanitary certificate from the state of origin declaring the articles have been officially inspected after harvest and found free of the cotton seed bug (*Oxycarenus hyalinipennis*) and the articles have been stored in such a manner to remain free of the cotton seed bug in storage and transit; or
  - (2) Included in a cooperative agreement with the Oklahoma Department of Agriculture, Food, and Forestry.
- (b) Regulated articles originating in an area not known to have the cotton seed bug but in transit through an area known to have the cotton seed bug shall be regulated articles.

## **35:30-8-5. Movement for scientific purposes**

Interstate and intrastate movement of regulated articles for scientific or experimental purposes shall be exempt from the provisions of 35:30-8-4 and may move under a compliance agreement and scientific permit, as required.

## **SUBCHAPTER 17. COMBINED PESTICIDE**

### **PART 1. COMMERCIAL AND NON-COMMERCIAL CATEGORIES OF PESTICIDE APPLICATION**

#### **35:30-17-1.3. Commercial pesticide applicator license renewal**

- (a) Each license for commercial pesticide application for companies with names beginning with the letters A, B, C, D, E, F, G, H, I, J, K, and L shall expire on the 30<sup>th</sup> day of September following issuance or renewal, and may be renewed for the ensuing calendar year, without penalty or reexamination if a properly completed application is filed with the Board not later than the 1<sup>st</sup> day of October of each year. If the application is not received by October 1, a penalty of twice the amount of the renewal fee shall be charged for renewal of the license. If the application is not received by November 1, an additional penalty of One Hundred Dollars (\$100.00) shall be paid by the applicant prior to license renewal.
- (b) Each license for commercial pesticide application for companies with names beginning with the letters M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z shall expire on the 31<sup>st</sup> day of December following issuance or renewal, and may be renewed for the ensuing calendar year, without penalty or reexamination if a properly completed application is filed with the Board not later than the 1<sup>st</sup> day of January of each year. If the application is not received by January 1, a penalty of twice the amount of

the renewal fee shall be charged for renewal of the license. If the application is not received by February 1, an additional penalty of One Hundred Dollars (\$100.00) shall be paid by the applicant prior to license renewal.

### **PART 3. CERTIFICATION, CONDUCT OF EXAMINATIONS, AND RECERTIFICATION**

#### **35:30-17-4. Examination of applicants for certification**

- (a) The written examination for certification of commercial and noncommercial applicators shall include two (2) phases. Phase I shall consist of general knowledge common to all licensed categories and shall be successfully completed before examination is attempted in any license category. Phase II shall consist of specific knowledge for each licensed category. An applicant may test in as many different licensed categories as desired. An applicant shall successfully complete a Phase II examination within twelve (12) months of passing the Phase I examination. Failure to meet the twelve (12) month deadline shall require an applicant to re-take the Phase I examination.
- (b) The written examination for certification of commercial and noncommercial applicators shall be computer based and conducted at a site determined by the board.
- (c) A practical examination shall also be required for commercial and noncommercial applicators in the following categories: Structural Pest, General Pest, Fumigation, and Food Processing. An individual shall successfully complete the practical examination within twelve (12) months of passing the Phase II written examination in the above categories. Failure to meet the twelve (12) month deadline shall require an individual to re-take the Phase II written examination.
- (d) The practical examination shall be conducted at the training facility at Oklahoma State University and includes the successful completion of an approved training program which demonstrates a thorough knowledge in the handling of pesticides, labels and labeling requirements, storage, transportation, mixing, application, disposal, insect biology and safety. The facility at Oklahoma State University meets the following conditions for treatment in the Structural Pest Category: crawl space, voids, and a concrete floor, garage floor, or patio slab.
- (e) A service technician shall be certified upon successful completion of a written service technicians examination. An individual shall not act, do business, or advertise as a service technician unless a service technician identification has been issued by the Board. A service technicians' identification shall be issued in the name of the licensed entity. The licensee shall return the service technician identification to the Board upon termination of the employee. A service technician identification shall be valid for five (5) years unless suspended, canceled, revoked, or the service technician is no longer employed by the licensed entity. Recertification may be required at any time by the Board. The Department may issue a service technician identification upon completion of the following:
- (1) A determination is made by the Department that the applicant has successfully completed the written examination;

- (2) The licensed entity provides a completed service technician identification application form at the time of testing; and
- (3) All appropriate fees are paid at the time of testing.
- (f) The written examination for service technician shall be computer based and conducted at a site determined by the board.
- (g) Private applicators shall complete a certification form and an education program or written examination as required by the Board. Private applicators in the Fumigation category shall be required to complete the certification form and a closed book written exam and successfully complete the Fumigation practical at the training facility at Oklahoma State University within twelve (12) months of passing the Fumigation written exam.
- (h) The written examination for private ~~applicator~~applicators shall be computer based and conducted at a site determined by the board.
- (i) An individual shall not act, do business, or advertise as a certified applicator unless all qualifications and standards required by the Board have been met. A certificate in any category shall be valid for five (5) years unless suspended, canceled, or revoked. Recertification may be required by the Board, but shall not exceed one recertification in a five (5) year period.
- (j) Successful completion of any written examination shall be a score of 70% or greater.
- (k) The Department may require that an individual seeking a certified applicator or service technician certification demonstrate the capability to read and write with sufficient proficiency to comprehend the content and instructions of a pesticide label.

**35:30-17-6. Recertification**

- (a) Each certified applicator shall seek recertification every five (5) years.
- (b) A~~Within twelve (12) months of expiration,~~ a certified applicator shall either pass a ~~written~~Phase II examination or earn a specified number of Continuing Education Units (CEU) approved by the Department to successfully complete recertification. Approximately~~If a certified applicant elects to re-examine and does not pass a Phase II examination within twelve (12) months of expiration, the applicant shall be required to re-take the Phase I and Phase II examinations and a practical examination, when applicable. If a certified applicant elects to earn CEU for recertification, approximately~~ one (1) hour of education shall be the equivalent of one CEU. The CEU requirements for each category are as follows:
  - (1) 1a - Agricultural Plant:
    - (A) Total in five years - 20 CEU
    - (B) Maximum in any one year - 10 CEU
  - (2) 1b - Agricultural Animal:
    - (A) Total in five years - 5 CEU
    - (B) Maximum in any one year - 2 CEU
  - (3) 2 - Forest:
    - (A) Total in five years - 10 CEU
    - (B) Maximum in any one year - 5 CEU
  - (4) 3a - Ornamental and Turf Outdoor:
    - (A) Total in five years - 20 CEU
    - (B) Maximum in any one year - 10 CEU

- (A) Total in five years - 20 CEU
- (B) Maximum in any one year - 10 CEU
- (5) 3b - Interiorscape:
  - (A) Total in five years - 10 CEU
  - (B) Maximum in any one year - 5 CEU
- (6) 3c - Nursery/Greenhouse:
  - (A) Total in five years - 15 CEU
  - (B) Maximum in any one year - 7 CEU
- (7) 4 - Seed Treatment:
  - (A) Total in five years - 5 CEU
  - (B) Maximum in any one year 2 CEU
- (8) 5 - Aquatic:
  - (A) Total in five years - 5 CEU
  - (B) Maximum in any one year 2 CEU
- (9) 6 - Right-of-Way:
  - (A) Total in five years - 15 CEU
  - (B) Maximum in any one year 7 CEU
- (10) 7a - General Pest:
  - (A) Total in five years - 20 CEU
  - (B) Maximum in one year - 10 CEU
- (11) 7b - Structural Pest:
  - (A) Total in five years - 20 CEU
  - (B) Maximum in one year - 10 CEU
- (12) 7c - Fumigation:
  - (A) Total in five years - 10 CEU
  - (B) Maximum in one year - 5 CEU
- (13) 7d - Food Processing:
  - (A) Total in five years - 15 CEU
  - (B) Maximum in one year - 7 CEU
- (14) 8 - Public Health:
  - (A) Total in five years - 15 CEU
  - (B) Maximum in one year - 7 CEU
- (15) 9 - Regulatory:
  - (A) Total in five years - 10 CEU
  - (B) Maximum in one year - 5 CEU
- (16) 10 - Demonstration & Research in app. Category:
  - (A) Total in five years - 20 CEU
  - (B) Maximum in one year - 10 CEU
- (17) 11a - Bird & Vertebrate Animal Pest:
  - (A) Total in five years - 5 CEU
  - (B) Maximum in one year - 2 CEU
- (18) 11b - Predatory Animal
  - (A) Total in five years - 5 CEU
  - (B) Maximum in one year - 2 CEU
- (19) 12 - Timber Treating (all subcategories):
  - (A) Total in five years - 5 CEU
  - (B) Maximum in one year - 2 CEU
- (20) 13 - Antimicrobial:
  - (A) Total in five years - 5 CEU
  - (B) Maximum in any one year - 2 CEU
- (21) 14 - Specialty Category:
  - (A) Total in five years - 5 CEU
  - (B) Maximum in any one year - 2 CEU
- (22) 15 - Aerial:
  - (A) Total in five years - 5 CEU
  - (B) Maximum in any one year - 2 CEU
- (23) 16 - Private Applicator:
  - (A) Total in five years - 20 CEU

## Permanent Final Adoptions

- (B) Maximum in any one year - 10 CEU
- (c) No more than one-half (1/2) of the total credit units shall be accepted for any one Calendar year.
- (1) Credit units shall be obtained in at least three (3) of the five (5) years, in any combination, so that the total number obtained equals or exceeds the five (5) year requirement.
- (2) The continuing education units may be prorated for any applicator whose recertification period is less than five (5) years.
- (3) The Department may allow a CEU to be credited to more than one category.
- (d) The CEU shall be structured to provide the following information over the five (5) year period:
- (1) Laws and rules;
- (2) Pesticides (formulations, registration, labeling and label comprehension, handling and storage, toxicity, and hazards);
- (3) Application equipment and calibration;
- (4) Pests and IPM;
- (5) Identification of hazardous areas;
- (6) Drift prevention;
- (7) Endangered species;
- (8) Groundwater; and
- (9) Worker protection.
- (e) Any person may request approval of an education program as CEU.
- (1) The request for approval shall include the following:
- (A) A list of proposed topics including a description of the content and their relative value for meeting the standards of continuing certification;
- (B) A list of speakers and their qualifications; and
- (C) Method used to verify attendance and evaluate the progress of participants.
- (2) The Department and the Oklahoma State University Pesticide Coordinator shall review the request for approval to determine if it meets the criteria of CEU.
- (A) If the education program is approved for CEU, the person requesting approval shall be notified of the number of assigned CEU.
- (B) Awarded CEUs shall not be valid for more than five (5) years after the date of approval. After five (5) years, courses shall be resubmitted for review and approval.
- (C) The person requesting approval may appeal the number of assigned CEU to a three- person review committee with a representative from each of the following:
- (i) Oklahoma State University;
- (ii) the Department; and
- (iii) certified applicators.
- (3) Individuals seeking course approval for CEUs shall electronically submit course information and other required information for CEU approval through a website.

### PART 6. PESTICIDAL PRODUCT PRODUCING ESTABLISHMENTS

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

- (a) The Registration of Pesticide and Active Ingredient Producing Establishments, Submission of Pesticide Reports and Books and Records of Pesticide Production and Distribution Regulations found in Title 40 of the Code of Federal Regulations (CFR) (~~2020~~2021 Revision), Part 167 et seq. and Part 169 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of 40 CFR § 167.90.
- (b) All words or terms defined or used in the Federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

### PART 8. PESTICIDE REGISTRATIONS AND PERMITS

#### 35:30-17-17.4. Spray adjuvant

Labels for spray adjuvants shall include:

- (1) Product brand name;
- (2) Type or function of principal functioning agents. Terms used to describe adjuvant functions shall be consistent with ASTM International Standards E 1519 and E 609. If ASTM International has not defined a term, the Department will determine the appropriate term. Functions claimed shall be consistent with the principal functioning agents. If two (2) or more functions are claimed, the functions shall be listed in descending order starting with the primary function;
- (3) Ingredient statement that includes:
- (A) Principal functioning agents listed by chemical name in descending order of composition with either individual or total percentages. If more than three (3) functioning agents are present, only the three (3) principal agents are required to be listed;
- (B) Percentage of constituents ineffective as spray adjuvants; and
- (C) Total percentage of all ingredients which shall equal one hundred percent (100%);
- (4) Directions for use that include a description of intended uses and recommended use rates;
- (5) Precautionary statements adequate to protect people and the environment that include:
- (A) Statement "Keep Out of Reach of Children"; and
- (B) Statement prohibiting aquatic use unless the registrant provides data to demonstrate that the proposed use will not cause unreasonable adverse effects to fish and aquatic invertebrates;
- (6) Appropriate storage and disposal statement;
- (7) Name and address of the registrant or manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, the name shall be qualified by appropriate wording such as "Packaged for" or "Distributed by"; and

- (8) Weight or measure of the contents.

**PART 9. MINIMUM STANDARDS FOR CONTRACTS AND KEEPING OF RECORDS**

**35:30-17-21. Records required for pesticide applications and restricted use pesticide sales**

(a) Commercial and non-commercial applicators shall keep accurate records pertaining to pesticide activities, which, at a minimum, show:

- (1) Start and stop time of application.
- (2) Total amount of pesticide used.
- (3) Name and address of the commercial or non-commercial company.
- (4) Name and certification number of the certified applicator who made or supervised the application and name of the non-certified applicator under direct supervision, if any.
- (5) Name and address of person for whom applied.
- (56) Legal description of the land where applied. The legal description may be a street address if properly marked, but shall not be a Post Office Box address.
- (67) Date of application.
- (78) Application rate.
- (89) Dilution rate for mixing.
- (910) Total quantity tank mix used.
- (1011) Complete trade name of pesticide product used.
- (1112) EPA registration number of pesticide product used.
- (1213) Name of adjuvants used when the label requires specific adjuvants.
- (1314) Name of drifting agents used when the label requires specific drifting agents.
- (1415) Target pest for the application.
- (1516) Site where the pesticide was applied.
- (17) Size of the area treated.
- (1618) Restricted Entry Interval as stated on the product label.
- (1719) A copy of the pesticide product label or labeling that is attached to the container or included in the shipping case.
- (1820) Copies of any contracts issued.
- (1921) Copies of any wood infestation reports issued.
- (2022) Other information as required by the Board.

(b) Private applicators of restricted use pesticides shall keep accurate records pertaining to applications, which, at a minimum, show:

- (1) Start and stop time of application.
- (2) Total amount of pesticide used.
- (3) Name and address of the private applicator.
- (4) Name and certification number of the certified applicator who made or supervised the application and name of the non-certified applicator under direct supervision, if any.

(5) Legal description of the land where applied. The legal description may be a street address if properly marked, but shall not be a Post Office Box address.

- (56) Date of application.
- (67) Application rate.
- (78) Dilution rate for mixing.
- (89) Total quantity tank mix used.
- (910) Complete trade name of pesticide product used.
- (1011) EPA registration number of pesticide product used.
- (1112) Name of adjuvants used when the label requires specific adjuvants.
- (1213) Name of drifting agents used when the label requires specific drifting agents.
- (1314) Target pest for the application.
- (1415) Site where the pesticide was applied.
- (16) Size of the area treated.
- (1517) Restricted Entry Interval as stated on the product label.
- (1618) A copy of the pesticide product label or labeling that is attached to the container or included in the shipping case.
- (1719) Other information as required by the Board.

(c) Restricted use pesticide dealers shall keep accurate records of restricted use pesticide sales, which, at a minimum show:

- (1) Complete brand name of the pesticide.
- (2) EPA registration number of the pesticide.
- (3) Date the pesticide was sold.
- (4) Total amount of restricted use pesticide sold.
- (5) Name and address of the residence or principal place of business of the any person to whom the restricted use pesticide was distributed or sold for application by a certified applicator.
- (6) Name and address, license or certification number or copy of the applicator's card of the a certified or private applicator.
- (7) Other information as required by the Board.

(d) Failure to allow inspection of records by the Board, to provide copies of records to the Board when requested in person, or to provide a summary of records to the Board within seven (7) working days when requested by mail or in person shall be a violation of this section.

(e) Records retained pursuant to this section shall be easily accessible for inspection by authorized agents of the Board during reasonable business hours.

(f) Commercial and non-commercial applicators shall maintain records retained pursuant to this section at their principle place of business. A commercial or non-commercial applicator's principle place of business shall not be located in a closed gated community or at a residence unless the applicator submits a plan of access to the principle place of business and that plan is approved by the Board.

**PART 11. STANDARDS FOR APPLICATION OF PESTICIDE**

# Permanent Final Adoptions

## 35:30-17-25. Pesticide application by certified applicators, service technicians, and private applicators

- (a) A certified applicator shall be on site to use any pesticide when required by the label or labeling.
- (b) A certified applicator shall be on site to supervise any pesticide application by a non- service technician.
- (c) A service technician shall be on site to make the actual application of any pesticide unless a certified applicator is present at the job site.
- (d) A certified applicator may be a service technician in other categories for a licensed company without completing the service technician's examination.
- (e) Certified applicators, service technicians, and private applicators shall be a minimum of eighteen (18) years of age to make pesticide applications.
- (f) "Noncertified applicator" means a person who has not met the exam qualifications of a certified applicator.
- (g) "Nonservice technician" means a person who has not met the exam qualifications of a service technician.

## PART 21. STANDARDS FOR DISPOSAL OF PESTICIDE AND PESTICIDE CONTAINERS

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

- (a) The Labeling Requirements for Pesticides and Devices, Container Labeling and Pesticide Management and Disposal regulations found in Title 40 of the Code of Federal Regulations (CFR) (2020/2021 Revision), Part 156.140 et seq. and Part 165 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety.
- (b) All words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

## SUBCHAPTER 24. OKLAHOMA INDUSTRIAL HEMP PROGRAM

### 35:30-24-11.1. Allowable testing thresholds

- (a) Hemp and processed hemp shall meet the allowable laboratory testing thresholds for medical marijuana and medical marijuana products established by the Oklahoma State Department of Health at 310:681-8-1 and Appendix A.
- (b) Processors shall not process, sell, or otherwise transfer any hemp products from any hemp production batch unless samples of the production batch have passed all tests in accordance with this section.
- (c) The provisions of this section shall not apply to hemp produced for seed or fiber production.

## SUBCHAPTER 25. SEED

### 35:30-25-15. Schedule of seed program fees

- (a) The annual license fee shall be Twenty Five Dollars (\$25.00) for each retail seed dealer ~~and~~, One Hundred Dollars (\$100.00) for each wholesale seed dealer, and One Hundred Dollars (\$100.00) for each medical marijuana seed dealer. Each license shall expire on June 30 of each year.
- (b) Wholesale seed dealers need only secure a single wholesale dealer's license to engage in both retail and wholesale sales.
- (c) Failure to remit a retail, wholesale, or medical marijuana seed dealer license renewal application within thirty (30) days after the renewal date shall result in a penalty equal to the cost of an additional license.
- (d) ~~Ann~~ semi-annual inspection fee of eight cents (\$0.08) per hundred pounds shall be paid by every person responsible for labeling and distributing seed to a retail seed licensee in Oklahoma, or each retail seed licensee who processes and sells seed to the consumer on which the inspection fee has not been paid.
  - (1) The minimum semi-annual inspection fee shall be Ten Dollars (\$10.00).
  - (2) A semi-annual affidavit, stating the number of pounds of seed sold for the preceding six (6) months, shall be filed no later than the last day of January and July and the semi-annual inspection fee shall be paid upon filing of the affidavit.
  - (~~2~~3) Failure to submit the semi-annual statement affidavit and inspection fee on time shall result in an inspection fee penalty of ten percent (10%) of the amount due or Ten Dollars (\$10.00), whichever is greater.
- (e) If the State Board of Agriculture finds any deficient semi-annual inspection fees due as a result of an audit of the records of any person subject to the provisions of Sections 8-21 through 8-28 of Title 2 of the Oklahoma Statutes, the Board shall assess a penalty fee of ten percent (10%), not to exceed Two Thousand Dollars (\$2,000.00) of the amount due, or One Hundred Dollars (\$100.00), whichever is greater. The audit penalty shall be added to the deficient semi-annual inspection fees due and payment of the entire amount shall be made within thirty (30) calendar days of notice of the deficiency.

### 35:30-25-16. Marijuana seed

- (a) Marijuana seed shall be sold to medical marijuana adult patient licensees at dispensaries licensed by the Oklahoma Medical Marijuana Authority (OMMA).
- (b) Marijuana seed shall be sold by wholesale seed dealer licensees to:
  - (1) Wholesale seed dealer licensees;
  - (2) Dispensaries licensed by the OMMA; and
  - (3) Growers licensed by the OMMA.
- (c) All sales of marijuana seed shall comply with OMMA administrative rules relating to product sales.

## SUBCHAPTER 29. FERTILIZER

## PART 5. LICENSES AND COMPLAINTS



**35:30-29-51. Fertilizer license and schedule of fertilizer fees**

- (a) Any person engaged in the distribution or sale of fertilizer shall obtain a license.
- (b) The Board shall not issue a fertilizer license to any bulk dry, liquid, or anhydrous ammonia facility unless the following are approved by the Board:
  - (1) Completed fertilizer license application;
  - (2) A completed fertilizer facility application package submitted in a format approved by the Board;
  - (3) Site inspection performed by the Board prior to construction;
  - (4) Final construction of the facility; and
  - (5) Completion of all other conditions required by the Board.
- (c) The Board shall not issue and may revoke any fertilizer registration if the Board determines:
  - (1) The nutrient value of the product or substance has inadequate plant food content; or
  - (2) The registration is for the primary purpose of disposal of the product or substance.
- (d) Fertilizer license renewal applications received thirty (30) or more days after the renewal date shall result in the Board charging a penalty equal and in addition to the cost of the license.
- (e) Fertilizer registration renewal applications received thirty (30) or more days after the renewal date shall result in the Board charging a penalty equal and in addition to the cost of the registration.
- (f) Fees for the fertilizer program shall be as follows:
  - (1) The annual fee for persons operating a business engaged in the distribution or sale of a fertilizer shall be Fifty Dollars (\$50.00) and expire on December 31 of each year.
  - (2) An inspection fee of one dollar (\$1.00) per ton of which fifty cents (\$0.50) per ton shall be forwarded directly to a special Soil Fertility Research Account in the Department of Plant and Soil Sciences of the Division of Agricultural Sciences and Natural Resources at Oklahoma State University for the purpose of conducting soil fertility research and extension involving efficient fertilizer use for agronomic crops and forages and groundwater and surface water protection from plant food nutrients. Oklahoma State University shall present an annual report to the Agriculture Committees of the Legislature on the use of the special Soil Fertility Research Account Fund.
  - (3) Each registrant distributing fertilizer in this state shall file with the Board not later than the last day of January and July of each year, a semiannual statement under oath, setting forth the number of net tons of fertilizer distributed during the preceding six (6) calendar months. The inspection fee and tonnage report shall be due within thirty (30) days following the close of the filing period and upon return of the statement the licensee shall pay the inspection fee. If no fertilizer was sold or distributed in this state for the semiannual period, the registrant shall submit a statement reflecting that information and shall remit a minimum fee of ten dollars (\$10.00). If the inspection fee and tonnage report is not filed and the payment

of inspection fee is not made within thirty (30) days after the end of the specified filing period, a collection fee of ten percent (10%) of the inspection fee due or a minimum of ten dollars (\$10.00), shall be assessed and added to the amount due.

(4) If the Board finds any deficient inspection fees due as a result of an audit of the records of any person subject to the provisions of the Oklahoma Fertilizer Act, the Board shall assess a penalty fee of ten percent (10%) of the amount due, with a maximum not to exceed two thousand dollars (\$2,000.00) or a minimum of one hundred dollars (\$100.00) whichever is greater. The audit penalty shall be added to the deficient inspection fees due and payment shall be made within thirty (30) days of notice of the deficiency.

(5) Annual registrations for specialty fertilizer products sold in packages of less than thirty(30) pounds shall pay a one hundred dollar (\$100.00) registration fee for each product. Specialty fertilizer product registrations shall expire on June 30 of each year. Specialty fertilizer registration renewal applications received thirty (30) or more days after the renewal date shall result in the Board charging a penalty equal and in addition to the cost of the registration. The penalty for failure to register any specialty fertilizer product shall be one hundred dollars (\$100.00) per product and shall be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

**SUBCHAPTER 37. NURSERY STOCK SALES**

**35:30-37-13. Prohibited sale of noxious weeds**  
Plants listed on the Federal Noxious Weed List, 7 CFR § 360.200, are prohibited from propagation, sale, or distribution in Oklahoma. This shall include sterile varieties of Imperata cylindrica.

[OAR Docket #22-565; filed 7-7-22]

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

[OAR Docket #22-566]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Eggs
- 35:37-1-2. Methods of grading [AMENDED]
- Subchapter 3. Meat Inspection
- Part 1. General Provisions
- 35:37-3-1. Incorporation by reference of federal meat inspection regulations [AMENDED]
- 35:37-3-3. Deleted regulations [AMENDED]
- 35:37-3-6. Oklahoma Certified Beef [NEW]
- Subchapter 5. Poultry Products Inspection
- Part 1. General Provisions

# Permanent Final Adoptions

35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations [AMENDED]  
35:37-5-2. Deleted regulations and exemptions [AMENDED]  
Subchapter 15. Organic Products  
35:37-15-2. The Adoption of NOP Standards [AMENDED]  
Subchapter 17. Produce safety  
35:37-17-3. Incorporation by reference of federal produce safety regulations [AMENDED]  
Subchapter 19. Homemade Food [NEW]  
35:37-19-1. Purpose [NEW]  
35:37-19-2. Definitions [NEW]  
35:37-19-3. Sale and delivery requirements [NEW]  
35:37-19-4. Labeling requirements [NEW]  
35:37-19-5. Violations [NEW]

## AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2), (28) and (34); 2 O.S. 6-181 et seq.; and 2 O.S. § 6-251 et seq.

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

November 7, 2021

## COMMENT PERIOD:

December 2, 2021, and ending January 6, 2022

## PUBLIC HEARING:

January 6, 2022

## ADOPTION:

January 26, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 1, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 12, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

### Incorporated Standards:

7 CFR Parts 56 and 205 (2021 Version) and 9 CFR Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 (2021 Version), unless otherwise specified, and 21 CFR Part 112 (2021 Revision).

### Incorporating Rules:

35:37-1-2  
35:37-3-1  
35:37-3-3  
35:37-5-1  
35:37-5-2  
35:37-15-2  
35:37-17-3

## Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5803.

## GIST/ANALYSIS:

The proposed rule amendments update citations to the Code of Federal Regulations and other procedures and regulations; provide for investigation of certain claims of noncompliance; provide certain penalties for noncompliance; provide new rules for regulating the production, sale, and resale of homemade food products; add definitions; provide sale, delivery, and labeling requirements for homemade food products; and provide penalty for violations.

## CONTACT PERSON:

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 1. EGGS

### 35:37-1-2. Methods of grading

Methods of egg grading shall be the same as those described in USDA "Regulations Governing the Voluntary Grading of Shell Eggs 7 CFR Part 56" (~~2020~~2021 Version).

## SUBCHAPTER 3. MEAT INSPECTION

### PART 1. GENERAL PROVISIONS

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

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2020~~2021 Revision), Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry form, certificate or seal shall be substituted.

### 35:37-3-3. Deleted regulations

The following sections of the Federal regulations governing the mandatory meat inspection of the USDA incorporated by reference under 35:37-3-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 9 CFR 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; 392; 439; and 590 (~~2020~~2021 Revision).

### 35:37-3-6. Oklahoma Certified Beef

(a) The Oklahoma Department of Agriculture, Food, and Forestry shall only investigate claims of noncompliance with the Oklahoma Certified Beef program upon receipt of a properly completed complaint form.

(b) Investigations of noncompliance will be to determine only if the bovine were bred, born, raised, and slaughtered within Oklahoma.

(c) Noncompliance may result in, but is not limited to, administrative fines, suspension from participation in the Oklahoma Certified Beef program, and removal and a lifetime ban from the Oklahoma Certified Beef program.

**SUBCHAPTER 5. POULTRY PRODUCTS  
INSPECTION**

**PART 1. GENERAL PROVISION**

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

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2020~~2021 Revision), Parts 381; 416; 417; 418; 424; 430; 441; 442; and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate or seal shall be substituted.

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

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

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

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

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR, Part 381; 416; 417; 418; 424; 441; 442; and 500), (~~2020~~2021 Revision) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.

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

(1) The producers slaughter no more than two thousand five hundred (2,500) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;

(2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;

(3) The poultry and poultry products do not move in commerce. Producers are prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, nursing homes, and other similar establishments and are prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the producer;

(4) The producers submit a certificate of registration to the Department;

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

(6) The poultry is sold directly to a household consumer, restaurant, hotel, or boardinghouse, for use in their establishment or in the preparation of meals for sales directly to consumers and transported without third-party intervention or intervening transfer or storage, and is maintained in a safe and unadulterated condition during transportation;

(7) The producers shall meet the sanitation requirements provided in 9 CFR 416.1-5 and allow the Department to inspect sanitation at least two (2) times each year; and

(8) The producers shall maintain records of poultry sales and allow the Department to examine records at all reasonable times, upon notice.

**SUBCHAPTER 15. ORGANIC PRODUCTS**

**35:37-15-2. The Adoption of NOP Standards**

The Department adopts or incorporates by reference the following parts of the official rules and regulations of the NOP, 7 CFR Part 205 (~~2020~~2021 Revision), except for OAC 35:37-15-1, or as the Department designates otherwise in specific cases:

(1) Subpart A - Definitions, except for those designated otherwise by this subchapter;

(2) Subpart B - Applicability;

(3) Subpart C - Organic Production and Handling Requirements;

(4) Subpart D - Labels, Labeling, and Market Information;

(5) Subpart E - Certification;

(6) Subpart F - General Requirements for Accreditation; and

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- (7) Subpart G - Administrative.
  - (A) Sections 205.600 through 205.607.
  - (B) Sections 205.660 through 205.663.
  - (C) Sections 205.670 through 205.672.
  - (D) Sections 205.680 through 205.681.

## SUBCHAPTER 17. PRODUCE SAFETY

### 35:37-17-3. **Incorporation by reference of federal produce safety regulations**

The Department incorporates by reference Title 21 of the Code of Federal Regulations, Part 112 (~~2018~~2021 Revision) regarding standards for the growing, harvesting, packing, and holding of produce for human consumption.

## SUBCHAPTER 19. HOMEMADE FOOD

### 35:37-19-1. **Purpose**

These rules are for regulating the production, sale, and resale of homemade food products pursuant to the provisions of Section 5-4.1 et seq. of Title 2 of the Oklahoma Statutes.

### 35:37-19-2. **Definitions**

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

"Delivered" means transferred to the customer, either immediately upon sale or at a time thereafter;

"Home food establishment" means a business on the premises of a home, apartment, or other dwelling in which a producer resides and in which homemade food products are created for sale or resale if the business has gross annual sales of prepared food of less than Seventy-five Thousand Dollars (\$75,000.00). A home food establishment shall be limited to one business per premises, but gross annual sales of the business shall include all sales of prepared food produced by the business at any location;

"Homemade food product" means food, including a beverage, which is produced and, if packaged, packaged at a residence; provided, however, homemade food product shall not mean alcoholic beverages, unpasteurized milk, cannabis or marijuana products and shall not contain seafood, including, but not limited to, all fish, shellfish, and fishery products, meat, meat by-products, or meat food products as defined by Section 301.2 of Title 9 of the Code of Federal Regulations or poultry, poultry products, or poultry food products as defined for purposes of the federal Poultry Products Inspection Act;

"Non-time-or-temperature-controlled-for-safety" means food that does not require time or temperature control for safety to limit the rapid and progressive growth of infectious or toxigenic microorganisms, including foods that have a pH level of four and six-tenths (4.6) or below or a water activity (aw) value of eighty-five one-hundredths (0.85) or less;

"Produce" means to prepare a food product by cooking, baking, drying, mixing, cutting, canning, fermenting, preserving, dehydrating, growing, raising, or other process;

"Producer" means the person who produces a homemade food product in a home food establishment; and

"Time-or-temperature-controlled-for-safety" means a food that requires time or temperature control for safety to limit infectious or toxigenic microorganisms and is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms; provided, however, time or temperature controlled for safety shall not include foods that have a pH level of four and six-tenths (4.6) or below or a water activity (aw) value of eighty-five one-hundredths (0.85) or less.

### 35:37-19-3. **Sale and delivery requirements**

(a) Non-time-or-temperature-controlled-for-safety homemade food products shall be sold:

(1) By the producer directly to the consumer, either in person or by remote means, including, but not limited to, the internet or telephone; or

(2) By a producer's designated agent or a third-party vendor, including, but not limited to, a retail or grocery store, farm, farm stand, farmers market, membership-based buying club, craft fair, or flea market, to the consumer; provided, the third-party vendor shall display a placard where homemade food products are displayed for sale with the following disclosure: "This product was produced in a private residence that is exempt from government licensing and inspection. This product may contain allergens."

(b) Non-time-or-temperature-controlled-for-safety homemade food products shall be delivered:

(1) By the producer or producer's designated agent directly to the consumer or a third-party vendor; or

(2) By a third-party vendor or a third-party carrier, such as a parcel delivery service, to the consumer or a third-party vendor.

(c) Time-or-temperature-controlled-for-safety homemade food products shall be sold by the producer directly to the consumer, either in person or by remote means, including, but not limited to, the internet or telephone.

(d) Time-or-temperature-controlled-for-safety homemade food products shall be delivered by the producer directly to the consumer.

(e) Before a producer begins to produce and sell time-or-temperature-controlled-for-safety homemade food products and thereafter, the producer shall satisfactorily complete and maintain food safety training from a list of providers, including the ServSafe Food Handler Training, approved by the Oklahoma Department of Agriculture, Food, and Forestry. Food safety training shall be available online and shall not exceed eight (8) hours in length.

(f) Homemade food products that are packaged and distributed in interstate commerce shall be sold in accordance with federal law.

**35:37-19-4. Labeling requirements**

(a) The following information shall be provided to the consumer in the format required by subsection b of this section:

- (1) Name and phone number of the producer;
- (2) Physical address where the product was produced;
- (3) Description of the homemade food product;
- (4) Ingredients of the homemade food product in descending order of proportion;
- (5) Statement indicating the presence of any of the most common allergens, including milk, eggs, peanuts, tree nuts, soybeans, wheat, fish, crustacean shellfish, and sesame; and
- (6) Legible print stating, "This product was produced in a private residence that is exempt from government licensing and inspection."

(b) The information required by subsection a of this section shall be provided in a legible format of at least 10-point font, in the following manner:

- (1) On a label affixed to the package if the homemade food product is packaged;
- (2) On a label affixed to a container if the homemade food product is offered for sale from a bulk container directly to the consumer;
- (3) On a placard displayed at the point of sale and on a card or other item that is made available to the consumer and is readily carriable if the homemade food product is not packaged; and
- (4) Displayed on the webpage from which the homemade food product is offered for sale if it is sold on the internet; provided, each item sold over the internet shall be properly labeled or shall have a label included in the shipping container.

(c) Homemade food products that are packaged and distributed in interstate commerce shall be labeled in accordance with federal law.

**35:37-19-5. Violations**

(a) Upon receipt of a consumer complaint, the Oklahoma Department of Agriculture, Food, and Forestry may request proof of completion of food safety training, verify a producer's gross sales, and ensure a producer has complied with sale, delivery, and labeling requirements.

(b) Each violation shall be punishable by an administrative fine not exceeding Three Hundred Dollars (\$300.00).

*[OAR Docket #22-566; filed 7-7-22]*

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 40. MARKET DEVELOPMENT**

*[OAR Docket #22-567]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 5. Agriculture Enhancement and Diversification Program

- Part 1. Definitions
- 35:40-5-1. Definitions [AMENDED]
- Part 3. Applicant Eligibility
- 35:40-5-31. Applicant eligibility [AMENDED]
- Part 5. Evaluation and Funding Criteria
- 35:40-5-51. Evaluation and funding criteria [AMENDED]
- Part 11. Terms of Loans ~~or~~ Grants
- 35:40-5-111. Terms of loans ~~or~~ grants [AMENDED]
- Part 13. Marketing and Utilization Loans [REVOKED]
- 35:40-5-131. Marketing and utilization loans [REVOKED]
- Part 15. ~~Cooperative Marketing~~ Value-added Agriculture Loans and Grants
- 35:40-5-151. ~~Cooperative marketing~~ Value-added agriculture loans and grants [AMENDED]
- Part 17. Farm Diversification Grants
- 35:40-5-171. Farm diversification grants [AMENDED]
- Part 18. ~~Basic and Applied~~ Product Development and Research Loans ~~or~~ Grants
- 35:40-5-181. ~~Basic and applied~~ Product development and research loans ~~or~~ grants [AMENDED]
- Part 23. Agriculture Event Grants
- 35:40-5-221. Agriculture event grants [AMENDED]
- Part 25. Veteran or Young Farmer Loans and Grants [NEW]
- 35:40-5-231. Veteran or young farmer loans and grants [NEW]
- Subchapter 23. Made in Oklahoma
- 35:40-23-4. Product eligibility [AMENDED]

**AUTHORITY:**  
Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 5-3.1 et seq., and 2 O.S. §5-14 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
November 7, 2021

**COMMENT PERIOD:**  
December 2, 2021, and ending January 6, 2022

**PUBLIC HEARING:**  
January 6, 2022

**ADOPTION:**  
January 26, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
February 1, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed rules amend the Oklahoma Agricultural Enhancement and Diversification Program to add definitions; modify eligibility requirements and evaluation criteria; modify names and requirements of certain loan and grant programs; revoke and create certain loan and grant programs; and conform language. The proposed rules amend the Made in Oklahoma Program to exclude certain products from being eligible to participate in the program.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

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## SUBCHAPTER 5. AGRICULTURE ENHANCEMENT AND DIVERSIFICATION PROGRAM

### PART 1. DEFINITIONS

#### 35:40-5-1. Definitions

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

**"Agricultural product"** means a product of cultivating the soil, growing crops, or raising livestock, horticultural commodity, silvicultural commodity, or agricultural product, horticultural product, viticulture, or silvicultural product, or bees and honey, planting seed, rice, livestock or livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer.

**"Agricultural producer"** means a person engaged in the business of cultivating, growing, raising, or processing for commercial purposes an agricultural commodity.

**"Agritourism"** means a working farm or ranch that is open to the public for purposes of purchasing products, public learning opportunities, recreational activities and stimulate economic growth and viability in rural communities by promoting and fostering agritourism ventures in Oklahoma.

**"Applicant"** means a person who is requesting loans or grants from the Oklahoma Agriculture Enhancement and Diversification Program.

**"Application"** means a form provided by the Department, that is used to request funds in the form of a loan or grant.

**"Board"** means the State Board of Agriculture or its designee.

**"Borrower"** means an individual, group of individuals, or an individual acting on behalf of a group or a corporation, which have been lent funds, as a loan.

**"Contract"** means a signed agreement between the State Board of Agriculture and the borrower or grantee outlining the terms and conditions of the loan or grant, including repayment schedules and other guidelines.

**"Cooperative"** means a group of individuals working together, who have an informal or formal agreement.

**"Family farm"** means a single family unit or multiple family members of the same lineage engaged in the business of producing or causing to be produced for commercial purposes an agriculture commodity.

**"Grant"** means funds awarded to an entity by the State Board of Agriculture, with no reimbursement required.

**"Grantee"** means an individual, group of individuals, or an individual acting on behalf of a group or a corporation that has been awarded funds as a grant.

**"Loan"** means funds provided by the State Board of Agriculture. Terms and conditions of the loan shall be outlined in a contract between the State Board of Agriculture and the borrower.

**"Nontraditional crops" or "nontraditional livestock"** means any crops, livestock or agricultural products except

wheat, corn, soybeans, milo, peanuts, cotton, hay, oats, beef cattle, dairy cattle, swine, poultry, and equine.

**"Proposal"** means a portion of the application that includes the executive summary, project narrative, list of funding sources and a breakdown of planned expenditures by those sources and the project budget.

**"Veteran farmer"** means an individual who served in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, including the reserve components thereof, and who was discharged or released under conditions other than dishonorable.

**"Young farmer"** means an individual under forty-five (45) years of age.

### PART 3. APPLICANT ELIGIBILITY

#### 35:40-5-31. Applicant eligibility

(a) An Applicant shall be individual person of at least twenty-one (21) years of age and a legal resident of the state of Oklahoma, Oklahoma corporation or legal entity, or Oklahoma governmental subdivision.

(b) Eligibility may be given to those applicants whose:

(1) Projects demonstrate a shared commitment for funding or in kind services from the applicant and other private or public sources, if any;

(2) Industrial and nonfood production processes utilize agricultural products;

(3) Food, feed, and fiber products and their uses are innovative and add to the value of agricultural products;

(4) Applications demonstrate a high feasibility of job creation and return-on-investments;

(5) Proposals demonstrate a high feasibility of rapid commercialization;

(6) Proposals center efforts on non-urban locales;

(7) Principals are individuals, a group of individuals, an individual acting on behalf of a group, or corporations which meet the criteria set forth in Section 951 of Title 18 of the Oklahoma Statutes, to market a product or formulate or implement a marketing plan for agricultural products which have not been marketed through existing marketing cooperatives produced or processed in Oklahoma;

(8) Proposals contain the potential to create additional income for the farm unit;

(9) Proposals provide for new and innovative plans for marketing the product;

(10) Proposals feature research that is innovative as well as commercially feasible: or

(11) Proposals ~~shall result in creation~~ create or expansion ~~or expand~~ viable agritourism venues.

(c) Eligibility may be given for new agricultural event applicants that:

(1) Highlight an agricultural commodity;

(2) Include an educational component;

(3) Enhance the economic impact of the agricultural commodity;

(4) Impact a large geographic region of the state; and

- (5) Are endorsed by a governmental subdivision or local Chamber of Commerce.
- (d) Eligibility may be given for an established agricultural event applicants that:
  - (1) Enhance the economic impact of an agricultural commodity;
  - (2) Include an educational component;
  - (3) Include proposals to increase participation and attendance;
  - (4) Are endorsed by a governmental subdivision or local Chamber of Commerce; and
  - (5) Provide supporting documents demonstrating the economic impact of prior agricultural events.
- (e) Consideration shall not be given to applications for:
  - (1) Research or marketing plans which do not clearly meet the stated objectives of the Oklahoma Agriculture Enhancement and Diversification Program;
  - (2) Proposals which are aimed solely at business expansion or creation without regard to agricultural products utilization; ~~and~~
  - (3) Research or marketing plans that cannot reasonably be expected to result in a viable commercial application, or that are or have been duplicated by other research efforts; ~~or~~
  - (4) Proposals for growing or any other aspect of medical marijuana.

**PART 5. EVALUATION AND FUNDING CRITERIA**

**35:40-5-51. Evaluation and funding criteria**

- (a) The Department shall evaluate each proposal.
- (b) Each application evaluation shall be based on the following criteria:
  - (1) An evaluation of the likelihood of the proposal's success.
  - (2) Demonstration of a high probability of job and wealth creation.
  - (3) A review of credibility, merit, technical, and commercial feasibility; innovative and commercially plausible research; and relative competence and technical qualifications of project principals.
  - (4) Demonstration that the proposal can be implemented quickly and has a high probability of rapid commercialization.
  - (5) Demonstration of a shared commitment for funding from other private or public sources or the applicant in the form of cash, in-kind services, or both. Indirect costs may qualify for matching funds. Preference shall be given to the applications with shared cash funding however, disbursement of funds shall be contingent on the production of evidence that matching funds have been allocated to the proposal.
  - (6) Centering of efforts on non-urban or rural locales except when the proposal requires specific research that cannot possibly be carried out in rural Oklahoma, consideration shall be given to the ultimate development and

- commercialization of the results of the proposal, with the same rural preference.
- (c) Each application evaluation for new or established agricultural events shall be based on the following criteria:
  - (1) The completeness of the application;
  - (2) The likelihood of success;
  - (3) Level of economic impact of the agricultural event;
  - (4) A review of educational component;
  - (5) The impact to Oklahoma agriculture;
  - (6) The size of geographic region of the state impacted;
  - (7) The use of grant funds; and
  - (8) Endorsements by governmental subdivisions, local Chambers of Commerce, and other community organizations.
- (d) The Department shall not consider any portion of an application requesting funding for the purchase of real property, live animals, or motorized vehicles including, but not limited to, automobiles, sport utility vehicles, all-terrain vehicles, and utility terrain vehicles.

**PART 11. TERMS OF LOANS ~~OR~~ GRANTS**

**35:40-5-111. Terms of loans ~~or~~ grants**

- (a) Loan funds shall be provided at zero interest with repayment terms determined by the Board. Repayment of loans in an amount of \$20,000.00 or less shall begin three (3) years from the date funds are initially issued to the borrower and shall be completed in not more than three (3) years. Repayment of loans in an amount over \$20,000.00 shall begin three (3) years from the date funds are initially issued to the borrower and shall be completed in not more than five (5) years. Loan repayments shall be in equal installments as specified in the loan contract.
- (b) In the event the facility or project fails to succeed, the borrower may submit in writing, a petition to the Department to convert the balance from a loan to a grant. Petitions recommended for approval shall be submitted to the State Board of Agriculture for final determination.
- (c) Grant funds for Value-Added Agriculture, Farm Diversification, agritourism venue development and expansion, and Basic Product Development and Applied—Research projects may be awarded in amounts up to but not exceeding \$10,000.
  - (1) Grants awarded ~~for less than~~ in the amount of \$2,500 or less shall not be required to provide matching funds.
  - (2) Grants awarded for \$2,501 to \$5,000 shall require a fifty percent (50%) matching contribution of funds or in-kind.
  - (3) Grants awarded in ~~excess~~ the amount of \$5,001 or more shall require a dollar for dollar ratio of matching dollars.
- (d) Grant funds for Agriculture events may be awarded in amounts up to but not exceeding \$50,000.
  - (1) Grants awarded in the amount of \$2,500 or less shall have supporting documents projecting an economic impact up to \$5,000.

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(2) Grants awarded in the amount of \$2,501 to \$5,000 shall have supporting documents projecting an economic impact of \$5,001 to \$75,000.

(3) Grants awarded in the amount of \$5,001 to \$50,000 shall have supporting documents projecting an economic impact of more than \$75,000.

### **PART 13. MARKETING AND UTILIZATION LOANS [REVOKED]**

#### **35:40-5-131. Marketing and utilization loans [REVOKED]**

~~A marketing and utilization loan may be used to assist in the development or implementation of sound domestic or foreign marketing plans for Oklahoma agricultural products, by products, agritourism venues, or new or better uses for existing agricultural products by the financing of marketing feasibility studies, business plans, and test marketing.~~

~~(1) Proposals shall encourage the creation of jobs and industry within the agricultural sector of the state.~~

~~(2) Applicants shall encourage the use of funds to seek new markets and marketing ideas, both domestically and internationally.~~

### **PART 15. COOPERATIVE MARKETING VALUE-ADDED AGRICULTURE LOANS AND GRANTS**

#### **35:40-5-151. Cooperative marketing Value-added agriculture loans and grants**

~~Cooperative marketing loans or Value-added agriculture loans and grants are to shall be available to used by entities or individuals wishing to work together to develop or establish production, processing or marketing of agricultural products and to establish or expand agritourism ventures. The purpose of this category is to provide funding for promoting productivity, providing added value to agricultural products, stimulating and fostering agricultural diversification, and encouraging processing innovations. Proposals for a value-added agriculture loan or grant shall:~~

~~(1) Preference shall be given to principals who are individuals rather than existing corporations. Demonstrate ability to produce a viable product and include completed research relating to product development, recipe scaling, packaging, and ingredient sourcing;~~

~~(2) Proof of a cooperative agreement, either formal or informal, shall be provided to the Advisory Board. Show a feasible marketing plan that includes profitability and sales outlets; and~~

~~(3) Proposals should provide an outlet for products normally not marketed through existing marketing cooperatives.~~

~~(4) A well researched, feasible marketing plan for the specific crop, livestock, or on farm, value added processing shall be included in the proposal. Include a description~~

~~of how production will create jobs and enhance the community.~~

### **PART 17. FARM DIVERSIFICATION GRANTS**

#### **35:40-5-171. Farm diversification grants**

~~Farm diversification grants are to shall be used for projects dealing with the diversification of family farms or ranches or agritourism venues, to nontraditional crops, nontraditional livestock, on-farm, value added processing of agricultural commodities, or development of an agritourism venue that will promote access to a new market. Proposals for a farm diversification grant shall be evaluated as follows:~~

~~(1) Proposals shall have Show the potential to create additional income for the farm unit; and~~

~~(2) Proposals shall demonstrate Demonstrate a well-researched plan. This for production and marketing which includes exploration and research of possible markets for the product and probable income; and~~

~~(3) Proposals shall contain new and innovative plans for marketing the product.~~

### **PART 18. BASIC AND APPLIED PRODUCT DEVELOPMENT AND RESEARCH LOANS OR AND GRANTS**

#### **35:40-5-181. Basic and applied Product development and research loans or and grants**

~~Business creation, expansion, or research which shall likely lead to a marketable product shall include but not limited to Product development and research grants and loans shall be used to create or expand agricultural business through research including, but not limited to, feasibility studies, test marketing costs, and product development. Proposals for a product development and research loan or grant shall:~~

~~(1) Focused research which enhances the value of an agricultural product or by product; Show there is no similar research on the proposed product; and~~

~~(2) Feasibility studies; Demonstrate how the proposed research will lead to a marketable product~~

~~(3) Product development costs;~~

~~(4) Projects that are driven by an entrepreneur or the industry and~~

~~(5) Agritourism.~~

### **PART 23. AGRICULTURE EVENT GRANTS**

#### **35:40-5-221. Agriculture event grants**

~~(a) Agriculture event grants shall be for the purpose of creating used to create a new agricultural event, highlighting that highlights an agricultural commodity, expanding product or expands the economic benefits benefit of an established agricultural event, increasing agricultural productivity and participation, or enhancing economic impact of the event on local or regional commerce.~~



(b) ~~An agricultural event grant shall include an~~ Proposals for an agriculture event grant shall:

- (1) Illustrate the educational component of the event; and
- (2) Demonstrate the economic impact of the event.

**PART 25. VETERAN OR YOUNG FARMER LOANS AND GRANTS**

**35:40-5-231. Veteran or young farmer loans and grants**

Veteran or young farmer loans and grants shall be for a veteran or young farmer who is engaged in the creation or expansion of an agricultural business. Proposals for a veteran or young farmer loan or grant shall:

- (1) Demonstrate financial need of the veteran or young farmer; and
- (2) Provide a strong business plan which includes a minimum of five (5) years projected productivity and income.

**SUBCHAPTER 23. MADE IN OKLAHOMA**

**35:40-23-4. Product eligibility**

(a) Products eligible to use the Made in Oklahoma logo shall:

- (1) Be processed or manufactured in an Oklahoma facility;
- (2) Meet or exceed all federal and State of Oklahoma standards and regulations; and
- (3) Include an Oklahoma address on each label.

(b) Products produced, sold, or resold pursuant to the provisions of Section 5-4.1 et seq. of Title 2 of the Oklahoma Statutes shall not be eligible to use the Made in Oklahoma logo.

[OAR Docket #22-567; filed 7-7-22]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM**

[OAR Docket #22-568]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. Agriculture Environmental Permitting and AGPDES  
Part 1. General Provisions  
35:44-1-3. Date of federal regulations incorporated [AMENDED]  
Subchapter 3. Permit Conditions and Requirements  
35:44-3-3. Date of federal regulations incorporated [AMENDED]

**AUTHORITY:**  
Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 2-18.2; 2 O.S. § 2A-1 et seq.; 2 O.S. § 2A-21 et seq.; 27A O.S. § 1-3-101(D).

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

November 7, 2021

**COMMENT PERIOD:**

December 2, 2021, and ending January 6, 2022

**PUBLIC HEARING:**

January 6, 2022

**ADOPTION:**

January 26, 2022

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

February 1, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022.

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated Standards:**

40 CFR (2021 Revision) unless otherwise specified.

**Incorporating Rules:**

35:44-1-3

35:44-3-3

**Availability:**

8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5803.

**GIST/ANALYSIS:**

The proposed rule amendments update citations to the Code of Federal Regulations.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 1. AGRICULTURE ENVIRONMENTAL PERMITTING AND AGPDES**

**PART 1. GENERAL PROVISIONS**

**35:44-1-3. Date of federal regulations incorporated**  
When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (~~2020~~2021 Revision).

**SUBCHAPTER 3. PERMIT CONDITIONS AND REQUIREMENTS**

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## 35:44-3-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (~~2020~~2021 Revision).

[OAR Docket #22-568; filed 7-7-22]

## TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 55. COMMERCIAL PET BREEDERS AND ANIMAL SHELTERS

[OAR Docket #22-569]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Standards of Care

35:55-3-1. Incorporation by reference [AMENDED]

### AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); and 4 O.S. § 30.1 et seq.

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

November 7, 2021

### COMMENT PERIOD:

December 2, 2021, and ending January 6, 2022

### PUBLIC HEARING:

January 6, 2022

### ADOPTION:

January 26, 2022

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

February 1, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

#### Incorporated Standards:

9 CFR (2021 Revision) unless otherwise specified.

#### Incorporating Rules:

35:55-3-1

#### Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5803.

#### GIST/ANALYSIS:

The proposed rule amendments update citations to the Code of Federal Regulations.

#### CONTACT PERSON:

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 3. STANDARDS OF CARE

### 35:55-3-1. Incorporation by reference

(a) The following provisions of Title 9 of the Code of Federal Regulations and the requirements contained therein pertaining to Animal Welfare, Part 3 (Standards) are, unless otherwise specified, adopted and incorporated by reference in their entirety:

- (1) 3.1 (housing facilities, general)
- (2) 3.2 (indoor housing facilities)
- (3) 3.3 (sheltered housing facilities)
- (4) 3.4 (outdoor housing facilities)
- (5) 3.5 (mobile or traveling housing facilities)
- (6) 3.6 (primary enclosures), except for 3.6 (c)(1)(ii) and (c)(2)
- (7) 3.7 (compatible grouping)
- (8) 3.8 (exercise for dogs)
- (9) 3.9 (feeding)
- (10) 3.11 (cleaning, sanitization, housekeeping, and pest control)
- (11) 3.12 (employees)
- (12) 3.13 (consignments to carriers and intermediate handlers)
- (13) 3.14 (primary enclosures used to transport live dogs and cats)
- (14) 3.15 (primary conveyances [motor vehicle, rail, air, and marine])
- (15) 3.16 (food and water requirements)
- (16) 3.17 (care in transit)
- (17) 3.18 (terminal facilities)
- (18) 3.19 (handling)

(b) When reference is made to a federal entity, it shall mean the state counterpart.

(c) When reference is made to 9 C.F.R. it means, unless otherwise specified, the volume of 9 C.F.R. as published on July 1 (~~2020~~2021).

[OAR Docket #22-569; filed 7-7-22]

## TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT, AND MATERIAL REFERENCE STANDARDS

[OAR Docket #22-551]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

40:25-1-1. Purpose [AMENDED]

40:25-1-1.1. Definitions [NEW]

40:25-1-3. Approved dry gas canisters [AMENDED]

40:25-1-5. Requests for Approval of devices or equipment for breath-alcohol analysis [AMENDED]

### AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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

November 15, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 15, 2022

**PUBLIC HEARING:**

January 19, 2022

**ADOPTION:**

February 08, 2022

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

February 11, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

*Conforming Products List of Calibrating Units for Breath Alcohol Testers* (72 FR 34747), published by the National Highway Traffic Safety Administration; National Institute of Standards and Technology (NIST)

**Incorporating rules:**

40:25-1-3

**Availability:**

8:00 a.m. to 4:30p.m., Monday through Friday at Board of Tests for Alcohol and Drug Influence, 3600 N. Martin Luther King Avenue Bldg. #9, Oklahoma City, OK 73136, 405-425-2460.

**GIST/ANALYSIS:**

The rule amendments and creations clarify the purpose of the chapter and provide definitions applicable to the chapter. The amendments update the language pertaining to gas canisters and requests for equipment/device adoption from seeking parties on the defined/referenced conforming products list.

**CONTACT PERSON:**

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**40:25-1-1. Purpose**

The rules in this chapter concern ~~the method of approving apparatus, approved devices, and approved equipment, materials, supplies, approved reference standards, and other items~~ (as defined) used for or involved in tests for alcohol and other intoxicating substances under the provisions of 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A.

**40:25-1-1.1. Definitions**

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

"Alcohol" means Ethyl Alcohol, also defined as ethanol.

"Breath alcohol test" means the collection and analysis of a person's expired alveolar breath to determine alcohol concentration.

"Director" means the position of the State Director of the Board as defined in O.A.C. 40:1-1-3.

"Device" means an object, machine, or piece of equipment made or adapted for a particular purpose, especially a piece of mechanical or electronic equipment that analyzes or measures, i.e. evidential breath alcohol analyzers such as the Intoxilyzer 8000 or other evidential toxicological measurement instrumentation.

"Equipment" means the technical equipment or machinery needed for a particular activity or purpose that does not analyze, i.e. breath alcohol simulator.

"Other intoxicating substances" means as defined in O.A.C. 40:40-1-2.

"Other items" means sanitary or other items that require no authorization or approval by the Board and are commonly used in the process of administering breath, oral fluid, or blood collections and do not impact the test analysis or results. Such item examples include but are not limited to hypodermic needles, iodine pads, mouthpieces, saliva traps, syringes, and other universal precaution items."

"Reference/uniform standard" means any external control or National Institute of Standards and Technology (NIST) traceable gas or solution/liquid.

**40:25-1-3. Approved dry gas canisters**

(a) Any National Institute of Standards and Technology (NIST) traceable alcohol reference appearing on the current or supplemented *Conforming Products List of Calibrating Units for Breath Alcohol Testers* [72 FR 34747], or its successor, published by the National Highway Traffic Safety Administration, pressurized dry gas canister labeled by the manufacturer with a target value of 0.080 BAC, ( $\pm$ )2% or .002, whichever is greater, is hereby approved for use in association with approved evidential breath alcohol measurement devices.

(b) The State Director of Tests, in accordance with the needs of the agency, may deploy dry gas canisters approved by this section for the purpose of performing calibration checks of approved evidential breath alcohol measurement devices.

(c) The State Director of Tests shall maintain a list of the dry gas canisters approved by this section that have been deployed by the agency.

**40:25-1-5. Requests for Approval adoption of devices or equipment for breath-alcohol analysis**

Any manufacturer of any apparatus, device, or equipment made for the purpose of analyzing the alcoholic content of breath, or for the purpose of simulating specimens of breath of known alcoholic content, may request this Board to ~~approve~~ adopt such apparatus, device, or equipment that appears on the applicable conforming products list released by the National Highway Traffic Safety Administration. The Board will consider said request upon submission of such information, instructions for use, exemplars, and other pertinent data as the Board may request. The Board may decline adoption on its own initiative.

[OAR Docket #22-551; filed 7-5-22]

# Permanent Final Adoptions

## TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICES

[OAR Docket #22-552]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- 40:50-1-1.1. Definitions [AMENDED]
- 40:50-1-2. Device certification process [AMENDED]
- 40:50-1-3. Standards and specifications [AMENDED]
- 40:50-1-4.1. Installation requirements [AMENDED]
- 40:50-1-5. Maintenance and calibration [AMENDED]
- 40:50-1-6.1. Removal requirements [AMENDED]

### AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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

November 15, 2021

### COMMENT PERIOD:

December 15, 2021 through January 15, 2022

### PUBLIC HEARING:

January 19, 2022

### ADOPTION:

February 08, 2022

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

February 11, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The rule amendment adds definitions and clarity for "Camera" and "Tampering". The amendment requires providers to report scheduled fees charged to interlock participants and defines appropriate methods for solicitation or advertising. The rule amendment bolsters the ignition interlock monitoring and enforcement efforts by requiring camera systems with installations. The rule amendment clarifies the Board's jurisdiction and authorizes the Board to conditionally approve manufacturer training representatives to conduct installations in the state for training purposes.

### CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

#### 40:50-1-1.1. Definitions

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

"**Alcohol**" means Ethyl Alcohol, also called ethanol.

"**Anti circumvention feature**" means any feature or circuitry incorporated into the device that is designed to prevent activity that would cause the device not to operate as intended.

"**Board**" means the Administrative Offices of the Oklahoma Board of Tests for Alcohol and Drug Influence created by O.S. 47:759.

"**Board en banc**" means the sitting members of the Board as defined by O.S. 47:759 (A).

"**Breath alcohol test**" means the analysis of a person's expired alveolar breath to determine the alcohol concentration.

"**Calibration**" means the process of testing and adjusting a device to ensure accuracy.

"**Camera**" means a separate device to capture photos as required in this Chapter.

"**Circumvention**" means to bypass the correct operation of an interlock device by starting the vehicle, by any means, without first providing a breath test or passing a confirmatory test.

"**Confirmatory test**" means a breath test required in response to a circumvention.

"**Certification**" means a status granted by the Board that permits a manufacturer to distribute a device in the state of Oklahoma.

"**Data storage system**" means a recording of all events monitored by the device.

"**Director**" means the position of the State Director of the Board as defined in O.A.C. 40:1-1-3.

"**Fee**" means a non-refundable administrative fee.

"**Free restart**" means a function of a device that will allow a vehicle to be restarted under the requirements in this title, without having to complete another breath alcohol test.

"**Ignition interlock device**" means a mechanism, which may include a camera, that prevents a vehicle from starting when the breath alcohol concentration of a breath alcohol test meets or exceeds the startup set point. Also referred to as "device".

"**Installation Authority**" means the Oklahoma agency or entity by statute or order requiring or authorizing installation of a device.

"**Ignition Interlock Maintenance and Calibration Fee**" means the fee collected from the participant, at the time of the performing calibration and maintenance as required by this title. This fee is to be remitted to the Board of Tests.

"**License**" means the permission granted by the Board to engage in specific activities of the ignition interlock program.

"**Manufacturer**" means the actual producer of the device.

"**Manufacturer representative**" means the individual designated by the manufacturer to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board with respect to device certification.

"**Monitor**" means the agency, organization and/or person(s) designated by the Installation Authority to receive reports regarding ignition interlock program participants.

"**Negative result**" means a breath alcohol test result indicating the alcohol concentration is less than the specific point value for the purpose specified.

"Operable vehicle" means a motor vehicle with ability to drive forward under its own power and steer and can be legally driven on public roadways.

"Penalty Fail" means a breath alcohol test resulting in a positive result that meets or exceeds the specific point value for the purpose specified.

"Permanent lockout" means a condition wherein the device will not allow a breath alcohol test and therefore will not allow the vehicle to be started.

"Positive result" means a breath alcohol test result indicating the alcohol concentration meets or exceeds the specific point value for the purpose specified.

"Proper Record Maintenance" means the manufacturer's complete records on every participant for a period of five (5) years from the date of removal including, but not limited to, all data retrieved from the data storage system of a device. The Board, or its designee, shall have access to any and all records.

"Reciprocity" means the process by which the Board may defer to a foreign state's device standards and specifications when an interlock participant is required to meet an interlock requirement for more than one state simultaneously.

"Reference sample device" means any alcohol breath testing external control or device approved for use by the Board.

"Retest" means a breath alcohol test or tests required in accordance with O.A.C. 40:50-1-3(e).

"Startup set point" means an alcohol concentration at which, or above, the device would prevent the vehicle from starting.

"Tampering" means any act or attempt to adjust, obscure, alter, interfere, disable, defeat or circumvent the installation or operation of the device and/or camera.

"Technical non-compliance" means the failure of the device to comply with one or more provisions of this title with regard to device performance that does not affect the device's ability to respond appropriately to a negative breath test or a breath test required by 40:50-1-3-(c), (e), or (g), or the ability of the device to satisfy the requirements of 40:50-1-3(b)(1) or 40:50-1-3(f).

"Vendor" means a licensed ignition interlock technician designated by the Manufacturer representative of a certified device to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board, excluding matters related to device certification.

**40:50-1-2. Device certification process**

(a) No device may be used in the state of Oklahoma unless it has been approved by the Board in accordance with the requirements stated herein.

(b) A list of approved device models shall be maintained by the Board and available for public review at the administrative office of the Board during regular business hours or by accessing the Board website at [www.ok.gov/bot](http://www.ok.gov/bot).

(c) A manufacturer representative seeking certification of a device shall:

(1) Complete an application for certification of an ignition interlock device and remit the appropriate fee in accordance with procedures established by the Board.

(2) Provide proof, as deemed appropriate by the Board, the device for which certification is being sought in Oklahoma meets or exceeds the current National Highway Traffic Safety Administration (NHTSA) specifications (78 FR 26849).

(3) Provide a certificate of insurance, issued by an insurance company authorized to transact business in Oklahoma, specifying:

- (A) A product liability policy with a current effective date;
- (B) The name and model number of the device model covered by the policy;
- (C) Policy coverage of at least one million dollars (\$1,000,000) per occurrence and three million (\$3,000,000) in the aggregate;
- (D) The manufacturer as the insured and the state of Oklahoma as an additional insured;
- (E) Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the device; and
- (F) The manufacturer will notify the Board immediately upon notice of cancellation of the product liability policy.

(4) Provide a schedule of all fees that may be charged to a participant. A participant shall not be imposed or required to pay any unscheduled fee(s). Such submission of schedule of fees shall be on an approved form provided by the Board. Any modification to the schedule of fees shall be submitted to the Board at least thirty (30) days prior to implementation.

(45) Devices shall use fuel cell technology for breath alcohol testing or other alcohol-specific sensing technology approved by the Board on-bane and a camera in accordance with the requirements in this Chapter.

(56) Agree to ensure any service performed on a device installed pursuant to an Oklahoma Installation Authority shall be in compliance with all requirements in this title.

(67) Agree to ensure proper record keeping and provide testimony relating to any aspect of the installation, service, repair, use, removal, interpretation of any report or information recorded in the data storage system of a device or performance of any other duties required by this title at no cost on behalf of the State of Oklahoma or any political subdivision.

(8) Shall authorize the Board of Tests to release records viewable by the agency to law enforcement representatives for investigative purposes on Board letterhead.

(79) Advise the Board whether the device for which certification is being sought in Oklahoma is the subject of any action to disallow, or has ever been, in any way, disallowed for use in another state whether such action occurred before or after approval in Oklahoma and if or when such action is or has been appealed in the other state and the outcome of the appeal.

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(8) Upon request of the Board, for each device submitted for certification or certified under this section, agree to install the device with all proposed anti circumvention features activated in a vehicle provided by the Board. Any service performed pursuant to this section, including but not limited to, installation, maintenance, calibration or removal shall be completed at no cost to the Board.

(11) Agree to only distribute Board approved solicitations related to the rules in this Chapter. Such requests for approval shall be submitted with a form provided and approved by the Board prior to distribution.

(d) The Board may conduct compliance testing on the device submitted for certification, at any time.

(e) Certification shall be for only one device model. ~~Separate certification is required for devices that differ in any operational aspect.~~

(f) Approved devices shall be recognizable, as such, upon visual inspection.

## 40:50-1-3. Standards and specifications

(a) The provisions in this subsection only apply to the use of a device pursuant to an Installation Authority.

(b) The device shall:

(1) Permit a free restart of the motor vehicle within two (2) minutes after the engine has shut off without requiring a further breath alcohol test.

(2) Have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities and pictures for the period of time elapsed from one maintenance and calibration to the next. All daily driving activity records in this data storage system shall be maintained by the manufacturer or the licensed service center and shall be available to the Installation Authority, Monitor and/or the Board upon request.

(3) Display tamper seals and a warning label that states: "Any person attempting to physically disable, disconnect or wire around this device or who intentionally fails to return the device upon request by the owner may be guilty of a misdemeanor under Oklahoma law (47 O.S. §11-902a)." If the device consists of separate pieces (e.g. a handset and separate base unit) a separate warning label shall be placed on each piece.

(4) Effective November 1, 2022, incorporate a camera on all initial new installations that is not located in the handset and meets the following requirements:

(A) Each camera shall be mounted to the vehicle so that it does not obstruct the driver's view and provides a clear unobstructed view of the driver.

(B) Has a sufficiently wide angle that it will be possible to determine whether the individual blowing into the device is seated in the driver's seat.

(C) The technician shall take a reference image of the participant in the driver's seat during the installation appointment.

(D) The camera shall operate in all lighting conditions and take an image of the driver with sufficient clarity and resolution to allow driver identification.

(E) The camera shall capture an image on each of the following events:

(i) An attempted or successful breath alcohol test.

(ii) Each time the vehicle is started.

(iii) A circumvention.

(iv) A retest violation.

(c) The startup set point value for the device shall be an alcohol concentration of 0.025 g/210L.

(d) The penalty fail point value for the device shall be an alcohol concentration of 0.025g/210L.

(e) A retest feature is required while a vehicle's engine is in operation.

(1) The first retest shall be required at a randomly variable interval ranging from five (5) to fifteen (15) minutes after passing the initial breath test and starting the vehicle's engine. Subsequent retests shall be required at a randomly variable interval ranging from fifteen (15) to forty-five (45) minutes from the previously requested test for the duration of the travel.

(2) The device shall allow five (5) minutes for the retest to be completed.

(3) The retest set point value shall be an alcohol concentration of 0.025 g/210L.

(4) A distinct audible and/or visual indicator shall come on to alert the driver that a retest is in progress. Once a retest is in progress, failure to deliver a negative result within the time frame allowed shall:

(A) Activate an audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.

(B) Record a retest violation in the data storage system, and

(C) Disable the free restart.

(f) The device shall have an approved anti circumvention feature(s) activated at all times.

(g) The device shall require a confirmatory test in response to a circumvention.

(1) The device shall allow two (2) minutes for the confirmatory test to be completed.

(2) The confirmatory test set point value shall be an alcohol concentration of 0.025 g/210L.

(3) An audible and/or visual indicator shall come on to alert the driver that a confirmatory test is in progress. Once a confirmatory test is in progress, failure to deliver a negative result within the time frame allowed shall:

(A) Activate an audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.

(B) Record a circumvention violation in the data storage system, and

(C) Disable the free restart.

(4) Once the confirmatory test is passed, the device shall enter the normal retest sequence as provided by these rules.

(h) A breath sample collection volume limit at or above 1.2 Liters unless an alternative configuration has been approved by the Board.

(i) In addition to the standards and specifications listed herein, the Board or its designee may impose additional requirements, as needed, depending upon design and functional changes in device technology and to ensure that the device functions properly and reliably.

**40:50-1-4.1. Installation requirements**

The device shall be installed according to the following guidelines:

- (1) ~~Original~~Initial device installations shall only be performed in a service center duly licensed by the Board.
- (2) The only person(s) allowed to install or observe the installation of the device are ignition interlock technicians duly licensed by the Board or manufacturer training representatives conducting installation trainings who are conditionally authorized by the Board.
- (3) A designated waiting area that is separate from the installation area is to be provided for the participant.
- (4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials or files of other participants.
- (5) Installations shall be completed on operable vehicles, as defined in this title.
- (6) The ignition interlock technician shall perform maintenance and calibration on the device in accordance with this title.
- (7) Upon completion of an installation of a device and all the components required for the device to function as required by these rules, the licensed ignition interlock technician shall provide the participant with installation verification in the form and/or format designated by the Board.
- (8) Upon completion of the installation of a device required for compliance with an Installation Authority(s), the licensed ignition interlock technician shall:
  - (A) Provide the participant with installation verification in the form and/or format designated by the Board, and
  - (B) Remit the appropriate fee.
- (9) Outside the State of Oklahoma, upon completion of the installation of a device required for compliance with an Installation Authority(s), the technician or service center appropriately authorized pursuant to their jurisdictional authority, who installs the device shall:
  - (A) Apply to the Director for authority to issue installation verification in the form and/or format designated by the Board, and
  - (B) Remit the appropriate fee.

**40:50-1-5. Maintenance and calibration**

- (a) The maintenance and calibration of a device shall be completed according to the following guidelines:
  - (1) The device shall enter a permanent lockout if the device has not been checked for calibration accuracy within sixty-five (65) days subsequent to the last check for calibration accuracy.

- (2) The maintenance and calibration of the device shall only be performed by ignition interlock technicians duly licensed by the Board who shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred.
- (3) The maintenance and calibration will consist of, but not be limited to, a check of the device to determine:
  - (A) The device is configured to the specifications required in this title.
  - (B) The anti circumvention features are activated and properly functioning.
  - (C) The device is in calibration.
  - (D) The device is installed in an operable vehicle as defined in this title.
    - (i) The device shall be subjected to a calibration confirmation test. This test shall consist of introducing a sample from a calibration standard approved by these rules into the device.
      - (I) Calibration standard(s) shall ~~be~~ within be an alcohol concentration equivalent to a range of 0.020 g/210L to 0.050 g/210L plus or minus (+/-) 0.005 g/210L of the stated alcohol concentration.
      - (II) Only dry gas calibration standards appearing on the Conforming Products List of Calibrating Units for Breath Alcohol Testers (77 FR 64588) published by the National Highway Traffic Safety Administration may be employed in the maintenance and calibration of the ignition interlock device.
      - (III) Calibration standards shall be operated in accordance with the manufacturer's recommendations, unless modified by the Board or its designee, and shall be maintained in proper working order. This includes, but is not limited to, any required altitude adjustment.
      - (IV) Preparatory documentation (such as a certificate of analysis) stating the alcohol concentration on the calibration gas standard must be available for inspection while the gas standard is being utilized.
    - (ii) The calibration confirmation test shall verify the accuracy of the ignition interlock device to be within plus or minus ( $\pm$ ) 0.01 g/210L of the stated alcohol concentration, unless modified by the Board en banc.
    - (iii) Should the ignition interlock device fail the calibration confirmation test:
      - (I) The ignition interlock device shall be recalibrated so as to restore accuracy before the device may be placed into service.
      - (II) That information shall be provided to the Board or its designee and/or the Installation Authority and/or the monitor upon request.
    - (iv) If the device fails to meet the requirements in this section, the device shall be removed from service and simultaneously replaced with a device that successfully meets the requirements in this

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section. All data contained in the data storage of the device being replaced shall be retrieved upon replacement. Records may be maintained electronically.

(b) The manufacturer's software utilized in a licensed service center by the licensed ignition interlock technician shall be capable of performing, documenting and reporting the result of this calibration confirmation test. All data contained in the data storage system shall be retrieved anytime the device is submitted to maintenance and calibration. Records may be maintained electronically. Upon completion of maintenance and calibration of the device, the licensed ignition interlock technician shall provide the participant a report showing the maintenance and calibration of the device.

(c) Outside the State of Oklahoma, maintenance and calibration of a device required for compliance with an Installation Authority, shall be completed in accordance with the rules in this section with the exception that the technician and service center performing applicable services shall be appropriately authorized pursuant to their jurisdictional authority.

### 40:50-1-6.1. Removal requirements

The device shall be removed according to the following guidelines:

- (1) The only person(s) allowed to remove or observe the removal of the device are ignition interlock technicians licensed by the Board.
- (2) A designated waiting area that is separate from the removal area is to be provided for the participant.
- (3) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials or files of other participants.
- (4) All data contained in the data storage system shall be retrieved in conjunction with removal of the device. Records may be maintained electronically.
- (5) Upon completion of the removal of the device, harness, relay and all third party materials used to initially install the device, the licensed ignition interlock technician shall:

- (A) Provide the participant a report showing the removal of the device, and
- (B) Notify the Board in the form and/or format designated by the Board.
- (C) Notify the installation and monitoring authority in the form and format designated by the Board.

(6) Outside the State of Oklahoma, the technician or service center appropriately authorized pursuant to their jurisdictional authority, shall upon completion of the removal of the device, harness, relay and all third party materials used to initially install the device:

- (A) Provide the participant a report showing the removal of the device, and
- (B) Notify the Board in the form and/or format designated by the Board.

[OAR Docket #22-552; filed 7-5-22]

## TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 55. SCREENING DEVICES

[OAR Docket #22-553]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 2. Drug Screening Devices [AMENDED]

40:55-2-3. Operating Procedure, Use, precautions, and maintenance [AMENDED]

### AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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

November 15, 2021

### COMMENT PERIOD:

December 15, 2021 through January 15, 2022

### PUBLIC HEARING:

January 19, 2022

### ADOPTION:

February 08, 2022

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

February 11, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The rule amendment redefines authorized users, proper device usage, training requirements, operation and safeguards, and maintenance of drug screening devices. The rule amendment clarifies the device is only to be used as a presumptive test and does not indicate impairment.

### CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 40:55-2-3. Operating Procedure, Use, precautions, and maintenance

(a) Authorized use. Oral fluid ~~testing~~ drug screening devices approved by these rules shall be performed in accordance with the manufacturer's instructions related to the use of the approved device, used as presumptive tests. The operator of the oral fluid screening device, or the law enforcement agency employing the operator, shall determine the appropriate timing for use of the oral fluid screening device during impaired driving investigations. The drug screening device results do not imply impairment in and of themselves. All precautions for the safety of the subject as prescribed by the manufacturer shall be adhered to.



(b) **Training.** The ~~officer~~operator of the oral fluid drug screening device shall be trained in the use of the approved drug screening device in accordance with the manufacturer's specifications. ~~The drug screening device results do not imply impairment in and of themselves. A law enforcement agency may adopt and carry out such trainings. All precautions for the safety of the subject as prescribed by the manufacturer shall be adhered to.~~

(c) **Operation.** Oral fluid screening devices approved by these rules shall be operated in accordance with the manufacturer's instructions. Use of expired oral fluid test cartridges is prohibited. In addition to any manufacturer's instructions, the operator of the oral fluid screening device shall observe the subject for at least 15 minutes prior to obtaining an oral fluid sample to confirm that the subject has not ingested any substance, vomited, or smoked during that time. ~~Approved drug screening devices shall be maintained in accordance with the manufacturer's instructions.~~

(d) **Maintenance.** Approved drug screening devices shall be maintained in accordance with the manufacturer's instructions.

[OAR Docket #22-553; filed 7-5-22]

**TITLE 55. THE BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTERED COMMERCIAL INTERIOR DESIGNERS OF OKLAHOMA  
CHAPTER 10. LICENSURE AND PRACTICE OF ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTRATION OF COMMERCIAL INTERIOR DESIGNERS**

[OAR Docket #22-516]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions [AMENDED]
- Subchapter 3. Administrative Operations [AMENDED]
- Subchapter 5. Application and Eligibility for Licensing or Registration [AMENDED]
- Subchapter 7. Examination [AMENDED]
- Subchapter 9. Licensing and Registration [AMENDED]
- Subchapter 11. Rules of Professional Conduct [AMENDED]
- Subchapter 13. Organizational Practice [AMENDED]
- Subchapter 15. Violations [AMENDED]
- Subchapter 17. Continuing Education Requirements [AMENDED]

**AUTHORITY:**

Board of Governors of the Licensed Architects, Landscape Architects and Registered Commercial Interior Designers of Oklahoma; 59 O.S., Sections 46.1 et seq.

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

December 2, 2021

**COMMENT PERIOD:**

December 16, 2021-January 14, 2022

**PUBLIC HEARING:**

A public hearing was held on February 9, 2022; however, no qualifying parties attended the hearing.

**ADOPTION:**

February 9, 2022

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

February 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Most of the changes were made to comply with HB1147, which changed the title of Registered Interior Designers and gave them certain privileges. The proposed revisions to Subchapter 1 are expanding definitions and clean-up. Changes to Subchapters 5, 7, and 9 were made to reflect the current licensing criteria and to rearrange information so that it is clear and logical. The proposed changes in Subchapter 11 were made to include Registered Commercial Interior Designers in the professional conduct rules. The changes in Subchapter 15 provide clarification of the violation and hearing process. Changes made in Subchapter 17 were made to update Continuing Education practices. All other Rule changes are simplification or clean-up items that do not change the interpretation or intent of the Rules.

**CONTACT PERSON:**

Leslie Hanska, Executive Director, 220 NE 28<sup>th</sup> Street, Suite 150, Oklahoma City, OK 73105, 405-949-2383

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**55:10-1-1. Purpose**

The Rules of this Chapter are set forth for the purpose of interpreting and implementing the Act, establishing the Board and conferring upon it responsibility for licensing Architects, Landscape Architects and registering Registered Commercial Interior Designers. The Act and Rules also requires regulating the practice of architecture and landscape architecture and enforcement of the Act. The Rules of this Chapter are known and cited as OAC 55:10.

**55:10-1-3. Definitions**

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

"Act" means the currently enacted and effective legislation codified at 59 O.S., Section 46.1, et seq.

"Applicant" means an individual who has submitted an application for a License or Registration to the Board.

"Architect" means any person who is licensed in the practice of architecture by the State of Oklahoma as hereinafter defined.

"Architect(s) of Record" means a Licensee currently licensed as an Architect ~~or Landscape Architect~~ and in good standing with this Board, that has met statutory and OAC 55:10 requirements, who is directly responsible to the Board for the

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firm practice, filings, paying all fees, penalties and submitting all documents.

~~"Architectural Intern" shall have the same meaning as "Intern Architect".~~

"ARE" means the current architect registration examination prepared by NCARB and adopted by the Board as the examination to be used in determining a Candidate's qualifications to practice architecture.

"AXP" means Architectural Experience Program, as defined by NCARB.

"Board" means the Board of Governors of the Licensed Architects, Landscape Architects and Registered Commercial Interior Designers of Oklahoma.

"Broadly Experienced" means a person who can demonstrate that the Board's equivalent education, training and examination standards have been met through a combination of education and comprehensive practice in responsible control in architectural, landscape architecture or as a Registered Commercial Interior Designer ~~interior design experience~~. This person is currently licensed or registered in the same profession in another jurisdiction and is in good standing. The person seeking licensure or Registration may be required to have a personal interview by the Board and the Board may, at its sole discretion ~~at the sole discretion of the Board~~, issue a license or registration.

"Building types" means the types of buildings found in O.S. 59, Section 46.21b of the Act.

"Candidate" means an individual who has been approved to sit for the examinations given by the Board, or who has passed said examinations, but has not been issued a License or Certificate of Registration.

"CE" means continuing education.

"Certificate of Authority" means the authorization granted by the Board for individuals to practice or offer to practice architecture or landscape architecture in the State through an Entity.

~~"Certificate of Registration" means the authorization granted by the Board to an individual Registrant to offer interior design services and represent the individual as a Registered Interior Designer in the State.~~

"Certificate of Title" means the authorization granted by the Board to an Entity to use the title and offer services as under a Registered Commercial Interior Designer.

"CEU" means a continuing education unit of one Contact Hour.

"CIDA" means Council of Interior Design Accreditation or its successor.

"CIDQ" means Council for Interior Designers Qualification, the organization administering examinations and setting model practice standards for the Registration of Interior Designers, or its successor.

"CLARB" means Council of Landscape Architectural Registration Boards or its successor.

~~"Contact Hour" as used in the continuing education requirements~~ means one clock hour unit of continuing education of not less than 50 minutes.

"Entity" means any group of individuals joined together to offer or contract for services to practice architecture, landscape architecture or ~~use the term registered interior design or the title of under a Registered Commercial Interior Designer~~. Entity shall include individuals, partnerships, firms, associations, corporations, limited liability companies and limited liability partnership and any other business or professional group recognized under the Act and approved by the Board.

"Examination" means the current licensing and registration examinations administered by this Board, or its designee, for Architects, Landscape Architects or Registered Commercial Interior Designers.

"Fiscal Year" means July 1 through June 30.

"IDEP" means the Interior Design Experience Program, as defined by CIDQ.

"Intern Architect" or "Architectural Intern" means an individual in the process of obtaining training acceptable to the Board in order to complete requirements and/or is currently testing to pursuing licensure.

"Intern Landscape Architect" or "Landscape Architectural Intern" means an individual in the process of obtaining credits acceptable to the Board in order to complete requirements and is currently testing to pursue licensing as a Landscape Architect.

"Issuing jurisdiction" means the state where the license record of an Applicant, Candidate, or Licensee is kept.

"LAAB" means Landscape Architectural Accrediting Board or its successor.

"LARE" means the current Landscape Architect Registration Examination prepared by CLARB or its successor and adopted by the Board as the licensing examination to be used in determining a Candidate's qualifications to practice landscape architecture.

"Landscape Architect" means an individual licensed to practice landscape architecture in Oklahoma.

"Landscape Architect of Record" means a Licensee currently licensed as a Landscape Architect and in good standing with this Board, that has met statutory and OAC 55:10 requirements, who is directly responsible to the Board for the firm practice, filings, paying all fees and penalties, and submitting all documents.

~~"Landscape Architectural Intern" shall have the same meaning as "Intern Landscape Architect".~~

"License" means License to practice architecture or landscape architecture issued by the Board and permission to use the title Architect or Landscape Architect.

"Licensee" means a licensed Architect or Landscape Architect that practices architecture or landscape architecture.

"NAAB" means the National Architectural Accrediting Board or its successor.

"NASAD" means the National Association of the Schools of Art and Design or its successor.

"NCARB" means National Council of Architectural Registration Boards or its successor.

"NCIDQ" means the current National Council of Interior Design Qualification exam, prepared by CIDQ or its successor and adopted by this Board used in determining a Candidate's qualifications to register as an interior designer.

**"Professional Consultant"** means an individual or firm, exhibiting subject matter expertise in the applicable field, retained by an Architect, Landscape Architect, or Registered Commercial Interior Designer who prepares or assists in the preparation of technical design documents issued by the Licensee or Registrant for use in connection with their technical submissions.

**"Prototypical Building"** means any commercial building or space within a commercial building that is intended to be constructed in multiple locations and which conveys an owner's intended uniform business program, plan or image.

**"Prototypical Plans"** are technical submissions for prototypical buildings that are prepared by and under the responsible control of an architect licensed in any jurisdiction in the United States for use in the State of Oklahoma.

**"Reciprocal License"** means a License granted by the Board to an individual to practice architecture or landscape architecture and granting use of the term Architect or Landscape Architect or any derivation of the word based on a current License in good standing in another jurisdiction meeting the requirements for licensing in this State.

**"Reciprocal Registration"** means a registration granted by the Board to an individual to use the title Registered Commercial Interior Designer or any derivation of the word based on the License or Registration in good standing in another jurisdiction meeting the requirements for Registration in this State.

**"Registered Commercial Interior Designer"** means an individual registered by the Board to use the title.

**"Registered Commercial Interior Designer Intern"** means an individual in the process of obtaining training acceptable to the Board in order to complete requirements and/or is currently testing to pursue Registration as a Registered Commercial Interior Designer.

**"Registered Commercial Interior Designer of Record"** means a Registered Commercial Interior Designer in good standing with this Board, that has met statutory and OAC 55:10 requirements, and who is directly responsible to the Board for the activities, filings, paying all fees, penalties and submitting all documents for the Entity having been issued the Certificate of Title.

**"Registrant"** means an individual registered by the Board to use the title Registered Commercial Interior Designer, as a designation of the individual's profession.

**"Registration"** means the authority granted by this Board to a qualified individual to use the term Registered Commercial Interior Designer unless exempt by the Act from Registration.

**"Resident State"** means the state where the Applicant, Candidate, Licensee or Registrant legally resides.

**"Responsible Control"** shall have the meaning set forth in the Act.

**"Rules"** means this Oklahoma Administrative Code, Title 55, Chapter 10 Rules.

**"Sole proprietorship"** means the only owner of a firm, licensed or registered as an individual by the Board.

**"Sponsor"** means an individual, organization, association, institution or other entity that provides an educational

activity for the purpose of fulfilling the continuing educational requirements of the Board.

**"Technical submissions"** has the same meaning as in the Act.

**"UNE"** means the former Landscape Architect licensing examination, prepared by CLARB and adopted by the Board as the licensing examination.

### SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

#### 55:10-3-1. Conduct of Board meetings

(a) The Board may meet at such place within the State of Oklahoma as may be directed by the Chair or provided in the notice of call for any regular or special meeting and subject to the requirements of the Oklahoma Open Meeting Act, 25 O.S., Sections 301, et seq.

(b) All meetings shall be conducted in accordance with the current edition of "Robert's Rules of Order".

~~(c) Members of the Board may waive formal or written call or notice of meeting, and by the attendance at any meeting such members so attending shall be deemed to have waived all notice thereof.~~

~~(dc)~~ A quorum shall consist of six (6) members but official action may not be taken upon any question unless five (5) members vote in accord.

~~(ed)~~ In the absence of a quorum at any regular or special meeting those members of the Board in attendance shall recess such meeting to any later date.

#### 55:10-3-5. Official seal [REVOKED]

~~The Board has adopted its official seal which is on file at the offices of the Board.~~

#### 55:10-3-6. Official records

Among other official records required by law, or by rules of other agencies in support of law, there shall be maintained by the Board accurate and current records including, but not limited to:

(1) Minutes of all meetings of the Board.

(2) Records of Licensees and Registrants containing the name, and the License or Registration number of all individuals to whom Licenses or Certificates of Registration have been issued, and the date of original issuance.

(3) Files for each current Licensee, Registrant, Applicant or Candidate containing relevant verification and evaluation data, a record of examination grades, and the last known address of all current Licensees and Registrants.

(4) Certificate of Authority and Certificate of Title files containing the name of each current Entity holding a current certificate, the Architect(s) of Record or Registered Commercial Interior Designer(s) of Record, relevant information of the Entity and the last known address.

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(5) Financial records of funds budgeted, committed, spent, remaining and projections of appropriate request for consideration in budget development.

### 55:10-3-7. Inactive records

All ~~inactive~~ records of the Board over three (3) years old may be deemed inactive and shall be maintained according to state records management requirements. ~~transferred to the Archives and Records Commission and disposed of according to that agency's current statutes and rules.~~

### 55:10-3-9. Confidential records

(a) The Act, at Section 46.24E, provides for certain records of the Board to be confidential and not open to the public for copying or viewing. They are:

- (1) Examination materials, before and after the examination is given;
- (2) File records of examination problem solutions;
- (3) Letters of inquiry and reference concerning Applicants;
- (4) Board inquiry forms concerning Applicants; and
- (5) Investigation files, including the original informal complaint, complainant's information, and any files not presented in a formal public hearing.

~~(b) Prior to presentment to the Board for formal or informal adjudication, any record, as defined in the Act pertaining to any alleged violation(s) of the Act or these Chapter 10 Rules shall be deemed part of the file of an investigation, confidential and not subject to disclosure.~~

~~(e-b)~~ Upon request, the Board will examine its investigation files to determine the extent to which material contained in the ~~said investigation~~ file should be deemed not confidential and, therefore, may be disclosed. In all cases, the Board, upon inquiry, will confirm a complaint has or has not been received and that an investigation is pending or has been completed.

### 55:10-3-13. Fees and penalties

(a) **Schedule of fees and penalties are as follows:**

- (1) Initial and subsequent biennial License, Registration or renewal fee -- \$325.00
- (2) Reciprocal License or Registration application fee -- \$100.00
- (3) Examination & Retake application fee -- \$50.00
- (4) Examination -- Actual Cost
- (5) Late payment penalty -- \$25.00
- (6) Returned (insufficient funds) check fee -- \$25.00
- (7) Reinstatement penalty -- \$200.00
- (8) Certificate of Authority and Certificate of Title application or renewal fee -- \$325.00; revisions--\$100.00
- (9) Duplicate certificate -- \$25.00
- (10) Roster-- \$.25 per page or electronic copy \$25.00
- (11) Transcript of hearing-- Actual Cost plus \$25.00
- (12) Copy of public records-- \$.25 per page
- (13) Emeritus License -- All fees waived
- (14) CE reinstatement penalty-- \$1000.00 (per biennial renewal period of noncompliance)

(15) Civil penalties -- Set by the Act

(16) Manual processing fee-- \$25.00 per transaction

(17) File Transfer fee-- \$75.00

~~(18) Readmission Application fee-- \$100.00~~

(b) **Fee exemption based on temporary military deployment.** The Board shall waive all fees, penalties and continuing education, if applicable, during the time Licensees, Registrants or Candidates are called to active military duty in the armed forces of the United States and deployed to a temporary military assignment. In order to obtain this exemption, the Licensees, Registrants or Candidates are required to submit to the Board office military documentation of such deployment. Upon receipt, the staff shall make a note to the file and the Licensees, Registrants or Candidates shall be placed on active military status for the duration of the ~~above mentioned~~above-mentioned deployment. At the end of the temporary deployment, the Licensees, Registrants or Candidates shall submit to the Board office within ninety (90) days, military documentation that the individual has returned from deployment. The individual will then be returned to regular active status. All fees, penalties and continuing education, if applicable, will be waived until the beginning of the next biennial License or Registration period. This exemption from fees and penalties shall also apply to the Certificate of Authority or the Certificate of Title if the Licensee is the only Architect of Record or the Registrant is the only Registered Commercial Interior Designer of Record associated with the Entity.

(c) **Fee exemption for active-duty/active-duty military personnel and spouses.** The Board shall waive the application and license or registration fee for ~~active-duty/active-duty~~ military personnel and their spouse for the first period of issuance upon satisfactory documentation of formal notice, orders for military transfer or honorable discharge to this state.

(d) **Fee exemption based on low income.** The Board shall grant a one-time waiver of any fees associated with the license or registration upon presentation of satisfactory documentation that an applicant is a low-income individual. This waiver shall not include fees charged by NCARB, CLARB, CIDQ or any other outside organization, nor shall it include any fines or costs assessed as a result of any disciplinary action. Documentation must verify that the individual is enrolled in a state or federal public assistance program, including but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

~~(e) **Readmission Application fee.** Reinstatement penalty.~~ This fee applies to individuals who ~~are re-applying for~~ apply to reinstate their License or Registration ~~to be reinstated~~ for any reason or to firms who are reinstating their Certificate of Authority or Certificate of Title. ~~-, or changing from emeritus to active status. This fee does not apply to OAC 55:10-3-13 (b), Certificates of Authority or Certificates of Title.~~

**SUBCHAPTER 5. APPLICATION AND ELIGIBILITY FOR LICENSING OR REGISTRATION**

**55:10-5-1. Availability of forms and Board records**

All forms required for submission to the Board are available from the Board office or on the Board's ~~website—online portals~~. When received complete, they will be entered into the Board records.

**55:10-5-2. Documents required for a License or Registration**

Every individual applying for an initial or reciprocal License or Registration shall submit (i) an ~~original~~ application to the Board, accompanied by the applicable fees in 55:10-3-13, a 2" x 3" passport quality photograph, original college transcript, letter of good standing and examination grades from initial state, proof of citizenship or alien status, and the required reference forms verifying all training experience, or (ii) transmit a record through NCARB, CLARB or CIDQ or their successors, copies of these documents. Information submitted will be verified and evaluated and subsequent submissions may be required of the Applicant. The forms must be complete and properly executed over the signature of the Applicant. Incomplete applications are withdrawn after one (1) year from the date of receipt by the Board and the Applicant will be required to reapply.

**55:10-5-3. Board action required**

All applications submitted for an initial or reciprocal License or Registration shall be approved or disapproved by the Secretary-Treasurer of the Board, ~~by Board staff, or by~~ Board action. Applications ~~submitted for a License or Registration~~ may be approved by the Secretary-Treasurer of the Board only if the application meets all requirements of the Act, and these Rules, and/or equivalent standards determined by the Board. When Board staff approves an initial or reciprocal application, it shall be ratified by the Board.

**55:10-5-4. Evaluation criteria**

(a) In the Board's evaluation of education and experience credits required, the application shall be subject to the following education and training requirement standards for the applicable profession:

- (1) for Architects, as established by current NCARB standards or its successor~~this Board based upon the current "NCARB Education Guidelines", Architect Registration Examination Guidelines and "Architectural Experience Program Guidelines"~~, the Act, and these Rules, ~~and including~~ equivalent standards;
- (2) for Landscape Architects, as established by current CLARB standards or its successor, the Act, and these Rules, ~~and/or including~~ equivalent standards determined by the Board;
- (3) for Registered Commercial Interior Designers, as established by current CIDQ standards or its successor,

the Act, and these Rules, ~~and/or including~~ equivalent standards determined by the Board. See OAC 55:10-5-10.

(b) Rejections of applications will include evaluation reports and instructions for completing requirements.

(c) The order upon which an Applicant completes education, examination, and training may, at the sole discretion of the Board, be considered to have met or not met their requirements.

**55:10-5-4.1. Equivalent education and training standards for Architects [REVOKED]**

~~(a) **Education and training equivalent requirements for licensing.** This is a State of Oklahoma program to lead national and/or international applicants into meeting licensing and acceptable training standards through equivalent and/or alternative standards and methods. The requirements set out in this paragraph for education and training along with the Board's current Rules will be used to meet these goals. The standard is a five (5) year professional education from an NAAB accredited degree in architecture and completion of the NCARB Architectural Experience program (AXP) plus the passage of the NCARB examinations and examinations required by the Board. Education and training may be gained in a variety of ways. The following paragraphs identify and explain those education and training equivalents and alternatives. A person seeking licensure is required to have five (5) years of education credits established below or an NAAB accredited degree in architecture and complete a national and/or international diverse training program or equivalent practical training acceptable to the Board in its sole discretion. Education and training may be gained in a variety of ways. A candidate for licensure must hold an NAAB accredited degree in architecture or meet the alternate education criteria adopted here, unless the candidate had been licensed by a member board or had accumulated at least five (5) years of education credits in accordance with these standards.~~

**(1) Education and training equivalents and alternatives.**

~~(A) Education credits allowed toward the first professional degree in architecture, or credits toward the first professional degree, where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two (2) years after termination of enrollment.~~

- ~~(i) 75% credit allowed first two (2) years~~
- ~~(ii) 100% credit allowed succeeding years~~
- ~~(iii) Five (5) years maximum credit allowed~~

~~(B) Education credits allowed toward the first professional degree in architecture, or credits toward that degree, where the degree program has not been accredited by NAAB within two (2) years of graduation.~~

- ~~(i) 75% credit allowed first two (2) years~~
- ~~(ii) 75% credit allowed succeeding years~~
- ~~(iii) Four (4) years maximum credit allowed~~

~~(C) Education credits allowed toward a foreign bachelor degree in architecture or credits toward that degree accredited by a national or internationally recognized accrediting council or entity acceptable~~

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to the Board as equivalent to (a)(1)(A) of this section, in its sole discretion.

- (i) 75% credit allowed first two (2) years
  - (ii) 100% credit allowed succeeding years
  - (iii) Five (5) years maximum credit allowed
- (D) Education credits allowed toward any other pre-professional related bachelor degree
- (i) Three (3) years maximum credit allowed
- (E) Education credits allowed for diversified experience directly related to architectural work as an employee in the office of a licensed architect.
- (i) 50% credit allowed first two (2) years
  - (ii) 50% credit allowed succeeding years
  - (iii) Five (5) years maximum credit allowed
  - (iv) 100% training credits allowed; no limit
- (F) Education credits allowed for diversified experience, practicing as a principal, with verified record of substantial practice, directly related to architectural work.
- (i) 50% credit allowed first two (2) years
  - (ii) 50% credit allowed succeeding years
  - (iii) Five (5) years maximum credit allowed
  - (iv) 100% training credits allowed; no limit
- (G) Education credits allowed for diversified experience as an employee of an organization (other than offices of licensed architects) when the experience is related to architectural work and is under the personal supervision of a licensed architect.
- (i) 50% credit allowed first two (2) years
  - (ii) 50% credit allowed succeeding years
  - (iii) Four (4) years maximum credit allowed
  - (iv) 100% training credits allowed; two (2) year maximum limit
- (H) Education credits allowed for experience as an employee of an organization (other than offices of licensed architects) when the experience is in a foreign country or on a military installation and directly related to architectural work but is not under direct supervision of a licensed architect in good standing in the United States or Canada, but rather a foreign credential entity or the military. And equates to (a)(1)(E) of this section by the Board in its sole discretion.
- (i) 50% credit allowed first two (2) years
  - (ii) 50% credit allowed succeeding years
  - (iii) Five (5) years maximum credit allowed
  - (iv) 100% training credits allowed; no limit
- (I) Education credits allowed for experience, other than (a)(1)(E-H) of this section, directly related to on-site building construction operation or experience involving physical analyses of existing buildings.
- (i) No education credits allowed
  - (ii) 50% training credits allowed; six (6) month maximum limit
- (J) Education credits allowed for non-diversified experience in architecture under the direct supervision of a licensed architect or engineer.
- (i) No education credits allowed

- (ii) 50% training credits allowed; six (6) month maximum limit

(K) Education credits allowed for a Master or Doctoral degree in architecture (except where the degree is the first professional degree) where it is a second accredited professional degree.

- (i) No education credits allowed
- (ii) 100% training credits allowed; one (1) year maximum limit

(L) Education credits allowed full-time teaching or research in an NAAB-accredited architectural program.

- (i) No education credits allowed
- (ii) 100% training credits allowed; one (1) year maximum limit

(M) Education credits allowed other education or training experience. See (b)(5)(B) of this section.)

### (b) Explanation of Requirements.

#### (1) Licensing Standards

(A) To be granted licensure, an applicant must:

- (i) Be at least twenty-one (21) years of age;
- (ii) Hold a high school diploma or equivalent;
- (iii) Hold an NAAB-accredited degree in architecture or have at least five (5) years of education credits using these standards and the Board's current Rules;
- (iv) Have at least three (3) years of diversified acceptable training credits;
- (v) Hold a current registration to practice architecture issued by an NCARB member board or foreign accrediting entity;
- (vi) Have passed the NCARB Architect Registration Examination (ARE), the NCARB Professional Examination (and the Qualifying Test or the Equivalency Examination when applicable by NCARB standards) or the NCARB 7-part, 36-hour Examination; provided such examinations and the grading procedures applied were in accordance with NCARB standards current at the time the applicant sat for the examinations or
- (vii) Have passed an acceptable foreign examination comparable to the United States examinations at the sole discretion of the Board; and
- (viii) Take and pass an examination on the Oklahoma Act and these Rules.

(B) Licensing standard deficiencies.

- (i) Applicants meeting all the requirements of (b)(1)(A)(i-viii) of this section may nonetheless be granted licensure if the applicant has accumulated ten or more years of excess training credits (earned as described in (b)(2)(A) of this section) and has passed an examination given by the Board at their discretion.

#### (2) Examination Deficiencies.

(A) Prior to July, 1973, the NCARB written examination was a 7-part examination of thirty-six (36)

hour duration, but some NCARB member boards administered examinations of a shorter duration. Compensation for each one hour deficiency in duration in the 7 part examination may be achieved by one (1) year of excess training credits. Excess training credits may be earned only after initial licensing by accumulating training credits in excess of those required for initial licensing. Applicants who have earned, under (a)(1)(F) of this section, ten (10) or more years of excess training credit (in the manner described in the preceding sentence) and have received their initial license by written examination, regardless of hour duration, are eligible for licensure.

(B) The Board may waive deficiencies in the applicant's examination procedure arising from examination transitions, if, in its judgment, such deficiencies are minor in nature or, if substantial, have been adequately compensated for by some equivalent proof of the applicant's competency.

(C) The transition rules relating to the implementation of any NCARB examinations will be followed by this Board.

(3) **Education credits.** Education credits shall be subject to the following conditions:

(A) No education credits may be earned prior to graduation from high school.

(B) Applicants with the degree specified in (a)(1)(A-D) of this section will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in (a)(1)(A-B) of this section may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.

(C) Thirty two (32) Semester credit hours or forty eight (48) quarter credit hours are considered to be one (1) year. Fractions of a year of one half or greater will be considered one half year, and smaller fractions will not be counted.

(D) Foreign education credits will be granted only under classifications in (a)(1)(C-D) of this section, unless the Board determines the degree is equivalent to the NAAB educational requirements. Any cost of translation and evaluation will be borne by the applicant.

(4) **Training Credits.**

(A) Training credits shall be subjected to the following conditions:

(i) No training credits may be earned prior to accumulating three (3) education credits

(ii) Every applicant must earn at least one (1) year of training credit under (a)(1)(E-G) of this section, and must earn it after earning five (5) years of education credits

(iii) To earn credit under (a)(1)(K) or (L) of this section, an applicant's credit hours must be in subjects evaluated by the Board as directly related to architecture. Twenty (20) semester credit hours

or thirty (30) quarter credit hours of teaching or equivalent time in research will equal one (1) year.

(iv) No credit used as an education credit may be used as a training credit

(v) Organizations will be considered to be "offices of licensed architects" if: (a) the architectural practice of the organization in which the applicant works is in the charge of a licensed person practicing as a principal and the applicant works under the personal supervision of a licensed architect; and (b) the organization may engage in construction.

(vi) An organization (or affiliate) is engaging in construction if it customarily engages in either of the following activities: (a) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation, or (b) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(vii) A person practices as a "principal" by being (a) a licensed architect and (b) the person in charge of the organization's architectural practice, either alone or with other licensed architects, landscape architects and/or engineers.

(viii) In evaluation training credits the Board prior to licensing, the Board requires the applicant to substantiate training experience by comparing this experience to the training requirements as indicated in these standards and the Board's current Rules.

(5) **General evaluation criteria.**

(A) To earn full education and/or training credits under (a)(1)(E-J) of this section, an applicant must work at least thirty two (32) hours per week for a minimum period of six (6) consecutive weeks. An applicant may earn one half the credit specified under (a)(1)(E) of this section for work of a least fifteen (15) hours per week in periods of six (6) or more consecutive weeks; no credit will be given for part time work in any category other than (a)(1)(E-G) of this section.

(B) Other education and training may be substituted for the requirements outlined above, only insofar as the Board considers them to be equivalent to the required qualifications.

(C) In evaluation credits, the Board may, prior to licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

**55:10-5-4.2. Equivalent education and training standards for Landscape Architects [REVOKED]**

(a) **Education and training equivalent requirements for licensing.** This is a State of Oklahoma program to lead national and/or international applicants into meeting licensing

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and training standards through equivalent and/or alternative standards and methods. These paragraphs for education and training will be used to meet these goals. The standard is a five-year professional education from an LAAB accredited degree program in landscape architecture and completion of the Board's training standards along with passage of the CLARB examinations or equivalent examinations and examinations required by the Board. Education and training may be gained in a variety of ways. The following paragraphs identify and explain those education and training equivalents and alternatives. A person seeking licensure is required to have five years of professional education credits established below or an LAAB accredited degree in landscape architecture and complete a national and/or international diverse training program or equivalent practical training acceptable to the Board in its sole discretion. Education and training may be gained in a variety of ways. A candidate for licensure must hold an LAAB accredited degree in landscape architecture or meet the alternate education criteria adopted here, unless the candidate had been licensed by a member board or had accumulated at least five years of education credits in accordance with these standards.

(1) **Experience Description and Education Credits.**

(A) Education credits allowed toward first professional degree in landscape architecture, or credits toward the first professional degree, where the degree program has been accredited by the Landscape Architectural Accrediting Board (LAAB) not later than two years after termination of enrollment.

- (i) 75% credit allowed first two (2) years
- (ii) 100% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed

(B) Education credits allowed toward first professional degree in landscape architecture, or credits accredited by LAAB within two (2) years of graduation.

- (i) 75% credit allowed first two (2) years
- (ii) 75% credit allowed succeeding years
- (iii) Four (4) years maximum credit allowed

(C) Education credits allowed toward a foreign bachelor degree in landscape architecture or credits toward that degree accredited by a national or internationally recognized accrediting council or entity acceptable to the Board as equivalent to (a)(1)(A) of this section, in its sole discretion.

- (i) 75% credit allowed first two (2) years
- (ii) 100% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed

(D) Education credits allowed toward any other pre-professional related bachelor degree or credits toward that degree.

- (i) Three (3) years maximum credit allowed

(E) Education credits allowed for diversified experience directly related to landscape architecture as an employee in the offices of a licensed or credentialed landscape architect

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed

- (iv) 100% training credits allowed; no limit

(F) Education credits allowed for diversified experience, practicing as a principal, with a verified record of substantial practice, directly related to landscape architecture work.

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed
- (iv) 100% training credits allowed; no limit

(G) Education credits allowed for diversified experience as an employee of an organization (other than offices of a licensed landscape architect) when the experience is related to landscape architecture work and is under the personal supervision of a licensed landscape architect, architect, civil engineer or credentialed planner in good standing

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Four (4) years maximum credit allowed
- (iv) 100% training credits allowed; two (2) year maximum limit

(H) Education credits allowed for experience as an employee of an organization (other than offices of licensed landscape architects) when the experience is in a foreign country or on a military installation and directly related to landscape architectural work but is not under direct supervision of a licensed engineer, architect, landscape architect or credentialed planner in good standing in the United States or Canada, but rather a foreign credential entity or the military and equates to (a)(1)(E) of this section, by the Board in its sole discretion.

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed
- (iv) 100% training credits allowed; no limit.

(I) Education credits allowed for experience, other than (a)(1)(E-H) of this section, directly related to on-site building construction, maintenance, or installation operations

- (i) No education credits allowed
- (ii) 50% training credits allowed; one (1) year maximum limit

(J) Education credits allowed for non-diversified experience in landscape architecture under the personal supervision of a licensed landscape architect, architect, engineer or credentialed planner in good standing.

- (i) No education credits allowed
- (ii) 50% training credits allowed; one (1) year maximum limit

(K) Education credits allowed for a Master or Doctoral degree in landscape architecture (except where the degree is the first professional degree) where it is a second accredited professional degree.

- (i) No education credits allowed
- (ii) 100% training credits allowed; one (1) year maximum limit



(L) Education credits allowed for full time teaching or research in an LAAB-accredited landscape architect program.

- (i) No education credits allowed
- (ii) 100% training credits allowed; one (1) year maximum limit

(M) Education credits allowed for other education and experience. See (b)(5)(B) of this section.

**(b) Explanation of requirements.**

**(1) Licensing standards.**

(A) To be granted licensure, an applicant must:

- (i) Be at least twenty one (21) years of age;
- (ii) Hold a high school diploma or equivalent;
- (iii) Hold an LAAB-accredited degree in landscape architecture or have at least five (5) years of education credits using these standards and the Board's current Rules;
- (iv) Have at least three (3) years of diversified acceptable training credits;
- (v) Hold a current registration to practice landscape architecture issued by a CLARB member board or foreign accrediting entity;
- (vi) Have passed the CLARB Landscape Architect Registration Examination (LARE), the CLARB Uniform National Examination (UNE) or a state administered examination prior to national testing methods; provided such examinations and the grading procedures applied were in accordance with CLARB standards and/or this State's standards current at the time the applicant sat for the examinations or
- (vii) Have passed an acceptable foreign examination comparable to the United States examinations at the sole discretion of the Board; and
- (viii) Take and pass an examination on the Oklahoma Act and these Rules and an examination on Oklahoma plant materials.

(B) Licensing standard deficiencies.

- (i) Applicants meeting all the requirements of (b)(1)(A)(i-vi, viii) of this section may nonetheless be granted licensure if the applicant has accumulated ten or more years of excess training credits, earned as described in (b)(2)(A) of this section and has passed an examination given by the Board at their discretion.

**(2) Examination deficiencies.**

(A) Some CLARB member boards administered examinations of a shorter duration. Compensation for each one hour deficiency in duration of an examination may be achieved by one year of excess training credits. Excess training credits may be earned only after initial licensing by accumulating training credits in excess of those required for initial licensing. Applicants who have earned, under (a)(1)(F) of this section, ten or more years of excess training credit (in the manner described in the preceding sentence) and have received their initial license by written

examination, regardless of hour duration, are eligible for licensure.

(B) The Board may waive deficiencies in the applicant's examination procedure arising from examination transitions, if, in its judgment, such deficiencies are minor in nature or, if substantial, have been adequately compensated for by some equivalent proof of the applicant's competency.

(C) The transition rules relating to the implementation of any CLARB examinations will be followed by this Board.

**(3) Education credits.** Education Credits shall be subject to the following conditions:

(A) No education credits may be earned prior to graduation from high school

(B) Applicants with the degree specified in (a)(1)(A-D) of this section, will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in (a)(1)(A) or (B) of this section, may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.

(C) 32 Semester credit hours or 48 quarter credit hours are considered to be one (1) year. Fractions of a year of one half or greater will be considered one half year, and smaller fractions will not be counted.

(D) Foreign education credits will be granted only under classifications in (a)(1)(C-D) of this section, unless the Board determines the degree is equivalent to the LAAB educational requirements. Any cost of translation and evaluation will be borne by the applicant.

**(4) Training credits.**

(A) Training credits shall be subjected to the following conditions:

(i) No training credits may be earned prior to accumulating three (3) education credits

(ii) Every applicant must earn at least one year of training credit under (a)(1)(E-G) of this section, and must earn it after earning five (5) years of education credits

(iii) To earn credit under (a)(1)(K) or (L) of this section an applicant's credit hours must be in subjects evaluated by the Board as directly related to landscape architecture. 20 semester credit hours or 30 quarter credit hours of teaching or equivalent time in research will equal one (1) year.

(iv) No credit used as an education credit may be used as a training credit

(v) Organizations will be considered to be "offices of licensed landscape architects" if:

- (I) the landscape architectural practice of the organization in which the applicant works is in the charge of a licensed person practicing as a principal and the applicant works under the personal supervision of a licensed landscape architect, architect or engineer; and

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(II) the organization may engage in construction.

(vi) An organization (or affiliate) is engaging in construction if it customarily engages in either of the following activities:

(I) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation, or

(II) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(vii) A person practices as a "principal" by being:

(I) a licensed landscape architect, and

(II) the person in charge of the organization's landscape architectural, architectural or engineering practice, either alone or with other licensed architects, landscape architects and/or engineers.

(viii) In evaluating training credits prior to licensing, the Board requires the applicant to substantiate training experience by comparing this experience to the training requirements as indicated in these standards and the Board's current Rules.

## (5) General evaluation criteria.

(A) To earn full education and/or training credits under (a)(1)(E-J) of this section, an applicant must work at least 32 hours per week for a minimum period of six (6) consecutive weeks. An applicant may earn one half the credit specified under (a)(1)(E) of this section, for work of a least 15 hours per week in periods of six (6) or more consecutive weeks; no credit will be given for part time work in any category other than (a)(1)(E-G) of this section.

(B) Other education and training may be substituted for the requirements outlined above, only insofar as the Board considers them to be equivalent to the required qualifications.

(C) In evaluation credits, the Board may, prior to licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

## 55:10-5-7. Qualifications for an Architect License

(a) **General requirements.** ~~An Applicant~~ The standard for an initial License to practice architecture in Oklahoma shall be; an individual not less than 21 years of age. Further, the Applicant shall have a

(1) Completion of a professional degree from an NAAB accredited program in a school of architecture; or an equivalent degree, complete

(2) Completion of NCARB's the AXP, experience/training program; and

(3) Passage of the NCARB examinations or equivalent examinations pass all sections of the ARE prior to licensing.

(b) **Equivalent Education and Training.** The Board may accept an Architect who is ~~Broadly Experienced meeting~~ meets the Board's equivalent standards of acceptable education and experience, ~~and licensed licensure~~ in good standing in another jurisdiction or country, ~~who has also passed and passage~~ of the NCARB examinations or its equivalent, as determined by the Board in its sole discretion, ~~and the Board's Act and Rules examination.~~

(b) **Equivalent Education and Training.** The Board may, in its discretion, accept applications for an initial License to practice architecture from Applicants who are not graduates as required in Section 55:10-5-4, who furnishes evidence acceptable to the Board of having completed an equivalent educational and training program.

(c) **State Exam Required.** All Applicants shall take and pass an examination on the Act and these Rules.

## 55:10-5-7.1. Equivalent standards for architects

(a) **Education and training equivalent requirements for licensing.** A person seeking licensure through equivalent standards is required to have five years of professional education credits as established below, to have completed NCARB's experience/training program or equivalent practical training acceptable to the Board in its sole discretion, and to have passed the NCARB examinations or equivalent examinations prior to licensing.

(1) Education credits allowed toward the first professional degree in architecture, or credits toward the first professional degree, where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two (2) years after termination of enrollment.

(A) 75% credit allowed first two (2) years

(B) 100% credit allowed succeeding years

(C) Five (5) years maximum credit allowed

(2) Education credits allowed toward the first professional degree in architecture, or credits toward that degree, where the degree program has not been accredited by NAAB within two (2) years of graduation.

(A) 75% credit allowed first two (2) years

(B) 75% credit allowed succeeding years

(C) Four (4) years maximum credit allowed

(3) Education credits allowed toward a foreign bachelor degree in architecture or credits toward that degree accredited by a national or internationally recognized accrediting council or entity acceptable to the Board as equivalent to (a)(1) of this section, in its sole discretion.

(A) 75% credit allowed first two (2) years

(B) 100% credit allowed succeeding years

(C) Five (5) years maximum credit allowed

(4) Education credits allowed toward any other pre-professional related bachelor degree: three (3) years maximum credit allowed

(5) Education credits allowed for diversified experience directly related to architectural work as an employee in the office of a licensed architect.

- (A) 50% credit allowed first two (2) years
- (B) 50% credit allowed succeeding years
- (C) Five (5) years maximum credit allowed
- (D) 100% training credits allowed; no limit

(6) Education credits allowed for diversified experience, practicing as a principal, with verified record of substantial practice, directly related to architectural work.

- (A) 50% credit allowed first two (2) years
- (B) 50% credit allowed succeeding years
- (C) Five (5) years maximum credit allowed
- (D) 100% training credits allowed; no limit

(7) Education credits allowed for diversified experience as an employee of an organization (other than offices of licensed architects) when the experience is related to architectural work and is under the personal supervision of a licensed architect.

- (A) 50% credit allowed first two (2) years
- (B) 50% credit allowed succeeding years
- (C) Four (4) years maximum credit allowed
- (D) 100% training credits allowed; two (2) year maximum limit

(8) Education credits allowed for experience as an employee of an organization (other than offices of licensed architects) when the experience is in a foreign country or on a military installation and directly related to architectural work but is not under direct supervision of a licensed architect in good standing in the United States or Canada, but rather a foreign credential entity or the military. And equates to (a)(5) of this section by the Board in its sole discretion.

- (A) 50% credit allowed first two (2) years
- (B) 50% credit allowed succeeding years
- (C) Five (5) years maximum credit allowed
- (D) 100% training credits allowed; no limit

(9) Education credits allowed for experience, other than (a)(5-8) of this section, directly related to on-site building construction operation or experience involving physical analyses of existing buildings.

- (A) No education credits allowed
- (B) 50% training credits allowed; six (6) month maximum limit

(10) Education credits allowed for non-diversified experience in architecture under the direct supervision of a licensed architect or engineer.

- (A) No education credits allowed
- (B) 50% training credits allowed; six (6) month maximum limit

(11) Education credits allowed for a Master or Doctoral degree in architecture (except where the degree is the first professional degree) where it is a second accredited professional degree.

- (A) No education credits allowed
- (B) 100% training credits allowed; one (1) year maximum limit

(12) Education credits allowed full time teaching or research in an NAAB accredited architectural program.

- (A) No education credits allowed
- (B) 100% training credits allowed; one (1) year maximum limit

(13) Education credits allowed other education or training experience. See (b)(5)(B) of this section.)

(b) **Explanation of Requirements.**

(1) **Licensing Standards.**

- (A) To be granted licensure, an applicant must:
  - (i) Hold a high school diploma or equivalent;
  - (ii) Hold an NAAB accredited degree in architecture or have at least five (5) years of education credits using these standards and the Board's current Rules;
  - (iii) Have at least three (3) years of diversified acceptable training credits;
  - (iv) Hold a current registration to practice architecture issued by an NCARB member board or foreign accrediting entity;
  - (v) Have passed the NCARB Architect Registration Examination (ARE), the NCARB Professional Examination (and the Qualifying Test or the Equivalency Examination when applicable by NCARB standards) or the NCARB 7-part, 36-hour Examination; provided such examinations and the grading procedures applied were in accordance with NCARB standards current at the time the applicant sat for the examinations or
  - (vi) Have passed an acceptable foreign examination comparable to the United States examinations at the sole discretion of the Board; and
  - (vii) Take and pass an examination on the Oklahoma Act and these Rules.

(B) Licensing standard deficiencies: Applicants who have not met the education requirements stated in 55:10-5-7.1 (b)(1)(A)(ii) may nonetheless be granted licensure if the applicant has accumulated ten or more years of training credits, in addition to the three (3) years required for training experience, and has passed an examination as determined by the Board.

(2) **Examination Deficiencies.**

- (A) The Board may waive deficiencies in the applicant's examination procedure arising from examination transitions, if, in its judgment, such deficiencies are minor in nature or, if substantial, have been adequately compensated for by some equivalent proof of the applicant's competency.
- (B) The transition rules relating to the implementation of any NCARB examinations will be followed by this Board.

(3) **Education credits.** Education credits shall be subject to the following conditions:

- (A) No education credits may be earned prior to graduation from high school.
- (B) Applicants with the degree specified in (a)(1-4) of this section will be allowed the credit shown in the

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Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in (a)(1-2) of this section may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.

(C) Thirty-two (32) Semester credit hours or forty-eight (48) quarter credit hours are considered to be one (1) year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.

(D) Foreign education credits will be granted only under classifications in (a)(3-4) of this section, unless the Board determines the degree is equivalent to the NAAB educational requirements. Any cost of translation and evaluation will be borne by the applicant.

(4) **Training Credits.** Training credits shall be subjected to the following conditions:

(A) No training credits may be earned prior to accumulating three (3) education credits

(B) Every applicant must earn at least one (1) year of training credit under (a)(5-7) of this section, and must earn it after earning five (5) years of education credits

(C) To earn credit under (a)(11) or (12) of this section, an applicant's credit hours must be in subjects evaluated by the Board as directly related to architecture. Twenty (20) semester credit hours or thirty (30) quarter credit hours of teaching or equivalent time in research will equal one (1) year.

(D) No credit used as an education credit may be used as a training credit

(E) Organizations will be considered to be "offices of licensed architects" if:

(i) the architectural practice of the organization in which the applicant works is in the charge of a licensed person practicing as a principal and the applicant works under the personal supervision of a licensed architect; and

(ii) the organization may engage in construction.

(F) An organization (or affiliate) is engaging in construction if it customarily engages in either of the following activities:

(i) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation, or

(ii) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(G) A person practices as a "principal" by being

(i) a licensed architect and

(ii) the person in charge of the organization's architectural practice, either alone or with other licensed architects, landscape architects and/or engineers.

(H) In evaluation of training credits prior to licensing, the Board requires the applicant to substantiate

training experience by comparing this experience to the training requirements as indicated in these standards and the Board's current Rules.

(5) **General evaluation criteria.**

(A) To earn full education and/or training credits under (a)(5-10) of this section, an applicant must work at least thirty-two (32) hours per week for a minimum period of six (6) consecutive weeks. An applicant may earn one-half the credit specified under (a)(5) of this section for work of a least fifteen (15) hours per week in periods of six (6) or more consecutive weeks; no credit will be given for part-time work in any category other than (a)(5-7) of this section.

(B) Other education and training may be substituted for the requirements outlined above, only insofar as the Board considers them to be equivalent to the required qualifications.

(C) In evaluation credits, the Board may, prior to licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

### **55:10-5-8. Qualifications for a Landscape Architect License**

(a) **General requirements.** ~~An Applicant~~ The standard for an initial License to practice landscape architecture shall be: ~~an individual not less than 21 years of age. Applicants shall have~~

(1) Completion of a professional degree from a ~~an~~ LAAB accredited program in a school of landscape architecture; ~~or an equivalent educational program, provide evidence of~~

(2) Verification of three (3) years of acceptable training credits as provided in ~~Section 55:10-5-4~~ below or as established by CLARB; ~~and pass all sections of the LARE and~~

(3) Passage of the CLARB examinations or equivalent examinations.

(b) **Equivalent Education and Training.** The Board may accept a Landscape Architect who ~~is Broadly Experienced meeting~~ meets the Board's equivalent standards of acceptable education and experience, ~~and licensed licensure~~ in good standing in another jurisdiction or country, who has passed and passage of the CLARB examinations or its equivalent, as determined by the Board in its sole discretion, ~~and the Board's Act and Rules examination.~~

(~~b~~c) **Training credits.**

(1) Training credits may not be counted prior to completion of the third year of college or a pre-professional degree. Thirty-two (32) semester credit hours or forty-eight (48) quarter credit hours are considered to be one (1) year. Fractions of one-half or greater will be considered one-half year and smaller fractions will not be counted. To earn full training credits, an Applicant must work at least (32) to (35) hours per week for a minimum of two consecutive months. A Candidate may earn one-half the credit specified for work of at least fifteen (15) hours per week for a minimum of four consecutive months.

Training credits may also be earned by any person who works outside the U.S. or Canada if the person is under the Responsible Control of a person credentialed to practice landscape architecture, architecture, engineering or planner and the supervision person is not registered in a U.S. or Canadian jurisdiction.

- (2) Training credits are defined as follows:
  - (A) Diversified landscape architectural experience under the Responsible Control of a licensed Landscape Architect.
    - (i) 100% credit
    - (ii) No limit to credit
    - (iii) Practicing as a principal in good standing as a landscape architecture for six (6) years full time, shall be deemed to have satisfied the training requirement.
  - (B) Diversified landscape architectural experience under the Responsible Control of a licensed Architect, engineer or credentialed planner in good standing.
    - (i) 100% credit
    - (ii) Two (2) years maximum credit
  - (C) Landscape architectural experience directly related to on site construction, maintenance, or installation operations.
    - (i) 50% credit
    - (ii) 1 year maximum credit
  - (D) Non-diversified experience in landscape architecture under the Responsible Control of a licensed Landscape Architect, engineer, Architect or credentialed planner in good standing.
    - (i) 50% credit
    - (ii) One (1) year maximum credit
- (c) **State exams required.** All Applicants shall take and pass an examination on the Act and these Rules and an examination on Oklahoma plant materials.

**55:10-5-8.1. Equivalent standards for landscape architects**

(a) Education and training equivalent requirements for licensing. A person seeking licensure through equivalent standards shall be an individual not less than 21 years of age, is required to have five years of professional education credits as established, verify completion of a 3-year national and/or international diverse training program as stated in section 55:10-5-8 or equivalent practical training acceptable to the Board in its sole discretion and passage of the CLARB examinations or equivalent examinations.

- (1) Education credits allowed toward first professional degree in landscape architecture, or credits toward the first professional degree, where the degree program has been accredited by the Landscape Architectural Accrediting Board (LAAB) not later than two years after termination of enrollment.
  - (A) 75% credit allowed first two (2) years
  - (B) 100% credit allowed succeeding years
  - (C) Five (5) years maximum credit allowed

- (2) Education credits allowed toward first professional degree in landscape architecture, or credits accredited by LAAB within two (2) years of graduation.
  - (A) 75% credit allowed first two (2) years
  - (B) 75% credit allowed succeeding years
  - (C) Four (4) years maximum credit allowed
- (3) Education credits allowed toward a foreign bachelor degree in landscape architecture or credits toward that degree accredited by a national or internationally recognized accrediting council or entity acceptable to the Board as equivalent to (a)(1) of this section, in its sole discretion.
  - (A) 75% credit allowed first two (2) years
  - (B) 100% credit allowed succeeding years
  - (C) Five (5) years maximum credit allowed
- (4) Education credits allowed toward any other pre-professional related bachelor degree or credits toward that degree: three (3) years maximum credit allowed
- (5) Education credits allowed for diversified experience directly related to landscape architecture as an employee in the offices of a licensed or credentialed landscape architect
  - (A) 50% credit allowed first two (2) years
  - (B) 50% credit allowed succeeding years
  - (C) Five (5) years maximum credit allowed
  - (D) 100% training credits allowed; no limit
- (6) Education credits allowed for diversified experience, practicing as a principal, with a verified record of substantial practice, directly related to landscape architecture work.
  - (A) 50% credit allowed first two (2) years
  - (B) 50% credit allowed succeeding years
  - (C) Five (5) years maximum credit allowed
  - (D) 100% training credits allowed; no limit
- (7) Education credits allowed for diversified experience as an employee of an organization (other than offices of a licensed landscape architect) when the experience is related to landscape architecture work and is under the personal supervision of a licensed landscape architect, architect, civil engineer or credentialed planner in good standing
  - (A) 50% credit allowed first two (2) years
  - (B) 50% credit allowed succeeding years
  - (C) Four (4) years maximum credit allowed
  - (D) 100% training credits allowed; two (2) year maximum limit
- (8) Education credits allowed for experience as an employee of an organization (other than offices of licensed landscape architects) when the experience is in a foreign country or on a military installation and directly related to landscape architectural work but is not under direct supervision of a licensed engineer, architect, landscape architect or credentialed planner in good standing in the United States or Canada, but rather a foreign credential entity or the military and equates to (a)(5) of this section, by the Board in its sole discretion.
  - (A) 50% credit allowed first two (2) years
  - (B) 50% credit allowed succeeding years
  - (C) Five (5) years maximum credit allowed

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- (D) 100% training credits allowed; no limit.
- (9) Education credits allowed for experience, other than (a)(5-8) of this section, directly related to on-site building construction, maintenance, or installation operations
- (A) No education credits allowed
- (B) 50% training credits allowed; one (1) year maximum limit
- (10) Education credits allowed for non-diversified experience in landscape architecture under the personal supervision of a licensed landscape architect, architect, engineer or credentialed planner in good standing.
- (A) No education credits allowed
- (B) 50% training credits allowed; one (1) year maximum limit
- (11) Education credits allowed for a Master or Doctoral degree in landscape architecture (except where the degree is the first professional degree) where it is a second accredited professional degree.
- (A) No education credits allowed
- (B) 100% training credits allowed; one (1) year maximum limit
- (12) Education credits allowed for full time teaching or research in an LAAB accredited landscape architect program.
- (A) No education credits allowed
- (B) 100% training credits allowed; one (1) year maximum limit
- (13) Education credits allowed for other education and experience. See (b)(5)(B) of this section.
- (b) **Explanation of requirements.**
- (1) **Licensing standards.**
- (A) To be granted licensure, an applicant must:
- (i) Hold a high school diploma or equivalent;
- (ii) Hold an LAAB accredited degree in landscape architecture or have at least five (5) years of education credits using these standards and the Board's current Rules;
- (iii) Have at least three (3) years of diversified acceptable training credits;
- (iv) Hold a current registration to practice landscape architecture issued by a CLARB member board or foreign accrediting entity;
- (v) Have passed the CLARB Landscape Architect Registration Examination (LARE), the CLARB Uniform National Examination (UNE) or a state administered examination prior to national testing methods; provided such examinations and the grading procedures applied were in accordance with CLARB standards and/or this State's standards current at the time the applicant sat for the examinations or
- (vi) Have passed an acceptable foreign examination comparable to the United States examinations at the sole discretion of the Board; and
- (vii) Take and pass an examination on the Oklahoma Act and these Rules and an examination on Oklahoma plant materials.
- (B) Licensing standard deficiencies: Applicants who have not met the education requirements stated in 55:10-5-8.1 (b)(1)(A)(ii) may nonetheless be granted licensure if the applicant has accumulated ten or more years of training credits, in addition to the three (3) years required for training experience, and has passed an examination as determined by the Board.
- (2) **Examination deficiencies.**
- (A) The Board may waive deficiencies in the applicant's examination procedure arising from examination transitions, if, in its judgment, such deficiencies are minor in nature or, if substantial, have been adequately compensated for by some equivalent proof of the applicant's competency.
- (B) The transition rules relating to the implementation of any CLARB examinations will be followed by this Board.
- (3) **Education credits.** Education Credits shall be subject to the following conditions:
- (A) No education credits may be earned prior to graduation from high school
- (B) Applicants with the degree specified in (a)(1-4) of this section, will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in (a)(1) or (2) of this section, may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.
- (C) 32 Semester credit hours or 48 quarter credit hours are considered to be one (1) year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.
- (D) Foreign education credits will be granted only under classifications in (a)(3-4) of this section, unless the Board determines the degree is equivalent to the LAAB educational requirements. Any cost of translation and evaluation will be borne by the applicant.
- (4) **Training credits.** Training credits shall be subjected to the following conditions:
- (A) No training credits may be earned prior to accumulating three (3) education credits
- (B) Every applicant must earn at least one year of training credit under (a)(5-7) of this section, and must earn it after earning five (5) years of education credits
- (C) To earn credit under (a)(11) or (12) of this section an applicant's credit hours must be in subjects evaluated by the Board as directly related to landscape architecture. 20 semester credit hours or 30 quarter credit hours of teaching or equivalent time in research will equal one (1) year.
- (D) No credit used as an education credit may be used as a training credit
- (E) Organizations will be considered to be "offices of licensed landscape architects" if:
- (i) the landscape architectural practice of the organization in which the applicant works is in the

charge of a licensed person practicing as a principal and the applicant works under the personal supervision of a licensed landscape architect, architect or engineer; and

(ii) the organization may engage in construction.

(F) An organization (or affiliate) is engaging in construction if it customarily engages in either of the following activities:

(i) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation, or

(ii) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(G) A person practices as a "principal" by being:

(i) a licensed landscape architect, and

(ii) the person in charge of the organization's landscape architectural, architectural or engineering practice, either alone or with other licensed architects, landscape architects and/or engineers.

(H) In evaluating training credits prior to licensing, the Board requires the applicant to substantiate training experience by comparing this experience to the training requirements as indicated in these standards and the Board's current Rules.

**(5) General evaluation criteria.**

(A) To earn full education and/or training credits under (a)(5-10) of this section, an applicant must work at least 32 hours per week for a minimum period of six (6) consecutive weeks. An applicant may earn one-half the credit specified under (a)(5) of this section, for work of a least 15 hours per week in periods of six (6) or more consecutive weeks; no credit will be given for part-time work in any category other than (a)(5-7) of this section.

(B) Other education and training may be substituted for the requirements outlined above, only insofar as the Board considers them to be equivalent to the required qualifications.

(C) In evaluation credits, the Board may, prior to licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

**55:10-5-10. Qualifications for Registration as a Registered Commercial Interior Designer**

**(a) General requirements.** All individuals applying for Registration as a Registered Commercial Interior Designer shall:

(1) Obtain all required education and training prior to Registration.

(2) Hold ~~an accredited~~ a professional degree in interior design accredited by the Council of Interior Design Accreditation or its successor, obtain two (2) years or 3,520

hours of acceptable training as defined by this Subsection and pass the examinations for Registration as a Registered Commercial Interior Designer administered by CIDQ or its successor; or

(3) Obtain an equivalent education to an accredited professional degree in interior design, as determined by the Board, obtain two (2) years or 3,520 hours of acceptable training and experience hours as defined by this Subsection and pass the examinations for Registration as an Interior Designer administered by CIDQ or its successor; or

(4) Have been issued a valid Registration from another state, jurisdiction or foreign country provided the requirements for Registration are equivalent to the requirements of this State as determined by the Board; or

(5) Have a degree from a program accredited by CIDA or its successor. An applicant, who has completed the program within two (2) years of the program acquiring this accreditation, shall be considered to have obtained an accredited education program in interior design.

**(b) Equivalent education and defining training requirements.** The following education, training and experience may be considered to be equivalent to the requirements of OAC 55:10-5-10(a) as determined by the Board in its sole discretion:

(1) A baccalaureate degree in programs of no less than 120 semester or 180 quarter passing credit hours of which 60 semester or 90 quarter hours, respectively, are interior design-related; and a total of no less than 3,520 hours of interior design acceptable training as defined herein;

(2) Certificate, degree or diploma with a minimum passing credit of 60 semester hours or 90 quarter passing credit hours respectively in interior design related coursework and obtain 5,280 hours of acceptable training; or

(3) Meet the educational standards set forth by the National Association of the Schools of Art and Design and other similar institutions provided the educational program has a minimum of 40 semester passing credit hours or 60 passing quarter credit hours in Interior Design related coursework and 7,040 hours of acceptable training.

(4) Thirty (30) passing semester hours from a Board approved program shall equal one (1) year of education towards the first accredited professional degree in interior design or its equivalent program.

(5) One (1) year of education credit hours from a Board approved program earned in an interior design program or its equivalent degree program shall equal two (2) years of acceptable training and experience.

(6) Four (4) years from a Board approved program shall be an equivalent standard for the first professional degree in interior design or its equivalent when computing the fifteen (15) years experience and training to equate towards the training and experience requirement in O.S. 59, Sections 46.39 through 46.40 of the Act.

(7) A second accredited professional degree in interior design or its equivalent shall count as one year of education for two (2) years of training and experience.

(8) The Board may accept a Registered Commercial Interior Designer who is Broadly Experienced meeting

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the Board's equivalent standards of acceptable education and experience and Registration who has passed the CIDQ examinations or an equivalent examination as determined by the Board in its sole discretion and the Board's Act and Rules examination.

(c) **Education content requirements.** Educational instruction shall include, but is not limited to, the following:

- (1) Building and Interior Systems
- (2) Business and Professional Practices, Management and Ethics
- (3) Codes and Ordinances
- (4) Basic and Creative Arts
- (5) Color Theory
- (6) Interior Design
- (7) Technical Knowledge
- (8) History and theory of Art, Architecture and Design
- (9) Human Factors
- (10) Lighting
- (11) Materials and Finishes
- (12) Communication Skills
- (13) Furnishings

(d) **Training and experience categories.** Training and experience credits shall be awarded for work performed in the following areas:

- (1) Programming
- (2) Schematic Design
- (3) Design Development
- (4) Contract Documents
- (5) Contract Administration
- (6) Professional Practice

(e) **Training and experience requirements.** The Board may accept as evidence of diversified training and experience ~~in interior design for registering a Registered Commercial Interior Designer~~ as stated in this Subsection:

- (1) Applicants having obtained the first CIDA professional accredited degree in interior design or its equivalent shall have 2 years of acceptable training and experience hours, as determined by the Board in its sole discretion. One year shall equal 1760 hours of training and experience.
- (2) Applicants may earn one (1) year of training and experience hours after completing 96 semester passing credit hours toward the first professional degree in interior design.
- (3) On January 1, 2007, all individuals beginning their training and experience shall obtain credits after all educational requirements have been met for those individuals with equivalent education equating to the first accredited professional degree in interior design.
- (4) Applicants with acceptable education and experience may take the examination to become a Registered Commercial Interior Designer, regardless of the order in which each was obtained when training and experience requirements are met and if training began prior to January 1, 2007.
- (5) Training and experience hours shall be awarded based on working full time for at least two (2) consecutive months with thirty-two (32) hours per week or more in

interior design or architecture. Part time training and experience hours shall be calculated at the rate of fifty percent (50%) for less than thirty-two (32) hours per week and more than fifteen (15) hours per week working for a least (4) consecutive months. Working less than fifteen (15) hours per week will not qualify for training and experience hours. Two (2) years of full time acceptable training and experience under a Registered Commercial Interior Designer or Architect as a Registered Commercial Interior Designer shall equal one (1) year of equivalent education in interior design.

(6) Applicants beginning their training and experience after January 1, 2008, shall be under the Responsible Control of a Registered Commercial Interior Designer, an interior designer registered or licensed in another jurisdiction, or an Architect, licensed in any jurisdiction.

(7) The Board, in its sole discretion, shall determine whether all education, training and experience for Applicants are acceptable or not and whether or not it satisfies the requirements for Registration.

(8) If the individual is not registered or licensed in a jurisdiction then all work shall be under the Responsible Control of a CIDQ certificate holder.

(9) Training and experience hours shall be submitted on the Board's forms or equivalent. It is the responsibility of the Applicant to obtain all required signatures. All Board forms are to be returned directly to the Board office by the employer, as they are confidential records.

(10) Training outside the U.S. or Canada under the Responsible Control of an individual credentialed by entities similar to CIDQ or NCARB or their successors in a foreign jurisdiction or country.

(f) **Grandfather requirements.** Any Applicant who submits a properly completed and acceptable application for Registration and pays all applicable fees shall be issued a Certificate of Registration provided the requirements below have been met:

(1) An Applicant has submitted evidence of education and training the Board deems equivalent to an accredited professional degree in interior design, satisfied training requirements, if applicable and has passed the examinations administered by CIDQ or its successor; or

(2) Without limitation to application deadlines, an Applicant may apply who has obtained fifteen (15) years of diversified and acceptable training and experience as defined in OAC 55:10-5-10(c)(d) or equivalents as determined by the Board prior to July 1, 2007, and the Applicant is not registered under this Act and not exempt from the requirements for Registration in order to use the title Registered Commercial Interior Designer. The Applicant shall be exempt from passing the CIDQ examinations and fulfilling any additional education or training requirements as determined by the Board. The Applicant may use any combination of education, training and experience as acceptable and determined by the Board to equate to the fifteen (15) years of experience. Thirty (30) passing education hours equals one (1) education credit year used toward obtaining the first accredited professional degree



in interior design or an equivalent degree as determined by the Board or may equal two (2) years of diversified and appropriate experience when calculating the required fifteen (15) years of experience. Additionally, the Applicant obtaining a second accredited professional degree in interior design or an equivalent degree as determined by the Board may use this education in addition to other education or training.

~~(g) **Exemption from Registration.** An individual holding a current Architect License is exempt from Registration and does not have the right to use the term Registered Interior Designer unless the individual is registered.~~

~~(hg) **State Exam Required.** All Applicants shall take and pass an examination on the Act and these Rules.~~

**55:10-5-11. Changing resident state and applying Qualifications for a Reciprocal License or Registration**

(a) All individuals applying for a reciprocal License or Registration shall satisfy the requirements contained in the Act and these Rules, and submit an acceptable and complete application for the License or Registration requested, and ~~enclose pay the necessary required fees payable by check, cashier's check, money order, credit card, if applicable or certified funds when submitted.~~ Prior to being issued a License or Registration, all Applicants shall take and pass an examination on the Act and these Rules. ~~The Secretary Treasurer shall have the power at his/her discretion, to approve all reciprocal applications that meet the statutory requirements of the Act and Rules in this Chapter without full Board action. The License or Certificate of Registration will follow at a later date.~~

(b) A License certificate ~~shall be issued and~~ will authorize the individual to engage in the practice of architecture or landscape architecture and use the title Architect or Landscape Architect in this State until the 30<sup>th</sup> day of June of the biennial License period. A ~~Certificate of Registration certificate shall be issued and~~ will authorize the individual to use the title Registered Commercial Interior Designer until the 30<sup>th</sup> day of June of the biennial Registration period. No License or Certificate of Registration shall be issued for longer than two (2) years.

(c) Any reciprocal License or Registration which is denied, suspended, revoked or refused to be renewed, by any state in which the Licensee or Registrant has obtained a License or Registration, or in which a certification is withdrawn by NCARB, CLARB or CIDQ or their successors shall be cause to suspend, revoke or refuse to renew the License or Registration by this Board.

(d) Applications for an architectural License by reciprocity shall comply with (a) of this Section and be through NCARB or directly through the Board and only to those individuals whose states, jurisdictions, countries or territories have similar requirements and equivalent standards and extend the same privilege to this State's Applicants. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a License number.

(e) Applications for a Landscape Architect License by reciprocity will be through submission of a CLARB record or its successor or directly through the Board, complying with (a) of

this Section and showing licensure by the UNE, the LARE or its successor in any other state, jurisdiction, country or territory whose requirements for licensing are at least equivalent to the requirements of this State and extend the same privilege of reciprocity to Landscape Architects licensed in this State. The Applicant shall be required to pass an examination on Oklahoma plant material. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a License number.

(f) Applications for a Registered Commercial Interior Design Registration by reciprocity shall comply with (a) of this section through submission of an CIDQ record or its successor or directly through the Board and only to those individuals whose states, jurisdictions, countries or territories have similar requirements and equivalent standards and extend the same privilege to this State's Registrants. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a Registration number.

(g) Rejections of applications for a License or Registration by reciprocity will be by letter explaining the reasons, and outlining procedures under which reconsideration may be possible.

**SUBCHAPTER 7. EXAMINATION**

**55:10-7-1. Examination required for Candidates**

(a) **Architect Candidates.** All Architect Candidates are required to take the ARE exam, as developed by NCARB. Prior to taking the ARE exam, Candidates with an accredited NAAB degree shall apply directly to NCARB to begin testing. Once all sections of the exam have been passed and 3740 AXP hours have been satisfied, Candidates shall submit an initial application for licensure with this Board. Candidates applying with equivalent standards are required to apply with this Board for approval prior to testing and must already be enrolled in AXP by establishing a council record with NCARB. Upon completing the ARE, the candidate shall take an examination on the Act and these Rules. Each candidate shall pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by NCARB and this Board.

(b) **Landscape Architect Candidates.** All Landscape Architect Candidates are required to take the LARE exam, as developed by CLARB and approved for administration on specific dates. Prior to taking the LARE exam, Candidates with an accredited LAAB degree shall apply directly to CLARB to begin testing are required to apply with this Board for approval and must establish a council record with CLARB. Once all sections of the exam have been passed and the 3-year training requirement as stated in section 55:10-5-8 has been satisfied, Candidates shall submit an initial application for licensure with the Board. Candidates applying with equivalent standards are required to apply with this Board for approval prior to testing and must establish a council record with CLARB. Upon completing the LARE candidates shall take and pass an examination on the Act and these Rules and be tested upon their knowledge of Oklahoma plant material. Each

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~~candidate shall pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by CLARB and this Board.~~

(c) **Registered Commercial Interior Design Candidates.** All Candidates for Registration as an Interior Designer must take the NCIDQ exam, as developed by CIDQ. ~~Prior to begin taking the NCIDQ exam, All Candidates shall apply directly to CIDQ to begin testing~~ are required to apply with this Board for approval. Upon completing the examination and satisfying the training requirements as stated in section 55:10-5-10, the candidate shall submit an initial application for registration with this Board. ~~take and pass an examination on the Act and these Rules. Each candidate shall pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by CIDQ and this Board, unless exempt by the Act.~~

(d) **Active Military Duty Candidates approved by equivalent standards.** Any equivalent Candidate on active military duty deployed to a temporary military assignment, shall be exempt from the retention period for the duration of the temporary deployment and is allowed to carry forward all passing scores into the individual's current examination cycle, as if the person had not been deployed. In order to qualify for this exemption, the Candidate shall submit military documentation of the deployment to the Board office and the staff shall place the Candidate on military active status. Upon return from the temporary military deployment, the Candidate shall submit to the Board office within ninety (90) days, military documentation that the individual has returned from deployment. The Candidate shall then be returned to regular active status for examination without losing any credits for sections passed in the current examination cycle.

(e) **Testing extensions for Candidates approved by equivalent standards.** ~~A~~ An equivalent Candidate shall not forfeit any examination time or passing score in the current testing cycle if the Board has granted an extension of time to take the examinations due to a hardship. All current passing scores in the current testing cycle will be carried into the extended time.

(f) **Candidates approved by equivalent standards and Failure failing to appear for testing.** ~~All~~ An equivalent ~~Candidates~~ Candidate failing to appear to examination five years after being approved to start testing are required to reapply for admission to the examinations, except for those Candidates on temporary military deployment, who are exempt under 55:10-7-1 or those persons granted a hardship by the Board.

### 55:10-7-4. Examination applications and fees for equivalent candidates

(a) Equivalent Architect and Landscape Architect Candidate applications and fees must be submitted prior to testing. ~~Landscape Architect Candidates and Registered Interior Designer Candidates applications must be Board approved by this office at least 10 days prior to the closing of the scheduling exam period as established by CLARB and CIDQ.~~

(b) All incomplete candidate applications are withdrawn after one (1) year from the date of receipt by the Board and the Applicant will be required to reapply.

(c) Any Candidate experiencing physical disability, illness or other extenuating circumstances may request exemption or extension from the examination retention requirements. The individual shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

### 55:10-7-7. Reexamination for equivalent candidates

Candidates shall reapply to continue testing if their application was placed on inactive status except for those Candidates on temporary military deployment or the Board has granted an extension of their time to take the examinations due to a hardship. Candidates must submit a new updated application and pay the fees which may be processed by the Board's staff without Board approval.

### 55:10-7-8. Review of examination grades; retention period for equivalent candidates

(a) The Board will not review any sections of the examinations.

(b) The Board will retain the final valid test scores on individual sections of the examinations taken and passed for Architect, Landscape Architect or Interior Design Candidates as determined by 55:10-7-1. Final passing scores will be placed in the Candidate's file and retained permanently.

(c) Candidates called to active military duty in the armed forces of the United States and deployed to a temporary military assignment, shall be exempt from the retention period for the duration of the temporary deployment as in Section 55:10-7-1.

### 55:10-7-9. Transfers of examination grades prior to licensing for equivalent candidates

(a) **Outgoing transfers.** The Board staff, upon written request by the Candidate and payment of the file transfer fee, will transfer the Board's jurisdiction file to any other duly constituted Architect, Landscape Architect or Interior Design boards and to NCARB, CLARB or CIDQ for use in evaluating such Applicant's eligibility for licensing or Registration, as applicable. A transfer to another board shall immediately terminate the Applicant's application with this Board.

(b) **Incoming transfers.** The Board, in its sole discretion, may or may not accept, toward obtaining an initial License or Registration, scores on separate test sections taken in other states by Candidates who did not meet Oklahoma requirements for admission to the exams at the time the exams were taken.

## SUBCHAPTER 9. LICENSING AND REGISTRATION

### 55:10-9-1. The License or Registration

~~A License or Registration shall be issued to individuals meeting all requirements of the Act and the Rules of the Board. Such~~ A License or Registration shall identify the individual by name, state the License or Registration number, designate

an effective date, confirm the individual's qualifications, and acknowledge the individual's right, in this State, to practice architecture, landscape architecture or offer ~~interior design~~ services as a Registered Commercial Interior Designer or and use the titles Architect, Landscape Architect, Registered Commercial Interior Designer or other restricted titles defined by the Act or the Rules, ~~as the case may be, in the State. Every architect unlicensed in the State, shall obtain a License ten (10) working days prior to signing a contract as the Architect by the client/owner.~~

**55:10-9-2. Term of License or Registration [REVOKED]**

~~A License or Registration will be issued by the Board for the life of the individual subject to meeting all requirements of renewal, meeting continuing education requirements where required, and subject to the Board's powers of reinstatement, fining, probation, suspension, revocation, penalties, orders or refusal to renew for cause, vested in the Board by the Act.~~

**55:10-9-3. Required display of the License [REVOKED]**

~~Each individual holding a License shall display it at his/her place of practice and is prepared to substantiate biennial renewals.~~

**55:10-9-4. Duplicate License or Registration**

A duplicate License or Registration may be issued to an individual provided:

- (1) the current License or Registration ~~renewal is effective~~ is in good standing;
- (2) a written request for a replacement or duplicate License or Registration is received; and
- (3) the fee is paid as prescribed in 55:10-3-13.

**55:10-9-5. Suspension, revocation, or refused renewal of a License or Registration**

~~(a) **Surrender of License or Registration.** Upon notice of the Board, Licenses or Registrations shall be suspended, revoked or refused by the Board to be renewed for cause, as listed in 55:10-15-2, as defined in (b) of this Section, shall be surrendered immediately in the manner prescribed by that notice.~~

~~(b) **Cause defined.** Cause shall be defined as any violation of the Act and the Board's current Rules in this Chapter. Cause shall also be defined as another state refusing to renew the Architect's, Landscape Architect's License or interior designer's Registration, not meeting continuing education requirements, if applicable, suspension or revocation of a License or Registration or NCARB, CLARB or CIDQ withdrawing the certification of the individual Licensee or Registrant.~~

**55:10-9-6. Biennial License or Registration required**

(a) All Licenses and Registrations must be renewed biennially, in order to practice or use the professional titles in

Oklahoma. Notices may be sent to all Licensees and Registrants at the last known address of record; however, it is the responsibility of each individual Licensee or Registrant to ensure ~~insure~~ the renewal fees and completed applications are received at the Board office by mail or hand delivery by 4:30 p.m. or online by 11:59 p.m. CST on June 30<sup>th</sup> of the renewal year to avoid penalties. Postmarks will not be accepted. Upon receipt of the renewal forms, continuing education forms, if applicable, and fees, the License or Registration shall be renewed. No License or Registration will be issued for longer than a two (2) year period.

(b) Licensees or Registrants called to active military duty in the armed forces of the United States and deployed to a temporary military deployment shall comply with OAC 55:10-3-13.

**55:10-9-8. Failure to biennially renew**

(a) Failure to biennially renew the License or Registration and satisfy all continuing education requirements, if applicable, remit renewal fees, submit properly completed and acceptable forms with pertinent information and pay penalties where applicable in 55:10-3-13, as prescribed by the Act and the Board's current Rules in this Chapter, will result in automatic suspension and revocation of the License, Registration, Certificate of Authority and/or Certificate of Title on July 1<sup>st</sup> of the renewal year.

(b) Notices of automatic suspension and/or revocation will be sent to the last known address of the Licensee, Registrant or Entity. If a License, Registration, Certificate of Authority or Certificate of Title is not renewed for any reason, the Licensee or Registrant must immediately cease the practice of architecture, landscape architecture or offering services as a Registered Commercial Interior Designer ~~registered interior design~~. An Architect, Landscape Architect or Registered Commercial Interior Designer shall cease using these professional titles or other titles restricted by the Act or the Rules. Individuals who continue to practice architecture, landscape architecture or offering services as a Registered Commercial Interior Designer ~~registered interior design~~ during the time of suspension and/or revocation are subject to the fines, penalties and civil remedies contained in the Act and these Rules.

**55:10-9-9. Reinstating License and Registration from emeritus status to active practice**

An individual desiring to reinstate a License or Registration to an active status may do so by re-applying and paying a readmission application reinstatement ~~fee~~. The Board has full discretion as to how to reinstate the License or Registration or to determine not to reinstate the License or Registration. If the Board, in its sole discretion reinstates the License or Registration, the individual shall pay the current License or Registration fee in 55:10-3-13. Upon reinstating to active status, The the individual is required to comply with all continuing education requirements to renew. shall also complete the continuing education requirements, if applicable, for the current License or Registration period and comply with all other Board requirements.

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### 55:10-9-10. Reinstatement of canceled License or Registration

(a) **Reinstatement of any License or Registration within three (3) years.** Licenses or Registrations canceled for non-payment of fees and/or failure to comply with continuing education requirements, if applicable, may be reinstated at any time within three (3) years, from the date of the cancellation, after paying all fees and penalties as prescribed in 55:10-3-13, and meeting all continuing education requirements. Reinstatements may be approved by the Board's staff upon compliance with the Act and Rules without Board action.

(b) **Reinstatement of initial License or Registration after three (3) years.** For those Architects, Landscape Architects or Registered Commercial Interior Designers licensed or registered initially in Oklahoma that allow their License or Registration to remain cancelled for a period exceeding three (3) consecutive years, ~~such former Licensee or Registrant may have the License or Registration~~ may be reinstated in a manner as determined by the Board consistent with the Act and these Rules, after reapplying and paying a readmission application fee. Additionally, the Licensee or Registrant shall meet all continuing education requirements where applicable, that would have been otherwise required, and pay all back fees and penalties. Registered Commercial Interior Designers whose registration was canceled prior to July 1, 2015 are exempt from reporting continuing education and paying the continuing education penalty fee(s) to reinstate. Upon reinstating to active status, the individual is required to comply with all continuing education requirements to renew.

(c) **Reinstatement of Reciprocal Licenses or Registrations after three (3) years.** Any Architect or Landscape Architect licensed to practice in Oklahoma by reciprocity, after ~~his/her~~ their reciprocal License has been canceled for more than three (3) years, must re-apply through the means of which the initial License was granted or demonstrate a current License in another jurisdiction. Registered Commercial Interior Designers must re-apply and prove a current Registration in another jurisdiction or through CIDQ.

(d) **Returning from temporary military deployment.** Licensees or Registrants returning from temporary military deployment shall notify the Board office consistent with OAC 55:10-3-13(b).

### 55:10-9-11. Reinstatement of a License or Registration based on cause

A License or Registration suspended, refused to be renewed, ~~penalties levied, orders issued or revoked~~ for cause, may be reinstated only by Board action and ~~only then~~ in the manner determined by the Board. Requests for reinstatement of a license or registration revoked for cause shall be addressed to the Board, showing why such reinstatement is justified.

## SUBCHAPTER 11. RULES OF PROFESSIONAL CONDUCT

### 55:10-11-1. General requirements

A Licensee or Entity shall above all, serve and promote the public interest in the effort to improve the human environment and shall act in a manner to bring honor and dignity to the professions of architecture, ~~and landscape architecture, and commercial interior design.~~

### 55:10-11-3. Competence

(a) In engaging in the practice of architecture, ~~or landscape architecture, or commercial interior design,~~ a Licensee or Entity shall act with care and competence, and shall apply the technical and tactical knowledge and skill which is ordinarily applied by licensed Architects, ~~and Landscape Architects, and Registered Commercial Interior Designers~~ of good standing. The Licensee or Entity shall not directly or indirectly indulge in exaggerated, misleading, deceptive or false statements or claims about professional qualifications.

(b) In designing a project, a licensed Architect, ~~or Landscape Architect, or Registered Commercial Interior Designer~~ shall follow all applicable State and municipal building laws, codes and regulations. While a Licensee ~~or Registrant~~ of these professions may rely on the advice of other professions as to the intent and meaning of such laws, codes and regulations, ~~once having obtained such advice,~~ the Licensee shall not intentionally or negligently design a project in violation of such laws, codes and regulations. When two or more codes are in conflict, the standard of practice is to use the most restrictive.

(c) A licensed Architect, ~~or Landscape Architect, or Registered Commercial Interior Designer~~ shall undertake to perform professional services only when ~~he or she~~ they, together with those engaged as consultants, ~~is~~ are qualified by licensing, education, training and experience in the specific technical and tactical areas required. The Licensee ~~or Registrant~~ shall establish by agreement, the nature and extent of services to be provided and the compensation to be paid.

(d) No individual shall be permitted to engage in the practice of architecture, ~~or landscape architecture, or registered commercial interior design~~ if, ~~after a hearing,~~ in the Board's judgment, determined during a formal hearing, such individual's professional competence is found to be substantially impaired by mental disabilities. An individual may apply for reinstatement through the procedures established by the Rules in this Chapter.

### 55:10-11-4. Conflict of interest

(a) A Licensee, Registrant, or Entity shall not accept or receive compensation directly or indirectly for services from any individual or Entity other than the client in connection with the reparation, alteration or construction of a project in relation to which the Licensee, Registrant, or Entity shall have accepted employment in any manner.

(b) If a Licensee, Registrant, or Entity has any business association or direct or indirect financial interest in a project undertaken to perform professional services, the Licensee, Registrant, or Entity shall fully disclose in writing to the client or employer the nature of the business association or financial

interest, and, if the client or employer objects to such association or financial interest, the Licensee, Registrant, or Entity shall either terminate such association or interest or offer to give up the commission or employment.

(c) A Licensee, Registrant, or Entity shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

(d) A Licensee, Registrant, or Entity shall not publicly endorse a product, system, or service, or permit the use of ~~his/her or its~~ their name or photograph to imply such endorsement. However, ~~he/she or it~~ they may be identified with any product, system, or service designed or developed by ~~him/her or it~~ them.

(e) When acting as the interpreter of building contract documents and the judge of contract performance, a Licensee, Registrant, or Entity shall render decisions impartially, favoring neither party to the contract.

**55:10-11-5. Full disclosure**

(a) A Licensee, Registrant, or Entity making public statements on architectural, ~~or landscape architectural, or commercial interior design~~ questions, shall disclose when ~~he/she or it is~~ they are being compensated for making such statements.

(b) A Licensee, Registrant, or Entity shall accurately represent to a prospective or existing client or employer ~~his/her/its~~ their qualifications and the scope of responsibility in connection with work for which ~~he/she/it is~~ they are claiming credit. ~~An individual leaving employment shall obtain written permission from the employer to take or copy plans and specifications when they leave the Entity.~~

(c) If, in the course of ~~his/her/its~~ their work on a project, the Licensee, Registrant, or Entity becomes aware of a decision taken by ~~their~~ his/her/its employer or client, against such Licensee's, Registrant's, or Entity's advice, which violates applicable State or municipal building laws, codes or regulations, and which will, in the Licensee's, Registrant's, or Entity's judgment, materially and adversely affect the health, welfare and safety to the public of the finished project, the Licensee, Registrant, or Entity shall:

- (1) report the decision to the local building inspector or other public official charged with the enforcement of the applicable State or municipal building laws, codes or regulations;
- (2) refuse to consent to the decision;
- (3) in circumstances where the Licensee, Registrant, or Entity reasonably believes that other such decisions will be taken, notwithstanding ~~their~~ her/his/its objection, terminate services with respect to the project. In the case of a termination in accordance with (c) of this Section, the Architect, Landscape Architect, Registered Commercial Interior Designer, or Entity shall have no liability to ~~his/her/its~~ their client or employer on account of such termination.

(d) A Licensee, Registrant, or Entity shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with an application for a License, Registration, renewal or contract with a client/owner.

(e) A Licensee, Registrant, or Entity shall not assist the application for an individual or Entity ~~known by the Registrant or Entity who they believe~~ to be unqualified in respect to education, training, experience or character.

(f) A Licensee, Registrant, or Entity, shall report such knowledge to the Board.

**55:10-11-6. Compliance with laws**

(a) A Licensee, Registrant, or Entity shall not, while engaging in the practice of ~~his/her/its~~ their profession, knowingly violate any State or federal criminal law.

(b) A Licensee, Registrant, or Entity shall neither offer nor cause to be offered any payment or gift to a government official, elected or appointed, with the intent of influencing the official's judgment in connection with a prospective or existing project in which the Licensee, Registrant, or Entity is interested.

(c) A Licensee, Registrant, or Entity shall comply with the licensing laws, rules and/or regulations governing ~~his/her/its~~ their professional practice in any jurisdiction.

**55:10-11-7. Professional conduct**

(a) An Architect, Landscape Architect, Registered Commercial Interior Designer, or Entity shall preserve the confidences of the client or employer. ~~A Licensee or Entity may make contributions of service or anything of value to those endeavors which he/she/it deems worthy. A Licensee or Entity has the right to participate in the political process and to contribute time and money to political campaigns. In making political contributions, the Licensee or Entity shall do so publicly.~~

(b) Each office maintained for the preparation of drawings, specification, reports or other professional work shall have a Licensee or Registrant in that office having Responsible Control of the work.

(c) A Licensee or Registrant shall not sign or seal drawings, specifications, reports or other professional work for which ~~he/she does~~ they do not have Responsible Control. Prototypical plans are an exception to the rule as noted in OAC ~~55:10-11-9(e)-(f)~~ 55:10-11-8(e)(f).

(d) A Licensee, Registrant, or Entity shall neither offer nor make any gifts, other than gifts of nominal value including, for example, reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the Licensee, Registrant, or Entity is interested. Intent of influence means influence, direct or indirect, which induces or tends to induce consideration or action with respect to any prospective work on any basis other than the merits of the matter.

(e) A Licensee, Registrant, or Entity shall not engage directly or indirectly ~~with or as~~ an agent or representative to solicit work on ~~his/her/its~~ their behalf whose compensation is contingent, in whole or in part, upon obtaining professional work for the Entity, Architect, ~~or Landscape Architect,~~ or Registered Commercial Interior Designer.

(f) A Licensee, Registrant, or Entity shall not make false statements about the professional work, or maliciously injure

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or attempt to injure the prospects, practice or employment position of others.

(g6) A Licensee, Registrant, or Entity shall not furnish limited services in such a manner as to enable owners, draftsmen, or others to evade public health and safety requirements.

(h7) A Licensee, Registrant, or Entity provides a service to the client, as well as a product and/or drawings and as such is only responsible for the design of the facility represented by the products and/or drawings ~~he or she~~ they completed, signed, sealed and dated for a specific client and location. Should the client or any other individual modify or change locations of the facility or make changes to the design without the authorization of the Licensee or Registrant, the Licensee or Registrant is only responsible and liable for the project as ~~he/she~~ they signed, sealed and dated it and the site at the original location. A Licensee or Registrant is allowed to review and adapt documents already sealed by the original Licensee or Registrant when modifying the plan and/or bringing the plan up to the current code requirements at the same location as the original site. In this case, the Licensee or Registrant is required to sign, seal and date only the modifications to the original documents and shall only be responsible for ~~his/her~~ their new modifications.

(i8) Nothing contained in ~~55:10-11-7 (7)~~ 55:10-11-7(h) shall apply to prototype plans, where the Licensee is allowed to review and adapt a prototypical technical submission, making changes to adapt in whole or in part to a different location and/or bring the plan up to the current code requirements. In this case, the Licensee is required to sign, seal and date the adapted, integrated documents and the licensee assumes full responsibility for the documents, in their entirety, as if fully prepared by or under the licensed architect's responsible control.

### **55:10-11-8. Licensee's seal Architect and landscape architect seal**

(a) **Seal required.** Every individual authorized to practice architecture or landscape architecture by a License shall procure a seal with which to identify all technical submissions, addenda, field orders and other documents of service issued by the Licensee for use in this State. ~~This seal may be purchased from any company of the Licensee's choice or computer generated.~~

(1b) **Type of seal.** The seal required shall be of a type that makes an image on the surface of original documents and duplications of original documents. ~~Both The the use of a rubber stamp or electronic image producing an accurate and legible image of the seal is permissible.~~

(2e) **Design of seal.** The seal of a licensed Architect shall be a circle and shall contain ~~his/her~~ their name, Oklahoma License number and the words, "Licensed Architect, State of Oklahoma." The seal of a licensed Landscape Architect shall be a circle and shall contain ~~his/her~~ their name, Oklahoma License number and the words, "Licensed Landscape Architect, State of Oklahoma." ~~Examples of acceptable forms for the design of seals are available from the Board.~~

(b) **Seal declares authorship.** The seal appearing on any technical submission shall be a prima facie evidence, as described in 55:10-15-1, that said technical submission was prepared by or under the individual named on said seal. The Licensee is responsible for its security when not in use.

(c) **Location of seal, signature and date.** The handwritten or electronically generated date shall be affixed across their seal.

(1) All Licensees shall affix their seal, signature and date, to all original drawings, whether or not complete, and to the original cover sheet and the page identifying all specification pages covered, including all addenda and field changes. If incomplete, the Licensee shall clearly identify that the plans are incomplete and not for construction.

(2) In the absence of sheets or covers identifying all sheets, all original contract documents of service must have the seal, date and signature of the Licensee responsible.

(d) **Use or attempted use of seal by unauthorized individuals.** No individual, other than the Licensee represented, shall use or attempt to use the prescribed seal, and no unregistered individual or Entity shall be authorized to use the prescribed seal. Restricted actions include:

(1) using a set of construction documents to construct a structure on another site without the permission of the original Licensee

(2) making unauthorized copies, modifications or incorporating any portion of the specifications into another work without the use of a Licensee's seal, signature and date authorizing such modifications.

(e) **Use of seal on prototype building plans.** Prototype building plans are not required to carry the seal, signature, and date of the original Licensee, but must prior to their issue in Oklahoma be marked and qualified by a written statement to the effect of: "Prototypical design submissions not for regulatory approval or construction." These submissions do not comprise a final, comprehensive set of design and construction documents and are not intended for use on any specific project without the appropriate review, modifications and integration into the work of a licensed architect engaged to provide professional architectural services for the specific project.

(f) **Technical submissions.** Architects and Landscape Architects are permitted to review and adapt portions of technical submissions if:

(1) the seal of the original Architect or Landscape Architect appears on the submissions to authenticate authorship.

(2) the succeeding Architect or Landscape Architect clearly identifies all modifications to the submissions.

(3) the succeeding Architect or Landscape Architect assumes responsibility and liability for the adequacy of the design on the modifications.

(4) the documents are prototypical technical submissions. An architect may sign and seal technical submissions prepared by another person if the signing and sealing architect has reviewed the work and has integrated

the work into their own technical submissions and the other technical submissions are prototypical building documents. Any licensed architect signing or sealing technical submissions integrating the work of another into the licensed architect's own work as permitted above shall maintain that such review and integration met the required professional standard of care. In applying his or her seal, the Oklahoma licensed architect assumes full responsibility in its entirety for the documents as if fully prepared by or under the Oklahoma licensed architect's responsible control.

(g) **Retention period.** An Architect, Landscape Architect or Entity shall retain a copy of all technical submissions produced for a minimum of ten (10) years following the date of preparation.

(h) **Prohibition on sealing documents.** No Licensee shall affix or attempt to affix the seal, signature or dates to sketches, drawings, specifications or other documents developed by unlicensed persons that are not employees in their offices or professional consultants except as stated in OAC 55:10-11-8(f).

(i) **Prohibited acts using seal.** No Licensee shall affix the seal, signature or date to documents unless:

- (1) such documents were developed and prepared under a Licensee's Responsible Control;
- (2) the Licensee had full authority to determine their development; and
- (3) the Licensee has reviewed and adopted, in whole or in part, architectural or landscape architectural portions and has either coordinated their preparation or integrated them into the work.

**55:10-11-9. Authorized use of seal [REVOKED]**

~~(a) **Seal declares authorship.** The seal appearing on any technical submission shall be a prima facie evidence in 55:10-15-1 that said technical submission was prepared by or under the individual named on said seal. Changes made to a signed, sealed and dated end of point product or service that are not designed by the original Licensee and that are not authorized or indicated by the seal of another Licensee on the changes, exempts the original Licensee from any authorship or liability concerning any changes made, including making site changes without the knowledge of the Licensee.~~

~~(b) **Location of seal, signature and date.** The seal impression or image shall be across the signature that may be generated electronically by the Licensee responsible to this Board for authorship of the documents thus identified. The handwritten or electronically generated date the signature is affixed shall accompany the signature.~~

~~(c) **Use of seal is individual act.** Authorized use of the prescribed seal is an individual act. The Licensee is responsible for its security when not in use.~~

~~(d) **Use or attempted use of seal by unauthorized individuals.** No individual, other than the Licensee represented, shall use or attempt to use the prescribed seal, and no unregistered individual or Entity shall be authorized to use the prescribed seal, except as described in (c) above. Use, reproduction distribution or attempted use of the seal shall include using a set~~

~~of construction documents to construct a structure on another site without the permission of the original Licensee or making unauthorized copies, modifications or incorporating any portion of the specifications into another work without the use of a Licensee's seal, signature and date authorizing such modifications. Prototype building plans are not required to carry the seal, signature and date of the original Licensee, but must prior to their issue in Oklahoma be marked and qualified by a written statement to the effect of: "Prototypical design submissions not for regulatory approval or construction." These submissions do not comprise a final, comprehensive set of design and construction documents and are not intended for use on any specific project without the appropriate review, modifications and integration into the work of a licensed architect engaged to provide professional architectural services for the specific project.~~

~~(e) **Entire Contract.** Any licensed Architect or Landscape Architect preparing documents that would be considered to fulfill an entire contract with a client being the end point of service, whether or not the plans are complete, shall sign, seal and date those documents. The Licensee may add any words on the documents that he/she/it chooses to indicate an incomplete document and not for construction notice.~~

~~(f) **Technical submissions.** Architects and Landscape Architects are permitted to review and adapt portions of technical submissions if:~~

- ~~(1) the seal of the original Architect or Landscape Architect appears on the submissions to authenticate authorship.~~
- ~~(2) the succeeding Architect or Landscape Architect clearly identifies all modifications to the submissions.~~
- ~~(3) the succeeding Architect or Landscape Architect assumes responsibility and liability for the adequacy of the design on the modifications.~~
- ~~(4) the documents are prototypical technical submissions. An architect may sign and seal technical submissions prepared by another person if the signing and sealing architect has reviewed the work and has integrated the work into his/her own technical submissions and the other technical submissions are prototypical building documents. Any licensed architect signing or sealing technical submissions integrating the work of another into the licensed architect's own work as permitted above shall maintain that such review and integration met the required professional standard of care. In applying his or her seal, the Oklahoma licensed architect assumes full responsibility in its entirety for the documents as if fully prepared by or under the Oklahoma licensed architect's responsible control.~~

**55:10-11-10. Required use of seal, signature and date on documents and retention period [REVOKED]**

~~(a) All Licensees shall affix their seal, signature and date, to all original drawings, and to the original cover sheet and the page identifying all specification pages covered, including all addenda and field changes.~~

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(b) ~~In the absence of sheets or covers identifying all sheets or pages bound, all original contract documents of service must have the seal, date and signature of the Licensee responsible.~~

(c) ~~An Architect, Landscape Architect or Entity shall retain a copy of all technical submissions produced for a minimum of ten (10) years following the date of preparation. Should the submissions be retained by electronic means, all submissions shall be updated into current versions so they are accessible at all times and can be printed out in a legible format.~~

### **55:10-11-11. Prohibition on submitting documents without seal, date and signature [REVOKED]**

~~No Architect or Landscape Architect shall submit technical submissions for a building permit or other submission without affixing his/her seal, date and signature to the work. All technical submissions shall clearly state the name of the firm, and the Licensee responsible for the project and the date prepared.~~

### **55:10-11-12. Prohibited use of seal [REVOKED]**

(a) ~~**Prohibition on sealing documents.** No Licensee shall affix or attempt to affix the seal, signature or dates to sketches, drawings, specifications or other documents developed by unlicensed persons that are not employees in their offices or professional consultants except as stated in OAC 55:10-11-9(e).~~

(b) ~~**Prohibited acts using seal.** No Licensee shall affix the seal, signature or date to documents unless:~~

- ~~(1) such documents were developed and prepared under a Licensee's Responsible Control;~~
- ~~(2) the Licensee had full authority to determine their development; and~~
- ~~(3) the Licensee has reviewed and adopted, in whole or in part, architectural or landscape architectural portions and has either coordinated their preparation or integrated them into the work.~~

### **55:10-11-13. Registered commercial interior designer's seal**

(a) **Seal required.** Every individual authorized to use the title "Registered Commercial Interior Designer" shall procure a seal with which to identify all interior technical submissions issued by the Registrant for use in this State.

(1) **Type of seal.** The seal required shall be of a type that makes an image on the surface of original documents and duplications of original documents. Both the use of a rubber stamp or electronic image is permissible.

(2) **Design of seal.** The seal of a Registered Commercial Interior Designer shall be triangular, as approved by the Board, and shall contain their name, Oklahoma registration number, and the words, "Registered Commercial Interior Designer, State of Oklahoma."

(b) **Seal declares authorship.** The seal appearing on any interior technical submission shall be a prima facie evidence, as

described in 55:10-15-1, that said interior technical submission was prepared by or under the individual named on said seal. The Registrant is responsible for its security when not in use.

(c) **Location of seal, signature and date.** The handwritten or electronically generated date shall be affixed across their seal.

(1) All Registrants shall affix their seal, signature and date, to all original drawings, and to the original cover sheet and the page identifying all specification pages covered, including all addenda and field changes. If incomplete, the Registrant shall clearly identify that the plans are incomplete and not for construction.

(2) In the absence of sheets or covers identifying all sheets, all original contract documents of service must have the seal, date and signature of the Registrant responsible.

(d) **Use or attempted use of seal by unauthorized individuals.** No individual, other than the Registrant represented, shall use or attempt to use the prescribed seal, and no unregistered individual or Entity shall be authorized to use the prescribed seal. Restricted actions include making unauthorized copies, modifications or incorporating any portion of the specifications into another work without the use of a Registrant's seal, signature and date authorizing such modifications.

(e) **Interior technical submissions.** Registered Commercial Interior Designers are permitted to review and adapt portions of interior technical submissions if:

(1) the seal of the original Registered Commercial Interior Designer appears on the submissions to authenticate authorship.

(2) the succeeding Registered Commercial Interior Designer clearly identifies all modifications to the submissions.

(3) the succeeding Registered Commercial Interior Designer assumes responsibility and liability for the adequacy of the design on the modifications.

(f) **Retention period.** A Registered Commercial Interior Designer shall retain a copy of all interior technical submissions produced for a minimum of ten (10) years following the date of preparation.

(g) **Prohibition on sealing documents.** No Registrant shall affix or attempt to affix the seal, signature or dates to sketches, drawings, specifications or other documents developed by unregistered persons that are not employees in their offices or professional consultants.

(h) **Prohibited acts using seal.** No Registrant shall affix the seal, signature or date to documents unless:

(1) such documents were developed and prepared under a Registrant's Responsible Control; and

(2) the Registrant had full authority to determine their development.

## SUBCHAPTER 13. ORGANIZATIONAL PRACTICE



**55:10-13-1. Individual and group practice [REVOKED]**

~~Individual Licensees or Registrants holding current Licenses or Registration may organize or engage in individual or group practice of architecture, landscape architecture or organize in an Entity for the purposes of representing themselves as a Registered Interior Designer or offering services as registered interior design allowed by statutes of this State and which are in compliance with the Act and the Board's current Rules in this Chapter. The Secretary-Treasurer of the Board may approve these applications without full Board action.~~

**55:10-13-3. Licensees accountable [REVOKED]**

~~The responsibility of the Board to safeguard the life, health, property, and the public welfare against the irresponsible practice of the professions of architecture and landscape architecture is vested in the qualification and responsibility of Licensees who are individually accountable.~~

**55:10-13-5. Certificate of Authority or Certificate of Title required**

The Board may grant a Certificate of Authority to practice architecture or landscape architecture ~~through individual Licensees~~ or a Certificate of Title to offer services under a Registered Commercial Interior Designer ~~to represent the person as a Registered Interior Designer or to offer services of registered interior design through Registrants to those Entities firms~~ meeting the following criteria:

- (1) An application for any entity, including branch offices, is filed and approved by the Secretary-Treasurer or the Board.
- (2) At least one general partner, or director, officer, shareholder, manager, member or principal is a licensed Architect or Landscape Architect and designated as being responsible for the practice of the profession in the State of Oklahoma or is registered as a Registered Commercial Interior Designer and responsible for the Entity. If a firm is offering multiple professions, the firm shall have at least one general partner, director, officer, shareholder, principal or for a limited liability company, a manager or member who is licensed or registered in each profession and is designated as being responsible for the activities of each profession, as the Architect, Landscape Architect, or Registered Commercial Interior Designer of Record.
- (3) All technical submissions, original drawings, original cover sheet and the page identifying all specification pages covered, all addenda and field changes shall be signed, sealed and dated by an Architect of Record defined in 55:10-1-3. Prototypical technical submissions refer to ~~55:10-11-7(i), 55:10-11-7(8) and 55:10-11-8(e), and 55:10-11-8(f)(4), 55:10-11-9(d)(f)(4).~~
- (4) Compliance with the Board's Rules in this Chapter and the Act shall not alleviate other members, officers, shareholders, managers, principals, directors, partners or employees from direct responsibility and liability by reason of employment or relationship with the Entity to the Board.

(5) The Certificate of Authority or Certificate of Title issued by the Board is subject to powers of renewal, suspension, revocation, denial, refusal to renew, levying criminal or civil penalties, vested in the Board by the Act and does not preclude the Board from using any other legal procedures necessary to carry out its powers and duties.

**55:10-13-6. Biennial renewals required for Certificate of Authority or Certificate of Title**

(a) **Biennial renewal requirements.** An Entity desiring to practice Architecture, Landscape Architecture or use the title Architect or Landscape Architect through a Certificate of Authority or an Entity desiring to ~~represent themselves as a Registered Interior Designer~~ or offer services of registered interior design under a Registered Commercial Interior Designer through a Certificate of Title, must submit the proper fees and applicable penalties in 55:10-3-13 and forms for application and renewal biennially. No Certificate of Authority or Certificate of Title shall be issued for longer than a two (2) year period. The renewal forms, required information and fees shall be due with the Licensee's or Registrant's individual renewal which are due by mail or hand delivery to the Board office by 4:30 p.m. or online by 11:59p.m. CST on or before June 30 of the renewal year to avoid penalties. Postmarks will not be accepted.

(b) **Late payment and reinstatement penalties.** ~~Failure to biennially renew and remit payment of the renewal fee for the Certificate of Authority or Certificate of Title on June 30 of the renewal year will result in a late payment and reinstatement penalties in 55:10-3-13 and cancellation of the certificate.~~

(c) **Renewal exemption based on temporary military deployment.** The exemption from fees and penalties shall apply to the Certificate of Authority or the Certificate of Title if a Licensee is the only Architect of Record or a Registrant is the only Registered Commercial Interior Designer of Record associated with the Entity. Licensees or Registrants who are called to active military duty in the armed forces of the United States and deployed to a temporary military assignment are exempt from paying all renewal fees and penalties in OAC 55:10-3-13.

**55:10-13-7. Failure to biennially renew a Certificate of Authority or Certificate of Title**

(a) Failure to biennially renew the Entity and remit payment of the renewal fee and applicable penalties, submit an acceptable and complete application and other required documents or information for the Certificate of Authority or Certificate of Title on June 30 of the renewal year will result in automatic cancellation and revocation of the certificate.

(b) Automatic cancellation and revocation of the Certificate of Authority or Certificate of Title will result in the Entity paying a late payment and reinstatement penalties in order to reinstate the Certificate. ~~in addition to all other fee requirements in OAC 55:10-3-13.~~

(c) Notices of suspension or revocation will be sent to the last known address of the Entity failing to biennially license or register and remit renewal fees and penalties.

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### 55:10-13-8. Reinstatement of canceled Certificate of Authority or Certificate of Title

(a) **Reinstatement within three (3) years.** A Certificate of Authority or Certificate of Title canceled for nonpayment of fees may be reinstated at any time within three (3) years, after paying all fees and penalties accrued at time of reinstatement. Reinstatements may be approved by Board staff upon compliance with the Act and Rules without Board action.

(b) **Reapplication after three (3) years.** Entities whose Certificate of Authority or Certificate of Title has been cancelled for three years or more shall submit a new Certificate of Authority or Certificate of Title application, along with all required documents and fees.

(c) **Reinstatement for cause.** A Certificate of Authority or Certificate of Title suspended, denied, refused to be renewed, penalties levied, orders issued or revoked for cause may be reinstated only by Board action and only then in the manner determined by such Board action. Requests for reinstatement of the Certificate of Authority or Certificate of Title revoked for cause shall be addressed to the Board and shall show cause why such reinstatement is justified.

(d) **Reinstatement based on temporary military deployment.** Entities given an exemption from paying fees and penalties because the only Architect of Record or Registered Commercial Interior Designer of Record was deployed on a temporary military deployment in the armed forces of the United States, shall notify the Board office consistent with OAC 55:10-3-13.

### 55:10-13-9. Compliance with laws, Rules, regulations and orders

All entities shall comply with all laws, Rules, regulations and orders issued, which apply to an individual Architect, Landscape Architect or Registered Commercial Interior Designer.

### 55:10-13-10. Investigations, hearings and penalties

The Board shall investigate complaints, hold hearings, issue orders and determine penalties against entities in the same manner, procedure and with the same rights and offenses as an individual Architect, Landscape Architect or Registered Commercial Interior Designer as designated in the Rules of this Chapter.

### 55:10-13-11. Surrender of Certificate of Authority or Certificate of Title [REVOKED]

~~Upon notice of the Board, Certificates of Authority or Certificates of Title suspended, refused to renew or revoked for cause by Board action shall be surrendered immediately in the manner prescribed by that notice.~~

### 55:10-13-12. Notification of changes in firm practice required

Entities shall notify the Board office within thirty (30) days of any or all changes that affect the Certificate of Authority or Certificate of Title. Notification shall be on the

Board's form, signed by an Architect, ~~or~~ Landscape Architect of Record, ~~or~~ Registered Commercial Interior Designer of Record, ~~or another partner, director, officer, shareholder, principal or for a limited liability company, a manager or member of the Entity,~~ notarized and accompanied by the fees in 55:10-3-13. Failure to properly and promptly notify the Board of these changes ~~shall~~ may be cause for penalties, orders issued, revocation, ~~refuse~~ refusal to renew or ~~suspend~~ suspension of the Certificate of Authority or Certificate of Title, as designated in the Rules of this Chapter.

### 55:10-13-13. Authority to use professional titles

(a) ~~Only individuals holding current Licenses or Registrations in Oklahoma and entities holding a current Certificate of Authority or Certificate of Title issued by the Board are authorized to employ the titles Architect~~ Architecture, Landscape Architecture, Architect or Registered Commercial Interior Designer or use any various construction of these words, in describing or identifying services, contracting or executing work.

(b) ~~No unlicensed individuals or entities have authority to contract or execute architectural or landscape architectural services or offer services of registered interior design in this State unless they comply the Act and these Rules.~~

### 55:10-13-14. Certificate of Authority or Certificate of Title index maintained; restriction on similar names [REVOKED]

(a) ~~The Board office shall maintain a suitable index of each current Certificate of Authority or Certificate of Title issued, setting forth the pertinent facts.~~

(b) ~~The name of the Entity shall not be the same or deceptively similar to the name of any other Entity then existing or which has existed within the preceding three (3) years, without the written consent of the previously existing Entity.~~

### 55:10-13-16. Use of deceased or retired names in titles of firm name Firm Names

(a) **Use of names of deceased or retired individuals.** Use of the names of deceased or retired licensed or registered partners or directors in a firm name is permissible.

(b) **Multiple surnames.** Use of multiple surnames in titles of firms is permissible so long as one surname is a licensed Architect, Landscape Architect or Registered Commercial Interior Designer. Other surnames shall be names of related licensed or registered professions (e.g., engineer - structural, mechanical, electrical, civil, or land surveyor).

(c) **Full names.** Use of a full name in the title of a firm is permissible so long as the full name is the name of a licensed Architect, Landscape Architect or a Registered Commercial Interior Designer or a deceased licensed Architect or Landscape Architect or Registered Commercial Interior Designer.

(d) **Fictitious names.** Fictitious names of firms are permissible so long as at least one Architect of Record or Registered Commercial Interior Designer of Record as defined in 55:10-1-3, has Responsible Control for the activities of the firm.

(e) **Single Surname.** Use of a single surname is permissible so long as that surname is a licensed Architect, Landscape Architect, Registered Commercial Interior Designer, or related professional (e.g., engineer, structural, mechanical, electrical, or civil, or land surveyor).

(f) **Same or similar names.** The name of the Entity shall not be the same or deceptively similar to the name of any other Entity then existing or which has existed within the preceding three (3) years, without the written consent of the previously existing Entity.

**55:10-13-17. Use of multiple surnames in titles of firm name [REVOKED]**

~~Use of multiple surnames in titles of firms is permissible so long as one surname is a licensed Architect, Landscape Architect or Registered Interior Designer. Other surnames shall be names of related licensed or registered professions (e.g., engineer structural, mechanical, electrical, civil, or land surveyor).~~

**55:10-13-18. Use of full name in title of firm name [REVOKED]**

~~Use of a full name in the title of a firm is permissible so long as the full name is the name of a licensed Architect, Landscape Architect or a Registered Interior Designer or a deceased licensed Architect or Landscape Architect or Registered Interior Designer.~~

**55:10-13-19. Use of departed surname in title of firm name [REVOKED]**

~~Use of a surname of an individual who has left a firm is permissible by written agreement for a period of two (2) years.~~

**55:10-13-20. Use of fictitious name in title of firm name [REVOKED]**

~~Fictitious names of firms are permissible so long as at least one Architect of Record or Registered Interior Designer of Record as defined in 55:10-1-3, has Responsible Control for the activities of the firm.~~

**55:10-13-21. Use of single surname in title of firm name [REVOKED]**

~~Use of a single surname is permissible so long as that surname is a licensed Architect, Landscape Architect, Registered Interior Designer, or related professional (e.g., engineer, structural, mechanical, electrical, or civil, or land surveyor).~~

**SUBCHAPTER 15. VIOLATIONS**

**55:10-15-1. Prima facie evidence**

(a) Prima facie evidence shall be construed or attempting to construe to practice, perform or offer architecture, landscape architecture or services as ~~interior design~~ a Registered Commercial Interior Designer within the meaning and intent

of the Act by display or verbal claim, sign, advertisement, contract, card or other printed, engraved, or written instrument or device, or by electronic means bearing an individual's or entities name or in any other way represent to be licensed or registered under the Act. Prima facie evidence is also defined as an individual or Entity representing as able to contract, offer, perform services or use the restricted titles defined under the Act as requiring a License, Registration, Certificate of Authority or a Certificate of Title. Any such action noted by this Section shall be sufficient to justify an injunction or any other order or a conviction without evidence of a general course of conduct. The Board shall determine if other legal procedures and penalties are necessary and shall have the power to proceed with any and all legal procedures in addition to the injunction or other such orders issued.

(b) The following actions shall not be violations under 59 O.S. 46.1 et seq. and the Rules of the Board: Advertising in national publications or electronic media, provided there is no offering of professional services in jurisdictions where not licensed.

**55:10-15-2. Grounds for violations and penalties**

Grounds for probation, denial, revocation, suspension, refusal to renew, orders, injunctions, civil and/or criminal penalties are as follows:

- (1) Fraud, deception or misrepresentation in applying for a License, Registration, Certificate of Authority, Certificate of Title or in taking the examinations (see 55:10-15-4);
- ~~(2) Noncompliance with statutory requirements or Rules in this Chapter for qualifying for a License or Registration;~~
- ~~(3) Violating the Act, or any Rule in this Chapter, regulation or order issued by the Board, including the unlicensed practice of architecture or landscape architecture;~~
- (43) Conviction of a felony;
- (54) Violating any jurisdiction's registration or licensing laws, requirements or rules and regulations;
- (65) Mental impairment;
- (76) Gross incompetence (see 55:10-15-5);
- (87) Recklessness on the part of the Licensee or Registrant in designing, planning or observing the construction or alteration of a project or building (see 55:10-15-6);
- (98) Dishonest practice (see 55:10-15-7);
- ~~(10) Failure to maintain a License or Registration in good standing in one additional jurisdiction for reciprocal Licensees or Registrants;~~
- ~~(11) Loss of NCARB, CLARB or CIDQ certification for reciprocal Licensees or Registrants based on cause;~~
- ~~(12) Nonpayment of fees, penalties, failure to complete continuing education requirements, when applicable, or failure to file acceptable and properly completed required documents with the Board will result in automatic revocation;~~
- ~~(13) Unauthorized or misuse of seal which shall include sealing, dating and signing any or all documents not prepared under a Licensee or Registrant.~~ Prototype plans

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are an exception to this rule as noted in OAC 55:10-11-9 (e) (f).

(4413) Aiding and/or abetting unlicensed practice of architecture or landscape architecture.

(4514) Sealing, signing and/or dating plans and/or specifications not prepared in accordance with the Act and/or these Rules.

(4615) ~~Giving~~ Submitting false or forged evidence or documents ~~submitted~~ to the Board or ~~generated~~ in the practice of architecture or landscape architecture.

(4716) Presenting the License or Registration of another as the individual's or Entity's own.

(4817) Concealing information relative to any violation of the Act or the Board's Rules.

(4918) Inappropriate behavior on the part of an Applicant during the examination period.

### 55:10-15-3. Additional penalties for violations

~~Civil penalties and legal~~ Investigation costs incurred by the Board, including reasonable attorney fees to prosecute the case, may be levied by the Board separately or in addition to civil or any other penalties determined by the Board. The Board may seek criminal and injunctive relief through the courts for any violation of the Act, Rules in this Chapter, regulation, or to enforce any order issued by the Board.

### 55:10-15-4. Fraud or misrepresentation

Any Architect, Landscape Architect, Registered Commercial Interior Designer, Entity or any other party who shall make oral or written fraudulent, false or misleading statements on any document, report, statement, examination, investigation, plans or specifications shall, upon conviction, be deemed guilty of fraud or misrepresentation. Fraud shall include copying any documents from an employer without specific written authorization.

### 55:10-15-5. Gross incompetence

~~Architects and Landscape Architects have been licensed under the authority of the Act that establishes minimum competence. Licensees are expected to continue their professional development after licensing, improving and increasing their proficiency and skills as required through fulfillment of continuing education requirements.~~ The Board expects each Licensee, Registrant, or Entity to undertake only those professional assignments they are he/she or it is qualified, competent, to perform and lawfully authorized to perform, undertake. The following practices, among others, may be deemed gross incompetence:

(1) Failure to use due diligence and proper restraint in planning and observation procedures, thus endangering the safety and welfare of the public.

(2) Failure to engage other licensed design professionals, competent and authorized through this or other Oklahoma statutes to practice in related planning disciplines, when the Architect, ~~or~~ Landscape Architect, or Registered Commercial Interior Designer is otherwise

responsible for obvious technical or tactical error jeopardizing the success or safety of the project, the public, the client and/or contractor.

(3) Failure to clearly, accurately and completely develop plans, drawings, specifications and other instruments of service in practice that properly qualify the requirements intended and insure against misunderstandings jeopardizing the client and/or contractor.

(4) Failure to use diligence and available counsel in preparing documents for the protection of a client in construction agreements involving the Licensee's or Registrant's responsibility.

(5) Practicing architecture or landscape architecture while mentally impaired.

### 55:10-15-6. Recklessness

(a) The Architect, ~~or~~ Landscape Architect, or Registered Commercial Interior Designer is responsible for ~~many~~ technical and tactical judgments relating to construction materials, techniques and systems processes. ~~His/her~~ Their education, training and experience should enable ~~him/her~~ them to make such determinations with confidence in a successful result.

(b) The Board expects of its Licensees, Registrants, Entities or individuals representing same, prudent and deliberate consideration in such decisions, made only after responsible and thorough investigation, research and when necessary, expert advice and assistance.

(c) When the result anticipated in such decisions is not reasonably predictable, each Licensee, Registrant, Entity or individual representing same, is expected to so advise the client, fully disclosing the implications involved.

(d) When such decisions promote procedures, techniques, materials, systems, etc., unfamiliar to the planning and/or building team involved, the Licensee, Registrant, Entity or individual representing same, is expected to exercise extraordinary care and attention to the process, ~~insuring~~ ensuring as best ~~he/she/they~~ can the result sought.

(e) If, in the judgment of the Board, a Licensee, Registrant, Entity or individual representing same, does not demonstrate concern, attention and involvement stated in this Section, and failure to do so brings jeopardy to the project, public or client, the Board may deem such neglect to be recklessness.

(f) A Licensee or Entity shall not aid or abet any unlicensed party in practicing architecture or landscape architecture. Aiding and abetting shall include furnishing limited services in such a manner as to enable owners or unlicensed parties to evade the requirements of the Act or Rules in this Chapter. Incomplete plans shall be clearly marked as incomplete and not for construction if services are terminated during the contract.

### 55:10-15-7. Dishonest practice

~~Dishonest practice means the~~ The following practices, among others, may be deemed dishonest practice:

(1) Acts which evidence violation, or attempts to violate, any laws or Rules of this or any other state relating to licensing or the practice architecture or landscape architecture.

- (2) Acts which evidence disregard or neglect in complying with regulations, codes, ordinances and recognized standards regulating construction at the place of building.
- (3) Acts which evidence attempts through commission or omission, to mislead or defraud any party.
- (4) Acts which evidence attempts or success in efforts violating Rules in this Chapter regarding the use of an Architect's, ~~or Landscape Architect's, or Registered Commercial Interior Designer's~~ seal, signature and date.
- (5) Acts which evidence attempts or success in efforts to bribe any party, who may influence the selection of any Architect, Landscape Architect, Registered Commercial Interior Designer, or Entity. Kickbacks, donations, or forgiveness offered or paid to gain improper advantage in selection will be considered bribes.
- (6) Acts which evidence attempts or success to conceal a Licensee's, Registrant's or Entity's interests in conflict with responsibilities of service to a client.
- (7) Acts which evidence improper partiality as arbiter or interpreter in matters relating to client/contractor agreements resulting in or from unauthorized waivers, deviations, or disregard of provisions in such agreements.
- (8) Acts evidenced by exaggerated, misleading, deceptive or false statements or claims about professional qualifications.
- (9) Falsifying any documents submitted to the Board or required to be kept by the Licensee, Registrant, Entity or generated in the practice of architecture or landscape architecture.
- (10) ~~It shall be illegal to copy~~ Copying any documents or programs from the employer's files in violation of federal or state law, ~~without expressed written consent by the employer.~~
- (11) Submitting forged documents or evidence to the Board.

**55:10-15-9. Filing a complaint; forms and evidence**

- (a) ~~When filing a formal complaint, the party shall contact the Board office for the forms required to be completed. The complainant shall document the allegations with evidence available and shall submit it to the Board office. The Secretary-Treasurer of the Board Investigator shall make appropriate inquiry to verify such information, including retaining the services of expert witnesses, if necessary, and shall present the findings to the Investigation Committee, including, but not limited to, the Secretary-Treasurer and the Executive Director of the Board, base upon such information and inquiry, proceed to one of the following courses:~~
  - (1) ~~Terminate the investigation when it appears no violation has occurred or there is insufficient evidence to support any violation; or~~
  - (2) ~~Refer the matter to the investigative committee; or~~
  - (3) ~~Appoint an individual investigator; or~~
  - (4) ~~Attempt informal resolution of the matter; or~~
  - (5) ~~Refer directly to Board.~~
- (b) A Board member shall not discuss with any individual, any facts or circumstances concerning any investigation or

formal complaint prior to holding a formal hearing, except in a Board meeting or with the Board's attorney.

**55:10-15-10. Informal resolution**

Those matters in which informal resolution is sought may be referred to the investigative committee or terminated as provided in OAC 55:10-15-9. Any final disposition of a violation by the Secretary-Treasurer must be reported to and approved by the Board ~~or approved by Counsel to the Board.~~

**55:10-15-11. Investigation committee**

- (a) **Appointment; officers.** The investigation committee, appointed by the Chair, shall investigate such cases referred to it. The committee shall be appointed for terms as designated by the Chair. At least a majority of the members of the committee shall be licensed or registered and in good standing with the Board. The Board shall designate one member Chair whose duty it shall be to conduct meetings of the committee, administer its activities and perform such other duties as are assigned by the Board.
- (b) **Duties.**

- (1) It shall be the duty of the investigation committee, upon request from the Secretary-Treasurer of the Board, to investigate to determine whether there exists probable cause to believe a violation has occurred as to justify ~~the institution of~~ formal or civil proceedings. The investigation shall be conducted with reasonable dispatch. ~~The investigative committee shall report to the Executive Director of the Board the result of any investigation promptly upon its conclusion. Such report shall include a summary of evidence considered by the committee including any materials provided to the committee, their conclusions of fact and law, and recommendation with respect to institution of civil or formal proceedings.~~ The committee may or may not, in its sole discretion, afford the accused party involved an opportunity to be heard in the course of preliminary investigation.

- (2) Before a report adverse to the accused party is made, the ~~investigative~~ investigation committee may or may not, in its sole discretion, notify him/her or it in writing of the complaint and allow not less than ten (10) days to reply in writing. At this level of the proceedings the accused party shall not be entitled to a hearing before the investigative committee as a matter of right, but may submit, in writing, a response for consideration by the investigative committee ~~which shall be included in the final report to the Executive Director.~~

**(c) Actions.** Based upon the information and inquiries made during the course of the investigation, the Investigation Committee shall proceed to one of the following courses:

- (1) Terminate the investigation when it appears no violation has occurred or there is insufficient evidence to support any violation; or
- (2) Attempt informal resolution of the matter; or
- (3) Attempt formal resolution; or
- (4) Refer directly to Board.

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## 55:10-15-12. Investigation report and recommendations

The Executive Director shall forward the investigation ~~investigative committee's~~ report to legal counsel for the Board who shall proceed with the recommendations contained therein, provided such recommended action conforms to law or established policy of the Board and is supportable based upon evidence ~~considered by the investigative committee and its conclusions~~. Civil or formal proceedings will not be instituted unless the investigation committee ~~is and counsel to the Board are~~ agreed upon such action or unless ordered by the Board based upon review of the recommendations of the investigative investigation committee and counsel of the Board. If formal charges are proposed without using the investigation committee, those charges shall be approved by the Secretary-Treasurer and the Executive Director before sent out by Counsel.

## 55:10-15-13. Investigator

Investigations may, at the discretion of the Secretary-Treasurer, be assigned to individual investigators who are employed or retained on a full or part-time basis by the Board for such purpose. ~~Such investigators may make use of the investigative committee but shall be in full charge of any investigation so assigned subject to direction by the Secretary-Treasurer, the Board, Executive Director and/or counsel to the Board.~~

## 55:10-15-15. Hearings

### (a) General provisions.

- (1) The Board shall set a time and place for the hearing of charge, provided that such hearing shall not be set less than twenty (20) days from mailing of notice of the proceeding to the last known address of the accused party according to Board records or information.
- (2) Such notice shall include a copy of the charge, a statement of the time, place and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing is held; of the matters asserted or issues involved. At any hearing, interested parties shall be afforded the opportunity to respond, present evidence, and argue on all issues involved.
- (3) Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, consent order, or default.
- (4) At any hearing, the party charged with misconduct or violation of the Act or Rules shall enjoy the following rights:
  - (A) against self-incrimination in testimony before the Board. However, any previous testimony before a court or inquiry of public record, may be used in evidence; and
  - (B) of confidential communication with ~~his~~ a spouse, attorney, clergyman, priest and/or physician; and
  - (C) of withholding such other records and files of any official or agency of any state or of the United States which, by any statute of such state or of the

United States, are made confidential or privileged; and  
(D) of cross examination; and  
(E) of counsel.

### (b) Hearing record.

- (1) The hearing record shall include:
    - (A) All pleadings, motions and intermediate rulings;
    - (B) Evidence received or considered, including the testimony of expert witnesses, if necessary;
    - (C) Questions and offers of proof, objections, and rulings thereon;
    - (D) Proposed findings and exceptions;
    - (E) Any decision, opinion, or report by the officer presiding at the hearing;
    - (F) All staff memoranda or data ~~submitted~~ presented as evidence to the hearing officer or members of the agency in connection with their consideration of the case; ~~This does not include staff memoranda or data submitted or communicated to Counsel for the Board, unless used in the hearing.~~
  - (2) Oral proceedings or any part of the oral proceedings shall be transcribed on request of any party.
  - (3) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
- (c) **Methods of hearings.** Hearings shall be conducted by one of the following methods, as determined by the Board:

- (1) By the Board;
- (2) By any member of the Board or its designee acting as hearing examiner;
- (3) By any attorney licensed to practice before the Supreme Court of the State of Oklahoma acting as hearing examiner.

## 55:10-15-16. Hearing disqualification procedures

A hearing examiner or any Board member shall withdraw from any proceeding in which ~~he/she/they~~ cannot afford a fair and impartial hearing or consideration. Any party may request such disqualification by filing an affidavit, promptly upon discovery of the alleged disqualification, stating the particular grounds for objection. The issue shall be referred to the Board to be determined promptly by the Board or the remaining members thereof and upon disqualification the Board shall assign another hearing examiner and if necessary, as provided by 75 O.S., Section 316, seek appointment of an additional member or members pro-tem.

## 55:10-15-18. Findings of the Board and penalties

- (a) The Board may find:
  - (1) The charges are dismissed for insufficient evidence;
  - (2) The charges are dismissed without prejudice;
  - (3) The charges are dismissed with prejudice;
  - (4) The defendant is found not guilty;
  - (5) The defendant is found guilty;
- (b) If the finding is guilty, the Board shall then determine the penalty to be imposed. The penalty resulting from a finding of guilty shall be one or more of the following:

(1) Reprimand: The formal notice of the Board, ~~not~~ subject to public notice, that the accused party has been found guilty of violations which can and must be corrected as instructed; failure for which may result in suspension, revocation, probation or a civil penalty.

(2) Censure: The formal notice of the Board, subject to public notice, that the accused party has been found guilty of violations which cannot be corrected, and which if repeated may result in suspension, revocation, probation, denial, refusal to renew, or civil penalty.

(3) Suspension: The formal notice of the Board, subject to public notice, that the finding of guilty had resulted in suspension, denial, probation or refusal to renew the accused individual's License, Registration, Certificate of Authority or Certificate of Title for a stated period. In addition, a civil penalty may also be imposed.

(4) Revocation: The formal notice of the Board, subject to public notice, that the finding of guilty has resulted in revocation of the accused individual's License, Registration, Certificate of Authority or Certificate of Title. In addition, a civil penalty may also be imposed.

(5) Civil Penalty: The formal notice, ~~at the discretion~~ of the Board, may be subject to public notice that the finding of guilty of the accused party has resulted in a civil penalty, as provided by the Act.

(6) Probation: The formal notice of the Board, subject to public notice, that the accused party has been found guilty of violations which cannot be corrected, and which if repeated may result in suspension, revocation, denial or refusal to renew and/or civil penalty.

(c) All disciplinary actions where the party has been convicted, pled guilty or nolo contendere to a violation of the Act or Rules, shall be publicized to the public and profession with their name, License or Registration number and/or the Certificate of Authority or Certificate of Title number and the city and state on the Board's records, if applicable.

**55:10-15-19. Proposed Notice of formal complaint and hearing orders**

~~At any hearing not heard by a majority of the members of the Board or when the case hearing record has not been read by a majority of the members of the Board, the decision, if adverse to a party to the proceeding, shall not be made until a~~ A formal proposed notice of complaint and hearing order is will be served upon the parties-Respondent and an opportunity is-will be afforded to each party adversely affected to file exceptions and present briefs and oral argument to the Board. The formal proposed notice order shall be accompanied by statements of the reasons therefore and of each issue of fact or law necessary to the proposed order, prepared by the Board's counsel individual who conducted the hearing or by one who has read the record. The parties may, by written stipulation waive compliance with this Section.

**55:10-15-20. Issuing of orders**

All orders, whether proposed or final, shall be issued within one hundred twenty (120) days of a hearing. Final orders shall be effective upon signing by the Chair or presiding officer of the Board. state their effective date but in no event shall such order be effective less than ten (10) days from the entry thereof.

**55:10-15-21. Final orders**

A final order adverse to a party in a proceeding shall be in writing, ~~or as~~ stated in the record. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. ~~Parties shall be notified either individually or by mail of any order. Upon request, a~~ A copy of the final order shall be delivered or mailed to each party and to the attorney of record.

**55:10-15-22. Procedures to file exceptions to proposed orders**

(a) Exceptions shall be filed with the Executive Director within ten (10) days of mailing the proposed order to the party. If exceptions are filed, the Executive Director shall set the time and place for the Board to consider the proposed order and the exceptions to it and cause notice of such time and place to be mailed to the party. Such time shall not be less than twenty (20) days after such notice is mailed.

(b) Briefs in support of exceptions must be filed with the Board at least seven (7) days before such hearing. The party may individually or through counsel be present and present oral argument to the Board in support of the exceptions. If no exceptions are filed, the Board will consider the proposed order at its next regular or special meeting, or at such other time as is convenient to the Board.

**55:10-15-24. Other hearings Effect of illegal activity or violations on licensure or certification**

When it comes to the Board's attention that a party residing in or out of the State of Oklahoma may be engaged in any illegal activity that might be determined as a violation of the Act, these Rules, penalties or orders issued by the Board, the Board may take any necessary legal action permitted pursuant to the provisions of 59 O.S., Sections 46.1 et seq. and may, in addition, bar the individual or Entity and/or their employers from obtaining a License, Registration, Certificate of Authority and/or Certificate of Title.

**55:10-15-25. Emergency hearings and orders**

(a) If the Board shall find an emergency to exist which, in the opinion of the Board, poses an immediate danger to the public health, welfare, or safety or which threatens irreparable harm to any party, the Board may order hearings as provided in this Section upon the giving of twenty-four (24) hour notice to the parties concerned, and may enter such temporary orders as will, in the judgment of the Board, maintain or restore the

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public health, welfare, and safety—~~pending hearing by the Board or judicial review of the Board's actions.~~

(b) Whenever in the judgment of the Board any party has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of the Act or these Rules, the Board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the Board that such party has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order ~~as may be appropriate shall~~ may be granted by such court, without bond.

(c) Nothing in the Rules of this Chapter dealing with violations, penalties or findings of facts shall preclude the Board from proceeding through any legal proceedings necessary to enforce its findings, orders or penalties.

### SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

#### 55:10-17-1. Purpose

These Rules provide for a continuing education program to ~~insure~~ ensure that all Architects and Landscape Architects, licensed in the state, and Registered Commercial Interior Designers remain informed of technical and professional subjects that the Board deems appropriate to the practice of architecture, landscape architecture and registered commercial interior design to safeguard life, health, and promote the public welfare.

#### 55:10-17-2. Board responsibilities

(a) The Board shall:

- (1) Perform continuing education audits of all professionals.
- (2) Determine if courses address the health, safety and welfare of the public through an audit.
- (3) Discipline Architects, Landscape Architects and Registered Commercial Interior Designers, ~~as may be appropriate if the requirements for Continuing Education have not been met.~~

(b) Members of the Board may attend courses for purposes of auditing the content and compliance with this rule.

#### 55:10-17-3. Noncompliance and sanctions

The continuing education requirements contained in this Section will apply to every Architect, ~~and~~ Landscape Architect, ~~as a condition for renewing of his/her license,~~ and Registered Commercial Interior Designers. Failure to fulfill the continuing education requirements, or file the required biennial report and affidavit, properly completed and signed, or to pay all required fees by June 30<sup>th</sup> of the renewal year, shall result in non-renewal of an Architect's or Landscape Architect's License, and Registered Commercial Interior Designer's Designers certificate registration.

#### 55:10-17-4. Continuing education requirements

(a) ~~Beginning with applications for renewal of licenses in order to renew a license or registration, which expire—expires on June 30, every odd other—year, each Architect, Landscape Architect and Registered Commercial Interior Designer shall attest, as prescribed by the Board, that they have completed 24 CEU's of acceptable continuing education requirements during the two-year period immediately preceding the biennial renewal date as a condition for renewal. One CEU shall represent one Contact Hour. No credit will be allowed for introductory remarks, meals, breaks, or business/administration matters related to courses of study.~~

(b) If the person exceeds the continuing education requirements in any renewal period, they may carry a maximum of 4 CEU's forward into the subsequent renewal period.

#### 55:10-17-5. Exemptions

A person may be exempt from participating in the continuing education program required by these Rules for one of the following reasons:

(1) A first-time ~~License or Registration~~ Licensee or Registrant, issued a license or registration by examination or reciprocity, shall be exempt for ~~his/her~~ their first renewal period if the first renewal period is less than two years from the original date of licensure or registration. ~~A Reciprocal Licensee or Registrant will be exempt from these requirements if the Licensee or Registrant is licensed or registered in another jurisdiction and has met continuing education requirements equal to or exceeding the requirements of this Subchapter. The person shall certify to the Board that the requirements of this Subchapter have been met and substantiate same when audited.~~

(2) ~~A person who has taken emeritus status must certify to the Board that they are not currently practicing one of these professions. In the event the emeritus individual elects to return to active practice, the individual shall earn the continuing education required for the current licensing period, not to exceed two (2) years. A person whose status is emeritus, per OAC 55:10-9-7, and is not actively practicing their profession shall be exempt from obtaining the continuing education required for renewals.~~

(3) A person called to active military duty in the armed forces of the United States shall be exempt from obtaining the continuing education required for the duration of the temporary deployment and all penalties, if applicable and shall comply with OAC 55:10-3-13.

(4) A person experiencing physical disability, illness or other extenuating circumstances may request exemption from the continuing education requirements. The individual shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

#### 55:10-17-6. Computation of credits

(a) Continuing education credits can be obtained in person or online, shall be measured in CEUs, and shall be computed as follows:



~~(1) successfully completing one One CEU for each Contact Hour of: in course work, seminars or making professional or technical presentations at meetings, conventions or conferences shall be the equivalent of one CEU;~~

~~(A) attending professional or technical presentations at meetings, conventions or conferences;~~

~~(B) attending programs sponsored by corporations or other organizations;~~

~~(C) completing seminars, tutorials, short courses, webinar, or online courses;~~

~~(D) making professional or technical presentations at meetings, conventions or conferences;~~

(2) teaching or instructing a qualified presentation, approved by the Board, shall constitute two CEUs for each hour spent in the classroom. Teaching credit shall be valid for teaching a course or seminar in its initial presentation only. Teaching credit may be claimed by full-time faculty at a college, university or other educational institution for the initial presentation only and shall be related to health safety, welfare issues only;

(3) authoring a published paper, article, writing a continuing education course or a book shall be the equivalent of 24 CEUs (No CEU's will be approved for newspaper or similar news articles);

(4) successfully completing one university semester hour of credit shall be the equivalent of 12 CEUs;

(b) Architects, Landscape Architects and Registered Commercial Interior Designers cannot obtain partial credit for portions of courses taken.

(c) Brief absences or tardiness during a course are discouraged, however, if necessary, the total of the absence of the attendee from the course should not exceed 10% of the course Contact Hours.

(d) Administrative procedures and introductions should be limited to no more than 10% of the course's Contact Hour credits. Specific course content should utilize no less than 80% of the course Contact Hours.

**55:10-17-7. General course/program requirements**

(a) All programs and courses are subject to auditing and the Board may disapprove any course not meeting the intended continuing education criteria set forth in this Subchapter.

(b) All courses sponsored by NCARB, CLARB, The American Institute of Architects, the American Society of Landscape Architects, Interior Design Continuing Education Council, American Society of Interior Designers and International Interior Design Association or their successors will count for the required continuing education requirements if they met the requirements of this Subchapter and the intent of the Board.

(c) Continuing education courses must be at least one Contact Hour in length, ~~and~~ meet the topic area guidelines described in this Subchapter, and must result in a certificate of completion, which includes participant's name, provider's name, course title, number of contact hours, and the date the course was given.

(d) Continuing education courses will be approved or disapproved by the Board based upon the information presented at the time of audit.

(e) To qualify for continuing education, the course must:

(1) include technical and practical applications which impact public health, safety and welfare and,

(A) maintain, improve, expand or enhance the quality of the existing technical knowledge;

(B) fill voids that may exist in the professional education and internship training; or

(C) develop new and relevant technical profession skills and knowledge.

(2) have clear purposes and objectives;

~~(3) be well organized, presented in a sequential manner, and provide evidence of pre planning;~~

~~(4) be presented by individuals who are well-qualified by education or experience in the field being taught; and~~

~~(5) provide individual participant documentation for record keeping and reporting.~~

~~(f) Architects, Landscape Architects and Registered Interior Designers may secure continuing education credit through the following types of programs and courses:~~

~~(1) attending professional or technical presentations at meetings, conventions or conferences;~~

~~(2) attending in house programs sponsored by corporations or other organizations;~~

~~(3) successfully completing seminars, tutorials, short courses, correspondence courses, televised courses or video taped courses;~~

~~(4) making professional or technical presentations at meetings, conventions or conferences;~~

~~(5) teaching or instructing, complying with OAC 55:10-17-6;~~

~~(6) authoring published papers, articles or books;~~

~~(7) successfully completing college or university sponsored courses; and~~

~~(g) Subject content acceptable for purposes of architecture continuing education shall be limited to:~~

~~(1) Study of Codes including safety codes, and laws and regulations governing the practice of architecture.~~

~~(2) Environmental Issues.~~

~~(3) Design proficiency.~~

~~(4) Study within planning, engineering, interior design, construction contracting and related disciplines.~~

~~(5) Legal aspects of contracts, documents, insurance, bonds, project administration, etc.~~

~~(6) Specialization, preservation, adaptive reuse, building types) etc.~~

~~(7) Construction Documents and Services.~~

~~(8) Materials and Methods.~~

~~(9) Mechanical, Plumbing, Electrical and Life Safety.~~

~~(10) Structural technology.~~

~~(11) Energy efficiency.~~

~~(12) Project administration.~~

~~(13) Professional ethics.~~

~~(14) Americans with Disabilities Act guidelines.~~

~~(h) Subject content acceptable for purposes of landscape architecture continuing education shall be limited to:~~

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- (1) Study of Codes including safety codes, and laws and regulations governing the practice of landscape architecture;
- (2) Environmental issues;
- (3) Design proficiency;
- (4) Study within planning, engineering, horticulture, construction contracting and related disciplines;
- (5) Legal aspects of contracts, documents, insurance, bonds, project administration, etc.
- (6) Specialization in areas of concentration;
- (7) Construction documents and sources;
- (8) Project administration;
- (9) Professional ethics;
- (10) Safety guidelines (Playgrounds, trails, etc.);
- (11) Herbicide and pesticide use;
- (12) American Disability Act Guidelines;
- (13) Irrigation system design;
- (14) Grading and drainage.

(1h) Subject content acceptable for purposes of interior design continuing education shall be limited to:

- (1) Legal: codes, including life-safety codes and standards, laws and regulations governing the practice of interior design; professional ethics, zoning, insurance to protect owners and public
- (2) Environmental: energy efficiency, sustainability, natural resources, hazardous materials, weather proofing, insulation and natural hazards
- (3) Design: interior building design, interior specifications, accessibility, safety and security measures
- (4) Study within planning, interior design, construction contracting and related disciplines
- (5) Legal aspects of contracts, documents, insurance, bonds, project administration, etc.
- (6) Preservation: historic, adaptation, reuse, building types
- (7) Construction Documents and Services
- (8) Materials and Methods: building systems, products, finishes, furnishings, equipment
- (9) Technical: structural, mechanical, electrical, communications, fire protection, controls
- (10) Pre-design: programming, project analysis, survey of existing conditions, including materials and configuration of the interior space of a project
- (11) Occupant Safety: indoor air quality, lighting, acoustics, ergonomics
- (12) Project administration
- (13) Americans with Disabilities Act guidelines

## 55:10-17-8. Instructional guidelines [REVOKED]

Methods of instruction used for course delivery include personal presentation, correspondence and video courses or other learning techniques. Instructional guidelines for the presentation of such course include the following:

- (1) Personal presentation courses must include:
  - (A) Course presentation and materials;
  - (B) Question and answer sessions (optional), and
  - (C) Evaluation (optional)
- (2) Correspondence courses must include:

- (A) Pre-course instruction book and course materials;
  - (B) Question and answer (optional);
  - (C) Evaluation (optional) and
  - (D) Testing (optional).
- (3) Video courses must include:
- (A) Pre-course instruction book and course materials;
  - (B) Lecture;
  - (C) Question and answer (optional);
  - (D) Evaluation (optional) and
  - (E) Testing (optional).

## 55:10-17-9. Disallowance

(a) The Board has final authority with respect to approval of courses, credits, and continuing education hours.

(ba) If the Board determines through an audit, that continuing education hours are to be disallowed, an Architect or Landscape Architect shall have 30 calendar days after notification to substantiate the original claim or earn other continuing education hours to meet minimum requirements and submit documentation to the Board office. This section only applies to persons who met the requirements by the biennial deadline.

(eb) Fraud or misrepresentation in certification of course attendance or any other aspect of fulfilling continuing education requirements will be disciplined in accordance with the Act, including revocation or denial of the renewal of a License and/or Certificate of Authority, if applicable.

## 55:10-17-10. Licensee responsibilities

(a) The Architect, ~~or~~ Landscape Architect and Registered Commercial Interior Designer is responsible for retaining proof of participation in continuing education activities. Such verification includes, the following as applicable:

- (1) A log showing activity claimed, sponsoring organization, location, duration, etc. signed by the Sponsor; or
- (2) Attendance certificates; or
- (3) Signed attendance receipts; or
- (4) Sponsor's list of attendees (signed by an individual in responsible charge of the activity).

(b) These records must be retained for one calendar year until January 1<sup>st</sup> following the filing of an application for License or Registration renewal. Copies shall be furnished to the Board for audit purposes if requested.

(c) The Architect, Landscape Architect and Registered Commercial Interior Designer must be present for the entire duration of the course for all approved course Contact Hours.

## 55:10-17-11. Biennial report and affidavit [REVOKED]

(a) Each Architect, Landscape Architect or Registered Interior Designer, at License or Registration renewal, shall submit an affidavit attesting to the individual's fulfillment of continuing education requirements during the two years preceding the renewal. Affidavits, with an accompanying report concerning the courses taken by the individual to fulfill continuing education requirements, shall be submitted either on the back of the

Licensee's or Registrant's renewal form provided by the Board or attached separately to the renewal form.

(b) Each affidavit shall be reviewed by the Board's staff for completeness, and may be subject to audit for verification of compliance with requirements. All persons shall retain proof of fulfillment of requirements until January 1<sup>st</sup> after submission in the event that the affidavit and report is selected for audit and the submissions pass the audit as completed.

**55:10-17-12. Requirements and responsibilities  
[REVOKED]**

(a) The Board has set forth the following criteria that will be reviewed in approving continuing education hours:

(1) Subject matter meeting the intent and purpose of requiring continuing education for Architects, Landscape Architects and Registered Interior Designers that complies with the requirements of the Act and these Rules.

(b) Courses shall be related to health, safety or welfare only as adopted by this Board

(c) Architects, Landscape Architects and Registered Interior Designers are encouraged to take programs of intermediate and advanced levels.

(d) Courses that are issuing reporting certificates should contain the following: participant's name, sponsor name, course title, number of contact hours, date course given, sponsor or monitor signature.

(e) Licensees or Registrants shall maintain a record of all reporting certificates or other documentation issued for verification of attendance until January 1<sup>st</sup> after submitting the License or Registration renewal and passing the audit as completed. Duplication or falsification, as well as misuse, of reporting certificates or other documentation may be grounds for disciplinary action against the Licensee or Registrant.

(f) Courses should issue to attendees seeking continuing education credit, a "Course Evaluation Summary Form".

(g) Sponsors should verify the identity of course participants.

(h) Sponsors are encouraged to publicize their courses. A list of licensed Architects and/or Landscape Architects and/or Registered Interior Designers may be secured for a nominal fee from the Board. Applicable fees must be submitted with the request. The Board shall have thirty (30) days from receipt of the request to process and provide the requested listing.

(i) Architects, Landscape Architects and Registered Interior Designers cannot obtain partial credit for portions of courses taken.

(j) Brief absences or tardiness during a course are discouraged, however, if necessary the total of the absence of the attendee from the course should not exceed 10% of the course Contact Hours.

(k) Administrative procedures and introductions should be limited to no more than 10% of the course's Contact Hour credits. Specific course content should utilize no less than 80% of the course Contact Hours.

[OAR Docket #22-516; filed 6-30-22]

**TITLE 85. STATE BANKING DEPARTMENT  
CHAPTER 1. REQUIRED RULES**

[OAR Docket #22-583]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 85:1-1-5. Communication with the Board and Commissioner [AMENDED]
- Subchapter 3. Procedural Rules
- 85:1-3-2. Service of pleadings [AMENDED]
- 85:1-3-7. Production of documents [AMENDED]
- 85:1-3-11. Pre-hearing conference [AMENDED]

**AUTHORITY:**

State Banking Board; 6 O.S., § 203

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

December 7, 2021

**COMMENT PERIOD:**

January 3, 2022 through February 11, 2022

**PUBLIC HEARING:**

February 16, 2022

**ADOPTION:**

February 16, 2022

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

February 18, 2020

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The amended rules clarify, eliminate obsolete language, and relieve regulatory burden associated with communications with the State Banking Department.

Subchapter 1. The amendments to Subchapter 1 remove the requirement that documents filed with the Banking Department be sent by physical mail. The amendments allow electronic delivery as an alternative.

Subchapter 3. The amendments to Subchapter 3 remove the requirement that documents filed with the Banking Department be sent by physical mail. The amendments allow electronic delivery as an alternative.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**85:1-1-5. Communication with the Board and Commissioner**

(a) Every communication in writing to the Board shall be addressed to the Commissioner at the principal office, unless the Board directs otherwise.

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(b) Every pleading and other document tendered for official filing ~~shall be deposited with or mailed to the Commissioner at the principal office, and shall be deemed received only upon actual delivery at the office of the Commissioner~~ physical or electronic delivery to the Commissioner or the principal office of the Board.

(c) Filing of any instrument shall not be complete except upon payment of all applicable fees required by law.

(d) Unless otherwise required by the Commissioner, any provision in this Title requiring written notification or that a document be provided in writing may be satisfied by providing electronic communication and electronic images of a document.

### SUBCHAPTER 3. PROCEDURAL RULES

#### 85:1-3-2. Service of pleadings

(a) Service of an initial pleading. Every application in which a party is named a respondent shall be served by the State Banking Department on each respondent named therein by mail or electronic delivery accompanied by a notice of hearing stating the date on which the cause is set for hearing, which shall be no less than ten (10) days after notice is mailed. Service hereunder shall be required in addition to provisions of these rules requiring service by publication.

(b) Service of subsequent pleadings. Every pleading, after the initial pleading, shall be served by the party filing it by regular mail or electronic delivery upon all parties of record. Parties of record shall include the applicant, all named respondents and all persons having theretofore entered an appearance in the cause, in person or by an attorney.

(c) Certificate of service. Every pleading required to be served by regular mail or electronic delivery shall contain a list of the persons served and the certificate of the party or his attorney, that on the date stated a copy of the pleading was mailed, postage prepaid, or delivered, to each person listed. Any pleading required to be served by regular mail or electronic delivery may be served by leaving a copy thereof at the principal office of the party, or of the attorney for the party, or at the email address designated for the party or the attorney for the party.

(d) Service not jurisdictional. Service prescribed by this section shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this section as to mailing and service notice shall not deprive the Board or Commissioner of jurisdiction of the proceeding, but shall be grounds for such appropriate relief as the Commissioner may order.

#### 85:1-3-7. Production of documents

(a) Upon application of a party, or upon the Commissioner's own motion, with or without notice, the Commissioner may make an order requiring a party to produce designated documents or tangible objects for inspection by parties to the proceeding, or for copying at the expense of the applicant, or to be offered in evidence. The order shall direct production

thereof at the hearing, or at a pre-hearing conference and production shall be at the principal office of the Board, unless some other place is stated in the order. An order hereunder may be directed to a party not yet a party of record, conditioned that if such party appears at the hearing, the order thereupon will be complied with.

(b) The party applying therefor shall mail a copy of the order by regular or electronic mail on each party of record at least seven days prior to the date upon which production is required.

(c) An order pursuant to this section may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the proceeding, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the proceedings.

(d) The order shall identify the document or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the party ordered to make production.

(e) An exact photographic copy of a document may be substituted for the original, at the expense of the person requesting the instrument.

#### 85:1-3-11. Pre-hearing conference

(a) The Commissioner, with or without request by any party of record, may order the parties or their attorneys to appear at a designated time for a pre-hearing conference to consider:

- (1) Simplification of the issues.
- (2) Presentation of issues of law, adjudication of which may simplify or eliminate issues of fact.
- (3) Admissions and stipulations of fact which will avoid unnecessary evidence and testimony.
- (4) Identification of documents to be offered at the hearing.
- (5) Identification of and numerical limit upon experts and other witnesses.
- (6) Discovery and production of documents, records, data and other information.
- (7) Other matters as may aid in trial of the proceedings.

(b) Any objection or amendment to the application, notice of hearing, investigative report, any pleading or order commencing a proceeding shall be made at the pre-hearing conference. No objection or amendment will be allowed after the pre-hearing conference except upon good cause.

(c) Actions taken at the pre-hearing conference may be embodied in a preliminary order, which order shall control subsequent proceedings and shall be binding on all parties, whether or not present, unless modified to prevent manifest injustice.

(d) Notice of the time and place of a pre-hearing conference shall be as prescribed by order of the Commissioner and shall be served by regular or electronic mail upon all parties of record.

[OAR Docket #22-583; filed 7-12-22]

**TITLE 85. STATE BANKING DEPARTMENT  
CHAPTER 10. SUPERVISION,  
REGULATION, AND ADMINISTRATION  
OF BANKS, TRUST COMPANIES, AND THE  
OKLAHOMA BANKING CODE**

[OAR Docket #22-584]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Department Requirements
- 85:10-3-10. Increase/decrease in capital stock [AMENDED]
- 85:10-3-12. Change in name - procedures and requirements [AMENDED]
- 85:10-3-16. Issuance of debentures or capital notes [AMENDED]
- 85:10-3-21. Fees [AMENDED]
- Subchapter 5. Requirements, Standards and Procedures for an Internal Control Program
- 85:10-5-3.1. Internal control program for fiduciary activities of trust departments and trust companies [AMENDED]
- Subchapter 9. New Banks, Branches, and Other Facilities
- 85:10-9-6. Branch closing [AMENDED]

**AUTHORITY:**

State Banking Board; 6 O.S., § 203

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

December 7, 2021

**COMMENT PERIOD:**

January 3, 2022 through February 11, 2022

**PUBLIC HEARING:**

February 16, 2022

**ADOPTION:**

February 16, 2022

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

February 18, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The intended effect of the amended rules is to clarify the rules, eliminate obsolete language, and to eliminate unnecessary fees.

Subchapter 3. Amendments to Subchapter 3 remove fees associated with the following applications: (1) an increase or decrease in a bank or trust company's capital stock; (2) a change in a bank or trust company's name; (3) issuance of debentures or capital notes; and (4) establishment of a detached facility.

Subchapter 5. Amendments to rule 85:10-5-3.1 are intended to strengthen the internal control requirements for trust departments and trust companies. The amendments update the rule to make all reports to the board of directors due quarterly and recognize electronic transfers among the types of disbursements for which the institution must appoint an authorized individual.

Subchapter 9. The amendment to subchapter 9 removes the requirement for a bank to follow branch closing requirements when the bank maintains a device at a former branch location by which customers may interact with bank personnel by video and/or audio equipment.

**CONTACT PERSON:**

Dudley Gilbert, Deputy Commissioner; (405)522-2830; dudley.gilbert@banking.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. DEPARTMENTAL  
REQUIREMENTS**

**85:10-3-10. Increase/decrease in capital stock**

(a) In addition to those procedures and requirements specified in Section 405 of the Code, the following procedures shall be followed in connection with an increase or decrease of capital stock.

(b) Pursuant to the voting of the stockholders to increase or decrease the capital stock, the bank or trust company shall advise the Commissioner of the amount of increase or decrease, and by what means, as follows:

(1) The bank or trust company shall complete and return to the Commissioner's office a certificate in a form prescribed by the Commissioner, together with two (2) certified copies of the resolution adopted by a majority of the stockholders and approved by the board of directors, which resolution appears in the minutes of their meetings, in connection with the increase or decrease in capital.

~~(2) The bank shall also submit a copy of its proposed amended certificate of incorporation accompanied by a fee as set forth in 85:10-3-21 for approving the documents.~~

(3) Within 30 days of receiving the properly executed documents from the bank or trust company, the Commissioner shall notify the bank or trust company of his approval or disapproval. The Commissioner may extend the 30-day period called for by this paragraph upon notice to the applicant. If approved, the bank or trust company shall file the amended certificate of incorporation with the Secretary of State, after which it will return a certified copy to the Commissioner, and if a bank, the required number of certified copies to the bank's primary federal regulator.

(4) The increase or decrease shall not be effective until the Commissioner has approved the documents and the Secretary of State has filed the amended certificate of incorporation.

(c) When an increase in capital stock is requested, the stockholders of the bank or trust company shall include in their resolution whether the new stock will be fully paid either in cash or by transfer from undivided profits or authorized unissued stock. If to be paid in cash, the resolution shall declare whether the offering will be a private offering or a public offering. If any offering of capital stock of a bank or trust company is a public offering, the bank or trust company must prepare an offering circular pursuant to the terms and requirements of Board rule 85:10-13-2.

**85:10-3-12. Change in name - procedures and requirements**

(a) A bank or trust company desiring to change its name shall furnish the following to the Commissioner:

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- (1) evidence of an affirmative majority vote of the outstanding voting stock approving the new name;
- (2) a resolution by the board of directors approving the new name, which resolution appears in the minutes of their meeting;
- (3) proposed amended corporate documents evidencing the new name;
- ~~(4) a fee in the amount set forth in rule 85:10-3-21.~~

(b) After the bank or trust company has been notified of the Commissioner's approval of its new name, it must file the necessary corporate documents with the Oklahoma Secretary of State and must submit certified copies of such filed documents to the Department and to the bank or trust company's primary federal regulator.

(c) It shall be the bank or trust company's responsibility to review governmental records with respect to the availability for use of the new name as well as whether the new name or mark used in connection with the new name will violate or infringe on some other company's name or mark. Any approval provided by the Commissioner will not be taken to mean that such new name or mark is available or eligible for use in any community nor will it mean that such new name or mark does not infringe on the rights of any other company.

(d) If any new name chosen by a bank or trust company is a "confusingly similar name" as defined in the Code, the bank or trust company must comply with the requirements of rule 85:10-11-19.

### 85:10-3-16. Issuance of debentures or capital notes

(a) Section 410 of the Code provides that a bank may issue its convertible or nonconvertible debentures or notes in such amounts and under the terms and conditions as shall be prescribed and approved by the Board. Section 1001 provides that a trust company has the power to issue debentures, notes, or other evidences or debt to the extent of an amount equal to ten (10) times its capital and surplus. Notwithstanding other terms and conditions the Board may require, no approval will be granted unless:

- (1) The request for approval is made on the form prescribed by the Commissioner;
- (2) The bank shall receive approval of its primary federal regulator;
- (3) The amount of the issue shall exceed Twenty-five Thousand Dollars (\$25,000.00);
- (4) The average maturity of the issue shall be no less than seven (7) years;
- (5) The issue by its terms expressly subordinates itself to the prior payment in full of the bank's liability to its depositors; and
- ~~(6) Payment of the fee for approval in the amount set forth in Rule 85:10-3-21(g).~~

(b) When a debenture or capital note issue is authorized by the board of directors of a bank or trust company, their resolution shall state whether the issue is to be offered at a private or public offering. If the issue will be offered through a public offering, the bank or trust company must prepare an offering circular pursuant to the terms and requirements of Board rule 85:10-13-2.

### 85:10-3-21. Fees

#### (a) New Charters.

(1) **Application fee for authority to organize.** In accordance with the provisions of Section 303(C) of the Code with respect to applications for authority to organize a state bank or trust company, an application fee in the amount of \$7,500.00 shall be submitted with each application for authority to engage in the banking business.

(2) **Application fee for holding company bank charters.** Notwithstanding the fee set forth in paragraph (1) of this subsection, in the case of an Application for Authority to Organize pursuant to Section 502(E) and 502.1 of the Code, an application fee in the amount of \$2,000.00 shall be submitted with each application for authority to engage in the banking business.

(b) **Application fee to change location.** In accordance with the provisions of Section 406(B) of the Code with respect to applications to change location, an application fee in the amount of \$2,000.00 shall be submitted with each application.

~~(c) **Application fee for detached facility.** An application for a certificate to maintain and operate a detached facility shall be accompanied by a fee in the amount of \$2,000.00.~~

~~(d) **Application fee for operating and financial subsidiaries.** An application for approval of an operating or financial subsidiary must be accompanied by a fee in the amount of \$2,000.00.~~

~~(e) **Application fee for branch.** An application fee of \$2,000.00 shall accompany each application for certificate to maintain and operate a branch.~~

~~(f) **Other types of applications and fees.** The following applications shall be accompanied by fee in an amount as prescribed below:~~

- ~~(1) Application to change name - \$250.00~~
- ~~(2) Application to abandon trust powers - \$1,500.00~~
- ~~(3) Application to change number or par value of shares - \$250.00~~
- ~~(4) Application to exercise trust powers - \$1,500.00~~

~~(g) **Debentures or capital notes.** An application for approval of debentures or capital notes must be accompanied by a fee in the amount of \$1,000.00~~

~~(h) **Fee for merger.** In accordance with the provisions of Sections 1103 and 1111 of the Code, with respect to the submission of the merger agreement for review, a fee in the amount of \$3,500.00 shall be submitted together with the merger agreement. Such fee shall be in addition to and not in lieu of any branch application fee(s) which may also be required.~~

~~(i) **Fee for purchase and assumption agreements.** In accordance with the provisions of Section 1109 of the Code, with respect to the submission of the agreement of purchase and sale for review, a fee in the amount of \$3,500.00 shall be submitted together with the purchase and sale agreement.~~

~~(j) **Fee for registration statements.** In accordance with the provisions of Section 104 of the Code with respect to registration statements, a fee in the amount of \$500.00 shall be submitted with each registration statement.~~

~~(k) **Method of Payment.** All fees shall be paid by an instrument made payable to the Oklahoma State Banking Department. However, the Department may develop procedures~~

for receiving electronic payment with respect to any or all fees, and subject to such conditions as may be prescribed by the Commissioner.

**SUBCHAPTER 5. REQUIREMENTS,  
STANDARDS AND PROCEDURES FOR AN  
INTERNAL CONTROL PROGRAM**

**85:10-5-3.1. Internal control program for fiduciary activities of trust departments and trust companies**

(a) Where applicable, the following items, at a minimum, shall be performed by all trust departments and all trust companies conducting fiduciary activities to assure the maintenance of sufficient internal audits and reviews, approvals and appointments, and board/committee reporting. Documentation must be maintained to show that each item was completed as required.

(b) The following internal audits and reviews must be completed at the frequency specified:

- (1) A daily review of master file changes.
- (2) A monthly review of overdrafts and uninvested cash balances that exceed a reasonable minimum established by the institution.
- (3) A monthly reconciliation of deposit operating accounts and any suspense accounts.
- (4) A semi-annual vault and safe deposit box review for all trust assets held on premises.
- (5) A quarterly review of trust accounts (a reasonable sample determined by management) for appropriate administration, asset management, documentation, and compliance with governing instruments, laws, internal policies, and sound fiduciary standards.

(c) The following reviews and appointments must be made on an annual basis:

- (1) A review and approval of trust department policies.
- (2) Appointment of individuals or committees with authority to approve discretionary account distributions over a reasonable minimum established by the institution.
- (3) Appointment of individuals with authority to sign trust department checks, including approve disbursements, including electronic transfers, checks and dual signature requirements.

(d) The following reports, at a minimum, must be provided to the institution's board, or committee of the board, at the frequency specified:

- (1) A ~~monthly~~ quarterly report of all opened and closed accounts.
- (2) A quarterly report of the status of all outstanding litigation, efforts taken since the last report to resolve the litigation, and any expected exposure to the institution.
- (3) A quarterly report of any new formal complaints directed at the trust company or trust department.
- (4) A quarterly report of any new settlements or other amounts paid to settle disputes.

(5) A quarterly report of assets with stale pricing dates that exceed generally accepted fiduciary standards.

(6) A quarterly report of any new audits conducted including management responses to any recommendations.

(7) A quarterly report of "watch list" accounts that warrant increased attention.

(8) A quarterly report of trust department or trust company profitability.

**SUBCHAPTER 9. NEW BANKS, BRANCHES,  
AND OTHER FACILITIES**

**85:10-9-6. Branch closing**

(a) A bank may discontinue a branch office with the approval of the Commissioner. In order to gain approval, the bank must:

- (1) submit to the Commissioner a resolution of its board of directors authorizing the closing;
- (2) post a notice of the closing at both the branch location and the main office of the bank for thirty (30) days prior to the closing. Said notice shall state the effective date of the closing and indicate the location of the bank's closest office;
- (3) submit to the Commissioner an affidavit stating that the notice posting requirement has been met;
- (4) either publish notice of the closing once a week for two (2) weeks in a legal newspaper in general circulation in the community where the branch is located or furnish written notice to depositors and safe deposit box holders at the branch to be closed; and
- (5) submit to the Commissioner a copy of the notices required by subsections (a)(2) and (a)(4) of this Section.

(b) The Commissioner shall approve the branch closing absent compelling reasons for denial.

(c) The requirements of subsection (a) of this section do not apply when:

- (1) the bank posts notice of the closing at both the branch location being closed and the main office of the bank for thirty (30) days prior to the closing; and
- (2) the bank operates an existing branch location within two miles of the branch being closed.
- (3) The notice posted pursuant to this subsection must include the date of the closing and information (including address and operating hours) of the nearest operating branch location of the bank.

(d) The requirements of subsection (a) of this section do not apply when the bank maintains one or more devices at a former branch location by which customers may interact with bank personnel by video and/or audio equipment and conduct core banking functions such as making deposits, cashing checks, or receiving loan proceeds.

[OAR Docket #22-584; filed 7-12-22]

# Permanent Final Adoptions

## TITLE 135. COMMISSION ON CHILDREN AND YOUTH CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #22-492]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 29. Board of Child Abuse Examination [NEW]
- 135:10-29-1. Origin, Authority, and Purpose [NEW]
- 135:10-29-2. Licensure and Training [NEW]
- 135:10-29-3. Duties and Responsibilities [NEW]
- 135:10-29-4. Standards for Medical Examinations and Evaluations [NEW]

### AUTHORITY:

The rules in this subchapter were prepared by the Board of Child Abuse Examination (BCAE), pursuant to 10 O.S. § 601.31(B)(1), and approved by the Oklahoma Commission on Children and Youth (OCCY), as authorized by 10 O.S. § 601.31(A).

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

January 7, 2022

### COMMENT PERIOD:

Tuesday, February 1, 2022 through Thursday, March 3, 2022

### PUBLIC HEARING:

March 4, 2022

### ADOPTION:

March 25, 2022

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

March 25, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved June 21, 2022 by Governor's Declaration

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### GIST/ANALYSIS:

The proposed new rules to Chapter 10 were made to bring the Oklahoma Commission on Children and Youth into compliance with 10 O.S. § 601.31. The rules provide clarity and correctly reference provisions of law.

### CONTACT PERSON:

Danielle Dill, Program Manager, (405) 606-4902, or danielle.dill@occy.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 29. BOARD OF CHILD ABUSE EXAMINATION

### 135:10-29-1. Authority and Purpose

The Board of Child Abuse Examination 'BCAE' was created by 10 O.S. § 601.30 under the umbrella of the Oklahoma Commission on Children and Youth (OCCY) for the purpose of

establishing a statewide system to provide expert medical evaluation for children suspected to be the victims of child abuse and neglect. The rules in this subchapter were prepared by the BCAE, as authorized by 10 O.S. § 601.31(B)(1), and approved by OCCY, as authorized by 10 O.S. § 601.31(A).

### 135:10-29-2. Licensure and Training

(a) To be eligible for inclusion on OCCY's statewide statutorily authorized list of trained Child Abuse Examiners, a person must have a valid, unrestricted Oklahoma license to practice as a medical doctor, doctor of osteopathic medicine, physician assistant, advanced practice registered nurse, or registered nurse certified as a pediatric sexual assault nurse examiner, and meet the requirements set forth in this subchapter. Child abuse examiners who fail to demonstrate that they are in compliance with these requirements may be removed from the list.

(b) Within the first year of inclusion on the list, persons who are licensed as physicians, nurse practitioners and physician assistants must obtain at least twenty (20) hours of training regarding child abuse and provide proof of training to the BCAE. The training must include medical evaluation of physical abuse, sexual abuse, abusive head trauma, child neglect, medical neglect, and Munchausen Syndrome by Proxy. The training must also include the effects of domestic violence and substance abuse on children.

(c) Persons who are board certified or eligible for board certification as child abuse pediatricians and other medical providers listed in subsection (a) who have previously been established as child abuse examiners with a multidisciplinary team or Children's Advocacy Center at the time of the establishment of these rules are not required to provide proof of the twenty (20) hours of training set forth in subsection (b).

(d) All child abuse examiners must receive eight (8) hours of continuing child abuse education every two (2) years and must also maintain licensure and certification in good standing with their respective licensing board or agency.

(e) Persons who are sexual assault nurse examiners, but not nurse practitioners, must have a pediatric sexual assault nurse examiner certificate and may only provide evaluation of sexual abuse. Sexual assault nurses shall refer patients to an appropriate medical provider for medical services other than sexual abuse evaluation.

### 135:10-29-3. Duties and Responsibilities

(a) Child abuse examiners will provide medical evaluations in a timely manner to determine if child maltreatment has occurred.

(b) Medicine is one of the core disciplines represented on each multidisciplinary team in Oklahoma. Child abuse examiners serving on a child abuse multidisciplinary team may identify the need for medical evaluation, conduct the evaluation, and provide results and explanation of a medical evaluation performed by themselves and other medical providers to the team, in order to inform the investigation and care of children who are suspected victims of child abuse and neglect. Participation in the child abuse multidisciplinary team is strongly encouraged.



- (c) Child maltreatment must be reported to the Oklahoma Human Services Child Abuse Hotline and appropriate law enforcement agencies when needed.
- (d) Child abuse examiners shall maintain confidentiality of examinations, records, and findings except where disclosure is authorized by 10A O.S. § 1-2-105(C)(1).
- (e) Child abuse examiners may share all evaluations and associated records with the Child Death Review Board pursuant to 10 O.S. § 1150.2(B)(8).

**135:10-29-4. Standards for Medical Examinations and Evaluations**

- (a) Evaluations of children, in which child abuse is suspected, should be completed as soon as possible with specific timing determined by the circumstances of each situation.
- (b) The medical evaluation shall include the procedures determined by the child abuse examiner as necessary to determine whether child abuse or neglect has occurred.
- (c) A legible report regarding each evaluation will be prepared according to medical standards. (d) Photographic or video documentation should be obtained as needed for documentation of injuries. The child abuse examiner will ensure this documentation is completed. It may be performed by the child abuse examiner or others.
- (e) The Child Abuse Examiner shall provide the child abuse medical evaluation report to all appropriate agencies.

[OAR Docket #22-492; filed 6-28-22]

**TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS  
CHAPTER 10. LICENSURE OF CHIROPRACTIC PHYSICIAN/PHYSICIANS**

[OAR Docket #22-528]

**RULEMAKING ACTION:**

PERMANENT Final Adoption

**RULES:**

- Subchapter 1. General Provisions
- 140:10-1-2 [AMENDED]
- Subchapter 3. Application, Examination and Licensing
- 140:10-3-1 [AMENDED]
- 140:10-3-3 [REVOKED]
- 140:10-3-5 [AMENDED]
- Subchapter 5. Procedures for Renewal Licenses
- 140:10-5-1 [AMENDED]
- 140:10-5-3 [AMENDED]
- Subchapter 8. Administrative Fees and Penalties
- 140:10-8-1 [AMENDED]

**AUTHORITY:**

Oklahoma Board of Chiropractic Examiners; 59 O.S. 2021 Board of Chiropractic Examiners

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

January 18, 2022

**COMMENT PERIOD:**

February 15, 2022 through March 17, 2022

**PUBLIC HEARING:**

March 24, 2022

**ADOPTION:**

March 24, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The rule amendments in Chapter 10 are necessary to come in line with amendments to the statutes through SB 49. In addition rules were deemed necessary by the Board to address non-attendance applications for continuing education extensions.

**CONTACT PERSON:**

Beth Kidd, Executive Director, 421 NW 13th Street, Suite 180, Oklahoma City, Oklahoma 73103, 405-522-3400.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**140:10-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. In addition, the use of the masculine gender shall be deemed inclusive in this chapter to include the feminine gender.

"**Accredited chiropractic college**" means a chiropractic educational institution which is accredited by the Commission on Accreditation of the Council on Chiropractic Education, a national, independent accreditation body recognized and approved by the U.S. Department of Education.

"**Act**" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"**Advisory Committee**" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board delegates to them.

"**Board**" means the Board of Chiropractic Examiners.

"**Chiropractic**" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto.

"**Chiropractic physician**" or "**licensee**" means a person who holds an original license to practice chiropractic in this state.

"**Continuing education requirements**" means attendance by a licensee at a minimum of sixteen (16) hours of Chiropractic education seminars as required for a renewal license.

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(A) Twelve (12) hours of the sixteen required by law must be clinical in nature, and the other remaining four (4) may consist of practice management, philosophy, and or other non-clinical topics.

(B) Eight (8) hours of continuing education may be acquired out of state with first having obtained a pre-approval from the Board of Chiropractic Examiners. Eight (8) hours of continuing education can be obtained by attending a national chiropractic association meeting and/or the Federation of Chiropractic Licensing Boards Annual or Federation of Chiropractic Licensing Boards' District meetings attended by any licensee.

(C) Eight (8) hours of mandatory in state continuing education shall be acquired by attending continuing education offered by a registered, domestic Oklahoma association whose seminar has been approved by the Board of Chiropractic Examiners.

**"Examination"** means the process used by the Board, prior to the issuance of any original license, to test the qualifications and knowledge of an applicant on any or all of the following: current statutes, rules, or any of those subjects listed in Section 161.8 of the Act.

**"Individual proceeding"** means the formal process employed by the Board to provide a hearing for a licensee of the Board accused of a violation of the Act and in which the Board may take action against such person's original license to practice chiropractic in this state.

**"License renewal program"** means a continuing education program which:

(A) is sponsored or administered by ~~an~~ astate or national chiropractic association or accredited chiropractic college for the purpose of providing licensees an opportunity to satisfy continuing education requirements; and

(B) has been approved by the Board.

**"Licenseure"** means the Board's process with respect to the grant, denial, renewal, revocation, or suspension of an original or renewal license.

**"Original license"** means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act:

(A) by examination pursuant to § 161.7 and 161.8 of the Act and 140:10-3-1 through 140:10-3-4 or

(B) by relocation of practice pursuant to § 161.9 of the Act and 140:10-3-5.

**"Relocation of practice"** means the ability of an applicant to obtain an Oklahoma chiropractic license who ~~meets~~ satisfies all of the following conditions:

(A) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original Oklahoma chiropractic license by examination ~~in this state at the date of such license;~~

(B) The applicant has no disciplinary matters pending against him or her in any state, country, territory or province;

(C) The license held prior to relocation of practice was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(D) The applicant passes any examination offered by the Board according to 140:10-3-1; and

(E) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

**"Renewal license"** means a license issued by the Board on or before the first day of July of each year to a licensee which authorizes the licensee to practice chiropractic in this state for the succeeding calendar year.

**"Revocation"** means the recalling, annulling or rendering inoperative of an original license or renewal license, or both, by the Board, after notice and an opportunity for a hearing in an individual proceeding.

### SUBCHAPTER 3. APPLICATION, EXAMINATION AND LICENSING

#### 140:10-3-1. Application for an original license by examination

(a) An application to the Board for an original license to practice chiropractic shall be made on forms created and approved by the Board and shall be signed and verified under oath by the applicant. The application shall include:

(1) A passport photo

(2) a copy of the applicant's diploma from chiropractic school college, or program accredited by an accrediting agency either recognized by the U.S. Secretary of Education, except as provided in (b) and(c) of this ~~Section~~ rule;

(3) Payment for the application will be made through the Board's online application portal in the amount of Three Hundred Dollars (\$300.00) ~~A money order, certified check or cashier's check payable to the Board in the amount of One Hundred Seventy Five Dollars (\$175.00) as payment of the application fee.~~ Such fee is not refundable under any circumstances.

(b) An applicant who has graduated from a chiropractic program outside the United States must have completed an educational program leading to a degree in chiropractic from an institution authorized to operate by the government having jurisdiction in which it is domiciled. The applicant must submit a diploma or equivalent documentation of successful completion of the program as certified by an official of the institution or the government having jurisdiction. All credentials, diplomas, and other documentation submitted to the Board in a foreign language shall be accompanied by a notarized English translation. The applicant shall provide satisfactory evidence of meeting the requirements for permanent residence or temporary non-immigrant status as set forth by the United States Citizenship and Immigration Services.

(c) A senior student at an accredited chiropractic college may, prior to graduation, make application for an original license by examination. In such event, the application shall be accompanied by a statement on a form approved by the Board containing certification by an official of such college that the applicant is a senior at the college and is expected to graduate within in one (1) year from the date of the certificate. An original license shall not, however, be issued to such an applicant until the applicant has submitted to the Board a copy of the applicant's diploma from said accredited chiropractic college, certified as true and correct.

(d) Applicants shall submit documentary evidence of completion of Parts I, II, III, IV and physiotherapy as administered by the National Board of Chiropractic Examiners with a passing score.

~~(e) A fee of One Hundred Seventy Five Fifty Dollars (\$175.00) as payment for the examination if approved by the Board of Chiropractic Examiners. Such fee is not refundable under any circumstances.~~

~~(e)~~ The Board shall expedite the process of licensure for those applicants who are active duty military personnel and their spouses. The Board shall issue a license within thirty (3) days of receipt of a completed application if the conditions set forth in 10-3-1 are met. The application fee for the military member and spouse are waived.

**140:10-3-3. Examination Fee [REVOKED]**

~~Each application for an original license shall be accompanied by a non-refundable examination fee of One Hundred Seventy Five Fifty Dollars (\$175.00) made payable to the Board, which payment shall be by money order, certified check or cashier's check, and which shall be submitted with the application.~~

**140:10-3-5. Application for an original license by relocation of practice**

(a) An application to the Board for an original license by relocation of practice to practice chiropractic in this state shall be made on a form created and approved by the Board and the applicant may also be required to appear before the board for a personal interview, and shall be assessed a jurisprudence examination. Prior to approval of an application, the Board may authorize the Executive Director to issue a temporary license to an applicant who has submitted a completed application and who, upon payment of the examination fee, has passed the required examination with a score acceptable by the Board. A temporary license shall authorize the applicant to practice chiropractic in Oklahoma between the submission of the application and applicant's approval for licensure by the Board. A temporary license shall expire upon the Board's approval of a permanent license or ten (10) calendar days following the Board's denial of an application for permanent license.

(b) The Board may, in its discretion, refuse to grant an original license by relocation of practice to any applicant and may require the applicant to take the oral examination required by the Act.

(c) Payment for the application will be made through the Board's online application portal in the amount of Three Hundred Dollars \$300.00~~The application shall be signed and verified under oath by the applicant.~~ The application shall include:

(1) A passport photo attached to the appropriate page of the application.

(2) a copy of the applicant's diploma from an accredited chiropractic college, certified by an official of the issuing college as being true and correct;

(3) Submit documentary evidence to the board that the applicant has been in active practice for three (3) years immediately preceding the date of application.

~~(4) a money order, certified check or cashier's check payable to the Board, in the amount of Three Hundred Fifty Dollars (\$350.00) as payment of the application fee. Such fee is not refundable under any circumstances.~~

(d) Except as is otherwise approved in writing by the Board, an application and all accompanying documents must be completed as set forth in the Act and application.

(e) All documents accompanying an application for an original license by relocation of practice that are written in any language other than English shall be translated, at the expense of the applicant, into the English language and certified under seal of the proper consulate. The translation shall be submitted with the application.

(f) All applicants must submit a certified copy of his/her birth certificate and/or naturalization papers if they were born anywhere other than the United States.

(g) The review of each application for an original license by relocation of practice shall be conducted by the Executive Director, and notice of the approval or disapproval thereof shall be given by the Executive Director in the same manner as for an application for an original license by examination.

(h) A fraudulent or false statement as to any material fact, which is contained in any application for an original license by relocation of practice, or the failure to provide any requested information, shall constitute sufficient cause for the disapproval of the application.

(i) The Board shall expedite the process of licensure for those applicants who are active duty military personnel and their spouses. The Board shall issue a license within thirty (30) days of receipt of a completed application if the conditions set forth in 10-3-1 are met. The application fee for the military member and spouse are waived.

**SUBCHAPTER 5. PROCEDURES FOR RENEWAL LICENSES**

**140:10-5-1. Renewal license; requirements**

(a) Except as provided in 140:10-5-4, related to senior inactive licenses, and 140:10-5-5, related to nonresident licenses, each licensee holding an original license to practice chiropractic in this state shall pay to the Board, on or before the first day of July of each year hereinafter, an annual renewal fee of Two Hundred Seventy-Five (\$275.00), which shall be accompanied by;

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(1) Evidence that the licensee has satisfied Board approved chiropractic continuing education requirements; or

(2) ~~A statement on a~~Statement of Non-attendance form, created and approved by the Board, containing: completed by the licensee, which shall include and be accompanied by: A One Hundred Dollar (\$100.00) fee and the sworn statement of the licensee which shall include the following affirmations:~~An affidavit from the licensee which states:~~

(~~A~~i) the licensee was unavoidably prevented from satisfying the continuing education requirements;

(~~B~~ii) the reason or reasons therefore; and

(~~C~~iii) that the licensee is not attempting to circumvent or abrogate the intent of such continuing education requirements, ~~and~~

(~~3B~~) In the event the licensee has failed to complete the annual number of continuing education hours required for renewal for a consecutive year or years, the licensee shall submit an additional Statement of Non-attendance form as required by (a)(2)(A) of this Rule for each consecutive year of non-compliance, the affidavits of two (2) licensed chiropractic physicians who personally know the licensee, vouch for the licensee's good standing in the chiropractic profession, and recommend that the licensee be issued a renewal license.

(~~b~~) In addition to the required annual renewal fee of Two Hundred Seventy-Five Dollars (\$275.00), each consecutive subsequent Statement of Non-attendance shall be accompanied by Two Hundred Dollars (\$200.00).

(~~b~~c) The Board shall, upon receipt of the renewal license fee, and upon determination of compliance with the requirements of Section 161.11 of the Act, issue a Chiropractic renewal license, which shall entitle the holder to practice chiropractic in this state during the succeeding calendar year.

(~~e~~d) Attendance by a licensee at a license renewal program shall be certified by an officer of the sponsoring or administering association, which officer shall have been previously approved by the Board for the purpose of providing such certification. The list of attendees from the continuing education seminar, shall be submitted no later than forty- five (45) days after the approved continuing education seminar. The list shall be submitted by the certified officer of the association, and sent to the Board after all signatures and/or timecards have been verified by the individual certified to report to the Board of Chiropractic Examiners on all seminar attendees. If there are any missing signatures and/or any other missing documentation the licensee will not be able to renew his/her license for the renewal year.

(~~e~~e) Individuals who take the allowable eight (8) hours of an approved out of state educational seminar shall be responsible for obtaining proof of attendance. The doctor shall submit proof of attendance with renewal application.

(~~e~~f) Distance learning whether offered in-state or out-of-state, online or correspondence from program approved by the Board may also satisfy eight (8) hours of out-of-state continuing education.

(~~f~~g) Subject to the provisions of Section 140:10-5-2 the Board of Chiropractic Examiners hereby recognizes the

requirements adopted from time to time by the Federation of Chiropractic Licensing Boards Providers of Approved Continuing Education (FCLB PACE) as the requirements of the Board. The Board recognizes FCLB PACE Recognized Providers as satisfying the requirements of the Board for purposes of the licensure renewal process. The Board, however, reserves the approval authority for all programs based on furtherance of professional development and related areas, and in the interest of the public protection.

(~~g~~h) Licensee on active duty as a member of the Armed Forces of the United States.

(1) In accordance with Title 59, O.S., Section 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act, while a licensee is on active duty the license may be renewed without payment of the renewal fee and without showing completion of the continuing education requirement. Such waiver shall be requested in writing to the Board prior to the license expiration along with evidence of the order for active duty. The license issued pursuant to this rule may be continued as long as the licensee is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty. Upon discharge from active duty and a request for license activation, the licensee shall submit to the Board evidence of successful completion of the continuing education requirement for the current renewal term.

(2) If a license on active duty does not request such a waiver in writing the license is suspended by operation of law, the applicant may provide the Board the documentation as required in subparagraph (1) of this subsection no later than one (1) year after discharge from active duty in order to remove the suspension and reactivate the license.

### **140:10-5-3. Revocation or suspension of license; reinstatement**

(a) In the event that a licensee fails to obtain a renewal license on or before the first day of July of each year, the original license of such licensee shall lapse or be suspended as provided for at Section 161.11 of Title 59 of the Oklahoma Statutes. The Board may reinstate the original license of such person upon the payment of all fees due, plus a penalty fee in the amount provided for in the Board's fee schedule, and upon presentation to the Board of satisfactory evidence of compliance with the continuing education requirements and any other education or training which the Board, in its discretion, deems necessary.

(b) If the Board receives notice from the Oklahoma Tax Commission that a licensee is not compliant with the Oklahoma income tax law pursuant to Section 238.1 of Title 68 of the Oklahoma Statutes, the license of that physician shall not be renewed but shall automatically be suspended pursuant to Section 161.11 of the Act. The suspension shall begin July 1 of the renewal year and shall not be lifted until:

(1) the Board receives notice from the Oklahoma Tax Commission that the license has come into compliance with Oklahoma income tax law; and

(2) the licensee has paid a reinstatement fee not to exceed Four Hundred Dollars~~of \$400.00~~

**SUBCHAPTER 8. ADMINISTRATIVE FEES AND PENALTIES**

**140:10-8-1. Fees**

Fee Schedule.

(1) Examination. The following fees shall be assessed for licensure and examination of Chiropractors:

- (A) Original license: ~~\$300.00~~\$175.00
- (B) Relocation of Practice: ~~\$300.00~~\$175.00
- ~~(C) Examination Fee: \$175.00~~

(2) Licensure. The following fees shall be assessed for licensure of Chiropractors:

- (A) Renewal fee active license \$275.00
- (B) Renewal fee inactive license \$175.00
- (C) Retired license fee \$50.00
- (D) Reinstatement fee not exceed \$400.00
- (E) Penalty fee for late renewal \$150.00

(3) Duplication or modification of license. A fee of \$75.00 shall be assessed for duplication or modification of original license.

(4) Miscellaneous fees: the following fees shall be assessed by the Board

- (A) Letter of good standing and/or verifications for other licensing Boards with seal: \$35.00
- (B) Verification of licensure: \$10.00 per license
- ~~(C) Duplication of proof of license renewal: \$10.00~~
- ~~(C)~~ Duplication of Public Records: per page: \$0.25
- ~~(D)~~ Returned check processing fee: \$20.00
- ~~(E)~~ Duplication of certificates issued by the Board: \$20.00
- ~~(F)~~ Directory \$35.00 hard copy and/or diskette
- ~~(G)~~ Search fee for records requested for commercial purposes: \$30.00
- ~~(H)~~ Continuing education application fee: \$300.00
- ~~(I)~~ Post Doctoral Diplomate Chiropractic Specialties registration/re-registration fee: \$50.00
- ~~(J)~~ Copy of tape of a board meeting and or an administrative hearing \$20.00
- ~~(L) Labels of addresses of all licensed chiropractors \$50.00~~
- ~~(K)~~ Travel-to-Treat registration \$50.00
- ~~(N)~~ Non-attendance application request \$100.00. Additional \$100.00 for each consecutive non-attendance application.
- ~~(M)~~ Certified chiropractic assistant fees:
  - (i) Initial Application fee: \$50.00
  - (ii) Examination fee: \$50.00
  - (iii) Certification Renewal: \$50.00 every two years
  - (iv) Failure to renew penalty: \$25.00
- ~~(P)~~ Initial Determination of Licensure Eligibility: \$95.00

[OAR Docket #22-528; filed 7-1-22]

**TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE  
CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM**

[OAR Docket #22-688]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Saving Quality Jobs Program [REVOKED]
- Part 1. Premium Payment Program [REVOKED]
- 150:65-3-1. Eligibility for premium payment [REVOKED]
- 150:65-3-2. Additional required information [REVOKED]
- 150:65-3-3. Premium payment offer [REVOKED]
- 150:65-3-4. Transmittal of information [REVOKED]
- Part 3. High Impact Projects [REVOKED]
- 150:65-3-10. High impact project eligibility [REVOKED]
- 150:65-3-11. High impact project profile [REVOKED]
- 150:65-3-12. Review of information [REVOKED]
- 150:65-3-13. High impact project incentive offer [REVOKED]
- 150:65-3-14. Required information [REVOKED]
- 150:65-3-15. Transmittal of information [REVOKED]
- 150:65-3-16. Origination fees [REVOKED]

**AUTHORITY:**

The Oklahoma Department of Commerce; 74 O.S. A§5001 et. seq.; Executive Order 2020-3;

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

January 21, 2022

**COMMENT PERIOD:**

February 15, 2022, through March 17, 2022

**PUBLIC HEARING:**

March 18, 2022, at 9:30 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

**ADOPTION:**

March 21, 2022

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

March 21, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

This rule is necessary to comply with Executive Order 2020-3, to increase efficiencies within the agency and to reduce the size of the State administrative Code.

**CONTACT PERSON:**

Thomas Grossnicklaus, Chief of Staff - General Counsel, 405-815-5153 or Thomas.grossnicklaus@okcommerce.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. SAVING QUALITY JOBS PROGRAM [REVOKED]**

# Permanent Final Adoptions

## PART 1. PREMIUM PAYMENT PROGRAM [REVOKED]

### 150:65-3-1. Eligibility for premium payment [REVOKED]

Eligible entities which may apply for premium payments under the Saving Quality Jobs Program are those establishments that qualify for incentive payments under the provisions of 68 O.S. Supp. 1994, Sections 3601 et seq. and 150:65-1-1 through 150:65-1-13 of this chapter and have submitted an application for premium payments, and

- (1) Have been certified by the Oklahoma Department of Commerce as having demonstrated that its existing jobs are at risk; or
- (2) Have been certified by the Oklahoma Department of Commerce as being engaged in an industry which is defined as strategically important pursuant to 68 O.S. Supp. 1994, Section 3704(2). Provided, that for an establishment engaged in more than one line of business during the time covered by the application, a majority of the new direct jobs shall be projected to be in a strategic industry or the new jobs were originally approved for the Quality Jobs Program from a project qualifying as a Central Administrative Office

### 150:65-3-2. Additional required information [REVOKED]

(a) In addition to the information that the Oklahoma Department of Commerce may require establishments to provide as set forth in 150:65-1-9, the Department may require establishments applying for premium payments for at risk jobs to provide the following information:

- (1) Internal company memos relevant to the issue of at risk jobs; or
- (2) A letter to the Department from the chief executive officer or a decision maker for Oklahoma operations requesting assistance in retaining jobs; or
- (3) Confirmation that the establishment is engaged in a search for a location for a project similar to that existing in the state or is considering an expansion; or
- (4) Industry trends as reflected by trade publications; or
- (5) Historical data regarding the establishment as supplied by such publications or company memos; or
- (6) Any other such information the Executive Director of the Department may require in order to certify that an establishment's existing jobs are at risk.

(b) All such materials described in this section may be kept confidential by the Department pursuant to the terms of the Open Records Act.

(c) The Department may require establishments approved to receive premium payments to provide any information necessary in order to administer the program and prepare program reports.

### 150:65-3-3. Premium payment offer [REVOKED]

(a) Before a premium payment is authorized, the Department shall review the balance remaining in the Saving Quality Jobs Premium Payment fund and the High Impact Project Payment fund.

(b) After a premium payment is authorized by the Oklahoma Department of Commerce, a quality jobs representative shall prepare a premium payment offer for the Executive Director's review and signature. The signed premium payment offer shall be forwarded to the establishment. A premium payment offer may be accepted by the establishment within sixty (60) days of the date of signing by the Executive Director.

(c) The Department may use a single form that includes the incentive offer provided in 150:65-1-6 and the premium payment offer provided in this section.

(d) The premium payment offer shall be on a form prescribed by the Department which shall include the following information:

- (1) The number of at risk jobs saved, if applicable;
- (2) The premium rate calculated as provided in 68 O.S., Supp. 1994, Section 3705;
- (3) The maximum allowable premium payment; and
- (4) Any other information the Department deems necessary.

(e) Upon acceptance and certification of the premium payment offer, the establishment shall return the offer to the Department. The original offer, signed by the chief executive officer or authorized representative, shall be returned to the Department by certified mail with return receipt requested, by personal delivery or by other means approved by the Department.

(f) For all purposes of the Saving Quality Jobs Act, the effective date of approval of the premium payment offer will be the date of the signed, accepted and certified offer is received by the Department.

### 150:65-3-4. Transmittal of information [REVOKED]

The Oklahoma Department of Commerce shall notify the Oklahoma Tax Commission of each approved premium payment offer. The Department shall provide the Commission with a copy of the offer which shall include the establishment's premium net benefit rate and the maximum allowable premium payment amount during the three year payment period. The Department may use a single form that includes the incentive offer provided in 150:65-1-6 and the premium payment offer provided in 150:65-3-3.

## PART 3. HIGH IMPACT PROJECTS [REVOKED]

### 150:65-3-10. High impact project eligibility [REVOKED]

Eligible entities which may apply for the Saving Quality Jobs High Impact Project Program are establishments that meet the qualifications of 68 O.S. Supp. 1994, Sections 3601 et seq. and 150:65-1-1 through 150:65-1-13 of this chapter, except that the establishment:

- (1) Has an annual gross payroll for new direct jobs projected to equal at least One Million Dollars (\$1,000,000)

but less than Two Million Five Hundred Thousand Dollars (\$2,500,000) within three (3) years of the anticipated date of receipt of the first incentive payments, and  
 (2) Will provide a number of new direct jobs that is equal to or greater than one percent (1%) of the total labor force of the county in which the project locates

**150:65-3-11. High impact project profile [REVOKED]**

(a) A quality jobs representative shall prepare a high impact project profile for establishments that meet the requirements of 150:65-3-10. In order to prepare a profile the establishment shall be required to provide the following information:

- (1) The calendar year and quarter in which the project first starts;
- (2) The employment resulting from the project over six (6) years;
- (3) The third year average salary of the new workers hired in the new direct jobs;
- (4) The county in which the establishment plans to locate;
- (5) A description of the establishment's operations and the operations of the project for which an application is being submitted; and
- (6) Such other information as may be required by the quality jobs representative.

(b) The project profile, which includes the preliminary analysis and the net benefit rate and the total possible incentive available to the establishment, will be sent to the eligible establishment for approval.

(c) Upon approval of the project profile, the establishment shall return the signed project profile to the quality jobs representative. The establishment shall also provide a copy of its basic health benefits plan offered to employees or a description of the plan that will be offered within one hundred and eighty (180) days of the date that it receives the first incentive payment.

(d) A project profile that has been approved, signed and returned to the Department by an establishment will serve as the application for the Saving Quality Jobs High Impact Project Program.

**150:65-3-12. Review of information [REVOKED]**

Before an incentive offer is made to an establishment, the Department shall review the establishment's project profile, health benefits plan, baseline employment, the net benefit rate and the maximum benefits allowable and the balance remaining in the High Impact Project Payment fund and the Saving Quality Job Premium Payment fund. After such review is completed, the Department may authorize the development of an incentive offer.

**150:65-3-13. High impact project incentive offer [REVOKED]**

(a) After an high impact project incentive offer is authorized by the Oklahoma Department of Commerce, a quality jobs representative shall prepare an incentive offer for the Executive Director's review and signature. The signed incentive offer

shall be forwarded to the establishment. An incentive offer may be accepted by the establishment within sixty (60) days of the date of signing by the Executive Director.

(b) The high impact project incentive offer shall be on a form prescribed by the Department which shall include the following information:

- (1) The net benefit rate which will be multiplied by verified gross quarterly payroll to determine the amount of quarterly payments;
- (2) The estimated net direct state benefits which is the maximum amount of benefits payments available;
- (3) The approval date of the incentive offer;
- (4) The baseline employment if applicable; and
- (5) Any other information the Department deems necessary.

(c) Upon acceptance and certification of the incentive offer, the establishment shall return the incentive offer to the Department. The incentive offer, signed by the chief executive officer or authorized representative, shall be returned to the Department by certified mail with return receipt requested, personal delivery or other means approved by the Department.

(d) For all purposes of the Saving Quality Jobs Act, the effective date of approval of the incentive offer will be the date the signed, accepted and certified incentive offer is received by the Department. Provided, however, the approved project may have a start date which is different than the effective date of approval.

**150:65-3-14. Required information [REVOKED]**

(a) The Oklahoma Department of Commerce may require establishments to provide any of the following information in order to determine eligibility under the provisions of the Saving Quality Jobs Act, 68 O.S. Supp. 1994, Section 3701, et seq:

- (1) SIC code number;
- (2) County in which the establishment plans to locate;
- (3) Business plans;
- (4) Feasibility studies;
- (5) Financing proposals;
- (6) OESC Form 3 or its electronic equivalent;
- (7) OTC Income Tax Withholding form;
- (8) Evidence of a firm commitment to a particular location;
- (9) Industry trends;
- (10) Service contracts in place or anticipated;
- (11) Historical data on management in place;
- (12) Organization structure of the establishment and any related business or governmental entities and the nature of the relationships;
- (13) Likelihood of job shifting;
- (14) Expansion of existing markets;
- (15) Extension of existing product line;
- (16) Labor market;
- (17) Financial statements or sales contracts; and
- (18) Marketing plans; and
- (19) Other relevant information.

(b) All such materials described in this section may be kept confidential by the Department pursuant to the terms of the Open Records Act.

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(e) The Department may require establishments approved to receive incentive payments to provide any information necessary in order to administer the program and prepare program reports.

## 150:65-3-15. Transmittal of information [REVOKED]

~~The Oklahoma Department of Commerce shall notify the Oklahoma Tax Commission of each approved high impact project incentive offer. The Department shall provide the Commission with a copy of each approved incentive offer, high impact project profile and the results of the cost benefit analysis.~~

## 150:65-3-16. Origination fees [REVOKED]

~~The Oklahoma Department of Commerce shall charge an origination fee of Two Hundred and Fifty Dollars (\$250.00) for each approved high impact project incentive offer. The fee shall be due at the time an establishment receives its first incentive payment from the Oklahoma Tax Commission. Upon receipt of the first incentive payment, the establishment shall remit the fee to the Department. [74:5012.1]~~

[OAR Docket #22-688; filed 7-29-22]

## TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM

[OAR Docket #22-689]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 13. Oklahoma Remote Quality Jobs Incentive Act [NEW]

150:65-13-1. Purpose [NEW]

150:65-13-2. Definition [NEW]

150:65-13-3. Eligible entities [NEW]

150:65-13-4. Application [NEW]

150:65-13-5. Cost/benefit analysis; limitation of benefit [NEW]

150:65-13-6. Incentive contract [NEW]

150:65-13-7. Transmittal of information [NEW]

### AUTHORITY:

The Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; 68 O.S. §4508

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

December 9, 2021

### COMMENT PERIOD:

January 18, 2022, through February 17, 2022

### PUBLIC HEARING:

February 18, 2022, at 10:00 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

### ADOPTION:

March 10, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The purpose of these rules is to implement the Oklahoma Remote Quality Jobs Incentive Act established in 68 O.S. §4501 et. seq.

### CONTACT PERSON:

Thomas Grossnicklaus, Chief of Staff - General Counsel, 405-815-5153 or Thomas.grossnicklaus@okcommerce.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 13. OKLAHOMA REMOTE QUALITY JOBS INCENTIVE ACT

### 150:65-13-1. Purpose

The purpose of these rules is to implement the Oklahoma Remote Quality Jobs Incentive Act established in 68 O.S. §4501 et. seq.

### 150:65-13-2. Definitions

For purposes of this subchapter, the following words and terms have the following meaning unless the context clearly indicates otherwise:

"Application date" means the date on which the proxy establishment's application is first received and stamped by a Remote Quality Jobs representative at the Oklahoma Department of Commerce.

"Approval date" means the date on which the Executive Director of the Department of Commerce issues the offer to a proxy establishment to receive benefits pursuant to the Oklahoma Remote Quality Jobs program. If the Director issues an offer to a proxy establishment, the Application Date as defined in these rules will be considered the Approval Date for purposes of the act.

"Commission" means the Oklahoma Tax Commission and any successor agencies thereto.

"Department" means the Oklahoma Department of Commerce and any successor agencies thereto.

"Director" means the Executive Director of the Oklahoma Department of Commerce.

"Effective date" means the date that the signed and accepted incentive contract is received by the Department. An approved project may have an Effective Date which is different than the Start Date.

"Qualifying basic health benefits plan" means a health benefits plan providing coverage for basic hospital care, physician care, mental health care, substance abuse treatment, prescription drugs and prenatal care where not more than fifty percent (50%) of the cost of the premium is paid by the remote



worker. Services provided by an Employee Assistance Plan (EAP) are not sufficient to meet this definition.

**"Remote Quality Jobs Program"** or **"Act"** means the Oklahoma Remote Quality Jobs Incentive Act.

**"Remote quality jobs representative"** means the Department professional, trained in the Remote Quality Jobs Program, who is so designated by the Executive Director, and whose responsibilities include direct contact with applicants and clients, analysis of data, initiation of project proposals, preparation of project profiles and preparation of incentive offers.

**"Remote worker"** means as defined in 68 O.S. §4503. The twelve (12) month period referred to in the statutory definition refers to the twelve (12) month period immediately preceding the application date for participation in the program.

**"Start date"** means the date on which a proxy establishment may begin accruing benefits for the creation of new direct jobs. This date is set by agreement and is not more than twenty-four (24) months from the Application Date.

**150:65-13-3. Eligible entities**

(a) A proxy establishment may receive quarterly payments for a ten-quarter period if they facilitate the attraction of remote workers to the State of Oklahoma.

(b) A proxy establishment may be deemed to "facilitate the attraction of remote workers to the State of Oklahoma" only if they participate in all of the following activities:

- (1) Engage in marketing designed to attract qualifying remote workers to relocate to a location within the State of Oklahoma;
- (2) Facilitate visits and tours, either virtually or in person, for prospective qualifying remote workers to become familiar with the benefits of relocating to the State of Oklahoma; and
- (3) Provide a monetary incentive to a qualifying remote worker or his/her assignee to relocate to a location within the State of Oklahoma payable in full or in part upon and/or within a year of their relocation to Oklahoma.

(c) A proxy establishment will not be permitted to claim a Remote Worker whose employer is participating in any of the programs set forth in Section 4507 of Title 68 of the Oklahoma Statutes.

**150:65-13-4. Application**

(a) An eligible proxy establishment may obtain an application for acceptance into the Remote Quality Jobs program from the Department. Upon completion of all information submitted as part of the application, the Director will determine whether an applicant is qualified to receive incentive payments under the Program.

(b) To apply, a qualified proxy establishment may submit an application for participation in the Remote Quality Jobs program to the Department.

(c) As part of the Application, the proxy establishment is responsible for supplying all of the following information:

- (1) The proposed Start Date of the contract.

(2) The number of new direct jobs to be included as part of the contract.

(3) The yearly average salary of the Remote Workers hired in the new direct jobs.

(4) An insurance summary document indicating proof of a Qualifying Basic Health Benefits Plan for each Remote Worker to be covered by the contract.

(5) The name of each Remote Worker to be included in the contract.

(6) The name of the current employer of each Remote Worker to be covered by the contract.

(7) The amount of the direct monetary incentive to be paid out by the proxy establishment to each Remote Worker the proxy establishment intends to claim under the contract.

(8) Any other information or documentation deemed relevant by the Department to ensure the project meets statutory criteria.

(d) A proxy establishment may submit the information set forth above at any time between the Application Date until sixty (60) days prior to the Start Date of the contract.

(e) A proxy establishment that is receiving incentive payments pursuant to the Remote Quality Jobs Program cannot apply for additional incentive payments for any new projects unless and until either:

(1) the establishment's actual verified annual gross payroll for new direct jobs under the establishments existing contracts has met the statutory criteria as set out in Section 4504 of Title 68 of the Oklahoma Statutes for one (1) calendar quarter or

(2) The annual projected payroll for each of the proxy establishment's existing contracts under the act exceeds the mandatory annual gross payroll set forth in 68 O.S. §4504(B) and no less than nine (9) months have passed since the Application Date for the proxy establishment's most recent existing contract.

**150:65-13-5. Cost/benefit analysis; limitation of benefit**

In conducting the cost/benefit analysis to determine the net benefit rate, the Department will consider the following factors:

(1) The estimated direct state benefits including, but not limited to, the anticipated level of new tax revenues to the state.

(2) The estimated direct state costs including, but not limited to, the added cost to the state of providing services.

(3) The payments to be made by the proxy establishment to Remote Workers covered by the contract within a year of relocation to Oklahoma.

(4) Any other factor deemed relevant by the Department.

**150:65-13-6. Incentive contract**

(a) After an incentive contract is recommended by the Department, the contract will be prepared for the Director's review and signature. The signed document will then be forwarded

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to the proxy establishment. The tendered contract may be accepted by the proxy establishment within sixty (60) days of the date of signing by the Director, unless the Director extends this period at the establishment's request.

(b) The incentive contract will be on a form prescribed by the Department which includes all of the following information:

(1) The net benefit rate which will be multiplied by verified gross quarterly payroll of the Remote Workers to determine the amount of quarterly payments;

(2) The maximum amount of benefit payments available, which is the lesser amount of the cumulative payments to be made by the proxy establishment to Remote Workers or the estimated net direct state benefits under the contract;

(3) The project's Approval Date;

(4) The project's Start Date;

(5) The projected number of new direct jobs;

(6) The average annual wage of new direct jobs;

(7) Any other information the Department deems necessary to carry out the provisions of the statute.

(c) The original incentive contract, signed by the chief executive officer or authorized representative, may be returned to the Department by any means acceptable to the Department.

## 150:65-13-7. Transmittal of information

(a) The Department will notify the Commission of each approved incentive offer.

(b) The Department will provide the Commission with all of the following documentation for each approved incentive offer:

(1) A copy of the executed incentive contract.

(2) The results of the cost-benefit analysis.

(3) Any other information deemed by both the Department and the Commission to be reasonably necessary for administration of the program.

[OAR Docket #22-689; filed 7-29-22]

## TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 105. OKLAHOMA LOCAL DEVELOPMENT AND ENTERPRISE ZONE INCENTIVE LEVERAGE ACT

[OAR Docket #22-690]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

150:105-1-2. Definitions [AMENDED]

150:105-1-3. Application process [AMENDED]

150:105-1-4. Threshold and selection criteria [AMENDED]

150:105-1-5. Annual reporting [NEW]

### AUTHORITY:

The Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; 62 O.S. §842

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

December 10, 2021

### COMMENT PERIOD:

January 18, 2022, through February 17, 2022

### PUBLIC HEARING:

February 18, 2022, at 10:00 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

### ADOPTION:

February 18, 2022

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

February 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The purpose of this rule is to provide a reporting mechanism for those participating in the Local Development and Enterprise Zone Incentive Leverage Act and to update outdated statutory references which are a part of the current administrative rules.

### CONTACT PERSON:

Thomas Grossnicklaus, Chief of Staff - General Counsel, 405-815-5153 or Thomas.grossnicklaus@okcommerce.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 150:105-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, and the terms defined in 62 O.S. § 841, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

**"Department"** means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

**"Director"** means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting director.

**"District"** means as defined in 62 O.S. §853.

**"EIN"** or **"FEI"** means Federal Employer Identification Number.

**"Local Development Act"** is set forth at 62 O.S. §§ 850 - 869.

**"Local governmental entity"** means a county, city or town forming an incentive district or an increment district pursuant to the provisions of the Local Development Act. [62 O.S. § 841(10)]

**"Project Area"** means as defined in 62 O.S. §853.

**"Retail leasable space"** means space intended for retail purposes and shall include, but not be limited to, points of sales, aisles, display areas, storage and warehouse space to support the retail purposes.

**"TIF"** means Tax Increment Financing as authorized by the Local Development Act.

**150:105-1-3. Application process**

(a) For the purpose of evaluating the applications, the Department will require all units of local governmental interested in the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal.

- (1) The Department will make available upon request application forms and application guidelines.
- (2) The forms and guidelines will provide threshold criteria information that will assist applicants in their application preparation.
- (3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

(b) After the Department's evaluation is completed, the Department shall forward to the Oklahoma Tax Commission the Net Benefit Rate determined by the Department, certification that the project plan is located in an enterprise zone or supports a qualifying major tourism destination project, and certification that the qualifying investment and development has been or will be substantially completed no later than December 31, 2024~~2034~~.

(c) The Department shall forward a complete copy of the submitted application to the Oklahoma Tax Commission upon request.

**150:105-1-4. Threshold and selection criteria**

Complete threshold requirements and selection criteria will be set forth in the application guide. The minimum threshold criteria are as follows:

- (1) Project must be located entirely within an enterprise zone or in support of a major tourism destination which the local governmental entity determines is likely to significantly benefit contiguous or nearby enterprise zone census tracts;
- (2) No more than ~~ten-fifty~~ percent (~~40%~~)(50%) of the net leasable space of such development may be used for retail purposes except as otherwise provided within the statute and no state local government matching payment shall be made for project costs in support of any gambling establishment;
- (3) State local government matching payments cannot be used to supplant local revenue currently being expended within the increment district boundaries;
- (4) Certification that all projects described within the related project plan will generate, in the aggregate, a minimum of either One Million Dollars (\$1,000,000.00) in payroll, exclusive of payroll for construction, or Five Million Dollars (\$5,000,000.00) in investment;
- (5) The application must include an estimate of incremental revenues new to the state likely to be derived from the project;

- (6) The project must include the commitment of local governmental entity; and
- (7) The project meets the time deadlines set forth in 62 O.S. § 842(I).
- (8) If the project is in support of a major tourism destination, the application must meet the requirements set forth at 62 O.S. § 842 (B)(3) and (B)(4).
- (9) If the project is a Military growth impact project, the application must meet the requirements set forth at 62 O.S. §§ 841(13), (14), and (15).
- (10) The project is required to be fiscally neutral to the State.

**150:105-1-5. Annual reporting**

(a) Before February 1<sup>st</sup> of each year, entities who have been approved for participation in the program will certify and submit a report to the Department containing information about each of the following:

- (1) The amount of local government investment spent in the district to date.
- (2) The amount of future local government investment in the district with a projected timeline of the future investment.
- (3) The estimated amount of private company investment in the district.
- (4) The anticipated amount of future private company investment in the district with a projected timeline of the future investment.
- (5) For ad valorem TIF projects:
  - (A) The aggregate assessed value of properties in the district for the base year;
  - (B) The aggregate assessed value of properties in the district for each year subsequent to the base year;
  - (C) The aggregate assessed value of properties in the project area for the base year;
  - (D) The aggregate assessed value of properties in the project area for each year subsequent to the base year.
- (6) For sales tax TIF projects:
  - (A) The base level of aggregate sales tax attributable to businesses in the district; and
  - (B) The base level of aggregate sales tax attributable to businesses in the project area.

(b) Attached to the certified report, the entity will include all of the following supporting documentation:

- (1) A map with a defined boundary of the district;
- (2) A map of the project area; and
- (3) A list of properties and operating companies in the district with the FEI/EIN of the operating companies.

(c) The entity will continue submitting these annual reports to the Department until they have submitted a final report after the project has been completed.

[OAR Docket #22-690; filed 7-29-22]

# Permanent Final Adoptions

## TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 125. OKLAHOMA OPPORTUNITY FUND [REVOKED]

[OAR Docket #22-691]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

150:125-1-1 through 150:125-1-5 [REVOKED]

### AUTHORITY:

The Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; Executive Order 2020-3

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

January 21, 2022

### COMMENT PERIOD:

February 15, 2022, through March 17, 2022

### PUBLIC HEARING:

March 18, 2022, at 9:30 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

### ADOPTION:

March 21, 2022

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

March 21, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

This action is to reduce the number of unnecessary rules pursuant to the Executive Order 2020-3. The chapter being revoked contains five (5) rules relating to the administration of the Oklahoma Opportunity Fund Program, which is no longer an active program. None of the actions being taken with respect to these rules increase costs of the agency or the agency's clients/partners.

### CONTACT PERSON:

Thomas Grossnicklaus, Chief of Staff - General Counsel, 405-815-5153 or Thomas.grossnicklaus@okcommerce.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

#### 150:125-1-1. Purpose and scope [REVOKED]

The purpose of these rules is to implement the Oklahoma Opportunity Fund at the Oklahoma Department of Commerce.

#### 150:125-1-2. Definitions [REVOKED]

In addition to those terms defined elsewhere in this chapter, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

**"Contingency Review Board"** means the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate. The Director of State Finance shall be an ex officio nonvoting member of the Board.

**"Department"** means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

**"Director"** means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting or interim director.

**"Eligible Applicants"** means for profit entities, nonprofit entities and state and local governmental entities.

**"The Oklahoma Opportunity Fund"** The fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of:

(A) All monies apportioned or allocated to the fund pursuant to law;

(B) Any amounts appropriated by the Legislature to the fund;

(C) Interest earned on the investment of money in the fund; and

(D) Gifts, grants, and other donations received for the fund. [62 O.S. § 48(A)]

#### 150:125-1-3. Application process [REVOKED]

For the purpose of evaluating the applications, the Department will require all applicants interested in the Oklahoma Opportunity Fund to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal.

(1) The Department will make available upon request application forms and application guidelines.

(2) The forms and guidelines will provide information that will assist applicants in their application preparation.

(3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

#### 150:125-1-4. Threshold and selection criteria [REVOKED]

Complete threshold requirements and selection criteria will be set forth in the application guide and shall include requirements for economic impact, local participation in the project and average wage thresholds.

#### 150:125-1-5. Award process [REVOKED]

The Director shall make recommendations to the Contingency Review Board for expenditures whether by loan or grant, which meet the criteria set forth in 62 O.S. § 48 and are expected to result in substantial economic benefit to the

State. Upon the unanimous approval of the Contingency Review Board the award shall be made. Any lien or security interest retained by the State shall follow the guidelines set forth in 62 O.S. § 48.

[OAR Docket #22-691; filed 7-29-22]

**TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE**  
**CHAPTER 150. THE OKLAHOMA FILM AND MUSIC OFFICE**

[OAR Docket #22-692]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Filmed in Oklahoma Act [NEW]
- 150:150-1-1. Purpose [NEW]
- 150:150-1-2. Definitions [NEW]
- 150:150-1-3. Program criteria and qualification [NEW]
- 150:150-1-4. Multi-film deals [NEW]
- 150:150-1-5. Apprentices [NEW]
- 150:150-1-6. State Certified Industry Standard Soundstage Facility [NEW]
- 150:150-1-7. Incentive amounts [NEW]
- 150:150-1-8. Qualified production expenditures [NEW]
- 150:150-1-9. Oklahoma expatriate crew program [NEW]

**AUTHORITY:**

The Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; 68 O.S. §3631 et. Seq.

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

January 21, 2022

**COMMENT PERIOD:**

February 15, 2022, through March 17, 2022

**PUBLIC HEARING:**

March 18, 2022, at 9:30 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

**ADOPTION:**

March 21, 2022

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

March 21, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

This action is to implement the Filmed in Oklahoma Act as implemented in the 2021 legislative session. This clarifies terms used in the act and provides the process for application and approval of participation under the Act.

**CONTACT PERSON:**

Thomas Grossnicklaus, Chief of Staff - General Counsel, 405-815-5153 or Thomas.grossnicklaus@okcommerce.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. FILMED IN OKLAHOMA ACT**

**150:150-1-1. Purpose**

These rules implement the Filmed In Oklahoma Act at the Oklahoma Film and Music Office (OFMO) within the Oklahoma Department of Commerce.

**150:150-1-2. Definitions**

In addition to the definitions in the Filmed in Oklahoma Act, the following terms when used in this Subchapter have the following meanings, unless the context clearly indicates otherwise:

**"Above-the-line personnel" or "ATL"** means as defined in 68 O.S. §3632. It includes individuals hired or credited on screen for the Production as producers (all levels), principal cast (SAG Schedule F/Run of Show or equivalent), screenwriters and the Film director.

**"Act"** means the Filmed in Oklahoma Act

**"Application estimate"** means the estimated QPEs submitted to OFMO prior to the start of principal photography.

**"Commission"** means the Oklahoma Tax Commission or its successor entity.

**"Conditional pre-qualification" or "conditionally pre-qualified"** means the status or act of approval being granted to a Production's Eligibility Application by OFMO.

**"Department"** means the Oklahoma Department of Commerce.

**"Eligibility application"** means the application of eligibility for the program. If the application is approved by OFMO, the film is "Conditionally Pre-Qualified"

**"Episodic pilot"** means a standalone episode of a television series used to sell the show to a television station, television network, cable television station or streaming service.

**"Final application"** means the package submitted to OFMO documenting all criteria for a rebate has been met and the Production Company is requesting payment of a Rebate Claim. This package includes all documentation reasonably necessary to prove eligibility that has not previously been provided to OFMO.

**"Hub location"** means the Municipality where most of the principal photography conducted in Oklahoma on the film has occurred.

**"Loan-out corporation" or "Loan-out company"** means a corporation or limited liability company actively registered with the Oklahoma Secretary of State to do business in this state as a foreign or domestic entity used by Above-the-line personnel and Crew to report payments received from the Production as Oklahoma earnings for the personnel or Crew member.

**"Master tradesperson"** means a skilled and experienced tradesperson who instructs an Apprentice through use of practical experience so the Apprentice may learn a trade, craft or profession.

**"Municipality"** means an incorporated city or town. If a location is not in an incorporated city or town, it is considered part of the nearest incorporated city, or town.

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**"Office"** or **"OFMO"** means the Oklahoma Film and Music Office or its successor entity.

**"Oklahoma based"** means as defined in 68 O.S. §3632. This term includes a business entity registered and in good standing as a Domestic entity with the Oklahoma Secretary of State and that files an Oklahoma income tax return.

**"Oklahoma expatriate"** means a person who has previously resided for at least one year, but does not currently reside, in Oklahoma.

**"Oklahoma resident"** means a person who is a resident under the Oklahoma Tax Code at the time of hire.

**"Oklahoma vendor"** means a seller, renter or lessor of goods or services who charges Oklahoma sales tax under an Oklahoma Sales Tax Permit on taxable transactions and is either (1) Oklahoma-Based or (2) a foreign business entity with an active registration to do business in Oklahoma and an Oklahoma physical location for transacting business.

**"Payroll burden"** means employer-paid taxes (e.g. FICA, Medicare and Unemployment Insurance) and payroll-associated payments made on a specific employee's behalf by law or collective labor bargaining agreement (e.g. union dues and union fringes). Payroll Burden includes the employer-paid portion of health insurance for an employee, if such insurance was paid to an Oklahoma-Based insurance company or obtained through a licensed Oklahoma insurance broker.

**"Per diem"** means fixed payments made to Crew and Above-the-line personnel regardless of residency in lieu of reimbursement for lodging/housing, meals and incidentals, up to a maximum of the Per Diem Rate allowed for the applicable location and date in the U.S. General Services Administration Per Diem Rates. This does not include car and travel stipends, as these expenses are ineligible for rebate.

**"Principal photography"** means the filming of significant components of a Film which involve principal cast or, in the case of Films that do not involve live actors, the beginning of substantive work on the animation or graphics that form the Film's primary visual story.

**"Production"** means a project to make a Film.

**"Production budget"** means the total budgeted cost of the Production.

**"Production company"** means as defined in 68 O.S. §3632. Eligibility and Final Applications are filed by the Production Company and, unless previously agreed to in writing by the OFMO, payment of approved Rebate Claims is made to the Production Company.

**"Project filmed in this state"** means that at least one of the film's principal photography production days have occurred in Oklahoma. A project that does not meet this threshold is a "project filmed outside this state".

**"Proof of funding"** means demonstration in a form acceptable to the OFMO that a Production has or will have funding in place to cover the Production Budget. Acceptable forms approved by the OFMO may include a letter of intent from a recognized industry financier, written verification of dedicated deposits in a recognized financial institution or a letter of credit from an acceptable guarantor.

**"Qualified production expenditure amount"** or **"QPE"** means a qualified production expenditure.

**"Rebate claim"** means the formal request for OFMO to issue a Rebate under the Program.

**"Rebate enhancement"** means the additional incentive amounts a project may be eligible for which may be offered in addition to the base incentive amount. These Rebate Enhancements are specifically listed in 68 O.S. §§3635(B) and 3636(B).

**"Rebate schedule"** means a schedule of dates, deadlines, and submittals the Production is to achieve to submit the Final Application and have its Rebate Claim approved.

**"Salaries"** or **"Wages"** means those salaries and wages designated as Oklahoma earnings on payroll records along with the associated Payroll Burden, Per Diem and Housing Allowance.

**"Scouting expenses"** means costs incurred to identify locations, Crew, facilities, services and equipment to be used in the Production.

**"Series season"** means a group of episodes of the same Eligible Television Series which are either released simultaneously or at regular intervals to be aired within a certain time frame through traditional television content providers or through a streaming service.

**"Start of pre-production"** means the opening of an Oklahoma office for the Production, or incurring QPE other than Scouting Expenses, or otherwise commencing business on the Production in Oklahoma other than scouting.

**"Television series"** means a group of two or more episodes of a production with a common series title and general theme intended to be released for viewing through a traditional television content provider or through a streaming service.

### **150:150-1-3. Program criteria and qualification**

(a) **Applying for rebate eligibility:**

(1) Applications and all necessary forms may be submitted to OFMO through the OFMO website or as otherwise specified by OFMO.

(2) Unless otherwise authorized by OFMO, Eligibility Applications submitted for projects filmed inside the State pursuant to 68 O.S. §3635 may be submitted no earlier than one (1) year prior to the start of Principal Photography but no later than forty-five (45) days prior to the start of Principal Photography. The exact specifications of the Eligibility Application are shown on the OFMO website, and include but are not limited to:

(A) General information about the Production;

(B) Contact information;

(C) Preliminary production milestone dates;

(D) A copy of the screenplay (or treatment if appropriate);

(E) The Production Budget top sheet and estimated headcount;

(F) Various acknowledgements of program and OFMO criteria and agreements to abide by them;

(3) Unless otherwise authorized by OFMO, Eligibility Applications for post-production activity on a Project

filed outside of this state pursuant to 68 O.S. §3636 may be submitted no earlier than one (1) year prior to the occurrence of the post-production activity occurring in Oklahoma but no later than fourteen (14) days prior to the occurrence of the post-production activity occurring in Oklahoma. The exact specifications of this Eligibility Application are shown on the OFMO website, and include but are not limited to:

(A) The post-production budget or budget top sheet including post-production services and

(B) Proof of funding for the post-production services.

(4) Applicants may track the status of their Eligibility Application on the OFMO website.

(5) Application does not guarantee acceptance. OFMO considers each Eligibility Application individually based upon many factors, including compliance with these Rules, the Act, the benefits of the project to Oklahoma (such as economic impact, jobs, tourism, branding, image and follow-on work), funds available, anticipated future Program needs, and other projects applying for a rebate.

(6) If the Eligibility Application is approved, the Production Company will be Conditionally Pre-Qualified and OFMO will work with the Production to establish a Rebate Schedule.

(7) Conditional Pre-Qualification does not guarantee ultimate approval of a Rebate Claim. The Rebate Claim is not deemed to be approved until after the Final Application is approved.

(8) If the Eligibility Application is denied, OFMO may provide the applicant with the reason(s) it was denied.

(9) Only one Eligibility Application per fiscal year per Production may be accepted.

(10) OFMO may provide the Oklahoma Tax Commission with quarterly reports containing information concerning the Conditional Pre-Qualification of Applications and approved Rebate Claims.

(b) Application Estimate. If the Eligibility Application is approved, the Application Estimate will be multiplied by the rebate percentage deemed appropriate by the Department. The resultant amount is the amount that may later be paid as the Rebate Claim (the "Potential Rebate Claim")

(c) If the Final Application and Rebate Claim are later approved:

(1) If the QPE are less than or equal to the application Estimate, the Rebate claim may be paid in full up to the Potential Rebate Claim amount. Any amount of the Potential Rebate Claim that has been Pre-Qualified but is less than the actual Rebate Claim may be deemed not Pre-Qualified and will not count toward the limitations set forth in 68 O.S. §3634.

(2) If the actual QPE are more than the Application Estimate, the amount that may be paid on the Rebate Claim is limited to the Potential Rebate Claim Amount. QPE that exceed the Potential Rebate Claim Amount are considered an additional claim and may, at OFMO's discretion, be approved for payment. If the additional claim is approved, the additional amount agreed to be paid counts toward the

Conditional Pre-Qualification limits set forth in 68 O.S. §3634 of the then current fiscal year.

(d) Rebate Schedule. For Projects filmed in this State pursuant to 68 O.S. §3635, unless otherwise agreed by OFMO in writing, after Conditional Pre-Qualification, OFMO and the Production Company will establish a schedule of dates based upon the following benchmarks:

(1) 45 calendar days prior to Principal Photography- submit Application Estimate and Proof of Funding for at least fifty percent (50%) of the Production budget unless otherwise agreed upon beforehand by OFMO.

(2) Prior to paying salaries or wages to a Production Company's employee in Oklahoma- submit a certificate of workers' compensation insurance with limits pursuant to Oklahoma Law.

(3) 30 calendar days prior to Principal Photography - submit the following:

(A) Proof of funding for the Production Budget;

(B) Updated filming schedule;

(C) Updated screenplay (or treatment if appropriate);

(D) Copy of the completion bond as described in "(e)" Below, if applicable;

(E) Additional documents as reasonably requested by OFMO.

(4) 10 calendar days prior to Principal Photography:

(A) Submit a certificate of general liability insurance with a minimum limit of \$1,000,000 in coverage (or a binder for such with a state date no later than the estimated Start of Pre-Production).

(B) Submit a certificate of automobile liability insurance with minimums of \$250,000/500,000/250,000 coverage (or a binder for such with a state date no later than the estimated Start of Pre-Production) or certification that no employee of the Production will drive an automobile as part of the Production.

(5) During Principal Photography - submit the following (preferably in advance, if practical):

(A) Updates to the filming schedule;

(B) Updates to the screenplay (or treatment if appropriate);

(C) Call Sheets.

(6) Within 90 calendar days of completion of the Production (or payment date of last QPE, if later):

(A) Upload through the OFMO website the list of Oklahoma Crew, Oklahoma Expatriates and Oklahoma Vendors used on the Production;

(B) Submit the Final Application.

(e) Completion Bond. Unless a Production is backed by a major studio or other financing source acceptable to OFMO, the Production will post a Completion Bond from a guarantor acceptable to OFMO guaranteeing completion of the Production and payment of all Oklahoma liabilities. In lieu of a Completion Bond, a Production may produce evidence acceptable to OFMO that all Crew, vendors and taxes have been paid and there are no outstanding or potential liens in Oklahoma against the Production Company.

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(f) End of Production credits:

(1) The end credit crawl of all release prints of a Film filmed in Oklahoma will include "filmed in Oklahoma using the Filmed in Oklahoma Act" and a logo provided by OFMO.

(2) The end credit crawl for all release prints of a Film for Projects filmed outside of this state pursuant to 68 O.S. §3636 will include "postproduction activity for the film was conducted in Oklahoma using the Filmed in Oklahoma Act" and a logo provided by OFMO.

(3) If the production does not contain end credits, the production company will provide equivalent value as determined by OFMO prior to payment of the Rebate Claim. If the production does not intend to use end credits, this should be disclosed to OFMO prior to Conditional Pre-Qualification of the project.

(g) Certified Public Accountant's Report: Final Applications for both Projects filmed in this state and for Projects filmed outside of this state pursuant to 68 O.S. §3636 will be accompanied by a CPA's Report, prepared at the expense of the Applicant, attesting that the amounts in the Final Application are OPE that comply with these rules.

(1) Reports will be prepared by a CPA currently licensed by the State of Oklahoma and who is independent under the American Institute of certified Public Accountants' (AICPA) Independence Rule.

(2) CPAs will carry professional liability insurance, in a form and from a carrier acceptable to OFMO, for at least \$500,000.

(3) The CPA's examination will be conducted according to the AICPA's Attestation Standards.

(4) Reports will use a materiality threshold set by OFMO and published on its website.

(5) CPAs will work with the Production Company to resolve exceptions or discrepancies prior to submitting the Final Application, such that the CPA's Report attests to the validity and accuracy of the amounts on the Application without exception.

(6) The CPA's Report will attest:

(A) Actual Production expenditures were at least \$50,000 and OPE at least \$25,000.

(B) All amounts on the Application are properly calculated and materially accurate.

(C) All Oklahoma payroll tax returns due from the Production Company (or its payroll processor) have been filed.

(D) All Oklahoma income tax returns for the Production Company due as of the review date have been filed.

(7) The CPA will retain all workpapers for the CPA's Report for seven years, during which they may be subject to audit by OFMO or its agents, upon a request by OFMO.

(h) Final Application:

(1) Upon completion of the Production and mandates herein, the Production Company may submit a Final Application.

(2) Submitting a Final Application does not guarantee approval. OFMO may approve or disapprove of all claims

within 60 calendar days of receipt of a properly completed Final Application.

(3) If a Final Application or Rebate Claim is denied, the Production Company may attempt to correct any discrepancies or problems and resubmit within thirty (30) days of denial.

(4) Once a Final Application is approved by OFMO,

(A) Amendments are not allowed;

(B) The Production Company will work with OFMO to establish a vendor ID with the State.

(5) The Oklahoma Tax Commission will, upon notification of approval from the OFMO, issue payment for all approved Rebate Claims, subject to any statutory limitations and any other written agreements between the Production Company and the Department.

(i) Delays, Transferability and Expiration:

(1) A Conditionally Pre-Qualified Production may delay the start of Principal Photography two times for a total delay of up to ninety (90) days from the date when principal photography was originally scheduled to begin, unless other extensions are granted in writing by OFMO for good cause. If the start is delayed a third time, or a Production does not start by the date specified in their latest update to the Production Schedule submitted to OFMO, Pre-Qualification is revoked, the Eligibility Application is denied and the Production cannot apply again until the following fiscal year.

(2) Conditional Pre-Qualification is specific to the Production and Production Company and is non-transferable. Productions, screenplays and budgets may evolve as long as they are substantially similar to those submitted in the Eligibility Application.

(3) Unless otherwise approved by OFMO in writing, Conditional Pre-Qualification expires:

(A) If the letter offering Conditional Pre-Qualification is not signed and returned to OFMO within seven (7) business days of receiving it; or

(B) Two (2) years from the start of Principal Photography.

(4) If Conditional Pre-Qualification expires or is revoked, the Potential Rebate Claim amount from the revoked or expired Conditional Pre-Qualification does not count toward the Conditional Pre-Qualification cap set forth in 68 O.S. §3634.

### **150:150-1-4. Multi-film deals**

(a) As part of the Eligibility Application, an applicant will provide information as requested by OFMO indicating whether the Film being produced is intended to be part of a "Multi-Film" Deal.

(b) If an applicant indicates that a film is part of a Multi-Film Deal, and provides the requested documentation, the Department may Conditionally Pre-Qualify the Multi-Film Deal Rebate Enhancement amount in a manner consistent with these rules. The Multi-Film Deal Rebate Enhancement amount Conditionally Pre-Approved for each Film in a Multi-Film Deal may only be approved for payment after approval of the Final Application of the third film in the Multi-Film Deal.



- (c) After approval of the Final Application of the third film in a Multi-Film deal, and for each subsequent film that is part of the Multi-Film deal, the Department may formally approve the Rebate Enhancement applicable for the Multi-Film Deal and notify the Commission so the Conditionally Pre-qualified Rebate Enhancement for the Multi-Film deal may be paid.
- (d) Episodes filmed as part of a single Series Season do not qualify for the Multi-Film Deal incentive enhancement.
- (e) A television Episodic Pilot which is part of a Multi-Film Deal for purposes of the incentive enhancement cannot receive an Incentive Enhancement for a television Episodic Pilot as otherwise provided in the act.

**150:150-1-5. Apprentices**

- (a) OFMO may maintain a list of trades or departments deemed necessary for a film production where an Apprentice may be utilized to qualify for the rebate pursuant to the Act and list these trades on the OFMO website.
- (b) A person is considered an Apprentice as defined by the act, if he or she meets all of the following criteria:
  - (1) The Apprentice is an Oklahoma resident;
  - (2) The Apprentice is supervised by an experienced Master Tradesperson in the trade, craft or profession being practiced by the Apprentice in the production;
  - (3) The Apprentice works in a trade recognized by OFMO as necessary for a film production;
  - (4) Unless otherwise approved by OFMO in writing, the Apprentice works under the supervision of the Master Tradesperson at least one-half (1/2) of the days the Master Tradesperson under which the Apprentice is learning is actively engaged in the film.
  - (5) The Apprentice is paid, at minimum, federal minimum wage for all hours worked during their apprenticeship;
  - (6) The Apprentice completes a questionnaire or survey provided by OFMO to be returned to OFMO with the Final Application.

**150:150-1-6. State Certified Industry Standard Soundstage Facility**

- (a) A facility may be considered a State Certified Industry Standard Soundstage Facility (State Certified Soundstage Facility), if a building, or complex of buildings, building improvements and associated back-lot facilities on a property meets all of the following criteria:
  - (1) Multiple Productions are, or are intended to be, regularly produced at the facility throughout the year;
  - (2) The primary revenue source for such a facility is from industry Productions and ancillary services to such Productions;
  - (3) The facility is marketed and made available to third party productions planning to rent such facility and the facility is able to be listed on the OFMO website for such rental;
  - (4) The facility provides additional industry specific on-site services and amenities for third party Productions;

- (5) The facility contains at least 7,500 sq feet of combined and dedicated studio space which:
  - (A) Features acoustically treated walls.
  - (B) Achieves a noise criterion rating of 30 or better
  - (C) Has a height of at least 15 feet and;
  - (D) Is equipped with sufficient heating and air conditioning for filming without the need for supplemental units (but supplemental units may be used)
  - (E) Otherwise meets the criteria for a qualified soundstage facility as defined in the Act.
- (b) OFMO may compile and maintain a list of State Certified Soundstage Facilities located within the State of Oklahoma and may make this list available either through request or by publishing a regularly updated list on the OFMO website.
- (c) A soundstage facility may apply to OFMO and request to be listed as a State Certified Soundstage Facility by contacting OFMO and making application to the Department in a manner and on an application provided by OFMO.

**150:150-1-7. Incentive amounts**

- (a) The base incentive amount and all Rebate Enhancement percentages set forth in 68 O.S. §3635 and §3636 are the maximum possible incentive percentage amounts payable under each specific circumstance. The decision as to whether to offer an incentive, and how much of an incentive may be offered is made at the discretion of OFMO.
- (b) The actual rebate percentage approved for a project, if any, is determined by the Department in a way that achieves the maximum positive impact for the Oklahoma economy.
- (c) In determining the rebate percentage amount to be approved, if any, pursuant to either 68 O.S. §3635 or §3636, the Department may consider the following:
  - (1) Benefits of the project to the State (including economic impact, industry infrastructure impact, jobs, tourism, branding, image and follow-on work);
  - (2) The amount of rebate payments conditionally pre-qualified by the Department for the current fiscal year;
  - (3) Impact on the ability of the Department to commit funds to additional projects for the current fiscal year;
  - (4) The amount of incentive believed to be necessary to win the project.
- (d) The incentive percentage to be approved for a project may be determined at the time of Conditional Pre-Qualification of the application with the following limitations:
  - (1) If a project fails to meet the criteria for a particular Rebate Enhancement for which the project was initially pre-qualified to receive, the percentage of that specific incentive enhancement is removed from the total percentage of the incentive offer.
  - (2) If a project underperforms with regards to any of the Rebate Enhancement categories from what they projected in the initial application, the additional incentive amount offered for that category may be reduced.
  - (3) If a project uses fewer apprentices than the amount claimed at the time of Conditional Pre-Qualification, the base incentive amount may be reduced.
  - (4) If the Rebate Claim amount is fifteen or more percent (15%+) lower than the amount for which the Film was

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pre-qualified, one percent (1%) of the Rebate amount for which the Film would otherwise be paid may be reduced due to the reduced economic benefit to the State.

(e) OFMO may utilize a scoring system to provide guidelines as to the amount of incentive offered for a project, if any. OFMO may also rank projects to determine which projects should receive priority in receiving an incentive offer. Any list created by OFMO ranking projects is not subject to the Open Records Act.

(f) OFMO may prioritize projects on a project ranking list which meet the following criteria:

- (1) Projects which are the second or subsequent film in a Multi-Film Deal;
- (2) Projects which are part of a television series filmed in Oklahoma where either the series Television Pilot or a previous Series Season was filmed in Oklahoma
- (3) Post-production activity occurring in Oklahoma on a television series filmed outside of Oklahoma where post-production activity on either the series Television Pilot or a previous Series Season had occurred in Oklahoma.

### **150:150-1-8. Qualified production expenditures**

(a) A Qualified Production Expenditure, or production cost, includes Oklahoma expenditures or production costs as defined in 68 O.S. §3632 including as the following expenditures, whether paid directly or through an Oklahoma based entity, subject to statutory limitations:

- (1) Salary Costs for Oklahoma Resident Crew;
- (2) Salary Costs for Oklahoma Expatriate Crew;
- (3) Payments to the owner(s) of an Oklahoma Loan-Out Company for Oklahoma Resident Crew;
- (4) Payments to the owner(s) of an Oklahoma Loan-Out Company or salary payments for Crew that is not Oklahoma-Based or who are non-residents, other than above-the-line personnel, subject to the sunset limitations in 68 O.S. §3635(A);
- (5) Subject to the twenty-five percent limitation, the sum of:
  - (A) payments to Oklahoma-Based above the line personnel
  - (B) payments to Oklahoma Loan-Out Companies for Above-the-line personnel; and
  - (C) payments to an Oklahoma-Based entity for using the Film's underlying creative work (e.g., screenplay, treatment, or novel).
- (6) Permits and fees paid to an Oklahoma state, county, or municipal governmental or quasi-governmental entity;
- (7) Payments to an Oklahoma Vendor for the following:
  - (A) Studio, stage or set construction and dismantling;
  - (B) Production scheduling, management, administration and operations;
  - (C) Casting and security services;
  - (D) Wardrobe and make-up materials, consumables and services;
  - (E) Set props and accessories (individual props costing in excess of fifty thousand dollars (\$50,000)

may only be included as a QPE if prior approval is granted by the OFMO);

(F) Cameras, film, microphones, tape, digital storage media and other materials and equipment used to record sound and images;

(G) Photography, visual image editing, animation, Computer graphics and effects, and related visual services;

(H) Sound (other than music) recording, editing, synchronization and related services;

(I) Licensing or use rights for music, or recording of songs or musical score, used in the Film including, with the approval of OFMO, licensing fees paid to an out of state entity for the use of music made by a musician that is an Oklahoma Resident);

(J) Lighting and electrical materials, equipment and services;

(K) Location, building, facility, equipment, prop and wardrobe rental;

(L) Stunts, special effects, pyrotechnics, firefighting, safety, handling/wrangling, security and other specialty services;

(M) Lodging and accommodations (whether paid for directly by the Production Company, paid through a third party who is paid by the production company, or provided as an allowance in the amount of actual costs of housing) for ATL and Crew;

(N) Food, restaurants and catering (whether paid for directly by the Production company or paid through a third party who is paid by the Production Company);

(O) Transportation of ATL, Crew, equipment and supplies (whether paid for directly by the Production company or paid through a third party who is paid by the Production Company);

(P) Travel costs to and from Oklahoma paid to or through an Oklahoma travel agent;

(Q) Completion bonds and insurance where either the guarantor or the is an Oklahoma Vendor);

(R) Shipping and postage for packages originating or terminating within Oklahoma;

(S) Fees, interest and financing charges paid to Oklahoma-Based Vendors and Oklahoma Based financial institutions and companies;

(T) Other materials, supplies and contracted services approved in advance by OFMO;

(U) CPA Report.

(8) Payments to an Oklahoma Vendor for the following valid Scouting Expenses of the Production:

(A) Location scouting, planning and packaging services;

(B) Travel costs to and from Oklahoma paid to a travel agent;

(C) Lodging and accommodations within Oklahoma;

(D) Transportation within Oklahoma;

(E) Meals purchased within Oklahoma.

(9) Reimbursements made to individuals for goods and Services provided by an Oklahoma Vendor that would have been QPE if paid directly by the Production, provided the individual provides a receipt for such goods and services.

(10) Reimbursements made for automobile mileage and toll fees paid to crew for travel beginning from a location in Oklahoma and ending at another location in Oklahoma as long as:

(A) mileage payments are limited to the current Internal Revenue Service (IRS) standard mileage rates and

(B) the payment of mileage is compliant with IRS rules for claiming mileage.

(11) Box rental fees paid to an Oklahoma resident crew member or an Oklahoma Expatriate crew member for the crew member using his or her own equipment or resources on a Film.

**150:150-1-9. Oklahoma expatriate crew program**

(a) OFMO may maintain a roster of Oklahoma Expatriate Crew and make such roster available to a Production Company upon request.

(b) The Expatriate roster may consist of Oklahoma Expatriates who are:

(1) Registered as an Oklahoma Expatriate with OFMO and;

(2) Have completed a Declaration of Expatriate Status satisfactory to OFMO.

*[OAR Docket #22-692; filed 7-29-22]*

**TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE  
CHAPTER 155. OKLAHOMA SUPPLIER DIVERSITY INITIATIVE**

*[OAR Docket #22-693]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 150:155-1-1. Purpose and authority [NEW]
- 150:155-1-2. Definitions [NEW]
- 150:155-1-3. Eligible entities [NEW]
- 150:155-1-4. Applications; contents [NEW]
- 150:155-1-5. Length of certification; renewal and revocation [NEW]
- 150:155-1-6. Administrative hearings [NEW]
- 150:155-1-7. Additional information; onsite inspections [NEW]
- 150:155-1-8. List of certified entities [NEW]

**AUTHORITY:**

The Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; 74 O.S. §85.45j.11.

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

December 9, 2021

**COMMENT PERIOD:**

January 18, 2022, through February 17, 2022

**PUBLIC HEARING:**

February 18, 2022, at 10:00 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

**ADOPTION:**

February 18, 2022

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

February 23, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- 150:155-1-1. Purpose and authority [NEW]
- 150:155-1-2. Definitions [NEW]
- 150:155-1-3. Eligible entities [NEW]
- 150:155-1-4. Applications; contents [NEW]
- 150:155-1-5. Length of certification; renewal and revocation [NEW]
- 150:155-1-6. Administrative hearings [NEW]
- 150:155-1-7. Additional information; on-site inspections [NEW]
- 150:155-1-8. List of certified entities [NEW]

**Gubernatorial approval:**

November 30, 2021

**Register publication:**

39 Ok Reg 269

**Docket number:**

21-857

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

This action is to implement the Oklahoma Supplier Diversity Initiative as enacted in the 2021 legislative session. This clarifies terms used in the act and provides the process for application and approval of participation under the Act

**CONTACT PERSON:**

Thomas Grossnicklaus, Chief of Staff - General Counsel, 405-815-5153 or Thomas.grossnicklaus@okcommerce.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**150:155-1-1. Purpose and authority**

(a) These rules implement the Oklahoma Supplier Diversity Initiative as set forth in Section 85.45j.11 of Title 74 of the Oklahoma Statutes.

(b) The Oklahoma Department of Commerce has the authority to qualify and certify diverse business enterprises for the State.

**150:155-1-2. Definitions**

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

"African American" means a US Citizen or lawful resident who has origins in any of the African racial groups of Africa.

"Asian American" means a US Citizen or lawful resident whose heritage is from Asia or the Indian subcontinent including, but not limited to Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, The U.S. Trust Territories of the Pacific Islands, The Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru,

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Federated States of Micronesia, Hong Kong, India, Pakistan or Bangladesh.

**"Controlled"** means having a sufficient amount of voting shares of a company to make all business decisions.

**"Department"** means the Oklahoma Department of Commerce

**"Hispanic American"** means a US Citizen or lawful resident of Spanish Heritage from any of the following countries or regions: Mexico, Puerto Rico, Cuba, Central or South America.

**"Military veteran"** means a US Citizen or lawful resident who has either served in the active military, naval or air service and who has been discharged in a manner other than dishonorably or a US Citizen or lawful resident who served in the National Guard and has been deployed on federal active-duty orders for at least 180 days and who has been discharged in a manner other than dishonorably.

**"Native American"** means a US Citizen or lawful resident who has a blood degree from and is recognized as an enrolled citizen of a federally recognized tribe and/or who has a Certificate of Degree of Indian Blood (CDIB) issued by the United States Bureau of Indian Affairs.

**"Oklahoma owned"** means that at least fifty one percent (51%) of the ownership group maintains a primary residence in the State of Oklahoma and have filed personal state income tax returns for the previous two years.

**"Racial minority"** means a citizen of the United States or other lawful resident who is African American, Hispanic American, or Asian American.

## **150:155-1-3. Eligible entities**

To be certified by the Department as a Diverse Business Enterprise, a business will meet all of the following criteria:

- (1) Have less than Five Hundred (500) total employees.
- (2) Have an annual revenue equal to or less than Twenty-Five Million Dollars (\$25,000,000).
- (3) Be Oklahoma Owned and Operated.
- (4) Be registered to do business with the Oklahoma Secretary of State, if applicable.
- (5) Not be a publicly traded company.
- (6) Meet one or more of the following criteria:

(A) Certified by the United States Small Business Administration as one or more of the following types of entities:

- (i) Woman-Owned Small Business
- (ii) Minority-Business Enterprise
- (iii) Small Disadvantaged Business
- (iv) Service-disabled Veteran-Owned Small Business
- (v) HUBZone Small Business Concern
- (vi) 8(a) Business Development Program member.

(B) Fifty-one percent (51%) or more owned and controlled by a member of one of the following diverse groups:

- (i) Native Americans.
- (ii) United States Military Veterans.
- (iii) Women.

(iv) Racial Minorities.

(C) An Oklahoma Department of Transportation Disadvantaged Business Enterprise.

## **150:155-1-4. Applications; contents**

(a) Any business seeking certification as a Diverse Business Enterprise may submit an application to the Department on forms or otherwise in a format furnished by the Department.

(b) The application may request the following information:

(1) A complete business history of the enterprise. This may include, as applicable, copies of organizational documents such as the minutes of the first organizational meeting, partnership agreements, articles of incorporation, stock certificates and corporate bylaws or business statement of sole proprietor.

(2) A listing of all principals and the percentages of ownerships and resumes of all principals, key managers and key personnel.

(3) Current financial statements of the business, latest business income tax returns, proof of investment by principals, bank resolution on all company accounts, loan agreements, lease/rental agreements and other information as may be necessary to verify control or ownership.

(4) Any additional information reasonably necessary for the Department to determine whether the business qualifies for certification under the rules of this chapter.

(c) As part of the application, the Department may demand that an applicant provide photocopies of any documentation the Department deems reasonable to determine if a business is an Eligible Entity.

(d) Incomplete or improperly completed applications may be returned to the applicant without further consideration.

(e) Within a reasonable time of having received a qualifying application and all supporting documents, the Department may notify a qualifying company that they are certified as a Diverse Business Enterprise and informing them of the length of their certification.

## **150:155-1-5. Length of certification; renewal and revocation**

(a) The Department will certify a business which meets the eligibility criteria of this chapter as a Diverse Business Enterprise. This certification will remain in place for up to five (5) years unless any one or more of the following conditions occur:

(1) There is a change in ownership or daily management to persons other than those upon whom certification was based.

(2) The business has a change in yearly revenues or number of employees that exceeds the size limitations for Eligible Entities.

(3) The business ceases to exist as an independent operation.

(4) There is a change which, had it occurred before certification, would have prevented the business from being certified by the Department.

(b) If an event occurs that cause a business to no longer meet the criteria of an Eligible Entity, they are to notify the Department in writing of the change and relinquish their certification within thirty (30) days of the event. The business may reapply for certification at any time, should they once again become an Eligible Entity.

(c) Renewal of Certification

(1) Prior to expiration of the certification, if an entity has experienced no change in ownership and otherwise meets all criteria of an Eligible Entity, the Eligible Entity may submit an affidavit confirming that no changes affecting ownership or the Eligible Entity's ability to meet the program's qualifications have occurred.

(2) If an Eligible Entity has experienced a change in ownership, but still meets the criteria of an Eligible Entity, the Entity may submit a renewal application to the Department along with any documentation requested by the Department if they seek to remain in the program.

(3) If the affidavit or renewal application is approved, the certification of the business may be extended for up to five years from the date the certification was set to expire.

(4) The affidavit form and/or renewal application to be submitted to the Department will be made available to businesses by the Department upon request or otherwise through the Department website.

(d) Expiration of Certification

(1) If the Department has not received an affidavit or renewal application from the business affirming that the business still meets the criteria of an Eligible Entity along with all requested documentation prior to expiration of their current certification, the business will no longer be certified as a Diverse Business Enterprise.

(2) If the affidavit or renewal application is received from the business by the Department prior to expiration of the certification, the Department may grant an extension to the business to provide documentation establishing that the business is still an Eligible Entity.

(3) The Department will notify the Office of Management and Enterprise Services (OMES) of any business whose certification has expired.

(e) Revocation of Certification

(1) A business may have its certification revoked if the business does not meet the criteria of an Eligible Entity as set forth in these rules or by statute.

(2) The Department will send a letter to the business at the address on the Business's application notifying the business that they are having their certification revoked at least thirty (30) days before the revocation is effective.

(3) A business may object to revocation of their certification by mailing a written objection to the Department via certified mail at least ten (10) days prior to the effective date of the revocation. If this letter is not received by the Department prior to the date of revocation, the certification will be revoked.

(4) The Department will notify OMES of any business whose certification is revoked.

(f) A business that has its certification revoked or whose certification expires may reapply for certification whenever that

business becomes eligible for certification as an Eligible Entity.

**150:155-1-6. Administrative hearings**

(a) Any applicant who believes that it has been wrongfully denied certification by the Department may request an administrative hearing pursuant to the provisions regarding Individual Proceedings found in 150:1-11-1 et. seq. of the Department's General Rules of Practice and Procedures.

(b) Any business that loses certification through revocation who timely mails or delivers a notice of objection to the Department as set forth within these rules will be presented an opportunity for hearing pursuant to 150:1-15-1 et. seq. of the Department's General Rules of Practice and Procedures.

**150:155-1-7. Additional information; on-site inspections**

(a) The Department may request additional information from program applicants or participants as deemed reasonably necessary by the Department at any time. Failure to provide such information may be grounds for denial of certification or revocation of certification.

(b) The Department may conduct on-site evaluations as deemed necessary by the Department.

**150:155-1-8. List of certified entities**

The Department will compile a list of all entities certified through the Diversity Initiative and will provide this list to the Central Purchasing Division of the Office of Management and Enterprise Services, or any successor entity, within a reasonable time.

*[OAR Docket #22-693; filed 7-29-22]*

**TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE  
CHAPTER 160. INVEST IN OKLAHOMA ACT**

*[OAR Docket #22-694]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 150:160-1-1. Purpose and authority [NEW]
- 150:160-1-2. Definitions [NEW]
- 150:160-1-3. Qualifying firms [NEW]
- 150:160-1-4. Application, renewal and removal from program [NEW]
- 150:160-1-5. Participating public entities [NEW]
- 150:160-1-6. Sharing of information [NEW]
- 150:160-1-7. Requests for additional information [NEW]

**AUTHORITY:**

Oklahoma Department of Commerce; 62 O.S. §2402

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

January 21, 2022

**COMMENT PERIOD:**

February 15, 2022, through March 17, 2022

# Permanent Final Adoptions

## **PUBLIC HEARING:**

March 18, 2022, at 9:30 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

## **ADOPTION:**

March 21, 2022

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

March 21, 2022

## **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 11, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

### **Superseded rules:**

- 150:155-1-1. Purpose and authority [NEW]
- 150:155-1-2. Definitions [NEW]
- 150:155-1-3. Qualifying firms [NEW]
- 150:155-1-4. Applications, renewal, and removal from program [NEW]
- 150:155-1-5. Participating public entities [NEW]
- 150:155-1-6. Sharing of information [NEW]
- 150:155-1-7. Requests for additional information [NEW]

### **Gubernatorial approval:**

December 15, 2021

### **Register publication:**

39 Ok Reg 343

### **Docket number:**

21-919

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

The purpose of this rule is to implement the Invest in Oklahoma Act at the Oklahoma Department of Commerce. 62 O.S. §2402

### **CONTACT PERSON:**

Thomas Grossnicklaus, Chief of Staff - General Counsel, 405-815-5153 or Thomas.grossnicklaus@okcommerce.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **150:160-1-1. Purpose and authority**

These rules implement the Invest in Oklahoma Act as set forth in Section 2400 et. seq. of Title 62 of the Oklahoma Statutes.

### **150:160-1-2. Definitions**

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

"Department" means the Oklahoma Department of Commerce.

"Firm" means the legal entity charged with management of the private equity fund, venture capital fund, or growth fund.

"Fund" means a private equity fund, venture capital fund or growth fund.

"Oklahoma based" means that the Fund or other business entity maintains their principal physical place of business in the State of Oklahoma.

"Principal" means any person employed by the Fund responsible for making decisions about investments for the Firm, regardless of their job title.

"Principal place of business" means the place where a company's officers direct, control and coordinate the business's activities.

"Program" means the Invest in Oklahoma Program.

"Public entity" means a public entity listed in section 2402 of Title 62 of the Oklahoma Statutes.

"Substantial investments in this state" means that the Fund has invested at least One Million Dollars (\$1,000,000) in Oklahoma based businesses over the three (3) years prior to application and is committed to invest at least ten percent (10%) of any funds received by one of the Public Entities in an Oklahoma Based business.

"Venture capital fund" means as defined in paragraph (a) of section 275.203(I) of Title 17 of the Code of Federal Regulations.

### **150:160-1-3. Qualifying firms**

(a) To qualify to participate in the Program, a Firm must meet all of the following criteria at the time the application is received by the Department:

(1) An internal rate of return, including realized and unrealized gains, for the Firm's portfolio over the last since inception which is the greater of either:

(A) One-third (1/3) of the annual rate of return for venture capital firms as reported by Pitchbook Data, Inc., or

(B) Five percent (5%).

(2) The Firm managing the Fund will have been active for at least one full year prior to application.

(3) The Firm managing the Fund will have at least Five Million Dollars (\$5,000,000.00) in assets under management over the most recent year prior to application.

(4) Principals or Limited Partners associated with the Firm cannot have ever been convicted of or received a deferred sentence for the following:

(A) Any felony offense.

(B) Any misdemeanor offense involving a financial related crime.

(5) The Firm will commit to investing at least ten percent (10%) of any investment they receive from a Public Entity in Oklahoma Based businesses.

(6) A Firm participating in the program may charge no more than 2.5% of its capital as a management fee and may collect no more than 30% of carried interest.

(7) Principals affiliated with the Firm will have a minimum of five (5) years of experience in one of the following areas:

(A) Institutional Investment,

(B) Executive level management, or

(C) Investment Banking.

(8) Be in good standing with all applicable regulatory agencies and taxing entities.

(b) In addition to the criteria set forth above, a Firm which is not Oklahoma Based may only participate if the Firm has made Substantial Investments in this State.

(c) Approval of a Firm for participation in the program may only occur if the Firm meets the qualifications in this subsection, and if the Department believes in its discretion that the Funds appear to be appropriately managed and invested.

**150:160-1-4. Application, renewal, and removal from program**

(a) A Firm who wishes to participate in the Program will apply to the Department for participation using a form created by the Department.

(b) The application will mandate that the Firm provide all of the following information:

(1) Documentation concerning the rate of return for the Firm's portfolio from at least the most recent full calendar year to the time of application.

(2) Documentation establishing the Firm's years of operation.

(3) Documentation establishing the amount of assets under management by the Firm from at least the most recent full calendar year to the time of application.

(4) Documentation concerning the differentiation and sustainability of investment strategy.

(5) Documentation establishing that a Firm who is Oklahoma-based meets the definition of an Oklahoma-based Firm.

(6) Documentation of the Firm's fee structure.

(7) Documentation establishing the experience of Principals associated with the Firm.

(8) Other documentation requested by the Department.

(c) Incomplete or improperly completed applications may be returned to the Firm without further consideration.

(d) Firms approved for participation in the Program may be approved for three (3) years.

(e) Renewal of program participation

(1) If a Firm which is participating in the Program seeks to continue in the Program after their approval period expires, the Firm will complete a renewal application and submit the same to the Department along with all documentation requested by the Department.

(2) The Department may provide a simplified renewal application for participation if it is deemed by the Department to be sufficient to determine the Fund meets program criteria.

(3) A Firm who applies for renewal must submit proof that it has invested at least ten percent (10%) of the amount received from a Public Entity in an Oklahoma Based business along with the renewal application. If a Firm cannot provide this information, it will not be renewed.

(3) If a Firm is approved for participation in the Program, the decision as to the length of its participation or renewal will be made in the sole discretion of the Department.

(4) If a Firm is not renewed for participation in the program, the Department will notify each Public Entity that the Firm has been removed from the program for failure to renew participation.

(f) Suspension and Removal of a Firm from the Program.

(1) The Department may suspend a Firm from participation in the Program at any time for any of the following reasons:

(A) If the Department reasonably believes the Firm is not being appropriately managed and invested.

(B) If an event occurs that, had it happened prior to the Firm's application, the Firm would have not been allowed to participate in the program.

(2) If the Department suspends a Firm from the Program, the Department will notify the Firm of the suspension within five (5) business days and will also notify each Public Entity that the Firm has been suspended from the Program.

(3) A Firm who is suspended from the Program may request an administrative hearing pursuant to the provisions regarding Individual Proceedings found in 150:1-11-1 et. seq. of the Department's General Rules of Practice and Procedures. If a hearing is held, each Public Entity will be notified of the result of the administrative hearing within a reasonable time.

(4) If the Firm does not prevail at the hearing, or if they do not timely request a hearing, they may be removed from participation in the Program and each Public Entity will be notified of the removal.

(5) Firms who are removed from the program may be disqualified from future participation by the Department either permanently or for a number of years if the Department believes that it is in the best interest of the State to do so.

**150:160-1-5. Participating public entities**

(a) Public Entities who are considering investing under the act should not rely, either solely or in part, on the fact that a Firm has been approved for participation in making investment decisions.

(b) Because the needs of each Public Entity may be different, each Public Entity should do their own due diligence before investing in a participating Firm.

(c) By allowing a Firm to participate, the Department does not make any representation as to the performance or viability of any Fund or Firm. Public entities who choose to participate do so at their own risk after performing their own due diligence and make decisions in accord with their fiduciary duties to their clients.

**150:160-1-6. Sharing of information**

The Department of Commerce will maintain a list of Firms who have been approved for participation in the Program. This list, along with a brief description of the Fund and contact information for the Firm may be shared with Public Entities upon request, and/or shared publicly on the website of the Department of Commerce.

**150:160-1-7. Requests for additional information**

The Department may request additional information from a Firm as deemed reasonably necessary by the Department at any time. Failure to provide such information within a time

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period set forth by the Department will be grounds for immediate suspension from the Program.

[OAR Docket #22-694; filed 7-29-22]

## TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 165. OKLAHOMA TOURISM DEVELOPMENT ACT TAX CREDIT PROGRAM

[OAR Docket #22-695]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

150:165-1-2. Definitions [AMENDED]

150:165-1-6. Application form [AMENDED]

### AUTHORITY:

The Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; 68 O.S. §3631 et. Seq.; 68 O.S. §2397.

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

January 21, 2022

### COMMENT PERIOD:

February 15, 2022, through March 17, 2022

### PUBLIC HEARING:

March 18, 2022, at 9:30 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

### ADOPTION:

March 21, 2022

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

March 21, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The purpose of this rule is to correct references in the Oklahoma Tourism Development Act Tax Credit Program Administrative Rules resultant from the transfer of the program from the Oklahoma Tourism and Recreation Department (OTRD) to the Oklahoma Department of Commerce (ODOC).

### CONTACT PERSON:

Thomas Grossnicklaus, Chief of Staff - General Counsel, 405-815-5153 or Thomas.grossnicklaus@okcommerce.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 150:165-1-2. Definitions

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

"Act" or "this act" means the Oklahoma Tourism Development Act found in 68 O.S. § 2391- §2397;

"Agreement" means an agreement entered into pursuant to Section 2396 of Title 68 of the Oklahoma Statutes, by and between the Director of the Oklahoma ~~Tourism and Recreation~~ Department of Commerce and an approved company, with respect to a tourism attraction project.

"Approved company" means any eligible company or companies seeking to undertake a tourism attraction project and is approved by the Director pursuant to the Act.

"Approved costs" means:

(A) obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in connection with the acquisition, construction, equipping and installation of a tourism attraction project,

(B) the costs of acquiring real property or rights in real property in connection with a tourism attraction project, and any costs incidental thereto,

(C) the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project which is not paid by the vendor, supplier, contractor, or otherwise provided,

(D) all costs of architectural and engineering services including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping and installation of a tourism attraction project,

(E) all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project,

(F) all costs required for the installation of utilities in connection with a tourism attraction project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including off-site construction of utility extensions paid for by the approved company, and

(G) all other costs comparable with those described in this paragraph.

"Director" means the Executive Director of the Oklahoma ~~Tourism and Recreation~~ Department of Commerce or the Director's designated representative.

"Eligible company" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project, whether owned or leased, within this state that meets the standards promulgated by the Director pursuant to this Act and, with respect to an Entertainment District, includes any such entity that will acquire, construct, develop, equip, install, expand or operate all or any portion of the Entertainment District, whether owned or leased.

"Entertainment District" means a mixed-use planned development project, with approved costs of one million dollars (\$1,000,000.00) or more in the aggregate, encompassing more than one hundred thousand (100,000) square feet and



including an entertainment or recreational component and at least three of the following categories, which may or may not be anticipated to be completed in multiple phases:

- (A) retail;
- (B) housing;
- (C) office;
- (D) restaurants;
- (E) hotel, regardless of whether the hotel is a destination hotel;
- (F) grocery;
- (G) brewery facilities for a small brewer (as defined in the Oklahoma Alcoholic Beverage Control Act, Section 1-103 of Title 37A of the Oklahoma Statutes); or
- (H) structured parking.

**"Entertainment District Tenant Party"** means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity operating within a tourism attraction project that is an Entertainment District pursuant to a lease or similar agreement with an approved company or otherwise.

**"Final approval"** means the action taken by the Director authorizing the eligible company to receive inducements under this Act.

**"Increased state sales tax liability"** means that portion of an approved company's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding the certification as an approved company or an Entertainment District Tenant Party, as applicable;

**"Inducements"** means the sales tax credit or incentive payment as prescribed in this Act.

**"Preliminary approval"** means the action taken by the Director conditioned upon final approval by the Director upon satisfaction by the eligible company of the requirements of the Act.

**"Tourism Attraction"** means a cultural or historical site; a recreational or entertainment facility; an area of natural phenomenon or scenic beauty; a theme park; an amusement or entertainment park; an indoor or outdoor play or music show; a botanical garden, or a cultural or educational center, a destination hotel whose location and amenities, including but not limited to upscale dining, recreation and entertainment, make the hotel itself a destination for tourists, or an Entertainment District. A tourism attraction shall not include:

- (A) lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved costs of the tourism attraction project, or the lodging facilities are a part of a destination hotel or an Entertainment District,
- (B) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction project, if the sale of goods is incidental to the tourism attraction project, or such facilities are a part of an Entertainment District.

(C) facilities that are not open to the general public, unless such facilities are a part of an Entertainment District wherein a substantial portion of the Entertainment District is open to the general public, as determined by the Executive Director,

(D) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project, unless such facilities are a part of an Entertainment District,

(E) facilities owned by the State of Oklahoma or a political subdivision of this state, or

(F) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under Section 200 et seq. of Title 3A of the Oklahoma Statutes shall be a tourism attraction for purposes of the Oklahoma Tourism Development Act for any approved project as meeting the definition of a Tourism Attraction or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling.

**"Tourism attraction project" or "project"** means the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction, and the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including, but not limited to: surveys, and installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities, and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which shall be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract tourists.

**150:165-1-6. Application Form**

(a) The Oklahoma ~~Tourism and Recreation~~ Department of Commerce shall make an application form in accordance with the Act and Administrative Rules contained in Subchapter 33.

(b) A copy of the form of application may be inspected, copied or obtained at the Oklahoma ~~Tourism and Recreation~~ Department Office of Commerce during regular business hours and ~~is may be made available at https://otr.travelok.com the Oklahoma Department of Commerce website.~~

[OAR Docket #22-695; filed 7-29-22]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 5. RULES OF PRACTICE**

[OAR Docket #22-666]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
Part 1. General

# Permanent Final Adoptions

165:5-1-3. Definitions [AMENDED]  
165:5-1-4. Office location; office hours; records [AMENDED]  
165:5-1-4.1. Open records requests [AMENDED]  
165:5-1-5. Filing of documents [AMENDED]  
Part 2. Electronic Filing of Documents  
165:5-1-13. Technical failures [AMENDED]  
165:5-1-14.1. Official ECF service list and certificate of service [AMENDED]  
Subchapter 3. Fees  
Part 1. General Provisions  
165:5-3-1. Fees, fines and bonds [AMENDED]  
165:5-3-2. Fees for the Petroleum Storage Tank Division [REVOKED]  
Part 6. Electric Vehicle Charging Station Fee [NEW]  
165:5-3-50. Purpose [NEW]  
165:5-3-51. Electric vehicle charging station fee [NEW]  
165:5-3-52. Failure to comply [NEW]  
Subchapter 5. Dockets  
165:5-5-1. Dockets; identifying initials [AMENDED]  
Subchapter 7. Commencement of a Case  
Part 1. General  
165:5-7-1. General application and notice requirements [AMENDED]  
Part 3. Oil and Gas  
165:5-7-9. Well location exception [AMENDED]  
165:5-7-11. Change of operator [AMENDED]  
165:5-7-12. Applications; determinations of allowables [AMENDED]  
165:5-7-20. Unitized management of a common source of supply [AMENDED]  
165:5-7-21. Unitized management of a common source of supply; brine and associated gas [AMENDED]  
165:5-7-33. Extension of time for closure of a noncommercial pit [AMENDED]  
165:5-7-34. Waiver of pit closure requirements [AMENDED]  
165:5-7-35. Operation of commercial pit, commercial soil farming site and/or commercial recycling facility [AMENDED]  
165:5-7-39. Staff applications for state funds to conduct remedial action [AMENDED]  
Subchapter 9. Subsequent Pleadings  
165:5-9-2. Subsequent pleadings [AMENDED]  
165:5-9-6. Continuances [AMENDED]  
Subchapter 13. Initial and Subsequent Proceedings  
165:5-13-1. Sessions and hearings [AMENDED]  
165:5-13-2. Setting of ~~causes~~ cases [AMENDED]  
Subchapter 15. Orders  
165:5-15-1. General form and procedure [AMENDED]  
Subchapter 19. Contempt  
165:5-19-1. Contempt procedure [AMENDED]  
Subchapter 21. Procedure for the Petroleum Storage Tank Docket  
165:5-21-3. Application and notice requirements for Petroleum Storage Tank cases [AMENDED]  
Subchapter 23. Informal Resolution of Natural Gas Gathering Disputes  
165:5-23-3. Form and service of a Notice of Intent to Mediate; reply by Respondent [AMENDED]  
Subchapter 25. Motor Carrier Tax and Registration Protests  
165:5-25-2. Filing confidential applications for hearing [AMENDED]

## AUTHORITY:

Corporation Commission; Article IX, Sections 18 and 19 of the Oklahoma Constitution, 17 O.S. §§ 1-3, 17 O.S. § 39.2, 17 O.S. § 52, 17 O.S. § 139.106(A), 17 O.S. §§ 166.1 and 166.1a, 17 O.S. § 306, 17 O.S. §§ 500 *et seq.*, 27A O.S. § 1-3-101, 52 O.S. §§ 87.1 *et seq.*, 52 O.S. § 139, 52 O.S. § 140, 52 O.S. §§ 287.1 *et seq.*, 52 O.S. §§ 309 *et seq.*, 62 O.S. § 34.57, 68 O.S. § 6509, and 75 O.S. § 314.

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

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on February 8, 2022.

## COMMENT PERIOD:

February 8, 2022 through March 22, 2022

## PUBLIC HEARING:

March 22, 2022

## ADOPTION:

March 22, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

October 1, 2022

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## GIST/ANALYSIS:

The adopted rules add and clarify requirements and rules relating to the Commission's Electronic Case Filing (ECF) System. Additionally, the adopted rules amend and add definitions, clean up language throughout to accurately reflect current terms and processes, reorganize sections of the rules, clarify docket types, clarify notice requirements, and give priority status to hearings on the OSF (Oklahoma Universal Services Fund) docket. Additionally, the adopted rules require the submission of an "as drilled" plat constructed from the results of the directional survey in connection with proposed location exception orders regarding directionally drilled or horizontal wells, clarify procedures for obtaining changes of operator designation regarding pooling, location exception, and increased density orders, require submission of secondary recovery unit certificates of dissolution to the Managers of the Commission's Technical Services and Underground Injection Control Departments, require submission of brine and associated solution gas unit certificates of dissolution to the managers of the Commission's Technical Services and Underground Injection Control Departments, and eliminate forms regarding the use of state funds to conduct remedial action, and to clarify procedures concerning requests for the use and authorization of such state funds. Finally, the proposed rules increase or remove fees, and assess a new fee of \$20.00 per applicable electric vehicle supply equipment (EVSE) port.

## CONTACT PERSON:

Jeff W. Kline, Deputy General Counsel and Agency Rules Liaison, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, P.O. Box 52000, Oklahoma City, OK 73105, (405) 521-2308, Jeff.Kline@occ.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### PART 1. GENERAL

#### 165:5-1-3. Definitions

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

"**Administrative Law Judge**" means an Oil and Gas Appellate Referee, Referee, Administrative Law Judge, Hearing Officer, an officer, attorney, or any other employee of the Commission to whom the Commissioners delegate by order or otherwise, the authority to conduct a hearing.

"**Applicant**" means any person commencing a proceeding requiring an application as the initiating document.

"**Application**" means any written request by an applicant commencing a proceeding for Commission action or relief.

**"Attorney"** means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted under principles of reciprocity permission to appear in proceedings of the Commission.

**"Business day"** means a day that is not a Saturday, Sunday, or legal holiday.

**"Case"** or **"cause"** means a proceeding filed with the Court Clerk, for Commission action or relief. The terms "case" and "cause" are used interchangeably herein.

**"Commission"** means the Oklahoma Corporation Commission, the public entity created under the provisions of Article IX, Section 15, Oklahoma Constitution.

**"Commissioner"** means a member of the Commission.

**"Complaint"** means the written document that opens a case and seeks enforcement of an order, rule, or regulation of the Commission or relief against a named respondent based upon an alleged violation of law or of a rule, regulation, or order of the Commission.

**"Complainant"** means any person commencing a proceeding requiring a complaint as the initiating document.

**"Confirmation of electronic filing"** means the electronic confirmation generated by the Electronic Case Filing System.

**"Document"** means any written matter filed in a case. A "document" includes any attached appendices.

**"Electronic"** means technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

**"Electronic Case Filing System"** or **"ECF System"** means the Commission's online filing system used to file documents with the Court Clerk in Commission proceedings.

**"Electronic Case Filing System filer"** or **"ECF filer"** means an Electronic Case Filing user whose electronic mail address and password can be used to file documents electronically in the Electronic Case Filing System.

**"Electronic Case Filing System user"** or **"ECF user"** means a person who has registered and been approved to access the Electronic Case Filing System.

**"Electronic filing"** means the tender of documents in Commission proceedings to, and acceptance by, the Court Clerk through the Electronic Case Filing System.

**"Electronic mail address"** is the primary electronic mail address provided by the registered Electronic Case Filing user or Electronic Case Filing filer. An electronic mail address must have the functionality required by the Electronic Case Filing System.

**"Electronic signature"** means a symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

**"Facsimile"** means the transmission of documents using a traditional fax machine or a web-based digital service.

**"File(d)"** or **"filing"** means tender of documents in Commission proceedings to, and acceptance by, the Court Clerk.

**"Filer"** means a person tendering documents to the Commission's Court Clerk for filing in a Commission proceeding, whether submitting those documents in paper or electronically.

**"Intervenor"** means any party of record who is not an applicant, complainant, or named respondent.

**"Legal holiday"** means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which United States mail is not delivered.

**"Official ECF service list"** means the list, for each case, of designated recipients of electronically mailed notice of filing of pleadings subsequent to the original Application or Complaint. This list does not include pro se persons or other persons entitled to notice who have not elected to accept electronic service, and must receive notice by other means.

**"Oil and Gas Appellate Referee"** means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

**"Order"** means that which is required or commanded to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decision of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Commission acts.

**"Party of record"** means a person who makes formal appearance either in person or by an attorney at any stage of a case whether or not seeking affirmative relief.

**"Person"** means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

**"Pro se"** means self-representation in a Commission proceeding without representation by an attorney.

**"Protestant"** means a person who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protest is governed by the rules applicable to a response.

**"Record"** of any proceeding shall consist of the following:

- (A) Preliminary exhibits, including pleadings, motions, notices, and proof of publication;
- (B) Transcript of proceedings at all hearings or the electronic recording of hearings or proceedings as provided by OAC 165:5-13-1(d);
- (C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters;
- (D) Exhibits, together with attachments, appendices, and amendments thereto;
- (E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any;
- (F) Exceptions and motions subsequent to the hearing;
- (G) Orders or rules of the Commission; and
- (H) Any other document or matter relevant to the issues ordered to be included by the Commission.

**"Referee"** means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing Commission regulated entities in Oklahoma who shall provide central support to the Commission en banc in the hearing of matters before the Commission en banc.

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**"Register"** or **"registration"** means the process for a person to request authority from the Commission to access the Electronic Case Filing System.

**"Regular mail"** means first class United States Mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:5 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

**"Respondent"** means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1(f), or who appears in opposition to relief sought by the applicant, and includes the term "defendant".

**"Respondent list"** means a list of named persons against whom relief is sought in a proceeding, or persons who are entitled to receive the application or complaint and notice of hearing as set forth in 165:5-7-1(f), or who appears in opposition to relief sought by the applicant, and includes the term "defendant". The "Respondent list" is distinguished from the Official ECF service list as defined herein.

**"Restricted mail"** means mailing by certified mail, return receipt requested, within the United States and its territories and mailing by registered mail outside the United States and its territories. For purposes of service outside the United States, "registered mail" includes any means provided by Federal Rule of Civil Procedure 4(f).

**"Secretary"** means the duly appointed and qualified Secretary, Assistant Secretary or Acting Secretary of the Commission, or any person appointed by the Commission to act as such Secretary during the absence, inability, or disqualification of the Secretary to act.

**"Staff counsel"** means ~~an a licensed attorney with the Commission's Judicial, and Legislative Services, or the Commission's Agency Counsel on staff at the Commission when acting as counsel for the Commission pursuant to the attorney's assigned duties at the Commission.~~

**"Technical failure"** means a malfunction of Electronic Case Filing System hardware, software, and/or telecommunications facility which results in the inability of a registered Electronic Case Filing System filer to file a document. It does not include the failure of a registered Electronic Case Filing System filer's equipment, software, and/or telecommunications facility.

**"User manual"** means the instructions for the Commission's Electronic Case Filing System.

**"Website"** means the Commission website.

### 165:5-1-4. Office location; office hours; records

(a) **Principal office.** The principal office of the Oklahoma Corporation Commission is in the Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address is P. O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(b) **Regional service areas.** The Commission has two regional service areas described as the Eastern Regional Service Area and the Western Regional Service Area. The Eastern Regional Service Area shall consist of the land east of Oklahoma State Highway 99. The Western Regional Service Area shall consist of the land west of that highway. The establishment of

these regional service areas shall not limit the services available from either regional service office.

(c) **Eastern regional service office.** In the Eastern Regional Service Area, the Commission maintains a regional service office in Tulsa, Oklahoma, at an address listed on the Commission's website.

(d) **Western regional service office.** In the western regional service area, the Commission's principal office serves as the regional service office.

(e) **Telephonic communication service.** ~~The Judicial and Legislative Services Division~~ A system shall develop and maintain a system for providing be maintained at the Commission to provide for telephone and/or videoconference communication service for all hearings.

(f) **Office hours.** For each regional service office or other office described in (a) through (d) of this Section, office hours shall be from 8:00 a.m. to 4:30 p.m., each day except Saturday, Sunday, and any legal holiday proclaimed by the Governor or official agency closing. Public records that are not available in the ECF System, when implemented, or on the Commission's website may be viewed during regular office hours. Copies of public records retained in the Court Clerk's Office may be obtained from 8:00 a.m. to 4:00 p.m.

(g) **Exercise of Commission authority.** The Commission, or any person exercising its authority, may meet and exercise its official powers and functions at any location in the State of Oklahoma.

(h) **Oil and gas filings.** ~~Applications—When applications for oil and gas development, administrative applications, and any other related oil and gas matters may be are filed, the Applicant may select either in any regional service office. Either regional service office may be selected as the venue when an application is filed. All filings must be made using the ECF System, unless otherwise authorized, directed, or instructed by the Court Clerk, the Commission rules, the User Manual, or Commission order.~~

(i) **Central records.** The central record of all filings with all regional service offices shall be maintained in the regional service office of the Corporation Commission located in Oklahoma City.

(j) **Court Clerk.** ~~Until the Commission implements the ECF System, every oil and gas related document or order tendered to the Court Clerk shall be filed, deposited with, or mailed to the Court Clerk at a regional service office unless the Director of Judicial and Legislative Services, or his or her designee directs otherwise. All persons filing documents with the Court Clerk shall file through the ECF System, unless otherwise authorized, directed, or instructed by the Court Clerk, the Commission rules, the User Manual, or Commission order. All Any documents related to other matters shall authorized to be filed in paper instead of through the ECF System shall be filed with, deposited with, or mailed to the Court Clerk at the Commission's principal office unless the Director of Judicial and Legislative Services, or his or her designee, Court Clerk directs otherwise. No document will be mailed to anyone who files through the ECF System or who obtains an immediate file-stamped copy, unless a self-addressed postage paid pre-paid envelope large enough~~

for the return of a file-stamped or processed copy is ~~included~~ provided. All documents shall be deemed received upon the date file stamped by the Court Clerk, subject to the provisions of OAC 165:5-1-5(g). Filing of any document shall not be complete except upon payment of all applicable fees required by law or by the rules of this Chapter. Filing of any document with the Court Clerk shall be deemed filing with the Secretary.

**165:5-1-4.1. Open records requests**

- (a) Records available to the public pursuant to the Oklahoma Open Records Act, 51 O.S. §§ 24A.1 et seq., may be obtained by directing written requests for records to the ~~respective division directors or their designated appointees~~ Commission's Public Information Office. This Section does not apply to records specifically required by the Commission to be kept confidential, including records subject to proprietary agreements, confidentiality orders and sealed exhibits. Charges for copies and research of such records shall be in accordance with OAC 165:5-3-1 and the Open Records Act, 51 O.S. § 24A.5(3).
- (b) Any records, reports or information obtained pursuant to the Oklahoma Petroleum Storage Tank Consolidation Act and/or OAC 165:15, 165:16, 165:25, 165:26, 165:27, and 165:29 shall be available to the public unless a showing satisfactory to the Commission by any person that the records, reports or information, or a particular part thereof, if made public would divulge production of sales figures, methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such record, report or information or particular portion thereof.

**165:5-1-5. Filing of documents**

- (a) **Document form.** ~~Upon implementation of the ECF System, all~~ All persons filing documents with the Court Clerk shall file through the ECF System, unless otherwise authorized, directed, or instructed by the Court Clerk, ~~or these the Commission rules, the User Manual, or Commission order~~. Documents presented in paper to the Court Clerk will only be accepted and filed if such documents are submitted by a pro se filer or contain confidential information as set forth in subsection (h), or otherwise authorized, directed, or instructed by the Court Clerk, the Commission rules, the User Manual, or Commission Order.
- (b) **Document Format.** Documents filed with the Court Clerk ~~by electronic mail or~~ through the ECF System shall be in portable document format ("PDF"), or another format stated in the User Manual. Documents filed in paper format may be printed, typewritten or reproduced by any legible method. All documents filed in paper format must be single-sided on 8 1/2" x 11" paper and ready for digital processing and uploading to the ECF System by the Court Clerk. Exceptions to the required document size may be allowed by the Court Clerk for good cause shown. Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the case number assigned by the Court Clerk, and document type, e.g., application, motion, response, or brief. All filed

documents must have a continuous pagination for the entire document, including exhibits and attachments. The original application shall include all this information, except the ~~docket case number~~, on each page. No document may be altered after filing; pages may not be otherwise inserted and no interlineations, additions or deletions may be made. If a filing error is made, the correct document or information, as appropriate, shall be submitted as a separate filing to the Court Clerk as soon as possible.

- (c) **Filing stricken by motion.** Upon the motion of the Commission or Administrative Law Judge, or the filing of a motion pursuant to OAC 165:5-9-2(b), the Administrative Law Judge is authorized to recommend to the Commission an order to strike the filing of any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such recommendation to grant a motion to strike a filed document, the subject document shall be presented to the Commission for ruling on acceptability for filing.
- (d) **Required information.** The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, and electronic mail address. All documents signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number. Anyone who disputes the authenticity of any electronic signature may file an objection to the document within five (5) business days of service.
- (e) **Requirement conflicts.** Wherever any provision of the Constitution or laws of Oklahoma makes a requirement as to notice or procedure which exceeds or conflicts with any provision of the rules of this Chapter, the former shall govern.
- (f) **Informal communications.** Nothing in the rules of this Chapter shall prohibit informal inquiry or complaint to the Commission by mail, electronic mail, or in person, which matters shall be handled administratively by the staff in an effort to secure amicable adjustment or agreement among affected persons. No official order shall be issued as a result of any informal proceedings.
- (g) **Electronic Mail transfers.** This subsection only applies if needed and if circumstances warrant as an alternative, supplement, or complement to filing through the ECF system and only pursuant to authorization, instructions, or directions by or of the Court Clerk, the Commission rules, the User Manual, or Commission order.
  - (1) ~~Until the Commission implements the ECF System, the~~ The Court Clerk shall accept pleadings submitted by electronic mail, at an address posted to the Commission's website, pending payment of the appropriate filing fees. A new case filing must be sent to the Court Clerk by electronic mail before 3:30 p.m. of each business day, otherwise it will have a file stamp reflecting the next regular business day.
  - (2) Unless otherwise delivered the same day, if an application for emergency relief in a spacing, location exception, increased density or multiunit horizontal well proceeding is submitted by electronic mail, a copy of such

emergency application shall be sent by electronic mail to the Technical Services Department of the Commission at an electronic mail address to be designated by the Director of the Conservation Division, on the date of the filing.

(3) ~~Until the Commission implements the ECF System, a~~ A CD case number may be requested by sending an electronic mail to the Court Clerk with the entire caption of the proposed application, a statement that only a case number is being requested, and contact information for the party requesting the case number. This will not be considered an electronic mail filing of the application and the date of filing the application will be the date the complete application is received in the Court Clerk's office or filed via ECF. In order to minimize gaps in the numbering of cases, the case number requested by electronic mail must be followed by filing original documents containing the exact same caption ~~in the Court Clerk's office or filed by electronic mail~~, within three (3) business days of the request, or the case number will be cancelled and may not be reused for any purpose.

(h) **Confidential documents.** All documents and information considered to be confidential must be clearly marked as such on a cover page of the document. Until such time as the ECF System provides for the electronic filing of documents subject to a protective order or otherwise considered confidential, unredacted documents which contain materials subject to a protective order, or otherwise considered confidential, shall not be filed electronically, but rather submitted in person or by mail to the Court Clerk within one (1) business day of the electronic filing of the cover page. All documents deemed and marked as confidential shall be docketed and retained by the Court Clerk. Until the Commission determines otherwise, the cover page only of such filings will be viewable by the public for identification purposes. The responsibility for following these rules concerning confidential documents and information rests solely with counsel, the parties, or any other filer. The Court Clerk does not have any duty to review documents for compliance with this rule. Paper copies of confidential documents may be returned to the party, or destroyed by agreement of the party, following the issuance of a final order and the expiration of the appeal period.

(i) **Personal Identifier Information.** If a filer includes personal identifier information such as Social Security numbers, tax identification numbers, financial account numbers, driver's license numbers, dates of birth, addresses or other sensitive information, in any document filed with the Court Clerk, electronically or otherwise, the document becomes a public record as filed, unless otherwise ordered by the Commission. Further, unless otherwise ordered or as otherwise provided by law, every filer, whether filing electronically or otherwise, shall redact the following information, except the last four digits, in documents prior to filing with the Court Clerk, including but not limited to:

- (1) Social Security numbers;
- (2) Taxpayer identification numbers;
- (3) Financial account numbers; and/or
- (4) Driver's license numbers.

## PART 2. ELECTRONIC FILING OF DOCUMENTS

### 165:5-1-13. Technical failures

(a) An ECF filer whose filing is made untimely as the result of a technical failure of the ECF System may seek relief from the Commission by filing a motion with the Court Clerk. If an ECF filer is unable to access the ECF System, the filer should check the Commission's website or contact the Court Clerk's Office to see if a technical failure has been declared.

(b) During a technical failure of the ECF System, documents may be filed in paper or by electronic mail ~~at the discretion and direction of the Director of Judicial and Legislative Services, or his or her designee as authorized, directed, or instructed by the Court Clerk, the Commission rules, the User Manual, or Commission order.~~ During a technical failure, the filer will be responsible for sending any documents to all parties of record and payment of any applicable filing fees.

(c) Failures not originating with the ECF System, such as phone line problems, problems with the filer's Internet service provider, power outages, or hardware or software problems, will not constitute a technical failure under (a) above. Upon the filing of a motion, the Commission may grant appropriate relief regarding an untimely filed document.

### 165:5-1-14.1. Official ECF service list and certificate of service

(a) Upon the filing of a case, the ECF System will generate the Official ECF Service List. A person will be added to the Official ECF Service List upon the filing of an entry of appearance, in accordance with OAC 165:5-9-4.

(b) After a document is filed in a specific case, the ECF System will automatically send notice of the filing to all persons on the Official ECF Service List.

(c) Pro se parties who do not choose to register as ECF Filers will not be included on the Official ECF Service List.

(ed) The notice of filing sent to those on the Official ECF Service List by the ECF System will constitute service of documents filed subsequent to the initial application or complaint and notice of hearing.

(e) Each filing with the ECF System must include a certificate of service that states the date and method of service, which may state that service was through the ECF System, for each person listed on the Official ECF Service List. For any parties, or other persons entitled to notice, who are not included on the Official ECF Service List, the certificate of service shall list the name and address of each such person and state the ~~manner~~ method and date of service.

(ef) Service through the ECF System is not effective if the person making service receives notice from the ECF System that the attempted service was not electronically delivered to the person to be served. To be considered effective service, the person making service will need to provide notice by other means available under these rules or by statute, and file a certificate of service reflecting the subsequent service.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees, fines and bonds

(a) General.

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any subsequent pleading or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) through (E) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:10-3-31, Use of vacuum at the well head.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the ~~Judicial and Legislative Services Commission~~ pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(L) shall be charged for any informal dispute resolution procedure that commences.

(D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(E) No filing fee shall be paid by a customer filing a Consumer Services docket application against a public utility.

(F) No filing fee shall be required for any application filed on the Oklahoma Universal Service Fund ("OSF") docket.

(G) No filing fee shall be paid by a party filing a protest to a nonconsensual towing Violation Notification issued by the Transportation Division.

(H) No filing fee shall be paid by a small business requesting the Commission to review its rules to determine whether or not the rules in question should be amended, repealed, or redrafted, pursuant to 75 O.S. § 250.10.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable. For documents that are being filed in paper form, all associated filing fees must be paid and the documents submitted to the Court Clerk's Office for filing prior to 3:30 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is

requested. No service shall be rendered before payment of the prescribed fee. No such other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) **Returned payments.** ~~A service fee of \$20.00 in accordance with 62 O.S. § 34.57, a fee shall be assessed on each check returned to the Commission as a result of the refusal of the bank upon which the check was drawn to honor the same. Upon the return of any check by reason of the refusal of the bank to honor it, the Commission may file a bogus check complaint with the appropriate district attorney. In the event that a payment transaction for any fee, fine or bond fails, the Commission reserves the right to require payment of that fee, fine or bond, and any future fee, fine or bond owed to the Commission by the same individual or entity, to be made by cash, cashier check, certified check, money order or another secured form of payment.~~

~~(6) **Petroleum Storage Tank Division fees.** All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.~~

(b) Schedule of filing fees.

(1) **Oil and gas fees.**

(A) Commercial disposal well application - \$1,500.00

(B) Commercial earthen pit application - \$1,250.00

(C) Commercial soil farming site application - \$1,250.00

(D) Commercial recycling facility application - \$1,000.00

(E) Noncommercial injection or disposal well application - Form 1015 - \$250.00

(F) Commercial facilities annual fee due on October 1 of each year:

(i) Commercial earthen pit facility - \$750.00

(ii) Commercial soil farming facility - \$750.00

(iii) Commercial recycling facility - \$750.00

(G) Conservation docket, pollution docket, and gas gathering base applications - \$200.00

(H) Emergency application on the conservation or pollution docket - \$250.00

(I) Permit to drill - Form 1000:

(i) Directional well - \$350.00

(ii) Horizontal well - \$400.00

(iii) Multiunit well - \$600.00

(iv) Vertical well - \$350.00

(J) Expedited permit to drill - Form 1000:

(i) Directional well - \$600.00

(ii) Horizontal well - \$600.00

(iii) Multiunit well - \$800.00

(iv) Vertical well - \$600.00

(K) Temporary permit to drill - Form 1000:

(i) Directional well - \$350.00

(ii) Horizontal well - \$350.00

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- (iii) Multiunit well - \$350.00
  - (iv) Vertical well - \$350.00
  - (L) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - \$5.00 per participant
  - (M) Permit for one-time land application of materials - Form 1014S - \$150.00
  - (N) Expedited permit for one-time land application of materials - Form 1014S - \$250.00
  - (O) Tax exemption application filed pursuant to OAC 165:10-2-1 - \$100.00
  - (P) Transfers of well operatorship - Forms 1073 and 1073I - single well - \$25.00
  - (Q) Transfers of well operatorship - Forms 1073IMW and 1073MW - multiple wells - \$250.00
  - (R) Notification of intent to plug - Form 1001 - \$100.00
  - (S) Operator agreement-annual fee-Form 1006B-based on the number of unplugged wells for which the operator is responsible according to Commission records:
    - (i) No wells being operated - \$100.00
    - (ii) From 1-25 wells - \$250.00
    - (iii) From 26-100 wells - \$500.00
    - (iv) From 101-500 wells - \$750.00
    - (v) Over 500 wells - \$1,000.00
  - (T) Fluid disposal/injection reports:
    - (i) Commercial disposal well fluid disposal report-Form 1012C-semiannual per well-\$500.00
    - (ii) Noncommercial disposal and injection well and LPG storage well report-Form 1012-annual per well-\$25.00
    - (iii) Noncommercial disposal and injection well and LPG storage well report-Form 1012-more than 100 wells-annual fee-\$2,500.00
  - (U) Permit to use earthen pit, noncommercial disposal or enhanced recovery well pit for temporary storage of saltwater, and pit associated with commercial disposal well surface facility-Form 1014:
    - (i) Capacity of pit less than or equal to 10,000 barrels-\$250.00
    - (ii) Capacity of pit greater than 10,000 barrels-\$1,000.00
  - (V) Permit for seismic operations-Form 1000S-\$100.00
  - (W) Application for temporary exemption from well plugging-Form 1003A-\$100.00
  - (X) Permit to vent or flare gas from well-Form 1022-\$50.00
  - (Y) Application for multiple zone well completion, production of well through a multiple choke assembly, and commingling of well production-Form 1023-\$50.00
- (2) **Transportation fees.**
- (A) Transportation docket application - \$500.00
  - (B) Other transportation fees:
    - (i) Intrastate license.
      - (I) Original application filing fee - \$100.00
      - (II) Sub application filing fee - \$100.00
      - (III) Renewal application filing fee - \$50.00
      - (IV) Reinstatement application filing fee - \$100.00
      - (V) Name change application filing fee - \$50.00
      - (VI) Identification device or per vehicle fee - \$7.00
    - (ii) Deleterious Substance License Permit application filing fee - \$350.00
    - (iii) International Fuel Tax Agreement (IFTA) fees.
      - (I) IFTA decal - \$2.00 per vehicle per decal set
      - (II) IFTA reinstatement fee - \$100.00
    - (iv) Trailer registration processing fee per trailer registered through the IRP System - \$2.00
    - (v) Temporary registration and fuel permit fees (a \$10.00 services fee is added to each permit in this unit):
      - (I) Temporary registration (72 hour trip permit) - \$12.00
      - (II) Temporary fuel permit (120 hours) - \$25.00
      - (III) Unladen or hunters permit (45 days) - \$25.00
    - (vi) Harvest permit fees (power units only).
      - (I) Thirty day permit - \$20.00 per axle
      - (II) Sixty day permit - \$35.00 per axle
      - (III) 15 day extension - \$8.75 per axle
    - (vii) Transportation Network Company annual permit fee - \$5,000.00
    - (viii) Household goods certificate fees:
      - (I) Original application filing fee - \$350.00
      - (II) Sub application filing fee - \$300.00
      - (III) Renewal application filing fee - \$300.00
      - (IV) Reinstatement application filing fee - \$250.00
      - (V) Name change application filing fee - \$50.00
      - (VI) Identification device or per vehicle fee - \$7.00
    - (ix) Apportioned commercial motor vehicle registration services fee - \$100.00 per vehicle (apportioned)
    - (x) Apportioned commercial motor vehicle registration application reprocessing fee - \$100.00 per application
    - (xi) Application for lawful fence - \$500.00. If the Transportation Division determines a lawful fence is required to be constructed by the railroad, the railroad shall have sixty (60) days from the date of notice to refund the application filing fee to the landowner
  - (3) **Utility fee.** Public utility docket application - \$100.00



(4) **Enforcement fee.** Enforcement docket application - \$100.00

(5) **Petroleum storage tank fees.**

(A) **Application fee.** The fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is \$100.00, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any subsequent pleading or amended application.

(B) **Variance review fee.** The fee for administrative review of a Petroleum Storage Tank Division variance application is \$250.00.

(C) **Annual storage tank permit fee.** Owners of regulated petroleum storage tanks, whether in use or not, are required to pay an annual permit fee as follows:

- (i) For petroleum storage tanks - \$25.00 per tank or tank compartment.
- (ii) For noncommercial agricultural underground storage tanks containing petroleum products - \$10.00 per tank.
- (iii) For any tank installed or permanently closed during a calendar year, the full yearly fee shall be assessed.
- (iv) Invoices will be mailed out approximately 60 days in advance of the due date as noted on the invoice.
- (v) If invoices are unpaid after the due date, a second invoice is mailed out which includes a failure to pay penalty, as found in 17 O.S. § 308.1, and provides 30 days to pay the invoice balance.
- (vi) If the invoice balance is unpaid after the 30 days, a letter is mailed to the Owner with the outstanding fees and informing the Owner that the permit is expired.
- (vii) If the invoice balance remains unpaid, a Fuel Specialist may shut down the regulated petroleum storage tank.

(D) **UST Installer License.** The fees for an Underground Storage Tank Installer License are:

- (i) Application fee - \$50.00
- (ii) License fee - \$100.00
- (iii) Annual License renewal fee - \$100.00

(E) **Environmental Consultant License.** The fees for an Environmental Consultant License are:

- (i) Application fee - \$50.00
- (ii) License fee - \$100.00
- (iii) Annual License renewal fee - \$100.00

(F) **UST Remover License.** The fees for an Underground Storage Tank Remover License are:

- (i) Application fee - \$50.00
- (ii) License fee - \$100.00
- (iii) Annual License renewal fee - \$100.00

(G) **AST Licensee.** The fees for an Aboveground Storage Tank Licensee are:

- (i) Application fee - \$50.00
- (ii) License fee - \$100.00
- (iii) Annual License renewal fee - \$100.00

(H) **Vapor Monitor Well Technician License.** The fees for a Vapor Monitor Well Technician License are:

- (i) Application fee - \$50.00
- (ii) Examination fee - \$25.00
- (iii) License fee - \$100.00
- (iv) Annual License renewal fee - \$100.00

(I) **Groundwater Monitor Well Technician License.** The fees for a Groundwater Monitor Well Technician License are:

- (i) Application fee - \$50.00
- (ii) License fee - \$100.00
- (iii) Annual License renewal fee - \$100.00

(J) **Antifreeze Permit.** The manufacturer of any antifreeze displayed, distributed, manufactured, marketed, produced, sold, used and/or offered for sale or resale, held with intent to sell, or transported within the State of Oklahoma is required to pay the following fees:

- (i) Application fee - \$100.00 per brand per type
- (ii) Annual permit renewal fee - \$100.00 per brand per type

(c) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary in addition to the fees specified in (d) of this Section.

(d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:

- (1) Certificate of non-development (maximum of one quarter section) - \$10.00
- (2) Copies of any file or order -
  - (A) Non-certified copies - \$0.25 per page; certified copies \$1.00 per page
  - (B) Postage - actual cost
- ~~(3) Microfilmed images from coin-operated microfilm reader (coin box) - \$0.25~~
- (43) Batch reproduction on continuing basis (per page) - \$0.25
- (54) Copy of any document prepared in OCC offices (per page) - \$0.25
- ~~(6) Copy of any Chapter of Commission rules and regulations - \$10.00~~
- ~~(7) Copy of Oil and Gas Conservation rules - \$20.00~~
- (85) Current ownership/lienholder information - \$1.00 per vehicle record page
- ~~(96)~~ Computer generated title history - \$5.00 per vehicle
- ~~(407)~~ Manual title history - \$7.50 per vehicle
- ~~(48)~~ Copy of lien release - \$7.50 per vehicle
- ~~(29)~~ Certified copy of lien release - \$10.00 per vehicle
- ~~(4310)~~ Certified copy of title history - \$10.00 per vehicle
- ~~(4411)~~ Preparation of the record on appeal to the Oklahoma Supreme Court - \$200.00

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with 51 O.S. § 24A.5.

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(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

~~(g) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page.~~

(g) **Copy fees waived.** Copy fees for non-certified documents listed above that are less than ten (10) pages will be waived.

~~(h) **Payments by Credit Card and other means of electronic funds transfer** Electronic payments.~~

(1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The ~~Oklahoma Corporation~~ Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the ~~Oklahoma Corporation~~ Commission.

(2) Implementation of payment by nationally recognized credit card and other means of electronic ~~funds transfer payments~~ will be phased in over a period of time as determined by the Commission.

(3) The ~~Oklahoma Corporation~~ Commission will verify that sufficient credit is available before acceptance of credit card to ~~insure~~ ensure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

~~(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.~~

(4) The ~~Oklahoma Corporation~~ Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

~~(6) "Electronic funds transfer payment" means refers to any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal means, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.~~

(7) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic ~~funds transfer payment~~.

(8) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(9) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

### 165:5-3-2. Fees for the Petroleum Storage Tank Division [REVOKED]

~~(a) **General.**~~

~~(1) For each initial application filed on the Petroleum Storage Tank docket, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any emergency application, subsequent pleading or amended application.~~

~~(2) Any fee assessed by this Section is either due and payable at the time of filing or due and payable at the time the service is requested. Neither service shall be rendered before payment of the prescribed fee nor shall the Court Clerk's Office or any division of the Commission accept any application subject to a filing fee until the required fee is paid. All fees are nonrefundable.~~

~~(3) The fees listed in this section may be paid by check, personal checks, cashier checks, certified checks, money orders, credit cards and other means of electronic funds transfer. Foreign checks must be payable through a United States bank in United States funds. The check or money order should be made payable to the "Oklahoma Corporation Commission Petroleum Storage Tank Division" and will be deposited to the Oklahoma Petroleum Storage Tank Revolving Fund.~~

~~(4) Payments by credit card and other means of electronic funds transfers.~~

~~(A) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which,~~

in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(B) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(C) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(i) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(ii) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(D) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(E) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(F) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(G) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(H) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(I) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(b) **Fees.**

(1) **Application fee.** The fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is \$100.00.

(2) **Variance review fee.** The fee for administrative review of a Petroleum Storage Tank Division variance application is \$250.00.

(3) **Annual storage tank permit fee.** Owners of regulated petroleum storage tanks, whether in use or not, are required to pay an annual permit fee as follows:

(A) For petroleum storage tanks—\$25.00 per tank or tank compartment.

(B) For noncommercial agricultural underground storage tanks containing petroleum products—\$10.00 per tank.

(C) For any tank installed or permanently closed during a calendar year, the full yearly fee shall be assessed.

(D) Invoices will be mailed out approximately 60 days in advance of the due date as noted on the invoice.

(4) **UST Installer License.** The fees for an Underground Storage Tank Installer License are:

(A) Application fee—\$50.00

(B) License fee—\$100.00

(C) Annual License renewal fee—\$100.00

(5) **Environmental Consultant License.** The fees for an Environmental Consultant License are:

(A) Application fee—\$50.00

(B) License fee—\$100.00

(C) Annual License renewal fee—\$100.00

(6) **UST Remover License.** The fees for an Underground Storage Tank Remover License are:

(A) Application fee—\$50.00

(B) License fee—\$100.00

(C) Annual License renewal fee—\$100.00

(7) **AST Licensee.** The fees for an Aboveground Storage Tank Licensee are:

(A) Application fee—\$50.00

(B) License fee—\$100.00

(C) Annual License renewal fee—\$100.00

(8) **Vapor Monitor Well Technician License.** The fees for a Vapor Monitor Well Technician License are:

(A) Application fee—\$50.00

(B) Examination fee—\$25.00

(C) License fee—\$100.00

(D) Annual License renewal fee—\$100.00

(9) **Groundwater Monitor Well Technician License.** The fees for a Groundwater Monitor Well Technician License are:

(A) Application fee—\$50.00

(B) License fee—\$100.00

(C) Annual License renewal fee—\$100.00

(10) **Antifreeze Permit.** The manufacturer of any antifreeze displayed, distributed, manufactured, marketed, produced, sold, used and/or offered for sale or resale, held with intent to sell, or transported within the State of Oklahoma is required to pay the following fees:

(A) Application fee—\$100.00 per brand per type

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~~(B) Annual permit renewal fee—\$100.00 per brand per type~~

**(11) Miscellaneous fees.**

~~(A) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in this Section.~~

~~(B) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall be refundable:~~

~~(i) Batch reproduction on continuing basis (per page)—\$0.25~~

~~(ii) Copy of any document prepared in OCC offices (per page)—\$0.25~~

~~(iii) Copies of any file or order—~~

~~(I) Non-certified copies—\$0.25 per page; certified copies \$1.00 per page~~

~~(II) Postage—actual cost~~

~~(C) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with 51 O.S. § 24A.5.~~

~~(D) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.~~

~~(E) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page when not submitted for filing with the Court Clerk's office.~~

~~(12) **Failure to pay fee.** Failure to pay by the designated due date, insufficient payments or returned payment of any fee within this subsection will result in the Corporation Commission being authorized to assess payment of any outstanding fee, plus for storage tank permits: a penalty of 50% of the computed total fee and/or suspend tank operation until payment of any fee or penalty assessed under this subsection is received.~~

## **PART 6. ELECTRIC VEHICLE CHARGING STATION FEE**

### **165:5-3-50. Purpose**

The purpose of this Part is to assess, pursuant to 68 O.S. § 6509, a fee upon each public charging station to provide funding to the Commission in the execution of duties and responsibilities required by the Driving on Road Infrastructure with Vehicles of Electricity (DRIVE) Act of 2021.

### **165:5-3-51. Electric vehicle charging station fee**

(a) Pursuant to 68 O.S. § 6509, an annual fee of \$20.00 is assessed on each individual electric vehicle supply equipment port at each public charging station located in the State of Oklahoma, as reported in the annual report, pursuant to OAC 165:14-3-5.

(b) The electric vehicle charging station fee is paid to the Commission annually on or before March 1 of each year, concurrently with the submission of the annual report, pursuant to OAC 165:14-3-5. The fee shall start on March 1, 2024.

(c) A public utility, as defined in OAC 165:5-3-21, whose delivery of electricity is rate regulated pursuant to approved tariffs and that pays into the PUD Assessment pursuant to 17 O.S. §180.11, shall not be required to pay the electric vehicle charging station fee on each electric vehicle charging station owned by the public utility.

(d) Pursuant to 68 O.S. § 6509(D), this fee will be deposited into the Oklahoma Corporation Commission Revolving Fund.

### **165:5-3-52. Failure to comply**

An electric vehicle charging station operator that fails or refuses to pay the required fee may be assessed fines and penalties as provided by law.

## **SUBCHAPTER 5. DOCKETS**

### **165:5-5-1. Dockets; identifying initials**

(a) **Subject matter dockets.** Subject matter dockets shall be maintained by the Court Clerk, with identifying initials preceding the docket case number as follows:

(1) General Docket (GD), which shall consist of ~~causes~~ cases not coming within the purview of any other docket listed below, and which shall include notices of inquiry.

(2) Conservation Docket (CD), which shall consist of ~~causes—cases~~ cases to prevent waste and protect or adjust the correlative rights of parties owning interests in the common source of supply or unitized management of a common source of supply including, but not limited to, spacing, increased density, location exception, pooling and unitization.

(3) Consumer Services Docket (CS), which shall consist of ~~causes—cases~~ cases initiated by either the Director of the Consumer Services Division against a regulated utility provider or a customer against the customer's regulated utility provider seeking to require the regulated utility provider to abide by approved tariffs, state statutes, Commission rules, or Commission orders. Regulated utility provider includes public utilities and telecommunications carriers as defined by 17 O.S. §§ 41, 139.102 and 151. Disputes between a customer and an electric vehicle charging station operator operating a public charging station, filed pursuant to OAC 165:14, shall be filed on the Consumer Services Docket.

(4) Enforcement Docket (EN), which shall consist of ~~causes—cases~~ cases initiated by the Commission or any of its directors, the Attorney General of Oklahoma, or other

affected parties to find parties in contempt of Commission rules or to require compliance of parties with applicable statutes, rules, and Commission orders.

(5) Gas Gathering Docket (GG), which shall consist of ~~causes—cases~~ initiated for determination of reasonable fees and terms or conditions of service related to open access to natural gas gathering systems.

(6) Motor Carrier Citation Docket (MCC), which shall consist of ~~causes—cases~~ initiated by issuance of citations by Commission motor carrier/vehicle officers at roadside, weigh stations or on-site, for alleged violation of state statutes, Commission rules or federal regulations regarding the registration, licensing, certification, or operation of motor carriers or commercial motor vehicles.

(7) Oklahoma Universal Service Fund Docket (OSF), which for ~~causes—cases~~ filed on or after January 1, 2018, shall consist of ~~causes—cases~~ relating to funding from the Oklahoma Universal Service Fund (OUSF) or the Oklahoma Lifeline Fund (OLF), including, but not limited to, requests for OUSF or OLF funding, submissions relating to OUSF administrative preapproval requests and the OUSF fee assessment.

(8) Petroleum Storage Tank Docket (PSD), which shall consist of ~~causes—cases~~ initiated by the Director of the Petroleum Storage Tank Division or other party seeking relief from Commission rules, disputing PSD decisions regarding jurisdiction, corrective action, licensing, system shutdown, Petroleum Storage Tank Indemnity Fund eligibility or reimbursement.

(9) Petroleum Storage Tank Division Citation Docket (PSC), which shall consist of ~~causes—cases~~ initiated by issuance of citations by Commission fuel inspectors for alleged violation of state statutes or Commission rules regarding operation of petroleum storage tank systems.

(10) Pollution Docket (PD), which shall consist of ~~causes—cases~~ initiated and related to the protection of the environment regarding oil and gas production or the disposal, injection, remediation or storage of deleterious substances produced from oil and gas related activities including, but not limited to, applications for injection wells, commercial disposal wells, disposal pits and recycling.

(11) Public Utility Docket (PUD), which shall consist of ~~causes—cases~~ initiated by the Director of the Public Utility Division, a person regulated by the Commission and subject to the provisions in OAC 165:14, 35, 40, 45, 50, 55, 56, 57, 58, 65, 70, 75, or 80, a public utility, or other another party with standing concerning any matter relating to the above listed chapters public utilities, except rulemaking and, effective January 1, 2018, the Oklahoma Universal Service Fund.

(12) Rulemaking Docket (RM), which shall consist of ~~causes—cases~~ initiated by the Commission or any of its directors for the promulgation, amendment, or repeal of a Commission statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. ~~[75 Okla. Stat. § 250.3(17)-75 O.S. § 250.3(19)]~~ Formal

petitions by the public for rulemaking, pursuant to 75 O.S. § 305, as well as requests by small businesses requesting the Commission to review its rules to determine if the rules in question should be amended, repealed, or redrafted, pursuant to 75 O.S. § 250.10, shall be part of the General Docket. If the Commission orders a rulemaking proceeding as a result of such petition or request, the rulemaking proceeding shall be part of the Rulemaking Docket.

(13) State Fund Plugging Docket (SF), which shall consist of ~~causes—cases~~ initiated by the Director of the Oil and Gas Conservation Division seeking authorization to use monies from the Commission's Plugging Fund to plug or replug abandoned wells in the State of Oklahoma.

(14) Transportation Docket (TD), which shall consist of ~~causes—cases~~ initiated by:

(A) an applicant protesting a Transportation Division determination denying a motor carrier's application seeking a license, certificate, or permit from the Transportation Division to lawfully operate as a for-hire or private motor carrier or for a special permit or registration;

(B) an applicant protesting a Transportation Division determination denying its registration or fuel tax application or proposed audit assessment;

(C) an application by the Transportation Division modifying, suspending, canceling or revoking an existing certificate, permit, registration, or license;

(D) an application by the Transportation Division modifying a previously issued order;

(E) an application by the Transportation Division to effect an operational change in a transportation regulated entity;

(F) an interested party protesting a license, certificate, permit or registration being issued or renewed;

(G) an interested party seeking to modify, suspend, cancel, or revoke an existing certificate, permit, registration or license or to assess penalties to a motor carrier, registrant or licensee;

(H) a pipeline operator seeking a pipeline acceptance;

(I) any individual, entity or railroad seeking approval to update, open or close a railroad crossing; or

(J) any interested party seeking relief from the Commission in transportation matters relating to its jurisdiction.

(15) "Oil and gas dockets" as used in these Rules includes the following dockets: CD, PD, GG, SF and oil and gas related EN docket.

(b) **Docket and case number assignment.** Every ~~cause case~~ shall be assigned a ~~docket—case~~ number by the Court Clerk, and all documents filed in the ~~cause—case~~ shall bear the ~~docket—case~~ number, including the identifying initials of the docket and year prefix-prefixes. The Court Clerk shall:

(1) File-stamp each document received with the date of receipt.

(2) Record every document filed in the ~~cause—case~~.

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- (3) Maintain a complete electronic file of all ~~original~~ documents filed in every ~~cause~~ case.
- (c) **Improper docketing.** If the Commission, or an Administrative Law Judge, after consultation with the Court Clerk, determines that an application has been filed on an improper docket as set forth in (a) of this Section, the Commission shall enter an order transferring the application to the proper docket ~~and closing the original case~~. The ~~Judicial and Legislative Services shall send the~~ order transferring the application to the proper docket shall be sent to the applicant by through the ECF System, mail, facsimile, or electronic mail, and the applicant who shall then be responsible for sending the order to all any parties of record not served via the ECF System.
- (d) **Procedural dockets.** In addition to the subject matter dockets described in (a) of this Section, the Commission may, from time to time, designate procedural dockets.
- ~~(e) For the purposes of documentation produced by the case management feature of the Electronic Filing System, individual applications or causes may be denoted as dockets and daily and weekly court calendars may be denoted as agendas.~~

## SUBCHAPTER 7. COMMENCEMENT OF A CASE

### PART 1. GENERAL

#### 165:5-7-1. General application and notice requirements

- (a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, the provisions of this Section shall govern the commencement of a case filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.
- (b) **Form.** Every case shall be commenced by:
- (1) An application.
  - (2) A complaint.
  - (3) An order or notice of the Commission commencing a case.
- (c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:
- (1) The heading, "Before the Corporation Commission of the State of Oklahoma".
  - (2) The applicant.
  - (3) The relief sought. In the case of a conservation docket or pollution docket case, the statement shall contain the legal description of the lands involved in the case.
  - (4) The docket identifying initials, year prefix, and case number, pursuant to OAC 165:5-5-1.
  - (5) The title of the document.
  - (6) In the case of an enforcement docket case, the caption shall contain the name(s) of the respondent(s).
- (d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

- (1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, electronic mail address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the case; and the name and address of each person (if any) named as respondent.
- (2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.
- (3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.
- (4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.
- (5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.
- (e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the mailing address, telephone number, electronic mail address and bar identification number of the person so signing it, as applicable. The person signing the application shall be deemed, on signing same, to be certifying that:
- (1) ~~He~~ The signer has read the application.
  - (2) To the best of ~~his~~ the signer's knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.
  - (3) The application is not filed to harass or to cause unnecessary delay or needless expense.
- (f) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the case is set for hearing, if required, in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application.
- (g) ~~Manner of service~~ **Service of subsequent documents.** All documents subsequent to the application in a case shall be served on a party of record through the ECF System in accordance with 165:5-1-14.1, or by regular mail, electronic mail, or in person, except where the rules of this Chapter or a statute requires a specific mode of service which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. Service outside the United States

and its territories shall be by any means provided by Federal Rule of Civil Procedure 4(f). For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service through the ECF System, or by mail, or electronic mail shall be complete on the date and time of transmittal except where otherwise provided in this Chapter or by statute; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

(h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the ~~certification that on the date stated a copy of the document was mailed, postage prepaid, mailed electronically or delivered date and particular method of service to each person, including those registered for the ECF System listed.~~

(i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.

(j) ~~Publication of notice~~ **Notice of hearing.** Every application, except as provided in this Chapter for motor carrier, Oklahoma Universal Service Fund, and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** The notice of hearing shall contain the type-written name of each current Commissioner at the bottom of the notice, which shall serve as the Commissioner's electronic signature, followed by the signature of the person filing the application.

(l) **Content of notice.** The notice shall contain:

- (1) The caption from the application.
- (2) The time, date, and place of hearing.
- (3) Briefly the general nature of the order, rule, regulation or other relief sought.
- (4) In oil and gas cases, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.
- (5) Who to contact for additional information.

(m) **Form of notice.** The notice shall conform substantially to the form shown in Appendix A to this Chapter.

(n) **Notice by publication.**

- (1) When a case other than an oil and gas or Petroleum Storage Tank Division case is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.

(2) In oil and gas cases, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.

(3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the case.

(4) Proof of publication shall be established by an original proof of publication.

(5) Publication is not necessary unless otherwise required by the Constitution, a statute, a Commission rule, or a Commission order.

(o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.

(p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

PART 3. OIL AND GAS

165:5-7-9. Well location exception

(a) The application, which shall be limited to a single well, and notice of hearing for an order granting a well location exception for a well drilled or to be drilled for oil or gas into any common source of supply at a location other than that authorized by a rule or order of the Commission shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon the operator of each well located in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which tract or unit the well location has been or is proposed to be moved. The application and notice of hearing shall specify the name(s) of the well(s) and operator(s) of the well(s) towards which the location exception well is moving. The application and notice of hearing also shall be served, in the manner required above, upon the operator of any well located in an adjoining or cornering tract of land or drilling and spacing unit currently producing from the same common source of supply, if the requested well location is closer to the offsetting well than would be permitted under the applicable well location tolerances or requirements. Provided, however, if the applicant, or any other entity to be authorized to drill or otherwise operate the subject well, is the operator of any of the wells identified above, then the application and notice of hearing shall be served, in the manner required above, upon each working interest owner in any such well.

(b) An application and notice of hearing for an order granting a well location exception pursuant to this Section may also

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include a request for an exception to OAC 165:10-3-28(c)(2). The application and notice of hearing shall be served in the manner required in subsection (a) of this Section, and shall contain the information required in such subsection. Where an application includes requested relief for both a location exception and exception to OAC 165:10-3-28(c)(2), such application shall separately identify respondents for the location exception and respondents for the exception to OAC 165:10-3-28(c)(2).

(c) For any well other than a directionally drilled well or a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual surface location of the well expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(d) For a directionally drilled well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the well's entry into and the proposed or actual subsurface location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled. For purposes of this section, a directionally drilled well does not include a horizontal well.

(e) For a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the completion interval, as defined by OAC 165:10-3-28, within the common source of supply for which the location exception is requested, expressed as the distance in feet from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(f) The proposed subsurface location for a directionally drilled well or a horizontal well may be described in the application and notice of hearing as no closer than specified footages from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be drilled.

(g) At the time of hearing, a well's location, as set out in the application and notice of hearing, may be changed to another location that is not closer to the boundaries of the drilling and spacing unit or mineral estate(s) described in the application and notice of hearing, that is not closer to any offsetting well the operator of which, or any working interest owner in which, was required to be notified under this section, and that does not require notice to additional operators or working interest owners under this section.

(h) If at the time of the hearing on an application for a directionally drilled well or a horizontal well, the applicant does not have the results of the well survey required by OAC 165:10-3-27, then the Administrative Law Judge may recommend the issuance of an interim order granting the application and, if so, shall consider whether to adjust the allowable based

on the potential locations of the well in each common source of supply for which the order is sought. All potential locations shall be considered in the interim order. If the directionally drilled well or the horizontal well is drilled and completed in compliance with the interim order, the well shall be assigned the allowable as set out in the interim order.

(i) If a directionally drilled or horizontal well is drilled and completed in compliance with an interim order approving a location exception, and no party of record has requested a hearing, the Commission may issue a final order approving the location exception, without further hearing, based on an administrative review by the Commission's Technical Services Department of the following documents, which the applicant must file with the Court Clerk for the record: the directional survey, ~~a final plat showing the actual location of the lateral, and the well completion report, and an "as drilled" plat constructed from the results of the directional survey.~~ The applicant must also submit a proposed final order to the Commission's Technical Services Department in any ~~cause~~ case handled through the administrative review process. In the event the directional survey shows that a directionally drilled or horizontal well was not drilled and completed in compliance with the interim location exception order, the applicant shall notify the Commission and all of the parties entitled to notice in the original hearing establishing the interim order by filing an amended application in the ~~cause~~ case setting forth the actual subsurface locations of the well and by giving proper notice thereof. The actual subsurface locations of the well will be considered at a hearing conducted on the date specified in the interim location exception order, or on such date to which the hearing is continued.

(j) Notice of hearing on an application for an order granting a well location exception for a well drilled or to be drilled for oil or gas at a location other than that authorized by a rule or order of the Commission shall be published pursuant to OAC 165:5-7-1(n)(2).

(k) An application for an exception to the minimum distance requirements specified by OAC 165:10-3-28 (c)(2) and (c)(3) for the completion interval of a horizontal well, the notice of hearing for such exception proceeding and any resulting order in such proceeding shall include the API numbers of the existing well or wells being encroached upon by such horizontal well requiring such exception. Such application shall set forth the proposed subsurface location tolerance area or if available, the actual subsurface locations of the completion interval of such horizontal well requiring such exception. The proposed or actual subsurface locations, as applicable, of the completion interval of the horizontal well requiring such exception may be amended at the hearing on any such application. If the results of the well survey required by OAC 165:10-3-28(c)(1) are not available at the time of the hearing on such an application, the Administrative Law Judge may recommend the issuance of an order granting the application on an interim basis. Any final order issuing in such a proceeding shall specify the distance in feet between the completion interval of the subject horizontal well and the well or wells being encroached upon by such horizontal well requiring such exception.



(l) At the hearing, except for good cause shown, a production plat and any other exhibits necessary to support the requested relief (e.g. isopach map or structure of the target zone(s), and cross section) shall be provided.

(m) The Commission may request that the record be reopened to receive additional information from the applicant prior to issuance of an order.

**165:5-7-11. Change of operator**

(a) **Scope.** This Section addresses designation of operators under forced pooling orders, location exception orders, and increased density orders.

(b) **Designation of operator under a forced pooling order.** Each order forced pooling the rights and equities in a drilling and spacing unit shall designate at least one operator to operate the well or unit. In addition, the Commission may designate one or more alternate operators in the order.

(c) **Procedure for obtaining a change of operator under a forced pooling order.** Application, notice and hearing shall be prerequisites to the issuance of an order changing or deleting a designation of operator in any forced pooling order. ~~Notice shall be given. The applicant shall send or cause to be sent copies of the application and notice of hearing by certified mail at least fifteen (15) days prior to the hearing to the respondents to the pooling order or to their successors in interest and the notice of hearing shall be published as required in OAC 165:5-7-1-OAC 165:5-7-1(n)(2).~~ Provided, however, this procedure shall not be the exclusive method of obtaining a change of operator under a forced pooling order as the use of the ~~optional procedure forms~~ set forth in OAC 165:5-7-11(g) below is still available. If such ~~optional Form 1073A application is forms~~ are used, Applicant must still provide personal notice by sending or causing to be sent copies of the application and notice of hearing by certified mail to the respondents to the pooling order or their successors in interest as well as publishing the notice by publication of hearing as required in OAC 165:5-7-1(n)(2).

(d) **Optional designation of operator for location exception and increased density orders.** A designation of operator shall not be necessary for an order for either a well location exception or increased well density. In any situation where a location exception or increased density order designates an operator, the Commission may issue an order either appointing a successor operator or removing the designation of operator provision.

(e) **Procedure for obtaining a change in operator designation regarding increased density and location exception orders.** Application, notice and hearing shall be prerequisites to issuance of an order changing or deleting a designation of operator in increased density and location exception orders. The applicant shall mail or cause to be mailed copies of the application and notice of hearing to each current working interest owner in the well at least fifteen (15) days prior to the hearing and the notice of hearing shall be published as required in OAC 165:5-7-1(n)(2). Provided, however, this procedure shall not be the exclusive method of obtaining a change of operator under increased density and location exception orders as the use of the forms set forth in OAC 165:5-7-11(g)

below is still available. If such forms are used, Applicant must still mail or cause to be mailed copies of the application and notice of hearing to each current working interest owner in the well at least fifteen (15) days prior to the hearing and the notice of hearing shall be published as required in OAC 165:5-7-1(n)(2). ~~provided, that no~~ No application, notice, or hearing shall be required to change or delete the designation of operator in increased density or location exception orders when:

(1) The interest of the currently designated operator is transferred to its subsidiary or parent company, or a subsidiary of a parent company;

(2) The interest of the currently designated operator is transferred to a surviving or resulting corporation or business entity due to, respectively, a merger, consolidation or reorganization involving the transferor and transferee. As used in this paragraph, "business entity" means a domestic or foreign partnership, whether general or limited; limited liability company; business trust; common law trust, or other unincorporated business; or

(3) The currently designated operator undergoes a name change. The relief afforded by this paragraph is not applicable to situations where the name change involves the following conditions:

(A) The assignment of a new Federal Employer Identification number by the Internal Revenue Service to the new company;

(B) The name change is accompanied by a change in the majority of partners in a partnership;

(C) The name change is associated with a divorce between a husband and wife when the husband and wife comprise a partnership;

(D) The name change is associated with the death of one spouse in a partnership comprised of a husband and wife;

(E) The name change involves a sole proprietorship; or

(F) The name change is associated with such other circumstances where the Commission determines upon application, notice and hearing that the relief provided in this paragraph is not applicable, or that an exception to any exclusion should be granted.

(G) As used in this subsection, the term "partnership" means a domestic or foreign partnership, whether general or limited.

(4) In such events, the parent, subsidiary, surviving or resulting corporation or business entity or currently designated operator who has undergone a name change shall be substituted as designated operator upon filing and approval of Form 1073, required by OAC 165:10-1-15.

(f) **Amendment of multiple orders.** The applicant may use one application to amend two or more orders, even though the orders grant different types of relief. For purposes of this Chapter, such an application shall be considered as an application for a single form of relief.

(g) **Use of ~~Optional Form Forms 1073A through 1073C~~ application.**

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(1) An applicant shall have the option to use Commission Form 1073A for the application, ~~and Form 1073B for notice of application or Form 1073C-1073B for the notice of hearing, and Form 1073C for an order changing or deleting a designation of operator.~~

(2) The Form 1073A shall include the following information:

- (A) The order number and type of order.
- (B) The name and legal description of the applicable well or drilling and spacing unit.
- (C) The OTC operator numbers of the current operator and the proposed operator.
- (D) The OTC lease number and API number.
- (E) The classification of the well.

(3) If the space provided on the form is insufficient to include the necessary information related to amendment of multiple orders, then the applicant shall attach to the form an exhibit with the necessary information.

~~(h) **Personal notice requirements for location exception and increased density orders.** With respect to a location exception or increased density order, the applicant shall mail or deliver a copy of the application and notice of hearing to each current working interest owner in the well.~~

~~(ih) **Special notice provisions applicable to notices of hearing.** For purposes of this Section, the notice of hearing shall contain a special provision apprising the respondent of the requirements for protests under ~~(j)(i)~~ of this Section.~~

~~(ji) **Requirements for protests.** Any person desiring to protest an application shall have fifteen (15) days after receipt of notice in which to file a written protest to the application during the protest period, which shall run for fifteen (15) days from the date on which the last publication of the notice of hearing is made. Failure to submit file a written protest within the fifteen (15) day period shall be deemed consent to the granting of the application. If the application is protested within the fifteen (15) days allowed, the applicant shall have the notice of hearing published pursuant to 165:5-7-1(n)(2) a hearing shall be required. If no protest is filed, or if all protests are withdrawn, and the Commission does not require a hearing, the application may be presented to the Manager of the Technical Services Department for administrative review. Applicants submitting applications for administrative review must provide a proposed order on Form 1073C to the Manager of the Technical Services Department. The proposed order shall be reviewed by the Manager of the Technical Services Department prior to submission of the proposed order to the Commission. The proposed order shall properly address service.~~

~~(kj) **Summary disposition of unprotested applications.** Applications not contested may be disposed of submitted for administrative review by announcement, without necessity of counsel appearing.~~

~~(k) **Compliance with Form 1073 requirement.** The applicant is required to file a Form 1073 transfer of operator with the Oil and Gas Conservation Division pursuant to OAC 165:10-1-15.~~

### 165:5-7-12. Applications; determination of allowables

(a) **Scope.** Any applicant seeking relief under 165:10-135, 165:10138, 165:10151(g), 165:10-15-1(h), 165:10-15-16, and 165:10-15-18 shall have the option to proceed under either (b) through (i) of this Section or 165:571 and other applicable rules of practice.

(b) **Application.** The application shall be submitted on Form 1030 to the Technical Department of the Oil and Gas Conservation Division of the Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 731054993 for filing with the Commission.

(c) **Exhibits.** The applicants shall submit at the time of filing of the application all exhibits and data.

(d) **Notice of application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of application to substantially comply with the example shown in Appendix H to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application upon:

(A) The operator of the well subject to the application if the applicant is not the operator of the subject well.

(B) All operators of wells offsetting the well for which the relief is requested.

(C) All working interest owners of all offset wells operated by the applicant, if the applicant is the operator of the subject well.

(4) **Publication of notice.** The applicant shall have the notice of application published pursuant to 165:5-71(n)(2).

(5) **Proof of notice.** The applicant shall submit file a certificate of mailing and an affidavit of publication to show compliance with the requirements of this Section.

(e) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk of the Commission its protest which shall be

entitled "Protest" and which shall contain the following information:

- (A) Caption from application.
  - (B) Title Protest.
  - (C) Name, address, and telephone number of protesting parties.
  - (D) Reasons for protest.
- (4) **Notice to applicant of protest.** The Protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.
- (f) **Protest periods.**
- (1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period, which shall run for fifteen (15) days from the date of the latest of the following events:
    - (A) Filing of the application.
    - (B) Filing of all required exhibits.
    - (C) The date on which the last publication was made.
    - (D) The date of completion of service of process on all respondents in the ~~cause-case~~.
  - (2) **Additional protest period.** After expiration of the protest period, an additional fifteen (15) day protest shall run if:
    - (A) The applicant amends the application to change the location or nature of the requested relief; or
    - (B) The applicant files amended applications in order to re-notice original parties, or initially notice new parties to the application.
    - (C) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the ~~cause-case~~.
- (g) **Unprotested applications.**
- (1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.
  - (2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or file exceptions to the report pursuant to 165:5-13-5.
- (h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.
- (i) **Protested applications.**
- (1) **Hearing required.**
    - (A) A hearing shall be required on each timely protested application except as provided in (h) of this Section.
    - (B) A hearing may also be requested by the subject operator upon denial of the administrative application by the Technical Department of the Oil and Gas Conservation Division of the Commission.
  - (2) **Notice of hearing.** The applicant shall obtain a hearing date from the ~~Judicial and Legislative Services Court Clerk~~. The applicant shall send a copy of the notice

of hearing to each party of record not later than fifteen (15) days before the hearing date.

- (3) **Contents of notice.** The notice of hearing shall contain the date, time, and place of hearing.
- (4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix I to this Chapter.

**165:5-7-20. Unitized management of a common source of supply**

- (a) Notice of hearing for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail upon each person who would be entitled to share in the production from the proposed unit.
- (b) Notice of hearing for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall be published pursuant to 165:5-71(n)(2).
- (c) Provision for amending or terminating the unit shall be in the Plan of Unitization. To amend the Plan of Unitization, the order creating the unit shall be amended and notice shall be as provided for an application seeking an order creating a unit pursuant to 52 O.S. §§287.1, et seq. When a unit is terminated in accordance with the terms of the Plan of Unitization, ~~a copy~~ copies of the certificate of dissolution filed in the county in which the lands are located shall also be filed with the ~~Commission's Well Records Department~~ Managers of the Commission's Technical Services and Underground Injection Control Departments. In such ~~causes-cases~~, no Commission action shall be required to terminate a unit if terminated in accordance with the Plan of Unitization. Where the Plan of Unitization does not provide for amendment or termination of a unit, an application may be filed seeking relief from the order creating the unit and notice shall be given as provided for the filing of an application in the original ~~cause-case~~.
- (d) The application for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall contain the following:
  - (1) The names and addresses of the operator or operators of the unit.
  - (2) A plat showing the lease, group of leases or unit(s) included within the proposed unit; the location of the proposed injection well or wells and the location of all oil and gas wells, including abandoned and drilling wells and dry holes; and the names of all operators offsetting the area encompassed within the unit.
  - (3) The common source of supply in which all wells are currently completed.
  - (4) The name, description, and depth of each common source of supply to be affected.
  - (5) A log of a representative well completed in the common source of supply.
  - (6) A description of the existing or proposed casing program for injection wells, and the proposed method of testing casing.
  - (7) A description of the injection medium to be used, its source and the estimated amounts to be injected daily.

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(8) For a unit with an allocated pool, a tabulation showing recent gasoil ratio and oil and water production tests for each of the producing oil and gas wells.

(9) The proposed plan of development of the area included within the unit.

(e) A copy of the application, without the attachments provided in (d)(1) through (9) of this Section, and notice of hearing shall be mailed to the owner or owners of the surface of the land upon which the unit is located. A copy of the application, with attachments and notice of hearing shall be mailed to each operator offsetting the unit as shown on the application.

### **165:5-7-21. Unitized management of a common source of supply; brine and associated gas**

(a) Notice of hearing for an order creating a unit pursuant to 165:10-340 shall be served by the applicant no less than twenty (20) days prior to the date of the hearing, by regular mail upon each person who would be entitled to share in the production from the proposed unit.

(b) Notice of hearing for an order creating a unit pursuant to 165:10-3-40 shall be published pursuant to 165:5-71(n)(2).

(c) Provision for amending or terminating the unit shall be in the Plan of Unitization. To amend the Plan of Unitization, the order creating the unit shall be amended and notice shall be as provided for an application seeking an order creating a unit pursuant to 165:10-340. When a unit is terminated in accordance with the terms of the Plan of Unitization, ~~a copy~~ copies of the certificate of dissolution filed in the county in which the lands are located shall also be filed with the ~~Commission Managers of the Commission's Technical Services and Underground Injection Control Departments~~. In such ~~cases~~ cases, no Commission action shall be required to terminate a unit if terminated in accordance with the Plan of Unitization. Where the Plan of Unitization does not provide for amendment or termination of a unit, an application may be filed seeking relief from the order creating the unit and notice shall be given as provided for the filing of an application in the original ~~cause~~ case.

(d) The application for an order creating a unit pursuant to 165:10-340 shall contain the following:

(1) The names and addresses of the operator or operators of the unit.

(2) A plat showing the lease, group of leases or unit(s) included within the proposed unit, the location of the known proposed injection well or wells, and the location of all existing brine wells including abandoned, drilling and dry holes, and the names of all operators offsetting the area encompassed within the unit producing from or injecting into the common source of supply affected by the unit.

(3) The common source of supply in which all wells are currently completed.

(4) The name, description, and depth of each common source of brine supply to be affected.

(5) A log of a representative well completed in the common source of supply.

(6) The proposed plan of development of the area included within the unit.

(7) The approval of fifty five percent (55%) of the ownership named in the unit application has been obtained, or will be obtained prior to the unit becoming effective.

(e) A copy of the application, with attachments, and notice of hearing shall be served by regular mail to each person who would be entitled to share in production from the proposed unit, and to each operator offsetting the unit as shown on the application.

(f) Category B surety shall be a requirement of a person, company, corporation, partnership, etc., filing an application to produce brine for the extraction of minerals and the reinjection of minerals and the reinjection or disposal of the effluent. The amount of surety shall be twenty-five thousand (\$25,000) dollars per well or a maximum of one hundred thousand (\$100,000) dollars for each authorized operator.

### **165:5-7-33. Extension of time for closure of a noncommercial pit**

(a) **Section applicability.** The provisions of this Section shall apply to each application under 165:10-716 to extend time for closure of a pit.

(b) **Application form.** The applicant shall prepare the application in a form which complies with OAC 165:5-71.

(c) **Affidavit.** The applicant shall attach to the application an affidavit explaining the applicant's reasons for the extension.

(d) **Site inspection.** The applicant shall be responsible for obtaining a site inspection by representative of the Conservation Division.

(e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-716.

(f) **Dismissal for noncompliance.** Failure to complete the application, submit the affidavit and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.

(g) **Notice of the Application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix B to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Soil Conservation District.

(B) Each surface owner and surface lessee of the tract on which the pit is located.

(4) **Publication.** Publication of the notice of the application is required.

- (5) **Proof of notice.** The applicant shall submit a certificate of service.
- (h) **Protests.**
  - (1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.
  - (2) **Late protests.**
    - (A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.
    - (B) The Commission may reinstate a late filed protest upon motion for good cause shown.
  - (3) **Form of protest.** The Protestant shall file with the Court Clerk its protest which shall contain the following information:
    - (A) Caption from application.
    - (B) Title: protest.
    - (C) Name, address, and telephone number of protesting parties.
    - (D) Reasons for protest.
  - (4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.
- (i) **Protest period.**
  - (1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:
    - (A) Filing of the application.
    - (B) Filing of all required exhibits.
    - (C) The date of completion of service of process on all respondents in the ~~cause-case~~.
    - (D) Site inspection of the facility.
- (j) **Unprotested applications.**
  - (1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.
  - (2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or file exceptions to the report as under 165:5-135.
- (k) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.
- (l) **Protested applications.**
  - (1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (k) of this Section.
  - (2) **Notice of hearing.** The applicants shall obtain a hearing date from the ~~Judicial and Legislative Services Court Clerk~~ subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice

of hearing to each party of record not later than fifteen (15) days before the hearing date.

- (3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.
- (4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix C to this Chapter.

**165:5-7-34. Waiver of pit closure requirements**

- (a) **Section applicability.** The provisions of this Section shall apply to each application under 165:10-716(e)(9) to exempt an operator from responsibility for closure of a pit and transfer to the surface owner responsibility for maintenance and closure of the pit.
- (b) **Names required.** Each application under this Section shall be filed in the name of the well operator and the surface owner of the land on which the pit is located.
- (c) **Surface owner signature.** The application shall not be approved without the signature of the surface owner on the application.
- (d) **Application form.** The applicants shall prepare the application with a caption in a format which complies with Appendix D to this Chapter.
- (e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-716.
- (f) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.
- (g) **Notice of the application.**
  - (1) **Contents.** The notice of the application shall contain the following information:
    - (A) A brief description of the relief sought.
    - (B) The terms of the protest period.
    - (C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.
    - (D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.
  - (2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix D to this Chapter.
  - (3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:
    - (A) The Soil Conservation District.
    - (B) Each adjacent surface owner and surface lessee.
  - (4) **Proof of notice.** The applicant shall submit a certificate of service.
- (h) **Protests.**
  - (1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement

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of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall contain the following information:

(A) Caption from application.

(B) Title: Protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(i) **Protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:

(1) Filing of the application.

(2) Filing of all required exhibits.

(3) The date of completion of service of process on all respondents in the ~~cause~~ case.

(4) Site inspection of the facility.

(j) **Unprotested applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or file exceptions to the report as under 165:5-135.

(k) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (j)(1) of this Section.

(l) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (k) of this Section.

(2) **Notice of hearing.** The applicants shall obtain a hearing date from the ~~Judicial and Legislative Services Court Clerk~~ subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix E to this Chapter.

**165:5-7-35. Operation of commercial pit, commercial soil farming site and/or commercial recycling facility**

(a) **Application.** Each application for authority to operate a commercial pit under 165:10-91, a commercial soil farming site under 165:10-9-2 and/or a commercial recycling facility under 165:10-9-4 shall comply with the application requirements of OAC 165:5-7-1(a) through (e). The Commission will not accept an application for an emergency order approving a commercial facility that requires a permit under OAC 165:10-9-1, OAC 165:10-9-2 or OAC 165:10-9-4.

(b) **Exhibits.** At the time of the filing of the application, the applicant shall submit all exhibits and data.

(c) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice, and perform the site inspection within sixty (60) days after the date of filing of the application may be grounds for dismissal of the application.

(d) **Notice of the application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The date and time for a site inspection to be made by the applicant, a Commission representative and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix F to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Oklahoma Conservation Commission, 2800 North Lincoln, Suite 160, Oklahoma City, Oklahoma 73105.

(B) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the site of the proposed facility.

(4) **Newspaper publications.** The applicant shall publish the notice of the application:

(A) Two times in a newspaper of general circulation in Oklahoma County, Oklahoma.

(B) Two times in a newspaper of general circulation in each county where the proposed facility will be located.

(5) **Proof of notice.** The applicant shall submit a certificate of service and affidavits of publication.

(e) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

- (2) **Late protests.**
  - (A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.
  - (B) The Commission may reinstate a late filed protest upon motion for good cause shown.
- (3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall be entitled protest and which shall contain the following information:
  - (A) Caption from application.
  - (B) Title: Protest.
  - (C) Name, address, and telephone number of protesting parties.
  - (D) Reasons for protest.
- (4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.
- (f) **Protest periods.**
  - (1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for thirty (30) days from the last of the following events to occur:
    - (A) Filing of the application.
    - (B) Filing of all required exhibits.
    - (C) The date on which the last publication was made.
    - (D) The date of completion of service of process on all respondents in the ~~cause case~~.
    - (E) Site inspection of the proposed facility.
  - (2) **Additional protest period.**
    - (A) After expiration of the protest period, an additional ten (10) day protest shall run:
      - (i) If the applicant amends the application to change the location of the facility or increase its size; or
      - (ii) If the applicant files amended exhibits changing the design of the facility.
    - (B) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the ~~cause case~~.
- (g) **Unprotested Applications.**
  - (1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.
  - (2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or file exceptions to the report as under 165:5-135.
- (h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.
- (i) **Protested applications.**
  - (1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (h) of this Section.

- (2) **Notice of hearing.** The applicant shall obtain a hearing date from the ~~Judicial and Legislative Services Court Clerk~~ subject to approval by the Manager of Pollution Abatement. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.
- (3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.
- (4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix G to this Chapter.

**165:5-7-39. Staff applications for state funds to conduct remedial action**

- (a) **Scope.** This Section establishes the procedure for applications by Commission staff requesting the issuance of orders authorizing the use of state funds to plug, replug or repair wells, and repair, remediate or close commercial pits-pit facilities.
- ~~(b) **Forms.**~~
  - ~~(1) The applicant shall have the option to use the following forms:~~
    - ~~(A) Form SFP2000 (Application).~~
    - ~~(B) Form SFP2001 (Notice of Hearing).~~
    - ~~(C) Form SFP2002 (Emergency Application).~~
    - ~~(D) Form SFP2003 (Emergency Order).~~
    - ~~(E) Form SFP2004 (Final Order).~~
  - ~~(2) Use of said forms shall be deemed compliance with all procedural rules of the Commission.~~
- ~~(eb) **Referral of cause to case from the Oil and Gas Conservation Division.** Upon filing of the application, the cause shall be assigned to a geologist or engineer in the Oil and Gas Conservation Division. It shall be the responsibility of the designee to: Upon receipt of a request from the Oil and Gas Conservation Division seeking the issuance of an order authorizing the use of state funds to plug, replug or repair wells pursuant to 52 O.S. §309 et seq. or regarding the repair, remediation or closure of a facility constructed or used for permanent storage of deleterious substances pursuant to 52 O.S. §140, an application shall be filed. Applicant shall:~~
  - ~~(1) Give proper notice of the application.~~
  - ~~(2) Acquire affidavits and any other exhibits showing the need for state funds to plug, replug or repair wells, or to repair, remediate or close a facility. The status of the well or facility operator and the condition of the well or facility are to be addressed in the exhibits.~~
  - ~~(3) Prepare—Acquire specifications and estimate of costs for remedial action to plug, replug or repair wells or to repair, remediate or close facilities.~~
  - ~~(4) Report his findings to the Commission.~~
- ~~(dc) **Emergency application.** In an emergency, the applicant may file an emergency application for—requesting the issuance of an order authorizing funds to conduct necessary remedial action. The Commission shall hear such applications with or without notice. At the time of hearing, the Commission shall receive the exhibits and recommendation required in (e) of this Section. The—the Commission shall rule on the request as to—it deems appropriate.~~
- ~~(ed) **Hearing on the merits.**~~

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(1) The matter shall be set for hearing before ~~the Commission on base or such an~~ Administrative Law Judge, as the Commission shall assign unless otherwise referred by the Commission.

(2) At the hearing, the ~~Commission—~~Administrative Law Judge shall:

(A) Receive any exhibits not previously entered into evidence.

(B) Inquire of the ~~designee applicant or witness as it the~~ Administrative Law Judge deems necessary.

(C) ~~Rule on the application as it deems appropriate~~ Make recommendations as to actions to be taken or relief to be granted or denied. The Commission shall issue an order as it deems appropriate.

(3) Where the Commission has issued an emergency order in the ~~cause—~~case, the applicant may move that the emergency order be made a final order. The Commission may grant such a request if further funds are not needed to accomplish the remedy.

been filed or a prehearing/scheduling order has been issued, notice shall be given to all persons entitled to notice by the movant by serving, at least five (5) business days prior to the date set for hearing. Service of the notice shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person, unless otherwise provided by statute. A copy of the motion and notice of hearing shall be provided to all parties of record.

(2) Exceptions to such motions may be lodged in accordance with the provisions of OAC 165:5-13-5(a)(1) except as provided in (A) and (B) of this paragraph.

(A) In oil and gas related matters, all decisions on motions filed after the case has been assigned to an Administrative Law Judge shall be considered in the Report of the Administrative Law Judge unless the Administrative Law Judge directs otherwise.

(B) In all other matters, the decisions on motions filed after a scheduling agreement has been filed or a scheduling order has been issued in a case shall be considered in the Report of the Administrative Law Judge unless the Commission or Administrative Law Judge directs otherwise.

## SUBCHAPTER 9. SUBSEQUENT PLEADINGS

### 165:5-9-2. Subsequent pleadings

(a) **Reply.** No documents shall be required other than the application and responses thereto. Reply to a response shall be permitted but shall not be required.

(b) **Motions.** All other objections to or requests for action or relief shall be by motion, with service to all persons entitled to notice. Service of the motion shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person as provided in this subsection, unless otherwise provided by statute. The motion shall state in concise language the action or relief sought and the facts and circumstances upon which the right thereto is based.

(1) All motions shall be set on a regularly scheduled motion docket by a Notice of Hearing to be heard by an Administrative Law Judge unless determined otherwise by a prehearing/scheduling agreement or a prehearing/scheduling order. All motions filed after a case has been set before the Commission or assigned to an Administrative Law Judge on the merits shall be set as directed by the Commission or the assigned Administrative Law Judge. The filing of a motion may not automatically delay the hearing on the merits.

(A) Prior to the record being opened on the merits or a prehearing/scheduling agreement filed or a prehearing/scheduling order issued, notice shall be given to all persons entitled to notice by the movant by serving at least five (5) business days prior to the date set for hearing. Service of the notice shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person, unless otherwise provided by statute. A copy of the motion and notice of hearing shall be provided to each respondent.

(B) After the record in the case has been opened on the merits or a prehearing/scheduling agreement has

(c) **Response/objection to motions.** Any person may file and serve a response or objection to any motion at any time before the motion is heard. The title of the response or objection shall refer to the motion being considered. Responses or objections filed to motions which already have been set for hearing shall not require a Notice of Hearing.

(d) **Amendment.** Amendment of a document may be permitted at any time upon such terms as are just. An amendment may take the form of a substitute document, an amendment or supplement, deletion of language, or correction by interlineation. Response may be made to an amended document, but shall not be required. An amended application is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however, no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application; instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter.

(e) **Dismissal.** The applicant may dismiss the application with or without prejudice at any time prior to the record being opened at the hearing on the merits in said case by submitting a proposed order dismissing the case to the ~~Judicial and Legislative Services, Administrative Law Judge assigned to the case or, if no Administrative Law Judge has been assigned, to the chief Administrative Law Judge~~ and all parties of record. Such dismissal shall not dismiss the case as to specifically stated affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has not received notice of the dismissal or who has requested specific affirmative relief, such respondent may enter any evidence into the record and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.



(1) At any time prior to the record being opened at the hearing on the merits in a case, a respondent may file a motion to dismiss in the same manner as provided in (b) of this Section.

(2) After the record has been opened at the hearing on the merits in a case, the case may be dismissed by agreement of all parties of record or recommended for dismissal with or without prejudice by the Commission or Administrative Law Judge upon the Commission's or Administrative Law Judge's own motion or upon motion of any party of record. A motion to dismiss filed hereunder shall comply with the provisions of (b) of this Section; provided that, in a case where a motion to dismiss has been filed, notice shall be served on each respondent in the case.

(3) Upon five (5) business ~~days~~ days' notice to parties of record, the Commission may entertain motions to dismiss for any of the following reasons:

- (A) Failure to prosecute.
- (B) Unnecessary duplication of proceedings or res judicata.
- (C) Withdrawal.
- (D) Moot question or obsolete applications.
- (E) Lack of jurisdiction.
- (F) Failure to submit a proposed order in a timely manner.
- (G) For other good cause shown.

(4) Upon ~~posting by the Judicial and Legislative Services providing~~ posting fifteen (15) business ~~days~~ days' notice on a posted disposition docket, and upon emailing notice to all parties of record to a case, the Commission may dismiss cases for any of the following reasons:

- (A) Failure to submit a proposed order to the Administrative Law Judge or the Commission within thirty (30) days after the recommendation date or as directed by the Administrative Law Judge or the Commission.
- (B) Failure to set a case on a day certain.

**165:5-9-6. Continuances**

(a) **General.** The Commission or Administrative Law Judge before whom a case is set may continue or adjourn a hearing at any time for any period, with or without notice or motion. Continuances may be granted for good cause shown, or by agreement of all parties of record at the hearing. A stipulation of a continuance among all parties of record ordinarily will be approved, unless the Commission determines that the public interest requires otherwise. A continuance in a case may be granted in advance of the date for hearing of the case in the following ways:

- (1) As provided in OAC 165:5-9-2(b)(1); or
- (2) The applicant in a case may request a continuance at least five (5) business days in advance of a hearing date from the Docket Clerk or, if the case has been assigned for hearing, the Commission or assigned Administrative Law Judge. Upon approval of a continuance date, the applicant shall send a notice of continuance stating the continuance date to the Docket Clerk and if the case has been assigned

for hearing, the Commission or assigned Administrative Law Judge. Notice of the continuance date shall be served on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the case, notice of the continuance date shall be served on all parties of record. The notice of continuance must be sent to all persons entitled to notice at least five (5) business days prior to the date of the hearing. Service of the notice of continuance shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person, unless otherwise provided by statute. Such case shall be continued on the docket without the necessity of the appearance of the applicant at the time of hearing.

(b) **Contested motion for continuance.** A contested motion for continuance on the day set for hearing of the case shall be heard by the Commission or Administrative Law Judge. Such decision may be noted as part of the order of the Commission or Initial Report of the Administrative Law Judge if requested by a party of record.

(c) **More than two continuances.** In those cases where two (2) continuances have previously been granted, upon the granting of each additional continuance, notice of such continuance shall be provided to all respondents. Service shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person by the person requesting such continuance or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the case, notice of the continuance date shall be served on all parties of record at least five (5) business days prior to the date the continued case is set for hearing. The movant shall provide proof of service of such notice at the time of hearing. This subsection shall not apply to matters assigned to before the Commission or an Administrative Law Judge unless the Commission or Administrative Law Judge deems or orders otherwise.

(d) **Day certain.** Every continuance shall be to a day certain. If an applicant has failed to set a continued case on a day certain for a period more than thirty (30) days after the last recorded hearing date as shown from the Commission's docket records, ~~the Director of the Judicial and Legislative Services or an Administrative Law Judge may recommend dismissal of the case to the Commission, pursuant to OAC 165:5-9-2(e)(4); and the Commission may dismiss the case without prejudice by an Order Dismissing Case.~~

(e) **Continuances of the Motor Carrier Citation Docket when the Commission is closed.** In the event the Commission is closed due to inclement weather or other administrative reason on the date and/or time of the Motor Carrier Citation Docket, all citations scheduled to be heard on the Motor Carrier Citation Docket shall be automatically continued to the following month's docket as posted on the Commission's website.

**SUBCHAPTER 13. INITIAL AND SUBSEQUENT PROCEEDINGS**

# Permanent Final Adoptions

## 165:5-13-1. Sessions and hearings

(a) **Open to public.** All official sessions and public hearings of the Commission or any Administrative Law Judge will be open to the public and will be held in its official courtrooms at the principal office in Oklahoma City, Oklahoma, the regional service office in Tulsa, Oklahoma, or at such other place as provided by law or designated by the Commission.

(b) **Time.** All hearings shall commence at the time designated in the notice of hearing or by order of the Commission.

(c) **Courtroom conduct.** Conduct of attorneys before the Commission shall be governed by the applicable rules of the Supreme Court of Oklahoma. All parties, witnesses, and observers will at all times maintain decorum, and will conduct themselves in such manner as to reflect respect for the authority and dignity of the Commission and its Administrative Law Judges. Upon violation of this provision, any person, witness, attorney, or other representative may be subject to punishment for contempt.

(d) **Record of hearing.** A stenographic or electronic record will be made of all proceedings before the Commission or an Administrative Law Judge pursuant to 20 O.S. §106.4(A). Audio and video recordings of all proceedings are official electronic records to be kept by the Commission—of which a copy may be kept by the court reporter present during the proceeding. A transcript of proceedings will be made by a court reporter at the request and expense of the person ordering it; or at the request of the Commission, in which case a copy will be made for any person requesting it, at that person's expense.

## 165:5-13-2. Setting of ~~causes~~ cases

(a) **General.** All hearings on the merits shall be set before an Administrative Law Judge, unless otherwise ordered by the Commission.

(b) **Specially set.** By a motion, the applicant or any party of record or respondent may, at any time up to commencement of a hearing, request of the Commission that a ~~cause~~ case be specially set before the Commission for hearing. The Commission may advance any ~~cause~~ case by sua sponte order at any time.

(c) **Exceptions.** For purposes of OAC 165:5-13-5, all exceptions to reports on hearings on the merits in matters on the GG, CD, PD, EN, SF, PSD and US dockets shall be heard by the Commission en banc unless referred to an Oil and Gas Appellate Referee. Hearing dates for exceptions are to be secured from a docket clerk at the time of filing. The exceptions will be heard on that date or as soon thereafter as may meet the convenience of the Commission. Exceptions in all other matters shall be set before the Commission en banc.

(d) **Authority of Administrative Law Judge.** An Administrative Law Judge shall exercise all of the powers of the Commission in the conduct of a ~~cause~~ case. An Administrative Law Judge shall rule upon admission of evidence, and objections thereto, and upon any other motion or objection arising during the pendency of the ~~cause~~ case until the issuance of the report of the Administrative Law Judge. Review of a ruling of an Administrative Law Judge shall be by exceptions pursuant to OAC 165:5-13-5, and any objection to a ruling or other action of such Administrative Law Judge not included in such

exceptions and amendments thereto, shall be deemed to have been waived.

(e) **Hearings on the PUD ~~docket~~ and OSF dockets.** All hearings in ~~causes~~ cases filed pursuant to OAC 165:70, OAC 165:59, 17 O.S. §286, or 18 O.S. §438.31 et seq. shall be given priority status on the PUD ~~docket~~ and OSF dockets in order to comply with 17 O.S. §139.106, 17 O.S. §152, 17 O.S. §137(I), 17 O.S. §286, and 18 O.S. §438.31 et seq. and any time periods prescribed therein.

(f) **Hearings on the Petroleum Storage Tank docket.** All hearings regarding the exercise of the Commission's adjudicative authority pursuant to the Oklahoma Petroleum Storage Tank Consolidation Act, 17 O.S. §§301 et seq. shall be given priority status on the Petroleum Storage Tank docket ("PSD") in order to comply with 17 O.S. §330 for the Commission to hear each case within one hundred eighty (180) days from the date of filing. See also OAC 165:5-21-9.

## SUBCHAPTER 15. ORDERS

### 165:5-15-1. General form and procedure

(a) **Contents of orders.** The Commission may prescribe a standardized format for all orders. Every order of the Commission shall contain the following where appropriate or except where the Commission determines otherwise:

(1) Caption, ~~cause~~ case number on the appropriate docket and order number. Every page of the order shall also contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the ~~docket~~ case number assigned to the cause by the Court Clerk, and order type, e.g., emergency order, final order, etc.

(2) Appearances.

(3) Date and place of all hearings.

(4) Summary of allegations of applicant, and of all other parties of record.

(5) Summary of evidence of applicant, and of all other parties of record.

(6) Findings of fact, containing all ultimate facts found to have been established.

(7) Conclusions of law, containing:

(A) All legal conclusions found to be applicable to the facts; and

(B) The directive of the order stated in concise and mandatory language.

(8) Signature of the Secretary certifying as to all Commissioners participating in making the order. The signatures of the Secretary and Commissioners participating in the making of the order may be electronic signatures as provided in OAC 165:5-1-14.

(9) Seal of the Commission.

(10) Date of filing, and effective date where appropriate.

(b) **Duty to send orders.** The Commission shall immediately provide a copy of the order to the applicant. Upon the implementation of electronic filing, delivery shall only be made by electronic mail, unless there are exigent or extraordinary circumstances. Except where otherwise specifically provided in this Chapter, the applicant shall thereafter mail

or otherwise deliver a copy of the order within five (5) days of the receipt of the order to all parties of record and to each respondent in the cause. Where an attorney has appeared of record for a person, service shall be on the attorney.

(c) **Effectiveness of order.** The issuance of or effectiveness of an order or its enforcement will not be stayed or postponed by the filing of any motion for rehearing or for other relief therefrom. The Commission may by order stay any order pending further hearing, and may stay or postpone the effective date thereof, or enforcement thereof for such time and on such terms as may be just.

(d) **Order titles and numbers.** An order of the Commission, descriptively titled, shall be issued for all motions and other matters set for hearing, except for continuances, and all such orders shall be given an order number; provided that when a motion is withdrawn, no order shall be required to document the withdrawal.

### SUBCHAPTER 19. CONTEMPT

#### **165:5-19-1. Contempt procedure**

(a) **Commencement.** A contempt proceeding is commenced with the filing of a verified Complaint. Prior to the filing of a contempt proceeding by the Commission, or a division thereof, the self-reporting of an apparent violation and corrective actions taken by the Respondent, along with plans to prevent future violations, and/or other mitigating factors should be considered.

(b) **Complaint.** The complaint shall state:

- (1) The name of the person, firm, trust, corporation, or association against whom the complaint is made.
- (2) Each law, order, rule, regulation of which violation is charged.
- (3) In general terms, the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) **Citation.** When a complaint is filed, the Secretary shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:

- (1) The name of the complainant and the date the complaint was filed.
- (2) A brief description of the nature of the complaint.
- (3) Reference to the accompanying copy of the complaint.
- (4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.
- (5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.

(d) **Service of citation.** Service of the citation for contempt may be made by a person directed to do so by order of the Commission. Such service shall be made in accordance with the rules of the Commission. Service shall be made by mailing

the citation for contempt by certified mail to the respondent's last known address as listed in Commission records, and, if applicable, to the respondent's registered agent as listed with the Oklahoma Secretary of State. The respondent is responsible for notifying the Commission of any change of address.

(e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Court Clerk. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective on the date of receipt, or if refused, on the date of refusal of the complaint by the respondent. If the certified mailing is returned as undeliverable, the Commission or Administrative Law Judge shall determine sufficiency of service and may recommend additional service requirements. The Commission or Administrative Law Judge may use the service of process requirements in 12 O.S. § 2004 as guidance to ensure effective service.

(f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine, cancellation, suspension, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the ~~cause~~ case and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.

(h) **Hearing procedures.** At the hearing, the Commission shall first determine whether jurisdiction and service are proper, then hear all objections and defenses other than to the merits of the complaint and shall enter appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine, suspension, cancellation, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(i) **Hearing date.** Every ~~cause~~ case instituted hereunder shall be tried on its merits on the date specified in the citation, or at such other time to which such ~~cause~~ case shall be continued for hearing by the Commission.

### SUBCHAPTER 21. PROCEDURE FOR THE PETROLEUM STORAGE TANK DOCKET

#### **165:5-21-3. Application and notice requirements for Petroleum Storage Tank cases**

(a) Every case will start with the filing of an application in the Court Clerk's Office. The following must be on the application:

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- (1) A caption with the heading of "Before the Corporation Commission of the State of Oklahoma."
  - (2) The name of the applicant(s).
  - (3) The relief sought (what the applicant wants done).
  - (4) The docket and case number.
- (b) The application must have four numbered parts as follows:
- (1) The first part must have (i) the applicant's name, address, and telephone number of his attorney or designated representative; (ii) the nature of the applicant's interest in the subject matter of the case; and (iii) the name and address of each person (if any) named as respondent(s).
  - (2) The second part must have the allegation of facts which are important to the case. The allegations must be stated simply in numbered subparagraphs as necessary for clarity.
  - (3) The third part must have the citations of statutes, rules, orders, and decided cases authorizing the relief sought.
  - (4) The fourth part must have a short and concise statement of what the applicant(s) wants the Commission to do.
- (c) The application must be signed by the applicant or, an authorized agent of the applicant or by the attorney for the applicant. The address and telephone number of the person signing must be under the signature. The person signing the application shall be deemed to certify that:
- (1) He has read the application; and
  - (2) To the best of his knowledge, formed after reasonable inquiry, the facts contained in the application are true; and
  - (3) That the application is not filed to harass or to cause unnecessary delay or needless expense.
- (d) A document may be served on a party of record by regular mail or in person. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney.
- (e) Every application and notice of hearing shall be served on the respondent and the ~~Judicial and Legislative Services~~ staff counsel by certified mail by the person filing the application; publication is not required. Thereafter, every document shall be served by regular mail upon all parties.
- (f) A certificate of service will be included on every document. The certificate shall contain a list of the persons to whom a copy of the document was mailed, postage prepaid, or to whom it was hand delivered.
- (2) The Complainant's company name;
  - (3) The Complainant's address;
  - (4) The Complainant's company phone number, ~~e-mail address~~, electronic mail address, and facsimile number;
  - (5) The date and time of the complaint including the name and address, and the telephone number and electronic mail address, and fax number, if known, of the Respondent with whom the Complainant has a dispute;
  - (6) A description of the dispute;
  - (7) The time period of the problem described in the dispute;
  - (8) The current status of the negotiations between the parties;
  - (9) Description of the actions taken by the Complainant to resolve the problem;
  - (10) The relief sought by the Complainant;
  - (11) The legal description, county name and name of the well(s) involved in the dispute; and
  - (12) The names of representatives of the Respondent with whom the Complainant has talked regarding the dispute.
- (b) No filing fee shall be charged ~~by the Judicial and Legislative Services~~ to the Complainant for filing the Notice of Intent to Mediate, however, ~~it shall charge~~ a \$5.00 fee shall be charged to each Participant to an informal dispute resolution procedure.
- (c) If the Notice of Intent to Mediate is filed after the filing of a Formal Complaint, the Notice of Intent to Mediate shall contain a statement of the Complainant's desire to commence the informal dispute resolution procedure, the information contained in OAC 165:5-23-3 (a)(8) and (a)(9), and shall reference the claims pled and relief sought in the Formal Complaint.
- (d) Attached to the Notice of Intent to Mediate may be any documentary evidence the Complainant wishes to submit.
- (e) The Complainant shall send by registered mail, facsimile, or deliver a copy of the Notice of Intent to Mediate and all attached documents to the Respondent at the same time that the Notice of Intent to Mediate and any attached documents are filed with the Commission.
- (f) Within ten (10) days of receiving the Notice of Intent to Mediate, the Respondent shall file in writing either a notice that it does not agree to participate in the informal dispute resolution procedure or a reply that it agrees to participate in the informal dispute resolution procedure, in which event Respondent shall respond to the Notice of Intent to Mediate and Respondent may attach to its reply any documentary evidence which it wishes to submit. The Respondent shall file its notice or reply and any attached documentary evidence with the Commission's Court Clerk and shall send by registered mail, facsimile, or deliver a copy of the notice or reply, and all attached documents, to the Complainant at the same time the notice or reply is filed with the Court Clerk.
- (g) Either the Complainant or the Respondent may withdraw its agreement to participate in the informal dispute resolution procedure at any time.

### SUBCHAPTER 23. INFORMAL RESOLUTION OF NATURAL GAS GATHERING DISPUTES

#### 165:5-23-3. Form and service of a Notice of Intent to Mediate; reply by Respondent

(a) Prior to or after the filing of a Formal Complaint under 52 O.S. §§ 24.4 and 24.5, a Complainant seeking redress under this Subchapter may commence the informal dispute resolution procedure by filing a Notice of Intent to Mediate. The Notice of Intent to Mediate shall be made in the form prescribed by the Commission and shall contain the following information:

- (1) The Complainant's name;

### SUBCHAPTER 25. MOTOR CARRIER TAX AND REGISTRATION PROTESTS

**165:5-25-2. Filing confidential applications for hearing**

(a) ~~Taxpayer~~ Until such time as the ECF System provides for the electronic filing of confidential documents, taxpayer or registrant applications for hearing pursuant to this subchapter shall be filed in paper with the Commission's Court Clerk's Office Clerk in person or by mail. Accordingly and notwithstanding OAC 165:5-1-5(h), to maintain the confidentiality of the taxpayer's identity, a coversheet for the application shall not be filed via the ECF System, and pursuant to 47 O.S. § 1170, all filings in the case are to be filed in paper with the Court Clerk in person or by mail instead of through the ECF System. Applications and filings shall be in writing, marked "CONFIDENTIAL TAXPAYER/REGISTRANT PROTEST," pursuant to OAC 165:5-1-5(g), signed by the taxpayer or registrant or an authorized representative thereof, and shall set out therein:

- (1) The name, mailing address, physical address, telephone number, and e-mail address of the taxpayer or registrant;
- (2) A statement of the amount of the deficiency as determined by the Transportation Division in the proposed assessment, the nature of the tax or fee and the amount thereof in controversy, or the denial of base state registration;
- (3) A clear and concise statement of each item in dispute;
- (4) The argument and any legal authority upon which each item in dispute is made; provided, that the taxpayer or registrant shall not be bound or restricted in such hearing, except on exceptions, to the arguments and legal authorities contained and cited in said applications or presented in the initial hearing;
- (5) A statement of the relief sought by the taxpayer or registrant;
- (6) A verification by the taxpayer or registrant or his duly authorized agent that the statements and facts contained therein are true; and
- (7) In a refund claim, a statement as to whether the basis for the claim request is due to a mistake of law or a mistake of fact with a brief explanation of the mistake.

(b) Pursuant to 47 O.S. § 1170 ~~and 51 O.S. § 24A.29~~, the Commission ~~hereby determines that is required to keep all reports, records, and files of the Commission concerning the administration of the IFTA/IRP confidential. All information classified as confidential shall remain confidential unless otherwise provided by law.~~

(c) The taxpayer or registrant may authorize the disclosure of information to any person pursuant to a written waiver of confidentiality.

*[OAR Docket #22-666; filed 7-21-22]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 10. OIL & GAS CONSERVATION**

*[OAR Docket #22-667]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Administration
  - Part 1. General Provisions
    - 165:10-1-3. Scope of rules [AMENDED]
    - 165:10-1-4. Citation effective date [AMENDED]
    - 165:10-1-6. Duties and authority of the Conservation Division [AMENDED]
    - 165:10-1-7. Prescribed forms [AMENDED]
  - Part 3. Surety
    - 165:10-1-10. Operator's agreement; Category A and Category B surety [AMENDED]
  - Part 5. Spacing
    - 165:10-1-22. Drilling and spacing units [AMENDED]
    - 165:10-1-24. Permitted well locations within standard drilling and spacing units [AMENDED]
- Subchapter 3. Drilling, Developing, and Producing
  - Part 1. Drilling
    - 165:10-3-1. Required approval of notice of intent to drill, deepen, re-enter, or recomplete; Permit to Drill [AMENDED]
    - 165:10-3-4. Casing, cementing, wellhead equipment, and cementing reports [AMENDED]
    - 165:10-3-5. Underground storage [AMENDED]
  - Part 3. Completions
    - 165:10-3-10. Well completion operations [AMENDED]
    - 165:10-3-17. Well site and surface facilities [AMENDED]
  - Part 5. Operations
    - 165:10-3-26. Well logs [AMENDED]
    - 165:10-3-27. Deviation from the vertical [AMENDED]
    - 165:10-3-28. Horizontal drilling [AMENDED]
- Subchapter 5. Underground Injection Control
  - 165:10-5-2. Approval of injection wells or disposal wells [AMENDED]
  - 165:10-5-5. Application for approval of injection and disposal operations [AMENDED]
  - 165:10-5-15. Application for order ~~or~~ permit for simultaneous injection well [AMENDED]
- Subchapter 7. Pollution Abatement
  - Part 3. Storage and Disposal of Fluids
    - 165:10-7-19. Land application of water-based fluids from earthen pits, tanks and pipeline construction [AMENDED]
    - 165:10-7-26. Land application of contaminated soils and petroleum hydrocarbon based drill cuttings [AMENDED]
- Subchapter 11. Plugging and Abandonment
  - 165:10-11-1. License for pulling ~~pipe~~ casing and plugging wells [AMENDED]
  - 165:10-11-3. Duty to plug ~~and abandon~~ [AMENDED]
- Subchapter 29. Special Area Rules
  - 165:10-29-1. Lake Atoka and McGee Creek Reservoir [AMENDED]

**AUTHORITY:**

Corporation Commission; 17 O.S. § 52, 27A O.S. § 1-3-101, 52 O.S. § 87.1, 52 O.S. § 139, 52 O.S. § 318.1, and 75 O.S. § 314.

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

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on February 8, 2022.

**COMMENT PERIOD:**

February 8, 2022, through March 22, 2022

**PUBLIC HEARING:**

March 22, 2022

**ADOPTION:**

March 22, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

# Permanent Final Adoptions

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

October 1, 2022

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## GIST/ANALYSIS:

The rules were approved to streamline and clarify the Oil & Gas Conservation rules, update the list of Oil & Gas Conservation Division prescribed forms and eliminate forms, change requirements regarding operator agreements, modify Permit to Drill requirements, allow the Commission to issue a Permit to Drill prior to the issuance of an order under certain circumstances, establish parameters concerning cementing of wells and submission of cementing reports, and revise provisions pertaining to notice of hydraulic fracturing operations and eliminate a reference to citations.

The approved rules also clarify requirements regarding submission of well logs, update specifications concerning approval of underground injection wells, increase the amount and type of information to be supplied in connection with applications for approval of underground injection wells, modify requirements pertaining to simultaneous injection wells, and streamline provisions pertaining to issuance of licenses for pulling casing and plugging wells. Certain amendments in approved rules OAC 165:10-1-22, OAC 165:10-1-24, OAC 165:10-3-1, and OAC 165:10-3-27 regarding issuance of Permits to Drill prior to the issuance of orders in particular circumstances are consistent with amendments to 52 O.S. § 87.1 in House Bill 3039 approved by Governor Stitt on May 22, 2022.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2022:**

## SUBCHAPTER 1. ADMINISTRATION

### PART 1. GENERAL PROVISIONS

#### 165:10-1-3. Scope of rules

All rules of general application in this Chapter promulgated to prevent waste, assure the greatest ultimate recovery from the reservoirs of this state, protect the correlative rights of all interests, and to prevent pollution shall be effective throughout the State of Oklahoma and be in force in all pools except as amended, modified, altered, or enlarged in specific individual pools by orders now in effect or hereafter issued by the Commission. The rules of this Chapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

#### 165:10-1-4. Citation effective date

(a) These rules shall be cited as OAC Title 165 Chapter 10 (OAC 165:10).

(b) The effective date of the rules of this Chapter is as set out below:

(1) Order No. 937 - Effective 06/16/15

- (2) Order No. 1299 - Effective 08/20/17
- (3) Order No. 1986 - Effective 01/05/22
- (4) Order No. 6251 - Effective 04/12/33
- (5) Order No. 6252 - Effective 04/15/33
- (6) Order No. 6393 - Effective 07/19/33
- (7) Order No. 6394 - Effective 07/20/33
- (8) Order No. 7263 - Effective 04/10/34
- (9) Order No. 8229 - Effective 10/31/33
- (10) Order No. 17528 - Effective 01/24/45
- (11) Order No. 19334 - Effective 10/24/46
- (12) Order No. 29232 - Effective 10/06/54
- (13) Order No. 30712 - Effective 09/09/55
- (14) Order No. 44297 - Effective 04/01/61
- (15) Order No. 47397 - Effective 12/01/61
- (16) Order No. 53568 - Effective 12/08/63
- (17) Order No. 53749 - Effective 01/03/64
- (18) Order No. 62481 - Effective 05/11/66
- (19) Order No. 62631 - Effective 06/01/66
- (20) Order No. 63817 - Effective 10/04/66
- (21) Order No. 64203 - Effective 11/10/66
- (22) Order No. 64207 - Effective 12/01/66
- (23) Order No. 65747 - Effective 05/05/67
- (24) Order No. 66006 - Effective 06/08/67
- (25) Order No. 66778 - Effective 09/05/67
- (26) Order No. 67113 - Effective 10/09/67
- (27) Order No. 67379 - Effective 11/06/67
- (28) Order No. 69103 - Effective 06/01/68
- (29) Order No. 69104 - Effective 06/01/68
- (30) Order No. 69340 - Effective 07/01/68
- (31) Order No. 70704 - Effective 01/03/69
- (32) Order No. 75248 - Effective 07/01/69
- (33) Order No. 77627 - Effective 01/01/70
- (34) Order No. 78830 - Effective 01/01/70
- (35) Order No. 78831 - Effective 01/01/70
- (36) Order No. 79460 - Effective 04/01/70
- (37) Order No. 79461 - Effective 04/01/70
- (38) Order No. 80401 - Effective 06/01/70
- (39) Order No. 80402 - Effective 06/01/70
- (40) Order No. 81221 - Effective 08/01/70
- (41) Order No. 81222 - Effective 08/01/70
- (42) Order No. 83168 - Effective 01-01-71
- (43) Order No. 84223 - Effective 04-01-71
- (44) Order No. 84224 - Effective 04-01-71
- (45) Order No. 84318 - Effective 03-29-71
- (46) Order No. 85138 - Effective 06-01-71
- (47) Order No. 85139 - Effective 06-01-71
- (48) Order No. 87730 - Effective 01-01-72
- (49) Order No. 87829 - Effective 01-01-72
- (50) Order No. 93381 - Effective 10-05-72
- (51) Order No. 93382 - Effective 10-05-72
- (52) Order No. 94418 - Effective 01-01-73
- (53) Order No. 96671 - Effective 04-01-73
- (54) Order No. 87829 - Effective 01-01-72
- (55) Order No. 94418 - Effective 01-01-73
- (56) Order No. 102096 - Effective 01-01-74
- (57) Order No. 109595 - Effective 01-01-75
- (58) Order No. 117899 - Effective 03-01-76
- (59) Order No. 128534 - Effective 03-01-77

- (60) Order No. 128781 - Effective 03-01-77
- (61) Order No. 138348 - Effective 03-01-78
- (62) Order No. 151077 - Effective 03-23-79
- (63) Order No. 161968 - Effective 01-03-80
- (64) Order No. 164345 - Effective 03-17-80
- (65) Order No. 164346 - Effective 02-14-80
- (66) Order No. 164347 - Effective 02-14-80
- (67) Order No. 165935 - Effective 04-01-80
- (68) Order No. 185407 - Effective 03-09-81
- (69) Order No. 185890 - Effective 03-16-81
- (70) Order No. 211505 - Effective 03-30-82
- (71) Order No. 228675 - Effective 01-01-83
- (72) Order No. 230515 - Effective 01-01-83
- (73) Order No. 230781 - Effective 01-01-83
- (74) Order No. 246797 - Effective 01-01-84
- (75) Order No. 250273 - Effective 01-01-84
- (76) Order No. 250466 - Effective 01-01-84
- (77) Order No. 260734 - Effective 07-01-84
- (78) Order No. 290210 - Effective 01-09-86
- (79) Order No. 292212 - Effective 02-10-86
- (80) Order No. 299185 - Effective 06-12-86
- (81) Order No. 302126 - Effective 10-08-86
- (82) Order No. 303650 - Effective 10-02-86
- (83) Order No. 304257 - Effective 10-16-86
- (84) Order No. 305211 - Effective 11-07-86
- (85) Order No. 311872 - Effective 05-06-87
- (86) Order No. 312391 - Effective 05-14-87
- (87) Order No. 310755 - Effective 06-01-87
- (88) Order No. 313445 - Effective 06-12-87
- (89) Order No. 313446 - Effective 07-09-87
- (90) Order No. 313660 - Effective 06-17-87
- (91) Order No. 313932 - Effective 06-25-87
- (92) Order No. 314001 - Effective 06-27-87
- (93) Order No. 313446 - Effective 07-09-87
- (94) Order No. 315275 - Effective 08-19-87
- (95) Order No. 320171 - Effective 12-21-87
- (96) Order No. 320741 - Effective 01-08-88
- (97) Order No. 320742 - Effective 01-08-88
- (98) Order No. 321123 - Effective 01-21-88
- (99) Order No. 323847 - Effective 05-01-88
- (100) Order No. 325144 - Effective 05-02-88
- (101) Order No. 326275 - Effective 06-27-88
- (102) Order No. 326343 - Effective 06-01-88
- (103) Order No. 326344 - Effective 06-01-88
- (104) Order No. 327514 - Effective 07-01-88
- (105) Order No. 327515 - Effective 07-01-88
- (106) Order No. 329661 - Effective 08-26-88
- (107) Order No. 329662 - Effective 08-26-88
- (108) Order No. 329663 - Effective 08-26-88
- (109) Order No. 334130 - Effective 01-04-89
- (110) Order No. 337475 - Effective 03-31-89
- (111) Order No. 337476 - Effective 03-31-89
- (112) Order No. 339860 - Effective 05-07-89
- (113) Order No. 341102 - Effective 08-25-89
- (114) Order No. 341103 - Effective 08-14-89
- (115) Order No. 346071 - Effective 03-29-90
- (116) Order No. 346107 - Effective 03-30-90
- (117) Order No. 355458 - Effective 03-20-91
- (118) Order No. 355461 - Effective 03-20-91
- (119) Order No. 355463 - Effective 03-20-91
- (120) Order No. 355471 - Effective 03-21-91
- (121) Order No. 364345 - Effective 06-25-92
- (122) Order No. 364382 - Effective 06-25-92
- (123) Order No. 368110 - Effective 08-28-92
- (124) Order No. 372796 - Effective 06-25-93
- (125) Order No. 381632 - Effective 07-11-94
- (126) Order No. 381755 - Effective 07-11-94
- (127) Order No. 387223 - Effective 10-20-94
- (128) RM No. 95000023 - Effective 07-01-96
- (129) RM No. 95000024 - Effective 07-01-96
- (130) RM No. 95000025 - Effective 07-11-96
- (131) RM No. 96000008 - Effective 07-01-96
- (132) RM No. 96000009 - Effective 07-01-96
- (133) RM No. 96000018 - Effective 10-15-96
- (134) RM No. 97000002 - Effective 07-01-97
- (135) RM No. 97000011 - Effective 07-01-98
- (136) RM No. 97000025 - Effective 07-11-98
- (137) RM No. 98000013 - Effective 07-15-98
- (138) RM No. 98000016 Emergency, - Effective 03-30-98
- (139) RM No. 98000017 Emergency, - Effective 03-30-98
- (140) RM No. 98000020 Emergency, - Effective 01-05-99
- (141) RM No. 98000033 - Effective 07-01-99
- (142) RM No. 98000034 - Effective 07-01-99
- (143) RM No. 98000035 - Effective 07-01-99
- (144) RM No. 99000010 - Emergency, - Effective 12-28-99
- (145) RM No. 20000002 - Effective 07-01-00
- (146) RM No. 20000009 - Emergency, - Effective 11-02-00
- (147) RM No. 20000009 - Permanent, - Effective 05-11-01
- (148) RM No. 20010005 - Effective 07-01-01
- (149) RM No. 20010006 - Effective 07-01-01
- (150) RM No. 20010009 - Emergency, - Effective 01-14-02
- (151) RM No. 20020017 - Effective 07-01-02
- (152) RM No. 20030001 - Effective 07-01-03
- (153) RM No. 20040006 - Effective 07-01-04
- (154) RM No. 20060012 - Effective 07-01-06
- (155) RM No. 20060013 - Emergency, - Effective 10-04-06
- (156) RM No. 20070004 - Effective 07-01-07
- (157) RM No. 20080003 - Effective 07-11-08
- (158) RM No. 20090001 - Effective 07-11-09
- (159) RM No. 20100003 - Effective 07-11-10
- (160) RM No. 20110004 - Emergency, - Effective 05-19-11
- (161) RM No. 20100007 - Effective 07-11-11
- (162) RM No. 20120005 - Effective 07-01-12
- (163) RM No. 20130001 - Effective 07-01-13
- (164) RM No. 20140002 - Effective 09-12-14
- (165) RM No. 20150001 - Effective 08-27-15
- (166) RM No. 20160001 - Effective 08-25-16

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- (167) RM No. 201600019 - Effective 09-11-17
- (168) RM No. 201800002 - Effective 09-14-18
- (169) RM No. 201900002 - Effective 08-01-19
- (170) RM No. 202000002 - Effective 10-01-20
- (171) RM No. 202100003 - Effective 10-01-21

### 165:10-1-6. Duties and authority of the Conservation Division

(a) It shall be the duty of the Conservation Division to administer and enforce the statutes of this State and the rules, regulations, and orders of the Commission relating to the conservation of oil and gas and the prevention of pollution in connection with the exploration, drilling, producing, transporting, purchasing, processing, and storage of oil and gas. A schedule of fines listed in this Chapter is in Appendix E.

(b) The Conservation Division shall have the right at all times to go upon and inspect any oil and gas properties, pipelines, tank farms, refineries, and other processing plants and pump stations for the purpose of making any investigations or tests to ascertain whether the rules, regulations, and orders of the Commission are being complied with, and shall report to the Commission any violation thereof.

(c) The Conservation Division may require the testing or retesting of any oil, gas, injection, or disposal well upon 48-hour notice. Until the test is completed or excused, no allowable will be assigned the well and the purchaser or taker of oil or gas from such well shall not run oil or gas until authorized by the Conservation Division.

(d) The Director of the Conservation Division may administratively reclassify a well according to the gas-oil ratio as specified in 165:10-13-2 if the retesting of a well pursuant to this Section indicates a change in the original gas-oil ratio. This administrative reclassification shall only be used for allowable or priority purposes pursuant to 165:10-17-12. The operator shall be notified in writing by the Conservation Division within 15 days of the effective date of any change in classification.

(e) If the operator of the well which has been reclassified objects to said reclassification, he may file a written objection with the Conservation Division within 15 days of receiving notice of the reclassification. At the same time that the objection is filed, the operator shall file an application and notice setting cause for hearing with the Court Clerk ~~Commission~~. The notice shall be published one time at least 15 days prior to the hearing in a newspaper of general circulation published in Oklahoma County and in a newspaper of general circulation published in each county in which lands embraced in the application are located.

(f) The Conservation Division shall have access to all well records, wherever located. All companies, operators, drilling contractors, drillers, service companies, or other persons shall permit any authorized employee of the Commission to come upon any lease or property operated or controlled by them, and to inspect the records of wells; provided, that information so obtained shall be confidential. Any person who attempts, by means of any threat or violence, to deter or prevent any authorized employee of the Commission from performing any duty hereunder shall be prosecuted to the fullest extent of the law.

(g) Upon request of the Conservation Division, service companies or other persons shall furnish and file reports and records showing gun perforating, hydraulic fracturing, cementing, shooting, chemical treatment, and all other service operations on any well.

### 165:10-1-7. Prescribed forms

(a) Required Conservation Division forms ~~may~~shall be submitted to the Commission on forms supplied by the Commission, which are available on the Commission's website, or on ~~xerographic~~ copies of Commission forms or by operator computer generated forms. ~~Operator computer generated forms will be printed from Commission designed files made available to operators via the electronic Bulletin Board Service (BBS), Internet (World Wide Web) or magnetic disk.~~ Operator computer generated forms must contain the exact language and wording of Commission forms. Any alteration of Commission forms language and wording may subject the signature party and/or operator to perjury charges.

(b) The following Conservation Division forms are prescribed for the following purposes:

(1) **Form 1000 - Notice of ~~Intention~~Intent/Permit to Drill application:** Operator shall file Form 1000 before any oil, gas, injection, disposal, service well or stratigraphic test hole is drilled, recompleted, re-entered or deepened. Such notice shall include the name(s) and address(es) of the surface owner(s) of the land upon which the well is to be located. The ~~Commission~~Conservation Division shall process the application, and mail a copy of the permit to drill or re-enter to the surface owner(s). The Conservation Division shall send an approved Permit to Drill by electronic mail to the operator applying for the Permit to Drill at the electronic mail address(es) listed in the Form 1006B Operator Agreement filed by the operator with the Conservation Division. If no electronic mail address is listed in the Form 1006B Operator Agreement filed by the operator with the Conservation Division, the Conservation Division shall mail the approved Permit to Drill to the operator's address listed in the Form 1006B. For each Permit to Drill other than a Permit to Drill for a recompletion, the operator shall send by facsimile, electronic mail or regular mail a copy of the Permit to Drill to each surface owner listed on the Form 1000 within ten (10) business days of the Conservation Division's approval of the Permit to Drill. Upon approval, the operator will have eighteen months to commence the permitted operations. A six month extension may be granted without fee providing the Conservation Division staff determines that no material change of condition has occurred, if ~~written~~a request by facsimile, electronic mail, or regular mail for such extension is received from the operator prior to the expiration of the original permit. Only one extension may be granted. A copy of the approved permit shall be posted at the well site. [Reference 165:10-3-1 and 165:10-1-25 and OAC 165:10-7-31]

(2) **Form 1000B - Application to Drill Deep Anode Groundbeds:** Form 1000B is required to be filed for wells drilled for deep anode groundbeds as required by



OAC 165:10-7-14. The purpose of Commission Form 1000B is to ensure groundwater is being protected in construction of the deep anode groundbed. [Reference 165:10-7-14]

(3) **Form 1000S - Application for seismic operations:** A permit for seismic operations must be obtained. The applicant must post a \$50,000 bond with the Surety Department in the Oil and Gas Conservation Division. The application must also be accompanied with a pre-plot of the project area. [Reference 165:10-7-31]

(4) **Form 1001 - Notification of Intention to Plug:** Operator shall file notice on Form 1001 five days prior to plugging operations and shall notify the appropriate Conservation Division District Office before work is started. If the well is an exhausted producer, list OTC assigned county and lease number. If the Intent to Plug is cancelled, the operator shall notify the Commission by letter. [Reference 165:10-11-4 and 165:10-11-6]

(5) **Form 1001A - Notification of Spudding of New Well:** Operator shall file a Form 1001A with the Conservation Division within 14 days of spudding a new well or reentering a previously plugged well. [Reference 165:10-3-2]

(6) **Form 1002A - Well completion report:** Operator shall furnish a complete well record on Form 1002A within 60 days after completion of operations to drill, recomplete, re-enter, or convert to injection or disposal well. Effective for both dry hole and/or producer. If well is an oil or gas producer, list OTC assigned county and lease number. Gas-oil ratio must be shown when Form 1002A is filed. List on a 24-hour basis both oil and gas. [Reference 165:10-3-25]

(A) **Oil well:** GOR less than 15,000:1

(B) **Gas well:** GOR 15,000:1 or more

(7) **Form 1002B - Confidential Filing of Electric Logs:** Operator shall file Form 1002B within 60 days from the earlier of the date of completion of the well or the date of the running of the last formation evaluation type ~~wire line~~ well log to hold logs confidential for one year period. Optional extension for six months may be requested by operator in writing to the Technical Services Department of the Conservation Division. [Reference 165:10-3-26]

(8) **Form 1002C - Cementing Report** ~~to accompany Well Completion Report:~~ Operator shall file Form 1002C ~~with the Well Completion Report (Form 1002A)~~ within 45 days of the release of the rig used to drill such well. The Form 1002C shall describe describe all cementing operations on surface, intermediate, and production casing strings, including multistage cementing jobs. The ~~form~~ Form shall be completed and signed by employees of both the operator and the cementing company. [Reference ~~165:10-3-4(i)~~ 165:10-3-4(j)]

(9) **Form 1003 - Plugging Record:** Operator will file Form 1003 within 30 days after plugging operations are completed. The Form 1003 is to be mailed or e-mailed to the appropriate Conservation Division District Office. Form 1003 shall be completed and signed by employees of

both the operator and the cementer. If a depleted producer, list OTC assigned county and lease number. [Reference 165:10-11-6 and 165:10-11-7]

(10) **Form 1003A - Notice of Temporary Exemption from Well Plugging:** Form 1003A shall be filed with the appropriate Conservation Division District Office. [Reference 165:10-11-3 and 165:10-11-9]

(11) **Form 1004 - Monthly Report of Unallocated Natural Gas Wells Production:** Each operator of the required meter under 165:10-17-5 shall file a monthly well report on Form 1004 with the Commission of all natural gas volumes transferred through the meter for the preceding month, by the last day of the month following such transfer. List formation name plus OTC assigned county and lease number. If more than one meter, the operator of each shall file this form. [Reference 165:10-1-47]

(12) **Form 1004B - Notice of Gas Purchase Curtailments:** In any month wherein a first purchaser or first taker has a market demand/supply imbalance and must curtail purchases or takes in compliance with 165:10-17-12, Form 1004B shall be filed by said first purchaser or first taker with the Conservation Division. [Reference 165:10-17-12]

(13) **Form 1005 - Monthly Report of Purchasers (Gas: subject to field rules):** [Reference 165:10-1-47 and 165:10-15-1]

(A) **GAS:** Each operator of the required meter or meters under 165:10-17-5 shall complete computer-generated Form 1005, and return a copy to the Conservation Division indicating the gas amounts transferred through the meter for the preceding month on allocated and special allocated gas wells.

(B) **OIL:** Each first purchaser, or first taker of oil from wells and projects which are capable of producing in excess of their maximum assigned allowables, must complete computer-generated Form 1005 and return a copy to the Conservation Division indicating the amount of oil taken from each well or unit for the preceding month.

(14) **Form 1006 - Surety bond for oil, gas, injection, or disposal wells:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division a surety bond (\$25,000.00) or other present alternate surety, including, but not limited to, Form 1006A or 1006C. Operator must file the original copy only with a copy of the power of attorney from the bonding company. The name and address of the Oklahoma resident service agent shall be endorsed on the bond form. [Reference 165:10-1-10 and 165:10-1-12]

(15) **Form 1006A - Financial Statement for oil, gas, injection or disposal wells:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division a verifiable financial statement (minimum net worth \$50,000.00 within the State of Oklahoma) or other present alternate surety, including, but not limited to, Form 1006 or 1006C. Operator must file an original copy on Form 1006A, which must be updated annually from the last filing date. [Reference 165:10-1-10 and 165:10-1-11]

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(16) **Form 1006B - Operator Agreement to plug oil, gas, and service wells within the State of Oklahoma:** Operator shall agree to plug well(s) in compliance with the Commission rules. This agreement must accompany the operator's elective choice of surety (including, but not limited to, Form 1006, 1006A, or 1006C). The operator is required to file a Form 1006B with the Conservation Division once every twelve (12) months. [Reference 165:10-1-10, 165:10-1-11, 165:10-1-12, 165:10-1-13, and 165:10-1-14]

~~(17) **Form 1006BR - Recycling, Reclaiming Operator's Agreement to Close the Reclaiming Facility:** Prior to operating a recycling or reclaiming facility the operator shall file an agreement to close the facility in compliance with OCC rules. This agreement must accompany the application for certification (Form 1020A). [Reference 165:10-8-5]~~

~~(18) **Form 1006BR-A - Operator agreement to close hydrocarbon recycling/reclaiming facility:** Operators of hydrocarbon recycling/reclaiming facilities are required to file agreements with the Commission concerning closure of such facilities. [Reference 165:10-8-5]~~

~~(19) **Form 1006BR-B - Surety for closure of hydrocarbon recycling/reclaiming facility:** Operators of hydrocarbon recycling/reclaiming facilities are required to file surety with the Commission for closure and reclamation of such facilities. [Reference 165:10-8-5]~~

~~(20) **Form 1006BT-A - Operator's agreement to close, reclaim and remediate truck wash pit:** Operators of truck wash pits are required to file agreements with the Commission regarding closure of such pits. [Reference 165:10-7-33]~~

~~(21) **Form 1006BT-B - Surety for closure of truck wash pits:** Operators of truck wash pits are required to file surety with the Commission for closure, reclamation and remediation of such pits. [Reference 165:10-7-33]~~

~~(22) **Form 1006C - Irrevocable commercial letter of credit:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division an irrevocable commercial letter of credit (\$25,000.00) or other present alternate surety, including, but not limited to, Form 1006A or 1006. Operator must file the original copy of with the bank seal affixed Form 1006C. A letter of credit must be valid for at least a one year period. [Reference 165:10-1-10 and 165:10-1-13]~~

~~(23) **Form 1006D - Affidavit of well plugging costs:** An operator may submit an affidavit on Form 1006D to the Conservation Division concerning the operator's statewide plugging liability. The Commission may approve Category B surety in an amount less than \$25,000.00 for an operator whose statewide plugging liability is less than \$25,000.00. The Form 1006D must be properly executed by a duly licensed pipe pulling and well plugging company and such Form must be acceptable to the Conservation Division. [Reference 165:10-1-10, 165:10-1-12, 165:10-1-13 and 165:10-1-14]~~

~~(24) **Form 1006S - Operator's agreement to plug seismic shot holes within the State of Oklahoma:** Prior~~

to commencing seismic operations the operator shall file an agreement to plug shot holes in accordance with Commission rules. This agreement must accompany the financial surety guarantee. [Reference 165:10-7-31]

~~(25) **Form 1006SB - Surety bond for seismic shot hole plugging within the State of Oklahoma:** Before commencing any seismic operation that requires the drilling of shot holes, those companies actually doing the work in the field must secure a bond in the amount of \$50,000.00. Seismic companies must file the original Form 1006SB only with a copy of the power of attorney from the bonding company. The name and address of the Oklahoma resident service agent shall be endorsed on the bond form. Form 1000S shall be filed with the bond. [Reference 165:10-11-6 and 165:10-7-31]~~

~~(26) **Form 1010 - Application for Cancelled Underage:** Operator shall file, within 30 days for oil, and six months for special allocated and allocated gas from the date of cancellation, to reinstate cancelled underage; stating reason for this request and notifying all offset operators. List OTC assigned county and lease number. [Reference 165:10-13-10 and 165:10-17-9]~~

~~(27) **Form 1011 - Multi-Zone lease runs report:** If there are two or more common sources of supply that are produced through a well or wells on the same lease or drilling and spacing unit and that are not commingled, production from each common source of supply shall be separately produced, measured and/or accounted for to the Commission. If one or more of the zones produced are classified as oil for allowable purposes, the operator is required to submit to the Conservation Division a multi-zone report on Form 1011 showing the production from each oil-bearing common source of supply on or before the last day of the succeeding proration period. [Reference 165:10-13-7]~~

~~(28) **Form 1012 - Fluid Injection Report:** Operators shall file Form 1012 with the Conservation Division by January 31 of each year covering the previous calendar year (January 1 through December 31) on all enhanced recovery projects, pressure maintenance projects, non-commercial disposal wells, LPG storage wells, authorized waterfloods and gas repressuring projects for each UIC well. The completed form will list well identification including API number, the Commission order or permit number, injection volume and pressure, etc., as required on the form. No UIC well is to be operated for injection or disposal unless the Form 1012 is filed by the above date. [Reference 165:10-5-7].~~

~~(29) **Form 1012C - Commercial disposal well fluid disposal report:** Operators of commercial disposal wells shall file Form 1012C with the Conservation Division by January 31 and July 31 of each year for the previous six-month period. The completed form will list well identification including API number, the Commission order or permit number, disposal volume and pressure, etc. as required on the form. No commercial disposal well is to be operated unless the Form 1012C is filed by the above dates. [Reference 165:10-5-7].~~

(3029) **Form 1012D - Daily volume and pressure report for disposal wells within areas of interest:** Operators of wells authorized for disposal within areas of interest designated by the Oil and Gas Conservation Division shall submit Form 1012D containing daily volumes and pressures to the Manager of the ~~Pollution Abatement~~ **Induced Seismicity** Department at a minimum on a weekly basis or as designated by such Manager. [Reference 165:10-5-7]

(3130) **Form 1013 - Application for adjusting an allowable for an Excessive Water Exemption or Reservoir Dewatering Oil Spacing unit:** An operator in an unallocated oil pool may be permitted to produce at a full capacity allowable rate, provided that the water- oil ratio at the well is greater than or equal to 3:1 as an excessive water exemption. To qualify for the reservoir dewatering oil spacing unit allowable shown on Appendix J, the operator must provide data to show that the water - oil ratio is greater than 1:1. The operator shall submit a production test on Form 1013 to the Conservation Division. [Reference 165:10-15-1, 165:10-15-16, 165:10-15-17 and 165:10-15-18].

(3231) **Form 1014 - Application for Permit to Use Earthen Pit, noncommercial disposal or enhanced recovery well pit used for temporary storage of saltwater, or pit associated with commercial disposal well surface facility:** The operator of a proposed off-site reserve pit, recycling/reuse pit, spill containment pit, remediation pit, noncommercial disposal or enhanced recovery well pit used for temporary storage of saltwater, or pit associated with a commercial disposal well surface facility must submit Form 1014 to the appropriate Conservation Division District Office for approval before constructing or using the pit. [Reference 165:10-7-16, 165:10-7-20 and 165:10-9-3]

(3332) **Form 1014A - Commercial facility report:** A report that operators of hydrocarbon recycling/reclaiming facilities, commercial pits, commercial soil farming sites and commercial recycling facilities are required to submit to the Manager of Pollution Abatement. [Reference 165:10-8-8, 165:10-9-1, 165:10-9-2 and 165:10-9-4]

(3433) **Form 1014C - Chain of custody record/analysis request:** Form 1014C is available for use by Commission personnel when samples are collected for submission to and analysis by a laboratory certified by the Oklahoma Water Resources Board or operated by the State of Oklahoma.

(3534) **Form 1014CA - Compliance agreement for land application:** Any person responsible for supervision of land application must submit a compliance agreement to the Commission. [Reference 165:10-7-19 and 165:10-7-26]

(3635) **Form 1014CR - Application for commercial recycling facility construction:** After a Commission order is obtained, Form 1014CR must be submitted for approval to the Manager of Pollution Abatement prior to the construction of the commercial recycling facility authorized by the order. [Reference OAC 165:10-9-4]

(3736) **Form 1014CS - Application for Commercial Soil Farming:** For a commercial soil farming site that has an order to operate, the operator shall submit a Form 1014CS to the Pollution Abatement Department for approval prior to commencing soil farming. [Reference 165:10-9-2]

(3837) **Form 1014D - Application for Surface Discharge or for reclaiming and/or recycling of produced water:** Each application for surface discharge of produced water or for reclaiming and/or recycling of produced water must be submitted to the appropriate Conservation Division District Office on Form 1014D in quadruplicate. Applications will be processed within five business days. [Reference 165:10-7-17 or 165:10-7-32]

(3938) **Form 1014F - Application for permit to use noncommercial pit with capacity in excess of 50,000 barrels to contain deleterious substances:** The operator of a proposed noncommercial pit with a capacity in excess of 50,000 barrels must submit the Form 1014F to and obtain the approval of the Manager of the Pollution Abatement Department or obtain the issuance of a Commission order before constructing or using the pit. [Reference 165:10-7-16]

(4039) **Form 1014HD - Notice for Disposal of Hydrostatic Test Water:** Companies wishing to discharge water as required by OAC 165:10-7-17, used to test a pipeline, tank, etc. must submit a Form 1014HD to the appropriate Conservation Division District Office and the Pollution Abatement Department for prior approval. [Reference 165:10-7-17]

(4140) **Form 1014L - Surface Owner Permission for Land Application:** Each application for land application must include an original Form 1014L, whereby the applicable surface owner gives permission for the applicant to land apply certain deleterious substances to a specific property. [Reference 165:10-7-19 and 165:10-7-26]

(4241) **Form 1014LA - Designation of land application agent:** A notarized affidavit designating any agent of an operator for land application must be submitted to the Commission. [Reference 165:10-7-17, 165:10-7-19 and 165:10-7-26]

(4342) **Form 1014LC - Letter of credit for land application:** Persons who contract to land apply materials are required to file surety with the Commission. [Reference 165:10-7-10]

(4443) **Form 1014N - Application for Commercial Pit Construction:** After a Commission order is obtained, Form 1014N must be submitted for approval by the Manager of Pollution Abatement prior to the construction of each commercial pit authorized by the order. [Reference 165:10-9-1]

(4544) **Form 1014P - Annual report for surface discharge:** An annual report is required to be submitted to the Commission by April 1 of each year on Form 1014P concerning surface discharges of produced water. Current (within three month) analyses of the produced water and soil from the discharge plot must be attached to the annual report. [Reference 165:10-7-17]

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(4645) **Form 1014R - Post land application report:** A post land application report shall be submitted by the operator or the operator's agent to the Manager of Pollution Abatement within ninety (90) days of the completion of land application. [Reference 165:10-7-19 and 165:10-7-26]

(4746) **Form 1014RW - Application for permit to use reclaimed water in oil and gas operations:** Each application for a permit to use reclaimed water in oil and gas operations must be submitted to the Manager of Field Operations on Form 1014RW. [Reference OAC 165:10-7-34]

(4847) **Form 1014S - Application for Land Application:** Each application for land application of materials must be submitted to the Pollution Abatement Department on Form 1014S. The applicant must be the operator of the well or other operator responsible for generating the waste to be land applied, except that a commercial pit operator may also apply in case of emergency or for the purpose of facilitating repair or closure, and the Oklahoma Energy Resources Board or its contractor may apply in cases where there is no responsible party. The Form 1014S shall be processed within five business days of submission of all required or requested information. [Reference 165:10-7-19 and 165:10-7-26]

(4948) **Form 1014SB - Surety bond for land application:** Persons who contract to land apply materials are required to file surety with the Commission. [Reference 165:10-7-10]

(5049) **Form 1014T - Application for permit to use truck wash pit:** The operator of a proposed truck wash pit must submit Form 1014T to the Manager of Pollution Abatement for the Conservation Division and obtain a permit before constructing or using the pit. [Reference 165:10-7-33]

(5150) **Form 1014W - Application for waste oil or drill cuttings use by County Commissioners:** Application to apply waste oil, waste oil residue, crude oil contaminated soil or freshwater drill cuttings must be made by any Board of County Commissioners on Form 1014W. The Form 1014W is required to be submitted by electronic mail to the appropriate District Manager. [Reference 165:10-7-22 and 165:10-7-28]

(5251) **Form 1014X - Application for waste oil or drill cuttings use by operators:** Application to apply waste oil, waste oil residue, crude oil contaminated soil or freshwater drill cuttings must be made by any operator on Form 1014X. The Form 1014X is required to be submitted by electronic mail or mailed to the appropriate District Manager. [Reference 165:10-7-27 and 165:10-7-29]

(5352) **Form 1015 - Application for Administrative Approval to Dispose of or Inject Class II fluids into Well(s) or to amend existing orders authorizing injection for injection, disposal or LPG storage well(s):** Applicant shall file an original of the application and one complete set of attachments with the Commission on Form 1015. When requesting approval to dispose of or inject Class II fluids into wells, applicant will also furnish copies of the application on Form 1015 as specified, and, where

noted, required attachments to Form 1015. Applicant will submit an affidavit of delivery or mailing to the Commission not later than five business days after the application is filed. Applicant shall file with the Commission proof of publication regarding the notice of application in an Oklahoma County newspaper and a county newspaper in which the well is located. [Reference 165:10-5-2, 165:10-5-5, and 165:5-7-30]

(5453) **Form 1015SI - Application for Order or Permit for Simultaneous Injection Well:** Operator shall file original with the Underground Injection Control Department on Form 1015SI. A copy of the form will also be supplied to the operator of any producing lease within one-half (1/2) mile of the proposed injection well. [Reference 165:10-5-15]

(5554) **Form 1015T - Application for Injection of Reserve Pit Fluids:** Each application for the on-site injection of reserve pit fluids (i.e., drilling mud fluids or fracture fluids) used in drilling or well completion shall be filed with the Underground Injection Control Department by the well operator on Form 1015T. The original of the application and one complete set of attachments shall be furnished to the Underground Injection Control Department. A copy of the application will also be supplied to the land owner and the operator of any producing lease within one-half (1/2) mile of the proposed well. [Reference 165:10-5-13]

(5655) **Form 1016 - Back Pressure Test for Natural Gas Wells:** Operators and/or purchasers, on the Form 1016, will report all single-point and four-point potential tests as required by pool rule orders or general rules. List OTC assigned county and lease numbers and special allocated pool numbers, first date of sales, and complete flow data. [Reference 165:10-17-6 and 165:10-17-7]

(5756) **Form 1017 - Guymon-Hugoton Field Gas Well Deliverability Tests:** Operators and/or purchasers of gas in this field shall take deliverability tests between January 1 and August 31 of each year, and on the test sheet Form 1017 file the results with the Commission. List OTC assigned lease number for each well. [Reference Orders No. 17867 and 87291 and 165:10-17-9]

(5857) **Form 1019 - Guymon-Hugoton Field Acreage Statement for Gas Wells:** A fact statement as to acreage attributable to each well shall be filed with the Commission on Form 1019 within 30 days of the well completion with a plat or map showing location of the well. List OTC assigned county and lease number. [Reference Order No. 17867 and 165:10-17-9]

(5958) **Form 1020A - Application for Certification for the Recycling, Reuse of Deleterious Substances:** Applicant shall file an original Form 1020A with necessary attachments with the Pollution Abatement Department. Form 1020A is filed prior to construction of facility or change of operator. [Reference 165:10-8-1 through 165:10-8-11]

(6059) **Form 1021 - Application for Priority Hardship Classification:** The applicant shall file Form 1021 and the necessary attachments with the Technical Services

Department for review prior to any hearing for priority one hardship classification. In addition, a formal application for hearing must be filed with the Court Clerk's Office of the Commission. [Reference 165:10-17-12]

~~(6160)~~ **Form 1021A - Application for limited deviation from the priority gas rules:** The applicant shall file Form 1021A and the necessary attachments with the Technical Services Department for review prior to any hearing for deviation from the priority gas rules. In addition, a formal application for hearing must be filed with the Court Clerk's Office of the Commission. [Reference 165:10-17-12]

~~(6261)~~ **Form 1022 - Application to flare or vent gas:** Operator shall file one copy of Form 1022 with the Technical Services Department of the Conservation Division listing OTC assigned county lease number. [Reference 165:10-3-15]

~~(6362)~~ **Form 1022A - Application to operate vacuum pump:** Operator shall file one copy of Form 1022A with the required attachments with the Technical Services Department of the Conservation Division. [Reference 165:10-3-31]

~~(6463)~~ **Form 1023 - Application for multiple completion, multichoke assembly or commingle completion:** Operator will file the original of Form 1023 with the required attachments. List OTC assigned county and lease number. [Reference 165:10-3-35; 165:10-3-39; 165:10-3-37]

~~(6564)~~ **Form 1024 - Packer setting affidavit:** Operator will submit Form 1024 as required. [Reference 165:10-3-35 and pertinent field rules]

~~(6665)~~ **Form 1025 - Packer leakage test:** Operator will submit Form 1025 as required. [Reference 165:10-3-35 and pertinent field rules]

~~(6766)~~ **Form 1027 - Bottom hole pressure test:** Operator, on the pink sheet of Form 1027, shall take BHP tests in the manner and during periods prescribed by special field rules. List OTC assigned county and lease numbers. [Reference Special Field Rules and 165:10-13-3]

~~(6867)~~ **Form 1028 - Application for discovery oil allowable:** Operator shall file Form 1028 with the required exhibits and tests within 30 days of completion of each new well in a discovery oil pool. [Reference 165:10-15-7]

~~(6968)~~ **Form 1029A - Production or potential test - oil only:** Operator of each newly completed discovery oil well shall file a potential test Form 1029A not later than 30 days after completion of the well. All tests, if requested, shall be witnessed by another operator. [Reference 165:10-15-7].

~~(7069)~~ **Form 1030 - Application for allowable adjustment:** Each operator or other interested parties desiring to adjust the allowable for a well or wells shall file Form 1030 for administrative review and approval. The allowable may be increased, decreased, or transferred as the evidence may indicate for the most efficient rate of production from the well or wells. [Reference 165:10-13-5, 165:10-13-8, 165:10-15-18 and 165:5-7-12]

~~(7170)~~ **Form 1034 - Nominations and purchasers report:** [Reference 165:10-1-36, 165:10-1-37 and 165:10-1-46] **Oil:** Purchasers will furnish nomination data, actual runs from leases, stocks, and other information on Form 1034 to the Conservation Division not later than noon Friday of the week preceding each scheduled market demand hearing. On months in which no market demand hearing is held, Form 1034 shall be filed by the 20th of the month listing crude oil runs for the previous month on line 5 only. Any change in nominations from the previous hearing shall be so indicated on this monthly report.

~~(7271)~~ **Form 1034-G - Gas nominations:** Operators of natural gas wells in special allocated gas pools where well allowable calculations according to special allocated field rules are in effect shall file their pool nominations on Form 1034-G no later than one week prior to the market demand hearing. [Reference 165:10-1-36, 165:10-1-37, 165:10-1-49 and 165:10-17-9].

~~(7372)~~ **Form 1040 - Monthly allocation schedule (gas):** Monthly gas schedule Form 1040 will be forwarded to operators by the Conservation Division indicating the status of special allocated gas wells and their current allowables. Operators will inform the Conservation Division of errors, if any, found in Form 1040 as promptly as possible. Additionally, purchasers will receive the monthly schedule and shall return the production from each well as requested. [Reference 165:10-1-47]

~~(7473)~~ **Form 1055 - Application for PipeCasing Pulling and Well Plugging License:** No person shall contract to pull casing or plug oil, gas, injection, disposal, or other service wells, or contract to salvage casing therefrom, or purchase wells for the purpose of salvaging casing therefrom until a license has been secured from the Commission. [Reference 165:10-11-1]

~~(7574)~~ **Form 1070 - Inventory of authorized existing enhanced recovery wells:** Operators shall file reporting Form 1070 before injecting into any enhanced recovery well. [Reference 165:10-5-3]

~~(7675)~~ **Form 1071 - Inventory of authorized existing disposal wells:** Operators shall file the reporting Form 1071 before disposing into any disposal well. [Reference 165:10-5-3]

~~(7776)~~ **Form 1072 - Notice of termination of injection:** Within 30 days of the termination of injection Form 1072 must be filed. [Reference 165:10-5-7]

~~(7877)~~ **Form 1073 - Notice of transfer of oil or gas well operatorship:** The new operator shall file Form 1073 to notify the Conservation Division of any change of operation of any oil or gas well within 30 days of transfer of the well. [Reference 165:10-1-15]

~~(7978)~~ **Form 1073I - Notice of transfer of underground injection well operatorship:** The new operator shall file Form 1073I to notify the Underground Injection Control Department of any change of operation of any injection, disposal, or hydrocarbon storage well within 30 days of transfer of the well. [Reference 165:10-5-10]

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(8079) **Form 1073IMW - Notice of transfer of multiple underground injection well operatorship:** For transfers involving more than 10 underground injection wells, a transferor and transferee may file a single Form 1073IMW with the Conservation Division indicating the transfer of multiple wells. If the Form 1073IMW is used, such Form must be filed with the Conservation Division regarding any change of operations of such wells within 30 days of transfer of the wells. [Reference 165:10-5-10]

(8480) **Form 1073MW - Notice of transfer of multiple oil or gas well operatorship:** For transfers involving more than 10 oil or gas wells, a transferor and transferee may file a single Form 1073MW with the Conservation Division indicating the transfer of multiple wells. If the Form 1073MW is used, such Form must be filed with the Conservation Division regarding any change of operations of such wells within 30 days of transfer of the wells. [Reference 165:10-1-15]

(8281) **Form 1075 - Mechanical integrity pressure test:** A pressure or monitoring test must be performed on new and existing injection wells and disposal wells. Information must be submitted on Form 1075 and witnessed by a Field Inspector. Forms shall be submitted to the Conservation Division's Underground Injection Control Department. [Reference 165:10-5-6]

(8382) **Form 1081 - Mineral owners escrow account:** Operator shall file, in quadruplicate, Form 1081 annually on anniversary date of first pooling order issued after effective date of Senate Bill 299 (7-1-84) and shall include all applicable orders issued during the twelve-month reporting period. [Reference 165:10-25-1 through 165:10-25-10]

(8483) **Form 1085 - Complaint report:** Form 1085 is used by Commission personnel to report violations of General Rules of the Commission and to report progress on ongoing remedial actions. Copies are sent to all parties concerned with investigation. Form 1085 combines and replaces old Forms 1034 and 1062. [Reference 165:10-7-7]

~~(85) **Form 1139 - Application for gross production tax exemption:** Operators shall file one copy of Form 1139 with the required attachments with the Technical Services Department of the Conservation Division. [Reference 165:10-21-75 through 165:10-21-80]~~

(8684) **Form 1535 - Application for classification of reservoir dewatering project for exemption of sales tax on electricity used for such operations and application for state sales tax exemption for electricity sold for operations involving enhanced recovery methods on a spacing unit or lease:** Operators shall file one original of Form 1535 with the required attachments with the Technical Services Department of the Conservation Division. To obtain the exemption of sales tax on the sale of electricity and associated delivery and transmission used for reservoir dewatering operations, or for a state sales tax exemption for electricity sold for operations involving enhanced recovery methods on a spacing unit or lease, the operator shall contact the Director's Office, Taxpayer

Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, Ok. 73194. [Reference 165:10-21-90 through 165:10-21-92 and 165:10-21-95 through 165:10-21-97]

(8785) **Form 2000BF - AAI Oversight Qualification:** The Applicant shall file one (1) Form 2000BF with the Brownfield Program of the Conservation Division listing the qualifications as per AAI of each Environmental Professional who will work on the site. [Reference 165:10-10-1 through 165:10-10-14]

(8886) **Form 2001BF - Brownfield Applicant Eligibility:** The applicant shall file one (1) Form 2001BF with the Brownfield Program of the Conservation Division. This Form is filed to demonstrate applicant's eligibility to be in the Brownfield program. [Reference 165:10-10-1 through 165:10-10-14]

(8987) **Form 2002BF - Consent to Entry:** The applicant shall file one (1) Form 2002BF with the Brownfield Program of the Conservation Division. This Form is the landowner's permission for applicant and their contractors to enter the property for assessment and cleanup work. Copies will be sent to all parties concerned with the assessment and/or cleanup. [Reference 165:10-10-1 through 165:10-10-14]

(9088) **Form 2003BF - Application for Brownfield Site Eligibility and Assessment:** The applicant shall file one (1) Form 2003BF with the Brownfield Program of the Conservation Division for all sites applicant is entering into the program. This Form provides necessary information on the site. This Form can be used by public, quasi-public, and non-profit entities to request a free Targeted Brownfield Assessment of a site that has been approved as eligible for the Brownfield program. [Reference 165:10-10-1 through 165:10-10-14]

(9489) **Form 2005BF - Brownfield Certificate of No Action Necessary:** The Form 2005BF will be issued by the Commission to the Brownfield Applicant, after the Brownfield staff has made a no action necessary decision. The applicant must file the Certificate of No Action Necessary in the office of the county clerk where the site is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to the Oklahoma Corporation Commission within 30 days. [Reference 165:10-10-1 through 165:10-10-14]

(9290) **Form 2006BF - Brownfield Certificate of Completion:** The Form 2006BF will be issued by the Commission to the Brownfield Applicant, after the Brownfield staff has made a final inspection of the site and review of the project following a remedial action. The applicant must file the Certificate of Completion and any land use restrictions in the office of the county clerk where the site is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to the Oklahoma Corporation Commission within 30 days. [Reference 165:10-10-1 through 165:10-10-14]

(9391) **Form 3000NGS - Application for Investigation and/or Abatement of Seeping Natural Gas:** An owner of property which has seeping natural gas shall file

an application with the Commission regarding the Commission's investigation and/or abatement of the seeping natural gas. [Reference 165:10-12-9]

(9492) **Form 4000WIP - Well impact report:** If an operator has evidence that its well(s) have been impacted by hydraulic fracturing operations, the operator may report the occurrence by electronic mail to the ~~appropriate Conservation Division District Office~~ Conservation Division within 24 hours of discovery. The operator must use Form 4000WIP to report the occurrence. [Reference 165:10-3-10]

(9593) **Form 5000NTL - Notice of temporary lines which may be used to transport produced water:** Operators are required to notify the Conservation Division, the appropriate County Commissioners and the surface owners of the land that is subject to the rights-of-way sought to be utilized by the operator, at least 48 hours prior to placing in public road rights-of-way temporary lines that may at any time be used to transport produced water for well drilling, completion, or remedial workover operations. Operators must use Form 5000NTL to provide the notice. [Reference 165:10-3-10.1]

(9694) **Form 6000NHF - Notice to Conservation Division of hydraulic fracturing operations:** Operators are required to notify the Conservation Division using Form 6000NHF at least 48 hours prior to commencement of hydraulic fracturing operations on a well. [Reference 165:10-3-10]

(9795) **Form 6000NOO - Notice to operators of producing wells of hydraulic fracturing operations:** Operators are required to notify operators of producing wells within one mile of the completion interval of the subject well at least 5 business days prior to commencement of hydraulic fracturing operations on such well. The notice to be provided such operators shall contain the information in Form 6000NOO. [Reference 165:10-3-10]

### PART 3. SURETY

#### 165:10-1-10. Operator's agreement; Category A and Category B surety

(a) "Any person who drills or operates any well for the exploration, development or production of oil or gas, or as an injection or disposal well, within this State, shall furnish in writing, on forms approved by the Corporation Commission, ~~his such person's~~ agreement to drill, operate and plug wells in compliance with the rules and regulations of the Commission and the laws of this state, together with evidence of financial ability to comply with the requirements for plugging, closure of surface impoundments, removal of trash and equipment as established by the rules of the Commission and by law." ~~§2 O.S. § 318.4~~ Any operator violating this Section may be fined up to \$500.00. To establish evidence of financial ability, the Commission shall require:

(1) Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with

banks and other financial institutions. The statement shall prove a net worth of not less than \$50,000.00 in U.S. dollars; or

(2) Category B surety shall include an irrevocable commercial letter of credit, cash, a cashier's check, a certificate of deposit, bank joint custody receipt, other approved negotiable instrument, or a blanket surety bond. Except as provided in (3) of this subsection, the amount of such Category B surety shall be in the amount of \$25,000.00 in U.S. dollars but may be set higher at the discretion of the Director of the Conservation Division. The Commission is authorized to establish Category B surety in an amount greater than \$25,000.00 in U.S. dollars based upon the past performance of the operator and its insiders and affiliates regarding compliance with the laws of this state, and compliance with any rules promulgated thereto including but not limited to the drilling, operation and plugging of wells, closure of surface impoundments, or removal of trash and equipment. Any such Category B surety shall constitute an unconditional promise to pay and be in a form negotiable by the Commission.

(3) The Commission may grant Category B surety in an amount less than \$25,000.00 in U.S. dollars to an operator whose statewide well plugging liability is less than \$25,000.00 in U.S. dollars. Said Category B surety shall be in an amount that is sufficient to cover the total estimated cost of properly plugging and abandoning each and every well, the operations for which, an operator is responsible. Statewide well plugging liability shall be documented by an affidavit filed on Form 1006D and shall be properly executed by a duly licensed ~~pipe-casing~~ pulling and well plugging company and shall be approved by the Conservation Division. Said affidavit shall state, among other things, an estimated cost of plugging, closure, and removal operations for each well in accordance with 165:10-11-3 through 165:10-11-8 inclusively and shall be accompanied by a Form 1000 (Intent to Drill) if the estimate involves a proposed well or by a Form 1002A (Completion Report) if the estimate involves a well that is a producing, injection, or disposal well. The estimated cost shall not include any salvage value as to recoverable casing, tubing, or well head equipment. The total statewide well plugging liability of an operator utilizing this Category B surety shall be kept current and shall be increased as additional wells are added to the responsibility of the operator and may be decreased as included wells are plugged and abandoned, but in no event shall exceed \$25,000.00 in U.S. dollars unless otherwise ordered by the Commission.

(b) Operators of record as of June 7, 1989, who do not have any outstanding contempt citations or fines and whose insiders or affiliates have no outstanding contempt citations or fines may post Category A surety.

(1) New operators, operators who have outstanding fines or contempt citations and operators whose insiders or affiliates have outstanding contempt citations or fines as of June 7, 1989, shall be required to post Category B surety. Operators who have posted Category B surety and have

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operated under this type surety and have no outstanding fines at the end of three years may post Category A surety.

(2) Operators using Category A surety who are assessed a fine of \$2,000.00 or more and who do not pay the fine within the specified time shall be required to post a Category B surety within 30 days of notification by the Commission.

(c) If a bond is required, the bond shall be executed by a corporate surety authorized to do business in this State and shall be renewed and continued in effect until the conditions have been met or release of the bond is authorized by the Commission.

(d) Irrespective of (a), (b), and (c) of this Section, for good cause shown concerning pollution or improper plugging of wells by an operator posting either Category A or Category B surety or by an insider or affiliate of such operator, the Commission, upon application of the Director of the Conservation Division after notice and hearing, may require the filing of additional Category B surety in an amount greater than \$25,000.00 in U.S. dollars but not to exceed \$100,000.00 in U.S. dollars. If the Commission has evidence that any person applying to the Commission for authority to operate may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing, determining whether the person should be authorized to operate.

(e) The agreement (Form 1006B-Operator's Agreement to Plug Oil, Gas and Service Wells Within the State of Oklahoma) provided for in (a) of this Section shall provide that if the Commission determines, after notice and hearing, that the person furnishing the agreement has neglected, failed, or refused to plug and abandon, or cause to be plugged and abandoned, or replug any well or has neglected, failed or refused to close any surface impoundment or remove or cause to be removed trash and equipment in compliance with the rules of this Chapter, then the person shall forfeit from ~~his~~such person's bond, letter of credit, or negotiable instrument or shall pay to this State, through the Commission for deposit in the State Treasury, a sum equal to the cost of plugging the well, closure of any surface impoundment, or removal of trash and equipment. The Commission may cause the remedial work to be done, issuing a warrant in payment of the cost thereof drawn against the monies accruing in the State Treasury from the forfeiture or payment. Any monies accruing in the State Treasury by reason of a determination that there has been a noncompliance with the provisions of the agreement (Form 1006B) or the rules and regulations of the Commission, in excess of the cost of remedial action ordered by the Commission, shall be credited to the ~~Conservation Oil and Gas Revolving Fund~~. The Commission shall also recover any costs arising from litigation to enforce this provision if the Commission prevails. Provided, before a person is required to forfeit or pay any monies to the State pursuant to this Section, the Commission shall notify the person at ~~his~~such person's last-known address of the determination of neglect, failure, or refusal to plug or replug any well, or close any surface impoundment, or remove trash and equipment, and said person shall have ten days from the date of notification within which to commence remedial operations. Failure to

commence remedial operations shall result in forfeiture or payment as provided in this subsection. If the operator is a corporation, association, partnership, limited liability company or any entity other than an individual, and such entity is not required to file a Form 10-K with the United States Securities and Exchange Commission, the operator shall file as part of its Form 1006B a complete list, in tabular form, of the full names (first, middle and last names) and any applicable suffix, e.g. Senior, Junior, business mailing addresses, physical business addresses (cannot be post office boxes), business telephone numbers, business email addresses, driver license numbers, and percentages of ownership of all officers, directors, partners or principals of the operator and the insiders and affiliates of the operator. The operator shall also file as part of its Form 1006B the current names and business mailing addresses of all service agents of the operator and the operator's insiders and affiliates. If the operator is required to file a Form 10-K with the United States Securities and Exchange Commission, the operator must submit a current Form 10-K with the Form 1006B to the Conservation Division. Such operator must complete page one of the Form 1006B, and the Form 10-K is submitted in lieu of other required information in the Form 1006B. Operators who are individuals shall file, as part of the operator's Form 1006B, the operator's full name (first, middle and last names) and any applicable suffix, e.g. Senior, Junior, business mailing address, physical business address (cannot be a post office box), business telephone number, business email address, percentages of ownership of the operator in insiders and affiliates of the operator, the full names, business mailing addresses, physical business addresses (cannot be post office boxes), business telephone numbers, and business email addresses of the officers, directors, partners or principals of the operator's insiders and affiliates. The operator shall also file as part of the operator's Form 1006B the current names and business mailing addresses of all service agents of the operator's insiders and affiliates. The operator is required to file a Form 1006B with the Conservation Division every twelve (12) months.

(f) No person shall drill or operate any well, or receive an allowable, without complying with the provisions of this Section.

(g) No person shall drill or operate any oil or gas well subject to the provisions of this Section, without the evidence of financial ability required by this Section. The Commission shall shut in, without notice, hearing or order of the Commission, the wells of any such person violating the provisions of this ~~Section~~subsection and such wells shall remain shut in for noncompliance until the required evidence of Category B surety is obtained and verified by the Commission. No taker, transporter, or purchaser of oil or gas shall take, transport, or purchase oil or gas from the wells of any such drillers or operators after receiving a copy of the shut-in order or notice by certified mail of the issuance of such an order.

(h) If title to property or a well is transferred, the transferee shall furnish the evidence of financial ability to plug the well and close surface impoundments required by the provisions of this ~~section~~Section, prior to the transfer.

(i) The following words, when used in this Section, shall have the following meaning:



- (1) "Affiliate" means an entity which owns twenty percent (20%) or more of the operator, or an entity of which twenty percent (20%) or more is owned by the operator.
- (2) "Insider" means officer, director, or person in control of the operator; general partners of or in the operator; general or limited partnership in which the operator is a general partner; spouse of an officer, director, or person in control of the operator; spouse of a general partner of or in the operator; corporation of which the operator is a director, officer, or person in control; affiliate, or insider of an affiliate as if such affiliate were the operator; or managing agent of the operator.

**PART 5. SPACING**

**165:10-1-22. Drilling and spacing units**

- (a) ~~The commission~~Commission may establish drilling and spacing units in any common source of supply as provided by law, and the ~~special~~ orders creating drilling and spacing units shall supersede the provisions of 165:10-1-21. It shall be the responsibility of any operator who proposes to drill a well to ascertain the existence and provisions of ~~special~~spacing orders creating drilling and spacing units.
- (b) The drilling of a well or wells into a common source of supply in an area covered by an application pending before the ~~commission~~Commission seeking the establishment of drilling and spacing units is prohibited except by special order of the ~~commission~~Commission. However, the Commission may issue a Permit to Drill for any well after a hearing for a special order or for an order on the merits prior to the issuance of any such order. Any such Permit to Drill is subject to and must conform with the final provisions of any such order. However, if an Intent to Drill (Form 1000) Additionally, if a Permit to Drill has been approved by the commissionCommission and operations commenced prior to the filing of a spacing application, the operator shall be permitted to drill and complete the well without a special order of the Commission.
- (c) Standard drilling and spacing units shall be either approximately square or rectangular; if rectangular, the drilling and spacing unit shall consist of two approximately square tracts.
- (d) Standard square drilling and spacing units shall be those containing approximately 10, 40, 160, or 640 acres; standard rectangular units shall contain approximately 20, 80, or 320 acres.
- (e) The drilling and spacing units within any common source of supply of oil or gas shall be of approximately uniform size and shape. In a combination reservoir, the drilling and spacing units within the oil portion of the reservoir shall be of approximately uniform size and shape, and the drilling and spacing units within the gas portion of the reservoir shall be of approximately uniform size and shape; provided, however, the drilling and spacing units within the gas portion of a combination reservoir along the gas-oil contact line or transition zone may be of nonuniform size and shape.

**165:10-1-24. Permitted well locations within standard drilling and spacing units**

- (a) The permitted well location within any standard square drilling and spacing unit shall be the center of the unit. The permitted well locations within standard rectangular drilling and spacing units shall be the centers of alternate square tracts constituting the units (alternate halves of the units); provided, however, a well will be deemed drilled at the permitted location if drilled within the following tolerance areas:
  - (1) Not less than 165 feet from the boundary of any standard 10-acre drilling and spacing unit or the proper square 10-acre tract within any standard 20-acre drilling and spacing unit.
  - (2) Not less than 330 feet from the boundary of any standard 40-acre drilling and spacing unit or the proper square 40-acre tract within any standard 80-acre drilling and spacing unit.
  - (3) Not less than 660-feet from the boundary of any standard 160-acre drilling and spacing unit or the proper square 160-acre tract within any standard 320-acre drilling and spacing unit.
  - (4) Not less than 1320 feet from the boundary of any standard 640-acre drilling and spacing unit.
- (b) The proper square tract of a rectangular drilling and spacing unit established prior to January 1, 1971, for which a slot drilling pattern was prescribed, shall be the northeast quarter and the southwest quarter of the governmental section, quarter section, or quarter quarter section containing two abutting rectangular drilling and spacing units; provided, slot patterns may be established or re-established upon application, notice, and hearing where consistent with available geological and engineering information when necessary to prevent waste or protect correlative rights.
- (c) The permitted well location tolerance areas set out in (a) of this Section shall apply to each standard drilling and spacing unit heretofore or hereafter established, notwithstanding the provisions of any ~~special~~ order of the Commission prescribing a different permitted well location tolerance area; provided, however, this Section shall not affect any adjusted allowable or penalty applied to any well by ~~special~~ order of the Commission prior to the effective date of this Section, nor shall any well heretofore drilled within a then permitted tolerance area be deemed outside the permitted tolerance area by reason of this Section.
- (d) Wells drilled ~~off-pattern~~off-pattern without first obtaining an exception after notice and hearing by the Commission are hereby prohibited from producing either oil or gas.
- (e) Whenever permission is granted to drill a well at a location other than specified in this Chapter, the allowable or production therefrom, or both, may be adjusted for the protection of the correlative rights of all persons entitled to share in the common source of supply.
- (f) Unless the order granting a well location exception provides otherwise, the permission to drill the well at the excepted location shall expire twelve (12) months after the date of the order, unless a well was commenced at the excepted location on or before the expiration date. The order granting the well

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location exception will thereafter expire when the well is plugged, abandoned, or converted.

(g) An application for an emergency order granting a well location exception may be granted if the applicant has obtained the written consent of the operator of each adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same formation, toward which the well location is proposed to be moved. Provided, however, if the applicant is the operator of the well in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same formation, toward which the well location is proposed to be moved, the applicant shall obtain the written consent of each working interest owner in such well.

(1) Letters evidencing the written consent of off-set operators and working interest parties as described in this subsection shall be introduced and received into evidence at the time of the emergency hearing and reviewed. Copies of said letters shall be filed with the Court Clerk of the Commission.

(2) If the written consent described in this subsection cannot be obtained, the applicant may send written notice to said non-consenting party giving that party at least five business days notice of the emergency hearing. If said non-consenting party fails to appear, then the emergency application shall be considered and may be granted without the non-consenting party's written consent. The applicant shall file an affidavit of mailing with the Court Clerk to prove the mailing of the five day notice.

(h) If a spacing application is currently pending and the applicant or any party who owns the right to drill needs to commence a well prior to issuance of the spacing order, the applicant or party shall obtain an emergency order to commence such well and an emergency location exception order, or the Commission may issue a Permit to Drill for any well after a hearing for an emergency location exception order prior to the issuance of any such order. Any such Permit to Drill is subject to and must conform with the final provisions of any such order if:

(1) The proposed well is ~~off-pattern~~ according to the existing spacing for any formation involved, or

(2) The well is ~~off-pattern~~ according to 165:10-1-21 governing well patterns for unspaced areas.

(i) Whenever an order permits an ~~off-pattern~~ well with a percentage penalty, the order permitting said well may provide, at the request of a party entitled to notice in the cause, for said party to have the right, at his sole cost and risk, to attend and monitor the initial potential testing and all subsequent annual testing of the proposed ~~off-pattern~~ well to ensure proper testing. If the order permits witnessing of tests as prescribed above, then the order shall further provide that at least five days prior to the initial potential testing and each subsequent annual testing of the proposed well, the operator of the well shall notify, in writing, all parties entitled to notice in the cause who requested to attend and monitor these tests of the date and time upon which said testing shall commence.

## SUBCHAPTER 3. DRILLING, DEVELOPING, AND PRODUCING

### PART 1. DRILLING

#### 165:10-3-1. Required approval of notice of intent to drill, deepen, re-enter, or recomplete; Permit to Drill

(a) **Permit to Drill.**

(1) Except as provided in ~~(4)~~(1) of this Section, on emergency authorization to commence, the operator shall obtain for the well a Permit to Drill approved by the Conservation Division before:

(A) Spudding a well for the exploration for and production of oil or gas.

(B) Spudding a well for use as an injection, disposal, or service well.

(C) Re-entry into a plugged well.

(D) Recompletion of a well.

(E) Deepening an existing well.

(2) A Permit to Drill shall be valid only for each common source of supply listed on the permit.

(3) Any operator who drills, deepens, reenters or re-completes a well without a permit to drill may be fined up to \$1,000.00.

(4) An operator requesting a Permit to Drill for a well shall submit a plat utilizing Commission records showing the ~~location~~ well name, operator, section, township, range and county, ground elevation, and total depth of each abandoned, plugged, producing or drilling well, and dryhole within one quarter (1/4) mile of the completion interval of the proposed well. The operator is also required to submit a certified plat regarding the proposed well prepared by a licensed surveyor, and the following information shall be included in the plat concerning the completion interval of the proposed well: the surface hole location footages from the quarter section with latitude and longitude, proposed bottom hole location footages from the quarter section with latitude and longitude, landing point, corner coordinates at section corners and quarter section points, GPS Datum NAD 27 and NAD 83, and distance to wells that will be closer than authorized in Commission rules or by Commission order. In addition, regarding an application for a Permit to Drill to recomplete a well, the operator shall include on the plat the surface hole location latitudes and longitudes for wells for which Permits to Drill have been approved.

(5) The Conservation Division shall send an approved Permit to Drill by electronic mail to the operator applying for the Permit to Drill at the electronic mail address(es) listed in the Form 1006B Operator Agreement filed by the operator with the Conservation Division. If no electronic mail address is listed in the Form 1006B Operator Agreement filed by the operator with the Conservation Division, the Conservation Division shall mail the approved Permit to Drill to the operator's address listed in the Form 1006B.

- (6) The Commission may issue a Permit to Drill for any well after a hearing for a special order or for an order on the merits prior to the issuance of any such order. Any such Permit to Drill is subject to and must conform with the final provisions of any such order.
- (b) **Amended or additional Form 1000 requirements.**
- (1) **When required.** If the Conservation Division has issued a Permit to Drill for a well, the operator of the well shall submit an amended Form 1000 for the well and obtain an amended Permit to Drill before:
- (A) Completing the well in a common source of supply which is not listed on the current unexpired Permit to Drill for the well.
- (B) Re-completing the well in a common source of supply which is not listed on the current unexpired Permit to Drill for the well.
- (C) Installing less surface casing than the amount approved on the unexpired Permit to Drill for the well.
- (D) Deviating from an alternative casing and cementing procedure which the Conservation Division approved on the unexpired Permit to Drill for the well.
- (E) Completing a well in a common source of supply at a subsurface location which does not correspond with the surface location on the most recently issued Permit to Drill for the well.
- (2) **Effect of amended or additional Permit to Drill on prior Permit to Drill.** Each approved, amended, or additional Permit to Drill for a well cancels any previously issued Permit to Drill for the well.
- (c) **Expired or revoked Permit to Drill.** If a Permit to Drill for a well expires or is revoked, the operator shall be subject to the requirements of (a) of this Section.
- (d) **Casing and cementing requirements.** Each Permit to Drill shall list the minimum amount of surface casing to be used or an approved alternative casing and cementing program under 165:10-3-4.
- (e) **Spud report and well spacing requirements.** In addition to complying with the requirement of obtaining a Permit to Drill, the operator shall comply with the following:
- (1) The spud report requirement of 165:10-3-2.
- (2) Any well spacing requirements applicable by order or rule of the Commission. Well spacing requirements do not apply to injection or disposal wells.
- (f) **Disposal of drilling fluids.**
- (1) The operator shall indicate on Form 1000 the proposed method(s) for disposal of drilling fluids. These methods shall include, but not be limited to:
- (A) Evaporation/dewatering and leveling of the reserve pit.
- (B) Soil farming.
- (C) Recycling.
- (D) Commercial off-site earthen pit disposal.
- (E) Annular injection.
- (F) Hauling to a facility or location other than a commercial earthen pit.
- (2) If the method in (1)(F) in this subsection is used, the operator shall provide the location to which the drilling fluids are to be hauled.
- (3) Issuance of the Permit to Drill shall not be construed as constituting approval of the disposal method(s) indicated. An operator who desires to dispose of drilling fluids through either evaporation/dewatering and leveling of the reserve pit, soil farming, commercial earthen pit disposal, or annular injection must comply with 165:10-7-16, 165:10-7-19 or 165:10-9-2, 165:10-9-1, or 165:10-5-13 respectively.
- (4) If the proposed method for drilling fluid disposal is changed, the operator shall notify the appropriate Conservation Division District Office, either by telephone, facsimile or electronic mail, within twenty-four (24) hours after the change. An amended Form 1000 for the well shall not be required for a change in disposal method.
- (g) **Notice to surface owners.**
- (1) The operator shall include on each Form 1000 submitted to the Conservation Division, the name and address of each surface owner of record for the wellsite.
- (2) For each Permit to Drill other than a Permit to Drill for a recompletion, the ~~Conservation Division operator~~ shall ~~mail by regular U.S. mail~~ send by facsimile, electronic mail or regular mail a copy of the Permit to Drill to each surface owner listed on the Form 1000 within ten (10) business days of the Conservation Division's approval of the Permit to Drill.
- (h) **Disapproval for noncompliance with Commission order.** If an operator is not in compliance with an enforceable order of the Commission, the Conservation Division shall not issue any Permit to Drill for the operator, until the operator complies with the order.
- (i) **Erroneous approval.** Erroneous issuance of a Permit to Drill shall not excuse noncompliance with any order or rule of the Commission.
- (j) **Expiration.**
- (1) **Eighteen-month period.** Except as provided in (3) of this subsection for expiration after submission of a completion report, a permit to drill shall expire eighteen months from the date of issuance, unless drilling operations are commenced and thereafter continued with due diligence to completion.
- (2) **Six-month extension.** A six month extension may be granted without fee providing the Conservation Division staff determines that no material change of condition has occurred, if ~~written~~ a request by facsimile, electronic mail, or regular mail for such extension is received from the operator prior to the expiration of the original permit. Only one extension may be granted.
- (3) **If Form 1002A is filed.** If the operator of the well submits to the Conservation Division a Completion Report (Form 1002A) for the well, the Permit to Drill for the well shall expire on the date the Completion Report is approved by the Conservation Division.
- (k) **Posting of Permit to Drill at the wellsite.** During any activity subject to this Section, the operator shall maintain at the wellsite an original or legible copy of the Permit to Drill for inspection by Commission personnel.

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(l) **Emergency authorization without approval of a Permit to Drill.** In an emergency, the Manager of the Technical Services Department of the Conservation Division may temporarily authorize commencement of activities without a Permit to Drill for a period up to five business days.

(m) **Limits of authority.** A Permit to Drill does not grant the operator authority to produce, inject or dispose without the required permits or allowable assignment.

## 165:10-3-4. Casing, cementing, wellhead equipment, and cementing reports

### (a) Scope.

(1) This Section governs the following:

- (A) Surface casing and cementing requirements.
- (B) Alternate casing and cementing procedure used instead of adequate surface casing and cement.
- (C) Minimum cementing and testing requirements for intermediate and production casing.
- (D) Minimum valve and blowout preventer requirements.
- (E) Cementing reports.

(2) This Section shall apply to the following:

- (A) Wells drilled or reentered for the production of oil, gas or brine.
- (B) Wells drilled or reentered for disposal of oil-field wastes.
- (C) Wells drilled for injection.
- (D) Wells drilled in subsurface gas storage units created by order of the Commission.
- (E) Other oilfield related service wells.

### (b) Effect on area rules.

(1) If any area rules promulgated by order of the Commission require less casing and cement than required by this Section, then this Section shall supersede the area rules.

(2) If an applicable area rule promulgated by order of the Commission has more stringent casing and cementing requirements than what are required by this Section, the Conservation Division shall enforce the area rules.

### (c) Quality of cement.

(1) **Parameters.** Cement used in the procedures described in this Section shall meet or exceed the following specifications:

- (A) Minimum compressive strength: 500 psi;
- (B) Maximum Young's modulus:  $< 1.2 \times 10^6$  psi;
- (C) Permeability:  $< 0.1$  mD; and
- (D) Minimum concentration of Portland cement: approximately 20%.

(2) **Required information.**

(A) If requested by a representative of the Conservation Division, the cementer shall provide quality control data sheets regarding the cement to the Technical Services Department, which data shall include, but not be limited to, the most recent laboratory test results for the cement. Laboratory test results for the cement must be no more than 12 months old.

(B) If requested by a representative of the Conservation Division, a sample of the cement shall be split

and an adequate portion (approximately one gallon) shall be properly labeled and delivered or otherwise provided to the Technical Services Department.

(ed) **Surface casing and cementing requirements for wells listed in (a)(2) of this Section:**

(1) **Minimum surface casing requirements.** Unless an alternate casing program is authorized by the Conservation Division or by an order of the Commission, suitable and sufficient surface casing shall be run and cemented from bottom to top with a minimum setting depth which is the greater of:

- (A) Ninety feet below the surface, or
- (B) Fifty feet below the base of treatable water.

(2) **Penalty for noncompliance.** An operator setting less than the required amount of surface casing or failing to remediate uncirculated cement before resuming operations may be fined up to \$5,000.00.

(3) **Exceptions to ~~(e)(1)(d)(1)~~.** Operators having wells producing hydrocarbons which were in compliance with the surface casing requirements at the time of completion shall not be required to comply with (1) of this subsection.

(4) **Well to be used for annular injection under 165:10-5-13.** If the operator intends to dispose of drilling or stimulation fluids by annular injection, then the operator shall comply with 165:10-5-13 which requires a surface casing string to be set not less than 200 feet below the base of treatable water, unless a Commission order provides otherwise.

(5) **Depth limitation on setting surface casing.** The well operator shall run and cement the surface casing string required by this subsection before drilling the well more than 250 feet below the base of treatable water, unless otherwise approved on the Permit to Drill.

(6) **Penalties.** Operators failing to obtain permission to drill a well more than 250 feet below the treatable water, or to obtain permission for an alternate casing and cementing procedure may be fined up to \$2,500.00.

(7) **Cementing procedures.**

(A) **Approved methods.** Except as provided in (B) of this paragraph for bradenhead cementing, cement shall be run by either the tubing and pump method, the pump and plug method, or the displacement method.

(B) **Bradenhead cementing prohibited.** Bradenhead cementing is prohibited without written permission from the appropriate Conservation Division District Office.

(C) **Restrictions on stage cementing.**

(i) **Above 200 feet.** Running cement through small tubulars is permitted above 200 feet in depth without special permission.

(ii) **Below 200 feet.** Below 200 feet in depth, the operator shall obtain permission from the appropriate Conservation Division District Office before using small tubulars to run cement.

(D) **Steel casing required.** For purposes of the surface casing requirements of this Section, surface casing shall be oil field grade steel casing.

(E) **Minimum cement setup time.** The cement behind the surface casing shall set at least eight hours before further drilling. The cement behind the surface casing in wells drilled in an underground storage facility pursuant to OAC 165:10-3-5 shall set at least twenty-four hours before further drilling.

(F) **Down-hole testing of surface casing and cement.** Before drilling the shoe of the surface casing, the operator shall test the surface casing using the procedure prescribed by (g) of this Section.

(G) **Failure to circulate cement or fall back of cement behind surface casing.**

(i) **Verifying the top of cement.** If no conductor string is set and the cement did not circulate to the surface or falls back more than five feet, the operator shall determine the top of the cement using a method approved by the District Manager or Field Inspector Supervisor.

(ii) **Top of cement less than 200 feet from the surface.** If the top of the cement is found less than 200 feet from the surface, the operator may circulate cement to surface using small tubulars.

(iii) **Top of cement greater than 200 feet from the surface.** If the top of the cement is greater than 200 feet from the surface, the operator shall perform a corrective cementing operation by circulating cement to the surface from the determined top of the cement. The District Manager or Field Inspector Supervisor may grant permission to circulate cement through small tubulars.

(H) **Insufficient surface casing or mechanical failure.** Within 24 hours after discovery of a problem with the surface casing or cement, the operator shall notify the appropriate Conservation Division District Office by telephone, facsimile or electronic mail of:

(i) Any mechanical failure of the surface casing or cement.

(ii) Discovery of a treatable water formation below the shoe of the surface casing.

(I) **Penalty.** An operator, failing to report a rupture, break, or opening in the surface casing, may be fined up to \$1,000.00 and the well shut down.

(J) **Notice.** The District Manager or Field Inspector shall be given at least 24 hours notice by telephone, facsimile or electronic mail prior to any cementing operation in order that they may have the opportunity to witness.

(de) **Alternate casing and cementing procedures.**

(1) **Requirement of approval on the Permit to Drill.** Use of an alternative casing and cementing procedure instead of surface casing and cement required by ~~(e)~~(d) of this Section is prohibited without authorization on the Permit to Drill for the well.

(2) **Disapproval.** The Manager of Technical Department may not issue a permit for an alternate casing string and cementing procedure if one or more of the following conditions exist:

(A) The well will penetrate a known lost circulation zone.

(B) The treatable water bearing formation(s) will be endangered.

(C) The projected depth of the well is less than 100 feet from the top of any authorized secondary project or gas storage facility.

(3) **Applicability of other casing and cementing standards.** Alternate casing and cementing procedures under this subsection are subject to the provisions of ~~(e)~~(7)(d)(7) of this Section.

(4) **Alternate casing and cementing procedure.**

(A) An operator having permission to run an alternate casing string may, for protection of the treatable water, drill the well to casing point and circulate cement to the surface, or circulate cement from a depth of 100 feet below the base of treatable water to the surface after following the procedures set out in ~~(f)~~(g) of this Section.

(B) Oil based drilling mud shall be prohibited.

(C) If a well is completed using an alternate casing and cementing procedure, a bond log covering the interval from 100 feet below the base of the treatable water to the surface shall be required. The District Manager may waive this requirement. A completion attempt, in cases where the protection of treatable water is questionable, is strictly prohibited.

(D) Unless extended by the District Manager, the operator shall have 72 hours after drilling and testing is completed to run production casing or plug the well. A minimum of 24 hours prior notice by telephone, facsimile or electronic mail must be given to the appropriate Conservation Division District Office prior to cementing operations so that a Field Inspector may have the opportunity to witness the cementing or plugging procedures. If the well is plugged and abandoned, procedures set out in ~~(e)~~(f) of this Section shall be followed.

(E) In the event that casing is run and cement does not circulate to the surface, or falls back, the operator shall determine the top of the cement using a method approved by the District Manager.

(5) **Remedial actions.**

(A) If the top of the cement is less than 200 feet from the surface, the operator may circulate cement from that point to the surface using small tubulars or by perforating the casing at that point and circulating cement to the surface.

(B) If the top of the cement is greater in depth than 200 feet, the operator shall perforate the casing at the top of the cement and circulate cement to the surface, or with the written permission of the District Manager or Field Inspector Supervisor, use small tubulars.

(C) In the event that a conductor string had been set and the top of the cement is at least ten feet above the base of the conductor casing no remedial action is needed.

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(D) Unless waived by the appropriate Conservation Division District Office, all corrective cementing operations shall be approved and witnessed by the Field Inspector.

(E) In wells where corrective actions were needed for casing or cementing problems, a completion attempt shall not be made without approval by the District Manager.

(ef) **Permanent well marker.** In the event that the well is a dry hole and no casing has been run, then during the plugging of the well the operator shall run and cement from bottom to top at least one joint of casing at the surface not less than 25 feet in length for use as a permanent well marker. The casing used as a well marker shall be oil field grade steel casing with an outside diameter of at least seven inches. The top of the marker shall be three feet below the surface and be capped with a steel plate inscribed or embedded with the well number and date of plugging on the steel plate. An operator failing to run and cement the well marker as required may be fined up to \$1,000.00 and shall, under the supervision of the Commission, replug the well.

(fg) **Minimum cement for additional casing strings.** If additional casing other than surface casing is run, except for temporary purposes, it shall be run, set, and cemented with a calculated volume of cement sufficient to fill the annular space behind the casing string from the base of the casing string to a minimum height which is the greater of five percent of the depth to which the casing string is set, or a height of 200 feet. Any well approved for horizontal completion shall be cemented with a calculated volume of cement sufficient to fill the annular space behind the production casing string to isolate the producing formation. The Conservation Division may grant a variance to this requirement for a horizontal well upon request.

(gh) **Pressure testing of casing strings.**

(1) Before drilling the cement plug in a casing string, the operator shall pressure test the installed casing for 30 minutes at a minimum pressure which is the lesser of the surface gauge pressure equal in pounds per square inch to 0.2 of the length of the casing in feet or 1500 psig.

(2) During the 30 minute test, if the surface pressure drops ten percent or more, the operator shall:

(A) Repair and retest the casing until the requirements of this subsection are met; or

(B) Plug the well according to the rules of this Chapter.

(hi) **Minimum wellhead equipment for drilling wells.** All reasonable and prudent precautions shall be taken for keeping the well under control during drilling operations, including but not limited to the use of blowout preventers or other similar equipment with appropriate pressure fittings attached to properly cemented casing strings and the maintenance of mud-laden fluid of sufficient weight to provide proper well control. A blowout preventer or other equipment necessary to maintain control of the well shall be installed prior to drilling out of the surface casing. Blowout preventers and associated equipment shall be maintained in good working order. Blowout preventers shall be pressure tested at regular intervals,

not to exceed twenty-one days, to ensure proper operation. A function test shall be conducted on a routine basis during drilling operations to ensure that annular preventers and rams will operate properly. Alternate testing procedures may be approved by the District Manager. The rig personnel shall be trained in the use of blowout prevention equipment and well control procedures on the rig.

(ij) **Cementing reports.**

(1) The operator of the well shall submit, ~~attached to Form 1002A Completion Report,~~ a Form 1002C Cementing Report within 45 days of the release of the rig used to drill such well, describing all cementing operations on surface, intermediate, and production casing strings, including multistage cementing jobs.

(2) If additional cementing operations occur after submission of the Cementing Report, the operator shall submit an amended Form 1002C for the well.

(jk) **Surface casing requirements for re-entry wells.** For a re-entry as defined by 165:10-1-2, casing and cementing requirements at the time of re-entry shall apply.

(kl) **Surface casing requirement for recompletions.** For a recompletion as defined by 165:10-1-2, casing and cementing requirements applicable to wells commenced on the latter of the spud date or re-entry date for the well shall apply.

(lm) **Casing and cementing requirements for wells converted for injection or disposal.** If a well is converted for use as an injection or disposal well, it shall be subject to the casing and cementing requirements of this Section effective at the time of conversion of the well.

(mn) **Casing and cementing requirements for wells penetrating unitized common sources of supply.** Each newly drilled or re-entered well which penetrates a common source of supply in which enhanced recovery operations are being conducted shall be properly cased and cemented from not less than 100 feet below to not less than 100 feet above each unitized common source of supply to prevent migration of formation fluids and contain formation pressure. In the event the well is to be plugged without being cased, the well shall be properly cemented over the aforementioned interval(s) during plugging procedures.

(no) **Insufficient surface casing and cement.** When it has been determined that a treatable water-bearing formation has not been properly cased and cemented, the operator shall take such measures designated by the Director of Conservation or ordered by the Commission to protect any treatable water-bearing formation.

### 165:10-3-5. Underground storage

(a) **Scope.** This Section shall apply to all operations pertaining to the drilling, completion, recompletion, or remedial operations on wells located within the boundaries of an underground storage facility as defined in (b)(4) of this Section or wells whose completion intervals will, at any point, be located within 600 feet of the underground storage facility.

(b) **Definitions.**

(1) "Underground storage" shall mean storage of natural gas in a subsurface stratum or formation of the earth.

(2) "Natural gas" shall mean gas either while in its natural state or after the same has been processed by removal therefrom of component parts not essential to its use for lights and fuel.

(3) "Storage operator" shall mean any person, firm, or corporation which operates an underground storage facility.

(4) "Underground storage facility" shall mean any subsurface stratum or formation of the earth used for underground storage. Provided that, in the case of a natural gas bearing subsurface stratum or formation, the commercially producible native gas shall have been substantially depleted and the gas therein shall not be used primarily for the secondary recovery of oil in paying quantities from the subsurface stratum or formation.

(5) "Well" means a vertical, directional or horizontal well drilled or bored or to be drilled or bored within the certified boundary of an underground storage facility, or whose completion interval will, at any point, be located within 600 feet of the underground storage facility.

(6) "Well operator" shall be the person, firm, or corporation that is the operator of a well.

(7) "Major remedial operations" shall mean any workover operations requiring a workover rig, wire line or pump truck services.

(8) "Good quality cement" means cement that would obtain a compressive strength to prevent oil, gas, or water migration within a twenty-four (24) hour period.

(9) "Certified boundary" means the perimeter of the legal description of an underground storage facility established by certificate and order of the Commission.

(10) "Completion interval" means for open hole completion or recompletions, the interval from the point of entry to the terminus and, for cased and cemented completions or recompletions, the interval from the first perforations to the last perforations.

(c) **Notice to storage operator.** Upon receipt of Form 1000 from a well operator, the Conservation Division shall determine whether the proposed well falls within one (1) mile of the certified boundary of an underground storage facility. Following a positive determination, the Conservation Division shall instruct the well operator to provide notice of the application for a Permit to Drill the well to the storage operator and the Director of the Public Utility Division as part of the application for Permit to Drill process. The well operator is required to supply written confirmation to the Conservation Division that notice of the application for a Permit to Drill the well has been provided to the storage operator and the Director of the Public Utility Division.

(d) **Operational procedures.**

(1) All storage operators and well operators are required to maintain on file with the Commission's Surety Department current mailing addresses, email addresses, and 24 hour telephone numbers. In addition, storage operators are required to maintain on file with the Commission's Surety Department the Commission order number pertaining to the underground storage facility.

(2) Before spudding a well within the certified boundary of a gas underground storage facility, the well operator shall mail a copy of the Permit to Drill to the storage operator at the address listed at the Commission and also supply a copy of the Permit to Drill to the Director of the Public Utility Division. The storage operator will inform the well operator of the estimated depth, thickness, and pressure of the underground storage facility at that location. Failure of the storage operator to provide the data to the well operator shall not be a cause to delay drilling, but the well operator is required to notify the storage operator, by phone a minimum of 24 hours prior to commencing drilling operations at a 24 hour telephone number furnished to the Commission by the storage operator.

(3) A well operator shall comply with the provisions of ~~165:10-3-4(c)~~165:10-3-4(d). Alternate casing programs shall not be permitted.

(4) Drilling rigs shall be equipped with a blowout preventer. The preventer shall be installed and tested at least 500 psig above the anticipated underground storage facility pressure before drilling below the base of the surface casing.

(5) The storage operator shall receive drilling reports daily from the well operator and the storage operator shall be provided 48 hours notice by the well operator at a 24 hour telephone number furnished to the Commission by the storage operator to afford the storage operator an opportunity to witness any tests or logging operations from the surface to 600 feet below the base of the underground storage facility. Any abnormal conditions occurring during the drilling operation, such as abnormal pressures and/or lost circulation, shall be reported immediately by the well operator to the storage operator at the 24 hour telephone number supplied by the storage operator to the Commission.

(6) The well operator shall drill the well in such a manner as to prevent invasion of drilling fluids into, or the escape of natural gas from, the underground storage facility. The well operator shall be required to mud up at least 100 feet above the anticipated depth of the top of the underground storage facility.

(7) If run, a copy of either an open hole porosity or resistivity well log run from the base of surface casing to total depth shall be promptly forwarded to the storage operator. The logs submitted to the storage operator may be terminated 600 feet below the base of the underground storage facility. At least 48 hours prior to commencing logging operations the well operator shall notify the storage operator at the 24 hour telephone number furnished by the storage operator to the Commission, and the storage operator shall have the option of witnessing the open hole logging operation.

(8) In the event that the well is noncommercial and is to be plugged and abandoned, the well operator shall place a cement plug using a good quality cement, covering from not less than 300 feet below the base to not less than 300 feet above the top of the underground storage

facility. At least 48 hours prior to commencing the plugging operation, the well operator shall notify the storage operator at the 24 hour telephone number furnished by the storage operator to the Commission, and the storage operator shall have the option of witnessing the plugging operation. The field inspector may invoke the provisions of 165:10-11-6(m), (n) and (o).

(9) In the event that casing is run, the well operator will cause the underground storage facility interval to be covered with steel casing and be cemented from not less than 100 feet below the base to not less than 100 feet above the top of the underground storage facility using a good quality cement. At least 48 hours prior to commencing the casing operation, the well operator shall notify the appropriate Conservation Division District Office and the storage operator at the 24 hour telephone number furnished by the storage operator to the Commission. The Commission field inspector for the area and storage operator shall have the option of witnessing the operation.

(10) For the purpose of ensuring the integrity of the underground storage facility, the well operator shall be required to run a cement bond log through the underground storage facility formation before any completion attempts are made. At least 48 hours prior to commencing the logging operation, the well operator shall notify the storage operator at the 24 hour telephone number furnished by the storage operator to the Commission, and the storage operator shall have the option of witnessing the logging operation and be furnished with a copy of the bond log from the top of cement to total depth or, at the option of the well operator, to 600 feet below the base of the underground storage facility. If the integrity of either the bond log or cement across the underground storage facility interval is questioned by the storage operator, the storage operator may, at its sole risk and expense, run additional logs. No completion, recompletion or major remedial operations shall be permitted until the fact has been established by the well operator, storage operator and the Managers of the Technical Services and Field Operations Departments, that the integrity of the cement is sound and that the underground storage facility is isolated from the remainder of the bore hole. The remedial work, if needed to protect the storage reservoir, shall be at the risk and expense of the well operator.

(11) The storage operator, the Managers of the Technical Services and Field Operations Departments and the Director of the Public Utility Division shall be notified at least 48 hours prior to commencement of completion, recompletion, or major remedial operations so as to afford opportunities to witness such operations. The well site shall be made accessible at all times to the storage operator and all information pertaining to the completion shall be forwarded daily to the storage operator. If the completion, recompletion, or major remedial operations attempt is to be made in any formation within 600 feet of the underground storage facility, the proposed plan of completion shall be forwarded to the storage operator ten business days prior to commencement of operations. The

storage operator shall have five business days after receipt of the proposed plan to forward any objection to the well operator. Completion operations, recompletion, or major remedial operations shall not be permitted until the matter is resolved.

(12) At any time that the storage operator shall reasonably believe that damage may be occurring to the underground storage facility or that natural gas may be escaping into any other formations or otherwise believe that a well may compromise the integrity of the underground storage facility, the storage operator may then request that the operator of the well conduct specific tests solely at the storage operator's risk and expense. If an agreement cannot be obtained between the parties concerned, the storage operator or well operator may bring the matter before the Corporation Commission for determination by application, notice, and hearing following the procedure set out in OAC 165:5-7.

(13) If tests establish that damage is occurring and/or that natural gas is escaping by the continued operation of the well, the well shall be shut down immediately and the remedial operation to rectify the condition shall be commenced within ten days, at the sole risk and expense of the well operator.

(14) All information furnished to the storage operator shall be kept confidential until released in writing by the well operator.

### PART 3. COMPLETIONS

#### 165:10-3-10. Well completion operations

(a) **Hydraulic fracturing and acidizing.** In the completion of an oil, gas, injection, disposal, or service well, where acidizing or fracture processes are used, no oil, gas, or deleterious substances shall be permitted to pollute any surface or subsurface fresh water. Unless an operator confers with and obtains the approval of the Conservation Division, the use of diesel fuel as the base fluid for hydraulic fracturing operations is prohibited. Approval of the Conservation Division shall be reflected in writing. Within 5 days of obtaining written authorization, the operator is required to send the authorization by facsimile, electronic mail or regular mail to the following:

- (1) The owner of the surface location where the proposed well is to be drilled; and
- (2) Each operator of a producing spacing unit or well within 1 mile of the perforated interval of the proposed well.

(b) **Notice of hydraulic fracturing operations.**

- (1) Notice shall be given by facsimile, electronic mail or regular mail at least 5 business days prior to the commencement of hydraulic fracturing operations on a horizontal well to operators of producing wells within 1 mile of the completion interval of the subject well. The notice to be provided to such operators shall contain the information in Form 6000NOO. If the hydraulic fracturing operations schedule changes after notice has been provided, resulting in a delay of operations of more than 5



days from the initial notice, new notice is required to be given.

(2) Notice shall be sent to the Conservation Division electronically using Form 6000NHF as provided on the Commission's website at least 48 hours prior to commencement of hydraulic fracturing operations on a well. The time period for sending such notice to the Conservation Division may be waived by the Manager of the Induced Seismicity Department.

(3) Separate stages of a planned multi-stage hydraulic fracturing operation shall not constitute separate hydraulic fracturing operations for notification purposes.

(4) If an operator has evidence that hydraulic fracturing operations have impacted its well(s), the operator may report the occurrence by electronic mail to the ~~appropriate Conservation Division District Office~~ Conservation Division as provided on the Commission's website within 24 hours of discovery. The operator shall use Form 4000WIP to report the occurrence.

(c) **Chemical disclosure.** Within 60 days after the conclusion of hydraulic fracturing operations on an oil, gas, injection, disposal, or service well that is hydraulically fractured, the operator must submit information on the chemicals used in the hydraulic fracturing operation to the FracFocus Chemical Disclosure Registry.

(1) The submission required by this subsection must include the following information:

- (A) the name of the operator;
- (B) the API number of the well;
- (C) the longitude and latitude of the surface location of the well;
- (D) the dates on which the hydraulic fracturing operation began and ended;
- (E) the total volume of base fluid used in the hydraulic fracturing operation;
- (F) the type of base fluid used;
- (G) the trade name, supplier, and general purpose of each chemical additive or other substance intentionally added to the base fluid; and
- (H) for each ingredient in any chemical additive or other substance intentionally added to the base fluid, the identity, Chemical Abstract Service (CAS) number, and maximum concentration. The maximum concentration for any ingredient must be presented as the percent by mass in the hydraulic fracturing fluid as a whole, and is not required to be presented as the percent by mass in any particular additive.

(2) For purposes of this subsection, the phrase "chemical additive or other substance intentionally added to the base fluid" refers to a substance knowingly and purposefully added to the base fluid and does not include trace amounts of impurities, incidental products of chemical reactions or processes, or constituents of natural materials.

(3) The operator is not responsible for inaccurate information provided to the operator by a vendor or service provider, but the operator is responsible for ensuring such information is corrected when any inaccuracy is discovered.

(4) If certain chemical information, such as the chemical identity, CAS number, and/or maximum concentration of an ingredient, is claimed in good faith to be entitled to protection as a trade secret under the Uniform Trade Secrets Act, 78 O.S. §§85-94, the submission to the FracFocus Chemical Disclosure Registry may note the proprietary nature of that chemical information instead of disclosing the protected information to the registry. The submission must include the name of the supplier, service company, operator, or other person asserting the claim that the chemical information is entitled to protection as a trade secret and provide the chemical family name or similar descriptor for the chemical if the chemical identity and CAS number are not disclosed. The Commission or the Director of the Oil and Gas Conservation Division may require the claimant to file with the Commission a written explanation in support of the claim.

(5) Nothing in this subsection restricts the Commission's ability to obtain chemical information under the provisions of OAC 165:10-1-6 or other applicable Commission rules.

(6) This subsection applies to:

- (A) horizontal wells that are hydraulically fractured on or after January 1, 2013; and
- (B) other wells that are hydraulically fractured on or after January 1, 2014.

(d) **Rule reference guide.** References to Commission rules regarding management of hydraulic fracturing operations are as follows:

- (1) Duties and authority of the Conservation Division (OAC 165:10-1-6).
- (2) Required approval of notice of intent to drill, deepen, re-enter or recomplete; Permit to Drill (OAC 165:10-3-1).
- (3) Surface and production casing (OAC 165:10-3-3).
- (4) Casing, cementing, wellhead equipment and cementing reports (OAC 165:10-3-4).
- (5) Swabbing and bailing (OAC 165:10-3-11).
- (6) Leakage prevention in tanks; protection of migratory birds (OAC 165:10-3-13).
- (7) Well site and surface facilities (OAC 165:10-3-17).
- (8) Completion reports (OAC 165:10-3-25).
- (9) Administration and enforcement of rules (OAC 165:10-7-2).
- (10) Cooperation with other agencies (OAC 165:10-7-3).
- (11) Water quality standards (OAC 165:10-7-4).
- (12) Prohibition of pollution (OAC 165:10-7-5).
- (13) Protection of public water supplies (OAC 165:10-7-6).
- (14) Informal complaints,  ~~citations~~, red tags and shut down of operations (OAC 165:10-7-7).
- (15) Use of noncommercial pits (OAC 165:10-7-16).
- (16) Surface discharge of fluids (OAC 165:10-7-17).
- (17) Discharge to surface waters (OAC 165:10-7-18).
- (18) One-time land application of water-based fluids from earthen pits and tanks (OAC 165:10-7-19).

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- (19) Noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater (OAC 165:10-7-20).
- (20) Waste management practices reference chart (OAC 165:10-7-24).
- (21) One-time land application of contaminated soils and petroleum hydrocarbon based drill cuttings (OAC 165:10-7-26).
- (22) Application of fresh water drill cuttings by County Commissioners (OAC 165:10-7-28).
- (23) Application of freshwater drill cuttings by oil and gas operators (OAC 165:10-7-29).
- (24) Application to reclaim and/or recycle produced water for surface activities related to drilling, completion, workover, and production operations from oil and gas wells (OAC 165:10-7-32).
- (25) Use of commercial pits (OAC 165:10-9-1).
- (26) Commercial soil farming (OAC 165:10-9-2).
- (27) Commercial recycling facilities (OAC 165:10-9-4).
- (28) Duty to plug and abandon (OAC 165:10-11-3).
- (29) Notification and witnessing of plugging (OAC 165:10-11-4).
- (30) Plugging and plugging back procedures (OAC 165:10-11-6).
- (31) Plugging record (OAC 165:10-11-7).
- (32) Review of environmental permit applications (OAC 165:5-1-15 through OAC 165:5-1-19)
- (33) Response to citizen environmental complaints (OAC 165:5-1-25 through OAC 165: 5-1-30).
- (34) Contempt (OAC 165:5-19-1 through OAC 165:5-19-2).

### 165:10-3-17. Well site and surface facilities

- (a) **Scope.** This Section shall be applicable to all operators and owners of oil and gas wells, leases, secondary recovery units, converted or newly drilled disposal or injection wells, and re-entries or reworkings of the above; however, this Section does not cover pits used in connection with oil and gas operations (see 165:10-7-16).
- (b) **Removal of fire hazards.** Any material that might constitute a fire hazard shall be removed a safe distance from the well location, tanks, and separator. All waste oil shall be ~~burned or~~ disposed of in a manner to avoid creating a fire hazard.
- (c) **Removal of surface trash.**
  - (1) All surface trash, debris, and junk associated with the operations of the property shall be removed from the premises. Equipment and material that may be useable and related to the operations of the property are not considered trash, debris and junk. With written permission from the surface owner, the operator may, without applying for an exception to 165:10-3-17(b), bury all nonhazardous material at a minimum depth of three feet; cement bases are included.
  - (2) If the operator fails to remove trash, debris, and junk after written notice, the Commission may fine the operator up to \$1,000.

- (d) **Required lease signs.** Within 30 days after the completion of any producing oil or gas well subsequent to the effective date of this Section, a sign shall be posted and maintained at the location indicating no trespassing, no unauthorized personnel or similar language, showing the operator of the well and the operator's twenty-four hour emergency telephone number, name of the well, number of the well, legal description of the well and API number; provided, however, where more than one well is producing on a lease, the operator may post and maintain a sign at the principal lease entrance indicating no trespassing, no unauthorized personnel or similar language, the lease name, operator, the operator's twenty-four hour emergency telephone number, legal description, and number of wells, and on each well designate the number of the well and API number. Within 30 days after completion or recompletion of an injection well or a disposal well subsequent to the effective date of this Section, a sign shall be posted and maintained at the well location indicating no trespassing, no unauthorized personnel or similar language, showing the operator of the well, the operator's twenty-four hour emergency telephone number, well name, well number, legal description of the well, API number and the Commission order number by which it was authorized. The legal description of each well completed on or after March 1, 1976, shall be posted at the well and shall describe the location of the well to the nearest quarter quarter section and shall show the section, township, and range. On a 160-acre or larger drilling and spacing unit, a sign shall also be posted at the entrance to the well site. Upon the Commission's approval, after the effective date of this Section, of transfer to a new operator of a well completed or recompleted prior to the effective date of this Section, the operator must comply with all requirements in this Section. If an operator fails to post a sign as directed, the Commission may fine the operator \$50.00 per violation; provided that total fines per incident shall not exceed \$500.00 per lease.
- (e) **Notice of fire or blowout.** In case of a fire or blowout, the well operator shall notify by telephone or electronic mail, as soon as possible, either the Conservation Division or the appropriate Conservation Division District Office.
- (f) **OTC numbers on stock tanks for oil and condensate.**
  - (1) On all oil and gas producing leases, the first purchaser of crude oil or condensate shall print its name or affix the company logo and print or affix the OTC Gross Production Division Purchaser Reporting Number on the lease sign or at least one of the storage tanks from which marketable liquids are being delivered.
  - (2) On all oil and gas producing leases, the well operator shall print or affix the OTC Gross Production Division assigned Production Unit Number and the OTC Gross Production Division Operator Reporting Number on the lease sign or at least one of the tanks from which marketable liquids are being stored. In the case of an enhanced recovery or unitization operation where several OTC Gross Production Division assigned Production Unit Numbers exist for the wells in the unit, the word "unitized" shall be printed or affixed to the lease sign or one of the storage tanks from which marketable liquids are being delivered to the purchaser.

(3) The identification numbers required in this subsection shall always be clearly legible. All letters and numbers shall be a minimum of two inches in height. Any operator failing to post required information may be fined up to \$50.00 per violation; provided that total fines per incident shall not exceed \$500.00 per well.

(g) **OTC numbers on gas meter or meter house.**

(1) On all gas producing leases, the operator of the well site gas meter required under 165:10-17-5 shall print or affix its name and OTC reporting number on the outside of the meter house or on the outside of the meter itself if no meter house exists.

(2) The operator of the lease shall print its OTC lease number and operator reporting number on the meter house or on outside of the meter if no meter house exists.

(3) The identification required in this subsection shall always be clearly legible.

(h) **Valve and seals on stock tanks.** The operator shall install tank valves such that metal identification seals can be properly utilized. These seals shall be used on all delivery tank valves to lessen unauthorized movement of marketable products.

(i) **Man-ways on frac tanks.** Each frac tank used at the wellsite shall have protective man-ways to prevent persons from accidentally falling into the frac tank.

(j) **Guy line anchors.** All guy line anchors left buried for use in future operations of the well shall be properly marked by a marker of bright color not less than four feet in height and not greater than one foot east of the guy line anchor.

(k) **Well site cleared.** Within 90 days after a well is plugged and abandoned, the well site shall be cleared of all equipment, trash, and debris. Any foreign surface material is to be removed and the location site restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the location site is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the well.

(l) **Restored surface.** Within 90 days after a lease has been abandoned, surface equipment such as stock tanks, heater, separators, and other related items shall be removed from the premises. The surface shall be restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the surface is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the lease.

(m) **Leasehold roads.** All leasehold roads shall be kept in a passable condition and shall be made accessible at all times for representatives and field inspectors of the Commission. At the time of abandonment of the property, the area of the road shall be restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the road area is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the

vegetative cover within 180 days after abandonment of the property.

(n) **Extension of time.**

(1) An operator may request an extension of time required in (k), (l), and (m) of this Section for not more than six months by applying to the appropriate Conservation Division District Office and showing that there is no imminent danger to the environment and that one of the following conditions exists:

(A) That an agreement with the surface owners is not possible.

(B) That adverse weather conditions exist or existed.

(C) That the equipment needed to conform to (k), (l), and (m) of this Section was not or is not available.

(2) If approved by the District Manager, the extension shall be granted and the surface owner shall be notified by the operator. Any extension beyond six months shall require application, notice and hearing pursuant to OAC 165:5-7-41.

**PART 5. OPERATIONS**

**165:10-3-26. Well logs**

(a) **60 days to submit well log(s).** All well logs required by this Section shall be submitted to the Conservation Division within 60 days from the earlier of the date of completion of the well or the date that the last formation evaluation type well log was run. An operator who fails to properly submit formation evaluation type well logs, if run, may be fined up to \$250.00.

(b) **Formation evaluation type well logs.** This Section does not require an operator to run a formation evaluation type well log. However, if an operator does run formation evaluation type well logs, the operator shall only be required under this Section to submit a resistivity log and a porosity log, if available. Resistivity and porosity logs include but are not limited to spontaneous potential, induction, laterolog, density, gamma ray, neutron and sonic logs.

(c) **Other logs to be available upon request.** Any other well logs, if available, shall be submitted to the Technical Services Department upon Commission order or special request of the Conservation Division.

(d) **Requirements for submitting a copy of a log.** A copy of a log submitted under this Section shall be in digital image, continuous as full size pages with 200 dpi, a single page Tiff image file, and Tiff Group 4 compression, with the well's legal description noted on it, unless the operator obtains authorization from the Technical Services Department to submit a continuous print paper version of the log. If there are separate runs for multiple casing strings, the operator shall submit the separate runs.

(e) **Obtaining confidential treatment of well log(s).**

(1) Unless the operator requests confidential treatment of a well log(s), any well log(s) submitted to the Conservation Division shall be available for public inspection.

(2) To obtain confidential treatment of a well log, the operator of the well shall:

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- (A) Place the well log(s) in a sealed envelope with a completed Form 1002B attached to the envelope.
- (B) Submit to the Technical Services Department of the Conservation Division the envelope with the log(s) and Form 1002B within 60 days from the earlier of:
- (i) The completion date of the well, or
  - (ii) The date that the last formation evaluation log was run.
- (3) A confidential well log under ~~(2)(B) of this Section~~this subsection shall remain confidential for one year from the date the last log was run on the well. Upon written request, the Conservation Division may administratively extend the period of confidentiality for six months. Under no circumstances shall confidentiality be granted for a period in excess of 18 months from the date the last log was run on the well.
- (f) **No allowable before submission of well logs.** The Conservation Division shall not assign an allowable to a well before the operator of the well submits to the Conservation Division any well log required to be submitted under (b) of this Section.

### 165:10-3-27. Deviation from the vertical

- (a) **Well location for purposes of well spacing.** For purposes of the well spacing requirements of 165:10-1-21 and 165:10-1-24, the location of a well in a common source of supply is the closest point to the unit boundary where the wellbore intersects the common source of supply.
- (b) **Presumed bottom hole location.** For purposes of review of Form 1000 applications, the Conservation Division may presume that the location in a common source of supply of a well without a horizontal drainhole is the same as the surface location for the well unless:
- (1) The operator submits a bottom hole survey, if the well has been drilled; or
  - (2) The operator complies with (c)(1) of this Section.
- (c) **Permitted and prohibited locations.**
- (1) ~~Off-pattern~~**Off-pattern surface location; permitted subsurface location.**
- (A) The Conservation Division may approve a Form 1000 for a well to be commenced without a location exception at an ~~off-pattern~~off-pattern surface location for a common source of supply when:
- (i) The Form 1000 lists a subsurface location which is a permitted location for the common source of supply.
  - (ii) Issuance of a Permit to Drill is conditioned on the operator running a bottom hole survey within 30 days after reaching total depth and on the operator submitting the survey to the Conservation Division within 45 days after the well reaches total depth.
- (B) The well shall not receive an allowable for the common source of supply until a bottom hole survey shows that the well is at a permitted location or until the operator obtains a location exception order for the subsurface location.

(2) ~~Off-pattern~~**Off-pattern subsurface location.**

- (A) The Conservation Division ~~shall not~~may approve a Form 1000 ~~without a location exception order for an off-pattern~~without a location exception order for any well after a hearing for an emergency location exception order or an order on the merits for a location exception order prior to the issuance of any such order. Any such Permit to Drill is subject to and must conform with the final provisions of any such order.
- (B) Issuance of a Permit to Drill under (1) of this subsection does not permit an operator to have, without a location exception order, an ~~off-pattern~~off-pattern subsurface location for a common source of supply, unless a Permit to Drill is approved after a hearing for an emergency location exception order or an order on the merits for a location exception order prior to the issuance of any such order. Any such Permit to Drill is subject to and must conform with the final provisions of any such order.
- (d) **Required directional and bottom hole surveys.** For good cause, the Commission may order an operator to run directional and/or bottom-hole surveys for a common source of supply in a well:
- (1) Upon application, notice, and hearing; or
  - (2) In any case involving the location of a well, upon motion of an affected party or upon the Commission's own motion.

### 165:10-3-28. Horizontal drilling

- (a) **Scope.** This Section affects a horizontal well with one or more laterals.
- (b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:
- (1) **"Adjacent common source of supply"** shall mean a common source of supply which is immediately adjacent to and adjoining the targeted reservoir(s) in a multiunit horizontal well being drilled or a well being drilled in a horizontal well unitization pursuant to 52 O.S. § 87.6 et seq. and which is inadvertently encountered in the drilling of the lateral of a multiunit horizontal well or a well pursuant to a horizontal well unitization when such well is drilled out of or exits, whether on one or multiple occasions, the targeted reservoir(s), and which is not the primary target of the subject well and shall not be included in the relinquished rights pursuant to 52 O.S. § 87.1(h). In the event that an adjacent common source of supply may be inadvertently encountered in the drilling of the lateral of a multiunit horizontal well or a well pursuant to a horizontal well unitization when such well is drilled out of or exits, whether on one or multiple occasions, the targeted reservoir(s), then said inadvertently entered adjacent common source of supply shall be included as part of the targeted reservoir only for the purpose of the inadvertent penetrations, and any subsequent completion, commingling and production of said adjacent common source of supply with the targeted reservoir(s), but not for

future development of said adjacent common source of supply [52 O.S. § 87.6(B)(1)].

(2) **"Completion interval"** shall mean, for open hole completions, the interval from the point of entry to the terminus and, for cased and cemented completions, the interval from the first perforations to the last perforations [52 O.S. § 87.6(B)(5)].

(3) **"Conventional reservoir"** shall mean a common source of supply that is not an unconventional reservoir.

(4) **"Date of first production"** shall mean the date hydrocarbons are first produced from the horizontal well, whether or not production occurs during drilling, completion, or through permanent surface equipment.

(5) **"Directional survey"** shall mean that survey or report showing the location of any point of the wellbore as it relates to the surveyed surface location from the surface to the terminus of each lateral.

(6) **"Horizontal component"** shall mean the calculated horizontal distance from the point of entry to the terminus [52 O.S. § 87.6(B)(8)].

(7) **"Horizontal well"** shall mean a well drilled, completed, or recompleted with one or more laterals which, for at least one lateral, the horizontal component of the completion interval exceeds the vertical component of the completion interval and the horizontal component extends a minimum of 150 feet in the formation [52 O.S. § 87.6(B)(6)].

(8) **"Horizontal well unit"** shall mean a drilling and spacing unit established by the Commission, after application, notice, and hearing, for a common source of supply into which a horizontal well has been or will be drilled.

(9) **"Horizontal well unitization"** shall mean a unitization for a targeted reservoir created pursuant to 52 O.S. § 87.6 et seq. [52 O.S. § 87.6(B)(7)].

(10) **"Lateral"** shall mean the portion of the wellbore of a horizontal well from the point of entry to the terminus [52 O.S. § 87.6(B)(9)].

(11) **"Multiunit horizontal well"** shall mean a horizontal well in a targeted reservoir or targeted reservoirs wherein the completion interval of the well is located in more than one unit formed for the same targeted reservoir, with the well being completed in and producing from such targeted reservoir in two or more of such units [52 O.S. § 87.6(B)(10)].

(12) **"Non-standard horizontal well unit"** shall mean a horizontal well unit that is not a standard horizontal well unit.

(13) **"Point of entry"** shall mean the point at which the borehole of a horizontal well first intersects the top of the common source of supply [52 O.S. § 87.6(B)(12)].

(14) **"Standard horizontal well unit"** shall mean a horizontal well unit that is a square 10-, 40-, 160-, or 640-acre tract or a rectangular 20-, 80-, 320- or 1,280-acre tract in accordance with OAC 165:10-1-22.

(15) **"Targeted reservoir"** shall mean one or more common sources of supply which will be encountered by the horizontal lateral portion of a horizontal well, and which has been designated by the Commission as part of

an order, rule or emergency rule as potentially suited for development for the applied for multiunit horizontal well or horizontal well unitization pursuant to 52 O.S. § 87.6 et seq. Provided, however, that more than one common source of supply may only be granted by the Commission and included in the targeted reservoir upon a showing of reasonable cause by the applicant requesting the multiunit well in the application requesting authority for the multiunit well prior to the drilling of said multiunit well that the inclusion of the additional common source(s) of supply shall prevent waste and protect the correlative rights of all of the owners of the oil and gas rights [52 O.S. § 87.6(B)(14)].

(16) **"Terminus"** shall mean the end point of the borehole of a horizontal well in the targeted reservoir [52 O.S. § 87.6(B)(15)].

(17) **"True vertical depth"** shall mean that depth at the point of entry perpendicular to the surface as measured from the elevation of the kelly bushing on the drilling rig.

(18) **"Unconventional reservoir"** shall mean a common source of supply that is a shale or a coal bed. "Unconventional reservoir" shall also mean any other common source of supply designated as such by Commission order or rule.

(19) **"Vertical component"** shall mean the calculated vertical distance from the point of entry to the terminus of the lateral [52 O.S. § 87.6(B)(20)].

(c) **General horizontal well requirements.**

(1) Within 60 days after completion of a horizontal well, the operator shall show that the location of the completion interval complies with the applicable general rule, location exception order, or other order of the Commission by submitting the following to the Technical Services Department:

(A) A directional survey run in the horizontal well shall be submitted within 45 days of the release of the rig used to drill such well. The survey shall be submitted electronically using a program provided by the Commission.

(B) ~~An~~ "as drilled" plat constructed from the results of the directional survey showing the completion interval, including the depths of the first and last perforations and footages with latitude and longitude from the quarter section. The depths of the first and last perforations reflected in the "as drilled" plat must correspond to the information included in the OCC Form 1002A Completion Report for the well. The "as drilled" plat must be submitted to the Conservation Division with the OCC Form 1002A Completion Report for the well.

(2) The completion interval of an oil and or gas horizontal well shall be located not closer than the minimum distance as set out below from any other oil or gas well completed in the same common source of supply except as authorized by a special order of the Commission:

(A) Three hundred feet from any other oil or gas well completed in the same common source of supply,

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the top of which is less than 2,500 feet in true vertical depth.

(B) Six hundred feet from any other oil or gas well completed in the same common source of supply, the top of which is 2,500 feet or more in true vertical depth.

(C) This paragraph does not apply to horizontal wells drilled in a unit created for secondary or enhanced recovery operations pursuant to 52 O.S. § 287.1 et seq. or to horizontal wells drilled in a horizontal well unitization created pursuant to 52 O.S. § 87.6 et seq. or to any wells operated by the same operator in the unit. Notification to working interest owners must be indicated on Form 1000.

(3) The perforated interval of an oil or gas non-horizontal well shall be located not closer than the minimum distance as set out below from the completion interval of any oil or gas horizontal well completed in the same common source of supply, except as authorized by a special order of the Commission:

(A) Three hundred feet from any completion interval of any oil or gas horizontal well completed in the same common source of supply, the top of which is less than 2,500 feet in true vertical depth.

(B) Six hundred feet from any completion interval of any oil or gas horizontal well completed in the same common source of supply, the top of which is 2,500 feet or more in true vertical depth.

(C) This paragraph does not apply to non-horizontal wells drilled in a unit created for secondary or enhanced recovery operations pursuant to 52 O.S. § 287.1 et seq.

(d) **Horizontal well requirements in an unspaced common source of supply.** In a horizontal well drilled in a common source of supply in which the Commission has not established any drilling and spacing units or horizontal well units, the completion interval of a horizontal well may not be located closer to the boundaries of the applicable mineral estate, oil and gas leasehold estate, or voluntary unit than the minimum distance set out below except as authorized by a special order of the Commission:

(1) Not less than 165 feet when the top of the common source of supply is less than 2,500 feet in true vertical depth.

(2) Not less than 330 feet when the top of the common source of supply is 2,500 feet or more in true vertical depth.

(e) **Drilling and spacing units.**

(1) A horizontal well may be drilled on any drilling and spacing unit.

(2) A horizontal well unit may be created in accordance with 165:10-1-22 and 165:5-7-6. Such units shall be created as new units after notice and hearing as provided for by the Rules of Practice, OAC 165:5.

(3) The Commission may create a non-standard horizontal well unit covering contiguous lands in any configuration or shape deemed by the Commission to be

necessary for the development of a conventional reservoir or an unconventional reservoir by the drilling of one or more horizontal wells. A non-standard horizontal well unit may not exceed 1,280 acres plus the tolerances and variances allowed pursuant to 52 O.S. § 87.1.

(4) A horizontal well unit may be established for a common source of supply for which there are already established non-horizontal drilling and spacing units, and said horizontal well unit may include within the boundaries thereof more than one existing non-horizontal drilling and spacing unit for the common source of supply. Upon the formation of a horizontal well unit that includes within the boundaries thereof one or more non-horizontal drilling and spacing units, the Commission shall provide that such horizontal well unit exists concurrently with one or more of such non-horizontal drilling and spacing units, and each such unit may be concurrently developed.

(f) **Horizontal well location requirements for horizontal well units and horizontal well unitizations.**

(1) **Conventional reservoirs.** In a conventional reservoir, the completion interval of a horizontal well in a horizontal well unit shall be located not less than the minimum distance from the unit boundary as follows:

(A) Not less than 165 feet from the boundary of any 10-, 20, or 40-acre horizontal well unit.

(B) Not less than 330 feet from the boundary of any 80- or 160-acre horizontal well unit.

(C) Not less than 660 feet from the boundary of any 320-, 640- or 1,280-acre horizontal well unit.

(2) **Unconventional reservoirs.** In an unconventional reservoir, the completion interval of a horizontal well in a horizontal well unit shall be located not less than the minimum distance from the unit boundary as follows:

(A) Not less than 165 feet from the boundary of any 10-, 20, or 40-acre horizontal well unit.

(B) Not less than 330 feet from the boundary of any 80-, 160, 320-, 640- or 1,280-acre horizontal well unit.

(3) **Horizontal well unitizations.** The completion interval of a horizontal well in a horizontal well unitization shall not be located less than 330 feet from the unit boundary.

(g) **Alternative well location requirements.** The Commission may establish well location requirements different from those provided in subsection (f) of this Section when necessary to prevent waste and protect correlative rights. These requirements may be established in the order creating a standard or non-standard horizontal well unit or through a special rule of the Commission covering a conventional or unconventional reservoir in a designated geographic area. (see OAC 165:10, Subchapter 29, Special Area Rules).

(h) **Allowable.**

(1) Horizontal oil well allowables may be established administratively using the standard allowables provided in Appendix A (Allocated Well Allowable Table) supplemented by the additional allowables provided in Appendix C (Table HD) to this Chapter.

(2) The allowable for a horizontal gas well shall be computed in the manner prescribed for a non-horizontal gas well in the same common source of supply.

(3) The allowable for a horizontal well unit or horizontal well unitization with multiple horizontal gas wells shall be the sum of the allowables for the separate horizontal gas wells. For this summation, the allowable for each horizontal gas well will be calculated as if it were the only well in the unit.

(4) The allowable for a multiunit horizontal well shall be allocated to each affected unit using the allocation factors determined in accordance with 52 O.S. § 87.8(B)(1).

(i) **Pooling.** Horizontal well units, horizontal well unitizations and multiunit horizontal wells may be pooled as provided in 52 O.S. § 87.1, 52 O.S. § 87.6 et seq. and Commission Rules of Practice, OAC 165:5.

## SUBCHAPTER 5. UNDERGROUND INJECTION CONTROL

### 165:10-5-2. Approval of injection wells or disposal wells

(a) The subsurface injection or disposal of any substance for any purpose is prohibited except upon approval of the Commission pursuant to 165:10-5-5 or 165:10-5-12 and 165:10-5-13. This authorization may be conditioned upon the applicant taking corrective action to protect treatable water as specified by the ~~Commission~~ Conservation Division. The Commission may fine an operator up to \$5,000.00 for any violation of this subsection.

(b) Except as provided in (c) and (d) in this Section, every well used for injection or disposal shall be cased and tested in accordance with 165:10-3-4 and 165:10-5-6.

(c) The testing requirements of 165:10-5-6 shall not apply to wells permitted by Commission order for subsurface injection of onsite reserve pit fluids.

(d) The Conservation Division may approve a Form 1015 application to convert an existing well for injection or disposal if the well does not otherwise comply with 165:10-3-4 if:

- (1) The operator attaches to the Form 1015 application a description of an alternate method of protecting treatable water.
- (2) The Conservation Division approves the proposed alternate method.
- (3) The application is filed in accordance with OAC 165:5-7 if a hearing is required.
- (4) The application is not protested.

(e) Any proposed injection or disposal well which is within one-half (1/2) mile of any public water supply well shall not be approved without notice and hearing, and the Commission shall not issue an order authorizing injection or disposal into said well until the applicant proves at the hearing that said well shall not pollute said water supply well. A commercial disposal well shall not be approved within a designated wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 USC Section 300h-7, Safe Water Drinking Act).

or within one (1) mile of a public water supply well for which a WPA has not been delineated.

### 165:10-5-5. Application for approval of injection and disposal operations

(a) **Application.** Each application for the approval of a proposed injection well, disposal well, or commercial disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) **Application.** The application for the approval of an injection or disposal well(s) shall be accompanied by:

(1) **Plat.**

(A) **Noncommercial disposal well.** A plat showing the location and total depth of the well(s) and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the proposed injection well or disposal well for volumes less than 20,000 barrels per day and within one-half (1/2) mile of the proposed disposal well for volumes equal to or greater than 20,000 barrels per day, and identifying the surface owner of the land on which the injection or disposal well is to be located, and each operator of a producing spacing unit or well within one-half (1/2) mile of each injection or disposal well with a requested injection rate of less than five thousand barrels per day, and each operator of a producing spacing unit or well within one (1) mile of each injection or disposal well with a requested injection rate of five thousand barrels per day or more.

(B) **Commercial disposal well.** A plat showing the location and total depth of the well(s) and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing spacing unit or well within one (1) mile of each disposal well.

(C) **Additional required information.** The following information must be submitted in a separate document regarding wells listed on such plats:

- (i) Well name and number and API number;
- (ii) Current operator of well;
- (iii) Well status;
- (iv) Total depth of well;
- (v) Geologic name of any producing interval in the well and/or any interval used for injection or disposal purposes;
- (vi) The diameter of and setting depth for the surface casing, intermediate casing (if set), production casing (if set) and liner (if used) in the well;
- (vii) Top of cement obtained from Forms 1002A or 1002C, if specified, or a cement bond log, temperature log or cased hole log, if available, in the outermost string of casing in the well perforating the injection interval to be used by the proposed noncommercial or commercial disposal well or

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injection well. If such logs are not available, a calculated top of cement will be acceptable; and

(viii) The size and amount of casing pulled, if any, and the depths of any plugs set, if any, in any plugged well;

(ix) Identify any well or borehole that penetrates the top of the proposed injection/disposal zone which is mud plugged and/or is configured in a manner that will not prevent the potential movement of fluids from the injection/disposal zone into treatable water strata. The applicant is required to submit the corresponding Form 1003 Plugging Records for such wells identified in this unit. If such Form 1003 Plugging Records are not available, the applicant must provide a corrective action plan to prevent injected/disposed fluids from impacting treatable water strata, which corrective action plan may include, but not be limited to, a written request by the applicant for a technical conference with the Conservation Division; and

(x) Identify any well where the top of cement is behind the long string below any portion of the proposed injection/disposal zone. The applicant is required to submit the corresponding Form 1002A Completion Reports for such wells identified in this unit. If such Form 1002A Completion Reports do not contain enough information to make the foregoing determination, or if Form 1002A Completion Reports are not available, the applicant must provide a corrective action plan to prevent injected/disposed fluids from impacting treatable water strata, which corrective action plan may include, but not be limited to, a written request by the applicant for a technical conference with the Conservation Division.

(2) **Completion Report.** If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) **Schematic diagram.** A schematic diagram of the well showing:

- (A) The total depth or plugback depth of the well.
- (B) The depth of the injection or disposal interval indicating both the top and bottom.
- (C) The geological name (geological group) of the injection or disposal zone.
- (D) The depths of the tops and bottoms of the casing and cement to be used in the well.
- (E) The size of the casing and tubing, and the depth of the packer.

(4) **Proposed zone information.** Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

- (A) When the fluid injection rate is 1,000 barrels per day or less, or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh

water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) When the fluid injection rate is greater than 10,000 barrels per day or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 3,000 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(D) If the overlying strata is less than required in (A), (B), or (C) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish to the Commission, sworn evidence and data in support of such findings. The Commission, when issuing an order approving fluid injection, shall consider the following:

- (i) Maximum injection rate.
- (ii) Maximum surface injection pressure.
- (iii) Injection fluid.
- (iv) The lithology and rock characteristics of the injection zones and overlying strata.

(5) **Proposed operating data:**

(A) Daily injection rates and pressures. The maximum permitted surface injection pressure may be the pressure requested in the application or 1/2 psi per foot of depth to the top of the injection/disposal interval, whichever is less, unless the results of a fracture pressure step-rate test support a higher pressure. The Conservation Division may designate areas of interest in which pressures and volumes may be more restrictive. The UIC Department may request that the applicant perform a fracture pressure step-rate test.

(B) Geologic name, depth, and location of injection fluid source.

(C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids. Sample collection date(s) must be no more than 12 months prior to the date the application is filed.

(D) Qualitative and quantitative analysis of representative sample of Class II fluids to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.



(c) **Application for approval.** A copy of the Form 1015 application for approval of injection or disposal of Class II fluids in a well and, where noted, required attachments to Form 1015, except for proofs of publication, fresh water analyses, analyses of representative samples of Class II fluids to be injected, and electric or radioactivity logs, shall be served by the applicant within five (5) business days of the date the application is filed by regular mail or delivered to the following, and applicant must submit an affidavit of mailing or delivery to the UIC Department not later than five (5) business days after the date the application is filed:

- (1) The owner of the surface of the land on which the proposed injection or disposal well is to be located;
- (2) For a proposed commercial disposal well, to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well;
- (3) For a proposed injection or noncommercial disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of such proposed well along with required Form 1015 attachments;
- (4) For a proposed noncommercial disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a commercial disposal well, to each operator of a producing spacing unit or well within two (2) miles of such proposed well along with required Form 1015 attachments;
- (5) For a proposed horizontal injection or noncommercial disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of the lateral of such proposed well along with required Form 1015 attachments;
- (6) For a proposed noncommercial horizontal disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a horizontal commercial disposal well, to each operator of a producing spacing unit or well within two (2) miles of the lateral of such proposed well along with required Form 1015 attachments;
- (7) For a proposed injection well with a requested injection rate of five thousand (5,000) barrels per day or more, to each operator of a producing spacing unit or well within one (1) mile of such proposed well along with required Form 1015 attachments; and
- (8) For a proposed horizontal injection well with a requested injection rate of five thousand (5,000) barrels per day or more, to each operator of a producing spacing unit or well within one (1) mile of the lateral of such proposed well along with required Form 1015 attachments.

(d) **Notice of application.** Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located.

Applicant shall file with the UIC Department proof of publication regarding the notice of application. The notice shall include:

- (1) UIC tracking number.
- (2) Name and address of applicant.
- (3) Location of proposed well to nearest 10 acre tract.
- (4) Well name.
- (5) The geological name of the injection formation.
- (6) The top and bottom of the injection interval.
- (7) Maximum injection pressures.
- (8) Maximum BID or MCFID injection rate.
- (9) The type of well (injection, disposal, commercial).

(e) **Written objection.** If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application on the pollution docket. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who may sign the permit.

(f) **Surety requirements for commercial disposal well facilities.**

- (1) Any operator of a commercial disposal well facility shall file with the Surety Department for the Conservation Division an agreement to properly plug the well and reclaim the site upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with Commission rules or take remedial action as required by law and Commission rules, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.
- (2) The Commission shall establish the amount of surety in the order or permit for the authority to operate a commercial disposal well facility. The amount of surety shall be based on factors such as the depth of the well, dimensions of the facility, and costs of plugging the well, reclamation, monitoring, plugging of monitor wells, any pit closure, trucking of any deleterious substances, remediation and earth work. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable commercial letter of credit, or other type of surety approved by order or permit of the Commission. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.
- (3) Operators of commercial disposal well facilities authorized prior to the effective date of this subsection must either comply with this subsection or close such facilities within one (1) year of the effective date of this subsection.

(g) In addition to the requirements listed above, the Manager of Underground Injection Control may request the applicant to

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submit the following information as a prerequisite to approval of the application:

- (1) For those wells included in OAC 165:10-5-5(b)(1) which penetrate the top of the injection interval, a tabulation of the wells indicating the following information, if available, from public records:
  - (A) Dates the wells were drilled.
  - (B) The present status of the wells.
  - (C) The identity of any abandoned well which was improperly plugged or remains unplugged.
- (2) A list of the following information, if available, to the applicant:
  - (A) The shut-in bottom hole formation pressure in psi; or the stabilized shut-in surface pressure and fluid level in the proposed injection well.
  - (B) The permeability of the proposed injection zone expressed in millidarcies.
  - (C) The porosity of the proposed injection zone expressed as a percentage of pore volume.
  - (D) Documentation of the methods used to arrive at the data requested above.
- (h) Authorization of an injection well or a disposal well or a commercial disposal well will expire and become null and void if no well completion report (Form 1002A) is filed or if no mechanical integrity test is performed pursuant to OAC 165:10-5-6 within sixty (60) days from the date of completion or conversion of the well.
- (i) In addition to the well construction requirements as set out in 165:10-3-1, commercial disposal wells shall comply with the following requirements:
  - (1) At a minimum, the well shall be constructed with a wellhead, surface casing, production casing, tubing, and packer.
  - (2) The surface casing shall be set and cemented at least fifty (50) feet below the base of the treatable water bearing zone. The production casing will not be allowed to also serve as the surface casing.
  - (3) The production casing must be set and cemented through the injection zone with the cement circulated behind the casing to a height at least two hundred fifty (250) feet above the disposal zone. A cement bond log showing quality and placement of the cement must be furnished to and ~~approved by acceptable to the Commission~~ Conservation Division before the well may be used for injection or disposal any perforating of the production casing takes place. The Conservation Division shall notify the operator by electronic mail as to whether the cement bond log is acceptable. Information regarding the proposed perforations shall be supplied to the Conservation Division with the cement bond log. The Manager of Underground Injection Control may approve the Arbuckle Formation for open hole completion.
  - (4) The annulus between the tubing and the casing must be open from the surface to the packer to allow for pressure testing and monitoring of the injection tubing and packer and the annulus filled with a packer fluid that protects against corrosion.

- (5) The packer must be set at least within seventy-five (75) feet of the top of the perforations.
- (6) Adequate gauges shall be installed on each annulus to allow proper monitoring of the disposal operation.
- (7) Tubing must be internally coated or lined to prevent corrosion from injected fluids. PVC, Plastic Coated, Stainless Steel or Fiberglass will qualify.
- (8) The packer must be either internally coated or stainless steel.
- (9) Commercial disposal wells authorized with a positive injection pressure must be equipped with a down hole shut-off device with a seal divider installed between the packer and the tubing. A Stainless Steel Profile Nipple and an "ON-OFF" Tool will qualify under this Section.
- (j) No Commercial disposal well will be permitted whose injection pressure approaches or exceeds the demonstrated frac gradient of the injection zones(s).
- (k) The geologic injection intervals authorized by the order or permit which are not perforated during the initial or subsequent completion of the disposal well will not expire until the disposal well is plugged, or the authority to inject is terminated or vacated.
- (l) In the event the Commission has evidence that an applicant for a commercial disposal well may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing, determining whether the applicant should be authorized to operate such commercial disposal well.

### **165:10-5-15. Application for order or permit for simultaneous injection well**

- (a) **General.**
  - (1) Simultaneous injection of salt water without a valid permit from the Underground Injection Control Department (UIC Department) or Commission order may result in the assessment of a fine up to \$5,000 per day of operation.
  - (2) A simultaneous injection ~~facility well~~ shall be inspected by a representative of the ~~commission~~ Commission prior to operation.
- (b) **Criteria for approval.**
  - (1) Simultaneous injection may be permitted if the following conditions are met and injection will not adversely affect offsetting production nor endanger treatable water:
    - (A) Injection zone is located below the producing zone in the borehole.
    - (B) Injection pressure is limited to less than the local fracture gradient.
    - ~~(C) If injection is by gravity flow, no Area of Review will be required.~~
    - ~~(D) If injection is by positive pump pressure, a 1/4 mile Area of Review plat will be required for all simultaneous injection well applications containing the information specified in OAC 165:10-5-5(b)(1)(A) and OAC 165:10-5-5(b)(1)(C).~~ If unplugged or mud-plugged boreholes are located within the 1/4

mile radius, the operator of the proposed simultaneous injection well will be required to ~~reconcile these~~ submit a corrective action plan in writing to the UIC Department to address such boreholes so as to protect treatable water prior to an order or permit being issued.

~~(D)~~ Simultaneous injectors must meet the requirements of OAC 165:10-3-4 as they apply to producing wells.

~~(F)(E)~~ Simultaneous injectors may be authorized to accept produced water from other wells. The UIC Department will determine on a case by case basis whether such a well warrants designation as a simultaneous injector, or whether the well requires a Commission order. Class II fluids from other wells operated by the operator of a simultaneous injection well may be disposed of in such simultaneous injection well if the operator applies on Form 1015 and obtains the issuance of a new permit or order pursuant to the requirements in OAC 165:10-5-5 pertaining to authorization of noncommercial disposal wells. The filing fee specified in OAC 165:5-3-1(b)(1)(E) must accompany the Form 1015 application.

(2) **Required form and attachments.** Each application for simultaneous injection shall be submitted to the UIC Department on Form 1015SI ~~in quadruplicate~~. The forms must be properly completed and signed. Attached to ~~one copy~~ of the application form shall be the following:

(A) Affidavit of mailing a copy of the completed Form 1015SI to each operator of a producing lease within 1/2 mile of the subject well.

(B) Schematic diagram of the well showing all casing and tubing strings, packers, perforations and pumps.

(3) **Monitoring, testing and reporting requirements for simultaneous injection wells.**

(A) Upon receiving ~~an order or permit~~, the operator shall file ~~an~~ a Form 1002A Completion Report or an amended Completion Report Form 1002A Completion Report within ~~30~~ 60 days of completion or recompletion of the well.

(B) Mechanical integrity will be demonstrated by ~~filing annual reports of surface casing pressure, production casing pressure and fluid level~~ the operator performing a radioactive tracer survey on the well before the well is operated as a simultaneous injection well, and thereafter on an annual basis, reflecting that the injection fluids are going into the authorized zone(s). The radioactive tracer surveys must be submitted to the UIC Department within 7 days of the performance of the surveys, and the results of the surveys must be acceptable to the UIC Department before the well can be used as a simultaneous injection well.

(C) Annual Report Form 1012 shall be submitted to the UIC Department by January 31 of each year for the previous calendar year ~~and semi-annual report Form 1012C shall be submitted by January 31 and~~

~~July 31 of each year for the previous six month period.~~

(4) If no protest is received within 15 days of the mailing of Form 1015SI, the application shall be submitted to the UIC Department for administrative ~~approval~~ review. If a protest is received within the protest period, the operator shall, within 30 days, set the application for hearing and give proper notice of a date for the hearing on the Pollution Docket before an Administrative Law Judge.

(c) **Expiration of the order or permit.** The simultaneous injection well order or permit shall expire on its own terms if the subject well is not recompleted or if a revised Form 1002A is not submitted within 180 days from the date on the permit the operator fails to perform the initial radioactive tracer survey on the well and submit the results of the survey to the UIC Department within 18 months after the effective date of the order or permit.

## SUBCHAPTER 7. POLLUTION ABATEMENT

### PART 3. STORAGE AND DISPOSAL OF FLUIDS

#### 165:10-7-19. Land application of water-based fluids from earthen pits, tanks and pipeline construction

(a) **Authority for land application.** No person shall land apply fluids except as provided by 165:10-9-2, 165:10-7-17, or this Section. Any operator failing to obtain a permit may be fined up to \$2,000. The land application permit shall be posted at the well site, pad or pipeline construction location.

(b) **Scope.** This Section shall cover the land application of water-based drilling fluids and cuttings from earthen pits, tanks, or other containment structures; however, this Section shall not be exclusive of other authorities for land application listed in (a) of this Section. Any land application made under this Section shall be done from a single well, single pad (containing multiple wells), or pipeline construction location. Permits shall not be granted for lands that have been previously permitted and used for these practices or similar practices such as soil remediation within the last three (3) years.

(c) **Site suitability restrictions.** Land application shall only occur on land having all of the following characteristics below, as field verified by a soil scientist or other qualified person pre-approved by the Commission. Any variance from site suitability restrictions must be approved by the Oil and Gas Conservation Division (see (f)(2)(C) of this Section).

(1) **Maximum slope.** A maximum slope of eight percent for all application methods.

(2) **Depth to bedrock.** Depth to bedrock must be at least 20 inches.

(3) **Soil texture.** A soil profile (as defined by USDA soil surveys) containing at least twelve inches (may be cumulative) of one of the following soil textures between the surface and the water table, unless a documented impeding layer of shale is present: loam, silt loam, silt, sandy clay

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loam, silty clay loam, clay loam, sandy loam, fine sandy loam, sandy clay, silty clay, or clay.

(4) **Salinity.** Slight salinity [defined as Electrical Conductivity (EC) less than 4,000 micromhos/cm] in the topsoil, or upper six inches of the soil, and a calculated Exchangeable Sodium Percentage (ESP) less than 10.0.

(5) **Depth to water table.** No evidence of a seasonal water table within six (6) feet of the soil surface as verified by field observation and published data.

(6) **Distance from water bodies.** A minimum distance of 100 feet from the land application site boundary to any perennial stream and 50 feet to any intermittent stream shown on the appropriate United States Geological Survey (U.S.G.S.) topographic map (available for viewing at the Commission's Oklahoma City Office and appropriate Conservation Division District Offices) and a minimum of 100 feet to any freshwater pond, lake, or wetland. [Designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service, available for viewing at the Commission's Oklahoma City Office (also, see (h)(6) of this Section)].

(7) **Site specific concerns.** Void of slick spots within or adjacent to the land application area, where subsurface lateral movement of water is unlikely, or areas void of concentrated surface flow such as gullies or waterways.

(8) **Stockpiling of cuttings.** Stockpiling of cuttings may be used during the handling and transportation of the cuttings both at the well and pipeline construction location and the receiving site. At the well site or pad generating the waste or pipeline construction location the cuttings must be placed in a steel pit or the areas used for this practice must be lined and bermed. A stockpile of cuttings at the receiving site must be located within the permitted area and the areas used for this practice must be lined and bermed. The stockpile of cuttings, whether at the well or pipeline construction location or the receiving site, must be closed within 30 days of cessation of drilling operations.

(d) **Sampling requirements.**

(1) **Notice to Field Inspector.** The appropriate Field Inspector shall be contacted at least two business days prior to sampling of the receiving soil and sampling of the drilling fluids and/or cuttings to be land applied from an earthen pit. This is to allow a Commission representative an opportunity to be present.

(2) **Receiving soil.** Sampling of the receiving soil shall be performed by, or under the supervision of, a soil scientist or other qualified person pre-approved by the Commission. Soil samples shall be taken from the proposed application area and analyzed. A minimum of four representative core samples from the surface (0-6 inches) must be taken from each ten acres, or part thereof. Each group of surface core samples representative of a ten-acre area (or less) shall be combined and thoroughly mixed. A minimum one-pint composite sample shall be taken and placed in a clean container for delivery to the laboratory. Alternatively, soil samples may be composited by the laboratory.

(3) **Drilling fluids and/or cuttings.**

(A) **Earthen pits.** Drilling fluids and/or cuttings to be land applied shall be sampled using the following procedure:

(i) Prior to sampling, fresh water (except natural precipitation) shall not be added to any pit for dilution or any other purpose.

(ii) A minimum of four samples, each from different quadrants of the pit and representative of the materials to be land applied, must be taken if the volume to be land applied is 25,000 bbls. or less. If more than 25,000 bbls. are to be land applied, a minimum of four quadrant samples plus one sample for each 5,000 bbls. over 25,000 bbls. will be required. The samples shall be combined and thoroughly mixed, then a minimum two quart composite sample placed into a foil or teflon covered glass container. The container shall be filled completely to exclude air and delivered to the laboratory within seven days. No samples shall be altered in any way.

(iii) After samples have been taken for analysis from a pit, the operator shall not allow the addition of fluids or other materials, except natural precipitation or fresh water to decrease the viscosity of the fluid.

(B) **Tanks.** Sampling of the drilling fluids and/or cuttings shall occur after the application has been approved. A minimum of one representative sample must be taken from each tank, the contents of which are to be land applied.

(e) **Analysis requirements.**

(1) **Testing.**

(A) The composite sample(s) of soil shall be tested by a laboratory operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality or in the North American Proficiency Testing System. Either a 1:1 extract or saturated paste extract shall be used for sample preparation.

(B) Methods of analysis.

(i) **Earthen pits.** The composite sample(s) of drilling fluids and/or cuttings shall be analyzed by a laboratory operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality or in the North American Proficiency Testing System.

(ii) **Tanks.** Samples of the drilling fluids and/or cuttings may be tested on-site. A filter press shall be used for preparation of samples. Tests must be performed by a person who is knowledgeable and experienced in the chemical testing of fluids. Acceptable on-site testing protocol may be obtained from the appropriate Conservation Division District Office.

(2) **Parameters for receiving soil.** Parameters for analysis of the receiving soil shall include at a minimum EC and ESP.

(3) **Parameters for drilling fluids and/or cuttings.**

(A) **Earthen pits.** Parameters for analysis of the drilling fluids and/or cuttings shall include at a minimum EC and Oil and Grease (O&G). Dry Weight shall also be determined if a significant amount of solids will be land applied.

(B) **Tanks.** EC shall be a required parameter for analysis of drilling fluids and/or cuttings. Dry weight shall also be determined if a significant amount of solids will be land applied.

(f) **Application for permit.**

(1) **Who may apply.** Only the operator of a well or pipeline or the operator's designated agent may apply for a land application permit under this Section, except that a commercial pit operator may also apply in case of emergency or for the purpose of facilitating repair or closure.

(2) **Required form and attachments.** Each application for land application of drilling fluids and/or cuttings shall be submitted to the Pollution Abatement Department on Form 1014S. A legible application shall be required. The following shall be attached to the application:

(A) Written permission from the surface owner to allow the applicant to land apply drilling fluids and/or cuttings. For purposes of obtaining such consent, the applicant shall use Form 1014L.

(B) A topographic map and the most recent aerial photograph (minimum scale 1:660) with the proposed and potential land application areas delineated as well as the location of cultural features such as buildings, water wells, etc. Both the topographic map and aerial photograph must show all areas within 1,320 feet of the boundary of the land application area.

(C) A site suitability report, pursuant to subsections (c) and (h)(6) of this Section, based on an on-site investigation and signed by a soil scientist or other qualified person. The report shall include detailed information concerning the site and shall discuss how all site characteristics were determined. Any requests for a variance to site suitability restrictions must be accompanied by a written justification that has been developed or approved by a soil scientist or other qualified person. The justification shall provide explanation as to safeguards which will assure that conditions of the permit will be met and there will be no adverse impacts from the land application.

(D) Analysis of drilling fluids and/or cuttings (for earthen pits only).

(E) Analyses of soil samples.

(F) Loading calculations.

(G) Copies of all chains-of-custody related to sampling.

(H) Manufacturer, model number, and specifications of testing equipment to be used (for tanks only).

(I) If there is an agent, a notarized affidavit designating same, signed by the operator within the last twelve months (Form 1014LA).

(J) Identification of any soil farming permit that has been issued in the same quarter section within the last three years. This information is available in the

OCC Soil Farming Database on the web at [www.oeeweb.com](http://www.oeeweb.com) Commission's website.

(K) Other information as required by this Section or requested by the Pollution Abatement Department.

(3) **Review period.** The Pollution Abatement Department shall review the application, either approve or disapprove it, and return a copy of Form 1014S within five business days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014S; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(g) **Calculating maximum application rate.**

(1) **Earthen pits.**

(A) The maximum application rate shall be calculated by the applicant or the applicant's designated agent based on the analyses of the pit materials and the soil of the application area. The averaging of TDS or TSS values of soil sampling areas shall not be permitted. If the entire application area is larger than ten acres, requiring separate soil sampling areas, the applicant or the applicant's designated agent shall use the highest soil TDS or TSS value of any sampling area in calculating the maximum application rate for the entire application area, and shall also calculate the maximum application rate of each ten acre (or less) application area using the respective TDS or TSS values of each soil sampling area. The applicant or the applicant's designated agent shall decide which of the two loading rates to use and notify the appropriate Conservation Division District Office when notification of commencement of land application is given, pursuant to (h)(1) of this Section.

(B) Soil loading formulas contained in Appendix I shall be used.

(C) The maximum application rate shall be restricted by the most limiting parameter. The Pollution Abatement Department shall indicate on the permit the maximum application rate and the minimum acreage that must be used.

(2) **Tanks.**

(A) The applicant shall calculate the maximum application rate based on the analysis of each tank or other containment vessel to be land applied and the soil of the application area. The averaging of TDS or TSS values of soil sampling areas shall not be permitted. If the entire application area is larger than ten acres, requiring separate soil sampling areas, the applicant shall have the option of using the highest soil TDS or TSS value of any sampling area in calculating the maximum application rate for the entire application area, or calculating the maximum application rate of each ten-acre (or less) application area using the respective TDS or TSS value of each soil sampling area.

(B) Soil loading formulas contained in Appendix I shall be used.

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- (C) Based on the maximum application rate, the applicant or its designated agent shall determine where the fluids will be applied and supervise the land application process.
- (h) **Conditions of permit.** Any land application which is performed under this Section shall be subject to the following conditions or stipulations of the permit:
- (1) **Notice to Field Inspector.** The applicant shall notify the appropriate Field Inspector at least 24 hours prior to the commencement of land application to allow a Commission representative an opportunity to be present.
  - (2) **Compliance agreement.** Any person responsible for supervision of land application shall have signed a compliance agreement with the Commission (Form 1014CA).
  - (3) **Presence of representative.** A representative of the applicant shall be on the land application site at all times during which fluids and/or cuttings are being applied. The representative shall be an employee of the applicant, designated agent, contractor, or other person pre-approved by the Commission.
  - (4) **Materials to be land applied.** Land application shall be limited to water-based drilling fluids and/or cuttings.
  - (5) **Weather restrictions.** Land application, including incorporation, shall not be done:
    - (A) During precipitation events.
    - (B) When the soil moisture content is at a level such that the soil cannot readily take the addition of drilling fluids.
    - (C) When the ground is frozen to a degree that the soil cannot readily take the addition of fluids.
    - (D) By spray irrigation when the wind velocity is such that even distribution of materials cannot be accomplished or the buffer zones, pursuant to (6) of this subsection, cannot be maintained.
  - (6) **Buffer zones.** Land application shall not be done within the following buffer zones, as identified in the site suitability report:
    - (A) Fifty feet of a property line boundary.
    - (B) Three hundred feet of any water well or water supply lake used for domestic or irrigation purposes.
    - (C) One-quarter (1/4) mile of any public water well or public water supply lake.
  - (7) **Land application rate.** The maximum calculated application rate of drilling fluids and/or cuttings shall not be exceeded. It may require more than one pass to achieve the maximum application rate while avoiding runoff or ponding, pursuant to (9) of this subsection. Application of drilling fluids and/or cuttings outside the approved plot shall be prohibited.
  - (8) **Land application method.**
    - (A) Application of drilling fluids and/or cuttings shall be uniform over the approved land application plot, shall not be applied at a rate to cause permanent vegetation damage, and shall be made by a method approved by the Commission prior to use. The flood irrigation method shall be limited to those fields that normally are irrigated in that manner.
    - (B) For earthen pits, if more than 500 lbs/acre of Oil and Grease or 50,000 lbs/acre of Dry Weight materials are applied, the materials shall be incorporated into the soil by use of the injection method, or by disking or some other method approved by the Commission.
    - (C) All land application vehicles shall be either a single or double axle vehicle with a permanently attached tank that shall not exceed 100 barrels, and the vehicle shall be equipped so as to minimize pooling and ruts caused by tire tracks. It shall have a diffuser mechanism to spread the mud/fluids in a fan pattern. Spreader bars shall not be used. The mud/fluids shall be forced from the tank with air pressure or a mechanical pump. Gravity applications are prohibited. Transport/tanker trucks (18 wheel vehicles) shall not be used for land application at any time. Use of an unauthorized vehicle or equipment may result in the revocation of the land application permit. A fine of up to \$2,000.00 may be assessed for each violation of this paragraph.
    - (D) Drill cuttings shall be spread with an industrial mechanical spreader capable of broadcasting and/or fanning out the cuttings. Dozers, backhoes, motor blades or scrapers shall not be used to spread drill cuttings or drill solids during land application at any time.
  - (9) **Runoff or ponding prohibited.** No runoff of land applied materials shall be allowed during application. Ponding is prohibited, except where the flood irrigation method is approved. In order to comply with this rule, some applications will require the use of more than the minimum calculated acreage and/or a drying period between applications.
  - (10) **Vegetative cover.** If the vegetative cover is destroyed or significantly damaged by disking, injection, or other practice associated with land application, a bona fide effort shall be made to restore or reestablish the vegetative cover within 180 days after the land application is completed. Additional efforts shall be made until the vegetative cover is fully restored or reestablished.
  - (11) **Time period.**
    - (A) **Earthen pits.** Land application shall be completed within 90 days from the date of the permit. At the end of the 90-day period, the permit shall expire by its own terms.
    - (B) **Tanks.** Land application shall be completed within 90 days after drilling ceases. At the end of the 90-day period, the permit shall expire by its own terms.
  - (12) **Post-application report.** A post-application report (Form 1014R) shall be submitted by the operator or the operator's agent to the Manager of the Pollution Abatement Department within 90 days of the completion of land application. One extension may be granted for a period of up to 90 days by the Manager of the Pollution Abatement

Department. If approval is obtained to amend the permit to authorize land application of contaminated soils and petroleum hydrocarbon based cuttings, any extension of time for submission of the post-application report granted by the Manager of the Pollution Abatement Department shall begin on the date the amended permit is approved. The report shall give specific details of the land application, including test results of materials applied and loading rate calculations (for tanks only), volumes of materials applied, and an aerial photograph (minimum scale 1:660) delineating the actual area where materials were applied. All applicable loading calculations from Appendix I of this Chapter shall be included in the Form 1014R. The report shall contain a statement certifying that the land application was done in accordance with the approved permit. Failure to timely submit a Form 1014R may result in the assessment of a fine of up to \$500.00.

(13) **Violations.** If the applicant violates the conditions of the permit or this Section, the land application shall be discontinued and the Pollution Abatement Department shall be contacted immediately. The Pollution Abatement Department may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, land application may resume with the Pollution Abatement Department's approval. If the permit is revoked, the operator may make application for a hearing to reinstate it.

(14) **Requirements to close pit.** Neither filing an application nor receiving a permit under this Section shall extend the time limit for closing a reserve pit pursuant to 165:10-7-16, or a commercial pit pursuant to 165:10-9-1.

(i) **Variiances.** A variance from the time provisions of (d)(1), (h)(1), or (h)(10) of this Section may be granted by the appropriate Conservation Division District Office for justifiable cause. A written request and supporting documentation shall be required. The appropriate Conservation Division District Office shall respond in writing within five business days after receipt, either approving or disapproving the request.

**165:10-7-26. Land application of contaminated soils and petroleum hydrocarbon based drill cuttings**

(a) **Authority for land application.** No person shall land apply soils or drill cuttings contaminated by salt or petroleum hydrocarbons except as provided by this Section. Any operator failing to obtain a permit may be fined up to \$2,000.00. The land application permit shall be posted at the well site, pad or pipeline construction location.

(b) **Scope.** This Section shall cover the land application of soils and drill cuttings contaminated by salt and/or petroleum hydrocarbons. Petroleum hydrocarbon-contaminated soils land applied under this Section shall meet the RCRA criteria for exempt or non-exempt/nonhazardous waste. [Reference 40 CFR Subtitle C and EPA publication EPA530-K-95-003 "Crude Oil and Natural Gas Exploration and Production Wastes: Exemption from RCRA Subtitle C Regulation]." Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality. Any land application made under this Section shall be done from a

single well or a single pad (containing multiple wells). Permits shall not be granted for lands that have been previously permitted and used for this practice or similar practices such as soil remediation within the last three (3) years.

(c) **Receiving site suitability restrictions.** Land application shall only occur on land having all of the characteristics below, as field verified by a soil scientist or other qualified person pre-approved by the Commission. Any variance from site suitability restrictions must be approved by the Oil and Gas Conservation Division (see (g)(2)(C) of this Section).

(1) **Maximum slope.** A maximum slope of eight percent for all application methods.

(2) **Depth to bedrock.** Depth to bedrock will be at least 20 inches if crude oil contaminated soils or petroleum hydrocarbon-based drill cuttings are to be applied; 20 inches if salt contaminated soils are to be applied.

(3) **Soil texture.** A soil profile (as defined by USDA soil surveys) containing at least twelve inches (may be cumulative) of one of the following soil textures between the surface and the water table, unless a documented impeding layer of shale is present: loam, silt loam, silt, sandy clay loam, silty clay loam, clay loam, sandy loam, fine sandy loam, sandy clay, silty clay, or clay.

(4) **Salinity.** Slight salinity [defined as Electrical Conductivity (EC) less than 4,000 micromhos/cm] in the topsoil, or upper six inches of the soil, and a calculated Exchangeable Sodium Percentage (ESP) less than 10.0.

(5) **Depth to water table.** No evidence of a seasonal water table within six (6) feet of the soil surface as verified by field observation and published data.

(6) **Distance from water bodies.** A minimum distance of 100 feet from the land application site boundary to any perennial stream and 50 feet to any intermittent stream found on the appropriate United States Geological Survey (U.S.G.S.) topographic map (available for viewing at the Commission's Oklahoma City Office and appropriate Conservation Division District Offices); and a minimum of 100 feet to any freshwater pond, lake, or wetland designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service (available for viewing at the Commission's Oklahoma City Office). Also, see (h)(6) of this Section.

(7) **Site specific concerns.** Void of slick spots within or adjacent to the land application area, where subsurface lateral movement of water is unlikely, or areas void of concentrated surface flow such as gullies or waterways.

(8) **Stockpiling of cuttings.** Stockpiling of cuttings may be used during the handling and transportation of the cuttings both at the well location and the receiving site. At the well site or pad generating the waste, the cuttings must be placed in a steel pit or the areas used for this practice must be lined and bermed. A stockpile of cuttings at the receiving site must be located on the permitted area and the areas used for this practice must be lined and bermed. The stockpile of cuttings, whether at the well location or the receiving site, must be closed within 30 days of cessation of drilling operations.

(d) **Sampling requirements.**

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- (1) **Notice to Field Inspector.** The appropriate Field Inspectors shall be contacted at least two business days prior to sampling of the receiving soil and materials to be land applied. This is to allow a Commission representative an opportunity to be present.
- (2) **Receiving soil.** Sampling of the receiving soil shall be performed by, or under the supervision of, a soil scientist or other qualified person pre-approved by the Commission. Soil samples shall be taken from the proposed application area and analyzed. A minimum of four representative surface core samples from the surface (0-6 inches) must be taken from each ten acres, or part thereof. Each group of surface core samples representative of a ten-acre area (or less) shall be combined and thoroughly mixed. A minimum one pint composite sample shall be taken and placed in a clean container for delivery to the laboratory. Alternatively, soil samples may be composited by the laboratory.
- (3) **Materials to be land applied.** Representative samples of the materials to be land applied shall be taken, composited into a minimum one-pint sample, and placed in a clean container for delivery to the laboratory. Alternatively, materials to be land applied may be composited by the laboratory.
- (e) **Analysis requirements.**
- (1) **Salt contaminated soils or drill cuttings.** Analysis requirements will be dependent upon the loading method that is chosen. For most applications, loading based on Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) will be most appropriate. However, applicants proposing to land apply on a site in western Oklahoma, where the soils commonly contain moderate to high levels of gypsum, may benefit from using the loading formula based on Chlorides (Cl).
- (A) Samples of soil and materials to be land applied shall be tested by a laboratory proficient in testing soils. Either a 1:1 extract or saturated paste extract shall be used for sample preparation for TDS or TSS or Cl loading. A saturated paste moisture equivalent is necessary where the saturated paste sample preparation method is used.
- (B) Parameters for analysis of the receiving soil shall include at a minimum EC, TDS or TSS, and ESP for TDS/TSS loading. For Chloride loading, parameters shall include Chlorides (dry weight basis) and ESP.
- (C) Parameters for analysis of soils or drill cuttings contaminated by salt shall include at a minimum EC for TDS/TSS loading and both EC and Cl for Chloride loading.
- (2) **Soils and drill cuttings contaminated by petroleum hydrocarbons.**
- (A) Samples of soil and materials to be land applied shall be tested by a laboratory proficient in testing soils.
- (B) Parameters for analysis of the receiving soil shall include at a minimum EC and ESP.
- (C) Parameters for analysis of soils or drill cuttings contaminated by petroleum hydrocarbons shall include at a minimum a test of the appropriate carbon range(s), which is determined by the nature of the waste material. These include Gasoline Range Organics (GRO) - C6 to C10 (EPA test method 8015/8020 M) and TPH (Oklahoma method 1005 extended C35).
- (f) **Application rates.**
- (1) **Calculations.** The maximum application rate for TDS or TSS, Cl, and GRO, or TPH shall be calculated by the applicant based upon the analyses of the materials to be land applied and the soil of the application area. For salt contaminated soils or drill cuttings, if the application area encompasses more than one soil sampling area, the rate shall be calculated in one of two ways, depending on how the application will be made. The applicant may either calculate the maximum application rate for the entire application area based upon the highest soil TDS or TSS or Cl value of any sampling area (averaging not allowed), or calculate it for each ten acre (or less) application area using the respective soil TDS or TSS or Cl values of each sampling area.
- (2) **Soil loading formulas.** The maximum application rate for any application area shall be restricted by the most limiting parameter. To determine this, the soil loading formulas in Appendix I of this Chapter shall be used as applicable.
- (3) **Variations.** In special situations, a request for a variance relating to soil loading of petroleum hydrocarbons may be administratively approved by the Manager of the Pollution Abatement Department. The applicant shall submit a written request explaining the circumstances or conditions which warrant a variance and shall also submit a management plan for reducing the petroleum hydrocarbon content in the soil to two percent or less.
- (g) **Application for permit.**
- (1) **Who may apply.** Only the operator responsible for generating the waste to be land applied or the operator's designated agent may apply for a land application permit, except that the Oklahoma Energy Resources Board or its designated contractor may make application to land apply materials for which there is no responsible party.
- (2) **Required form and attachments.** Each application for land application of soils contaminated by salt and/or crude oil or petroleum hydrocarbon-containing deleterious substances shall be submitted to the Pollution Abatement Department on Form 1014S. A legible application shall be required. The following shall be attached to the application:
- (A) Written permission from the surface owner to allow the applicant to land apply, incorporate, and fertilize materials. For purposes of obtaining such consent, the applicant shall use Form 1014L.
- (B) A topographic map and the most recent aerial photograph (minimum scale 1:660) with the proposed and potential land application areas delineated as well as the location of cultural features such as buildings,



water wells, etc. Both the topographic map and aerial photograph must show all areas within 1320 feet of the boundary of the land application area.

(C) Receiving site suitability report, pursuant to subsections (c) and (h)(6) of this Section, based on an on-site investigation and signed by a soil scientist or other qualified person. The report shall include detailed information concerning the site and shall discuss how all site characteristics were determined. Any requests for a variance to site suitability restrictions must be accompanied by a written justification that has been developed or approved by a soil scientist or other qualified person. The justification shall provide explanation as to safeguards which will assure that conditions of the permit will be met and there will be no adverse impacts from the land application.

(D) Analyses of receiving soil samples.

(E) Analyses of contaminated soil or petroleum hydrocarbon-based drill cuttings.

(F) For contaminated soils, an investigation report and diagram, drawn to scale, detailing the aerial extent and depth of the contamination; and sampling procedures which were used to assure that representative samples were taken.

(G) Loading calculations.

(H) Copies of all chains-of-custody related to sampling.

(I) If there is an agent, a notarized affidavit designating same, signed by the operator within the last 12 months (Form 1014LA).

(J) Identification of any soil farming permit that has been issued in the same quarter section within the last three (3) years. This information is available in the OCC Soil Farming Database on the ~~web~~ at [www.occweb.com](http://www.occweb.com) Commission's website.

(K) Other information as required by this Section or requested by the Pollution Abatement Department.

(3) **Review period.** The Pollution Abatement Department shall review the application, either approve or disapprove it, and return a copy of Form 1014S within five business days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014S; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(h) **Conditions of permit.** Any land application which is performed under this Section shall be subject to the following conditions or stipulations of the permit:

(1) **Notice to Field Inspector.** The applicant shall notify the appropriate Field Inspector at least 24 hours prior to the commencement of land application to allow a Commission representative an opportunity to be present.

(2) **Compliance agreement.** Any person responsible for supervision of land application shall have signed a compliance agreement with the Commission (Form 1014CA).

(3) **Presence of representative.** A representative of the applicant shall be on the land application site at

all times during which materials are being applied. The representative shall be an employee of the applicant, designated agent, contractor, or other person pre-approved by the Commission.

(4) **Materials to be land applied.** Land application under this Section shall be limited to soils and drill cuttings contaminated by salt and/or petroleum hydrocarbons. Petroleum hydrocarbon-contaminated soils or drill cuttings land applied under this Section shall meet the RCRA criteria for exempt or non-exempt/nonhazardous waste. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.

(5) **Weather restrictions.** Land application, including incorporation, shall not be done:

(A) During precipitation events.

(B) When the soil moisture content is at a level such that the soil cannot readily take the addition of materials.

(C) When the ground is frozen to a degree that the soil cannot readily take the addition of fluids.

(6) **Buffer zones.** Land application shall not be done within the following buffer zones, as identified in the site suitability report:

(A) Fifty feet of a property line boundary.

(B) Three hundred feet of any water well or water supply lake used for domestic or irrigation purposes.

(C) One-quarter (1/4) mile of any public water well or public water supply lake.

(7) **Land application rate.** The maximum calculated application rate of materials shall not be exceeded. Under no circumstances shall land applied materials exceed a two inch depth. Furthermore, no runoff or ponding of land applied materials shall be allowed. It may require more than one pass or lift to achieve the maximum application rate while avoiding runoff or ponding. For land applications involving petroleum hydrocarbons all free oil shall be removed.

(8) **Land application method.**

(A) Application of materials shall be uniform over the approved land application area, and shall be made by a method approved by the Commission prior to use. Land applied materials shall be incorporated into the soil by disking or chiseling during or immediately after application to a minimum depth of two times the depth of applied materials; however, if any contaminated sandy soil is applied to any clayey soil, incorporation shall be to a minimum depth of four times the depth of the applied materials. Tillage of grassland may not be necessary. If materials are land applied on grassland a reduced application rate may be necessary.

(B) All land application vehicles shall be either a single or double axle vehicle with a permanently attached tank that shall not exceed 100 barrels, and the vehicle shall be equipped so as to minimize pooling and ruts caused by tire tracks. It shall have a diffuser mechanism to spread the materials in a fan pattern. Spreader bars shall not be used. The materials shall

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be forced from the tank with air pressure or a mechanical pump. Gravity applications are prohibited. Transport/tanker trucks (18 wheel vehicles) shall not be used for land application at any time. Use of an unauthorized vehicle or equipment may result in the revocation of the land application permit. A fine of up to \$2,000.00 may be assessed for each violation of this paragraph.

(C) The materials shall be spread with an industrial mechanical spreader capable of broadcasting and/or fanning out the cuttings. Dozers, backhoes, motor blades or scrapers shall not be used to spread materials during land application at any time.

(9) **Fertilizer.** For any land application involving petroleum hydrocarbon-contaminated soils and/or drill cuttings, if it is determined that revegetation is needed, fertilizer shall be applied at an appropriate rate as indicated by soil testing for available N-P-K to adjust the average carbon-nitrogen ratio in order to enhance biodegradation of the petroleum hydrocarbons and assist in reestablishing vegetation. Soil tests shall also include at a minimum EC, ESP, N-P-K, C:N ratio and TPH. Soil samples shall be collected from the affected area at a depth of six (6) inches. Background samples shall be collected from an adjacent unaffected area. In the absence of soil testing, Nitrogen, Phosphorus, and Potassium shall be applied at a rate of 160-40-40 lbs. per acre (actual N-P-K). Application of fertilizers shall be done in a manner that minimizes runoff potential (split applications) and so as to increase availability of nutrients to microorganisms for degradation of petroleum hydrocarbons.

(10) **Vegetative cover.** A bona fide effort shall be made to restore or reestablish the vegetative cover within 180 days after the land application is completed. Additional efforts shall be made until the vegetative cover is fully restored or reestablished.

(11) **Time period.**

(A) Land application shall be completed within 90 days of the anticipated completion date shown on the approved application form; or

(B) Land application shall be completed within 90 days after drilling ceases. At the end of the 90-day period the permit shall expire by its own terms.

(12) **Post-application report.** A post-application report (Form 1014R) shall be submitted by the operator or the operator's agent to the Manager of the Pollution Abatement Department within 90 days of the completion of land application. One extension may be granted for a period of up to 90 days by the Manager of the Pollution Abatement Department. If approval is obtained to amend a permit to land apply water-based fluids so as to authorize land application of contaminated soils and petroleum hydrocarbon based cuttings, any extension of time for submission of the post-application report granted by the Manager of the Pollution Abatement Department shall begin on the date the amended permit is approved. The report shall give specific details of the land application, including volumes of materials applied and an aerial photograph (minimum

scale 1:660) delineating the actual area where materials were applied. All applicable loading calculations from Appendix I of this Chapter shall be included in the Form 1014R. The report shall contain a statement certifying that the land application was done in accordance with the approved permit. Failure to timely submit a Form 1014R may result in the assessment of a fine of up to \$500.00.

(13) **Violations.** If the applicant violates the conditions of the permit or this Section, the land application shall be discontinued and the Pollution Abatement Department shall be contacted immediately. The Pollution Abatement Department may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, land application may resume with approval of the Pollution Abatement Department. If the permit is revoked, the operator may make application for a hearing to reinstate it.

(i) **Variations.** A variance from the time provisions of (d)(1), (h)(1), or (h)(10) of this Section may be granted by the appropriate Conservation Division District Office for justifiable cause. A written request and supporting documentation shall be required. The appropriate Conservation Division District Office shall respond in writing within five business days after receipt, either approving or disapproving the request.

### SUBCHAPTER 11. PLUGGING AND ABANDONMENT

#### 165:10-11-1. License for pulling pipecasing and plugging wells

(a) No person shall contract to pull casing or plug oil, gas, injection, disposal, or other service wells, or contract to salvage casing therefrom, or purchase wells for the purpose of salvaging casing therefrom until a license has been secured from the Commission. ~~(1) The application on Form 1055 for such license shall state must include:~~

~~(A1) The name, business address, business telephone number, business email address, and business facsimile number of the applicant.~~

~~(B2) The names, and business addresses, business telephone numbers, business email addresses, and business facsimile numbers of all partners, chief officers, and directors, or principals if the applicant is a partnership, corporation, limited liability company, or any entity other than an individual.~~

~~(C3) The experience of applicant in pulling casing and plugging wells.~~

~~(D4) Evidence of financial responsibility of the applicant.~~

~~(E5) The counties in which the applicant will operate.~~

~~(6) Other information as required by the Commission.~~

~~(2) Notice that an application has been filed shall be published by the applicant in a newspaper of general circulation in Oklahoma County and in the county where the applicant's principal place of business is located. The applicant shall file proof of publication prior to the hearing or administrative approval. The notice shall include:~~

~~(A) The name of the applicant.~~

~~(B) Generally what operations the applicant intends to conduct for which applicant is financially responsible.~~

~~(C) The counties in which applicant will operate.~~

~~(3) If a written objection to the application is filed within 15 days after the application is published or if a hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given as the Commission shall direct. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Field Operations who shall file a report and make recommendations to the Commission.~~

(b) Applicant shall submit the Form 1055 and required information to the Oil and Gas Conservation Division Field Operations Department for review at the email address indicated on the Form 1055. The Field Operations Department shall review the Form 1055, and the Form 1055 shall either be approved or disapproved within fifteen (15) business days of applicant's submission of all required or requested information. If the Form 1055 is approved, the Manager of the Field Operations Department shall sign the license. If the Field Operations Department denies the Form 1055, the applicant may request a hearing regarding the application.

(bc) The license shall not be transferable and may at any time be suspended or revoked by the Commission upon complaint application, notice, and hearing.

(ed) Any person violating this Section may be fined up to \$2,500.00. Any operation in violation of this Section shall be shut down pending compliance with this Section.

**165:10-11-3. Duty to plug and abandon**

(a) **Scope.** This Section applies to:

- (1) Liability of the well owners and operator or other responsible person(s) to plug a well.
- (2) Time periods for plugging wells:
  - (A) Without casing.
  - (B) With only surface casing and cement.
  - (C) With production casing.
- (3) Wells exempted from plugging.
- (4) Notice of Temporary Exemption from Plugging granting permission to postpone plugging of a well.

(b) **Liability of owners and operators or other responsible persons(s).** Any working interest owner and operator of any oil, gas, disposal, injection, or other service well or any seismic, core, or other exploratory hole, whether cased or uncased, shall be jointly and severally liable and responsible for the plugging thereof in accordance with this Subchapter unless other responsible person(s) become liable for such plugging. "Other responsible person(s)" means person(s) exercising dominion and control over any oil, gas, disposal, injection, or other service well or any seismic, core, or other exploratory hole, whether cased or uncased, without the authority or permission of the working interest owners or operator thereof. In such instances the other responsible person(s) shall be jointly and severally liable with the owners and operator for the plugging of the well. The owner of the surface estate shall not be considered an "other responsible person" solely as a result of:

(1) the reversion of the ownership of an abandoned wellbore and associated equipment to the surface owner, as a matter of law, unless the surface owner engages in activities that potentially compromise the integrity of the wellbore; or

(2) the removal of abandoned surface equipment, trash and debris from the surface estate, or remediation activities regarding the surface estate.

(c) **Time period for plugging well without casing.** Each well in which neither production casing nor surface casing has been run shall be properly plugged within 72 hours after drilling or testing is completed. However, should the lack of production and surface casing create a fire hazard or a risk of contaminating the environment or formations containing oil, gas, or known treatable water, said well shall be properly plugged within 24 hours after drilling and testing is completed. The well marker requirement described in ~~165:10-3-4~~ ~~(e)~~165:10-3-4(f) shall be followed.

(d) **Time period for plugging well with only surface casing and cement.** Each well in which only surface casing has been run and cemented in conformance with 165:10-3-4 shall be properly plugged within 90 days after drilling or testing is completed unless the lack of production or intermediate casing creates a fire hazard or risk of contaminating the environment or formations containing oil, gas, or known treatable water, in which case or cases the well shall be plugged within 24 hours.

(e) **Time period for plugging well with production casing.** Unless exempted under provisions contained elsewhere in this Section, any well which has production casing in place shall be plugged within one year after the latter of:

- (1) Cessation of drilling if the well was not completed or tested; or
- (2) Cessation of the latter of completion or testing if the well has not produced; or
- (3) Cessation of production.

(f) **Operators failing to commence timely plugging operations.** An operator who fails to commence plugging operations as required in (c), (d), and (e) of this Section after due notice from the District Office or the appropriate field inspector may be fined up to \$1,000.00.

(g) **Wells exempted from plugging.** The following wells which have production casing in place shall be exempt from (e) of this Section:

- (1) Shut-in gas wells, for the purpose of this Section, shall be considered producing wells in operation.
- (2) Any well for which a written order of the Commission granting a specific exception to plugging is in full force and effect.
- (3) Supply wells or wells authorized by order of the Commission for injection or disposal purposes and are in compliance with the rules of the Commission.
- (4) Any well for which a temporary exemption from the plugging rules has been approved.
- (5) Any oil or gas well which is exempt from plugging pursuant to 17 O.S. § 53.

**SUBCHAPTER 29. SPECIAL AREA RULES**

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### 165:10-29-1. Lake Atoka and McGee Creek Reservoir

(a) **Scope.** The requirements of this section will apply to wells located in the areas listed below, and will supersede all field orders related to these areas. These requirements are in addition to the Commission's existing statewide requirements. The areas controlled by this section include:

(1) **IN ATOKA COUNTY**

- (A) Sections 1-35 of Township 1 North, Range 12 East;
- (B) Sections 1-18, 21-28 and 35-36 of Township 1 North, Range 13 East;
- (C) Sections 1-36 of Township 1 North, Range 14 East;
- (D) Section 6 of Township 1 North, Range 15 East;
- (E) Sections 1-5, 8-16, 20-29 and 32-36 of Township 2 North, Range 12 East;
- (F) Sections 1-36 of Township 2 North, Range 13 East;
- (G) Sections 4-9 of Township 2 North, Range 14 East;
- (H) Sections 1-2, 11-14, 23-26 and 36 of Township 1 South, Range 11 East;
- (I) Sections 2-10, 16-20, 24-25 and 30-31 of Township 1 South, Range 12 East;
- (J) Sections 1-3, 9-16, 19-30 and 32-36 of Township 1 South, range 13 East;
- (K) Sections 1-11 and 13-36 of Township 1 South, Range 14 East;
- (L) Sections 1-5, 8-17, 22-27 and 34-36 of Township 2 South, Range 13 East;
- (M) Sections 1-24 and 26-35 of Township 2 South, Range 14 East;
- (N) Sections 1-2 and 12 of Township 3 South, Range 13 East;
- (O) Sections 2-9 of Township 3 South, Range 14 East.

(2) **IN PITTSBURG COUNTY**

- (A) Sections 7, 18-22 and 25-36 of Township 2 North, Range 14 East;
- (B) Section 31 of Township 2 North, Range 15 East;
- (C) Sections 1-3, 9-16, 20-29 and 32-36 of Township 3 North, Range 12 East;
- (D) Sections 1-36 of Township 3 North, Range 13 East;
- (E) Sections 6 and 28-33 of Township 3 North, Range 14 East;
- (F) Sections 26-28 and 32-36 of Township 4 North, Range 13 East.

(3) **IN COAL COUNTY** Sections 12-14, 22-27 and 34-36 of Township 1 North, Range 11 East.

(b) **General.** The design criteria for all wells shall consider all pertinent factors for well control including formation pressures and casing setting depths such that the wellbore can be maintained under control at all times and that all surface and subsurface fresh water supplies or formations are protected.

(c) **Well site limitations.** No oil and/or gas well shall be located within 1,320 feet of the maximum water surface level

contour line of either reservoir. The maximum water surface level is 609.8 feet above sea level for McGee Creek and 590 feet above sea level for Lake Atoka Reservoir.

(d) **Drill site containment.** During the drilling and completion of an oil and gas well the operator shall:

(1) Maintain an earthen retaining wall downslope of the well, no closer than 50 feet from the wellbore, if the well is located within six (6) miles of the maximum water surface level contour line of either reservoir. The maximum water surface level is 609.8 feet above sea level for McGee Creek Reservoir and 590 feet above sea level for Lake Atoka. The retaining wall shall be constructed prior to the commencement of drilling and shall be of adequate size for the terrain involved with a minimum length of 330 feet and a minimum compacted height of two (2) feet;

(2) Maintain a diversion ditch upslope of the well. The diversion ditch shall be constructed prior to the commencement of drilling and shall be adequate to divert surface drainage water from the well location;

(3) Pump any fluid, other than storm water, trapped within the well site into steel tanks for storage and removal. Storm water may be discharged as necessary as long as there is no sheen or other visible evidence of hydrocarbons being present, the chloride concentration does not exceed 500 mg/l, and the operator maintains records of each discharge for a period of three (3) years. These records must be supplied to the Commission upon request.

(e) **Production site containment.**

(1) During production operations, all fluid separation and storage vessels shall be enclosed within earthen or equivalent retaining walls so that the enclosed area has a storage capacity of at least one and one-half (1.5) times the liquid capacity of the largest vessel in the storage area.

(2) Any fluid other than storm water and any storm water that cannot be discharged will be pumped into steel tanks for storage and removal. Storm water may be discharged as necessary as long as there is no sheen or other visible evidence of hydrocarbons being present, the chloride concentration does not exceed 500 mg/l, and the operator maintains records of each discharge for a period of three (3) years. These records must be supplied to the Commission upon request.

(f) **Erosion control.** During the drilling phase of operations, silt fencing or other suitable materials or practices shall be used on the downslope side of the drill site to control runoff from the location. The silt fencing or other suitable materials or practices used to control runoff at the location shall be maintained in a manner so as to consistently work to control run-off.

(g) **Circulating and reserve pits.**

(1) Steel tanks shall be used for circulating and reserve pits for all drilling operations located within one (1) mile of the maximum water surface level contour line of either reservoir. The maximum water surface level is 609.8 feet above sea level for McGee Creek Reservoir and 590 feet above sea level for Lake Atoka.

(2) Outside of the areas designated by OAC 165:10-29-1(g)(1), any pit shall be lined with a geomembrane liner that meets or exceeds each of the following specifications:

- (A) be made of linear low density polyethylene;
- (B) have a thickness of 20 millimeters; and
- (C) conform to the test requirements prescribed in the Geosynthetic Research Institute (GRI) Test Method GM17; and
- (D) The liner shall also comply with the requirements for geomembrane liners found in OAC 165:10-7-16(c)(7).

(3) No pit shall be constructed or maintained so as to receive outside runoff water and the fluid level of earthen pits shall be maintained at all times as least 24 vertical inches below the lowest point of embankment.

(4) If there is flowback during the fracing of a well, the flowback must be to steel tanks prior to being placed into a lined pit if the temperature of the flowback exceeds 150 degrees Fahrenheit.

(5) The Oklahoma Corporation Commission shall inspect all pits within the purview of these rules prior to the liner being installed. The operator shall notify the District Office at least one (1) business day prior to installation of the liner. If the Commission has not inspected the pit within one (1) business day following the notification, the operator may proceed to install the liner.

(6) Any reserve/circulation pit shall be closed within six (6) months after drilling operations cease. Upon request by the operator, a six (6) month extension shall be granted by the District Office, after review by a field inspector to confirm the pit is in compliance with Commission requirements.

(h) **Air drilling.** When drilling with air for circulation, an unlined earthen pit to contain the wellbore cuttings is allowed, provided the chloride concentration of any fluids discharged into the pit does not exceed 1000 mg/l. Discharge of air and cuttings from the "blooey line" shall be subjected to fresh water injection or spray to eliminate, to the greatest extent possible, the drift of dust and particulates from the well site. Water and additives for liquid drilling fluid shall be maintained at the well site at all times in sufficient volumes to circulate the wellbore if needed. All water in the unlined earthen pit shall be removed and properly disposed of as soon as air drilling ceases.

(i) **Casing.** All casing shall be new or reconditioned and tested to conform to API specifications.

(1) **Surface casing.** Surface casing shall be set to a minimum depth of 700 feet, or 50 feet below the deepest treatable water, whichever depth is greater. In setting the surface casing, a minimum of six (6) centralizers shall be used in the bottom portion of the casing string.

(2) **Production casing.** Production casing of four and one-half (4.5) inches or greater OD, and all related equipment items, such as the wellhead valves, shall have a pressure rating sufficiently in excess of the highest formation pressure encountered in the well. In setting the production casing, the annular space between the

wellbore and the production casing shall be filled with cement calculated to fill at least 500 feet above the shallowest planned zone to be tested. Centralizers shall be used across the planned zone(s) to be tested. The production casing shall be pressure tested to conform to ~~OAC 165:10-3-4(g)~~OAC 165:10-3-4(h). In the event the total depth of the well is less than 500 feet, the annular space between the wellbore and the production casing shall be filled with cement calculated to fill at least that portion of the wellbore to the base of the surface casing. Centralizers shall be used across the planned zone to be tested. The production casing shall be pressure tested to comply with ~~OAC 165:10-3-4(g)~~OAC 165:10-3-4(h).

(j) **Blowout prevention equipment.** Before drilling below the surface casing and until drilling operations are completed, a blowout preventer (BOP) with a minimum of two (2) hydraulically operated rams, one (1) blind type and one (1) pipe type to fit the drill pipe, and related well control equipment, including a manifold and a floor valve, with a working pressure that exceeds the maximum anticipated surface pressure, shall be installed, used and tested in a manner to prevent blowouts. The BOP stack shall include a drilling spool with side outlets if side outlets are not provided on the BOP body. BOPs shall be tested to the rated pressure of the blowout stack assembly. All blowout prevention equipment is to be tested prior to drilling out from the surface casing. While drilling operations are in progress, the BOP shall be actuated once each trip. When removing drill pipe from any hole that utilized drilling fluids, the annulus shall be filled with mud before the mud level drops 100 feet from surface. A Kelley-cock shall be installed below the swivel. Wells being drilled to a depth less than 4,000 feet may use annular type blowout preventers.

(k) **Drill stem testing.** Drill stem testing shall only be allowed during daylight hours. Fluid removed from the well during testing must be flowed or pumped into steel pits or tanks and promptly removed from the location at the conclusion of testing. The formation fluids in the hole shall be reversed-out prior to the removing of the drill stem test tool from the hole.

(l) **Prevention of leakage and pollution.** Equipment, pipe, pumps, tanks, and other appurtenances used in conducting operations shall be maintained at all times to prevent leakage and the escape of saltwater, oil and other deleterious substances. All oil, water and deleterious substances from wet strings of tubing shall be drained into steel tanks. All cellars with oil and oil sumps shall be promptly pumped out.

(m) **Exceptions to this section.** When good cause is shown, and when it is not reasonably likely to result in any pollution to either reservoir, an administrative exception to a requirement of this section may be granted by the Oklahoma Corporation Commission. Notice of an application for an exception to this section shall be sent at least 15 days in advance to: (1) the manager of the District 4 Office of the Oil and Gas Conservation Division of the Oklahoma Corporation Commission; (2) the General Manager of the Oklahoma City Water Utilities Trust, 420 W. Main, Suite 500, Oklahoma City, Oklahoma 73102; and (3) the General Manager of the McGee Creek Authority, 420 W. Main, Suite 500, Oklahoma City, Oklahoma 73102. A 15-day period from the date of the written notice should be

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established for any party to file an objection to such an administrative application. If an objection is filed, a full hearing shall be held on the merits.

(n) **Other.** In reviewing an application for a permit-to-drill (form 1000), the Technical Services Department of the Oklahoma Corporation Commission will determine whether or not the well lies within any of the areas designated in OAC 165:10-29-1(c), OAC 165:10-29-1(d)(1) and OAC 165:10-29-1(g)(1).

[OAR Docket #22-667; filed 7-21-22]

## **TITLE 165. CORPORATION COMMISSION CHAPTER 14. ELECTRIC VEHICLE CHARGING STATIONS**

[OAR Docket #22-668]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

- Subchapter 1. General Provisions [NEW]
  - 165:14-1-1. Purpose, title, and authority [NEW]
  - 165:14-1-2. Reserved [NEW]
  - 165:14-1-3. Application of rules [NEW]
  - 165:14-1-4. Reserved [NEW]
  - 165:14-1-5. Definitions [NEW]
  - 165:14-1-6. Reserved [NEW]
  - 165:14-1-7. Interpretation of rules [NEW]
  - 165:14-1-8. Reserved [NEW]
  - 165:14-1-9. Relief from rules [NEW]
  - 165:14-1-10. Reserved [NEW]
  - 165:14-1-11. Resale of electricity and amount charged to consumer [NEW]
  - 165:14-1-12. Reserved [NEW]
  - 165:14-1-13. Public charging station is not a public utility [NEW]
- Subchapter 3. Records and Reporting [NEW]
  - 165:14-3-1. Record keeping [NEW]
  - 165:14-3-2. Reserved [NEW]
  - 165:14-3-3. Registration and contact information [NEW]
  - 165:14-3-4. Reserved [NEW]
  - 165:14-3-5. Annual reporting requirements [NEW]
  - 165:14-3-6. Reserved [NEW]
  - 165:14-3-7. Reporting of openings and closings [NEW]
- Subchapter 5. Equipment Standards, Testing, Calibration, and Inspection Reports [NEW]
  - 165:14-5-1. Inspections and tests [NEW]
  - 165:14-5-2. Reserved [NEW]
  - 165:14-5-3. Charging station equipment and applicable standards [NEW]
  - 165:14-5-4. Reserved [NEW]
  - 165:14-5-5. Equipment testing [NEW]
- Subchapter 7. Consumer Complaints [NEW]
  - 165:14-7-1. Consumer services informal review [NEW]
  - 165:14-7-2. Reserved [NEW]
  - 165:14-7-3. Records of service complaints; investigations [NEW]
- Subchapter 9. Costs and Fines [NEW]
  - 165:14-9-1. Determining assessment of costs [NEW]
  - 165:14-9-2. Reserved [NEW]
  - 165:14-9-3. Fines [NEW]

### **AUTHORITY:**

Corporation Commission; 68 O.S. § 6509.

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

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on November 16, 2021.

### **COMMENT PERIOD:**

November 16, 2021 through March 3, 2022

### **PUBLIC HEARING:**

March 3, 2022

### **ADOPTION:**

March 3, 2022

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

March 11, 2022

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

### **FINAL ADOPTION:**

June 21, 2022

### **EFFECTIVE:**

October 1, 2022

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

#### **Incorporated standards:**

National Fire Protection Association's (NFPA) 70; National Electrical Code; National Institute of Standards and Technology Handbook 130; Uniform Regulation for the Method of Sale of Commodities

#### **Incorporating rules:**

165:14-5-3(d); 165:14-5-3(h)

#### **Availability:**

8:00 a.m. to 4:30 p.m., Monday through Friday at Jim Thorpe Office Building, Oklahoma Corporation Commission, Public Utility Division, Room 580, 2101 North Lincoln Boulevard, Oklahoma City, OK 73105, (405) 521-4114.

#### **GIST/ANALYSIS:**

The adopted rules standardize record keeping requirements, require submission of contact information, an annual report, and regular reporting requirements, determine that public charging stations are not public utilities, establish requirements for charging station equipment and testing standards, establish consumer protection measures, require charging station operators to retain records of service complaints and investigations, and clarify that the Commission may assess costs and fines after notice and a hearing in certain situations.

#### **CONTACT PERSON:**

Jeff W. Kline, Deputy General Counsel and Agency Rules Liaison, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, P.O. Box 52000, Oklahoma City, OK 73105, (405) 521-2308, Jeff.Kline@occ.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2022:**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **165:14-1-1. Purpose, title, and authority**

**(a) The purpose of this Chapter is to establish rules to implement and enforce requirements pertaining to electric vehicle charging stations, pursuant to Section 6509 of the Driving on Road Infrastructure with Vehicles of Electricity (DRIVE) Act of 2021 (hereinafter referred to as the "DRIVE Act"), 68 O.S. §§ 6501 et seq.**

**(b) The Oklahoma Corporation Commission has authority to promulgate and enforce these rules pursuant to 68 O.S. § 6509.**

**165:14-1-2. [RESERVED]**

**165:14-1-3. Application of rules**

- (a) This Chapter shall be read in context with any applicable:
  - (1) Federal law and/or regulation;
  - (2) State law and/or regulation; and,
  - (3) Commission order and/or rule.
- (b) This Chapter shall be applicable to all public charging stations operating in the State of Oklahoma.
- (c) This Chapter is not applicable to charging stations:
  - (1) That are not available for use by the public (e.g., at a personal residence, including multifamily dwellings, workplaces, or other non-public locations).
  - (2) That dispense electrical energy at no cost to the consumer.
  - (3) Used solely for dispensing electrical energy in connection with operations in which the amount dispensed does not affect customer charges or compensation (e.g., a store provides a free charging station on its property, a paid parking lot provides a charging station for which there is no charge based on the amount of energy delivered, a car manufacturer provides free charging services for its owners, or an organization charges a monthly fee for unlimited use of its network of charging stations).
  - (4) With a charging capacity of less than fifty (50) kilowatts.

**165:14-1-4. [RESERVED]**

**165:14-1-5. Definitions**

In addition to the terms defined in 68 O.S. § 6502, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

**"Commission"** or **"OCC"** means the Oklahoma Corporation Commission.

**"Consumer"** or **"Customer"** means any person charging an electric vehicle at a public charging station.

**"CSD"** means the Oklahoma Corporation Commission's Consumer Services Division.

**"EVSE port"** or **"electric vehicle supply equipment port"** means the part of charging station equipment that has the power to charge only one electric vehicle at a time even though it may have multiple connectors/plugs.

**"Install," "installing" or "installation"** means the major activities and actions required to connect, in accordance with applicable building and electrical codes, the conductors, connectors and all associated fittings, devices, power outlets or apparatuses mounted at the premises that are directly involved in delivering energy from the premises' electrical wiring to the public charging station.

**"Maintain," "maintaining" or "maintenance"** means the major activities and actions required to keep in an appropriate, safe condition and operation the conductors, connectors and all associated fittings, devices, power outlets or apparatuses mounted at the premises that are directly involved in delivering energy from the premises' electrical wiring to the public charging station.

**"NIST"** means the National Institute of Standards and Technology.

**"Person"** means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

**"PUD"** means the Public Utility Division of the Oklahoma Corporation Commission.

**"Repair" or "repairing"** means the major activities and actions required to restore to a safe, sound condition and operation the conductors, connectors and all associated fittings, devices, power outlets or apparatuses mounted at the premises that are directly involved in delivering energy from the premises' electrical wiring to the public charging station.

**165:14-1-6. [RESERVED]**

**165:14-1-7. Interpretation of rules**

The words contained in this Chapter shall be given their ordinary and customary meanings, with technical terms and words being construed as generally understood within the electric and electric vehicle industries, except where otherwise expressly provided.

**165:14-1-8. [RESERVED]**

**165:14-1-9. Relief from rules**

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to a party or parties subject to the rules of this Chapter, the Commission may, upon application and for good cause shown, issue an order waiving or modifying the requirements of this Chapter. The Commission may grant temporary relief pending hearing.

**165:14-1-10. [RESERVED]**

**165:14-1-11. Resale of electricity and amount charged to consumer**

(a) The Commission does not consider the charging of electric vehicles at a public charging station owned or operated by a person not otherwise considered to be a rate regulated public utility to be the resale of electricity subject to the rate setting authority of the Commission.

(b) A rate regulated public utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a public charging station.

**165:14-1-12. [RESERVED]**

**165:14-1-13. Public charging station is not a public utility**

A public charging station is not a public utility under 17 O.S. §§ 151 et seq.; however, public charging stations that are

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owned by a public utility shall comply with the requirements of this Chapter.

## **SUBCHAPTER 3. RECORDS AND REPORTING**

### **165:14-3-1. Record keeping**

(a) Each charging station operator operating a public charging station shall:

(1) Maintain third-party testing and inspection reports for three (3) years. Each testing and inspection report shall contain:

- (A) Sufficient information to identify the meter;
- (B) The date of the test;
- (C) Reading of the meter;
- (D) Results of the test; and
- (E) The reason for conducting the test.

(2) Retain documentation regarding the installation of a charging station for three (3) years.

(3) Retain calibration records for the life of the meter. These records shall include the date when the meter was last calibrated and adjusted.

(b) All records shall be kept and sorted by location.

(c) All records included in this Section shall be provided to or made available for inspection by the PUD upon reasonable request.

### **165:14-3-2. [RESERVED]**

### **165:14-3-3. Registration and contact information**

(a) On or before January 1, 2023, or within thirty (30) days of opening a new public charging station, each charging station operator operating a public charging station shall provide the following information to PUD for each public charging station:

(1) The station name, complete physical address, type of facility where the station is located, and if necessary, directions from the nearest intersection;

(2) Global positioning system ("GPS") coordinates;

(3) Date the station opened;

(4) Access days and times;

(5) The number of each type of EVSE port located at the charging station (e.g. Level 1, Level 2, DC fast charger);

(6) Electric vehicle connector types usable;

(7) Electric vehicle charging network, if applicable; and

(8) How the customer is charged.

(b) Each charging station operator shall include the name(s), mailing address(es), electronic mail address(es) and telephone number(s) of the individual(s) primarily responsible for:

(1) Providing customer service;

(2) Repair and maintenance;

(3) Answering complaints;

(4) Authorizing and/or furnishing refunds to customers;

(5) Regulatory matters;

(6) Serving as primary emergency contact;

(7) Serving as contact for after-hours emergency(ies);

(8) Providing legal representation for regulatory matters;

(9) Reporting requirements;

(10) Serving as community liaison; and

(11) Engineering operations, meter tests, and repairs.

(c) If the information listed in (a) or (b) is unavailable, the charging station operator may seek a waiver from the PUD Director by making the request in writing.

(d) Any changes to the information in (a) or (b) shall be provided to PUD within thirty (30) calendar days of the change.

(e) The contact person under (b) may be the same for one or more of the listed items and shall be furnished applicable to each specific public charging station, if different, so that the PUD will be able to reach the responsible person at any time.

(f) Each charging station operator operating a public charging station shall promptly furnish such other information as the PUD may request.

### **165:14-3-4. [RESERVED]**

### **165:14-3-5. Annual reporting requirements**

(a) On or before March 1 of each year, each charging station operator operating a public charging station shall electronically submit information required by the PUD, which includes but is not limited to the following:

(1) Certification that the information provided under OAC 165:14-3-3(a) and (b) is accurate.

(2) The number of EVSE ports located at each public charging station, sorted by physical address.

(3) The name, telephone number, and electronic mail address of at least one person designated by the charging station operator to address questions pertaining to the report.

(4) A certification stating that all testing has been completed pursuant to the requirements in this Chapter.

(b) One report may be submitted for multiple public charging stations if the information, other than the physical address and the number of EVSE ports, is the same.

(c) No confidential information should be included in the report.

### **165:14-3-6. [RESERVED]**

### **165:14-3-7. Reporting of openings and closings**

(a) The charging station operator operating a public charging station shall inform the Commission in writing within thirty (30) calendar days of opening and/or permanently closing a public charging station.

(b) The Commission shall be notified in writing if a public charging station is closed due to maintenance and/or repairs for greater than fifteen (15) business days.



**SUBCHAPTER 5. EQUIPMENT STANDARDS,  
TESTING, CALIBRATION, AND INSPECTION  
REPORTS**

**165:14-5-1. Inspections and tests**

The Commission, or its authorized representative, shall be permitted to inspect and test the facilities located at any public charging station. Inspections and tests must be performed in compliance with all applicable state and federal regulations.

**165:14-5-2. [RESERVED]**

**165:14-5-3. Charging station equipment and applicable standards**

- (a) Public charging stations must be maintained in all respects, including the functioning of the equipment.
- (b) The charging station must be legibly and permanently marked to show the name, phone number, and electronic mail address of the person to contact for emergencies, malfunctioning equipment, customer service, and for other concerns.
- (c) No meter shall be installed which is known to be defective, or to have incorrect constants or which has not been tested and adjusted, if necessary, in accordance with the manufacturer's requirements or industry standards.
- (d) All electrical equipment must meet the requirements of the most recent version of the National Fire Protection Association's NFPA 70, the National Electrical Code, and any updates thereto as it applies to wet, damp and hazardous conditions. All electrical wiring and equipment must be suitable for the locations in which it is installed; and, required emergency switches must be installed and appropriately placed.
- (e) Public charging station facilities must be resistant to damage from the impact of a motor vehicle or be protected by suitable collision barriers.
- (f) All required markings, instructions, graduations, indications, or recorded representations and their defining figures, words, and symbols must be easily readable and of such character that they will not easily become illegible.
- (g) The Commission encourages all public charging stations to follow the standards in Section 3.40 of the NIST Handbook 44, and its future amendments, unless there exists a conflict with the statute or a provision of this Chapter.
- (h) The Commission adopts, and all public charging stations are required to follow the Uniform Regulation for the Method of Sale of Commodities, as it pertains to retail sales of electricity sold as vehicle fuel in NIST Handbook 130, and its future amendments, unless there exists a conflict with the statute or a provision of this Chapter.
- (i) The requirements of this Section will be enforced as follows:
  - (1) Beginning on January 31, 2024, for all public charging stations that began operations on or after January 31, 2024.
  - (2) Beginning on November 1, 2041, for all public charging stations that began operations prior to November 1, 2021.

- (3) Beginning on January 31, 2028, for all public charging stations that began operations on or after November 1, 2021, and prior to January 31, 2024.

**165:14-5-4. [RESERVED]**

**165:14-5-5. Equipment testing**

- (a) Each charging station operator operating a public charging station shall provide and install at its own expense and shall continue to own, maintain, and operate proper and sufficient equipment for the accurate measurement of electricity delivered by each public charging station.
- (b) Each charging station operator operating a public charging station shall follow test procedures necessary for testing its meters in compliance with the manufacturer's requirements or industry standards. The equipment facilities and procedures shall be available for inspection by the Commission or its authorized representative. A charging station operator operating a public charging station may contract for testing of its meters by a third party.
- (c) To ensure accuracy, meters shall be tested in accordance with a testing schedule established by the charging station operator, but in no instance shall it be greater than three (3) years between tests. Initial certifications from the manufacturer may count toward the three (3) year certification requirement. Charging stations that began operations prior to January 1, 2023, must complete testing no later than January 1, 2026.
- (d) If charging station equipment is determined by the charging station operator or the PUD to be nonfunctional or having incorrect or inaccurate meter measurements, the equipment shall be taken out-of-service immediately, unless waived in writing by the PUD Director for good cause shown. Once repairs are completed, the equipment shall be tested to confirm metered measurements and readings are within the original manufacturer's calibrations and/or specifications. Repaired equipment may be put back into service after the test results have been reported to the PUD.

**SUBCHAPTER 7. CONSUMER COMPLAINTS**

**165:14-7-1. Consumer services informal review**

- (a) Whenever there is a dispute between the charging station operator operating a public charging station and the consumer as to the accuracy of the charging station meter, the matter may be brought by either party to the Commission's CSD. A consumer may be represented by a third party, if the consumer is available for verification.
- (b) CSD will review the matter and issue an informal review decision in writing. If the dispute can be resolved by telephone with the party seeking review, the review decision need not be in writing unless requested by either party.
- (c) During CSD's informal review, CSD may direct the charging station operator to test the accuracy of the equipment. The test shall be performed within a reasonable time and may be performed by a third party.

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(1) Prior to conducting the test, the charging station operator shall provide the cost to conduct the test and provide the consumer notice that if the meter is found to test within the accuracy prescribed by the manufacturer of the equipment, the consumer will be required to pay the cost of the test. The consumer may withdraw the written request at any time prior to the test being conducted.

(2) If requested in writing by the consumer, the charging station operator shall conduct the test in the presence of the consumer, the consumer's representative, and/or an expert.

(3) The charging station operator shall prepare a written report stating the name of the consumer requesting the test, the date of the request, the location of meter, the type, make, size, and serial number of the meter, the date tested, and the result of the test. This report shall be provided to the consumer and CSD within ten (10) business days after the completion of the test.

(4) If the meter is found to test outside of the limits of accuracy prescribed by the manufacturer of the equipment or industry standards, the charging station operator shall refund any overcharge to the consumer.

(d) If the CSD is unable to resolve the dispute to the mutual satisfaction of the consumer or charging station operator, either may file a Consumer Services Complaint with the Commission.

**165:14-7-2. [RESERVED]**

**165:14-7-3. Records of service complaints; investigations**

Each charging station operator operating a public charging station shall make a full and prompt investigation of every formal complaint made to it by its consumers, either directly, or through the Commission after the consumer or other interested party has contacted the charging station operator. Each charging station operator operating a public charging station shall keep a record of all formal complaints received, which record shall show the name and address of the complainant, the date, the nature of the complaint, and the adjustment, or disposal made thereof, which record shall be retained for examination by the Commission. For purposes of this Section, a formal complaint is a written communication by a consumer or other interested party to the charging station operator operating a public charging station that prompts an investigation by the charging station operator. All records of formal complaints shall be retained for a period of at least two (2) years from the date of final disposition.

## **SUBCHAPTER 9. COSTS AND FINES**

**165:14-9-1. Determining assessment of costs**

(a) If a Commission proceeding is filed to enforce testing, calibration, and inspection report requirements, costs of the proceeding may be assessed upon the filing of a motion.

(b) Pursuant to Subsection (a), the Commission will determine the estimated costs of the case. These costs will be the basis of the amount assessed to the charging station operator subject to this Chapter.

(c) After notice and hearing, the Commission shall issue an order which shall include the following:

(1) Whether or not the charging station operator will be assessed a cost;

(2) The amount to be assessed; and

(3) The date that the payment(s) shall be made.

**165:14-9-2. [RESERVED]**

**165:14-9-3. Fines**

(a) If a charging station operator operating a public charging station fails to meet the requirements of this Chapter or any provision of the DRIVE Act within the Commission's jurisdiction, the Commission shall, following notice and a hearing, assess a fine not to exceed Five Hundred Dollars (\$500.00) per day, per violation. Each day on which a violation occurs will be deemed a separate and distinct offense.

(b) All costs, fees, fines, or assessments collected shall be deposited into the Commission Revolving Fund.

*[OAR Docket #22-668; filed 7-21-22]*

## **TITLE 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION**

*[OAR Docket #22-669]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 7. Specifications, Standards, and Labeling for Motor Fuels

165:15-7-5. Diesel fuel [AMENDED]

Subchapter 13. Labeling of Tanks and Product Lines

165:15-13-1. General identification and color coding requirements [AMENDED]

### **AUTHORITY:**

Corporation Commission; 17 O.S. §§ 306(12), 307, 322, 342, and 347.

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

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on February 18, 2022.

### **COMMENT PERIOD:**

December 28, 2021 through February 10, 2022

### **PUBLIC HEARING:**

February 10, 2022

### **ADOPTION:**

February 10, 2022

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

February 18, 2022

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

### **FINAL ADOPTION:**

June 21, 2022

### **EFFECTIVE:**

October 1, 2022

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

American Petroleum Institute's ("API") Recommended Practice 1637 color symbol system.

**Incorporating rules:**

165:15-13-1

**Availability:**

8:00 a.m. to 4:30 p.m., Monday through Friday at Jim Thorpe Office Building, Oklahoma Corporation Commission, Petroleum Storage Tank Division, 2101 North Lincoln Boulevard, Oklahoma City, OK 73105, (405) 521-4683.

**GIST/ANALYSIS:**

The adopted rules update a statutory citation and adopt the API Recommended Practice 1637 color system.

**CONTACT PERSON:**

Daniel P. Boyle, Attorney, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, P.O. Box 52000, Oklahoma City, OK 73105, 405-521-4749, Daniel.Boyle@occ.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2022:**

**SUBCHAPTER 7. SPECIFICATIONS, STANDARDS, AND LABELING FOR MOTOR FUELS**

**165:15-7-5. Diesel fuel**

The standard classification of diesel fuel, as described in ASTM D 975 and biodiesel as described in ~~52 O.S. §325~~17 O.S. §303, must be used.

**SUBCHAPTER 13. LABELING OF TANKS AND PRODUCT LINES**

**165:15-13-1. General identification and color coding requirements**

(a) All storage tanks subject to the rules of this Chapter must be marked with a tag, lettering, or other permanent marking on the fill neck and color coded on the ~~overfill sumptank fill~~ lids to identify the type, grade, or quality of regulated substance they contain in accordance with American Petroleum Institute (API) Recommended Practice 1637 color symbol system.

(b) ~~East of 99 degrees west longitude, color coded markings must be:~~

- (1) ~~Unleaded motor fuel, 91 octane or above: red.~~
- (2) ~~Unleaded motor fuel, 89 or 90 octane: blue.~~
- (3) ~~Unleaded motor fuel, 86 through 88 octane: white.~~
- (4) ~~Diesel motor fuel: yellow.~~
- (5) ~~Kerosene: brown.~~
- (6) ~~Dyed diesel: half yellow, half red.~~
- (7) ~~Unleaded 87 octane E10: white with black "X" and a black border around lid.~~
- (8) ~~Premium unleaded 91 octane E10: red with black "X" and a black border around lid.~~

(9) ~~E15: E15 tanks must be designated "E15" in black with a black border around lid, and the colors referenced above for unleaded motor fuel, 86 through 91 octane, should be used for the lid.~~

(10) ~~Biodiesel: bronze with yellow and black border around lid.~~

(11) ~~E85: orange with black "X" and a black border around lid.~~

(c) ~~West of 99 degrees west longitude, color coded markings must be:~~

(1) ~~Unleaded motor fuel, 90 octane or above: red.~~

(2) ~~Unleaded motor fuel, 88 or 89 octane: blue.~~

(3) ~~Unleaded motor fuel, 86 or 87 octane: white.~~

(4) ~~Diesel motor fuel: yellow.~~

(5) ~~Kerosene: brown.~~

(6) ~~Dyed diesel: half yellow, half red.~~

(7) ~~Unleaded 87 octane E10: white with black "X" and a black border around lid.~~

(8) ~~Premium unleaded 91 octane E10: red with black "X" and a black border around lid.~~

(9) ~~E15: E15 tanks must be designated "E15" in black with a black border around lid, and the colors referenced above for unleaded motor fuel, 86 through 91 octane, should be used for the lid.~~

(10) ~~Biodiesel: bronze with yellow and black border around lid.~~

(11) ~~E85: orange with black "X" and a black border around lid.~~

(d) ~~Vapor recovery connections and manholes shall be marked with orange circles.~~

(e) ~~Observation and monitoring wells shall be marked with a black triangle on a white background.~~

(f) ~~At all facilities with more than one tank, the color coding applied to the fill cap or manhole cover shall extend beyond the edge of the cap or cover onto adjacent concrete or pavement.~~

(g) ~~The tag labeling and color coding must be waterproofed and fuel proofed material so that the type, grade, or quality of the motor fuel is readily visible to persons adding to or taking a sample from the line or storage tank.~~

[OAR Docket #22-669; filed 7-21-22]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 25. UNDERGROUND STORAGE  
TANKS**

[OAR Docket #22-670]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

Part 3. Definitions

165:25-1-11. Definitions [AMENDED]

Part 9. Notification and Reporting Requirements

165:25-1-48. Tank and line tightness testing. [AMENDED]

Subchapter 2. General Requirements for Underground Storage Tank Systems

Part 1. Codes and Standards

165:25-2-2. Incorporated codes and standards [AMENDED]

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## Part 3. Design and Installation

165:25-2-36. Tank system installation [AMENDED]

165:25-2-40. Installation testing [AMENDED]

## Part 6. Piping

165:25-2-55.1. Underground storage tank piping materials [AMENDED]

Part 13. Removal and Closure of Underground Storage Tank Systems

165:25-2-131. Tank removal and closure [AMENDED]

## Subchapter 3. Release Prevention and Detection Requirements

Part 2. Release Detection Requirements and Methods

165:25-3-6.29. Monitoring requirements for piping [AMENDED]

Part 3. Release Investigation Requirements

165:25-3-8. Release investigation and confirmation [AMENDED]

Subchapter 18. Inspections, Notices of Violation, Field Citations, and Formal Enforcement Actions

Part 1. Inspections

165:25-18-4. Inspections for compliance [AMENDED]

Part 5. Penalties

165:25-18-19. Penalties [AMENDED]

## AUTHORITY:

Corporation Commission; 17 O.S. §§ 306(12), 307, 322, 342, and 347.

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

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on February 18, 2022.

## COMMENT PERIOD:

December 28, 2021 through February 10, 2022

## PUBLIC HEARING:

February 10, 2022

## ADOPTION:

February 10, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 18, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

October 1, 2022

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

### Incorporated standards:

National Fire Protection Association Standards: Standard Number 30, 2021, "Flammable and Combustible Liquids Code." Standard Number 329, 2020, "Handling Releases of Flammable and Combustible Liquids and Gases." Standard Number 326, 2020, "Safeguarding Tanks and Containers for Entry, Cleaning and Repair." Standard Number 30A, 2021, "Motor Fuel Dispensing Facilities and Repair Garages."

American Petroleum Institute Standards: Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems." Sixth Edition, April 2011, Reaffirmed May 2020. Recommended Practice 1632, "Cathodic Protection of Underground Storage Tank and Piping Systems." Third Edition, May 1996, Reaffirmed December 2010. Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks." Fourth Edition, February 2021. Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks." Fifth Edition, June 2001, Reaffirmed May 2020. Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets." Fifth Edition, May 1993, Reaffirmed May 2020. Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Filling Stations." Second Edition, August 2010, Errata February 2011, Addendum August 2012, Reaffirmed May 2020. Recommended Practice 1627, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations." First Edition, August 1986, Reaffirmed January 2000. Publication 1628, "A Guide to the Assessment and Remediation of Underground Petroleum Releases." Third Edition, July 1996. Recommended Practice 2200, "Repairing Hazardous Liquid Pipelines." Fifth Edition, September 2015. Standard 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks." Eighth Edition, January 2018. Recommended Practice 1637, "Using the API Color Symbol System to Identify Equipment, Vehicles, and Transfer Points for Petroleum Fuels and Related Products at Dispensing and Storage Facilities and Distribution Terminals." Fourth Edition, April 2020.

National Association of Corrosion Engineers: International Test Method, TM 0497 2018, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems."

Underwriter's Laboratory Standards: Standard UL1316 2018, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures." Standard UL567 2021, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."

Petroleum Equipment Institute: PEI/RP 100-20 (2020 Edition) "Recommended Practices for Installation of Underground Liquid Storage Systems." PEI/RP 400-18 (2018 Edition), "Recommended Procedures for Testing Electrical Continuity of Fuel Dispensing Hanging Hardware." PEI/RP 500-19 (2019 Edition), "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment." PEI/RP 900-21 (2021 Edition), "Recommended Practices for the Inspection and Maintenance of UST Systems." PEI/RP 1000-14 (2014 Edition) "Marina Fueling Systems." PEI/RP 1200-19 (2019 Edition), "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities." PEI/RP 1700-18 (2018 Edition), "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems."

National Leak Prevention Association ("NLPA")/Kenneth Wilcox Associates, Inc., ("KWA") Standard 832, Preventative maintenance, repair and in-situ construction of petroleum sumps, incorporated by reference.

## Incorporating rules:

165:25-2-2

## Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at Jim Thorpe Office Building, Oklahoma Corporation Commission, Petroleum Storage Tank Division, 2101 North Lincoln Boulevard, Oklahoma City, OK 73105, (405) 521-4683.

## GIST/ANALYSIS:

The adopted rules add the Environmental Protection Agency ("EPA") definition of repair from Title 40 Code of Federal Regulations ("C.F.R.") § 280, establish online scheduling for tank and line tightness testing, update adopted standards to the current edition, add a new standard for sump maintenance and repair recently approved by the EPA, clarify slope requirements for underground suction and pressurized piping, allow shorter installation testing times if certified by third parties, clarify the Petroleum Storage Tank Division's ("PSTD") interpretation of a repair to a fuel island to be consistent with language found in 40 C.F.R. § 280, and clarify when installation of an under dispenser containment ("UDC") sump is required. Additionally, the adopted proposed rules clarify backfill requirements and allow excavation to remain open longer when replacing tanks in certain situations, allow third party certified methods for shorter testing times for monitoring of piping, clarify that the PSTD may not conduct the actual testing or monitoring to ensure compliance during inspections, remove language already found in statute, remove unnecessary language found in 17 O.S. § 311(A), and clarify terminology related to a violation of PSTD rules.

## CONTACT PERSON:

Daniel P. Boyle, Attorney, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, P.O. Box 52000, Oklahoma City, OK 73105, 405-521-4749, Daniel.Boyle@occ.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### PART 3. DEFINITIONS

#### 165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. §§ 303 and 348, the following words or terms, when used in this Chapter, shall

have the following meaning unless the context clearly indicates otherwise:

**"Agent"** means a person authorized by another to act on their behalf, either out of employment or contract.

**"Airport"** means landing facility for aircraft that are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

**"Airport hydrant system"** means an underground storage tank system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one (1) or more tanks from an external source, such as a pipeline, barge, rail car, or other motor fuel carrier.

**"ATG"** means automatic tank gauge.

**"Ball float functionality"** means the ball float is operational as designed.

**"BTEX"** means benzene, toluene, ethylbenzene and xylene.

**"Bulk plant"** means a petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

**"Cathodic protection"** means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

**"Change in service"** means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); or change of regulated substance that a storage tank contains.

**"Commission"** or **"OCC"** means the Oklahoma Corporation Commission.

**"Compatible"** means the ability of two (2) or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

**"Corrosion expert"** means an individual having the requisite knowledge, experience, certification, and training to design, install, test, and maintain corrosion protection systems.

**"EPA"** means the United States Environmental Protection Agency.

**"Electronic signature"** means an electronic signature as defined in OAC 165:5-1-3.

**"Farm tank"** is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

**"Field constructed tank"** means a tank constructed in the field such as a tank constructed of concrete that is poured in

the field, or a steel or fiberglass tank primarily fabricated in the field.

**"Financial responsibility"** shall have the same meaning in this Chapter as in 40 CFR 280 Subpart H.

**"Financial security"** means holding financial security in a tank system or facility site and is not considered ownership of a tank system unless certain criteria of 40 CFR 280 Subpart H is met.

**"Fleet and Commercial"** means any facility as defined in this Chapter that uses underground storage tanks to store regulated substances for use in its own vehicles or equipment.

**"Flow-through process tank"** means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

**"Formal Enforcement Action"** means the process of ensuring compliance with Commission regulations, rules, orders, requirements, standards, and/or state law when a violation occurs and PSTD initiates an enforcement Complaint under the contempt procedure in Oklahoma Administrative Code (OAC) 165:5 Subchapter 19 to be heard at the Commission by an Administrative Law Judge or the Commissioners.

**"Gathering lines"** means a gathering line or gathering system as defined in OAC 165:45-1-2.

**"Important building"** means a building that is considered not expendable in an exposure fire.

**"Inert material"** means a solid, motionless substance that is neither chemically nor biologically reactive, is denser than water, and will not decompose. Examples of inert material include sand and concrete, or as otherwise approved by PSTD staff.

**"Lender liability"** shall have the same meaning in this Chapter as in 40 CFR 280 Subpart I.

**"Licensed Environmental Consultant"** means an individual who has a current license issued by PSTD to perform corrective action.

**"Maintenance"** means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

**"Marina"** means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

**"Observation well"** means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

**"Operational life"** means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

**"Operator"** means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated

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thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of ~~its~~ its service/use.

**"Out of Order tag"** means tag, device or mechanism on the tank fill pipe that clearly identifies an underground storage tank as ineligible for delivery of product.

**"Owner"** means any person as set forth in 17 O.S. § 303(27), including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system. However, a real property owner who has a storage tank system located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.

**"OWRB"** means the Oklahoma Water Resources Board.

**"Permanent out of use"** or **"POU"** means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

**"Private airport"** means an airport used only by its owner and regulated as a fleet and commercial facility.

**"Private airstrip"** means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

**"PSTD"** means Petroleum Storage Tank Division.

**"Recalcitrant owner"** means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement, or order.

**"Regulated substance"** means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include compressed natural gas, liquid natural gas or propane.

**"Release detection"** means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

**"Repair"** means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

**"Residential tank"** is a tank located on real property used primarily for dwelling purposes.

**"Retail facility"** means a service station, convenience store or any other facility selling a PSTD regulated substance that is open to the general public.

**"Secondary containment"** means an underground storage tank and/or piping with inner and outer barriers which provide a space for interstitial (the space between the inner and outer walls of a double walled tank or piping) monitoring.

**"Tampering"** means willful intention in an attempt to deceive, cheat or misrepresent facts to the public. Tampering also presents a risk to the environment as well as public health, safety and welfare.

**"Tank tightness testing"** or **"precision testing"** means a procedure for testing an underground storage tank system's integrity.

**"Temporary out of use"** or **"TOU"** means the status of an underground storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

**"TPH"** means total petroleum hydrocarbons.

**"Underground storage tank"** or **"UST"** "storage tank" as defined in 17 O.S. § 303(40) that has ten percent (10%) or more of its volume beneath the surface of the ground.

**"Underground storage tank system"** means a closed-plumbed system including, but not limited to the underground storage tank(s), the individual storage tank compartments, the lines, dispenser for a given product, containment sump, if any, and ancillary equipment or a delivery truck that is connected to the storage tank system.

**"Used Motor Oil"** is any spent motor oil removed from a motor vehicle.

## PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

### 165:25-1-48. Tank and line tightness testing

- (a) Tank and line tightness testing results in which any part of the tank system tested does not pass must be reported to the PSTD within twenty-four (24) hours by the owner, operator, their employees or agents, and also independently by the person or company performing the test. Complete test results must be submitted within 7 days of testing.
- (b) Tank tests must include both the wetted portion and ullage portion of the tank.
- (c) Hydrostatic line tightness tests and line leak detector tests must be conducted by a certified tester, if applicable, in accordance with manufacturer's instructions, and reported on the prescribed PSTD form.
- (d) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.
- (e) All personnel performing tank and line testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with the testing equipment, manufacturer certification and applicable industry standards or codes.
- (f) Tank and line tightness testing must be scheduled by submitting the PSTD scheduling form in the established online format and PSTD staff may be present.

## SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

### PART 1. CODES AND STANDARDS

**165:25-2-2. Incorporated codes and standards**

Specific references to documents are made in this Chapter. Each of these documents or part thereof is included by reference as a standard. New editions of codes and standards supersede all previous editions. Commission rules will supersede in all conflicts between PSTD rules and any industry standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

- (1) National Fire Protection Association Standards:
  - (A) Standard Number 30, ~~2018~~2021, "Flammable and Combustible Liquids Code."
  - (B) Standard Number 329, ~~2015~~2020, "Handling Releases of Flammable and Combustible Liquids and Gases."
  - (C) Standard Number 385, 2017, "Tank Vehicles for Flammable and Combustible Liquids."
  - (D) Standard Number 326, ~~2015~~2020, "Safeguarding Tanks and Containers for Entry, Cleaning and Repair."
  - (E) Standard Number 30A, ~~2018~~2021, "Motor Fuel Dispensing Facilities and Repair Garages."
- (2) American Petroleum Institute Standards
  - (A) Recommended Practice 1615, ~~(2011)~~, "Installation of Underground ~~Hazardous Substances~~ or Petroleum Storage Systems, ~~Sixth Edition~~." Sixth Edition, April 2011, Reaffirmed May 2020.
  - (B) Recommended Practice 1632, ~~(R2010)~~, "Cathodic Protection of Underground Storage Tank and Piping Systems." Third Edition, May 1996, Reaffirmed December 2010.
  - (C) Recommended Practice 1604, ~~(R2010)~~, "Closure of Underground Petroleum Storage Tanks, ~~Third Edition~~." Fourth Edition, February 2021.
  - (D) Recommended Practice 1631, ~~(2001)~~, "Interior Lining and Periodic Inspection of Underground Storage Tanks." Fifth Edition, June 2001, Reaffirmed May 2020.
  - (E) Recommended Practice 1621, ~~(R2012)~~, "Bulk Liquid Stock Control at Retail Outlets." Fifth Edition, May 1993, Reaffirmed May 2020.
  - (F) Recommended Practice 1626, ~~(2010)~~, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and ~~Service~~Filling Stations." Second Edition, August 2010, Errata February 2011, Addendum August 2012, Reaffirmed May 2020.
  - (G) Recommended Practice 1627, ~~(R2000)~~, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations." First Edition, August 1986, Reaffirmed January 2000.
  - (H) Publication 1628, ~~(1996)~~, "A Guide to the Assessment and Remediation of Underground Petroleum Releases." Third Edition, July 1996.
  - (I) ~~Publication—Recommended Practice 2200, (2015), "Repairing Crude Oil, Liquefied Petroleum~~

~~Gas, and Product Hazardous Liquid Pipelines, Fourth Edition." Fifth Edition, September 2015.~~

- (J) ~~Publication Standard 2015, (2018), "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks." Eighth Edition, January 2018.~~
- (K) ~~Recommended Practice 1637, (R2012), "Using the API Color Symbol System to Mark Identify Equipment, and Vehicles, and Transfer Points for Petroleum Fuels and Related Products at for Product Identification at Gasoline Dispensing and Storage Facilities and Distribution Terminals, Third Edition." Fourth Edition, April 2020.~~
- (3) National Association of Corrosion Engineers:
  - (A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
  - (B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."
  - (C) Standard Number SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines."
  - (D) International Test Method, TM 0101 2012, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems."
  - (E) International Test Method, TM 0497 ~~2012~~2018, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems."
- (4) Underwriter's Laboratory Standards:
  - (A) Standard UL58, 2018, "Steel Underground Tanks for Flammable and Combustible Liquids."
  - (B) Standard UL1316 ~~Bulletin—2013~~2018, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures."
  - (C) Standard UL1746 ~~Bulletin 2013~~, "External Corrosion Protection Systems for Steel Underground Storage Tanks."
  - (D) Standard UL567 ~~Bulletin 2012~~2021, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."
  - (E) Standard UL971 ~~Bulletin 2011~~, "Nonmetallic Underground Piping for Flammable Liquids."
- (5) American Society for Testing Materials:
  - (A) ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
  - (B) ASTM G158-98 (2016), "Three Methods of Assessing Buried Steel Tanks."
- (6) Petroleum Equipment Institute:
  - (A) PEI/RP ~~400-17~~100-20 (2017—2020 Edition) "Recommended Practices for Installation of Underground Liquid Storage Systems."
  - (B) PEI/RP 400-18 (2018 Edition), "Recommended ~~Practices—Procedures~~ for ~~Equipment—Testing~~

Electrical Continuity of Fuel Dispensing Hanging Hardware."

(C) ~~PEI/RP 500-11500-19~~ (2011—2019 Edition), "Recommended ~~Practice~~Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment."

(D) ~~PEI/RP 900-17900-21~~ (2017—2021 Edition), "Recommended Practices for the Inspection and Maintenance of UST Systems."

(E) PEI/RP 1000-14 (2014 Edition) "Marina Fueling Systems"

(~~EF~~) ~~PEI/RP 1200-171200-19~~ (2017—2019 Edition), "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

(~~EG~~) ~~PEI/RP 1700-1700-18~~ (2018 Edition), "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems."

(7) Steel Tank Institute:

(A) STIP3®, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks."

(B) STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

(C) STI-R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks."

(D) RP-972-10, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs."

(E) STI-ACT-100-U®, F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks".

(F) STI-F841, "Standard for Dual Wall Underground Steel Storage Tanks."

(G) STI-F922, "Specification for Permatank®."

(H) RP-R051, "Cathodic Protection Testing Procedures for STI-P3® Underground Storage Tank Systems."

(8) Factory Mutual 1920, "Flexible Pipe Couplings."

(9) National Leak Prevention Association (NLPA) Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection."

(10) National Groundwater Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."

(11) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)."

(12) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

(13) NLPA/KWA Standard 832, "Preventative Maintenance, Repair and In-situ Construction of Petroleum Sumps."

### PART 3. DESIGN AND INSTALLATION

#### 165:25-2-36. Tank system installation

(a) **Backfill material.** Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, non-corrosive porous material such as sand, crushed rock or pea gravel specified by the tank manufacturer. The Licensed UST Installer must be present and continuously supervise backfilling operations to ensure that proper procedures are followed.

(b) **UST installation.**

(1) Owners/operators of all underground storage tank systems must notify PSTD at least forty-eight (48) hours prior to the installation of underground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the installation and the Temporary Authorization for Receipt of Fuel from PSTD. Following the required forty-eight (48) hour notification of new UST installations, an on-site inspection may be required at critical junctures. The PSTD Fuel Specialist monitoring the installation must be contacted prior to initiating the following so it may be observed or inspected:

(A) The air/soap test of tanks.

(B) The tank pit prior to the placement of tank(s).

(C) The backfilling of the lower quadrant of tank(s).

(D) The air/soap test, layout of piping, and hydrostatic testing of sumps prior to backfilling.

(E) The tightness test of tanks and piping, and leak detector tests prior to startup.

(F) Backfilling of all piping.

(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.

(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, factory specifications must be provided to prevent contact between piping segments.

(4) Underground suction piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank and must be buried below ground a minimum of eighteen inches (18"). All underground pressurized piping must slope towards the tank. When this presents an issue with containment depth, pressurized piping may change in direction between under dispenser containments (UDCs). Product piping from the first dispenser must be sloped back to the tank and when needed, a transition containment sump may be installed between the first dispenser and the tank. All piping must be sloped to a minimum



of one-eighth inch (1/8") per foot and maintain a burial depth of eighteen inches (18").

(5) If a tank is installed in an area subject to a high water table or flooding, anchoring must be used to prevent tank flotation. Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.

(6) The tank pit must contain a smooth, evenly graded bed of manufacturer approved material extending the full length of the tank bottom.

(7) The Licensed UST Installer must follow PEI RP-100 recommended practice for ballasting to prevent tank flotation during installation.

(8) Licensed UST Installers must be certified by the tank and line manufacturer, if applicable, and must be on site during all installation activities, including preparation for and placement of concrete over any part of the tank system.

(9) Photos of installation and other required documentation must be submitted with the PSTD registration form within thirty (30) days and tank fees must be paid before a permit will be issued.

**165:25-2-40. Installation testing**

(a) All tanks must be tested with air pressure prior to installation, and/or tested according to manufacturer's specifications. Pressure must not exceed 5 pounds per square inch (psi). The entire tank must be soaped during this period and inspected for bubbling.

(b) All suction piping must be tested while disconnected from the tank, pumps, and dispensing units. The piping must be subjected to an air test with the following specifications:

(1) The piping must be subjected to an air test of at least 50 psi for a period of one hour.

(2) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.

(3) As an alternative to the preceding methods in (1) and (2) above, the piping may be subjected to a vacuum test while connected to tanks, pumps and dispensing units.

(c) Pressurized piping must be tested while connected to tanks and pumps. The piping must be subjected to an air test of at least 50 psi.

(1) Air test secondary piping for a period of one hour, using the test pressure prescribed by the piping manufacturer.

(2) Apply soap solution to all joints and piping surfaces and inspect for leaks.

(d) All piping should be air tested and monitored continuously during the installation.

(e) Tightness (also called precision) testing of the entire system must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation:

(1) A precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions; or

(2) The following alternative to a precision tightness test will be accepted, but only if conducted before the system is put into service:

(A) A certified ATG capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank and

(B) A precision tightness test of the ullage portion of the tank must be completed.

(3) Testing of both interstice and primary tank of a double wall tank as specified by tank manufacturer must be performed.

(4) Primary tank openings, manways and risers must be tested during the installation of all double wall tanks.

(5) The product line(s) must be hydrostatically tested by a NWGLDE approved testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or 1 1/2 times the operating pressure, whichever is greater. ~~The lines must be tested for a minimum of one hour at one and one-half times the operating pressure and tested in accordance with the testing devices third party certification.~~

(6) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's specifications.

(7) If an ATG system with electronic line leak detector(s) is installed, it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3 gph, 0.2 gph and 0.1 gph).

(8) Containment sumps must be tested after all piping and conduit has been installed along with spill prevention equipment (spill buckets) by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(A) Requirements developed by the manufacturer (owners and operators may use this option only if the manufacturer has developed requirements);

(B) Code of practice developed by a nationally recognized association or independent testing laboratory, e.g., PEI RP 1200.

**PART 6. PIPING**

**165:25-2-55.1. Underground storage tank piping materials**

(a) All new or replacement underground pressurized piping must be installed as follows:

(1) Nonmetallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.

(b) All new or replacement suction product piping must meet the requirements of 165:25-3-6.29 as follows:

(1) Nonmetallic;

(2) Double-walled;

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- (3) A tracer locator wire must be installed in all piping trenches; and
- (4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.
- (c) Existing facilities that are replacing the lesser of twenty feet (20') or fifty percent (50%) of underground piping must upgrade pursuant to (a) or (b) of this Section. If a metallic line fails due to structural failure or corrosion, all metallic product lines at the facility must be immediately removed, and cannot be repaired.
- (d) Existing facilities that are making any alteration to a fuel island when concrete removal is required must install dispenser sumps and monitor as pursuant 165:25-3-6.29. Repairs to the island that in no way change the island from its original design is not considered making alterations.
- (e) Existing facilities ~~that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet~~ that are installing new dispensers must install under dispenser containment (UDC) sumps and monitor as pursuant to 165:25-3-6.29. Dispensers will be considered new when both the dispenser and equipment needed to connect the dispenser to a UST system is installed. Check valves, shear valves, unburied risers or flexible connectors and other transitional components are considered equipment that connects a dispenser to a UST system.
- (f) Existing facilities that are replacing underground storage tanks or making repairs at a submersible pump that require excavation of dirt or concrete removal must install tank sumps and they must be monitored pursuant 165:25-3-6.29.
- (g) Existing facilities that are replacing underground storage tanks must replace all single walled piping per (a) or (b) of this section.
- (h) Piping installed as a siphon or to manifold tanks may be single wall non-metallic pipe.
- (i) Ball valves must be installed on new safe suction lines to isolate lines for testing purposes.

### PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

#### 165:25-2-131. Tank removal and closure

- (a) Owners/operators of all underground storage tank systems must notify PSTD at least fourteen (14) days prior to the removal or permanent closure of underground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require a change in the date of removal, PSTD shall be given forty-eight (48) hours notice prior to the new date.
- (b) An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.
- (c) Tanks and lines must be removed upon closure unless a Commission order grants a variance that allows the tanks and/or lines to be closed in place. Tank systems that are removed from the ground must be transported from the site and whether sold to a scrap dealer or disposed of at an acceptable facility, sufficient holes should be made in the tanks to render

the tank(s) unfit for further use. A certificate of destruction must be submitted to PSTD with the UST Closure Report. When scheduling a removal, a site map of where samples are to be taken should be attached to the scheduling form. After closure activities are completed, the excavation must be backfilled no later than seven (7) days upon completion of tank removal. Backfill material shall be earth, gravel, rock, sand or combinations thereof, backfill shall predominate in the finer sizes and present no isolated voids, silt pockets or areas of large stones. Refer to OAC 165:29-3-65 when backfilling. Exceptions to backfilling within seven (7) days may be made when a new tank system is scheduled to be installed in the same tank pit.

(d) The Licensed UST Remover must be on the job site during all removal activities, beginning with break-out of concrete. This includes Licensed UST Remover presence during cutting and removing concrete over any part of the tank system.

(e) Photos must be taken of tank(s), line(s) and soil at removal. In the event there is a hole in tank(s) or line(s), further photographic evidence is required. If tank(s), line(s) or excavated soil show evidence of a release, photos of the apparent release must be taken that indicate the release source.

### SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

#### PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

##### 165:25-3-6.29. Monitoring requirements for piping

Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) All underground piping that conveys regulated substances under pressure must be equipped with a mechanical or electronic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

(C) New installations and facilities replacing a piping system must have double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(D) The underground pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.**

(A) Suction piping installed after July 1, 2008 must be double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

**(3) Methods of release detection for pressurized piping.** Each method of release detection for piping must be done in accordance with the following requirements.

(A) Mechanical line leak detectors and annual line tightness testing.

(i) An annual function test of the operation of the leak detector must be conducted by simulating a leak.

(ii) A hydrostatic line tightness test must be done annually by a certified tester ~~in accordance with this Chapter. The product line(s) must be hydrostatically tested by a NWGLDE approved testing device capable of detecting a leak of 0.10 gallons per hour at one and one-half times the operating pressure and tested in accordance with the testing devices third party certification.~~

(B) Sump sensors with automatic line leak detectors.

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1<sup>st</sup> of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually. Sensors status and alarm history reports must be printed and retained or use an interstitial monitoring form every thirty (30) days for systems installed after July 1, 2008.

(iii) An annual function test of the operation of the leak detector must be conducted by simulating a leak.

(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of a mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of three (3) gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 or 0.1 gallons per hour at least once every thirty (30) days; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is function tested annually by simulating a leak, and if necessary, calibrated.

**(4) Methods of release detection for suction piping.**

(A) Safe Suction Piping. No release detection is required for suction piping installed on or prior to July 1, 2008 if it is designed and constructed to meet (i) through (iv) below:

(i) The below-grade piping operates at less than atmospheric pressure.

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(iii) One (1) check valve is included in each suction line.

(iv) The check valve is located directly below and as close as is practical to the suction pump.

(B) Tri-annual Line Tightness Testing. Underground piping that conveys regulated substances under suction must have a line tightness test conducted at least every three (3) years by a certified tester.

(C) Sump sensors.

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of tri-annual line tightness testing except at marinas where a line tightness test is required by April 1<sup>st</sup> of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained or use an interstitial monitoring form every thirty (30) days for systems installed after July 1, 2008.

**PART 3. RELEASE INVESTIGATION REQUIREMENTS**

**165:25-3-8. Release investigation and confirmation**

(a) This Section applies to the investigation of all reportable releases unless PSTD specifically waives any part of this Section in writing.

(b) Owners/operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within seven (7) days of receipt of notice from PSTD using the following steps or another procedure approved by PSTD:

(1) **System test.** Owners/operators must conduct tightness tests and if applicable, secondary containment testing, that will determine whether a leak exists in the storage tank system or a breach of either wall of the secondary containment has occurred.

(A) Owners/operators must repair, replace or permanently close as defined in OAC 165:25-2-135, the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, delivery piping or the interstice indicates that a release exists.

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(B) Further investigation is not required if the test results for the system, tank, delivery piping and interstice do not indicate that a release exists and chemical concentrations of regulated substances detected in soil or water are not the basis for a suspicion of a release.

(C) Owners/operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank, delivery piping and interstice do not indicate that a release exists but indicate concentrations of regulated substances detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners/operators must measure for the presence of a release where released chemicals are most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately five feet (5') from the outside of the UST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be conducted by an OCC licensed Environmental Consultant.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with Chapter 29 of Commission rules.

(B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(1) Benzene

(A) Native Soils - 0.5 mg/kg

(B) Groundwater - 0.005 mg/l

(2) Toluene

(A) Native Soils - 40.0 mg/kg

(B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene

(A) Native Soils - 15.0 mg/kg

(B) Groundwater - 0.7 mg/l

(4) Xylene

(A) Native Soils - 200.0 mg/kg

(B) Groundwater - 10.0 mg/l

(5) TPH

(A) Native Soils - 50.0 mg/kg

(B) Groundwater - 2.0 mg/l

(C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall may be required to confirm a case at the discretion of PSTD.

(d) Within twenty (20) days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) through (c) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the PSTD, after which corrective action may be required under the provisions of Chapter 29 of Commission rules. Failure to submit reports in a format established by PSTD within the timeframe required may result in an enforcement action.

### SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

#### PART 1. INSPECTIONS

##### 165:25-18-4. Inspection for compliance

(a) All storage tank systems regulated by this Chapter must be physically inspected for compliance with the provisions of this Chapter.

(b) These inspections may include, but not necessarily be limited to, review of:

(1) Records of installation.

(2) Records of repair and retrofit operations including required tightness testing.

(3) Release containment practices.

(4) Release detection practices.

(5) Compliance with prior Commission orders to perform corrective action.

(6) Records of removal and closure.

(7) Records that document compatibility with underground storage tank systems storing regulated substances greater than ten percent (10%) ethanol or twenty percent (20%) biodiesel.

(8) Records of annual operation and maintenance tests on the electronic and mechanical components of release detection equipment.

(9) Site assessments for groundwater or vapor monitoring

(10) Current permit for all tanks located at the facility

(11) Current operator training certificates for all classes of operators.

(c) In addition, PSTD may ~~perform~~ require any other inspection, testing, or monitoring necessary to ensure compliance with this Chapter and to protect property, human health, safety and welfare and the environment.

#### PART 5. PENALTIES

##### 165:25-18-19. Penalties

(a) Pursuant to 17 O.S. § 311(A), any person who violates any of the provisions of this Chapter shall be liable for a fine not to exceed \$10,000.00 for each day that the violation continues.

(b) If the person disagrees with the violation(s) listed in the Formal Enforcement Action, ~~they~~the person may appear ~~at the hearing~~ at the Commission hearing. If found in violation of PSTD rules at the time ~~the~~ Commission order is issued, the person must pay the amount of the fine, as well as an administrative cost of \$250.00.

*[OAR Docket #22-670; filed 7-21-22]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 26. ABOVEGROUND STORAGE TANKS**

*[OAR Docket #22-671]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- Part 3. Scope of Rules
- 165:26-1-21. Overview of applicability [REVOKED]
- Part 5. Standards and Codes
- 165:26-1-31. Codes and standards [AMENDED]
- Part 7. Notification and Reporting Requirements
- 165:26-1-44. Tank closure or change in service [REVOKED]
- Subchapter 2. General Requirements for Aboveground Storage Tank Systems
- Part 1. Design and Installation
- 165:26-2-8. Installation testing [AMENDED]
- Part 21. Removal and Closure of Aboveground Storage Tank Systems
- 165:26-2-212.1 Requirements for returning to service [AMENDED]
- Subchapter 3. Release Prevention and Detection Requirements
- Part 17. Release Investigation
- 165:26-3-171. Release investigation and confirmation [AMENDED]
- Subchapter 4. Inspections, Notices of Violation, Field Citations and Formal Enforcement Actions
- Part 7. Penalties
- 165:26-4-21. Penalties [AMENDED]
- Appendix G. Field Citations Table [REVOKED]
- Appendix G. Field Citations Table [NEW]

**AUTHORITY:**

Corporation Commission; 17 O.S. §§ 306(12), 307, 322, 342, and 347.

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

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on February 18, 2022.

**COMMENT PERIOD:**

December 28, 2021 through February 10, 2022

**PUBLIC HEARING:**

February 10, 2022

**ADOPTION:**

February 10, 2022

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

February 18, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

October 1, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME): ASME B31.3 2020, "Process

Piping." ASME B31.4 2019, "Pipeline Transportation Systems for Liquids and Slurries."

American Petroleum Institute (API) Standards: API Recommended Practice 652, "Linings of Aboveground Petroleum Storage Tank Bottoms," Fifth Edition, 2020. API Publication 1628 SET, "A Guide to the Assessment and Remediation of Underground Petroleum Releases." Third Edition, July 1996. API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction." Fifth Edition, (2014), Addendum 1 (2018), Addendum 2 (2020).

National Fire Protection Association (NFPA) Standards: Standard Number 30, 2021, "Flammable and Combustible Liquids Code." Standard Number 30A, 2021, "Motor Fuel Dispensing Facilities and Repair Garages."

Underwriter's Laboratory (UL) Standards: Standard UL142, 2019, "Steel Aboveground Tanks for Flammable and Combustible Liquids." Standard UL842, 2020, "Valves for Flammable Fluids." Standard UL971, 2011, "Nonmetallic Underground Piping for Flammable Liquids."

Petroleum Equipment Institute: RP 200-19, "Installation of Aboveground Storage Systems" (2019 Edition). RP 1000-14, "Marina Fueling Systems" (2014 Edition). RP 1700-18, "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems" (2018 Edition).

**Incorporating rules:**

165:26-1-31

**Availability:**

8:00 a.m. to 4:30 p.m., Monday through Friday at Jim Thorpe Office Building, Oklahoma Corporation Commission, Petroleum Storage Tank Division, 2101 North Lincoln Boulevard, Oklahoma City, OK 73105, (405) 521-4683.

**GIST/ANALYSIS:**

The adopted rules revoke rules already addressed in statute, update adopted standards to current editions, adopt two new standards, clarify that an air soap test is not required when installing a new aboveground storage tank ("AST") if the interstice vacuum already meets the requirements set by the tank manufacturer, clarify the testing method when an AST is returned to service, and in Appendix G, remove one description used for rules in the violation column.

**CONTACT PERSON:**

Daniel P. Boyle, Attorney, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, P.O. Box 52000, Oklahoma City, OK 73105, 405-521-4749, Daniel.Boyle@occ.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**PART 3. SCOPE OF RULES**

**165:26-1-21. Overview of applicability [REVOKED]**

~~This Chapter will apply to owners, operators, their employees and agents of aboveground storage tanks which PSTD is authorized to regulate pursuant to 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. §§ 301 et seq., which gives PSTD the responsibility of regulating aboveground storage tanks that contain regulated substances, including but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, or the transport truck attached to it, whether above the ground or below. PSTD references the National Fire Protection Association~~

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~~30 and 30A, Standard Number 30, 2018, "Flammable and Combustible Liquids Code" and Standard Number 30A, 2018, "Automotive and Marine Service Station Code". New editions of NFPA 30 and NFPA 30A supersede all previous editions.~~

## PART 5. STANDARDS AND CODES

### 165:26-1-31. Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

- (1) American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME):
  - (A) ASME B31.3-~~2016~~2020, "Process Piping."
  - (B) ASME B31.4 ~~2016~~2019, "Pipeline Transportation Systems for Liquids and Slurries."
- (2) American Petroleum Institute (API) Standards:
  - (A) ~~API RP~~Recommended Practice 652, "~~Lin- ing~~Linings of Aboveground Petroleum Storage Tank Bottoms," ~~Second Edition, April, 2014~~Fifth Edition, 2020.
  - (B) API Publication 1628 SET, "A Guide to the Assessment and Remediation of Underground Petroleum Releases." Third Edition, July 1996.
  - (C) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction,"~~2018.~~ Fifth Edition, (2014), Addendum 1 (2018), Addendum 2 (2020).
- (3) American Society for Testing and Materials (ASTM) Standards: ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
- (4) National Association of Corrosion Engineers (NACE) Standards: NACE SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
- (5) National Fire Protection Association (NFPA) Standards:
  - (A) Standard Number 30, ~~2018~~2021, "Flammable and Combustible Liquids Code."
  - (B) Standard Number 30A, ~~2018~~2021, "Motor Fuel Dispensing Facilities and Repair Garages."
- (6) Underwriter's Laboratory (UL) Standards:
  - (A) Standard UL142, ~~2006~~2019, "Steel Aboveground Tanks for Flammable and Combustible Liquids."
  - (B) Standard UL842, ~~2015~~2020, "Valves for Flammable Fluids."

(C) Standard UL971, 2011, "Nonmetallic Underground Piping for Flammable Liquids."

(7) Petroleum Equipment Institute: ~~Publication PEI/RP 200-13, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling." (2013 Edition)~~

(A) RP 200-19, "Installation of Aboveground Storage Systems" (2019 Edition)

(B) RP 1000-14, "Marina Fueling Systems" (2014 Edition)

(C) RP 1700-18, "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems" (2018 Edition)

(8) "Spill Prevention, Control and Countermeasure Regulation," 40 CFR 112.

(b) The standards set forth in (a) of this Section are also available from the following sources:

- (1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42<sup>nd</sup> Street, New York City, New York, 10036; Telephone: (212) 642-4900.
- (2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2, New York, NY 10016-5990; Telephone (800) 843-2763.
- (3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.
- (4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.
- (5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone (281) 492-0535.
- (6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.
- (7) National Groundwater Association (NGWA), 601 Dempsey Road, Westerville, Ohio 43081; Telephone (614) 898-7791.
- (8) Underwriter's Laboratory (UL), 333 Pflingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.
- (9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

## PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

### 165:26-1-44. Tank closure or change in service [REVOKED]

~~Owners of aboveground storage tank systems must notify PSTD at least fourteen (14) days prior to the removal of the aboveground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require the owner to change the date of removal, the Division should~~

~~be given forty eight (48) hours notice of the new date. An authorized agent of PSTD may be present to observe the removal operations and to inspect the closed tank system and the surrounding environment. Any company that removes aboveground storage tank systems must have an AST Licensee on the jobsite during removal. All UST's currently being used as AST's must be destroyed upon closure. A certificate of destruction must be included with the AST Closure Report and submitted to PSTD within forty five (45) days of closure.~~

**SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS**

**PART 1. DESIGN AND INSTALLATION**

**165:26-2-8. Installation testing**

(a) A tightness test must be completed on tank and lines during construction and before being put into service after the lines have been covered.

(1) All aboveground storage tanks must be tested to manufacturer's instructions. Single-wall tanks shall be air tested, soaped, and inspected for bubbling prior to installation. Double-wall tanks with a vacuum on the interstice: Check vacuum gauge to determine if the vacuum meets all minimum requirements set by the tank manufacturer. An air soap test is not required if the interstice vacuum meets tank manufacturer requirements.

(2) Aboveground product piping shall be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

(3) All suction product piping must be tested while disconnected from the pumps, and dispensing units. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions

(4) All pressurized piping must be tested while connected to tanks, pumps and dispensing units if installed at the time of installation. The piping must be subjected to an air test of at least 50

psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

(5) All piping should be air tested and monitored continuously during the installation.

(6) All underground pressurized and suction piping must have a precision tightness test performed after all

paving over the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must be hydrostatic tested by a NWGLDE approved testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or 1½ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

(7) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's instructions.

(8) If an ATG system with electronic line leak detector(s) is installed it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3gph, 0.2gph, and 0.1gph).

(9) Containment sumps must be tested after all piping and conduit has been installed by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(A) Requirements developed by the manufacturer (owners and operators may use this option only if the manufacturer has developed requirements);

(B) Code of practice developed by a nationally recognized association or independent testing laboratory, e.g., PEI RP 1200.

**PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS**

**165:26-2-212.1. Requirements for returning to service**

(a) All tanks out of service for more than twelve (12) months are required to be ~~pressure and soap~~tightness tested and test results submitted to PSTD before returning to service.

(b) A tightness test must be performed by a certified tester and must be completed on the underground portion of out of service systems if more than twelve (12) months have elapsed since the last tightness test. Any system failure will require either closure or upgrade of the failed portion.

(c) All systems out of service for more than twelve (12) months are required to meet all the requirements of this Chapter.

(d) All underground storage tanks being used as aboveground storage tanks that have been out of service for more than twelve (12) months may not be returned to service.

**SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS**

**PART 17. RELEASE INVESTIGATION**

**165:26-3-171. Release investigation and confirmation**

(a) This Section applies to the investigation of all reportable releases unless PSTD staff specifically waives any part of this Section in writing.

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(b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from PSTD, using the following steps or another procedure approved by PSTD:

(1) **System test.** Owners and/or operators must conduct tightness tests that determine whether a leak exists in the storage tank system.

(A) Owners and/or operators must repair, remove or replace the aboveground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicator chemical concentrations detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners and/or operators must measure for the presence of a release where regulated substances are most likely to be present at the aboveground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the AST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be performed by a PSTD Licensed Environmental Consultant.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the aboveground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with Chapter 29 of Commission rules.

(B) If the test results for the native soil and/or groundwater or the aboveground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(1) Benzene  
(A) Native Soils - 0.5 mg/kg  
(B) Groundwater - 0.005 mg/l

(2) Toluene  
(A) Native Soils - 40.0 mg/kg  
(B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene  
(A) Native Soils - 15.0 mg/kg  
(B) Groundwater - 0.7 mg/l

(4) Xylene  
(A) Native Soils - 200.0 mg/kg  
(B) Groundwater - 10.0 mg/l

(5) TPH  
(A) Native Soils - 50.0 mg/kg  
(B) Groundwater - 2.0 mg/l  
(C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall may be required to confirm a case at the discretion of PSTD.

(d) Within twenty (20) days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) through (c) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by PSTD, after which corrective action may be required under the provisions of Chapter 29 of Commission rules.

### SUBCHAPTER 4. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS AND FORMAL ENFORCEMENT ACTIONS

#### PART 7. PENALTIES

##### 165:26-4-21. Penalties

(a) Pursuant to 17 O.S. § 311(A), any person who violates any of the provisions of this Chapter shall be liable for an administrative penalty or fine not to exceed \$10,000.00 for each day that the violation continues.

(b) If the person disagrees with the violation(s) listed in the Formal Enforcement Action, ~~they~~ the person may appear at the hearing at the Commission hearing. If found in violation of PSTD rules at the time ~~the~~ a Commission order is issued, the person must pay the amount of the fine, as well as an administrative cost of \$250.00.



**APPENDIX G. FINE CITATIONS TABLE [REVOKED]**

**APPENDIX G. FINE CITATIONS TABLE [NEW]**

\*Field Citation Table fine amounts will be used when Field Citations are issued, and may be used as a suggested fine amount in a Formal Enforcement Action, but not to exceed the statutorily set limitations in 17 O.S. § 311(A).

Rule	Violation	Fine Amount
<b>Registration &amp; Permit Requirements</b>		
165:26-1-41	Failure to amend registration within 30 days to reflect changes in tank status	\$500
165:26-1-42	Failure to register tanks within 30 days of bringing the system into service	\$500
165:26-1-42	Operating a tank without a valid permit	\$1,000
165:26-1-47	Failure to amend registration within 30 days to reflect change in ownership	\$500
165:26-1-70	Failure to pay AST permit fees prior to due date	Not > 50% of fee
<b>Notification Requirements</b>		
165:26-1-41	Failure to identify all storage tanks on notification form after third request, including a letter advising tank owner of the penalty	\$1,000
165:26-1-41	Failure to notify PSTD in the required online format and timeframe	\$250
	Second offense	\$500
	Third offense	\$750
165:26-1-42	Failure to notify PSTD prior to AST installation.	\$500
165:26-1-48	Failure to report non-passing tank or line tightness test results.	\$500
165:26-1-57	Failure to provide installation information on notification form after third request, including a letter advising tank owner of the penalty.	\$1,000
165:26-2-210	Failure to notify PSTD prior to AST closure	\$500
165:26-3-77	Failure to report to PSTD within 24 hours of discovering any PSTD regulated substances, conditions or monitoring results that indicate a reportable release may have occurred	\$250
<b>Required Reports</b>		
165:26-1-57	Failure to submit tank closure report within 45 days	\$250

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Rule	Violation	Fine Amount
165:26-3-171	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	\$250
	Second offense for same case or facility number	\$500
	Third offense for same case or facility number	\$750
<b>General Leak Detection Requirements</b>		
165:26-1-55 165:26-1-58	Failure to maintain records of release or leak detection monitoring	\$250
165:26-1-56	Failure to retain records of maintenance and repair of release or leak detection equipment	\$250
165:26-3-19 165:26-3-20	Failure to provide adequate release or leak detection for storage tank system	\$250
	Second Offense	\$500
	Third Offense	\$1,000
165:26-3-20	Failure to monitor tank(s) for releases as required	\$250
165:26-3-20.1	Failure to use approved release or leak monitoring method for tank	\$250
165:26-3-20.1 165:26-3-20.2	Failure to use approved release or leak monitoring method for piping	\$250
<b>Spill &amp; Overfill Prevention</b>		
165:26-1-59	Failure to maintain spill and overfill records	\$250
165:26-2-5.1	Tank owner/operator accepting delivery into an AST that does not have spill or overfill protection	\$1,000
<b>Operation and Maintenance of Corrosion Protection</b>		
165:26-1-58	Failure to provide a Cathodic Protection Design or Suitability Study	\$1,000
165:26-2-40	Tank owner/operator accepting delivery into an AST that does not have a required corrosion protection system	\$1,000
165:26-2-41	Failure to properly operate and maintain corrosion protection system (first offense)	\$150
	Second Offense	\$500
	Third Offense	\$1,000
165:26-2-42	Failure to properly and/or timely test corrosion protection system	\$250
165:26-2-42	Failure to maintain records of cathodic protection system every 60 days	\$250 (per period)
165:26-2-42	Failure to use a qualified cathodic protection tester to inspect corrosion protection system at least once every three years (first offense)	\$500
	Second Offense	\$1,000

<b>Rule</b>	<b>Violation</b>	<b>Fine Amount</b>
165:26-2-42	Failure to test cathodic protection system within 6 months installation or repair	\$250
<b>Release Investigation &amp; Confirmation</b>		
165:26-3-171	Failure to conduct tightness test(s) to investigate suspected leak(s)	\$250
165:26-3-171	Failure to investigate a spill or a spill resulting from overfill over 25 gallons	\$100
165:26-3-171	Failure to clean up a spill or a spill resulting from overfill over 25 gallons	\$500
<b>Temporary Closure</b>		
165:26-2-212	Failure to provide adequate release detection as required in a temporarily closed storage tank system	\$250
165:26-2-212(2)	Failure to properly vent a temporarily closed storage tank system as required	\$250
165:26-2-212(3)	Failure to secure all storage tank-related equipment for temporary closure.	\$250
<b>Permanent Closure</b>		
165:26-2-213	Failure to use a PSTD licensed AST Licensee	\$500
165:26-2-214	Failure to measure for the presence of a release before a permanent closure	\$500
165:26-2-214(d)	Failure to use a PSTD licensed Environmental Consultant	\$500
<b>Repairs</b>		
165:26-1-56	Failure to maintain repair records for operating life of storage tank	\$250
165:26-2-1.1 165:26-2-191	Failure to use a PSTD licensed AST Licensee to install or repair person to repair	\$500
	Second offense or thereafter by owner (per owner, not per facility)	\$1000
165:26-2-8	Failure to perform tightness test on tank system after installation or repair	\$300
<b>Other</b>		
165:15-7-1	Misrepresentation of octane level per location	\$500
	Second Offense within a year	\$1000
	Third Offense – Closure & Hearing	\$5000
165:26-1-31	Failure to follow standard codes for installation	\$500

## Permanent Final Adoptions

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Rule	Violation	Fine Amount
<b>Administrative Penalty</b>	Any owner or operator of a storage tank who fails to comply with any order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to a fine in an amount as allowed by law.	

*[OAR Docket #22-671; filed 7-21-22]*

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**TITLE 175. STATE BOARD OF  
COSMETOLOGY AND BARBERING  
CHAPTER 1. ADMINISTRATIVE  
OPERATIONS**

[OAR Docket #22-636]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
175:1-1-2 [AMENDED]  
Subchapter 5. Rules of Practice  
175:1-5-4 [AMENDED]  
175:1-5-15 [AMENDED]

**AUTHORITY:**

59 O.S. § 199.3 and § 199.7; State Board of Cosmetology and Barbering

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

November 19, 2021

**COMMENT PERIOD:**

December 15, 2021 to March 7, 2022

**PUBLIC HEARING:**

March 7, 2022

**ADOPTION:**

March 14, 2022

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

March 23, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The rule changes concerning threading are needed to settle ongoing litigation against the State and memorialize a compromise acceptable to all parties. *See Ittiq v. Oklahoma State Bd. of Cosmetology and Barbering*, CV-2021-242 (Okla. County Dist. Ct. filed Feb. 3, 2021). The changes decrease the regulatory burden on threaders, by establishing a threading technician license. The threading rule changes specific to this rule filing, create definitions for "threading" and "threading technician." In addition, the rules for sanctions and fines have been updated to prevent someone from obtaining or renewing a license without first paying any outstanding citations that have been upheld by the Board.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**175:1-1-2. Definitions**

The terms and phrases defined in the Oklahoma Cosmetology Act shall have the same meaning when applied in the rules which are herein set forth in this Chapter to substantiate

the Cosmetology and Barbering Law. The following rules and terms shall have the same meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Cosmetology and Barbering Act.

"Apprentice" means a person who is engaged in learning the practice of cosmetology or barbering in a cosmetology or barber establishment. [Title 59 O.S. Section 199.1]

"Assigned practice or clinic work" means demonstrations and lesson practice in which services may be performed on patron, student or model on clinic floor in classroom for the benefit of student observation, notes, etc. The practice or demonstration shall be assigned by or with approval of the instructor in charge and materials/supplies used for the education demonstration are the responsibility of the school.

"Barber/Barber Stylist" means any person who engages in the practice of barbering.

"Barber Establishment" means an Establishment or place of business where one or more persons are engaged in the practice of barbering but shall not include barber schools or colleges.

"Barbering" means any one or combination of practices done upon the upper part of the human body for cosmetic purposes and when done for payment either directly or indirectly for the general public, constitutes the practice of barbering, to wit: shaving or trimming the beard or cutting the hair; giving facial or scalp massages or treatment with oils, creams, lotions or other preparations, either by hand or mechanical appliances; singeing, shampooing or applying lighteners or color to the hair, applying hair tonics; applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body, but excluding the application of makeup; and removing superfluous hair from the face, neck or upper part of the body.

"Barber school or college" means an Establishment operated for the purpose of teaching barbering.

"Board" means the State Board of Cosmetology and Barbering.

"Clean" means removal of surface and/or visible debris by using soap, detergent or chemical "cleaner", followed by a clean water rinse.

"Clock hour" means a measure of time determined to be sixty (60) minutes that a student spends in an educational or training activity.

"Contact time" means the amount of moist contact time required for a disinfectant to be effective against the pathogens on the label. Clean items or surfaces must remain completely immersed or visibly wet (sprays, wipes) for full contact time to be effective.

"Cosmetic studio" means any place or premises where demonstrators give demonstrations, without compensation, for the purpose only of advertising and selling cosmetics.

"Cosmetician" means a person licensed by the Board to perform patron services limited to hair arranging and application of make-up, including, but not limited to using hairstyling tools and products. Services must be performed in a licensed establishment.

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**"Cosmetologist"** means any person who engages in, follows or performs any of the practices of cosmetology.

**"Cosmetology"** means any one or combination of practices generally and usually performed by and known as the occupation of beauticians, beauty culturists, beauty operators, cosmeticians, cosmetologists, or hairdressers, or any other person holding himself or herself out as practicing cosmetology by whatever designation and within the meaning of the Oklahoma Cosmetology and Barbering Act and in or upon whatever place or premises. Cosmetology shall include, but not limited to, any one or combination of the following practices: bleaching, cleansing, curling, cutting, coloring, dressing, removing, singeing, styling, waving or similar work upon the hair of any person by any means, whether with hands or mechanical or electrical apparatus or appliances. Nothing in the Oklahoma Cosmetology and Barbering Act shall be construed to prohibit the use of hands or mechanical or electrical apparatus or appliances for the non-permanent removal of hair from the human body without puncturing of the skin or the use of stimulating exercising, beautifying or similarly working the scalp, face, neck, arms or the manicuring of the nails of any person, exclusive of such of the foregoing practice as are within the scope of practice of the healing arts as provided by law.

**"Cosmetology Establishment"** means an Establishment or place of business where one or more persons are engaged in the practice of cosmetology but shall not include barber schools and colleges.

**"Cosmetology or Barber school"** means a school or department that is approved by the Board to conduct and provide cosmetology and/or barber training and education in Oklahoma. It means any place or premises where instruction in any or all the practices of cosmetology and or barbering are given. Any person, firm, institution or corporation, who holds himself, firm, institution or corporation who shall teach and train any other person or persons in any of the practices of cosmetology and/or barbering is hereby declared to be engaged in operating a cosmetology and/or barbering school, and shall be operating cosmetology and/or barbering school, and shall be subject to the provisions of the Oklahoma Cosmetology and Barbering Act. Licensed cosmetology and barbering schools may offer education to secondary and post secondary students in this state.

**"Credit hour"** means a unit of value awarded to a student for successful completion of a program, course or course lesson and credit to clock ratio as recognized by the United States Department of Education or a regional or national accreditation entity recognized by the United States Department of Education.

**"Demonstrator"** means a person who is not licensed in this state as a Cosmetologist, Barber or Instructor and who demonstrates any cosmetic preparation. The person shall be required to obtain a Demonstrator license from the Board before making any such demonstrations.

**"Disinfect"** means the process of making a non-porous item safe for use. Requires the use of a chemical intended to kill or denature a bacteria, virus or fungus. Proper disinfection requires adherence to manufacturers label with regard to

concentration and contact time. UV light is not acceptable disinfection.

**"Dry sanitizer"** means a clean, dry, closed (covered) cabinet, drawer, chest or other type container used in a cosmetology/barber establishment or school for the purpose of storing clean, dry disinfected combs, brushes and other implements without fumigant after the articles have been cleaned and disinfected in a wet sanitizer (or by other approved method in the case of metal implements).

**"Emergency circumstances"** means a serious injury, illness or death in the immediate family of applicant for registration, examination, licensure, etc.

**"Establishment"** means a place or premises, cosmetology salon or barber shop, cosmetic or other specialty shop/salon where any one or combination of cosmetology or barbering practices are performed on the public except that the term shall not include a cosmetology or barbering school.

**"Esthetician/Facialist/Facial Operator"** means a person licensed by the Board to perform skin care, make-up and hair removal services to the public provided the hair removal services shall not include electrolysis.

**"Facial/Esthetics Instructor"** means a person licensed by the Board as a qualified teacher of the art and science of skin care theory and practice.

**"Hairbraiding Technician"** means a person certified by the Board to perform hairbraiding, hairweaving techniques, and hair extensions in a licensed cosmetology establishment.

**"Hybrid learning"** means courses that combine face-to-face classroom instruction with on-line computer based learning.

**"Manicurist/Nail Technician"** means a person licensed by the Board to perform nail care services to the public in a place licensed by the Board where nail care/manicuring/pedicuring services may be performed.

**"Manicurist/Nail Technician Instructor"** means a person licensed by the Board as a qualified teacher of the art and science of nail technology theory and practice.

**"Master Barber Instructor"** means a person licensed by the Board who gives instruction in barbering or any practices thereof and trained in a school after November 1, 2014.

**"Master Cosmetology Instructor"** means a person licensed by the Board as a qualified teacher of cosmetology theory and practice.

**"Mobile Establishment"** means a specialty Establishment that is operated in a self-contained, self-supporting, enclosed mobile unit.

**"Non-Porous"** means material that has no pores and does not allow for liquids to be absorbed or pass through. Common non-porous materials include glass, metal and plastic.

**"Post secondary institution"** means a school licensed to teach students according to prescribed curriculum as in Title 59 O.S. § 199.7 (F) 1 Board rule 175:10-3-34(a).

**"Porous"** means material that has minute spaces or holes through which liquid or air may pass.

**"Secondary institution"** means a school licensed to teach students eligible for credit for 500 hours of related subjects as prescribed in Title 59 O.S. § 199.7 (f)2 and in Board rule 175:10-3-34(b).

"Sterilize" means the eradication of all microbial life through the use of heat, pressure, steam or chemical sterilant.

"Student" means a person who is enrolled in a cosmetology or barber school and appropriately registered with the Board for the purpose of being educated and trained in the practice of cosmetology or barbering.

"Threading" means a form of temporary hair removal by using thread that is twisted and rolled along the surface of the skin, entwining the hair in the thread and lifting it out of the follicle.

"Threading Technician" means a person with a limited specialty cosmetology license issued by the Board to perform threading in a licensed establishment.

"Unassigned practice or clinic work" means a personal service of cosmetology or barber practice (on student on another etc.); which shall be elective practice which one student chooses to perform or to receive (routine shampoo not included); and in which school supplies may be used (i.e. bleach/color/perm, etc.); and which practice and service is not assigned by the instructor and/or performed for the benefit of a group of students who have been scheduled to observe as a classroom or clinic demonstration; and for which a reasonable cost for supplies used in the practice may be charged to the student receiving the unassigned services.

"Wet sanitizer" means a large, pan-type covered container which shall contain a liquid chemical disinfecting agent used in a school or Establishment for the purpose of disinfecting combs, brushes and other non-metal tools and implements used in training and practice.

SUBCHAPTER 5. RULES OF PRACTICE

175:1-5-4. Board sanctions

(a) If it is proven that violations of the Oklahoma Cosmetology Act and Board rules and regulations have occurred, sanctions available to the Board are:

- (1) Revocation of license; or
(2) Suspension of license; or
(3) Refusal to issue license; or
(4) Placing licensee on probation.
(5) Fines for citations for violations of the Cosmetology and Barber Act or Board rules as in Rule 175:1-5-15. Citations may be issued by the Executive Director or an inspector on forms approved by the Board. The citation shall be served personally or by certified mail return receipt requested. The citation shall state the nature of the violation and the fine assessed. The person or establishment receiving the citation may pay the fine or contest it in a hearing before the Board conducted in accordance with the Oklahoma Administrative Procedures Act. The citation shall state the date and location of the hearing. The citation shall serve as sufficient notice of the hearing. If the fine is paid prior to the date of the hearing then the matter shall be deemed final and not subject to further review. Failure to pay a citation that has been upheld by the Board shall constitute a continued or flagrant violation of these rules, such that the Board may refuse to renew

the related license or issue an original license where the individual cited is unlicensed unless and until the citation is paid.

(b) Such matters of violation may be referred to the District Attorney or to the Attorney General for injunctive or other relief.

175:1-5-15. Schedule of fines

(a) The fine schedule for citations or final orders issued by the Board for violations of the Cosmetology and Barber Act or rules promulgated there under shall be subject to the fines as follows providing each day a violation continues shall be a separate offense:

- (1) Engaging in cosmetology or barbering in any of the licensed practices without a license
(A) First: \$250
(B) Subsequent: \$500
(2) Employing an unlicensed person to perform cosmetology or barbering (per person):
(A) First: \$250
(B) Subsequent: \$500
(3) Failure to comply with a specific provision of the Cosmetology and Barber Act or rules by an individual not licensed under the Act:
(A) First: \$250
(B) Subsequent: \$500
(4) Operate a cosmetology or barber school without first obtaining a license from the Board:
(A) First: \$250
(B) Subsequent: \$500
(5) Failure to comply with sanitation standards established by the Board.
(A) First violation: Warning
(B) Second violation of the same standard: \$50

(b) If the citation is paid prior to hearing date, the citation is still considered part of the licensee's permanent record but dismissed. After three fines, the Board may consider suspension or revocation of license, or other disciplinary action, after full Board hearing.

(c) Failure to pay a citation that has been upheld by the Board shall constitute a continued or flagrant violation of these rules, such that the Board may refuse to renew the related license or issue an original license where the individual cited is unlicensed unless and until the citation is paid.

[OAR Docket #22-636; filed 7-18-22]

TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #22-637]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Rules of Practice

# Permanent Final Adoptions

175:1-5-13 [AMENDED]

**AUTHORITY:**

59 O.S., § 199.3 and 199.7; State Board of Cosmetology and Barbering  
75 O.S., § 305; Oklahoma Administrative Procedures Act

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

December 14, 2021

**COMMENT PERIOD:**

January 18, 2022 to February 17, 2022

**PUBLIC HEARING:**

March 7, 2022

**ADOPTION:**

March 14, 2022

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

March 23, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule amendments are designed to comply with Title 75, Section 305 of the Oklahoma Statutes, which requires agencies to promulgate rules allowing for "interested persons" to submit petitions requesting rule promulgation, amendment, or repeal. The amended rule sets forth the requirements for the rulemaking petition, as well as the Board's policy for responding to such petitions.

**CONTACT PERSON:**

John Funderburk, Oklahoma, State Board of Cosmetology and Barbering.  
Tel. 405-522-7616, John.Funderburk@cosmo.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 5. RULES OF PRACTICE

### 175:1-5-13. Agency rulemaking

(a) All rules shall be promulgated and submitted for gubernatorial and legislative approval in accordance with the Administrative Procedures Act and rules established for agency rulemaking. Adopted rules shall be filed with the Office of Administrative Rules in compliance with the applicable rule and law.

(b) Any person may request the Board to adopt, amend or repeal a rule in this chapter. The request shall be made in writing and shall include the follow:

- (1) the name, address and telephone number of the person making the request;
- (2) the name, address and telephone number of the agency or organization the person represents, if any;
- (3) an explanation for the reason for requesting the adoption, amendment, or repeal of a rule;
- (4) the number used to identify the rule if the request is to amend or repeal an existing rule; and

(5) the proposed language if the request is to amend an existing rule or adopt a new rule

(c) It is the Board's policy to respond to request made in accordance with subsection (b) within 30 calendar days.

[OAR Docket #22-637; filed 7-18-22]

## TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 10. LICENSURE OF COSMETOLOGISTS, BARBERS, SCHOOLS AND RELATED ESTABLISHMENTS

[OAR Docket #22-638]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Licensure of Schools

Part 5. Equipment and Curriculum Requirements

175:10-3-37 [AMENDED]

175:10-3-46 [AMENDED]

Subchapter 7. Sanitation, Disinfection and Safety Standards for Establishments and schools

175:10-7-18 [AMENDED]

175:10-7-28 [AMENDED]

Subchapter 9. Licensure of Cosmetologists, Barbers and Related occupations

Part 3. State Board Examination

175:10-9-32 [AMENDED]

175:10-9-33 [AMENDED]

175:10-9-36 [AMENDED]

175:10-9-37 [NEW]

Part 5. Demonstrators; Cosmetic Studios; Trade Shows; Guest Artists; Wig Dressing; Other Practices of Cosmetology and Barbering

175:10-9-55 [AMENDED]

**AUTHORITY:**

59 O.S., § 199.3 and 199.7; State Board of Cosmetology and Barbering

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

November 19, 2021

**COMMENT PERIOD:**

December 15, 2021 to January 23, 2022

**PUBLIC HEARING:**

March 7, 2022

**ADOPTION:**

March 14, 2022

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

March 23, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The new rule and rule changes concerning threading are needed to settle ongoing litigation against the State and memorialize a compromise acceptable to all parties. *See Ittiq v. Oklahoma State Bd. of Cosmetology and Barbering*, CV-2021-242 (Okla. County Dist. Ct. filed Feb. 3, 2021). The threading rule changes specific to this rule filing decrease the regulatory burden on threaders, by establishing a threading technician license and setting the requirements therefor. The rule changes also clarify that: both written and practical examinations are required of licensees and certificate holders; lapses



in licensure will not be credited as work experience for master cosmetology instructors and master barber instructors; licensees are prohibited from putting tools or materials in their mouths or other mucous membranes; only professional products can be used for educational purposes; and hairbraiding technicians must complete a closed-book safety and sanitation examination, in order to obtain certification.

**CONTACT PERSON:**

John Funderburk, Oklahoma, State Board of Cosmetology and Barbering.  
Tel. 405-522-7616, John.Funderburk@cosmo.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. LICENSURE OF SCHOOLS**

**PART 5. EQUIPMENT AND CURRICULUM REQUIREMENTS**

**175:10-3-37. Master cosmetology instructor course entrance and curriculum requirements**

- (a) **Entrance requirements.**
  - (1) Student registered in the master cosmetology instructor course must:
    - (A) hold an Oklahoma Cosmetologist license or be registered for the Basic Cosmetologist examination. If any person enrolled prior to examination shall fail to appear or fail to pass Basic Cosmetologist, he/she shall immediately cease master cosmetology instructor training until such time as he shall again register for and show proof of achieving a passing score on the cosmetologist examination.
    - (B) hold a High School Diploma or General Education Development Certificate
    - (C) file registration application for master cosmetology instructor course including fee of \$5.00 with the Board.
  - (2) Each student shall be provided with an approved textbook or manual before commencing training.
- (b) **Curriculum requirements.** The 1000 clock hour Master Cosmetology Instructor course curriculum is prescribed as follow: (Note: Hours may be measured in credits and ratio as recognized by the United States Department of Education or by a regional or national accreditation entity recognized by the United States Department of Education.)
  - (1) Orientation 60 clock hours
  - (2) Introduction to teaching and curriculum 120 clock hours
  - (3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing and administering and grading examinations 330 clock hours
  - (4) Cosmetology Law, cosmetology school management and record keeping 90 clock hours
  - (5) Teaching - assisting in the classroom and clinic 150 clock hours

- (6) Practice teaching - classroom and clinic 250 clock hours
- (7) Total hours 1000 hours
- (c) Master Cosmetology Instructor students are assigned practice in classes actually scheduled by the school. Practice teaching by master cosmetology instructor students will be in the Basic, Manicurist/Nail Technician, Cosmetician, and/or Esthetician/Facialist/Facial Operator course. Practice teaching must be supervised by a licensed master cosmetology instructor.
- (d) A master cosmetology instructor student is not allowed to perform patron services. The master cosmetology instructor student shall only demonstrate for or otherwise assist student under his supervision.
- (e) **Minimum training supplies.** A master cosmetology instructor shall be provided the following:
  - (1) textbook or manual
  - (2) workbook
  - (3) Board Statute, Rules and Regulations Book.
- (f) Any lapse in licensure will not be credited towards work experience as outlined in 199.7(n)(1)(2)

**175:10-3-46. Master Barber instructor course, entrance and curriculum requirements**

- (a) **Entrance requirements.**
  - (1) Student registered in the barber instructor course must:
    - (A) hold an Oklahoma Barber license or be registered for the Barber examination. If any person enrolled prior to examination shall fail to appear or fail to pass the Barber exam, he/she shall immediately cease instructor training until such time as he shall again register for and show proof of achieving a passing score on the barber examination.
    - (B) hold a High School Diploma or General Education Development Certificate.
    - (C) file registration application for barber instructor course including fee of \$5.00 with the Board.
  - (2) Each student shall be provided with an approved textbook or manual before commencing training.
- (b) **Curriculum requirements.** The 1000 clock hour Master Barber Instructor course curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio as recognized by the United States Department of Education or by a regional or national accreditation entity recognized by the United States Department of Education.)
  - (1) Orientation 60 clock hours
  - (2) Introduction to teaching and curriculum 120 clock hours
  - (3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing and administering and grading examinations 330 clock hours
  - (4) Board rules, regulations and statutes, school management and record keeping 90 clock hours
  - (5) Teaching - assisting in the classroom and clinic 150 clock hours
  - (6) Practice teaching - classroom and clinic 250 clock hours

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- (7) Total hours 1000 clock hours
- (c) Master Barber Instructor students are assigned practice in classes actually scheduled by the school. Practice teaching by barber instructor students will be in the barber course. Practice teaching must be supervised by a licensed Barber instructor.
- (d) A master barber instructor student is not allowed to perform patron services. The master barber instructor student shall only demonstrate for or otherwise assist students under his supervision.
- (e) Minimum student training supplies. A master barber instructor minimum kit equipment is required as follows:
  - (1) textbook or manual
  - (2) workbook
  - (3) Board Statute, Rules and Regulations Book
- (f) Any lapse in licensure will not be credited towards work experience as outlined in 199.7(n)(1)(2)

## SUBCHAPTER 7. SANITATION, DISINFECTION AND SAFETY STANDARDS FOR ESTABLISHMENTS AND SCHOOLS

### 175:10-7-18. Disinfection precautions before and after each patron service

- (a) The hands of the licensee, student or apprentice shall be washed and the integrity of the skin carefully examined before and after performing a service for any person. If any abrasion, cut, scratch, open lesion or infection is evidenced, protective or disposable gloves shall be worn while performing services in order to reduce risk or transmission of infectious bacteria/virus/disease.
- (b) All licensees are required to wash hands prior to any service, following eating, smoking or the use of the restroom. Hands must be washed with running water and soap and then dried with a disposable towel. Antibacterial soap is not recommended.
- (c) Styptic pencils and lump alum are prohibited. Liquid or powdered astringent shall be used to check bleeding and shall be applied with separate, clean, sterile gauze or cotton which shall be disposed of immediately after use.
- (d) Any licensee who can reasonably anticipate, as the result of performing any cosmetology or barbering service, contact with blood and other potentially infectious material, shall use universal precautions, and shall wear protective disposable gloves while performing the services. Gloves shall not be re-used and shall be disposed of properly immediately after use.
- (e) Implements and tools that cannot be disinfected must be disposed of after one use.
- (f) At no time should any tool or material that will be in contact with the patron be placed in the mouth or other mucus membranes of the licensee.

### 175:10-7-28. Product use, knowledge and procedures

- (a) All licensees shall be held individually liable for product knowledge. Maximum precautionary, safe, disinfection and

appropriate preparation prior to service and application, as required by product label, shall be practiced at all times upon the public. For products that contain a requirement for a patch test, licensees may provide a consumer advisory that is clearly visible in the area of the application, or provide the client with a printed fact sheet with information that describes the label requirement for the patch test, or utilize a signed statement of release of liability regarding the patch test warning.

- (b) All products removed from a multi-use container such as a tub or tube, must be done so in a manner that the remaining product in the container is not contaminated.
- (c) Products such as pomades, waxed and gels must be removed with wither a single use spatula that is disposed of immediately after a single use or a disinfected multi use spatula. Fingers may not be used to remove product.
- (d) Powders and lotions may be dispensed from a shaker or pump ensuring that the licensee's or client's hands never touch the dispensing portion of the container.
- (e) Only professional products allowed in schools to meet educational requirements

## SUBCHAPTER 9. LICENSURE OF COSMETOLOGISTS, BARBERS AND RELATED OCCUPATIONS

### PART 3. STATE BOARD EXAMINATION

#### 175:10-9-32. Failure to pass examination; re-taking failed portion; review hours

- (a) An applicant who fails either the practical portion or the written theory examination may be rescheduled for examination by submitting the appropriate registration application and fee to the Board. Applicant shall be scheduled to take only that portion of the examination failed.
- (b) An applicant who has failed either the practical practice or the written theory examination four (4) times must first show proof of having completed 120 clock or equivalent number of credit review hours in an approved Oklahoma school before being eligible to re-register for the practical and written examination.

#### 175:10-9-33. Review of hours required after failure to timely register for examination or to apply for license

- (a) After one (1) year and up to five (5) years from date of the completion of a course of training, any applicant who fails to register for the examination or who fails to apply for a license after notice to apply, shall be required to show proof of no less than the following review hours in an approved Oklahoma cosmetology or barber school before being eligible to sit for the practical and written examination (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education):

- (1) Cosmetologist 120 clock hours

- (2) Manicurist 40 clock hours
  - (3) Facialist 40 clock hours
  - (4) Cosmetician 40 clock hours
  - (5) Barber 120 clock hours
  - (6) Master Cosmetologist Instructor 120 clock hours
  - (7) Manicurist/Nail Technician Instructor 120 clock hours
  - (8) Facial/Esthetics Instructor 120 clock hours
  - (9) Master Barber Instructor 120 clock hours
- (b) After five (5) years from date of the completion of a course or training, any applicant who shall fail to register for the examination or who shall fail to apply for a license after notice to apply, shall be required to first register for the appropriate practical and written examination. He shall be required to show proof of a specific number of current review hours, the same as is required for the renewal of an expired license which is expired for the same length of time as required in Title 59 O.S. Section 199.10 (D).

**175:10-9-36. Examination for hairbraiding technician certification**

In order to be eligible for a hairbraiding technician certificate, a person shall:

- (1) be at least seventeen (17) years of age;
- (2) submit a completed application;
- (3) submit 2" X 2" current full-face photograph of the applicant as requested on registration form. A current photograph is one taken within the last six months. No embellishments or filters of any kind that alter the face of the applicant;
- (4) complete a closed book safety and sanitation examination with a passing score of at least seventy-five percent (75%).
- (5) An applicant declaring a disability as defined by the American Disabilities Act (ADA) shall submit a written statement when requesting an oral examination or other special testing accommodation.

**175:10-9-37. Examination for threading technician license**

In order to be eligible for a threading technician license, a person shall:

- (1) be at least seventeen (17) years of age or a high school diploma or General Education Development Certificate.;
- (2) submit a completed application;
- (3) submit 2" X 2" current full-face photograph of the applicant as requested on registration form. A current photograph is one taken within the last six months. No embellishments or filters of any kind that alter the face of the applicant;
- (4) complete a closed book safety and sanitation examination with a passing score of at least seventy-five percent (75%).
- (5) An applicant declaring a disability as defined by the American Disabilities Act (ADA) shall submit a written

statement when requesting an oral examination or other special testing accommodation

**PART 5. DEMONSTRATORS; COSMETIC STUDIOS; TRADE SHOWS; GUEST ARTISTS; WIG DRESSING; OTHER PRACTICES OF COSMETOLOGY AND BARBERING**

- 175:10-9-55. Practices of cosmetology and barbering**
- (a) Only licensed Facialist/Esthetician, Cosmetologist, Threading Technician or Barber may perform threading.
  - (b) Only a licensed Facialist/Esthetician or Cosmetologist may perform eyelash extensions.
  - (c) Only licensed ~~Facialist/Estheticians~~Facialist/Esthetician, ~~Cosmetologists~~Cosmetologist or ~~Barbers~~Barber may perform body sugaring.

[OAR Docket #22-638; filed 7-18-22]

**TITLE 185. CRIME VICTIMS COMPENSATION BOARD  
CHAPTER 10. CRIME VICTIMS COMPESATIONCOMPENSATION PROGRAM**

[OAR Docket #22-388]

- RULEMAKING ACTION:**  
PERMANENT final adoption
- RULES:**  
185:10-1-4 [AMENDED]  
185:10-1-8 [AMENDED]
- AUTHORITY:**  
Oklahoma District Attorneys Council; Oklahoma Crime Victims Compensation Act, 21 O.S. 142.1
- SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 3, 2021
- COMMENT PERIOD:**  
January 3, 2022 through February 3, 2022
- PUBLIC HEARING:**  
No public hearing was scheduled
- ADOPTION:**  
March 8, 2022
- SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 8, 2022
- APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022
- FINAL ADOPTION:**  
June 21, 2022
- EFFECTIVE:**  
September 11, 2022
- SUPERSEDED EMERGENCY ACTIONS:**  
n/a
- INCORPORATIONS BY REFERENCE:**  
n/a
- GIST/ANALYSIS:**  
These changes will keep the Rules up with any legislative changes that may occur in the future. It will also eliminate the need to make rule changes as regular as we have had to.
- CONTACT PERSON:**  
Tina Harman, 405-264-5006

## Permanent Final Adoptions

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **185:10-1-4. Eligibility criteria for compensation**

(a) The criminally injurious conduct leading to the filing of the compensation claim must have occurred in Oklahoma. Beginning November 1, 1989, residents of Oklahoma who are victimized in states without eligible crime victims compensation programs, as such term is defined in the federal Victims of Crime Act of 1984, Public Law 98-473, will be eligible claimants under the Oklahoma Crime Victims Compensation Act. Proof of conviction of the person causing the criminally injurious injury to the victim is conclusive evidence that the crime was committed.

(b) The incident must have occurred on or after October 19, 1981.

(c) The incident must have been reported to law enforcement officials within 72 hours, unless the Board finds there was good cause, as permitted by 21 O.S. 142.10, or would have been reported within the period of time except for good cause shown as defined by statute. In claims wherein the victim is under the age of eighteen (18), the crime resulting in the claim must have been reported to authorities within seventy two (72) hours after disclosure to a responsible adult except for good cause shown. This shall also apply to persons who are diagnosed as mentally handicapped.

(d) The claim for compensation must be filed in the Oklahoma City office within one (1) year of the incident date or death of the victim. The Board or administrator may, at its discretion, waive this requirement in certain situations, as permitted by 21 O.S. § 142.10, if the Board finds there was good cause for failure to file the claim within one (1) year. If the victim is mentally handicapped, or is a child under eighteen (18) years of age, the Board may use the date the criminal incident was disclosed to a responsible adult when establishing whether or not the claim was timely filed.

(e) The victim must have suffered physical or psychological injury or death as a result of the criminal action of another.

(f) The claimant and/or victim must have cooperated with law enforcement officials, the District Attorney's office, and the Crime Victims Compensation Board during entire investigation. In the event the Board or administrator finds the claimant and/or victim was not cooperative, a claim may be denied, withdrawn, or reduced.

(g) The net amount of compensation requested in the claim must not have been paid by a collateral source, however, the Board or administrator shall not require any claimant to seek or accept any collateral source contribution, unless the claimant was receiving such benefits prior to the occurrence giving rise to the claim under the provisions of the Act.

(h) The claimant and/or victim was not the offender or an accomplice of the offender, and, the compensation award shall not be used to benefit the offender or accomplice. Number one through four below were developed in accordance with Section 7129 of the Victims of Crime Act.

(1) In determining whether a compensation award can be made without unjustly enriching an offender, the Board or administrator shall evaluate whether the victim has reported the crime and is cooperating with the criminal justice system in the investigation and prosecution of the crime, and whether the victim will do what is possible to prevent access by the offender to compensation paid to the victim. If the victim is cooperating fully, and if the offender will not benefit from or have access to a substantial portion of any cash award made by the Board to the victim, then the award shall not be declined on the basis that the award would benefit the offender.

(2) A determination that the award would benefit the offender shall not be based solely on the presence of the offender in the household at the time of the award. The presence of the offender in the household is only one factor to be considered in determining that he/she would benefit from the award; a determination of whether the offender will benefit from an award shall be made in each case, based on the totality of the circumstances.

(3) In determining whether an award would benefit the offender, the Board must weigh whether the benefit to the offender is substantial or in-consequential. Factors to be considered include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his/her living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award may not be reduced or denied.

(4) Collateral resources available to the victim from the offender shall be examined. Collateral resources may include court-ordered restitution, an offending spouse's medical insurance, or other resources of the offender available to cover the victim's expenses. In evaluating the availability of collateral resources, a determination shall be made first as to whether the offender has a legal responsibility to pay; second, whether the offender has resources to pay; and third, whether payment is likely. The victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery. If the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impedes payment of insurance that may be available to cover a spouse's or child's expenses, the Board will attempt to meet the victim's needs to the extent allowed, and may pursue whatever actions are appropriate to seek reimbursement from the offender. The Board is subrogated to any restitution the offender may owe the victim if an award is made. Donations from individuals on behalf of the victim are not collateral sources, as defined in 21 O.S. 142.3.

(i) The claim must not have been the result of negligent maintenance or use of a motor vehicle by the offender, unless the vehicle was operated or driven by the offender while under the influence of alcohol or any other intoxicating substance or,

unless the vehicle was operated or driven by the offender with the intent to injure or kill the victim or in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person or the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact.

(j) ~~Compensation otherwise payable to a claimant shall be diminished by the Board or Administrator in certain circumstances, pursuant to 21 O.S. 142.10, or denied to the extent or degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the Board or administrator. Compensation may also be diminished or denied if the Board or administrator finds that the victim was legally intoxicated or under the influence of a controlled dangerous substance (CDS), and the victim's intoxicated state contributed to his/her injury or death. Any person over the age of 18, injured while voluntarily riding with a legally intoxicated driver or someone under the influence of a CDS, may be found to have contributed to his/her injury or death, provided there is evidence that the victim knew of the driver's intoxicated state prior to the injury.~~

(k) ~~the~~The offense involving one or more vehicles results in the death of the victim due to the reckless disregard for the safety of others by the offender. As used in this division, reckless disregard for the safety of others is defined as the omission to do something which a reasonably careful person would do, or the lack of the usual and ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

**185:10-1-8. Application review procedure**

(a) A victim, dependent of a victim, or person legally acting on behalf of the victim, must ~~complete first secure a copy of~~ the Official Victims Compensation Application Claim Form. In the event assistance is needed by the claimant in completing the ~~form~~ information, such assistance will be provided by the District Attorneys Office in the district where the crime occurred ~~victim witness coordinator~~, or by the staff located at the District Attorneys Council in Oklahoma City.

(b) A claim form must be completed, signed and received at the District Attorneys Council within one (1) year of the incident date, date of disclosure in child sexual assault cases, or death of the victim. If the Board or administrator finds good cause for failure to file the claim within one (1) year, the filing period may be extended.

(c) The victims compensation staff shall log the claim form as being received and forward it to the victim-witness coordinator in the district where the crime occurred. Upon completion, the claim shall be returned to the Oklahoma City office for processing.

(d) The Board, ~~victim witness coordinators and~~ District Attorney's Office Victim - Witness Staff, and the Victims Compensation Board staff, herein referred to as "staff" ~~staff~~ have the authority to conduct investigations and or request

any additional information from the victim and/or claimant, the investigating law enforcement agency, medical personnel and/or facilities, witnesses, employers and others as may be deemed necessary for the proper review and verification of the claim.

(e) The staff shall make a thorough analysis of the claim once it is completed and received from the victim-witness coordinator.

(f) ~~Once the claim has been reviewed by staff review and summary completed~~, the claim will be placed on the next appropriate Board or administrative docket for consideration. A claim must be reviewed by staff at least fifteen (15) calendar days prior to a regularly scheduled Board meeting for consideration at that meeting. Those claims not reviewed fifteen (15) calendar days prior to a regular meeting shall be considered at the next scheduled Board meeting. New claims will be reviewed by the staff in the order in which the completed claims are received in the Oklahoma City office. Claims reviewed by the Administrator, pursuant to 21 O.S. 142.5 are not required to be placed on a separate internal docket for review and are not subject to the fifteen (15) calendar rule.

(g) Agendas and supporting material shall be sent to the Board no less than ten (10) calendar days in advance of the Board meeting.

(h) Notification of Board meetings shall be filed with the Secretary of State in accordance with the Open Meeting Law. Copies of the meeting agendas giving date, location and time of meetings shall be posted in conspicuous places on the premises of the building wherein the Board meetings will be held and/or at offices of the Crime Victims Compensation Board. Claimants whose compensation claims are to be considered by the Board will be sent notification of the meeting no less than fourteen (14) calendar days in advance and will have the opportunity to appear and be heard, and to offer evidence and argument on any issue relevant to the claim. Claims reviewed by the administrator, pursuant to 21 O.S. 142.5, are not required to be placed on a separate internal docket for review and are not subject to the fourteen (14) calendar day rule. There is no opportunity to appear to be heard on any issue relevant to acclaim decided administratively, unless the claimant wishes to file an appeal. All appeals are heard by the Board, pursuant to 185:10-1-10.

(i) Once a decision is made by the Board, the claimant shall be sent notification of the decision within twenty (20) days.

[OAR Docket #22-388; filed 6-22-22]

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 1. STATE BOARD OF EDUCATION**

[OAR Docket #22-653]

**RULEMAKING ACTION:**  
PERMANENT final adoption

# Permanent Final Adoptions

## RULES:

Subchapter 5. Due Process  
210:1-5-6. Suspension and/or revocation of certificates [AMENDED]

## AUTHORITY:

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

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

January 25, 2022

## COMMENT PERIOD:

February 15, 2022 through March 17, 2022

## PUBLIC HEARING:

March 17, 2021

## ADOPTION:

March 24, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 31, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The purpose of the rule is to clarify existing administrative rule provisions governing the suspension and/or revocation of an educator certificate. Examples include the presentation of evidence in an individual proceeding for revocation, changing that from the State Board of Education legal counsel to the State Department of Education legal counsel.

## CONTACT PERSON:

Brad Clark, General Counsel, Office of Legal Services, Monday through Friday 8:00 a.m. to 5:00 p.m., at Oklahoma State Department of Education, 5<sup>th</sup> Floor, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, OK 73105, Telephone number: (405) 522-3274 E-mail: Brad.Clark@sde.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 5. DUE PROCESS

### 210:1-5-6. Suspension and/or revocation of certificates

(a) **Application.** The rules and regulations of the State Board of Education governing the suspension and revocation of certificates apply to the following: superintendents of schools, principals, supervisors, librarians, school nurses, school bus drivers, visiting teachers, classroom teachers and other personnel performing instructional, administrative and supervisory services in the public schools. Except as otherwise specifically provided by law, the issuance or denial of a new certificate shall not be considered an individual proceeding subject to the process and procedures set forth in this Section.

(b) **Grounds for revocation.** A certificate shall be revoked only for:

(1) A willful violation of a rule or regulation of the State Board of Education, or the United States Department of Education; or

(2) A willful violation of any federal or state law, or  
(3) A conviction for any of the offenses or bases for revocation set forth in 70 O.S. §§ 3-104 or 3-104.1; or  
(4) For other proper cause, including but not limited to violation of the Standards of Performance and Conduct for Teachers at Chapter 20, Subchapter 29 of this Title.

(c) **Duty to report and refrain from illegal activity.** It shall be a violation of State Board of Education rules and regulations for any person holding a valid teaching certificate to be aware of and fail to report, or knowingly participate in any activity deemed illegal while participating in job-related activities of student organizations, athletic and scholastic competitions, fairs, stock shows, field trips, or any other activity related to the instructional program. Willful violation of (b)(1)-(b)(4) of this regulation or the failure to report or knowing participation in any activity deemed illegal may result in recommendation of revocation or suspension of the certificate, or such other penalty, as may be determined after due process by the State Board of Education.

(d) **Right to hearing on revocation of an existing certificate.** No certificate shall be revoked until the holder of the certificate has been provided with a copy of the application to revoke the certificate and opportunity for a hearing provided by the State Board of Education in accordance with the following procedures:

(1) **Filing of application to revoke a certificate.** An individual proceeding to revoke a certificate shall be initiated by filing an application to revoke a certificate. An application to revoke a certificate shall be filed with the Secretary of the State Board of Education by the State Department of Education. The application shall name the holder of the certificate to be revoked as the respondent in the action, and shall contain:

(A) A statement of the legal authority and jurisdiction under which the applicant seeks to initiate the proceeding and the hearing is to be held;

(B) A reference to each particular statute and/or rule involved;

(C) A short and plain statement of the allegations asserted; and

(D) A statement of the facts alleged to give rise to the revocation. The application shall also state a proposed effective date for the relief requested (e.g., revocation), which shall be set no earlier than forty-five (45) calendar days from the date the complaint is filed.

(2) **Informal disposition.** Informal disposition of the application to revoke a certificate may be made by stipulation, agreed settlement, consent order, or default, unless otherwise precluded by law. Written notice signed by each party or counsel representatives shall be delivered to the Secretary of the State Board of Education prior to the time of the scheduled hearing.

(3) **Notice to parties.** Within three (3) business days of the date the application to revoke a certificate is filed with the Secretary of the State Board of Education, the Secretary shall send a copy of the application along with a notice of intent to revoke the certificate by certified or registered

mail, restricted delivery with return receipt requested, to the holder of the certificate. It is the responsibility of every certificate holder to notify the State Department of Education upon a change of address, and the mailing address on file for each certificate holder shall be presumed to be a proper address for service of notice. Service of notice of intent to revoke a certificate shall be deemed complete upon certified or registered mailing of the notice to the certificate holder's last known address. In addition to the requirements of notice set forth at 75 O.S. § 309, the notice of intent to revoke the certificate shall include:

(A) A statement setting forth the proposed effective date of revocation of the certificate; and

(B) A statement advising the holder that if the holder fails to appear for a hearing and contest the revocation, the allegations in the application for revocation will be deemed confessed and the Board may issue a final order to effect revocation of the certificate as of the effective date proposed in the notice.

(e) **Emergency Action.** Pursuant to 75 O.S. § 314, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

(f) **Hearing procedures.**

(1) **Hearing and appointment of a hearing officer.** Upon filing the application with the Secretary of the Board, the Secretary shall set the matter for a hearing. The Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board.

(2) **Attendance of witnesses.** If the complainant, or the holder of the certificate wants any person to attend the hearing and testify as a witness, he/she shall notify the Chairperson of the State Board of Education at least fifteen (15) calendar days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson ~~shall may cause the Secretary to thereupon issue a subpoena, by mail, to the desired witness to attend in accordance with the provisions of this subsection.~~ Every person testifying at a revocation hearing shall be sworn to tell the truth. The parties to the hearing shall exchange witness and exhibit lists and any exhibits no later than fifteen (15) calendar days prior to the hearing.

(3) **Subpoenas.** Subpoenas and/or subpoenas duces tecum may be issued in accordance with the following procedures:

(A) **Issuance of subpoenas.** Subpoenas for the attendance of witnesses, or for the production of books, records, papers, objects, or other evidence of any

kind as may be necessary and proper for the purposes of a proceeding shall be issued by the Secretary of the Board at the direction of the Chairperson; upon order of the Board; or at the request of any party to a proceeding before the Board. The signature of the Secretary shall be sufficient authentication for any subpoena.

(B) **Service of subpoenas.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.

(C) **Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash a subpoena or subpoenas duces tecum issued in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. ~~A subpoena or subpoenas duces tecum may not be quashed if any party objects.~~ A motion to quash shall be filed within seven days of the issuance of the subpoena.

(D) **Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of any individual proceeding or other authorized action of the Board, ~~the Board as soon as convenient shall consider the issue of enforcement of the subpoena. By resolution, it may direct application to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony.~~ the party seeking enforcement may file an appropriate motion for enforcement with the State Board or hearing officer, as applicable, or may seek enforcement in a court of competent jurisdiction. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(E) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred.

(4) **Right to representation.** Any party to the individual proceeding shall at all times have the right to representation by counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented.

(5) **Legal counsel to State Board of Education.** The attorney for the State ~~Department Board~~ of Education shall present evidence to the Board, in furtherance of the

## Permanent Final Adoptions

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application. ~~Should the Board not have legal counsel, and if deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide counsel to the Board to rule on~~ regarding questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General the Chairperson of the Board will rule on the evidence, competency of the witness and other questions of law.

(6) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(7) **Notice of facts.** The Board shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(8) **Presentation and consideration of evidence.** The State Board of Education shall consider only evidence upon the specific cause contained in the notice, and evidence will be heard for such cause. Questions of the admissibility of evidence shall be governed by the provisions of 75 O.S. § 310.

(9) **Order of procedure.** The order of procedure at the hearing shall be as follows:

(A) Opening statements by legal counsel of both parties;

(B) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;

(C) Closing arguments by legal counsel of both parties; and

(D) Submission of case to the Board or the hearing officer for decision.

(10) **Continuance of a hearing.** The Board or hearing officer may continue or adjourn the hearing at any time for a specified time by notice or motion. The Board or hearing officer may grant a continuance upon motion of a party for good cause shown if written request is filed and served on all parties of record and filed with the Secretary of the

Board at least five (5) days prior to the date set for hearing.

A respondent may be granted only one (1) continuance.

(g) **Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.

(1) **Decision.** Decisions shall be issued in accordance with the following procedures:

(A) After hearing all evidence, and all witnesses, the State Board of Education or, if applicable, the hearing officer, shall render its decision on whether the certificate shall be revoked.

(B) The decision of the State Board of Education or a hearing officer presiding at the hearing shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the holder of the certificate.

(C) If the holder of the certificate fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (f)(10) of this Section, demonstration of good cause, the Board or hearing officer shall hold the party in default and issue an order sustaining the allegations set forth in the application.

(D) If the applicant fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in subsection (f)(10) of this Section, demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the application shall be dismissed.

(2) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(3) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (h) of this Section, the final agency order shall represent exhaustion of all administrative remedies by the State Board of Education. All final orders in an individual proceeding shall be in writing and made a part of the record. Final



orders are to be issued by the Chairperson of the Board or the presiding officer for transmission to the parties by the Secretary of the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and the party's attorney of record, if any.

(4) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(h) **Record of hearing.**

(1) The record of a hearing shall be set forth in such form and detail as the Chairperson or the Board may direct. The hearing may also be fully transcribed, and shall be placed on file in the Secretary's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense. In accordance with the requirements of 75 O.S. § 309, the record shall include:

- (A) All pleadings, motions, and intermediate rulings;
- (B) Evidence received or considered during the individual proceeding;
- (C) A statement of matters officially noticed;
- (D) Questions and offers of proof, objections, and rulings thereon;
- (E) Proposed findings and exceptions;
- (F) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and
- (G) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(2) The State Board Secretary shall electronically record the proceedings, with the exception of the executive sessions. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. If the requesting party should desire the tape(s) to be transcribed by a court reporter, the requesting party shall bear the expense.

(i) **Rights to a rehearing, reopening or reconsideration.**

(1) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the State Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based

upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

(2) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

- (A) Newly discovered or newly available evidence, relevant to the issues;
- (B) Need for additional evidence adequately to develop the facts essential to proper decision;
- (C) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;
- (D) Need for further consideration of the issues and the evidence in the public interest; or
- (E) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds which justify the rehearing shall be set forth by the State Board of Education which grants the order, or in the petition of the individual making the request for the hearing.

(3) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(4) Rehearing, reopening, or reconsideration of the matter may be heard by the State Board of Education or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(j) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.

(k) **Applications for reinstatement of a certificate.** After five (5) years of the effective date of revocation of a certificate, or after expungement of the offense(s) that formed the basis for the revocation by a court of competent jurisdiction, an individual may apply for reinstatement of the certificate in accordance with the application procedures set forth by the State Department of Education.

(l) **Notifications of suspension or revocation.** Upon the suspension or revocation of an individual's certificate, the State ~~Board~~ Department of Education shall notify the superintendent (or board of education, if the superintendent is the holder of the suspended or revoked certificate) of the district that most recently employed the certified individual based upon the individual's certification number and the personnel reports currently on file with the State Department of Education. In addition, the State Board shall to the extent possible notify the superintendents of all Oklahoma school districts. Notification shall also be provided to the extent possible to certification officers in each state or territory of the United States.

[OAR Docket #22-653; filed 7-20-22]

# Permanent Final Adoptions

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

[OAR Docket #22-654]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
210:10-1-18. Transfers [AMENDED]

### AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 8-101.2

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

January 25, 2022

### COMMENT PERIOD:

February 15, 2022 through March 17, 2022

### PUBLIC HEARING:

March 17, 2022

### ADOPTION:

March 24, 2022

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

March 31, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions  
210:10-1-18. Transfers [AMENDED]  
210:10-1-18.1 Right to appeal transfer application upon denial [NEW]

#### Gubernatorial approval:

March 7, 2022

#### Register publication:

39 OK Reg 661

#### Docket number:

22-232

#### INCORPORATIONS BY REFERENCE:

n/a

#### GIST/ANALYSIS:

Senate Bill 783 (2021), amending the Education Open Transfer Act (the "Act") was signed into law and became effective on March 31, 2021, and is codified at 70 O.S. § 8-101.2, 8-103, 8-103.1, and 8-113. This law requires the State Board of Education to promulgate rules to establish an appeals process for denied student transfer applications for the revised school transfer policy that took effect on January 1, 2022. The Act also requires amendments to existing administrative rule concerning student transfers. As such, the approved administrative rule establishes a process for appeals of student transfer requests that have been denied, and also updates provisions of the existing administrative rule to be consistent with the amendments to the Act.

#### CONTACT PERSON:

Brad Clark, General Counsel, Office of Legal Services, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma State Department of Education, 5<sup>th</sup> Floor, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-3274 E-mail: Brad.Clark@sde.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 210:10-1-18. Transfers

(a) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Student of a Deployed Parent"** means a student who is the dependent child of a member of the active uniformed military services of the United States on full-time active duty status and for whom Oklahoma is the home of record or a student who is the dependent children of a member of the military reserve on active duty orders and for whom Oklahoma is the home of record.

(2) **"Open Transfer(s)"** means the transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue.

(3) **"Parent"** means the parent, legal guardian, foster parent, or person having custody of the student seeking a transfer, whose residence is used to determine the residence of the student in accordance with the provisions of 70 O.S. § 1-113(A)(1). For purposes of the Individuals with Disabilities Education Act at 20 U.S.C. § 1400 et seq. (IDEA), the definition of Parent set forth in 34 C.F.R. § 300.30 shall supersede the definition of Parent set forth in this subsection.

(4) **"Receiving School District"** means the school district to which the student is seeking to be transferred.

(5) **"Resident School District"** means the school district in which the Parent, guardian, or person having custody of the student resides, as defined in 70 O.S. § 1-113(A)(1).

(ab) **Governing statutes.** ~~All district transfers~~ Open Transfers shall be governed by the Oklahoma Education Open Transfer Act, 70 O.S. § 8-101.1, et seq. In addition, the following types of transfers are governed by the following provisions of law:

(1) **Students with disabilities.** Transfers made for the purpose of providing a free appropriate public education (FAPE) to special education students shall be governed by 70 O.S. § 18-110 and 70 O.S. § 13-101, et seq. Such transfers shall not be considered ~~open transfers~~ Open Transfers subject to the provisions of (d) of this Section.

(2) **Gifted and talented students.** Transfers made for the purpose of providing gifted child educational programs shall be governed by 70 O.S. § 1210.307. Such transfers shall not be subject to the provisions of (d) of this Section.

(3) **Parents who are teachers.** Transfers for the purpose of allowing a student to attend school in a district in which the student's ~~parent~~ Parent is employed as a teacher shall be governed by 70 O.S. § 8-113. Such transfers shall not be subject to the provisions of (d) of this Section.

(4) **Deployed parents** ~~Parents.~~ Transfers for the purpose of allowing a student of a deployed ~~parent~~ Parent to attend school in a ~~transfer district~~ districts in which a family member resides shall be governed by 70 O.S. § 8-103.1.

Such transfers shall not be subject to the provisions of (d) of this Section.

(5) **Emergency transfers.** Transfers on the basis of an emergency shall be governed by 70 O.S. § 8-104.

(65) **Sibling transfers.** Transfers of siblings pursuant to the provisions of 70 O.S. § 8-101.2 shall be processed as ~~open transfers~~ Open Transfers in accordance with the requirements of 70 O.S. § 8-103 and (d) of this Section. Transfers of multiple birth siblings shall be processed as ~~open transfers~~ Open Transfers, provided that if multiple birth siblings are transferred to the same receiving district, a ~~parent~~ Parent or guardian may request placement at the same school and/or in the same classroom under the provisions of 70 O.S. § ~~25-154(A)~~ 24-154(A).

(bc) **District policies and procedures pertaining to student transfers.** ~~Local school districts shall adopt policies and procedures governing the transfer of students who do not reside in the school district. Such policies and procedures shall comply with all provisions of state law governing student transfers, including the statutes pertaining to transfers referenced in (a) of this Section. If permitted by statute and the provisions of this Section, the receiving school board of education may refuse the transfer request of a student who does not reside in the district in accordance with the provisions of the adopted policy, but may not accept or deny a request based on statutorily prohibited factors as set forth in 70 O.S. § 8-103.1.~~

(1) Each school district board of education shall adopt a policy to determine the number of transfer students the school district has the capacity to accept in each grade level for each school site within a school district pursuant to 70 O.S. § 8-101.2. The policy may include the acts and reasons outlined in 70 O.S. § 24-101.3 and a history of absences as bases for denial of a transfer. "History of absences" means ten or more absences in one semester that are not excused for the reasons provided for in 70 O.S. § 10-105(B) or due to illness. The school district's policy shall not include any other basis for denying a transfer request.

(2) The transfer of a student from the district in which the student resides to another school district furnishing instruction in the grade the student is entitled to pursue shall be granted at any time in the year unless:

(A) The number of transfers exceeds the capacity of a grade level for each school site within a school district; or

(B) The transfer would violate the school's adopted transfer policy with respect to acts and reasons outlined in 70 O.S. § 24-101.3 or a student's history of absences.

(3) A school may not accept or deny a request based on the statutorily prohibited factors set forth in 70 O.S. § 8-103.1.

(4) If the grade a student is entitled to pursue is not offered in the district where the student resides, a transfer request shall be automatically approved by the Receiving School District. 70 O.S. § 8-101.

(e) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Active duty orders"** means temporary transfer of a member of the active uniformed military services of the United States to a location that is outside of the service member's school district of residence in compliance with official orders in support of combat, contingency operation or a natural disaster that requires the use of orders for more than thirty (30) consecutive days.

(2) **"Deployed parent"** means a "parent" under the definition set forth in this subsection who is a member of the active uniformed military services of the United States, is on full time active duty status or active duty orders, and for whom Oklahoma is the home of record.

(3) **"Emergency transfer"** means the transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue which, for specific reasons, must be requested and approved outside of the statutory timeframe required for open transfers.

(4) **"IEP service agreement"** means an Individualized Education Program agreement between school districts to provide special education and related services to an eligible student with a disability solely for the purpose of providing the student a free appropriate public education (FAPE). An IEP Service Agreement is the resourcing of special education and related services (i.e., all services required to be provided to a student pursuant to the provisions of the IDEA) to a school district that provides special education and related services to an eligible student with a disability on behalf of the resident district.

(5) **"Open transfer"** means the transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue. An open transfer may be requested and approved only during the statutory timeframe.

(6) **"Parent"** means the parent, legal guardian, or person having custody of the student seeking a transfer, whose residence is used to determine the residence of the student in accordance with the provisions of 70 O.S. § 1-113(A)(1). For purposes of the Individuals with Disabilities Act at 20 U.S.C. § 1400 et seq. (IDEA), the definition of parent set forth in 34 C.F.R. § 300.30 shall supersede the definition of parent set forth in this subsection.

(7) **"Receiving school district"** means the school district in which the student is seeking to be transferred.

(8) **"Resident school district"** means the school district in which the parent, guardian, or person having custody of the student resides, as defined in 70 O.S. § 1-113(A)(1).

(9) **"Teacher"** means any person employed in a position that meets the definition of a teacher set forth in 70 O.S. § 1-116.

(d) **Open Transfers.** Transfers to another district may be approved by the board of education of the receiving school district. If the grade a student is entitled to pursue is not offered

## Permanent Final Adoptions

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in the district where the student resides, the transfer shall be automatically approved by the receiving school district. No student may be granted more than one (1) open transfer per school year, but may qualify for additional transfers pursuant to emergency provisions of the Education Open Transfers Act or a legal change in residence. All open transfers Open Transfers must be initiated and processed in accordance with the following procedures:

(1) The ~~parent~~Parent of the student must complete an application form specified by the State Board of Education. ~~The application must be filed with the receiving school district by May 31 of the school year preceding the school year for which the transfer is being requested.~~

(2) No later than May 31 of the same year in which the transfer is requested, the receiving school district shall notify the resident school district that an application for transfer has been filed by the student enrolled in the resident school district. The application shall be filed with the superintendent of the Receiving School District for transfers to school districts in this state and with the State Board of Education for transfers to school districts in another state.

(3) No later than July 15 of the same year in which the transfer is requested, the board of education of the receiving school district shall approve or deny the application and notify the parents of the student of the decision in writing. The Receiving School District shall approve or deny the application and notify the Parent of the student of the decision in writing within 30 days of receiving an application. Applications shall be processed in the order in which they are received. If the number of student transfer applications exceeds the capacity of a Receiving School District, the district shall select transfer students in the order in which the district received the student transfer applications.

(4) No later than August 1 of the same year in which the transfer is requested ~~If the transfer application is accepted, the parents~~Parents of the student shall provide the receiving school district ~~with~~ written notification that the student will be enrolling in the ~~receiving school district~~Receiving School District ~~within ten days of receiving notice that the transfer application was approved.~~ Failure of the ~~parents~~Parents to notify may result in the loss of the student's right to enroll in the school district for that year only. If a ~~parent~~Parent fails to notify the ~~receiving school district~~Receiving School District that a student will be enrolling, and the ~~receiving school district~~Receiving School District chooses to cancel the transfer, the ~~receiving school district~~Receiving School District shall provide a written notice of the cancellation to the ~~parent~~Parent ~~and the resident district of the student~~ immediately upon cancellation.

(5) ~~Approval of the resident district is not required for an open transfer. If a transfer application is denied, the Parents of the student may appeal the Receiving School Districts decisions as set forth in 70 O.S. § 8-101.2(E) and Okla. Admin. Code § 210:10-1-18.1.~~

(6) ~~Transfer requests submitted outside of the statutory time frame for open transfers will not be considered timely~~

and must meet the statutory criteria of an emergency transfer to be approved. If the Receiving School District receives notice that the transferring student will be enrolling in the Receiving School District, the Receiving School District shall notify the Resident School District within ten (10) days.

(7) ~~Notwithstanding the provisions of this subsection, a student shall be allowed to transfer to a school district in which a parent of the student is employed as a teacher upon the approval of the receiving district only, without regard to the deadlines or other limitations on number of transfers set forth in this subsection. Approval of the resident district is not required for an Open Transfer.~~

(e) **Emergency and mandatory transfers.** In addition to the open transfer process, students may be transferred on an emergency basis as prescribed by statute or on the basis of a transfer mandated by statute. Emergency transfers must be initiated and processed in accordance with the following procedures:

(1) The parents of the student may make an application for an emergency transfer. The application for emergency transfer must be filed with the superintendent of the receiving school district.

(2) The superintendent of the receiving school district or his/her designee responsible for approving transfers may approve the emergency transfer only upon an adequate showing of emergency, and subject to approval of the State Board of Education.

(3) Only the superintendent of the receiving school district or his/her designee responsible for approving transfers may submit an application for emergency transfer to the State Board of Education for approval. The superintendent or designee of the receiving school district shall collect documentation from the student desiring to be transferred, and may be required to submit such documentation to the State Board of Education through the State Department of Education's student information system. In submitting an application for an emergency transfer to the State Board of Education, the superintendent or designee verifies that he/she has personally reviewed and approved the application and has a good faith belief that the student qualifies for an emergency transfer.

(A) If the superintendent has appointed a designee to review and approve emergency transfers, the school district shall notify the State Department of Education of the appointment.

(B) Resident district approval of an emergency transfer is only required if an emergency transfer is being requested on the basis of concurrence of both the resident district and the receiving school district pursuant to 70 O.S. § 8-104(5). Emergency transfer approval requests submitted to the State Board of Education on the basis of 70 O.S. § 8-104(5) shall be reviewed by the resident district within ten (10) business days of submission. Failure of the resident district to take action to approve or deny the emergency transfer request within ten (10) business days shall result in an automatic approval.

(4) Emergency transfers shall be approved only in the following circumstances:

- (A) The destruction or partial destruction of a school building;
- (B) Inability of the resident district to offer the subject a student desires to pursue, if the student becomes a legal resident of the school district after February 1 of the school year immediately prior to the school year for which the student is seeking to transfer.
- (C) A catastrophic medical problem of a student, which for purposes of this section shall mean an acute or chronic serious illness, disease, disorder or injury which has a permanently detrimental effect on the body's system or renders the risk unusually hazardous;
- (D) Total failure of transportation facilities;
- (E) With the concurrence of both the resident and receiving school districts;
- (F) The unavailability of remote or on site Internet-based instruction by course title in the district of residence for a student identified as a result of the district's intake and screening procedures as in need of drop-out recovery or alternative education services, provided such student was enrolled at any time in a public school in this state during the previous three (3) school years;
- (G) The unavailability of a specialized deaf education program for a student who is deaf or hearing impaired. This transfer may be processed and handled as an IEP Service Agreement. Such determination shall be made in coordination with the parents of the requesting student; or
- (H) When a student has been the victim of harassment, intimidation and bullying as defined in 70 O.S. § 24-100.3, and the receiving school district has verified that:
  - (i) The student has been the victim of harassment, intimidation or bullying; and
  - (ii) The resident school district was notified of the incident or incidents prior to the filing of the application for transfer;

(5) Obtaining an emergency transfer by submitting an application that includes false or inaccurate information, or obtaining an emergency transfer on behalf of a student who remains in the resident school district may result in a reduction of a district's funding allocation based on Average Daily Attendance (ADA) and/or Average Daily Membership (ADM).

(6) If a student to whom an emergency transfer has been granted fails to report and/or enroll in the receiving school district, the superintendent of the receiving school district shall notify the State Board of Education and the resident school district within ten (10) business days.

(f) **Deployed parents**~~Parent~~. Student transfers under the Deployed Parents School Act of 2012 at 70 O.S. § 8-103.1 shall be processed in accordance with the following provisions:

(1) The parents of the student may make an application for a deployed parent transfer. The application for a deployed parent transfer must be filed with the superintendent of the receiving school district. If a transfer request is submitted on behalf of a student of a deployed parent in accordance with 70 O.S. § 1-103.1 and this administrative rule, the application shall be approved regardless of the capacity of the receiving school district.

(2) The superintendent of the receiving school district or his/her designee responsible for approving transfers may approve deployed parent transfer only upon an adequate showing of the following: Local school district boards of education shall adopt a policy for transfer requests by students of a deployed parent.

- (A) The parent meets the definition of a deployed parent set forth in (c) of this Section;
- (B) The parent has a current, valid identification card issued by the United States Department of Defense; and
- (C) The student will be residing with a relative of the student who lives in the receiving school district or who will be living in the receiving school district within six (6) months of the date that the application for transfer is filed.

(3) Transfers pursuant to the provisions of this subsection shall not be subject to the open transfer deadlines set forth in (d) of this Section. Transfer requests on behalf of Students of a Deployed Parent shall be processed in accordance with 70 O.S. § 8-103.1.

(g) ~~Cancellation~~**Termination of transfers**~~Transfers~~. Transfers may only be cancelled in accordance with the following provisions:—A transfer may not be terminated in the middle of a school year. At the end of each school year, a school district may deny continued transfer of the student for the reasons outlined in 70 O.S. § 8-101.2(B)(1)-(2). Written notice of a receiving school district's intention to deny continued transfer of a student shall be given to the parent of a student by no later than July 15 and shall comply with Okla. Admin. Code § 210:10-1-18.1(b)(3). A receiving school district's denial of a continued transfer may be appealed in compliance with § 210:10-1-18.1.

(1) Open transfers may not be cancelled unless the receiving school district has notified the resident school district and parent of the students of its intent to cancel the transfer by July 15 prior to the school year for which the school district seeks to cancel the transfer.

(2) Emergency transfers may only be cancelled with the concurrence of the board of the receiving school district and the parent of the student. A school district must notify the parent in writing of the date and time for which the transfer will be considered for cancellation by the school board and the written notice must be received by the parent no less than five (5) business days prior to the date of a regularly scheduled meeting at which the proposed cancellation will be considered, or no less than forty eight (48) hours prior to the meeting at which the proposed cancellation will be considered if it is a special meeting.

# Permanent Final Adoptions

## (hg) Reporting transfers.

(1) On or before September 1 of each school year January 1, April 1, July 1, and October 1, the Superintendent of each receiving school district Receiving School District shall file a statement with the State Board of Education and each resident school district Resident School District showing the name and grade level of each student granted a transfer to the receiving school district Receiving School District and the Resident School District for each student.

(2) On or before January 1, April 1, July 1, and October 1, each school district board of education shall submit to the State Department of Education the number of student transfers approved and denied and whether each denial was based on capacity, acts and reasons outlined in Section 24-101.3 of this title or a history of absences as provided for in paragraph 2 of subsection B of this section. The State Department of Education shall publish the data on its website and make the data available to the Office of Educational Quality and Accountability.

[OAR Docket #22-654; filed 7-20-22]

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

[OAR Docket #22-655]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

210:10-1-18.1. Right to Appeal Transfer Application Upon Denial [NEW]

### AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 8-101.2

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

January 25, 2022

### COMMENT PERIOD:

February 15, 2022 through March 17, 2022

### PUBLIC HEARING:

March 17, 2022

### ADOPTION:

March 24, 2022

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

March 31, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions

210:10-1-18.1. Right to appeal transfer application upon denial [NEW]

#### Gubernatorial approval:

March 7, 2022

#### Register publication:

39 OK Reg 661

#### Docket number:

22-232

#### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Senate Bill 783 (2021), amending the Education Open Transfer Act (the "Act") was signed into law and became effective on March 31, 2021, and is codified at 70 O.S. § 8-101.2. This law requires the State Board of Education to promulgate rules to establish an appeals process for denied student transfer applications for the revised school transfer policy that took effect on January 1, 2022. As such, the approved administrative rule establishes a process for appeals of student transfer requests that have been denied.

### CONTACT PERSON:

Brad Clark, General Counsel, Office of Legal Services, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma State Department of Education, 5<sup>th</sup> Floor, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-3274 E-mail: Brad.Clark@sde.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 210:10-1-18.1. Right to Appeal Transfer Application Upon Denial

(a) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Student"** means a student who is requesting transfer from the district in which the student resides to another school district furnishing instruction in the grade the student is entitled to pursue.

(2) **"Parent"** means the parent, legal guardian, foster parent, or person having custody of the student seeking a transfer, whose residence is used to determine the residence of the student in accordance with the provisions of 70 O.S. § 1-113(A)(1). For purposes of the Individuals with Disabilities Education Act at 20 U.S.C. § 1400 et seq. (IDEA), the definition of Parent set forth in 34 C.F.R. § 300.30 shall supersede the definition of Parent set forth in this subsection.

(3) **"Receiving School District"** means a school district to which a Student is seeking to be transferred.

(4) **"Receiving Board of Education"** means the board of education for the Receiving School District.

### (b) **Appeal to Receiving Board of Education.**

(1) If a transfer request made pursuant to 70 O.S. § 8-101.2 is denied by the Receiving School District, the Parent of the Student may appeal the denial to the Receiving Board of Education.

(2) The Receiving School District shall provide notification of denial in writing to the Parent of the Student by either hand-delivery, by U.S. Mail or electronic mail.

(3) The notification shall include:

(A) An explanation, including but not limited to any citation to the statute, regulation, or school district policy under which the denial was made;

(B) A copy of the policy adopted by the Receiving Board of Education for determining the number of

transfer students the school district has capacity to accept;

(C) A copy of this administrative rule; and

(D) The date upon which the appeal will be due.

(4) A Parent of a Student shall have ten days to appeal a Receiving School District's denial of a transfer request. If notification of denial is hand-delivered, the appeal period shall begin the day after the notification is delivered. If notification of denial is sent by U.S. Mail, the appeal period shall begin three days after the notification is mailed. If notification of denial is sent by electronic mail, the appeal period shall begin the day after the notification is sent. The Receiving Board of Education shall accept an otherwise untimely appeal if a Parent of a Student can establish that they did not receive actual notice of the notification denying the transfer request, and the appeal was submitted within ten days after the Parent of the Student received actual notice.

(c) **Submission of Appeal to Receiving Board of Education.** An appeal to a Receiving Board of Education shall be submitted to the office of the superintendent of the Receiving School District. The appeal shall include the following:

(1) The name, address and telephone number of the Parent of the Student and the Student for whom the appeal is being taken;

(2) The date the Receiving School District gave notice denying the transfer request;

(3) The basis for appealing the decision of the Receiving School District; and

(4) The name, address and telephone number of the appellant's legal representative, if applicable. Any documentary evidence should be attached to the petition for appeal.

(d) **Timeframe for Hearing of Appeal to Receiving Board of Education.** The Receiving Board of Education shall consider the appeal at its next regularly scheduled board meeting.

(e) **Appeal to State Board of Education.**

(1) If the Receiving Board of Education denies an appeal of a request to transfer made pursuant to 70 O.S. § 8-101.2, the Parent of the Student may appeal the denial to the State Board of Education.

(2) The Receiving Board of Education shall provide notification of denial in writing to the Parent of the Student by either hand-delivery, by U.S. Mail or by electronic mail.

(3) The notification shall include:

(A) An explanation, including but not limited to any citation to the statute, regulation, or school district policy under which the denial was made;

(B) A copy of the policy adopted by the Receiving Board of Education for determining the number of transfer students the school district has capacity to accept;

(C) A copy of the State Board of Education's prescribed form for an appeal; and

(D) A copy of this administrative rule.

(4) A Parent of a Student shall have ten days to appeal a Receiving Board of Education's denial of a transfer request. If notification of denial is hand-delivered, the appeal period shall begin the day after the notification is delivered. If notification of denial is sent by U.S. Mail, the appeal period shall begin three days after the notification is mailed. If notification of denial is sent by electronic mail, the appeal period shall begin the day after the notification is sent. The State Board of Education shall accept an otherwise untimely appeal if a Parent of a Student can establish that they did not receive actual notice of the notification denying the transfer request, and the appeal was submitted within ten days after the Parent of the Student received actual notice.

(f) **Submission of an Appeal to the State Board.** An appeal to the State Board of Education shall be submitted to the Executive Secretary of the Board. The Parent of a Student appealing a transfer denial from a Receiving Board of Education shall use the form prescribed by the State Board of Education. At the time of submitting an appeal to the State Board, the appellant must concurrently submit a copy of the appeal to the superintendent of the Receiving School District that denied the transfer request. The superintendent shall immediately transmit the appeal to the Receiving Board of Education.

(g) **Form for Appeal.** At a minimum, the appeal form prescribed by the State Board of Education shall include the following information:

(1) The name, address, and telephone number of the Parent of the Student and the Student for whom the appeal is being taken;

(2) The name of the Receiving Board of Education against whom the appeal is filed;

(3) The date on which the Parent of the Student received notification that the Receiving Board of Education denied the transfer request;

(4) The basis for appealing the decision of Receiving School Board and statement that any documentary evidence should be attached to the petition for appeal;

(5) The name, address and telephone number of the appellant's representative, if applicable;

(6) Notice that the appeal will be considered by the State Board at the next regularly scheduled meeting, at which the appellant and school district may appear; and

(7) A signature of the appellant, or authorized representative.

(h) **Response.** Upon receipt of notice of an appeal, but not later than five (5) days prior to the date at which the appeal is scheduled to be considered by the State Board of Education, the Receiving Board of Education may submit a written response to the appeal. Responses should not exceed five (5) pages. If not submitted by the appealing Parent, the Receiving Board of Education shall provide a copy of the policy adopted to determine the number of transfer students the school district has the capacity to accept in each grade level for each school site within a school district.

(i) **Timeframe for Hearing Appeal to State Board.** Appeals shall be considered by the State Board of Education at its next regularly scheduled meeting. No later than ten (10)

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days from the date of the consideration of the appeal request, the State Board of Education will provide the appellant and the denying school district with notice of the time and place of the State Board meeting at which the appeal will be considered. The appellant and school district will have an opportunity to appear in person or by authorized representative or by attorney to address the State Board at the meeting.

**(j) Consideration of Appeal to State Board of Education.** If a Receiving Board of Education has not adopted a policy to determine the number of transfer students the school district has the capacity to accept in each grade level for each school site within a school district, there shall be a presumption that the receiving school district has capacity to accept the student requesting transfer. If no policy has been adopted, the receiving school district board of education shall have the burden to present evidence demonstrating that capacity does not exist. If a Receiving Board of Education has not adopted a capacity policy, it may not reject a transfer request based on:

- (1) The acts and reasons outlined in Section 24-101.3;
- or
- (2) A history of absences.

*[OAR Docket #22-655; filed 7-20-22]*

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

*[OAR Docket #22-656]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

210:10-1-23. Prohibition of race and sex discrimination [NEW]

### AUTHORITY:

State Board of Education; 70 O.S. § 24-157

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

December 8, 2021

### COMMENT PERIOD:

January 3, 2022 through February 2, 2022

### PUBLIC HEARING:

February 2, 2022

### ADOPTION:

March 10, 2022

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

March 31, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions

210:10-1-23. Prohibition of race and sex discrimination [NEW]

### Gubernatorial approval:

September 23, 2021

### Register publication:

39 OK Reg 133

### Docket number:

21-736

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

House Bill 1775 (2021) was signed into law on May 7, 2021, with an emergency clause making it effective on July 1, 2021, and now codified at 70 O.S. § 24-157. This law requires the State Board of Education to promulgate rules, approved by the Legislature, to implement the requirements and prohibitions identified in the law. On Sept. 10, 2021, the State Board of Education adopted emergency rules pursuant to these statutory requirements, including in the rule definitions of key terms of what and who is subject to the provisions of the law and rules, and included a process for individuals and entities to file complaints for an alleged violation of the law. On January 3, 2022, a notice of permanent rulemaking intent was published in the *Oklahoma Register* on behalf of the State Board of Education. Written comments on the proposed rules were accepted from January 3, 2022, through February 2, 2022. A public hearing was also conducted on February 2, 2022, during which additional public comment was provided. After considering and responding to public comment, the State Board of Education revised the rule, including clarifying language with regards to submitting, investigating, and reporting complaints. Further, the revised rule streamlines the reporting processes at both the local and state levels, as well as reduces the time for a school district to complete its investigation.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### **210:10-1-23. Prohibition of race and sex discrimination**

**(a) Purpose.** It shall be the policy of the Oklahoma State Board of Education to prohibit discrimination on the basis of race or sex in the form of bias, stereotyping, scapegoating, classification, or the categorical assignment of traits, morals, values, or characteristics based solely on race or sex. Public schools in this state shall be prohibited from engaging in race or sex-based discriminatory acts by utilizing these methods, which result in treating individuals differently on the basis of race or sex or the creation of a hostile environment.

### **(b) General.**

#### **(1) Definitions.**

**(A) "Public School"** means the board of education of a school district, charter school, virtual charter school or otherwise accredited school, as defined and provided for in 70 O.S. § 1-108, 70 O.S. § 3-132, 70 O.S. § 3-145.3 and 70 O.S. § 3-104, respectively.

**(B) "Course"** means any program or activity where instruction or activities tied to the instruction are provided by or within a Public School, including courses, programs, instructional activities, lessons, training sessions, seminars, professional development, lectures, coaching, tutoring, or any classes.



(C) **"Teacher"** means the same as it is defined in 70 O.S. § 1-116.

(2) **Applicability.** This rule shall apply to all Public Schools in this state and any Teacher, administrator or other employee of a Public School.

(3) **Nondiscrimination.** Nothing in this rule shall be intended to prohibit a Public School from employing lawful methods to address discrimination consistent with the requirements of the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964 ("Title VI"), Title IX of the Education Amendments of 1972 ("Title IX"), and 70 O.S. § 24-157(B). Further, nothing in this rule shall interfere with mandated activities required of a Public School pursuant to a court order of desegregation.

(4) **Severability.** If any specific provision of this rule or its application to any person or Public School is held invalid, the remainder of the rule or the application of its provisions to any Public School, person, practice or entity shall not be affected.

(5) **Instruction.** Nothing in this rule shall be construed to prevent the teaching of history, social studies, English language arts, biology or any other subject matter area consistent with the Oklahoma Academic Standards as adopted and approved by the State Board of Education and approved by the Oklahoma Legislature.

(6) **Title IX of the Education Amendments of 1972.** Nothing in this rule shall be interpreted to prohibit the lawful consideration of sex, as authorized by Title IX, which permits distinctions and/or classifications based on sex in specific circumstances. This includes but is not limited to the provision of single-sex programs, the establishment of separate sex facilities (bathrooms and locker rooms) or sex-specific athletic teams, consistent with the requirements of Title IX and its implementing regulations at 34 C.F.R. Part 106.

(c) **General Prohibition.** No teacher, administrator or other school employee shall require or make part of any Course offered in a Public School the following discriminatory principles:

- (1) One race or sex is inherently superior to another race or sex.
- (2) An individual, by virtue of his or her race or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously.
- (3) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex.
- (4) Members of one race or sex cannot and should not attempt to treat others without respect to race or sex.
- (5) An individual's moral character is necessarily determined by his or her race or sex.
- (6) An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.
- (7) Any individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex, or

(8) Meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race.

(d) **Specific Prohibitions Ensuring Compliance.** To ensure compliance with 70 O.S. § 24-157(B) and to not discriminate on the basis of race or sex, the following requirements shall apply to all aspects of Public School Course(s) or activities, and to any Public School, Teacher, administrator, other employee, or other individual, group or representative of a Public School:

(1) Public Schools in this state shall be prohibited from providing, contracting to provide, offering or sponsoring any Course(s), as defined in subsection (b)(1)(B), that includes, incorporates, or is based on discriminatory practices identified in section (c).

(2) Public Schools in this state shall be prohibited from using any public or private monies, property, or any other assets or resources to engage in race or sex-based discrimination, including discriminatory practices identified in section (c).

(3) Public Schools in this state shall be prohibited from adopting programs or utilizing textbooks, instructional materials, curriculum, classroom assignments, orientation, interventions, or counseling that include, incorporate or are based on the discriminatory concepts identified in subsection (c).

(4) Public Schools in this state shall be prohibited from executing contracts or agreements with internal or external entities, persons, companies or businesses to provide services, training, professional development, or any other assistance that includes, incorporates or is based on discriminatory practices identified in section (c). Within sixty (60) days of the approval of this rule, existing contracts or agreements executed by Public Schools that conflict with this requirement shall be amended to come into compliance with this section. Contracts or agreements executed solely to provide services prohibited by 70 O.S. § 24-157(B) or sections (c) or (d) of this rule shall be cancelled or terminated, consistent with the terms of the contract and applicable law.

(5) Public Schools in this state shall be prohibited from receiving or applying to receive any monies including state, federal or private funds, that require, as a condition of receipt, the adoption of a Course(s), policies, curriculum, or any other instructional material that includes, incorporates or is based on discriminatory practices identified in subsection (c).

(6) Public Schools in this state shall be prohibited from adopting diversity, equity, or inclusion plans that incorporate the concepts identified in subsection (c). Diversity officers in Public Schools shall be prohibited from providing any service or performing duties that include, incorporate, or are based on discriminatory practices identified in subsection (c).

(7) Public Schools shall be prohibited from mandating diversity training that includes, incorporates or is based on discriminatory practices identified in subsection (c). This

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includes providing such training to employees, contractors, staff members, parents, students, or any other individual or group.

(8) Public Schools in this state shall be prohibited from adopting policies, including grading or admissions policies, or providing any other benefit or service that applies to students or any school employee differently on the basis of race or sex, unless specifically permitted by Title IX. (See (b)(6)). This prohibition includes segregated classes, programs, training sessions, extracurricular activities, or affinity groups unless otherwise permitted by Title IX. (See (b)(6)).

(9) Public Schools in this state shall be prohibited from requiring students to complete surveys, or using the results from surveys, to teach discriminatory concepts identified in subsection (c).

(10) Public Schools in this state shall be prohibited from joining any group or association that require, as a condition of membership, Teachers, administrators or other employees of a school district, charter school or virtual charter school to teach, provide instruction, or offer any Course that includes, incorporates, or is based on discriminatory practices identified in subsection (c) and violate state law.

(e) **Parents Rights.** Parents and legal guardians of students enrolled in Public Schools in this state shall have the right to inspect curriculum, all instructional materials used by a Public School as a part of the educational curriculum, classroom assignments, and lesson plans to ensure compliance with 70 O.S. § 24-157(B). Consistent with 25 O.S. § 2002, no Public School shall interfere with or infringe upon the fundamental rights of parents to determine their child's education.

(f) **State Department of Education and State Board of Education.** To ensure the compliance with the requirements of 70 O.S. § 24-157(B), as a part of any Course, the following requirements shall apply to the State Board of Education and the State Department of Education, respectively:

(1) The State Board of Education shall be prohibited from mandating state standards or promulgating any rule that is based on, includes or incorporates discriminatory concepts of race or sex-based discrimination, including concepts identified in section (c).

(2) The State Department of Education shall be prohibited from providing resources, instructional support, Courses, training, seminars, professional development, or any other class to Public Schools that is based on, includes or incorporates discriminatory concepts identified in section (c). This prohibition includes executing contracts or agreements with external entities, persons, companies or businesses to provide services, training, professional development, or any other assistance that includes, incorporates or is based on discriminatory practices identified in section (c) to Public Schools under the supervision of the Oklahoma State Board of Education and State Department of Education.

(3) The State Department of Education shall be prohibited from receiving or applying to receive any federal, state or private monies that require, as a condition of receipt, the adoption of programs, policies, curriculum, or

any other instructional material that includes, incorporates or is based on discriminatory practices identified in subsection (c).

(g) **Public School Policies and Investigations.** To ensure compliance, Public Schools shall be required to adopt policies and procedures, including incorporating into employee and student handbooks, the requirements of 70 O.S. § 24-157(B) and this rule. A Public School's policy developed pursuant to this section must specifically notify individuals of the right to file complaints under subsections (g) of this rule. Public Schools shall ensure that the parent or legal guardian of all students enrolled in the school are annually notified of the non-discrimination requirements in 70 O.S. § 24-157(B) and this rule.

(1) Public schools shall be required to develop a process for students, parents, teachers, school staff, and members of the public to file a complaint alleging a violation of the provisions of 70 O.S. § 24-157(B) or this rule. In order for a complaint to be accepted for investigation, it must:

(A) Be submitted in writing, signed and dated by the complainant, including complaints submitted through electronic mail that include electronic signatures;

(B) Identify the dates the alleged discriminatory act occurred;

(C) Explain the alleged violation and/or discriminatory conduct and how 70 O.S. § 24-157 or the provisions of this rule have been violated;

(D) Include relevant information that would enable a Public School to investigate the alleged violation; and

(E) Identify witnesses the Public School may interview, if applicable, provided the Public School will not dismiss a complaint for failure to identify witnesses.

(2) Public Schools shall be required to designate at least one employee to receive reports of violations filed by students, parents, teachers, school staff, or members of the public. Public Schools shall identify the employee(s) responsible for receiving complaints in policies and materials published pursuant to section (g).

(A) The contact information of employee(s) responsible for receiving complaints, including telephone and e-mail, shall be included in the policies and materials adopted pursuant to section (g) and shall be made publicly available on the Public School's website.

(B) The employee(s) responsible for receiving complaints pursuant to this section shall notify the complainant that the complaint has been received and whether it will be investigated within ten (10) days of receipt.

(C) Public Schools shall ensure that employees(s) responsible for receiving and investigating complaints under this subsection are unbiased and free of any conflicts of interest.

(3) Public Schools shall be required to investigate all complaints that meet the requirements of subsection (g)(1) and make a determination as to whether a violation occurred. A Public School must conclude the investigation of a complaint filed pursuant to subsection (g)(1) within forty-five (45) days of receipt of the complaint.

(A) A complainant shall be notified in writing of a final determination, including the Public School's findings of whether a violation occurred, within the forty-five (45) days of receipt of the complaint.

(B) It is permissible for a Public School to receive, process, and investigate complaints filed under this subsection in the same manner in which the Public School processes and investigates all other complaints of discrimination, provided the Public School notifies a complainant pursuant to subsection (g)(2)(B), reaches a final determination in the investigation within forty-five (45) days of receipt of the complaint pursuant to subsection (g)(3) of this rule and complies with (g)(3)(A).

(4) A complainant may file a complaint alleging a violation of 70 O.S. § 24-157 or this rule directly with a Public School pursuant to subsection (g)(1) of this rule or may file a complaint directly with the State Department of Education pursuant to subsection (h)(2) of this rule provided:

(A) A complainant may not file complaints simultaneously with a Public School and the State Department of Education;

(B) The State Department of Education may not require a complainant to first file with a Public School prior to seeking relief pursuant to (h)(2); and

(C) Any complainant who believes that a Public School has incorrectly refused to investigate a complaint or has evidence that a Public School has reached an incorrect determination may subsequently file a complaint with the State Department of Education pursuant to subsection (h)(2) of this rule.

(h) **Accreditation.** Consistent with State Board of Education's authority under 70 O.S. § 3-104.4 (I)(5), Public Schools in this state shall be evaluated annually to ensure compliance with 70 O.S. § 24-157(B) and the requirements of this rule.

(1) **Public School Application for Annual Accreditation.** Consistent with the provisions and requirements of OAC 210:35-3-201, a Public School's failure to comply with 70 O.S. § 24-157(B) or any requirement in this rule shall, at a minimum, result in the accreditation status of the Public School being classified "Accredited With Deficiency." The Public School shall have one school year to correct deficiencies.

(A) A Public School that fails to correct deficiencies after being classified as "Accredited With Deficiency" for violations of 70 O.S. § 24-157(B) or any requirement in this rule shall be classified, at a minimum, "Accredited With Probation" in the second year of noncompliance for "deliberately and unnecessarily violating one or more regulations." (See OAC 210:35-3-201(b)(4)(C)). The Public School shall have one school year to correct deficiencies.

(B) A Public School that fails to correct deficiencies after being classified as "Accredited With Probation" for violations of 70 O.S. § 24-157(B) or any requirement in this rule shall be classified "Nonaccredited" in the third year of noncompliance consistent with Oklahoma statutes and the State Board of Education's administrative rules, processes and procedures. (See OAC 210:35-3-201).

(2) **State Department of Education Investigation and Immediate Action.** Consistent with the requirements of 70 O.S. § 3-104.4, the Department shall investigate any complaint of any failure to comply with accreditation standards, including compliance with 70 O.S. § 24-157(B) or any requirement in this rule, within thirty (30) days. If the Department determines that a Public School has failed to comply with the accreditation standards, including this rule, the Department shall report the information to the State Board for further action, and within ninety (90) days, as required by 70 O.S. § 3-104.4.

(A) Complaints of alleged violations of 70 O.S. § 24-157(B) or any requirement in this rule shall be filed with the Accreditation Division of the State Department of Education. In order for a complaint to be accepted for investigation, it must

(i) Be submitted in writing, signed, and dated by the complainant, including complaints submitted through electronic mail that include electronic signatures;

(ii) Identify dates that alleged discriminatory act occurred;

(iii) Explain the alleged violation and/or discriminatory conduct and how 70 O.S. § 24-157 of the provisions of this rule have been violated;

(iv) Include relevant information that would enable a Public School to investigate the alleged violation; and

(v) Identify witnesses the Public School may interview, if applicable, provided the Public School will not dismiss a complaint for failure to identify witnesses.

(B) The State Department of Education shall post information on its website that provides instructions to students, parents, teachers, or other school employees on how to file a complaint pursuant to this subsection.

(3) Information obtained by the Accreditation Division under subsection (h), including violations of accreditation standards, shall be shared with the State Department of Education's Office of General Counsel and the State Board of Education's attorney for appropriate action or proceedings under subsection (j) of this rule. Findings of Teacher misconduct shall be reported to the Office of General Counsel for appropriate action or proceedings under subsection (j) of this rule.

(i) **Public Reporting.** Public School employee(s) designated pursuant to subsection (g)(2) shall be required to report for each complaint filed pursuant to subsection (g)(1)

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to the State Department of Education within ten (10) days of resolution of the complaint.

(1) The State Department of Education shall report monthly to the State Board of Education on complaints reported and filed pursuant to subsections (g)(2) and (h)(2), unless no complaints have been reported or filed or unless otherwise directed by the Board, including:

(A) The number of complaints filed with Public Schools;

(B) The number of complaints filed with Public Schools that were dismissed or not investigated;

(C) The number of complaints filed with Public Schools that were opened for investigation;

(D) The number of cases filed with Public Schools where, following a full investigation, the Public School determined that a violation occurred;

(E) The number of cases filed with Public Schools where, following a full investigation, the Public School determined no violation occurred;

(F) The number of cases filed with the Accreditation Division of the State Department of Education;

(G) The number of complaints filed with the Accreditation Division of the State Department of Education that were dismissed or not investigated;

(H) The number of complaints filed with the Accreditation Division of the State Department of Education that were opened for investigation;

(I) The number of cases filed with the Accreditation Division of the State Department of Education where, following a full investigation, the Department has determined that a violation occurred; and

(J) The number of cases filed with the Accreditation Division of the State Department of Education where, following a full investigation, the Department determined no violation occurred.

(2) Any Public School employee(s) who fails to timely file reports with the State Board of Education, as required by this subsection may be subject to proceedings pursuant to (j) of this rule.

(j) **Suspension or Revocation.** Consistent with OAC 210:1-5-6 and subsection (b)(1)(C), the provisions of this rule shall apply to superintendents of schools, principals, supervisors, librarians, school nurses, classroom teachers or other personnel performing instructional, administrative and supervisory services in the Public Schools.

(1) **Suspension.** As a part of its investigation of a legally sufficient complaint filed pursuant to subsection (g), the State Department of Education shall make a determination of whether to initiate proceedings to suspend the license or certificate of any school employee who is found to have violated 70 O.S. § 24-157(B) or any provision of this rule, consistent with the State Board's processes and procedures for suspension of certificates.

(2) **Grounds for Revocation.** Consistent with OAC 210:1-5-6, subsection (b), the State Board of Education

shall initiate proceedings to revoke the license or certificate of any school employee for "willful violation" of 70 O.S. § 24-157(B) or any requirement in this rule. (See OAC 210: 1-5-6(b)(1) - (b)(2)). The requirements and processes outlined in OAC 210:1-5-6, including the rights afforded to certificate holders, shall apply to all revocation proceedings.

(k) **Retaliation.** No individual shall be retaliated against for: 1) filing a complaint pursuant to subsections (g)(1) or (h)(2) of this rule; 2) exercising any right or privilege conferred by or referenced within this rule; or 3) exercising any right or privilege secured by a law referenced in this rule. Public Schools shall be prohibited from retaliating against any student, parent, Public School employee or any other individual for filing a complaint of exercising any right conferred by or referenced in this rule.

(1) Any school employee who retaliates against a complainant shall be subject to disciplinary action pursuant to subsection (j) of this rule.

(2) The State Department of Education shall be authorized to investigate complaints or retaliation filed under subsection (h)(2) of this rule.

(l) **Whistleblower Protection.** Any Teacher who files a complaint pursuant to subsection (g)(1) or (h)(2) of this rule or otherwise discloses information the Teacher reasonably believes evidences a violation of 70 O.S. § 24-157(B) or this rule shall be entitled to the Whistleblower Protections in applicable laws, including those at 70 O.S. § 6-101.6b.

(m) **False Reporting.** Any Teacher or other school employee who, willfully, knowingly and without probable cause makes a false report pursuant to subsection (g)(1) or (h)(2) of this rule may be subject to proceedings pursuant to subsection (j) of this rule.

(n) **Complaints by School Staff.** Any school employee who is discriminated against by a Public School in the form of race or sex based harassment, bias, stereotyping, scapegoating, classification, or the categorical assignment of traits, morals, values, or characteristics based solely on race or sex in violation 70 O.S. § 24-157(B), may file an employment discrimination complaint with the Oklahoma Attorney General's Office of Civil Rights Enforcement pursuant to 25 O.S. § 1101, *et seq.*

(o) **Relief.** Title VI and Title IX may be enforced by private right of action, whereby aggrieved parties may seek relief, including monetary damages, for violations of federal antidiscrimination laws. Victims of discrimination may file a lawsuit directly against the Public School. In addition to any private rights of action, aggrieved parties may seek applicable remedies through the U.S. Department of Education's Office for Civil Rights or the U.S. Department of Justice's Civil Rights Division.

[OAR Docket #22-656; filed 7-20-22]

**TITLE 210. STATE DEPARTMENT OF  
EDUCATION  
CHAPTER 15. CURRICULUM AND  
INSTRUCTION**

*[OAR Docket #22-657]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 11. Early Childhood Education Programs

210:15-11-3. Criteria for pilot early childhood program pursuant to Title 70 O.S. § 10-105.4 [AMENDED]

**AUTHORITY:**

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 10-105.4.

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

January 7, 2022

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 3, 2022

**ADOPTION:**

March 24, 2022

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

March 31, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The current rules governing the Oklahoma Early Childhood Program (OECPP) were adopted in 2007, shortly after the creation of the program by the Oklahoma Legislature. The updated staffing requirements expand the background qualifications for teachers and assistant teachers to include areas beyond early childhood education while maintaining similar qualifications. This ensures that the pool of applicants is large enough to adequately staff classrooms with high-quality teachers. The updated timeframe for which programming is offered aligns more accurately with partnering childcare providers. More specifically, until 2018, programs were required to operate for forty-six (46) weeks per year with two weeks of staff training. Then, program operations were changed to authorize operations by the hour so that requirements (over six hours per day) still meet the total time of operation but can be shortened to a total time span of less than forty-six (46) weeks.

**CONTACT PERSON:**

Brad Clark, General Counsel, Office of Legal Services, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma State Department of Education, 5<sup>th</sup> Floor, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-3274 E-mail: Brad.Clark@sde.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 11. EARLY CHILDHOOD  
EDUCATION PROGRAMS**

**210:15-11-3. Criteria for pilot early childhood program pursuant to Title 70 O.S. § 10-105.4**

(a) Qualifying children are those children aged birth through three years, who are identified as at-risk as determined by Federal Poverty Guidelines.

(b) Qualifying programs must meet childcare licensing requirements as provided by the Oklahoma Department of Human Services for Children aged birth through three years.

(c) The adult child ratio shall meet minimum childcare licensing requirements as provided by the Oklahoma Department of Human Services for children aged birth through three years.

(d) The provider will ensure the operational schedule is a minimum of eight hours a day for ~~50~~46 weeks a year. Children will be served ~~48~~44 weeks, with two additional weeks for staff training.

(e) Staffing requirements are:

(1) ~~The lead teacher must hold early childhood certification and a bachelor's degree. Lead teachers must hold one of the following:~~

(i) an associate's degree (AA), baccalaureate degree (BA), or master's degree (MA) in early childhood, child development, elementary education, or early childhood special education;

(ii) an associate's degree (AA), baccalaureate degree (BA), or master's degree (MA) in social work, nursing, psychology, human development and family studies and one year experience as a teacher;

(iii) at least 60 college/university credits with at least 30 college credits in early childhood education, child development, elementary education, or early childhood special education; or

(iv) a baccalaureate degree or higher in any discipline with at least 36 college credits in early childhood education, child development, elementary education, or early childhood special education.

(2) ~~The assistant teacher must hold a minimum of an associate's degree (60 college credits) in child development or a related field. Assistant teachers must hold one of the following:~~

(i) a high school diploma and a current Child Development Associate (CDA) degree (120 clock hours);

(ii) a high school diploma and at least 12 college credits in early childhood education, child development, elementary education, or early childhood special education; or

(iii) one of the options outlined in section (e)(1).

(3) ~~The classroom aide must hold a minimum of a high school diploma and a Child Development Associate (CDA) degree (120 clock hours).~~

(4) Each staff member must undergo a Federal Bureau of Investigation (FBI) background check.

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(4) Any staff member not meeting the requirements outlined in section (e)(1) or (e)(2) above will be given a "plan of correction" and meet requirements within a 2-year period.

(5) The provider shall employ a family support worker whose caseload shall be approximately 50 families.

(f) All staff must participate in initial training and annual training in infant and toddler development, curriculum, and parent education.

(g) The curriculum shall be aligned with Oklahoma's Early Learning Guidelines for Infants and Toddlers.

(h) All programs must undergo an annual program evaluation.

[OAR Docket #22-657; filed 7-20-22]

## TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #22-658]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 27. Reading Sufficiency Act

210:15-27-4. Individualized Program of Reading Instruction  
[AMENDED]

### AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 3-104.4; 70 O.S. § 1210.508A *et seq.*

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

January 7, 2022

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 3, 2022

### ADOPTION:

March 24, 2022

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

March 31, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The current Administrative Rules for the Reading Sufficiency Act (RSA) were updated in 2020. When discussing the program requirements for Tier 1 instruction, it was discovered that the word "daily" was eliminated from the update when referring to the ninety (90) minutes of reading instruction. The word "daily" has been restored to the adopted rule to provide clarity and consistency.

### CONTACT PERSON:

Brad Clark, General Counsel, Office of Legal Services, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma State Department of Education, 5<sup>th</sup> Floor, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-3274 E-mail: Brad.Clark@sde.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

## SUBCHAPTER 27. READING SUFFICIENCY ACT

### 210:15-27-4. Individualized Program of Reading Instruction

(a) **Eligible students.** ~~Each student~~ Students enrolled in kindergarten, first, second, and third grade in the public schools of Oklahoma shall be assessed at the beginning, middle, and end of each school year using a screening instrument approved by the State Board of Education. Any student found not to be reading at grade level shall be provided an Individualized Program of Reading Instruction designed to enable the student to acquire the appropriate grade level reading skills. Diagnostic assessment shall be provided if determined appropriate, and progress monitoring shall continue throughout the year.

(b) **Student Reading Proficiency Team.** For students found not to be reading at the corresponding grade level upon completion of an approved screening instrument, a Student Reading Proficiency Team shall be created. The following guidelines apply to Student Reading Proficiency Teams:

(1) For a student not reading at the corresponding grade level in first grade or second grade as identified by an approved screening instrument, the Student Reading Proficiency Team shall develop an individualized program of reading instruction. The team shall be composed of:

- (A) The student's parent(s) or guardian(s);
- (B) The teacher assigned responsibility for the student's reading instruction in that academic year;
- (C) A teacher assigned responsibility for reading instruction in the student's next grade level; and
- (D) A certified reading specialist, if available.

(2) For a third grade student who is not eligible for automatic promotion and who does not meet criteria on the reading foundations/processes and vocabulary portions of the third-grade assessment administered pursuant to 70 O.S. § 1210.508, a Probationary Promotion Reading Proficiency Team may evaluate the student for probationary promotion. Upon the unanimous recommendation of the Probationary Promotion Reading Proficiency Team and approval of the school principal and district superintendent, a student recommended for probationary promotion shall be promoted to fourth grade. The Probationary Promotion Reading Proficiency Team shall be composed of:

- (A) The student's parent(s) or guardian(s);
- (B) The teacher assigned responsibility for the student's reading instruction in that academic year;
- (C) A teacher assigned responsibility for reading instruction in the student's next grade level; and
- (D) A certified reading specialist.

(c) **Program requirements.** Each program of reading instruction shall include provisions of the READ Initiative adopted by the school district as provided for in 70 O.S. § 1210.508C. For purposes of the Reading Sufficiency Act, a "program of reading instruction" shall be based upon a Multi-Tiered Systems of Support (MTSS) model, and shall include:

(1) **Tier I.** Tier I, or core instruction, is research-based reading instruction for all students that is based on the science of how students learn to read and is aligned with the Oklahoma Academic Standards. Tier I instruction provides all students a minimum of ninety (90) minutes of daily reading instruction.

(2) **Tier II.** Tier II intervention is supplemental, direct, research-based instruction based on the cognitive science of how students learn to read, designed to supplement core instruction and address students' reading skill deficits. Tier II intervention is:

- (A) Based on specific student needs;
- (B) Reflects the needed intensity and/or frequency as identified by an appropriate reading assessment; and
- (C) Is determined by the teacher responsible for grade level Tier I reading instruction, reading specialist (if available), and building principal.

(3) **Tier III.** Tier III intervention is supplemental, direct, customized, and intensive research-based instruction based on the cognitive science of how students learn to read, designed to supplement core instruction and address students' reading skill deficits by targeting the area(s) of greatest need. Tier III intervention is:

- (A) Based on specific student needs;
- (B) Reflects the needed intensity and/or frequency as identified by a diagnostic assessment; and
- (C) Is determined by the teacher responsible for grade level Tier I reading instruction, reading specialist (if available), and building principal.

(d) **District review of program.** Each district shall conduct a review of the program of reading instruction for all students who do not meet criteria on the reading foundations/processes and vocabulary portions of the third grade assessment and do not qualify for a good-cause exemption under 70 O.S. § 1210.508C. For each student retained under the provisions of the Reading Sufficiency Act, the school district shall require a student portfolio to be completed. The district review of each retained student's program of reading instruction shall address additional supports and services needed to remediate the identified areas of reading deficiency, which may include but not limited to:

- (1) Small group instruction;
- (2) Reduced teacher-student ratios;
- (3) More frequent progress monitoring;
- (4) Tutoring or mentoring;
- (5) Transition classes containing third and fourth grade students;
- (6) Extended school day, week, or year; and
- (7) Summer Academy Reading Programs as provided for in 70 O.S. § 1210.508E, if available.

(e) **Students approved for probationary promotion.** For a student who is approved for probationary promotion, the Probationary Promotion Reading Proficiency Team shall continue to review the student's reading performance and repeat the evaluation and recommendation process described in 1210.508C each academic year until the student demonstrates grade-level reading proficiency on an approved screening instrument or transitions to another school. If a student who has been approved for probationary promotion transitions to another school before demonstrating grade-level proficiency on an approved screening instrument, a copy of the student's Individualized Program of Reading Instruction shall be provided to the student's subsequent school.

[OAR Docket #22-658; filed 7-20-22]

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 20. STAFF**

[OAR Docket #22-659]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 9. Professional Standards: Teacher Education and Certification  
Part 9. Teacher Certification  
210:20-9-110. Alternative Placement Teaching Certificates [AMENDED]

**AUTHORITY:**  
State Board of Education; 70 O.S. § 3-104; 70 O.S. § 6-122.3

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
January 7, 2022

**COMMENT PERIOD:**  
February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**  
March 3, 2022

**ADOPTION:**  
March 24, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 2, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The amendment updates the administrative rule addressing alternative placement teaching certificates. Specifically, the amendment exempts school counselors from the pedagogy and classroom management college coursework, instead requiring the completion of college coursework aligned with the competencies of comprehensive school counseling.

**CONTACT PERSON:**  
Brad Clark, General Counsel, Office of Legal Services, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma State Department of Education, 5<sup>th</sup> Floor, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-3274 E-mail: Brad.Clark@sde.ok.gov

# Permanent Final Adoptions

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

## SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

### PART 9. TEACHER CERTIFICATION

#### 210:20-9-110. Alternative placement teaching certificates

(a) **Issuance of provisional alternative teaching certificates.** The State Department of Education shall issue a three (3) year, nonrenewable provisional alternative placement teaching certificate to an individual who completes the application for an alternative placement teaching certificate and submits all documentation necessary to verify that the applicant meets all of the following criteria:

(1) **Post-secondary education.** The applicant for alternative placement certification holds:

(A) At least a baccalaureate degree from an institution whose accreditation is recognized by the Oklahoma State Regents for Higher Education and has attained a retention grade point average of not less than 2.50 on a 4.0 scale; or

(B) A terminal degree in any field from an institution accredited by a national or regional accrediting agency recognized by the United States Department of Education, verified as a terminal degree by the Oklahoma State Regents for Higher Education; or

(C) At least a baccalaureate degree from an institution whose accreditation is recognized by the Oklahoma State Regents for Higher Education, and has completed at least two (2) years of qualified work experience. For purposes of this section, qualified work experience must be documentable through standard employment verification procedures, and relevant to a certification area or area of specialization as determined by the State Board of Education, the Office of Educational Quality and Accountability, the Department of Career and Technology Education, and/or the State Regents for Higher Education.

(2) **Competency in a certification area.** In addition to having completed qualifying post-secondary education, the applicant demonstrates competency in an area of specialization for an elementary-secondary certificate, a secondary certificate, or a vocational-technical certificate. Competency in a certification area may be demonstrated through the following:

(A) Completion of an academic major, or at least thirty (30) credit hours of post-secondary coursework, in a field that corresponds to a certification area.

(B) Completion of an academic minor, or at least fifteen (15) credit hours of post-secondary coursework, in a field that corresponds to a certification area, plus at least one (1) year of qualified work experience or relevant volunteer experience in the same field. Volunteer experience must be verified through documentation and/or references.

(C) At least three (3) years of qualified work experience or relevant volunteer experience in a field that corresponds to an area of certification, or a combination of relevant work and volunteer experience totaling at least three (3) years, plus a written recommendation from an employer or volunteer coordinator.

(D) Successful completion of a relevant professional exam (e.g. accountancy, nursing).

(E) Publication of a relevant article in a peer-reviewed academic journal or trade journal.

(F) Other documentable means of demonstrating competency, subject to the approval of the State Department of Education.

(3) **Intent to earn standard certification.** The applicant declares the intention to earn standard certification by means of an alternative placement program that meets the requirements of 70 O.S. § 6-122.3 in not more than three (3) years. An applicant shall be deemed to have declared their intent to earn standard certification through submitting a completed application for alternative certification.

(4) **Teacher competency examinations.** The applicant has passed all of the following teacher competency examinations:

(A) The Oklahoma General Education Test (OGET); and

(B) The Oklahoma Subject Area Test (OSAT) in each area of specialization for which certification is sought, unless the applicant is eligible for an exception to the OSAT requirement under 70 O.S. § 6-122.3(e). Pursuant to statute, in consultation with the Commission for Educational Quality and Accountability, the State Board of Education may grant an exception to the requirement to complete the OSAT exam for initial certification in a subject area for which the applicant holds a substantially related advanced degree from an accredited institution. This exception is not available for subject areas which require an advanced degree for certification, such as school administrator, school counselor, library media specialist, and reading specialist certificates.

(5) **Intent to serve as a public school teacher.** The applicant declares their intention to serve as a teacher at an Oklahoma public school. An applicant shall be deemed to have declared their intent to seek employment at an accredited Oklahoma public school district through submitting a completed application for alternative certification.

(b) **Requirements for enrollment in an alternative certification program.** As a prerequisite to enrollment in an



alternative placement program set forth in 70 O.S. § 6-122.3, applicants shall meet all of the following requirements:

- (1) The applicant has never been denied admittance to a teacher education program approved by the Oklahoma State Regents for Higher Education, the North Central Association of Colleges and Schools and by the Oklahoma Commission for Educational Quality and Accountability to offer teacher education programs; and has never been enrolled in and subsequently failed courses necessary to successfully meet the minimum requirements of the program;
- (2) The applicant has on file with the director of teacher education at an Oklahoma institution of higher education a plan for meeting standard certification requirements within three (3) years; and
- (3) The applicant is participating in the teacher residency program set forth in 70 O.S. § 6-195.

(c) **Requirements for professional education instruction.** Participants in alternative placement programs as addressed in subsection (b) must complete between six (6) and eighteen (18) credit hours of professional education instruction, or between ninety (90) and two hundred seventy (270) clock hours of school district-approved professional development, with the minimum hours of instruction required dependent on the applicant's prior level of education and/or experience. Professional education requirements must be completed within three (3) years after entering the Alternative Placement program. For all participants, except school counselors, professional education instruction must include at least one college credit course addressing pedagogical principles and at least one college credit course addressing classroom management. For school counselors, professional education instruction must include at least two college credit courses addressing the components of a comprehensive school counseling program, including but not limited to, data-informed decision making, closing achievement and opportunity gaps, school counseling ethical standards, and improving student achievement, attendance and discipline. For each year of documented experience in the relevant certification area, a participant's total required professional education may be reduced by three (3) credit hours or forty-five (45) clock hours, provided all participants must complete at least six (6) credit hours or ninety (90) clock hours of professional education instruction. Minimum required instructional hours shall be determined as follows:

- (1) For alternative placement program participants who hold a terminal degree, six (6) credit hours or ninety (90) clock hours of professional education instruction are required.
- (2) For alternative placement program participants who hold a non-terminal degree beyond a baccalaureate degree, twelve (12) credit hours or one hundred eighty (180) clock hours of professional education instruction are required.
- (3) For alternative placement program participants who hold a baccalaureate degree, eighteen (18) credit hours or two hundred seventy (270) clock hours of professional education instruction are required.

(d) **Issuance of standard teaching certificates.** The State Department of Education shall issue a standard teaching certificate to an individual who successfully completes all of the requirements set forth in (a), (b), and (c) of this Section within three (3) years of the date of issuance of the applicant's provisional alternative teaching certificate and meets all of the following requirements:

- (1) The applicant has passed the Oklahoma Professional Teaching Exam (OPTE) for either elementary/middle level or secondary level; and
- (2) The applicant has completed all professional education requirements of the alternative placement program set forth in 70 O.S. § 6-122.3 and the administrative rules and/or adopted policies of the State Board of Education.

(e) **No student teaching experience required.** Student teaching and/or pre-student teaching field experience shall not be required of alternative program applicants as a condition of receiving a provisional or standard certificate pursuant to the provisions of this Section.

(f) **Criminal history record check.** Prior to employing an alternatively certified teacher, the district board of education shall request a criminal history record check of the individual under the provisions of 70 O.S. § 5-142.

(g) **State Board of Education exceptions.** In accordance with the requirements of 70 O.S. § 6-122.3, the State Board of Education may grant a waiver or exception to any of the requirements of this Section and may grant a certificate upon demonstration of specific competency in the subject area of specialization by the applicant. An applicant for alternative certification who does not have at least two (2) years of relevant work experience, but demonstrates competency in the subject area in which certification is sought, may request an exception to the work experience requirement of 70 O.S. § 6-122.3.

[OAR Docket #22-659; filed 7-20-22]

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

[OAR Docket #22-515]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 5. Educator Preparation Program Accreditation  
218:10-5-3 [AMENDED]
- Subchapter 7. Educator Assessment Regulations  
218:10-7-1 [AMENDED]

**AUTHORITY:**

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

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

September 21, 2020

**COMMENT PERIOD:**

October 16, 2020 through December 8, 2020

**PUBLIC HEARING:**

February 9, 2022

**ADOPTION:**

February 16, 2022

# Permanent Final Adoptions

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

February 23, 2022

## **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 11, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

n/a

## **INCORPORATIONS BY REFERENCE:**

n/a

## **GIST/ANALYSIS:**

The Educator Preparation Program Accreditation amendments reflect changes in statute. The amendments to Educator Assessment Regulations reflect changes in assessment requirements for School Counselor Certification.

## **CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## **SUBCHAPTER 5. EDUCATOR PREPARATION PROGRAM ACCREDITATION**

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

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

(1) Membership on the educator preparation governing unit shall be defined by written policy to include:

(A) A majority of the members who have a minimum of three years teaching experience in public schools;

(B) A majority of the members in the governance unit who are currently teacher education faculty members;

(C) Some faculty members who shall represent the arts and sciences;

(D) A designated director of educator preparation defined as the institution's official representative for educator preparation. The authority and responsibilities of this individual shall be clearly defined in written policies; and

(E) A clearly defined process whereby faculty members and administrators become members and the terms of office.

(2) The responsibilities of the educator preparation governing unit shall be defined by written policy to include:

(A) Responsibilities of the officers of the unit;

(B) Responsibilities of the unit's standing committees; and

(C) Responsibilities in the following areas as they are related to educator preparation:

(i) Admission/retention in educator preparation;

(ii) Field experience and student teaching (admission and placement);

(iii) Development of courses and program curricula; and program review, evaluation and planning.

(3) Program review, evaluation and revision responsibilities include:

(A) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all educator preparation programs within each accreditation period;

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

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

(i) Educator preparation faculty and arts and science faculty;

(ii) Graduates of the programs;

(iii) Students currently in the program;

(iv) Teachers and administrators from the public schools;

(v) Parents of P-12 students and business and community leaders who are actively involved in assisting P-12 schools.

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

(A) A clearly defined budget-making process for all teacher education programs; and

(B) An analysis showing that the institution's financial support for programs in educator preparation are maintained at a level appropriate for a professional preparation program.

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

- (c) Candidate-related standards are to be consistent with accreditation standards.
- (d) Program decisions of the professional education unit are to be guided by a conceptual framework, which establishes the shared vision for the preparation of teacher candidates.
- (1) The conceptual framework application for state initial accreditation.
  - (2) The conceptual framework shall consist of:
    - (A) The program's philosophy, purposes, professional commitments and dispositions;
    - (B) A knowledge base that provides the foundation for the framework;
    - (C) Performance expectations for candidates that align with professional, state and institutional standards; and
    - (D) A system by which candidate performance is regularly assessed.
- (e) The following guidelines are to be used to collect and maintain data on each institution's educator preparation program:
- (1) The institution shall establish a process which seeks information and program input from educator preparation faculty; faculty from arts and sciences and other programs and disciplines which are appropriate; candidates within the educator preparation program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.
  - (2) The institution shall establish procedures to inform the public regarding the educator preparation program and to solicit and receive public input.
  - (3) The self-study shall be accessible to any interested party under the Oklahoma Open Records Act.
  - (4) The submitted institutional plan must be approved by the institution's governing board.
  - (5) Annual reviews and reports indicating program changes.
- (f) The following policies, procedures and guidelines are used to direct the content and candidates' experiences of each institution's teacher preparation program.
- (1) Programs require teacher candidates to have speaking and listening skills at a novice high level in a language other than English.
  - (2) General studies requirements for candidates include the arts, communication, history, literature, mathematics, philosophy, sciences, English, government, and the social sciences.
  - (3) Programs establish cohort or colleague groups within the institution to assist teacher candidates in achieving competencies, better adapting to the school environment and furthering professional growth.
  - (4) Candidates complete a well-planned sequence of courses and/or experiences in pedagogical studies that ensures student competency in the Oklahoma State Department of Education Full Subject Matter Competencies for Teacher Licensure and Certification.
  - (5) The guidelines and standards for program reviews representing specialty organizations and national learned society standards are used in developing programs in each content area.
- (6) Secondary and elementary/secondary teacher candidates have undergraduate majors or their equivalents, in a subject area.
- (7) Teacher candidates in early childhood, elementary, and special education have subject area concentrations, which allow qualification as a generalist. To qualify as a generalist, candidates must document competency in mathematics, science, language arts, and social studies as identified in the CAEP professional learned societies' standards and State Department of Education Full Subject Matter Competencies for early childhood, elementary and special education.
- (8) Teacher candidate coursework includes the study of substance abuse symptoms identification and prevention; mental illness symptoms identification and mental health issues; classroom management skills; trauma-informed responsive instruction; ~~and~~ classroom safety and discipline issues; and multi-tiered systems of support.
- (9) Teacher candidate coursework or training includes the use of digital and other instructional technologies to effectively maximize student learning.
- (10) Early childhood, elementary education and special education candidates; training includes research-based instructional strategies for instruction, assessment and intervention for literacy development for all students, including advanced readers, typically developing readers and struggling readers who are coping with a range of challenges, including, but not limited to, English learners and learners with handicapping conditions and learning disabilities (including dyslexia).
- (11) Teacher candidates must complete the equivalent of twelve (12) weeks of student teaching and have a minimum of 60 hours of diverse field experiences prior to their student teaching internship.
- (12) Teacher candidates are provided with advisement services to assist them in taking course work designed to maximize their opportunities for certification and employment. At a minimum, teacher candidates are provided information on the latest supply and demand information concerning teacher employment, state salary structure, and teaching shortage areas.
- (13) Substantive collaboration and classroom interaction with students accompany theoretical curriculum, thus allowing teacher candidates the opportunity to apply theory to actual classroom situations.
- (14) Instruction integrates pedagogical competencies or skills with experiences in the school setting.
- (15) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.
- (16) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher

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Competencies and/or subject matter competencies outlined in the CAEP national (professional) learned societies' standards.

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

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

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

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

(h) The following policies are to be used to evaluate individual program areas at each institution: The institution shall submit program reviews for each required program area based upon the CAEP and/or State policies, guidelines and accreditation schedule.

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

### SUBCHAPTER 7. EDUCATOR ASSESSMENT REGULATIONS

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

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

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

(2) Any individual who completes a School Counselor preparation program approved by OEQA, and who is not a certified teacher, must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test for School Counselor.

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

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

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

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

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

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

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

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

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

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

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

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

[OAR Docket #22-515; filed 6-30-22]

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**TITLE 235. OKLAHOMA FUNERAL BOARD  
CHAPTER 10. FUNERAL SERVICES  
LICENSING**

[OAR Docket #22-488]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
235:10-1-4 [AMENDED]

**AUTHORITY:**

Oklahoma Funeral Board; 59 O.S., §§ 396.2a, 396-17, 75 O.S. § 302(A)(1), 75 O.S. § 307.

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

March 4, 2022

**COMMENT PERIOD:**

December 27, 2021 through February 17, 2022

**PUBLIC HEARING:**

February 17, 2022

**ADOPTION:**

February 23, 2022

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

March 4, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**GIST/ANALYSIS:**

The proposed rule provides for instructions for requests for rule adoption, amendment, or repeal.

**CONTACT PERSON:**

Tyler Stiles, Executive Director, Oklahoma Funeral Board, 3700 N. Classen Blvd., Suite 175, Oklahoma City, Oklahoma 73118, 405-522-1790, tyler.stiles@funeral.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**235:10-1-4. Requests for rule interpretation or promulgation  
Request for interpretation of rules**

(a) **Requests for rule interpretation.**

(1) Any person who may be affected by the existence of application of any of the rules of this chapter may request in writing an interpretation of ruling regarding the application of such rule to the facts furnished with the inquiry. Any such request shall state fully the facts concerning which the rule may apply, and the particular rule about which the question exists. The request or inquiry will be added to the agency for the next scheduled Board

meeting and may if necessary be continued for further consideration to additional business meetings. The Board's interpretation of the rule will be furnished in writing to the person making the request, within a reasonable time thereafter.

(2b) Requests for interpretation of rules shall not be accepted or considered if the request involves facts and/or circumstances whereupon a complaint has been filed, but not yet disposed.

(b) **Requests for rule adoption, amendment, or repeal.**

(1) Any interested person may request the Board to adopt, amend or repeal a rule in this chapter. The request shall be made in writing and shall include an explanation to support the request. A request shall also include:

(A) the name, address and telephone number of the person making the request;

(B) the name, address and telephone number of the agency or organization the person represents, if any;

(C) the reason for requesting the adoption, amendment, or repeal of a rule;

(D) the number used to identify the rule if the request is to amend or repeal an existing rule; and

(E) the proposed language if the request is to amend an existing rule or adopt a new rule.

(2) It is the Boards policy to respond to such requests within 30 calendar days.

[OAR Docket #22-488; filed 6-28-22]

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

[OAR Docket #22-679]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

240:1-1-7. Petitions for declaratory rulings [AMENDED]

Subchapter 3. Records and Inspections

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

Subchapter 5. Local Project Funding

240:1-5-1. Purpose [REVOKED]

240:1-5-2. Definitions [REVOKED]

240:1-5-3. Local project funding announcement [REVOKED]

240:1-5-4. Evaluation of local project funding contract applications [REVOKED]

240:1-5-5. Affidavit of LPF officer [REVOKED]

240:1-5-6. Serial numbering of local project funding contracts [REVOKED]

240:1-5-7. Monitoring of local project funding contracts [REVOKED]

**AUTHORITY:**

Oklahoma Employment Security Commission; 40 O.S. §§ 4-302, 4-310.1

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

August 4, 2021.

**COMMENT PERIOD:**

September 1, 2021 through October 1, 2021

**PUBLIC HEARING:**

October 1, 2021

**ADOPTION:**

October 5, 2021

# Permanent Final Adoptions

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

October 8, 2021

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTION:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

240:1-1-7. Petitions for declaratory rulings. The proposed amendment removes the requirement to provide a fax number on petitions for declaratory rulings.

240:1-3-9. Release of confidential information to specific government agencies. The proposed amendment adds the Oklahoma Department of Career and Technology Education and the Oklahoma State Regents of Higher Education as agencies approved to request access to wage information to determine educational outcomes of students graduating from schools and universities in Oklahoma.

240:1-5-1 through 1-5-7. Local Project Funding. In Executive Order 2020-3, Governor Stitt required a review of all agency administrative rules to find and revoke those rules that have become obsolete and are no longer necessary. In a review of the rules of the Oklahoma Employment Security Commission, it was found that the rules concerning local project funding were obsolete and unnecessary. The local project funding rules consist of 7 rules numbered from 240:1-5-1 through 240:1-5-7. These rules were passed in 2003 to provide for "local project funding" as envisioned by Executive Order 98-37. The OESC never entered into the type of contract provided for in the local project funding program due to restrictions on the use of its federal grant funds. The local project funding rules are now obsolete and should be revoked.

## CONTACT PERSON:

Zubayr Rahman, Director of Legislative Affairs, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Employment Security Commission, 2401 North Lincoln Boulevard, Oklahoma City, OK 73105, 405-762-1146, Zubayr.rahman@oesc.state.ok.us

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 240:1-1-7. Petitions for declaratory rulings

(a) Pursuant to the Administrative Procedures Act, 75 O.S. § 307, individuals or organizations may file a Petition for Declaratory Ruling with the Oklahoma Employment Security Commission to obtain a determination on the applicability of any rule or order of the agency.

(b) The Petition for Declaratory Ruling shall include the following:

- (1) Name, address, and telephone number of the individual or organization filing the Petition.
- (2) Identification of the agency rule or order that the petitioner wishes to have a determination on.
- (3) A short and plain statement of why the declaratory ruling is necessary, the facts that instigated the petition, the outcome the petitioner wishes to achieve, and any prior agency determinations that may be affected by the declaratory ruling requested.

(4) The petition must be signed by the individual, or the chief executive officer of the organization filing it. If the individual or organization is represented by an attorney or representative, that person may sign the petition on behalf of the filing party. The attorney or representative must print his or her full name, address, telephone number, ~~fax number~~, and e-mail address on the petition.

(c) The petition shall be filed with the Director of Appeals, Oklahoma Employment Security Commission, P.O. Box 53345, Oklahoma City, OK 73152-3345.

(d) Procedure:

(1) All declaratory rulings requested for rules and procedures concerning the administration of claims for unemployment benefits pursuant to Article II of the Employment Security Act of 1980 shall be heard by the Appeal Tribunal of the Oklahoma Employment Security Commission. All rules and statutes regarding hearings and appeals of unemployment benefit claims will apply to the hearing, determination, and appeal of these petitions.

(2) All petitions for declaratory rulings on all rules and procedures of the Oklahoma Employment Security Commission, other than those covered by subsection (d)(1) of this rule, shall be heard by the Assessment Board of the Oklahoma Employment Security Commission. All rules and statutes regarding hearings of the Assessment Board and appeals of Assessment Board determinations will apply to the hearing, determination, and appeal of these petitions.

(e) The petition for declaratory ruling shall be docketed and assigned a hearing officer according to the procedures of the Appellate Division. The hearing officer may require briefs from the petitioning party or the Oklahoma Employment Security Commission or both. Any person or entity wishing to file an Amicus Curiae brief must file a motion with the Appellate Division requesting to do so. Amicus Curiae briefs may be allowed by order, at the discretion of the hearing officer. The hearing officer shall have the authority to set motion deadlines, briefing schedules and hearing dates in all cases. Whether or not to hold hearings in a particular case will be within the discretion of the hearing officer. Determinations on petitions for declaratory rulings may be made on the briefs alone.

(f) Notice of all petitions for declaratory rulings shall be posted on the website of the Oklahoma Employment Security Commission and read into the record of the first Commission meeting that occurs more than 20 days after the filing of the petition. The notice will contain:

- (1) The name of the petitioning party.
- (2) The date of filing.
- (3) A short synopsis of the issue presented by the petition including the citation to the statute, rule, policy, or procedures that is the subject of the petition.
- (4) The address to send motions for permission to file amicus curiae briefs and the deadline for filing these motions.

(g) If it is determined that a party is using the declaratory ruling procedure to harass any other party or to hinder or delay the administration of justice, the hearing officer shall have authority to dismiss the petition on those grounds.

SUBCHAPTER 3. RECORDS AND INSPECTIONS

240:1-3-9. Release of confidential information to specific government agencies

- (a) Pursuant to 40 O.S. § 4-508(C), the government agencies, public entities and political subdivisions specified in part (b) of this rule may obtain confidential information maintained by the Oklahoma Employment Security Commission after entering into an agreement with the Oklahoma Employment Security Commission that sets out the purpose the information will be used for, how the information will be transmitted, and how the information will be safe guarded. All costs involved in providing information to government agencies, public entities, or political subdivisions will be set out in the agreement. The information shall be held confidential by the receiving government agency, public entity or political subdivision at all times and shall not be disclosed or open to public inspection. It shall be allowable for the receiving government agency, public entity, or political subdivision to release aggregated data.
- (b) Government agencies authorized to obtain confidential information from the Oklahoma Employment Security are:
- (1) The Oklahoma Department of Commerce, to accomplish specific goals, missions or tasks of the agency as determined by the Oklahoma Legislature;
  - (2) The Oklahoma Department of Transportation for use in federally mandated regional transportation planning, which is performed as a part of its official duties;
  - (3) The Oklahoma State Treasurer's office to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;
  - (4) The Oklahoma Attorney General for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
  - (5) The Oklahoma Department of Labor for use in investigation of workers' compensation fraud;
  - (6) The Oklahoma Workers' Compensation Commission for use in investigation of workers' compensation fraud;
  - (7) The Oklahoma Insurance Department for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
  - (8) The Oklahoma State Bureau of Investigation for use in the investigation of insurance fraud and health care fraud;
  - (9) Any Oklahoma state, Oklahoma county or Oklahoma municipal law enforcement agency for use in criminal investigations and the location of missing persons or fugitives from justice;
  - (10) The Center of International Trade of Oklahoma State University for the development of international trade for employers doing business in the State of Oklahoma;
  - (11) The Oklahoma State Regents for Higher Education for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program;
  - (12) The Center for Economic and Management Research of the University of Oklahoma to identify economic trends;

- (13) The Center for Economic and Business Development at Southwestern Oklahoma State University to identify economic trends;
  - (14) The Office of Management and Enterprise Services to identify economic trends;
  - (15) The Department of Mental Health and Substance Abuse Services to evaluate the effectiveness of mental health and substance abuse treatment and state or local programs utilized to divert persons from inpatient treatment;
  - (16) Public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C., Section 503(I);
  - (17) An agency of this state or its political subdivisions that operates a program or activity designated as a required partner in the Workforce Innovation and Opportunity Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 3151(b)(1), based on a showing of need made to the Commission;
  - (18) The national State Wage Interchange System, at the discretion of the Commission;
  - (19) The Bureau of the Census of the U.S. Department of Commerce for the purpose of economic and statistical research;
  - (20) The Oklahoma Health Care Authority for use in determining eligibility for subsidies for health insurance premiums for qualified employers, employees, self-employed persons, and unemployed persons; or
  - (21) The Oklahoma State Department of Rehabilitation Services for use in assessing results and outcomes of clients served.
  - (22) The Office of Juvenile Affairs for use in assessing results and outcomes of clients served as well as the effectiveness of state and local juvenile and justice programs including prevention and treatment programs.
  - (23) Any county Public Defender's office in the state of Oklahoma and the Oklahoma Indigent Defense System for the purpose of determining financial eligibility for the services provided by these entities.
  - (24) The Oklahoma Department of Career and Technology Education and the Oklahoma State Regents of Higher Education as agencies approved to request access to wage information to determine educational outcomes of students graduating from schools and universities in Oklahoma.
- (c) For the limited purpose of completing performance accountability reports required by the Workforce Innovation and Opportunity Act, only those designated required partners that meet the 20 CFR §603.2(d) definition of public official may contract with a private agent or contractor pursuant to 20 CFR §603.5(f) for the purpose of the private agent or contractor receiving confidential unemployment compensation information to the extent necessary to complete the performance accountability reports.

SUBCHAPTER 5. LOCAL PROJECT FUNDING [REVOKED]

# Permanent Final Adoptions

## 240:1-5-1. Purpose [REVOKED]

These rules set out the procedures and criteria that will be used to award local project funding contracts by the Oklahoma Employment Security Commission.

## 240:1-5-2. Definitions [REVOKED]

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

**"Commission"** means the Oklahoma Employment Security Commission.

**"Local project funding contract"** means an agreement made pursuant to Executive Order 98-37, not subject to statutory competitive bidding requirements, between a state agency and a local governmental entity or a private entity, or both, in which the state agency agrees to provide funding to accomplish a public purpose. The direct benefits of a local project funding contract shall accrue primarily to a local population rather than the state as a whole.

**"Local Project Administrator"** means the person employed by an entity that is awarded a local project funding contract, or the person employed by an entity that will be the fiscal agent acting on behalf of a group of entities that have collaborated to obtain a local project funding contract. The local project administrator will:

- (A) Serve as the point of contact with the Commission;
- (B) Submit and attest to the accuracy of all reports; and
- (C) Receive payment of all funds and manage the funds.

**"LPF Auditor"** means the employee of the Commission designated by the Executive Director to be responsible for monitoring all local project funding contracts after an award of the contract has been made.

**"LPF Officer"** means the employee of the Commission designated by the Executive Director to be responsible for reviewing all local project funding contract proposals, and who will award contracts to the successful applicants.

## 240:1-5-3. Local project funding announcement [REVOKED]

Each local project funding contract will be announced by press release submitted to 25 newspapers in both metropolitan and rural areas. A paid advertisement will be placed in a newspaper that serves the geographic area where the local project will be located. An announcement will also be printed in the Oklahoma Register. All announcements will be submitted at least 20 days before the deadline for making application to obtain a local project funding contract. Each announcement submitted for publication shall contain the following information:

- (1) The Oklahoma Employment Security Commission will be the contracting agency;
- (2) A description of the type of projects eligible for local project funding contracts;

(3) A description of the type of persons or entities who are eligible or qualified for the local project funding contract;

(4) A total amount of money available from the agency for the local project funding contract;

(5) The closing date and time for receipt of applications; and

(6) The name, business address, telephone number, fax number, and e-mail address of the person who interested parties may contact for additional information and the name and business address of the person to whom applications must be submitted.

## 240:1-5-4. Evaluation of local project funding contract applications [REVOKED]

(a) The LPF officer will be responsible for evaluating all local project funding contract applications and to award contracts to the successful applicants

(b) Each local project funding contract application will be evaluated on the following criteria, if relevant:

- (1) The lowest unit price or overall cost;
- (2) The best value;
- (3) The experience of the person or entity applying for the contract;
- (4) The licenses, certifications, or academic achievement possessed by the applicant;
- (5) The past contractual experience between the Commission and the applicant;
- (6) The number of employees and the amount of resources the applicant will devote to the project;
- (7) The financial condition or capitalization of the person or entity applying for the contract;
- (8) Demonstrated ability to complete the project and meet all reporting requirements; and
- (9) That the applicant is an equal opportunity employer.

## 240:1-5-5. Affidavit of LPF officer [REVOKED]

The LPF officer shall be responsible for submitting an affidavit to the Director of the Office of Management and Enterprise Services certifying that the award of the local project funding contract met all criteria set forth in these rules, as well as filing all other documentation required for the Office of Management and Enterprise Services to encumber the necessary funds and pay the local project funding contract.

## 240:1-5-6. Serial numbering of local project funding contracts [REVOKED]

Each local project funding contract shall be identified by a serial number that will be cited in all correspondence to the contracting parties and the Office of Management and Enterprise Services concerning the local project funding contract. The number shall begin with the agency number for the Commission, followed by the last two digits of the year in which the contract is made, then followed by the number assigned to the contract. The agency number, year, and contract number will be separated by dashes.



**240:1-5-7. Monitoring of local project funding contracts [REVOKED]**

The Commission will be responsible for monitoring all local project funding contracts awarded under these rules. The Commission will have the right to require the local project administrator to submit any reports deemed necessary for the award and administration of the contract, and the local project administrator will allow the LPF Auditor to audit any of its books and records that the auditor deems necessary in order to ensure that the purposes of the contract are being fulfilled and that all laws and rules are being adhered to. The LPF auditor will also have the right to conduct a physical inspection of any facilities or programs that are benefited or impacted by the local project funding contract.

*[OAR Docket #22-679; filed 7-21-22]*

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

*[OAR Docket #22-680]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 240:10-1-2. Definitions [AMENDED]
- Subchapter 3. Benefits
- Part 5. Eligibility
- 240:10-3-20. Instructions to secure work [AMENDED]
- 240:10-3-21. Educational institutions-between academic terms [AMENDED]
- 240:10-3-22. Filing claims for benefits [AMENDED]
- 240:10-3-27. Social Security account numbers or claim ID number [AMENDED]
- Part 11. Filing Claims Notice
- 240:10-3-50. Employers who receive a notice of determination [AMENDED]
- 240:10-3-53. ~~High volume employers and third party administrators filing requirements~~ Filing requirements for third-party administrators, high volume employers and temporary help firms [AMENDED]
- 240:10-3-54. Electronic notification for ~~employers/employers~~ unemployment benefit claims [AMENDED]
- 240:10-3-55. Electronic notification for claimants with unemployment benefit claims [NEW]
- Part 12. Interest Waiver for Benefit Overpayments
- 240:10-3-61. Filing a request for waiver [AMENDED]
- 240:10-3-63. Request letter [AMENDED]
- 240:10-3-65. Appeal of initial determination [AMENDED]
- Subchapter 5. Contributions
- Part 3. Rates
- 240:10-5-17. Relief from benefit wage charges - disasters [AMENDED]
- Part 19. Maintenance and Production of Work Records
- 240:10-5-91. Employer's Quarterly Contribution Wage Reports [AMENDED]
- Subchapter 11. Assessment Board Procedure
- Part 1. General Provisions
- 240:10-11-6. Address of Board [AMENDED]
- Subchapter 13. Appeal Tribunal Procedure
- Part 1. General Provisions
- 240:10-13-5. Jurisdiction [AMENDED]
- 240:10-13-8. Address of Appeal Tribunal [AMENDED]
- Part 3. Appeals to Appeal Tribunal
- 240:10-13-20. Filing an appeal [AMENDED]
- Part 5. Hearings

240:10-13-41. Withdrawal [AMENDED]

**AUTHORITY:**

Oklahoma Employment Security Commission; 40 O.S. §§ 4-302, 4-310.1

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

August 4, 2021.

**COMMENT PERIOD:**

September 1, 2021 through October 1, 2021

**PUBLIC HEARING:**

October 1, 2021

**ADOPTION:**

October 5, 2021

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

October 8, 2021

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTION:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

240:10-1-2. Definitions. The proposed definitions are being added to reflect the Business Process Transformation taking place within the agency, the health state of emergency declared by the Governor in March 2020 and defining the employer groups able to file as high-volume employers.

240:10-3-20. Instructions to secure work. The U.S. Department of Labor provided model UI state work search legislation in its training and employment notice of February 10, 2020. The OESC has been requested to enact the model work search legislation into its state law. Subsection (b) of this rule contains the work search requirements for the OESC. Some of the current requirements have been stricken because they were duplicated in the model language provided by the USDOL. The USDOL model language is included in subsections (b)(4) through (18). Subsection (dd) is an activity log requirement and subsection (E) is a referral requirement that also come from the USDOL model legislation. The model legislation is intended to create similar requirements across the United States and to speed unemployment benefit claimants to return to work. Subsection (f) is being amended to allow for waiver of work registration requirements when there is a natural disaster, pandemic, fire, flood, or explosion and the requirement would work a hardship on claimants.

240:10-3-21. Educational institutions - between academic terms. The proposed amendment is to add language to allow for benefits for jobs that provide services to an educational institution but is not an actual educational institution itself. An example of this would be an educational institution by a private for-profit entity that is not an educational institution or an educational service agency.

240:10-3-22. Filing claims for benefits. The proposed amendment is noticing claimants of the new digital services portal and the filing procedure to access benefits.

240:10-3-27. Social Security account numbers or claim ID number. The proposed amendment is noticing employers utilizing the secure employer's portal to use social security numbers when submitting communication regarding quarterly contributions, reports, or adjustments to reports. If an employer utilizes electronic e-file or mail to submit communication or reports they will need to refrain from submitting social security numbers and submit the name and claim ID number of the workers.

240:10-3-50. Employers who receive a notice of determination. The proposed amendment notices employers of rights and responsibilities if they choose to be a party to the claim.

240:10-3-53. Filing requirements for third-party administrators, high volume employers and temporary help firms. The proposed amendment adds Temporary Help Firms as a high-volume employer that must file protests through the State Information Data Exchange System (SIDES). Amendments were made to reflect the digital process transformation of the Commission.

240:10-3-54. Electronic notification for employers regarding unemployment benefit claims. The proposed amendment is noticing the employer of its responsibility to check for notices through the OESC employer portal. Subsection (b) notifies the employer of the rules regarding the date

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stamp of the notification. Subsection (c) notifies the employer of their right to opt out of the electronic transmission process.

240:10-3-55. Electronic notification for claimants with unemployment benefit claims. The proposed amendment is noticing the claimant of its responsibility to check for notices through the OESC claimant portal. The claimant portal will allow for notification of claim determinations through a secure internet portal that claimants can access through the use of user IDs and passwords. Once completed, the claimant portal, like the employer portal provided for in 240:10-3-54, will create an efficient and secure mode of communication for unemployment benefit claimants.

240:10-3-61. Filing a request for waiver. The proposed amendment updates language and adds the option of electronic e-filing as a means of filing a request.

240:10-3-63. Request letter. The proposed amendment removes the requirement to include a social security number when submitting a request to OESC.

240:10-3-65. Appeal of initial determination. The proposed amendment updates language to be in line with 40 O.S. Section 2-603.

240:10-5-17. Relief from benefit wage charges - disasters. The proposed amendment introduces the term "pandemic" to the list of disasters that could be considered among the reasons why relief from benefit wage charges could be granted. Subsection (B) exempts pandemic as a reason an employer can request in writing that their benefit wage charge be removed. It also allows the Executive Director to waive the employer benefit wage charge at any time there has been a pandemic declared by the Governor of Oklahoma and lays out the steps for the waiver.

240:10-5-91. Employer's Quarterly Contribution Wage Reports. The proposed amendment adds ACH debit/credit and EFT as acceptable means of payment of tax by employers.

240:10-11-6. Address of Board. The proposed amendment amends the address of the Assessment Board.

240:10-13-5. Jurisdiction. The proposed amendment updates language to be in line with 40 O.S. § 2-603; Appeal tribunal.

240:10-13-8. Address of Appeal Tribunal. The proposed amendment amends the address of the Appeal Tribunal.

240:10-13-20. Filing an appeal. The proposed amendment gives claimants the option to file their appeal on-line or by electronic e-file which would bring this rule in line with the Business Process Transformation of the agency.

240:10-13-41. Withdrawal. The proposed amendments give the claimant the option to withdraw their appeal by electronic e-file or by mail.

## CONTACT PERSON:

Zubayr Rahman, Director of Legislative Affairs, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Employment Security Commission, 2401 North Lincoln Boulevard, Oklahoma City, OK 73105, 405-762-1146, Zubayr.rahman@oesc.state.ok.us

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 240:10-1-2. Definitions

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

**"Business Process Transformation"** means a change from paper and pencil process to integrated digital technology.

**"Commuting distance"** means an automobile driving distance of fifty (50) miles from a claimant's place of residence.

**"Electronic" or "Electronic e-filing"** means submission by email or other digital transmission.

**"Full-time work"** means employment in thirty-two (32) or more hours of work per week.

**"Good cause"** means reasons beyond the control of the party seeking relief.

**"High volume employer"** means any employer entity that files more than 30 protests in any month during the previous calendar year in response to benefit claim notices on behalf of itself or client employers.

**"Interested Party"** means:

(A) In an unemployment claim appeal - the Commission, a claimant who files a claim for unemployment benefits with the Commission, and any employer who properly files a written objection to the claim pursuant to 40 O.S. § 2-503 (E) and 2-507.

(B) In an unemployment tax protest - the Commission and the employer with an account that is directly affected by a decision made by the Commission or its representative.

(C) In a supplemental unemployment benefit plan appeal - the Commission, the employer that made application for approval of the plan, and the collective bargaining agent of the employees, if any exists.

**"Leases" and "Rents"** means a contract between an owner of a business, building, or property and a leasee, in which:

(A) Space is leased, sublet, or rented for the purpose of operating or conducting a trade or business by the leasee;

(B) The lease or rental fee is set at a fixed amount per month, that remains constant for the term of the lease, sublease, or rental contract; and

(C) Is not based upon a percentage of income or revenue earned in the trade or business.

**"Mail", "Mailed", and "Mailing"**, as used in 40 O.S. §1-224, shall mean the mailing of a document through the United States Postal Service or a private delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C. § 7502(f), as a delivery service that may deliver returns, claims, statements, or other documents to the Internal Revenue Service.

**"Pandemic"** means a health state of emergency declared by the Governor.

**"Part-time work"** means employment of less than thirty-two (32) hours of work in a week.

**"Reasonable cash value"** [40:1-218] means an amount estimated and determined by consideration of the position held, type of work performed, duration of the work, and customary compensation of like providers in like industries.

**"Reemployment Services"** means those services which provide job search assistance and job placement services, which are counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services.

**"RESEA"** means Re-Employment Services and Eligibility Assessment.

**"RESEA Selection"** means:

(A) A systematic computer generated process that:

(i) Identifies those claimants most likely to exhaust regular compensation and will need job

- search assistance services to make a successful transition to new employment;
- (ii) Refers identified claimants to reemployment services; and
- (iii) Collects follow-up information relating to the services received.

(B) Data elements which may be used in the identification process for RESEA selection are:

- (i) Recall status;
- (ii) Union hiring hall agreement;
- (iii) Education;
- (iv) Job tenure;
- (v) Industry;
- (vi) Occupation;
- (vii) Unemployment rate;
- (viii) Number of prior UI claims; and
- (ix) Maximum weekly benefit amount.

(C) Data elements prohibited for usage in RESEA selection are:

- (i) Age;
- (ii) Race or ethnic group;
- (iii) Sex;
- (iv) Color;
- (v) National origin;
- (vi) Disability;
- (vii) Religion;
- (viii) Political affiliation; and
- (ix) Citizenship.

**"Temporary help firm"** means any firm or entity that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, or special assignments and projects.

**"Temporary Layoff"** means a short term cessation of work or employment in which the employer maintains an attachment to an employee by means of a recall date. A temporary layoff may be requested by an employer for no more than eight (8) weeks in any benefit year. A request for a temporary layoff must be made by the employer to the Commission in writing and must include a specific recall date within eight (8) weeks of the cessation of work or employment. The employer may apply to the Commission for an extension of the recall date. The extension shall not exceed four (4) additional weeks in the benefit year.

**"Temporary Layoff-Federal"** means a short-term cessation of work or employment in cases involving a federal agency or federal contractor with employees who have agreed to refrain from seeking employment elsewhere as part of their terms of employment when work is ceased due to the needs of the federal government, and the federal employer or federal contractor maintains an attachment to an employee by means of its contract of employment. In these cases, a recall date will not be required. The provisions of 40 O.S. §2-105.1 on reimbursed pay or back pay shall apply to this type of temporary layoff.

**"Third Party Administrator"** means any entity that contracts with an employer to perform administrative functions on the employer's behalf related to the employer's compliance

with any provision of the Employment Security Act of 1980, or any entity that contracts to represent the employer's interests in any protests, appeal or hearing before any division of the Oklahoma Employment Security Commission or the Board of Review. Attorneys licensed to practice law in Oklahoma who represent clients before the Oklahoma Employment Security Commission, or the Board of Review shall not be considered third party administrators.

**"Wages"**

(A) **"Gratuities"** or **"Tips"** The employer shall include as wages all monies paid as gratuities or tips received by an individual in the course of his or her work pursuant to 40 O.S. Section 1-218 or, if actual information is not available, gratuities and tips shall be allocated to the employer in the amount of 8% of gross receipts.

(B) **"Noncash remuneration"** Noncash remuneration means meals, lodging or any other payment in kind received by a worker from the employing unit in addition to or in lieu of cash payments for services except for meals and lodging that are furnished on the business premises of the employer for the convenience of the employer pursuant to 40 O.S. Section 1-218(6).

**"Wages paid"**

(A) The term "wages paid", as defined in 40 O.S. Section 1-219, shall include both wages actually received by the worker and wages constructively paid. Wages shall be considered constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time although not then actually in the worker's possession. A mere crediting of the wages to the worker's account, without actually making them available to the worker so that they may be drawn upon by him/her at any time, does not constitute constructive payment.

(B) In the case of an employer who terminates his/her coverage as of January 1st of some year, the term "wages paid" shall include all wages earned for all pay periods up to and including the last payroll period ending in that year, at the end of which, the employer's coverage is terminated.

(C) "Wages paid" to the worker are to be reported in the calendar quarter in which they were actually paid.

**"Week"** For the purpose of paying benefits and for the purpose of this Chapter, a "week" as defined in 40 O.S. §1-220 shall consist of a calendar week which begins at 12:01 A.M. Sunday and ends at midnight the following Saturday.

**"Working day"** means:

(A) For employers, any day the employer as open and conducting its regular business activities.

(B) For claimants, any day the claimant's employer or former employer scheduled the claimant to work and the claimant was present and working at his or her assigned activities for part or all of the scheduled work hours for that day.

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"Written notice" means submission by electronic e-filing or by mail.

## SUBCHAPTER 3. BENEFITS

### PART 5. ELIGIBILITY

#### 240:10-3-20. Instructions to secure work

(a) **Able and available to accept employment.** When a claimant files an initial claim for benefits, the Commission shall instruct the claimant that, in addition to registering for work in the Oklahoma labor exchange system or the system in the state in which the claimant resides, the claimant must diligently search for suitable employment.

(b) **Seek and accept work.** The Commission shall ~~direct and require that claimants to~~ diligently search for work ~~the claimant must do those things that a reasonably prudent individual in a prudent manner that would be expected to do to secure work using any means that are appropriate and customary suitable each week. A diligent work search requires that a claimant make two (2) work search efforts each week and consists of some combination of the following elements:~~

(1) Union members must be registered with the hiring hall or placement facility of their labor union and be a member in good standing.

(2) Participation in ~~all~~ reemployment services offered to the claimant by the Commission or any other State Employment Service.

(3) Submit weekly job applications for work with suitable employers.

(4) ~~Register with the placement service of any professional organization the claimant is a member of. Register for work, create, and upload a resume with the state's labor exchange system, job boards, placement service of any professional organization the claimant is a member of, temporary work agencies, or educational institution with job placement offices;~~

(5) ~~Register with the placement service of any school, college, university, or training institution from which the claimant graduated.~~ Participate in scheduled reemployment services offered by the Oklahoma Employment Security Commission in Workforce Oklahoma Centers or complete similar online or self-service activities.

(6) ~~Take examinations for work with governmental agencies. Participate in employment and training services provided by partner programs in Workforce Oklahoma Centers;~~

(7) Participate in work-related networking events sponsored by the Oklahoma Employment Security Commission (e.g., job clubs, job fairs, industry association events, networking groups, etc.);

(8) Taking a civil service exam or examinations for work in a governmental agency;

(9) Participate in interviews with employers (virtually or in-person); or

(10) Any other work search activities prescribed by the Commission.

(c) **Increase of work search requirements.** The number of work search efforts described in subsection (b) of this rule ~~may shall~~ be increased at the discretion of the Commission based on the circumstances of each claimant if the claimant has not received a job offer within the first six (6) weeks of unemployment.

(d) **Activity log.** The claimant is required to maintain the Commission provided work search activity log, as well as, any associated documentation and make it available for review by Commission representatives, upon request.

(e) **Referrals.** A claimant who receives job referrals from the Commission that are considered to be appropriate or suitable, as otherwise defined in 40 O.S. §2-408, must apply for the job within one week of receiving the referral, and the claimant must accept employment if suitable work is offered. Claimant may be disqualified to receive benefits pursuant to 40 O.S. §Section 2-417-18.

(f) **Waiver of work search requirement.** If an employee is involved in a temporary layoff, a temporary layoff-federal, or is receiving supplemental unemployment benefit payments through an approved plan, the work search requirement is met if the employee maintains an attachment to the employer and remains available to return to work for the employer. The work ~~registration search~~ requirement of 40 O.S. §2-204 and work search requirement of 40 O.S. §2-417 may be waived by the Executive Director in consultation with the Deputy Director, the General Counsel, and a designated Division Director members of the Senior Staff if it is found that claimants in a specific geographic area or region of the state are prevented from making a reasonable work search as a direct result of natural disaster, pandemic, fire, flood, or explosion.

(g) Work search efforts to the same employer for the same role or position may only be repeated every four (4) weeks. Claimants may search for different roles or positions with the same employer, as desired. If employer initiates a second interview and the claimant completes the interview, the second interview may be considered a work search effort for the claimant.

#### 240:10-3-21. Educational institutions - between academic terms

Pursuant to 40 O.S. §2-209 and 26 U.S.C.A. §3304(a)(6)(A), benefits based on service and employment defined in 40 O.S. §1-210(3) or (4) shall be payable on the same terms and conditions as benefits payable on the basis of other service subject to the Employment Security Act of 1980, except that individuals providing services to an educational institution shall not be paid benefits based on services to the educational institution for any week of unemployment commencing during the period between two successive academic years or terms, if the individual performs services in the first academic year or term and there is a contract or a reasonable assurance that the individual will perform services for the educational institution in the second academic year or term. A determination of the denial of benefits between an

academic year or term shall be made based on the following subsections of this rule:

(1) Prerequisites. Before making a determination concerning the existence of a contract or reasonable assurance of employment in the following academic year or term, the Commission representative must find that three prerequisites exist. If any one of the three prerequisites are not met, unemployment benefits must be allowed. The three prerequisites are:

(A) An offer of employment. The offer may be written, oral or implied. The offer must be genuine and made by an individual with authority to offer the employment.

(B) The employment offered in the following academic year or term must be in the same capacity as that of the previous academic year or term.

(C) The economic conditions of the job offered in the following academic year or term may not be considerably less than the conditions present in the previous academic year or term. If the claimant is offered a salary or wage for the following academic year or term that is less than 90% of the salary or wage paid in the previous academic year or term, this shall be considered economic conditions that are considerably less from the previous to the following academic year or term.

(2) The term "contract" means an enforceable, non-contingent agreement that provides for compensation: (i) for an entire academic year; or (ii) on an annual basis, though the contract terms describing compensation are not expressed as an annual salary.

(3) The term "reasonable assurance" means that there is a high probability that employment will be available based on the totality of circumstances and contingent nature of the offer made to the claimant. The following rules apply in making the determination:

(A) If the offer of employment contains a contingency, the Commission representative must determine if the contingency is within the employer's control or not in the employer's control. If the offer of employment is contingent upon a factor within the employer's control, such as course programming, allocation of funding, final course offerings, program changes, and faculty availability, the claimant does not have reasonable assurance and benefits shall be allowed. If the offer of employment is contingent on factors outside of the employer's control such as enrollment levels, legislative funding, or seniority, this would be considered to not be in the employer's control and further examination of the facts is required.

(B) If the employer's offer to a claimant contains a contingency that is not in the employer's control, the Commission representative must examine the contingent nature of the offer. The Commission representative must give primary weight to the contingency when making the determination on the claim. If the Commission representative finds that it is highly probable that the contingency will be met,

that is, the issue upon which the contingency is based will probably be concluded in a way that will allow employment to occur in the next academic year or term, then reasonable assurance can be found. If it is not highly probable that the contingency will be met, that is, there is a good probability the contingency will be resolved in a way that will prevent employment from occurring in the next academic year or term, then reasonable assurance cannot be found.

(C) The Commission representative must analyze the totality of circumstances for each offer of employment to determine whether it is highly probable that there will be a job available for the claimant in the following academic year or term. This element requires considering factors such as legislative appropriations, funding levels, enrollment, the nature of the course of study to be taught, the claimant's seniority, budgeting and assignment practices of the school, the number of offers made in relation to the number of potential teaching assignments, the period of student registration, and any other contingencies. In order to find that there is reasonable assurance, the Commission representative is required to find, through evidence presented by the employer and the claimant, that it is highly probable that a job is available in the next academic year or term. In making a determination of reasonable assurance, the Commission representative is not required to find that there is a certainty of a job.

(4) Employer requirements.

(A) If the educational institution employer did not enter into a formal employment contract with the claimant, the employer shall submit a written statement to the Commission representative explaining the manner in which the employee was given a reasonable assurance of employment in the following academic period or term. The employer shall state whether the assurance was given in writing, orally, or implied through other means. The employer shall state the information that was given to the claimant about the offer of employment in the next academic year or term, including contingencies.

(B) If the educational institution employer entered into a formal employment contract with the claimant, the employer shall provide a copy of the contract to the Commission representative.

(C) The educational institution employer will be responsible to provide any other information necessary to make the determination of a contract of employment or reasonable assurance and any other information requested by the Commission representative.

(5) Claimant requirements. The claimant will be responsible to provide sufficient information for the Commission representative to make a determination of reasonable assurance of employment or a contract of employment in the next academic year or term, and the claimant shall provide any information or documents requested by the Commission representative. If services

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are provided to or on behalf of an educational institution by a private for-profit entity or an entity pursuant to the provisions of 40 O.S. Section 1-210 (3)(4) that is not an educational institution or an educational service agency, the employees providing these services shall not be subject to the terms and conditions as described in 40 O.S. Section 1-210 (1)(2)(3) and (4).

### **240:10-3-22. Filing claims for benefits**

Claims for unemployment insurance benefits are to be submitted by telecommunication or by internet utilizing the digital services portal to create an account to access benefits with respect to each week in accordance with such rule as the Commission may prescribe, filed by claimants through the Internet or by telecommunication.

### **240:10-3-27. Social Security account numbers or claim ID number**

(a) **Submittal by employing unit.** Each employing unit shall submit the name and Social Security account number of a worker through the employer's portal or by mail when communicating with the Commission in connection with any quarterly contribution report or adjustment of said report, claim, or proceeding under the Employment Security Act of 1980 with respect to such worker. Any report or claim submitted to the Commission by an employing unit through electronic e-file or by mail shall refrain from submitting social security numbers and shall submit the name and claim ID number of the worker(s).

(b) **Submittal by individual.** Any individual shall submit his/her name and Social Security account number or a claim ID number when communicating with the Commission in connection with any report, claim, or proceeding under the Employment Security Act of 1980 with respect to such individual.

## **PART 11. FILING CLAIMS- NOTICE**

### **240:10-3-50. Employers who shall receive a notice of determination**

(a) In order for an employer to receive a notice of determination for being a party to a claim when a claimant has filed for benefits, the employer must electronically e-file a timely objection to the claim (40:2-507), unless the employer has elected to utilize other means of transmittal pursuant to 40 O.S. § 1-224.

(b) The phrase to each other employer who timely filed a written objection to the claim [40:2-507] refers to "each employer" involved in the claim for benefits. Thus, both last and base period employers must timely file a written objection to the claim in order to have a right to receive a notice of a determination upon a claim.

### **240:10-3-53. High volume employers and third-party administrators—filing requirement Filing requirements for third-party administrators, high volume employers and temporary help firms**

~~(a) Any employer or third party administrator~~ Third-party administrators, high volume employers and temporary help firms shall file protests through the State Information Data Exchange System (SIDES) or by telefax to the telefax number set out referenced on the Notice of Benefit Claim form. Appeals shall be filed any appeal by telefax to the telefax number set out referenced on the Notice of Determination or by electronic e-filing pursuant to 40 O.S. §1-224(B)4. The Oklahoma Employment Security Commission shall not accept hand delivery, postal mailing, or e-mailing of protests or appeals by third-party administrator, high volume employers, or temporary help firms that files more than 30 protests in any month during the previous calendar year in response to benefit claim notices, on behalf of itself or client employers, shall file the protests through the State Information Data Exchange System (SIDES) or by telefax to the telefax number set out on the Notice of Benefit Claim form, and shall file any appeal by telefax only to the telefax number set out on the Notice of Determination. The Oklahoma Employment Security Commission shall not accept hand delivery, postal mailing, or e-mailing of protests or appeals by employers or third party administrators meeting the volume of filings set forth above.

~~(b) The Oklahoma Employment Security Commission may review the protests filed by employers and third party administrators and shall issue written determinations to employers or third party administrators that are determined to meet the filing volume set out in subsection (a) above. Appeal of this determination shall be made pursuant to the procedures set out in 40 O.S. §3-115.~~

### **240:10-3-54. Electronic notification for employer employers regarding in unemployment benefit claims**

~~(a) An employer may request that all notices concerning an unemployment benefit claim, in which the employer is involved, be delivered through electronic means. Once the request is processed, all notices in all unemployment insurance cases currently pending and that arise in the future may be delivered through electronic means by utilizing the employer portal. It will be the responsibility of the employer to access its account through the employer portal on a regular basis to check for notices concerning unemployment benefit claims that are posted there.~~

~~(b) It will be the responsibility of the employer to access its account through the employer portal on a regular basis to check for notices concerning unemployment benefit claims that are posted there. All deadlines shall be computed from the date of the electronic notification sent by the Commission.~~

~~(c) All time deadlines shall be computed from the date of the electronic notification sent by the Commission. If the employer has elected to utilize other means of transmittal it will be the responsibility of the employer to notify the Commission of this preference.~~

**240:10-3-55. Electronic notification for claimants with unemployment benefit claims**

Upon completion of the business process transformation, claimants will be able to access their account through the online claimant's portal. It will be the responsibility of the claimant to access its account through the claimant's portal on a regular basis to check for notices concerning unemployment benefit claims that are posted there. This will allow for notification of claim determinations through a secure internet portal that claimants can access through the use of user IDs and passwords. Once completed, the claimant portal, like the employer portal provided for in 240:10-3-54, will create an efficient and secure mode of communication for unemployment benefit claimants.

**PART 12. INTEREST WAIVER FOR BENEFIT OVERPAYMENTS**

**240:10-3-61. Filing a request for waiver**

- (a) A claimant who wants a waiver of interest that has accrued ~~in due to~~ his or her overpayment, must make a request for waiver in writing and file it with the Oklahoma Employment Security Commission.
- (b) Filing must be accomplished by electronic e-filing, mailing or delivering the request document to the Benefit Payment Control Unit of the Oklahoma Employment Security Commission at the following address: Oklahoma Employment Security Commission, Benefit Payment Control Unit, P. O. Box 52925, Oklahoma City, OK 73152-2925.
- (c) A request for waiver is deemed filed on the date the request letter is received by the Oklahoma Employment Security Commission.

**240:10-3-63. Request letter**

- (a) The request letter prepared by the claimant must contain the following information:
  - (1) Claimant's name, address, and telephone number
  - (2) Claimant's ~~Social Security number or claim ID number~~
  - (3) The time period for which interest is requested to be waived or the amount of interest requested to be waived.
  - (4) A statement of all reasons the claimant will rely on to explain why interest should be waived.
- (b) The request letter must be signed by the claimant.
- (c) If the claimant is represented by an attorney, the name, address, telephone number and Oklahoma Bar Association number of the attorney must also be included in the request letter.
- (d) The claimant must attach to the request letter a copy of all notices, statements, determinations, correspondence, or any other documents relevant to the request for waiver.

**240:10-3-65. Appeal of initial determination**

- (a) In order to appeal the determination of the Oklahoma Employment Security Commission, the claimant must file an

appeal within 10 days ~~of~~ after the date the determination letter was mailed to the claimant pursuant to 40 O.S. Section 2-603.

- (b) The appeal document or communication must contain the following:
  - (1) The name, address, and telephone number of the claimant.
  - (2) The claimant's ~~Social Security number or~~ claim ID.
  - (3) The date of the determination letter issued by the Oklahoma Employment Security Commission.
  - (4) Signature of the claimant.
- (c) The appeal may be filed by any method allowed in 40 O.S. Section 1-224 or by telecommunication.
- (d) If any claimant fails to file his or her appeal letter within the 10 days provided for in subsection (a) of this Section, then the determination of the Oklahoma Employment Security Commission shall be final, and no appeal shall thereafter be allowed.

**SUBCHAPTER 5. CONTRIBUTIONS**

**PART 3. RATES**

**240:10-5-17. Relief from benefit wage charges-disasters**

- (a) In order for an employer to remove a benefit wage charge from his or her account because of a separation of employees from employment that occurred due to a natural disaster, pandemic, fire, flood, or explosion pursuant to 40 O.S. Section 3-106.1, the following requirements must be met:
  - (1) The affected employer must request in writing that the benefit wage charge be removed and shall state in this writing:
    - (A) date of the occurrence of the disaster;
    - (B) type of disaster;
    - (C) name of the business;
    - (D) physical location of the building, office, or plant involved in the disaster; and
    - (E) nature of the business conducted by this employer at the location that was damaged.
  - (2) The disaster must be reported to the Commission within one year and four months of the date of occurrence.
- (b) The benefit wages charged to an employer for a given calendar year may be waived at any time at the discretion of the OESC Executive Director when a pandemic has been declared by the Governor of Oklahoma. An emergency waiver will be executed based upon the specific time frames stated in the executive order and/or any amendments or revisions to the executive order signed by the executive director. The executive order shall lay out the beginning and ending dates of the emergency waiver. Therefore, employers will not be charged while the emergency waiver is in place. Benefit wage charges that occur after the expiration date of an emergency waiver will be administered in accordance with 40 O.S. section 3-106. Moreover, 240:10-5-17(A) is not applicable when a pandemic has been declared.

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## PART 19. MAINTENANCE AND PRODUCTION OF WORK RECORDS

### 240:10-5-91. Employer's Quarterly Contribution Wage Reports

(a) **Due date of report.** Each employer shall report both contributions and "wages paid" (as defined in OAC 240:10-1-2) through the Employer Portal on the Commission Internet website, or if an exception has been granted, on paper Form OES-3, Employer's Quarterly Contribution and Wage Report, for each quarterly period in which the employer is subject to the Employment Security Act of 1980, on or before the last day of the month following the calendar quarter to be reported. However, an employing unit which has not previously qualified as an employer under the Employment Security Act of 1980 and who first qualifies as an employer during a calendar year shall file Form OES-3, Employer's Quarterly Contribution and Wage Reports, for all past periods of that calendar year on or before the due date for the quarterly report for that quarter in which such employing unit becomes an employer subject to the Employment Security Act of 1980.

#### (b) Information required.

- (1) All instructions furnished with the official forms must be followed.
- (2) All information required on the official forms shall be given.

(c) **Date of filing.** The date of filing of the Employer's Quarterly Contribution and Wage Report shall be determined by the date that an employer's fully completed report form is submitted for filing with the Commission pursuant to 40 O.S. §1-224.

#### (d) Report filing.

(1) This subsection shall apply to all Employer's Quarterly Contribution and Wage Reports that are due for filing after January 1, 2011.

(2) All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website, unless an exception is granted by the Commission.

(3) All third-party administrators shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website for clients with an assigned Oklahoma SUTA account number, unless an exception is granted by the Commission.

(e) **Payment of Tax.** All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number and all third-party administrators shall be required to pay all amounts due for quarterly state unemployment taxes on or before the last day of the month following the calendar quarter to which the taxes relate. All employers and third-party administrators shall make payment through ACH debit/credit, wire by an electronic fund transfer (EFT) or a credit card acceptable to the Commission; unless an exception is granted by the Commission for the employer or third-party administrator to make payment in an alternative method.

(f) **Authorization.** This rule is authorized by 40 O.S. §§3-102, 4-302, and 4-503.

## SUBCHAPTER 11. ASSESSMENT BOARD PROCEDURE

### PART 1. GENERAL PROVISIONS

#### 240:10-11-6. Address of Board

(a) The Assessment Board is located at ~~2800 N.W. 36<sup>th</sup> Street, Suite 102,~~ 2401 N. Lincoln Blvd., 4<sup>th</sup> Floor, Oklahoma City, Oklahoma ~~73112,~~ 73152. The telephone number of the Assessment Board is (405) 601-3311. The telefax number of the Assessment Board is (405) 601-3337.

(b) All instruments or correspondence pertaining to a protest before the Board shall be sent to: Assessment Board, P. O. Box 53345, Oklahoma City, Oklahoma 73152-3345.

## SUBCHAPTER 13. APPEAL TRIBUNAL PROCEDURE

### PART 1. GENERAL PROVISIONS

#### 240:10-13-5. Jurisdiction

Pursuant to provisions of 40 O.S. Section 2-602, the Appeal Tribunal is empowered to decide an appeal from determinations of the Commission and/or its representatives. Pursuant to 40 O.S. Section 2-603, an appeal from a determination by the Commission must be filed within ten (10) days ~~from~~after the date of mailing by the Commission. Pursuant to 40 O.S. Section 2-616, an appeal from a determination of the Commission that a benefit overpayment occurred under 40 O.S. Section 2-613(1) or (2), must be filed within twenty (20) days ~~from~~after the date of mailing by the Commission. If not timely filed, the Appeal Tribunal is without jurisdiction, unless good cause for late filing is found by the Appeal Tribunal. Claims for exemption and any other matters relating to an income levy issued pursuant to 40 O.S. Section 2-618 may be filed at any time before the thirtieth day after the expiration date or termination of the levy.

#### 240:10-13-8. Address of Appeal Tribunal

The main office of the Appeal Tribunal is located in Oklahoma City at ~~2800 N.W. 36<sup>th</sup> Street, Suite 102,~~ 2401 N. Lincoln Blvd., 4<sup>th</sup> Floor, Will Rogers Building, Oklahoma City, Oklahoma ~~73112,~~ 73152, with telephone number (405) 601-3311, ~~and telefax number (405) 601-3337.~~

(1) All instruments or correspondence pertaining to a case shall be sent to: Appeal Tribunal, P. O. Box 53345, Oklahoma City, Oklahoma 73152

(2) All instruments and correspondence shall bear the claimant's name and claim ID, if known.



(3) Copies of all documents, instruments, and correspondence mailed, telefaxed, or delivered to the Appeal Tribunal by an interested party to a case shall be sent to the other interested parties to the same case by the Clerk of the Appeal Tribunal.

PART 3. APPEALS TO APPEAL TRIBUNAL

240:10-13-20. Filing an appeal

With the exception of those entities who are required to file by telefax, the appeal should be filed with the Commission in any manner set forth in 40 O.S. Section 1-224. Appeals may be filed on-line, by electronic e-file, or by telephone through the Commission's interactive voice response system, or by speaking with one of the Commission's claim representatives, pursuant to 40 O.S. Section 1-224. A Commission representative will then forward the appeal to the Appeal Tribunal.

PART 5. HEARINGS

240:10-13-41. Withdrawal

- (a) An appeal may be withdrawn by the appealing party at any time prior to the decision being rendered only with approval of the Director of the Appeal Tribunal or his/her designee. A request to withdraw must be submitted in writing; electronic e-filing or by mail.
(b) The case will be dismissed with prejudice (meaning it cannot be brought forth again at a later date). The determination will then stand as final and binding on the parties.

[OAR Docket #22-680; filed 7-21-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #22-619]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions 252:100-1-3 [AMENDED]
Subchapter 7. Permits for Minor Facilities
Part 1. General Provisions 252:100-7-1.1 [AMENDED]
252:100-7-2 [AMENDED]
Part 3. Construction Permits 252:100-7-15 [AMENDED]
Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources
Part 5. Permits for Part 70 Sources 252:100-8-4 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.
Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.
Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through 2-5-117.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 25, 2021
November 23, 2021

COMMENT PERIOD:

September 15, 2021 through October 20, 2021
December 15, 2021 through January 19, 2022

PUBLIC HEARING:

October 20, 2021, Air Quality Advisory Council
January 19, 2022, Air Quality Advisory Council
February 18, 2022, Environmental Quality Board

ADOPTION:

February 18, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 25, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 15, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department of Environmental Quality (Department) is proposing to amend OAC 252:100, Subchapters 1, 7, and 8, to allow for certain construction activities to be conducted at the owner/operator's risk after submission of an administratively complete minor New Source Review (NSR) permit application but prior to issuance of the construction permit. The Department is also proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to NESHAP and NSPS. The gist of this rule proposal and the underlying reason for the rulemaking is to give additional clarity to actions the regulated community may take prior to issuance of a minor construction permit.

CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

252:100-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"Act" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

"Administrator" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"Air contaminant source" means any and all sources of emission of air contaminants (pollutants), whether privately or publicly owned or operated, or person contributing to emission

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of air contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

**"Air pollution abatement operation"** means any operation which has as its essential purpose a significant reduction in:

- (A) the emission of air contaminants, or
- (B) the effect of such emission.

**"Air pollution episode"** means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion. Other factors such as humidity may also affect the episode conditions.

**"Ambient air standards" or "Ambient air quality standards"** means levels of air quality as codified in OAC 252:100-3.

**"Atmosphere"** means the air that envelops or surrounds the earth.

**"Best available control technology" or "BACT"** means the best control technology that is currently available as determined by the Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

**"Building, structure, facility, or installation"** means:

(A) all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

(B) notwithstanding the provisions of subparagraph (A), for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this definition, has the same meaning as in 40 CFR 63.761.

**"Carbon dioxide equivalent emissions" or "CO<sub>2</sub>e"** means an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions, for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a CO<sub>2</sub>e.

**"Catalytic cracking unit"** means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

**"Combustible materials"** means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

**"Commence"** means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

**"Commencement of operation" or "commencing operation"** means the owner or operator of the stationary source has begun, or caused to begin, emitting a regulated air pollutant from any activity for which the stationary source is designed and/or permitted.

**"Complete"** means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Director from requesting or accepting any additional information.

**"Construction"** means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

**"Crude oil"** means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

**"Direct fired"** means that the hot gasses produced by the flame or heat source come into direct contact with the material being processed or heated.

**"Division"** means Air Quality Division, Oklahoma State Department of Environmental Quality.

**"Dust"** means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

**"EPA"** means the United States Environmental Protection Agency.

**"Excess emissions"** means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

**"Existing source"** means, unless specifically defined otherwise, an air contaminant source which is in being on

the effective date of the appropriate Subchapter, section, or paragraph of these rules.

**"Facility"** means all of the pollutant-emitting activities that meet all the following conditions:

- (A) Are under common control.
- (B) Are located on one or more contiguous or adjacent properties.
- (C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

**"Federally enforceable"** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

**"Fossil fuel"** means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

**"Fuel-burning equipment"** means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

**"Fugitive dust"** means solid airborne particulate matter emitted from any source other than a stack or chimney.

**"Fugitive emissions"** means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**"Fume"** means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

**"Garbage"** means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

**"Greenhouse gas" or "GHG"** means the air pollutant defined in 40 CFR § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).

**"Gross particulate matter" or "GPM"** means particulate matter with an aerodynamic diameter greater than 10 micrometers.

**"In being"** means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

**"Incinerator"** means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

**"Indirect fired"** means that the hot gasses produced by the flame or heat source do not come into direct contact with the material, excluding air, being processed or heated.

**"Installation"** means an identifiable piece of process equipment.

**"Lowest achievable emissions rate" or "LAER"** means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

**"Major source"** means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

**"Malfunction"** means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

**"Minor NSR"** means any NSR permit action under Subchapter 7 or 8 that is not Prevention of Significant Deterioration or Nonattainment NSR.

**"Mist"** means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

**"Modification"** means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

- (i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;
- (ii) an increase in hours of operation;
- (iii) use of alternative fuel or raw material if, prior to the date any standard under this part

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becomes applicable to such source the affected facility is designed to accommodate such alternative use.

**"National Emission Standards for Hazardous Air Pollutants"** or **"NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

**"New installation"**, **"New source"**, or **"New equipment"** means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

**"New Source Performance Standards"** or **"NSPS"** means those standards found in 40 CFR Part 60.

**"New source review"** or **"NSR"** means a process of evaluation performed by the DEQ to determine the applicable requirements that must be incorporated into a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source. DEQ's NSR program, at a minimum, must meet the requirements of 40 CFR Part 51, Subpart I.

**"Nonmethane organic compounds"** or **"NMOC"** means nonmethane organic compounds, as defined in 40 CFR 60.754.

**"NSR permit"** means a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source.

**"Opacity"** means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

**"Open burning"** means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

**"Organic compound"** means any chemical compound containing the element carbon.

**"Owner or operator"** means any person who owns, leases, operates, controls or supervises a source.

**"Part 70 permit"** means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

**"Part 70 program"** means a program approved by the Administrator under 40 CFR Part 70.

**"Part 70 source"** means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

**"PM<sub>10</sub> emissions"** means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less as measured by applicable reference methods, or an equivalent or alternative method.

**"PM<sub>10</sub>"** means particulate matter with an aerodynamic diameter of 10 micrometers or less.

**"PM<sub>2.5</sub>"** means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

**"Particulate matter"** or **"PM"** means any material that exists in a finely divided form as a liquid or a solid.

**"Particulate matter emissions"** means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

**"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

**"Prevention of significant deterioration"** or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

**"Process equipment"** means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

**"Process weight"** means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

**"Reasonably available control technology"** or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

**"Reconstruction"** means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new

components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

**"Refinery"** means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

**"Refuse"** means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

**"Refuse-burning equipment"** means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

**"Regulated air pollutant"** means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

**"Responsible official"** means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations

of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

**"Shutdown"** means the cessation of operation of any process, process equipment, or air pollution control equipment.

**"Smoke"** means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

**"Source operation"** means the last operation preceding the emission of an air contaminant, which operation:

(A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,

(B) is not an air pollution abatement operation.

**"Stack"** means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

**"Standard conditions"** means a gas temperature of 68 degrees Fahrenheit (20° Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

**"Startup"** means the setting into operation of any process, process equipment, or air pollution control equipment.

**"Stationary source"** means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

**"Temperature inversion"** means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

**"Title V permit"** means (unless the context suggests otherwise) an operating permit for a Part 70 source.

**"Total Suspended Particulates"** or **"TSP"** means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

**"Visible emission"** means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

**"Volatile organic compound"** or **"VOC"** means any organic compound that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, tert-butyl acetate and compounds listed in 40 CFR 51.100(s)(1) are presumed to

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have negligible photochemical reactivity and are not considered to be VOC.

## SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

### PART 1. GENERAL PROVISIONS

#### 252:100-7-1.1. Definitions

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

**"Actual emissions"** means the total amount of any regulated air pollutant actually emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

**"Administratively complete"** means an application that provides:

(A) All information required under OAC 252:100-7-15(c) and 252:100-7-18(e);

(B) A landowner affidavit as required by OAC 252:4-7-13(b);

(C) The appropriate application fees as required by OAC 252:100-7-3; and

(D) Valid certification by the applicant.

**"Best Available Control Technology" or "BACT"** means the best control technology that is currently available as determined by the Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs.

**"Commence"** means, as applied to the construction or modification of a minor facility to which neither a NSPS or NESHAP applies, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

**"De minimis facility"** means a facility that meets the requirements contained in paragraphs (A) and (B) of this definition.

(A) All the air pollutant emitting activities at the facility are on the de minimis list contained in Appendix H or the facility meets all of the following de minimis criteria:

(i) The facility has actual emissions of 5 TPY or less of each regulated air pollutant, except that fraction of particulate matter that exhibits an aerodynamic particulate diameter of more than 10 micrometers ( $\mu\text{m}$ ).

(ii) The facility is not a "major source" as defined in OAC 252:100-8-2.

(iii) The facility is not a "major stationary source" as defined in OAC 252:100-8-31 for facilities in attainment areas.

(iv) The facility is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas.

(v) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(vi) The facility has not opted to obtain or retain an Air Quality Division permit.

(B) The facility is not subject to the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63).

**"Emergency engine"** means a stationary engine used to resume essential operations or ensure safety during sudden and unexpected occurrences including but not limited to loss of electrical power, fire, and/or flood.

**"Facility"** means all of the pollutant-emitting activities that meet all the following conditions:

(A) Are under common control.

(B) Are located on one or more contiguous or adjacent properties.

(C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

**"Federally Enforceable State Operating Permit" or "FESOP"** means an operating permit issued under Subchapter 7 of this Chapter, including operating permits issued under the provisions of 252:4-7-33(a)(2). As such, for the purposes of this subchapter, "FESOP" and "operating permit" are synonymous.

**"FESOP Enhanced NSR process"** means a process under which the evaluation of requirements applicable under NSR is integrated with a determination of procedural and compliance requirements under the DEQ's FESOP program. This process is only available for facilities already operating under a FESOP permit. Under a FESOP enhanced NSR process, the 30-day public and EPA review period of a draft NSR permit is integrated with the review of the draft FESOP modification, and results in the issuance of a minor source construction permit whose applicable FESOP implications have also been reviewed. Later the requirements of the construction permit may be incorporated into a modified FESOP using the minor source operating permit modification process, without further public or EPA review, as authorized in OAC 252:4-7-13(g)(9) and OAC 252:100-7-18(f).

**"Gasoline dispensing facility"** means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment, as these terms are used in 40 CFR Part 63 Subpart CCCCC.

**"Hazardous Air Pollutant" or "HAP"** means any hazardous air pollutant regulated under Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412, and subject to NESHAP.

**"Minor facility"** means a facility which is not a Part 70 source.

**"National Emission Standards for Hazardous Air Pollutants"** or **"NESHAP"** means those standards as published by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412.

**"New portable source"** means a portable source that has never operated within the State of Oklahoma. This includes sources that are initially constructed and existing facilities that are relocating into Oklahoma from another state.

**"New Source Performance Standards"** or **"NSPS"** means those standards found in 40 CFR Part 60.

**"Permit exempt facility"** means a facility that:

- (A) has actual emissions in every calendar year that are 40 TPY or less of each regulated air pollutant;
- (B) is not a de minimis facility as defined in OAC 252:100-7-1.1;
- (C) is not a "major source" as defined in OAC 252:100-8-2 for Part 70 sources;
- (D) is not a "major stationary source" as defined in OAC 252:100-8-31 for PSD facilities in attainment areas;
- (E) is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas;
- (F) is not operated in conjunction with another facility or source that is subject to air quality permitting;
- (G) is not subject to an emission standard, equipment standard, or work practice standard in the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63); and
- (H) is not subject to the requirements of OAC 252:100-39-47.

**"Portable source"** means a source with design and intended use to allow disassembly or relocation.

**"Relocate"** means to move a source from one geographical location to another. The term does not include minimal moves within the facility boundaries.

**"Regulated air pollutant"** means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

- (A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. Section 60.15(b)(1), the emissions unit is a reconstructed unit within the meaning of paragraph (1) in the definition of "Reconstruction" in 40 C.F.R. Section 63.2, or the emissions unit completely takes the place of an existing emissions unit.
- (B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- (C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**"Traditional NSR process"** means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the FESOP program. This process is required for facilities that have not yet received a FESOP, but it may also be used (as an alternative to the FESOP Enhanced NSR process) for facilities that have already received a FESOP. The traditional NSR process provides a 30-day public and EPA review period on the draft construction (NSR) permit, as described in OAC 252:100-7-17 and OAC 252:4-7. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified FESOP that also includes a 30-day public and EPA review period, as described in OAC 252:100-7-18 and OAC 252:4-7.

**252:100-7-2. Requirement for permits for minor facilities**

(a) **Permit required.** Except as provided in OAC 252:100-7-2 and 252:100-7-18(b), no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from the DEQ. For additional application and permitting procedures, see OAC 252:4, Subchapter 7. Environmental Permit Process.

(b) **Exceptions.**

(1) **De minimis facilities.** De minimis facilities are exempted from the permitting requirements of OAC 252:100-7. De minimis facilities remain subject only to the following air quality control

- (A) De minimis facilities must comply with OAC 252:100-13, Open Burning.
- (B) With the exception of those de minimis cotton gin facilities or grain, feed or seed facilities that comply with the requirements of 252:100-23, Control of Emissions from Cotton Gins or 252:100-24, Particulate Matter Emissions from Grain, Feed or Seed Operations, de minimis facilities remain subject to OAC 252:100-25, Visible Emissions and Particulates.
- (C) With the exception of those de minimis cotton gin facilities or grain, feed or seed facilities that comply with the requirements of 252:100-23, Control of Emissions from Cotton Gins or 252:100-24, Particulate Matter Emissions from Grain, Feed or Seed Operations, de minimis facilities remain subject to OAC 252:100-29, Control of Fugitive Dust.
- (D) De minimis facilities must comply with OAC 252:100-42 Control of Toxic Air Contaminants.
- (E) De minimis facilities must comply with 252:100-5, Registration, Emission Inventory and Annual Operating Fees.

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- (2) **Permit exempt facilities.** Permit exempt facilities are exempted from the permitting requirements of OAC 252:100-7. Permit exempt facilities remain subject to all other applicable State and Federal air quality control rules and standards.
- (3) **Emergency engines at residential and school facilities.** Primary and secondary schools and single family residences with an emergency engine are exempted from the permitting requirements of OAC 252:100-7.
- (4) **Gasoline dispensing facilities with throughput of less than 100,000 gallons per month.** Gasoline dispensing facilities in compliance with 40 CFR Part 63 Subpart CCCCCC, and whose primary or only obligation to obtain a permit is due to the construction (installation) and/or operation of a gasoline dispensing facility, with throughput of less than 100,000 gallons per month on a rolling annual average are exempt from the permitting requirements of OAC 252:100-7.
- (5) **Construction Activities Prior to Issuance of a Minor NSR (Construction) Permit.** After the submission of an administratively complete minor NSR construction permit application, but prior to the issuance of the corresponding construction permit, an applicant may begin construction up to, but not including, making any new, modified, or reconstructed unit operational such that it has the ability to emit any regulated air pollutant. The applicant assumes the risk of losing any investment it makes toward implementing such construction prior to the issuance of a construction permit authorizing the construction. DEQ retains the authority to deny the permit application without consideration of and regardless of any investment the applicant has made prior to permit issuance. This paragraph does not serve as authorization by DEQ of the requested construction. In addition, this exception does not exempt the owner or operator from any applicable requirements under federal rules (e.g., NSPS or NESHAP) or state-only regulations.
- (c) **Permit application.**
- (1) All applications shall be signed by the applicant.
- (2) The signature on an application for a permit shall constitute an implied agreement that the applicant shall be responsible for assuring construction or operation, as applicable, in accordance with the application and OAC 252:100.
- (3) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of the draft permit.
- (d) **Applicability determination.** Upon written request along with the required fee and any relevant information needed, the DEQ will make a determination of whether a permit is required.
- (e) **Change in permit status.** The owner or operator of a permitted facility may at any time notify the DEQ that the facility:
- (1) Is de minimis, requesting termination of the permit, or
- (2) Qualifies for either a permit by rule or a general permit, submitting the appropriate application for such permit, or
- (3) Is permit exempt, requesting termination of the permit.
- (f) **Transfer of permit.** The transfer of ownership of a stationary source or a facility is an administrative amendment that shall subject the new owner or operator to existing permit conditions and/or compliance schedules. A new permit is not required. The transferor shall notify the DEQ using a prescribed form no later than 30 days following the change in ownership.
- (g) **Emission calculation methods.** The methods in OAC 252:100-5-2.1(d) shall be used when calculating regulated air pollutant emission rates for purposes of determining if a DEQ-issued air quality permit is required or what type of permit is required.

### PART 3. CONSTRUCTION PERMITS

#### 252:100-7-15. Construction permit

(a) **Construction permit required.** Except as provided in OAC 252:100-7-2(b)(5), ~~A~~ construction permit is required to commence construction or installation of a new facility or the modification of an existing facility as specified in OAC 252:100-7-15(a)(1) and (2).

(1) **New Facility.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit.

(2) **Modification of an existing facility.**

(A) A construction permit is required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category.

(B) A construction permit is required for an existing facility covered by an individual permit:

(i) ~~to add a piece of equipment or a process~~ an "affected facility," "affected source," or "new source" as those terms are defined in 40 CFR Section 60.2, 40 CFR Section 63.2, and 40 CFR Section 61.02, respectively, that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) or

(ii) to add or physically modify a piece of equipment or a process that results in a permitted emissions increase of any one regulated air pollutant by more than 5 TPY.



(C) The requirement to obtain a construction permit under OAC 252:100-7-15(a)(2)(B)(i) does not apply to replacement of a piece of equipment, provided the replacement unit does not require a change in any emission limit in the existing permit, and the owner or operator notifies the DEQ in writing within fifteen (15) days of the startup of the replacement unit, and/or as otherwise specified by the permit.

(b) **Permit categories.** Three types of construction permits are available: permit by rule, general permit, and individual permit. A permit by rule may be adopted or a general permit may be issued for an industry if there are a sufficient number of facilities that have the same or substantially similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements.

(1) **Permit by rule.** An owner or operator of a minor facility may apply for registration under a permit by rule if the following criteria are met:

(A) The facility has actual emissions of 40 TPY or less of each regulated air pollutant, except HAPs.

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has established a permit by rule for the industry in Part 9 of this Subchapter.

(D) The owner or operator of the facility certifies that it will comply with the applicable permit by rule.

(E) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(2) **General permit.** Minor facilities may qualify for authorization under a general permit if the following criteria are met:

(A) The facility has actual emissions less than 100 TPY of each regulated air pollutant, except for HAPs.

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has issued a general permit for the industry.

(3) **Individual permit.** The owners or operators of minor facilities requiring permits under this Subchapter which do not qualify for permit by rule or a general permit shall obtain individual permits. An owner or operator may apply for an individual permit even if the facility qualifies for a permit by rule or a general permit.

(c) **Content of construction permit application.** Construction permit applications shall contain at least the data and information listed in OAC 252:100-7-15(c)(1) and (2).

(1) **Individual permit.** An applicant for an individual construction permit shall provide data and information required by this Chapter on an application form available from the DEQ. Such data and information should include but not be limited to:

- (A) site information,
- (B) process description,
- (C) emission data,

- (D) BACT when required,
- (E) sampling point data and
- (F) modeling data when required.

(2) **General permit.** An applicant for authorization under a general permit shall provide data and information required by that permit on a form available from the DEQ. For general permits that provide for application through the filing of a notice of intent (NOI), authorization under the general permit is effective upon receipt of the NOI.

(d) **Permit contents.** The construction permit:

(1) Shall require the permittee to comply with all applicable air pollution rules.

(2) Shall prohibit the exceedance of ambient air quality standards contained in OAC 252:100-3.

(3) May establish permit conditions and limitations as necessary to assure compliance with all rules.

(e) **Duty to comply with the construction permit.** The permittee shall comply with all limitations and conditions of the construction permit. A violation of the limitations or conditions contained in the construction permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules. No operating permit will be issued until the violation has been resolved to the satisfaction of the DEQ.

(f) **Cancellation of authority to construct or modify.** The authority to construct or modify granted by a duly issued construction permit will terminate (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.

(g) **Extension of authorization to construct or modify.**

(1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

(A) one extension of 18 months or less or

(B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

(h) **Expiration of authorization to construct or modify.** The authorization to construct or modify under the construction permit shall expire upon completion of the construction or modification, or as otherwise provided in (e), (f), or (g). However, the requirements established under (d) shall continue in effect until and unless the facility or affected unit ceases operations, was never constructed in the first place, or the

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requirement is superseded under a subsequently-issued construction permit or a FESOP that has undergone public review.

## SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES

### PART 5. PERMITS FOR PART 70 SOURCES

#### 252:100-8-4. Requirements for construction and operating permits

(a) **Construction permits.**

(1) **Construction permit required.**

(A) **Facilities without Part 70 operating permits.** Except as provided in OAC 252:100-8-4(a)(1)(D), ~~Nono~~ person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit under Part 5 of OAC 252:100-8.

(B) **Facilities with Part 70 operating permits.** Except as provided in OAC 252:100-8-4(a)(1)(D), ~~Aa~~ construction permit is also required prior to

- (i) reconstruction of a major affected source under 40 CFR Part 63,
- (ii) reconstruction of a major source if it would then become a major affected source under 40 CFR Part 63,
- (iii) commencement of any physical change or change in method of operation that would be a significant modification under OAC 252:100-8-7.2(b)(2), or
- (iv) commencement of any physical change or change in method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY, calculated using the approach in 40 C.F.R. Section 49.153(b).

(C) **Additional Requirements.** In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

(D) **Construction Activities Prior to Issuance of a Minor NSR (Construction) Permit.** After the submission of an administratively complete minor NSR construction permit application, but prior to the issuance of the corresponding construction permit, an applicant may begin construction up to, but not including, making any new, modified, or reconstructed unit operational such that it has the ability to emit any regulated air pollutant. The applicant assumes the risk of losing any investment it makes toward implementing such construction prior to the issuance of a construction permit authorizing the construction. If a minor NSR project necessitates determination of BACT, and the BACT recommended in the permit application is not approved in whole or in part by DEQ, the

subsequent resolution of the appropriate selection of BACT shall be based upon the facility's pre-application physical configuration. DEQ retains the authority to deny the permit application without consideration of and regardless of any investment the applicant has made prior to permit issuance. This subparagraph does not serve as authorization by DEQ of the requested construction. In addition, this exception does not exempt the owner or operator from any applicable requirements under federal rules (e.g., NSPS or NESHAP) or state-only regulations.

(2) **Requirement for case-by-case MACT determinations.**

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

- (i) Electric utility steam generating units unless and until these units are added to the source category list.
- (ii) Stationary sources that are within a source category that has been deleted from the source category list.
- (iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) **Operating permits.**

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this paragraph, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.**

(A) A new source shall file an administratively complete operating permit application within 180 days of commencement of operation.

(B) An existing source that becomes subject to the Part 70 operating permit program due to modification shall file an administratively complete operating permit application within 180 days of commencement of operation of the modification.

(C) An existing source that becomes subject to the Part 70 operating permit program without undergoing physical or operational changes resulting in an increase in the emission of any air pollutant subject to regulation shall file an administratively complete operating permit application by March 6, 1999 or within 12 months after the date the source first becomes subject to the Part 70 operating permit program, whichever is later.

(4) [Reserved]

(5) [Reserved]

(6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.

(7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.

(8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least 180 days before the date of permit expiration, unless a longer period (not to exceed 540 days) is specified in the permit. Renewal periods greater than 180 days are subject to negotiation on a case-by-case basis.

(9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).

(10) **Application completeness.** See Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

(c) **Enhanced NSR process.** An existing Part 70 source covered by an operating permit issued under this subchapter may be eligible to utilize the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) for a construction permit for modification of the source.

[OAR Docket #22-619; filed 7-14-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

[OAR Docket #22-620]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 2. Incorporation by Reference  
252:100-2-3 [AMENDED]  
Appendix Q. Incorporation by Reference [REVOKED]  
Appendix Q. Incorporation by Reference [NEW]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.  
Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

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

August 25, 2021

**COMMENT PERIOD:**

September 15, 2021 through October 20, 2021

**PUBLIC HEARING:**

October 20, 2021, Air Quality Advisory Council  
November 9, 2021, Environmental Quality Board

**ADOPTION:**

November 9, 2021

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

November 18, 2021

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

Date of 40 C.F.R. provisions incorporated by reference in OAC 252:100-2-3 and in Appendix Q is changed to "as they existed on June 30, 2021."

**Incorporating rules.**

252:100-2-3

Appendix Q. Incorporation By Reference

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

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## GIST/ANALYSIS:

The Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q. The gist of these rules and the underlying reason for the rulemaking is to incorporate the latest changes to EPA regulations, primarily those relating to the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS).

## CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 2. INCORPORATION BY REFERENCE

### 252:100-2-3. Incorporation by reference

Except as provided under this section, the provisions of 40 CFR listed in Appendix Q are hereby incorporated by reference as they existed on ~~June 30, 2020~~ June 30, 2021.

(1) **Inclusion of 40 CFR citations and definitions.** When a provision of 40 CFR is incorporated by reference, all citations contained therein are also incorporated by reference.

(2) **Inconsistencies or duplications of requirements or incorporation dates.**

(A) In the event that there are inconsistencies or duplications between the requirements of this Chapter and the requirements of those provisions incorporated by reference in Appendix Q or elsewhere in this Chapter, the more stringent requirements shall apply.

(B) In the event that a specific date of incorporation is indicated in Appendix Q or a subchapter of this Chapter, the specified date of incorporation shall apply.

(3) **Terminology related to 40 CFR.** For purposes of interfacing with 40 CFR and unless the context clearly indicates otherwise, the following terms apply.

(A) "Administrator" is synonymous with "Executive Director."

(B) "U. S. Environmental Protection Agency" or "EPA" is synonymous with "Department of Environmental Quality" or "DEQ."

**APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]**

**APPENDIX Q. INCORPORATION BY REFERENCE [NEW]**

Except as provided under OAC 252:100-2-3, the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on June 30, 2021, unless otherwise noted.

PART	SUBPART	DESCRIPTION
50	n/a	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method)
50	n/a	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM <sub>10</sub> in the Atmosphere
51	A	Table 1 to Appendix A only of Subpart A—Emission Thresholds by Pollutant for Treatment as Point Source Under 40 CFR 51.30
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
51	n/a	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
51	n/a	Appendix W to Part 51 – Guideline on Air Quality Models
58	n/a	Appendix A to Part 58 - Quality Assurance Requirements for Monitors used in Evaluations of National Ambient Air Quality Standards
58	n/a	Appendix B to Part 58 – Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring
60	A	General Provisions [Except 60.4, 60.9, 60.10 and 60.16]
60	Cf	Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators
60	Da	Standards of Performance for Electric Utility Steam Generating Units
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
60	Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

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PART	SUBPART	DESCRIPTION
60	E	Standards of Performance for Incinerators
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
60	F	Standards of Performance for Portland Cement Plants
60	G	Standards of Performance for Nitric Acid Plants
60	Ga	Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011
60	H	Standards of Performance for Sulfuric Acid Plants
60	I	Standards of Performance for Hot Mix Asphalt Facilities
60	J	Standards of Performance for Petroleum Refineries
60	Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
60	L	Standards of Performance for Secondary Lead Smelters

PART	SUBPART	DESCRIPTION
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983
60	O	Standards of Performance for Sewage Treatment Plants
60	P	Standards of Performance for Primary Copper Smelters
60	Q	Standards of Performance for Primary Zinc Smelters
60	R	Standards of Performance for Primary Lead Smelters
60	S	Standards of Performance for Primary Aluminum Reduction Plants
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
60	V	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
60	Y	Standards of Performance for Coal Preparation and Processing Plants
60	Z	Standards of Performance for Ferroalloy Production Facilities
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983

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PART	SUBPART	DESCRIPTION
60	BB	Standards of Performance for Kraft Pulp Mills
60	BBa	Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013
60	CC	Standards of Performance for Glass Manufacturing Plants
60	DD	Standards of Performance for Grain Elevators
60	EE	Standards of Performance for Surface Coating of Metal Furniture
60	GG	Standards of Performance for Stationary Gas Turbines
60	HH	Standards of Performance for Lime Manufacturing Plants
60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants
60	LL	Standards of Performance for Metallic Mineral Processing Plants
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations
60	NN	Standards of Performance for Phosphate Rock Plants
60	PP	Standards of Performance for Ammonium Sulfate Manufacture
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations
60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances
60	TT	Standards of Performance for Metal Coil Surface Coating
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006



PART	SUBPART	DESCRIPTION
60	VVa	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	WW	Standards of Performance for the Beverage Can Surface Coating Industry
60	XX	Standards of Performance for Bulk Gasoline Terminals
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry
60	DDD	Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
60	GGGa	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes
60	JJJ	Standards of Performance for Petroleum Dry Cleaners
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
60	LLL	Standards of Performance for SO <sub>2</sub> Emissions From Onshore Natural Gas Processing: SO <sub>2</sub> Emissions
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

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PART	SUBPART	DESCRIPTION
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities
60	WWW	Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification on or After May 30, 1991, but Before July 18, 2014
60	XXX	Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
60	CCCC	New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators constructed after November 30, 1999
60	DDDD	Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, Model Rule only, Sections 60.2575 through 60.2875, including Tables 1 through 9
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006

<b>PART</b>	<b>SUBPART</b>	<b>DESCRIPTION</b>
60	III	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
60	JJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	LLLL	Standards of Performance for New Sewage Sludge Incineration Units
60	OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015
60	OOOOa	Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced after September 18, 2015
60	TTTT	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units
60	n/a	Appendix A to Part 60 - Test Methods
60	n/a	Appendix B to Part 60 - Performance Specifications
61	A	General Provisions
61	C	National Emission Standard for Beryllium
61	D	National Emission Standard for Beryllium Rocket Motor Firing
61	E	National Emission Standard for Mercury
61	F	National Emission Standard for Vinyl Chloride
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
61	M	National Emission Standard for Asbestos
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants
61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters

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PART	SUBPART	DESCRIPTION
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
61	FF	National Emission Standard for Benzene Waste Operations
63	A	General Provisions
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
63	I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
63	L	National Emission Standards for Coke Oven Batteries
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

<b>PART</b>	<b>SUBPART</b>	<b>DESCRIPTION</b>
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
63	T	National Emission Standards for Halogenated Solvent Cleaning
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

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PART	SUBPART	DESCRIPTION
63	JJ	National Emission Standards for Wood Furniture Manufacturing Operations
63	KK	National Emission Standards for the Printing and Publishing Industry
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfitic, and Stand-Alone Semichemical Pulp Mills
63	NN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources
63	OO	National Emission Standards for Tanks - Level 1
63	PP	National Emission Standards for Containers
63	QQ	National Emission Standards for Surface Impoundments
63	RR	National Emission Standards for Individual Drain Systems
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
63	TT	National Emission Standards for Equipment Leaks – Control Level 1
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators
63	WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
63	YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

PART	SUBPART	DESCRIPTION
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
63	GGG	National Emission Standards for Pharmaceuticals Production
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

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PART	SUBPART	DESCRIPTION
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
63	DDDD	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products
63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances
63	OOOO	National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products



PART	SUBPART	DESCRIPTION
63	QQQQ	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks
63	DDDDD	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters
63	EEEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries
63	FFFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

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PART	SUBPART	DESCRIPTION
63	GGGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation
63	HHHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
63	IIIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants
63	JJJJJ	National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
63	KKKKK	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing
63	LLLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
63	MMMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
63	NNNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
63	PPPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands
63	QQQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
63	RRRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing
63	SSSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing
63	TTTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining
63	UUUUU	National Emission Standards for Hazardous Air Pollutants: Coal and Oil-fired Electric Utility Steam Generating Units
63	WWWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers
63	YYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

<b>PART</b>	<b>SUBPART</b>	<b>DESCRIPTION</b>
63	ZZZZZ	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
63	BBBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
63	CCCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium
63	HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
63	JJJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
63	LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
63	MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
63	NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
63	OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
63	PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources
63	QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources

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PART	SUBPART	DESCRIPTION
63	RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
63	SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
63	TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
63	VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
63	WWWWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
63	XXXXXX	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories
63	YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
63	ZZZZZZ	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
63	AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
63	BBBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
63	CCCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
63	DDDDDDD	National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing
63	EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
63	HHHHHHH	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
64	n/a (All Sections)	Compliance Assurance Monitoring (CAM)
72	All Subparts	Permits Regulation (for Acid Rain Sources)

<b>PART</b>	<b>SUBPART</b>	<b>DESCRIPTION</b>
98	A	Table A-1 only to Subpart A of Part 98 – Global Warming Potentials
241	n/a	Solid Wastes Used as Fuels or Ingredients in Combustion Units

*[OAR Docket #22-620; filed 7-14-22]*

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# Permanent Final Adoptions

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #22-622]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources

Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas

252:100-8-36.1 [AMENDED]

Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)

Part 3. Control of VOCs in Storage and Loading Operations

252:100-37-16 [AMENDED]

Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas

Part 7. Specific Operations

252:100-39-45 [AMENDED]

### AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

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

April 5, 2021

### COMMENT PERIOD:

May 3, 2021 through June 16, 2021

### PUBLIC HEARING:

June 16, 2021, Air Quality Advisory Council

November 9, 2021, Environmental Quality Board

### ADOPTION:

November 9, 2021

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

November 18, 2021

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The Department of Environmental Quality (Department or DEQ) is proposing to make revisions in Subchapters 8, 37, and 39 as part of the Department's review of Chapter 100 in response to Governor Stitt's Executive Order 2020-03. The Department is proposing to correct the rule and statute references in OAC 252:100-8-36.1 to the proper legal form. The Department is proposing to add an exemption to OAC 252:100-37-16(c) to formalize the Department's interpretation that natural gas compressor stations are not considered loading facilities for the purposes of this section. In OAC 252:100-39-45, the Department is proposing to correct the approval process for facilities that incinerate petroleum solvent dry cleaning filters and to remove the outdated compliance schedule. The gist of this rule proposal and the underlying reason for the rulemaking is to remove outdated rule language and/or provide regulatory clarity.

### CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

SECTION 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

## SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES

### PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

#### 252:100-8-36.1. Public participation

See OAC 252:4—~~and O.S. §§ 27A 2-5-112 and 27A 2-14-101 to §, 27A O.S. § 2-5-112, and 27A O.S. §§ 2-14-101 through 2-14-304.~~

## SUBCHAPTER 37. CONTROL OF EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCs)

### PART 3. CONTROL OF VOCs IN STORAGE AND LOADING OPERATIONS

#### 252:100-37-16. Loading of VOCs

(a) **Loading facilities with throughput greater than 40,000 gallons/day.** Each VOC loading facility with a throughput greater than 40,000 gal/d (151,416 l/d) from its aggregate loading pipes shall be equipped with a vapor-collection and disposal system unless all tank trucks or trailers are bottom loaded with hatches closed.

(1) **Vapor-collection and disposal system.**

(A) **Vapor-collection portion of the system.**

(i) When loading VOCs through the hatches of a tank truck or trailer, using a loading arm equipped with a vapor collecting adaptor, a pneumatic, hydraulic, or mechanical means shall be provided to ensure a vapor-tight seal between the adaptor and the hatch.

(ii) When loading is effected through means other than hatches, all loading and vapor lines shall be equipped with fittings that make vapor-tight connections and which must be closed when disconnected or which close automatically when disconnected.

(B) **Vapor-disposal portion of the system.** The vapor-disposal portion of the system shall consist of:

(i) a vapor-liquid absorber system with a minimum recovery efficiency of 90 percent by weight of all the VOC vapors and gases entering such disposal system; or,

(ii) a variable-vapor space tank, compressor, and fuel-gas system of sufficient capacity to receive all VOC vapors and gases displaced from the tank trucks and trailers being loaded.

- (2) **Prevention of VOC drainage.** A means shall be provided in either loading system specified in subsection (a) to prevent VOC drainage from the loading device when it is removed from any tank truck or trailer, or to accomplish complete drainage before removal.
- (b) **Loading facilities with throughput equal to or less than 40,000 gallons per day.**
- (1) Each loading pipe at a VOC loading facility with an aggregate throughput of 40,000 gal/d (151,416 l/d) or less shall be equipped with a system for submerged filling of tank trucks or trailers which is installed and operated to maintain a 97 percent submergence factor.
- (2) Paragraph 252:100-37-16(b)(1) applies to any facility that loads VOCs into any tank truck or trailer with a capacity greater than 200 gal (757 l) which is designed for transporting VOCs.
- (c) **Exemptions.**
- (1) Loading facilities subject to the requirements of 40 CFR 60 Subpart XX or 40 CFR 63 Subpart R are exempt from the requirements of 252:100-37-16(a) and (b).
- (2) Loading operations at natural gas compressor stations are exempt from the requirements of 252:100-37-16(a) and (b). For the purposes of this section, natural gas compressor station means any permanent combination of one or more compressors that move natural gas at increased pressure through gathering or transmission pipelines, or into or out of storage. This includes, but is not limited to, gathering, boosting, and transmission compressor stations.

**SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCs) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS**

**PART 7. SPECIFIC OPERATIONS**

**252:100-39-45. Petroleum (solvent) dry cleaning**

- (a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise.
- (1) **"Cartridge filters"** means perforated canisters containing filtration paper and/or activated carbon that are used in a pressurized system to remove solid particles and fugitive dyes from soil-laden petroleum solvent.
- (2) **"Containers and conveyors of petroleum solvent"** means piping, ductwork, pumps, storage tanks, and other ancillary equipment that are associated with the installation and operation of washers, dryers, filters, stills, and settling tanks.
- (3) **"Dry cleaning"** means a process of the cleaning of textiles and fabric products in which articles are washed in a non-aqueous solution (petroleum solvent) and then dried by exposure to a heated air stream.

- (4) **"Housekeeping"** means those measures and precautions necessary to minimize the release of petroleum solvent to the atmosphere.
- (5) **"Operations parameters"** means the activities required to insure that the equipment is operated in a manner to preclude the loss of petroleum solvents to the atmosphere.
- (6) **"Perceptible leaks"** means any petroleum solvent vapor or liquid leaks that are conspicuous from visual observation, such as pools or droplets of liquid, or buckets or barrels of petroleum solvent or petroleum solvent-laden waste standing open to the atmosphere.
- (7) **"Petroleum solvent"** means organic material produced by petroleum distillation comprising a hydrocarbon range of 8 to 12 carbon atoms per organic molecule that exists as a liquid under standard conditions.
- (b) **Applicability.** This Section applies to petroleum solvent washers, dryers, filters, settling tanks, vacuum stills, and other containers and conveyors of petroleum solvent that are used in petroleum solvent dry cleaning facilities in Tulsa County only.
- (c) **Operating requirements.**
- (1) The owner or operator of a petroleum solvent dry cleaning facility shall not operate any dry cleaning equipment using petroleum solvents unless:
- (A) there are no perceptible liquid or vapor leaks from any portion of the equipment;
- (B) all washer lint traps, button traps, access doors and other parts of the equipment where petroleum solvent may be exposed to the atmosphere are kept closed at all times except when required for proper operation or maintenance;
- (C) the still residue is stored in sealed containers and the used filtering material is placed into a sealed container suitable for use with petroleum solvents, immediately after removal from the filter and disposed of in the prescribed manner; or,
- (D) cartridge filters containing paper or carbon or a combination thereof, which are used in the dry cleaning process are drained in the filter housing for at least 24 hours prior to removal.
- (2) The owner or operator of a petroleum solvent dry cleaning facility shall not operate any drying tumblers and cabinets that use petroleum solvents unless tumblers and cabinets are operated in a manner to control petroleum solvent vapor leaks by reducing the number of sources where petroleum solvent is exposed to the atmosphere. Under no circumstances should there be any open containers (can, buckets, barrels) of petroleum solvent or petroleum solvent-containing material. Equipment containing solvent (washers, dryers, extractors, and filters) should remain closed at all times other than during maintenance or load transfer. Lint filter and button trap covers should remain closed except when petroleum solvent-laden lint and debris are removed. Gaskets and seals should be inspected and replaced when found worn or defective. Petroleum solvent-laden clothes should never be allowed to remain exposed to the atmosphere for longer periods than are necessary for load transfers. Finally, vents on petroleum

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solvent-containing waste and new petroleum solvent storage tanks should be constructed and maintained in a manner that limits petroleum solvent vapor emissions to the maximum possible extent.

(3) The owner or operator shall repair all petroleum solvent vapor and liquid leaks within 3 working days after identifying the sources of the leaks. If necessary repair parts are not on hand, the owner or operator shall order these parts within 3 working days, and repair the leaks no later than 3 working days following the arrival of the necessary parts.

(d) **Disposal of filters.** Filters from the petroleum dry cleaning facility shall be disposed of by:

- (1) incineration at a facility ~~approved by the fire marshal's office~~ permitted by the appropriate regulatory entity for such disposal;
- (2) by recycling through an approved vendor of this service; or,
- (3) by any other method approved by the Division Director.

~~(e) **Compliance schedule.** Compliance with 252:100-39-45(e)(1) through 252:100-39-45(e)(3), shall be accomplished by affected facilities on or before October 1, 1986.~~

[OAR Docket #22-622; filed 7-14-22]

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #22-621]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources
- Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
- 252:100-8-36.2 [AMENDED]

### AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.  
Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

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

April 5, 2021

### COMMENT PERIOD:

May 3, 2021 through June 16, 2021

### PUBLIC HEARING:

June 16, 2021, Air Quality Advisory Council  
November 9, 2021, Environmental Quality Board

### ADOPTION:

November 9, 2021

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

November 18, 2021

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The Department of Environmental Quality (Department or DEQ) is proposing to amend the source obligation provisions for facilities subject to prevention of significant deterioration (PSD) in OAC 252:100-8-36.2 to more closely align Oklahoma's rules with the U.S. Environmental Protection Agency (EPA) rules in 40 C.F.R. § 51.166(r). This proposed rulemaking is in response to requests from industry to add the "reasonable possibility" provisions. The gist of the proposed rules and the underlying reasons for the revisions are to make Oklahoma's PSD source obligation provisions more similar to EPA's provisions, thereby reducing the recordkeeping burden on Oklahoma's permitted PSD facilities.

### CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES

### PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

#### 252:100-8-36.2. Source obligation

(a) **Obtaining and complying with preconstruction permits.** Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this Part or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Part who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(b) **Consequences of relaxation of permit requirements.** When a source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the requirements of OAC 252:100-8, Parts 1, 3, 5, and 7 and 252:100-8-34 through 252:100-8-37 shall apply to that source or modification as though construction had not yet commenced on it.

(c) **Requirements when using projected actual emissions.** The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) of any regulated NSR pollutant, and the owner or operator elects to use the method specified in (B)(i) through (iii) of the definition of "projected actual emissions" in OAC 252:100-8-31 for calculating projected actual emissions.



(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

- (A) A description of the project;
- (B) Identification of the existing emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
- (C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under (B)(iii) of the definition of "projected actual emissions" in OAC 252:100-8-31 and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) Additional recordkeeping requirements for projects not requiring a PSD or Nonattainment NSR permit, but with a "reasonable possibility" of resulting in a significant emissions increase. If the project is determined to have a "reasonable possibility" of resulting in a significant emission increase, the owner or operator shall comply with the applicable requirements of subparagraphs (B) through (E) below.

- (A) A "reasonable possibility" occurs when:
  - (i) The owner or operator calculates the project to result in a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in OAC 252:100-8-31 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
  - (ii) The owner or operator, in accordance with the procedures described in (B)(iii) of the definition of "projected actual emissions" under OAC 252:100-8-31, excludes a portion of one or more existing unit's emissions from the calculation of "projected actual emissions," and, if the owner or operator had not excluded those emissions, the projected actual emissions increase would be at least 50 percent of the amount that is a "significant emissions increase," as defined in OAC 252:100-8-31 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant.

(B) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator shall provide a copy of the information set out in OAC 252:100-8-36.2(c)(1) to the Director. Nothing in OAC 252:100-8-36.2(c)(2)(B) shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.

~~(C)~~ The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in OAC 252:100-8-36.2(c)(1)(B); and calculate and maintain

a record of the annual emissions, in TPY on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

~~(4D)~~ If the unit is an existing EUSGU, the owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under OAC 252:100-8-36.2~~(e)(3)(c)(2)(C)~~ setting out the unit's annual emissions during the calendar year that preceded submission of the report.

~~(5E)~~ If the unit is an existing unit other than an EUSGU, the owner or operator shall submit a report to the Director if the annual emissions, in TPY, from the project identified in OAC 252:100-8-36.2(c)(1), exceed the baseline actual emissions (as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C)) by an amount that is significant for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C). Such report shall be submitted to the Director within 60 days after the end of such year. The report shall contain the following:

- ~~(Ai)~~ The name, address and telephone number of the major stationary source;
- ~~(Bii)~~ The annual emissions as calculated pursuant to OAC 252:100-8-36.2~~(e)(3)(c)(2)(C)~~; and
- ~~(Ciii)~~ Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(3) [RESERVED]

(4) [RESERVED]

(5) [RESERVED]

(6) The owner or operator of the source shall make the information required to be documented and maintained pursuant to OAC 252:100-8-36.2(c) available for review upon request for inspection by the Director or the general public.

(7) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification based on any credible evidence, including but not limited to emissions data produced after the project is completed. In any such case, the owner or operator may be subject to enforcement for failure to obtain a PSD permit prior to beginning actual construction.

(8) If an owner or operator materially fails to comply with the provisions of OAC 252:100-8-36.2(c), then the calendar year emissions are presumed to equal the source's potential to emit.

[OAR Docket #22-621; filed 7-14-22]

# Permanent Final Adoptions

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #22-623]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 13. Open Burning  
252:100-13-7 [AMENDED]  
252:100-13-8 [AMENDED]  
252:100-13-8.1 [AMENDED]

### AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through 2-5-117.

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

August 25, 2021

### COMMENT PERIOD:

September 15, 2021 through October 20, 2021

### PUBLIC HEARING:

October 20, 2021, Air Quality Advisory Council

November 9, 2021, Environmental Quality Board

### ADOPTION:

November 9, 2021

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

November 18, 2021

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

DEQ is proposing to amend OAC 252:100-13, Open Burning, to conform the Department's rules to statutory changes enacted in the 2021 legislative session. Senate Bill 246 (2021) changed 27A Okla. Stat. (O.S.) § 2-5-130 to only require an air curtain incinerator (ACI) be used in counties or areas within a county that are or have been designated nonattainment or where an ambient air quality monitor has documented a violation of the National Ambient Air Quality Standards (NAAQS), or those counties with a population of greater than 500,000. The gist of this rulemaking is to implement the above-mentioned statutory changes. This will currently restrict the areas where an ACI is required for land clearing operations, or the burning of clean wood waste or yard brush to only Oklahoma and Tulsa Counties.

### CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

### SUBCHAPTER 13. OPEN BURNING

#### 252:100-13-7. Allowed open burning

When not prohibited by law or ordinance, the following types of burning are allowed, provided the conditions and requirements in OAC 252:100-13-9 have been met:

(1) **Fire training.** Open burning of human-made structures for the purpose of municipal fire department training is allowed as provided for in the Oklahoma Clean Air Act, 27A O.S., Section 2-5-106.1. For any human-made structure, the entire structure, including, but not limited to, insulation, roofing, flooring, painted surfaces and plumbing, shall be examined for the presence of asphalt, asbestos, and lead-containing materials. All asphalt, asbestos, and lead-containing materials shall be removed from the structure prior to the fire training. Asbestos inspection and removal shall be conducted according to the requirements of federal law. Federal law requires a certified asbestos inspector, and notification of any activity that would breakup or dislodge asbestos, such as stripping or removal work, at least 10 working days prior to activity commencement, as specified in 40 CFR 61.145. Industrial and commercial facilities and fire training schools may conduct on-site live burn fire training.

(2) **Elimination of hazards.** Provided prior authorization is obtained from the local fire chief, open burning is allowed for the elimination of:

(A) A fire hazard that cannot be abated by any other means.

(B) A dangerous or hazardous material when there is no other practical or lawful method of abatement or disposal, if authorization is also received from the DEQ prior to such burning.

(3) **Recreational and ceremonial fires.** Open burning is allowed for camp fires and other fires used solely for recreational purposes, ceremonial occasions, or non-commercial preparation of food.

(4) **Land management and land clearing operations.** Open burning is allowed for the following land management and land clearing operations:

(A) Fires purposely set to forest, crop or range lands for a specific reason in the management of forests, crops, or game, in accordance with practices recommended by the Oklahoma Department of Wildlife Conservation, the Oklahoma Department of Agriculture, Food, and Forestry, and the United States Forest Service.

(B) Fires purposely set for land clearing operations if conducted at least 500 feet from any occupied residence other than those located on the property on which the burning is conducted and in accordance with OAC 252:100-13-8. Such burning shall be conducted using an air curtain incinerator in counties or areas that are or have been designated nonattainment, or in MSAs with a population of greater than nine hundred thousand people according to the latest federal decennial census.

(5) **Burning of domestic refuse.** Where no collection and disposal service is reasonably available, domestic

refuse may be burned on the property where the waste is generated.

(6) **Hydrocarbon burning.** Open burning of hydrocarbons is allowed for:

(A) The disposal of spilled hydrocarbons or the waste products of oil exploration, development, refining, or processing operations which cannot be feasibly recovered or otherwise disposed of in a legal manner. Notice must be given to the DEQ prior to such burning.

(B) The disposal of waste hydrocarbons through a flare. The owner or operator shall be required to use a smokeless flare if a condition of air pollution is determined to exist by the DEQ.

(7) **Yard brush.** Yard brush may be burned on the property where the waste is generated or transported. If transported, yard brush must be burned in accordance with OAC 252:100-13-8 and OAC 252:100-13-8.1.

(8) **Certain medical marijuana plant refuse.** Commercial licensees, medical marijuana research facilities, and medical marijuana educational facilities, as those terms are defined in the Oklahoma Statutes at Section 428 of Title 63 titled, the Oklahoma Medical Marijuana Waste Management Act (Act), are allowed to open burn the parts of the marijuana plant grown to produce medical marijuana (as prescribed in Section 429 of Title 63 of the Act) that are exempted from the term "Medical marijuana waste" as defined in the Oklahoma Statutes at Section 428 of Title 63 of the Act.

(9) **Wood waste or clean lumber.** Wood waste, clean lumber, or a mixture of only wood waste and clean lumber may be burned in accordance with OAC 252:100-13-8 and 252:100-13-8.1.

**252:100-13-8. Use of air curtain incinerators**

(a) Except for hazardous material, any combustible material or refuse that is allowed to be burned under this Chapter may be burned in an air curtain incinerator that is properly designed and operated for the control of smoke and particulate matter. The owner or operator of ~~an~~the air curtain incinerator ~~located in an MSA with a population of greater than nine hundred thousand people or in counties or areas that are or have been designated nonattainment~~ shall not accept any material owned by other persons and shall not transport any material to the property where the air curtain incinerator is located in order to burn the material, except ~~as provided in accordance with OAC 252:100-13-8(a)(1)~~OAC 252:100-13-8.1.

(1) ~~The owner or operator of the air curtain incinerator located in an MSA with a population of greater than nine hundred thousand people or in counties or areas that are or have been designated nonattainment may accept and/or transport:~~

- (A) ~~100 percent wood waste,~~
- (B) ~~100 percent clean lumber, or~~
- (C) ~~100 percent mixture of wood waste and clean lumber.~~

(2) ~~In addition to the requirements in this subchapter, the owner or operator of the air curtain incinerator must~~

~~comply with the requirements of OAC 252:100-17 and 40 CFR Part 60.~~

(b) For land clearing operations and disposal of clean wood waste and transported yard brush, an ACI is ~~not~~required ~~except in counties or areas within a county that:—are or have been designated nonattainment or in an MSA with a population of greater than nine hundred thousand according to the latest federal decennial census.~~

(1) are or have been designated nonattainment for National Ambient Air Quality Standards (NAAQS) or where the Department-certified ambient air quality monitoring data documents a violation of primary NAAQS prior to such determination, or

(2) have a population of greater than five hundred thousand (500,000) people according to the latest Federal Decennial Census.

(c) In addition to the requirements in this subchapter, the owner or operator of the air curtain incinerator must comply with the requirements of OAC 252:100-17 and 40 CFR Part 60.

**252:100-13-8.1. Transported material**

(a) Combustible material obtained from land clearing operations, yard brush, ~~and~~clean wood waste, and clean lumber may be transported from where it is generated to another location in order to perform open burning. Material transported in order to perform open burning must meet the following conditions:

(1) The open burning shall not be conducted in counties or areas within a county that are or have been designated nonattainment or where the Department-certified ambient air quality monitoring data documents a violation of primary NAAQS prior to such determination, or in MSAs with a population of greater than ~~nine~~five hundred thousand, except in accordance with OAC 252:100-13-8(b).

(2) The material shall be burned within 90 days of being transported.

(3) The volume of material shall not exceed 10,000 cubic feet.

(b) Except in accordance with OAC 252:100-13-8~~(a)~~ or 252:100-13-8.1(a) above, no person shall accept any material owned by other persons nor transport combustible material from where it is generated to another location in order to perform open burning.

[OAR Docket #22-623; filed 7-14-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

[OAR Docket #22-624]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 47. Control of Emissions from Existing Municipal Solid Waste Landfills  
252:100-47-2 [AMENDED]

# Permanent Final Adoptions

252:100-47-3 [AMENDED]  
252:100-47-5 [AMENDED]  
252:100-47-6 [AMENDED]  
252:100-47-7 [AMENDED]  
252:100-47-8 [AMENDED]  
252:100-47-9 [AMENDED]  
252:100-47-10 [AMENDED]  
252:100-47-11 [AMENDED]  
252:100-47-12 [AMENDED]  
252:100-47-13 [AMENDED]  
252:100-47-14 [AMENDED]

## AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.  
Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

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

August 25, 2021  
November 23, 2021

## COMMENT PERIOD:

September 15, 2021 through October 20, 2021  
December 15, 2021 through January 19, 2022

## PUBLIC HEARING:

October 20, 2021, Air Quality Advisory Council  
January 19, 2022, Air Quality Advisory Council  
February 18, 2022, Environmental Quality Board

## ADOPTION:

February 18, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 25, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The Department of Environmental Quality (DEQ) proposes to amend OAC 252:100, Subchapter 47, Control of Emissions from Existing Municipal Solid Waste Landfills. The gist of the proposed rule is to implement the provisions of 40 C.F.R. Part 60, Subpart Cf, "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills." Upon promulgation, the revised Subchapter 47 will be incorporated into Oklahoma's revised State 111(d) Plan. The proposed rule changes affect municipal solid waste (MSW) landfills that commenced construction, modification, or reconstruction before July 17, 2014, and accepted waste after November 8, 1987, including closed landfills. Landfill gas collection and control systems (GCCS) will be required for landfills with design capacities of at least 2.5 million megagrams and 2.5 million cubic meters that have estimated emissions of at least 34 megagrams per year of non-methane organic compounds (NMOC). The previous NMOC threshold to install a control system was 50 megagrams per year. Currently, EPA is implementing the emission guidelines for existing MSW landfills with a Federal Plan under 40 C.F.R. Part 62, Subpart OOO.

## CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 47. CONTROL OF EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS

### 252:100-47-2. Reference to 40 CFR

When a provision of Title 40 of the Code of Federal Regulations (40 CFR) is incorporated by reference in OAC 252:100-2 and Appendix Q of Chapter 100, all citations contained therein are also incorporated by reference.

### 252:100-47-3. Definitions

(a) ~~The~~This Subchapter uses applicable definitions in 40 CFR 60.751-60.41f, except as provided in (b) of this Section are hereby incorporated by reference as they exist on July 1, 2002.  
(b) The following words and terms when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Existing municipal solid waste landfill"** or **"existing MSW landfill"** means a municipal solid waste landfill that commenced construction, modification, or reconstruction on or before May 30, 1994~~July 17, 2014~~ and accepted waste ~~after~~since November 8, 1987.

(2) **"Legacy controlled landfill"** means any MSW landfill subject to this Subchapter that submitted a gas collection and control system (GCCS) design plan prior to May 21, 2021 in compliance with 40 CFR Part 60, Subpart WWW, or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc, depending on which regulation was applicable to the landfill. This definition applies to those landfills that completed construction and began operations of the GCCS and those that are within the 30 month timeline for installation and start-up of a GCCS according to 40 CFR Part 60, Subpart WWW or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc.

(3) **"State Plan"** means a program that the State is responsible for developing and implementing to achieve compliance with the emission guidelines in Subpart Cc or Cf of 40 CFR Part 60. Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc, will be superseded by the State Plan implementing 40 CFR Part 60, Subpart Cf, upon EPA approval of said plan.

### 252:100-47-5. General provisions

(a) **Applicability.** Except as provided in ~~sub~~paragraphs (1) ~~and (2)~~through (3) of this paragraph subsection, the provisions of this Subchapter are applicable to all existing MSW landfills in the State of Oklahoma. This Subchapter is also an applicable requirement for existing MSW landfill sites on the National Priorities List in Appendix B of 40 CFR Part 300.

(1) Physical or operational changes made to an existing MSW landfill solely to comply with this Subchapter are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, ~~Subpart~~Subparts WWW (Standards of Performance for Municipal Solid Waste Landfills That

Commenced Construction, Reconstruction, or Modification on or After May 30, 1991, but Before July 18, 2014) or XXX (Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014).

(2) Remedial activities required by or conducted pursuant to state or federal law are not considered construction, reconstruction, or modification for the purposes of this Subchapter.

(3) If the landfill's design capacity increases as the result of a modification that was commenced after July 17, 2014, then the landfill becomes subject to 40 CFR Part 60, Subpart XXX. If the design capacity increase is the result of a change in operating practices, density, or some other change that is not a modification, then the landfill remains subject to this Subchapter.

(b) **Exemptions.** The DEQ, with EPA approval, may provide for the application of less stringent emissions standards or longer compliance schedules than those otherwise required by this Subchapter, provided that at least one of the circumstances listed below are applicable to the MSW landfill:

- (1) Unreasonable cost of control resulting from facility age, location, or basic design; or
- (2) Physical impossibility of installing necessary control equipment; or
- (3) Other factors specific to the facility that make application of a less stringent standard or final compliance time significantly more reasonable.

**252:100-47-6. Permits required and compliance schedules**

(a) **Part 70 operating permits.**

(1) The owner or operator of an existing MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain a Part 70 permit for the landfill, unless the landfill is otherwise a Part 70 source.

(2) The owner or operator of an existing MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, that is not otherwise a Part 70 source, is subject to OAC 252:100-8 as a Part 70 source ~~ninety (90) days after the effective date of the state plan, even if the initial design capacity report was submitted earlier.~~

(3) When an existing MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain a Part 70 permit for the landfill if the landfill is not otherwise subject to the requirements of OAC 252:100-8 and if either of the following conditions is met:

- (A) The landfill was never subject to the requirement for a control system under OAC 252:100-47-7.
- (B) The owner or operator meets the conditions for control system removal specified in OAC 252:100-47-7.

(b) **Construction permits.** The owner or operator of any existing MSW landfill that installs a MSW landfill gas collection and control system is required to obtain a construction permit as provided by OAC 252:100-7-15 or OAC 252:100-8-4. ~~If the~~

landfill has a design capacity of at least 2.5 million cubic meters and 2.5 million megagrams and an estimated nonmethane organic compounds (NMOC) emission rate of at least 50 megagrams per year, calculated in accordance with Section 9 of this Subchapter, the owner or operator of the MSW landfill shall also comply with the following requirements:

(1) ~~The application for a construction permit and the collection and control system design plan shall be submitted to the DEQ within 12 months after the initial or any annual NMOC emissions rate report indicates that the emission rate equals or exceeds 50 megagrams per year, unless site specific sampling demonstrates that the emission rate is less than 50 megagrams per year.~~

(2) ~~All contracts for installation of the emission control systems or for process modifications shall be awarded and all orders for the purchase of component parts to accomplish emission control or process modification shall be completed within 3 months of the submittal of the design plan under paragraph (b)(1) of this section.~~

(3) ~~The installation of the collection and control system shall commence within 3 months of the awarding of contracts under paragraph (b)(2) of this section.~~

(4) ~~The installation of the collection and control system shall be completed within 18 months of the submittal of the design plan under paragraph (b)(1) of this section.~~

(5) ~~Within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year, the MSW landfill shall be in compliance with paragraphs (b)(1) through (b)(4) of this section.~~

(c) **Compliance Schedules and Increments of Progress.**

To achieve final compliance, the owner or operator must complete the planning, awarding of contracts, and installing and starting up of MSW landfill air emission collection and control equipment capable of meeting the emissions standards under OAC 252:100-47-7 within 30 months after the applicable start date in paragraphs (1) and (2) of this subsection according to the schedule in paragraph (3) of this subsection. MSW Landfills currently subject to 40 CFR Part 60, Subpart WWW, that are subject to these rules must continue to comply with the requirements of Subpart WWW until they become subject to the more stringent requirements of this rule.

(1) The date a nonmethane organic compounds (NMOC) emission rate report shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory).

(2) The date of the most recent NMOC emission rate report that shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory), if Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater.

(3) Increments of progress to install air pollution control devices to meet emission standards in OAC 252:100-47-7:

(A) Submit to the DEQ an application for a construction permit and a collection and control system design plan in accordance with the requirements of

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40 CFR 60.38f(d) within 12 months of the applicable start date.

(B) Award contract(s) to initiate on-site construction or installation of the collection and/or control equipment within 20 months of the applicable start date.

(C) Commence on-site construction or installation of the collection and/or control equipment within 24 months of the applicable start date.

(D) Complete on-site construction according to the approved collection and control system design plan and achieve final compliance within 30 months of the applicable start date. For a legacy controlled landfill, the initial or most recent performance test conducted to comply with 40 CFR Part 60, Subpart WWW, or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc, is sufficient for compliance with this subparagraph. The test report does not have to be resubmitted.

### 252:100-47-7. Emission standards

(a) ~~An~~ Each owner or operator of an existing MSW landfill meeting the conditions set forth in 40 CFR 60.33f(a) paragraphs (1) through (4) shall comply with ~~all~~ the collection system and control system provisions specified in 40 CFR 60.75260.33f(b) and 60.33f(c), which is hereby incorporated by reference as it exists on July 1, 2002.

(1) Legacy controlled landfills or landfills in the closed landfill subcategory must install and start up a gas collection and control system within 30 months after the first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year, submitted under previously applicable regulations 40 CFR Part 60, Subpart WWW, or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc.

(2) Legacy controlled landfills or landfills in the closed landfill subcategory that have already installed control systems and completed initial or subsequent performance tests may comply with this Subchapter using the initial or most recent performance test conducted to comply with 40 CFR Part 60, Subpart WWW, or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc.

(b) Each owner or operator of an existing MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that does not install a collection or control system must calculate an NMOC emission rate for the landfill on an annual basis as provided in 40 CFR 60.33f(e).

(c) The collection and control system may be capped, removed, or decommissioned if the criteria provided in 40 CFR 60.33f(f) are met.

### 252:100-47-8. Operational standards for collection and control systems

~~An~~Each owner or operator of an existing MSW landfill with a gas collection and control system shall comply with all provisions specified in 40 CFR ~~60.753~~60.34f(a) through (g)

or the operational standards in 40 CFR 63.1958. Once the owner or operator begins to comply with the provisions in 40 CFR 63.1958, they must continue to operate the collection and control system according to those provisions and cannot return to the provisions of 40 CFR 60.34f, which is hereby incorporated by reference as it exists on July 1, 2002.

### 252:100-47-9. Test methods and procedures

~~An~~Each owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.75460.35f(a) through (e), which is hereby incorporated by reference as it exists on July 1, 2002.

### 252:100-47-10. Compliance provisions

~~An~~Each owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.75560.36f(a) through (e) or the compliance provisions in 40 CFR 63.1960. Once the owner or operator begins to comply with the provisions in 40 CFR 63.1960, they must continue to operate the collection and control system according to those provisions and cannot return to the provisions of 40 CFR 60.36f, which is hereby incorporated by reference as it exists on July 1, 2002.

### 252:100-47-11. Monitoring of operations

~~An~~Each owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.75660.37f(a) through (h) or the monitoring provisions in 40 CFR 63.1961. Once the owner or operator begins to comply with the provisions in 40 CFR 63.1961, they must continue to operate the collection and control system according to those provisions and cannot return to the provisions of 40 CFR 60.37f, which is hereby incorporated by reference as it exists on July 1, 2002.

### 252:100-47-12. Reporting requirements

(a) ~~The owner or operator of an existing MSW landfill shall submit an initial design capacity report to the DEQ within 90 days of the effective date of the State Plan.~~

(b) ~~The owner or operator of an existing MSW landfill having a design capacity equal to or greater than 2.5 million cubic meters and 2.5 million megagrams, shall submit an initial NMOC emission rate report to the DEQ within 90 days of the effective date of the State Plan. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in 40 CFR 60.757(b)(1)(ii) and (b)(3).~~

(c) ~~The owner or operator of an existing MSW shall comply with the provisions specified in 40 CFR 60.757, except 60.757(a)(1) and (b)(1)(i), which is hereby incorporated by referenced as it appears on July 1, 2002.~~

(a) Each owner or operator of an existing MSW landfill shall comply with all reporting provisions specified in 40 CFR 60.38f(a) through (n), except 60.38f(d)(2).

(b) When an MSW landfill subject to this Subchapter is in the closed landfill subcategory, the owner or operator is not subject to the following reports of this Subchapter, provided the

owner or operator submitted these reports under the provisions of 40 CFR Part 60, Subpart WWW, or under this Subchapter on or before July 17, 2014:

- (1) Initial design capacity report specified in 40 CFR 60.38f(a).
(2) Initial or subsequent NMOC emission rate report specified in 40 CFR 60.38f(c), provided that the most recent NMOC emission rate report indicated the NMOC emissions were below 50 megagrams per year.
(3) Collection and control system design plan specified in 40 CFR 60.38f(d).
(4) Closure report specified in 40 CFR 60.38f(f).
(5) Equipment removal report specified in 40 CFR 60.38f(g).
(6) Initial annual report specified in 40 CFR 60.38f(h).
(7) Initial performance test report in 40 CFR 60.38(i).

(c) When an MSW landfill subject to this Subchapter is in the legacy controlled landfill subcategory, the owner or operator is not subject to the following reports of this Subchapter, provided the owner or operator submitted these reports under the provisions of 40 CFR Part 60, Subpart WWW, or under this Subchapter on or before June 21, 2021:

- (1) Initial design capacity report specified in 40 CFR 60.38f(a).
(2) Initial or subsequent NMOC emission rate report specified in 40 CFR 60.38f(c).
(3) Collection and control system design plan specified in 40 CFR 60.38f(d).
(4) Initial annual report specified in 40 CFR 60.38f(h).
(5) Initial performance test report in 40 CFR 60.38(i).

252:100-47-13. Recordkeeping requirements

Each owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.75860.39f(a) through (j), which is hereby incorporated by reference as it exists on July 1, 2002.

252:100-47-14. Specifications for active collection systems

Each owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.75960.40f(a) through (c), which is hereby incorporated by reference as it exists on July 1, 2002.

[OAR Docket #22-624; filed 7-14-22]

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

[OAR Docket #22-625]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Incorporation by Reference

- 252:205-3-1. [AMENDED] Subchapter 5. Additional Generator Requirements
252:205-5-1. [REVOKED]
252:205-5-2. [REVOKED]
252:205-5-3. [REVOKED]
Subchapter 21. Fees
252:205-21-1. [AMENDED]
252:205-21-2. [AMENDED]
252:205-21-4. [AMENDED]

Appendix C. Annual Facility Monitoring Fees [REVOKED]
Appendix C. Annual Facility Monitoring Fees [NEW]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 24, 2021

COMMENT PERIOD:

September 15, 2021, to October 21, 2021

PUBLIC HEARING:

October 21, 2021, Hazardous Waste Management Advisory Council
February 18, 2022, Environmental Quality Board

ADOPTION:

February 18, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 25, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 15, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATION BY REFERENCE:

Incorporated standards:

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as amended through July 1, 2021".

Incorporating rules:

252:205-3-1 and 3-2

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIYNzI=

GIST/ANALYSIS:

The gist of this rulemaking is to make DEQ's hazardous waste rules consistent with the federal regulations by incorporating by reference (IBR) the regulations found in 40 CFR Parts 124 and 260-279, revised as of July 1, 2021. The significant rule change for this IBR modernizes the rules governing determinations for ignitable liquid hazardous wastes. The modification will allow labs testing for the characteristic to use non-mercury thermometers. It finalizes the codification of existing guidance defining "aqueous" as "50% water by weight." And it corrects cross references to DOT regulations and removes obsolete information. This rulemaking ensures that Oklahoma's hazardous waste rules are at least equivalent to the federal rules, as required to maintain program Authorization. Additionally, statute changes that became effective July 1, 2021 have rendered certain state rules obsolete. Therefore, the DEQ is modifying those state rules that have been affected by the statute changes.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

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SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

## SUBCHAPTER 3. INCORPORATION BY REFERENCE

### 252:205-3-1. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified): the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1, ~~2020~~2021.

## SUBCHAPTER 5. ADDITIONAL GENERATOR REQUIREMENTS

### 252:205-5-1. Disposal plans [REVOKED]

All persons generating hazardous waste in Oklahoma or generating hazardous waste to be stored, treated, recycled or disposed of in Oklahoma shall file a disposal plan with the DEQ on DEQ forms and shall obtain the DEQ's approval prior to offering the waste for transport.

~~(1) The generator must update the disposal plan as needed and must notify the DEQ at least five working days before any changes are implemented. The DEQ requires a minimum of five (5) working days to process and approve new or amended disposal plans. Changes shall not be implemented until approved by the DEQ.~~

~~(2) One time disposal plans may be issued for emergency clean up or waste removal.~~

~~(3) The DEQ may require supporting documentation including but not limited to, laboratory analyses and Material Safety Data Sheets to verify information submitted. If specific technical process knowledge is provided which the Department determines adequately identifies the waste, laboratory analysis will not be required.~~

~~(4) If a disposal plan is canceled for non payment of fees, the generator must complete a new application and re-submit supporting documentation to the DEQ for approval.~~

### 252:205-5-2. SQG exemption from disposal plan requirements [REVOKED]

Small quantity generators and very small quantity generators are not required to file disposal plans (252:205-5-1) or quarterly reports (252:205-5-3) with the DEQ.

### 252:205-5-3. Quarterly reporting requirements [REVOKED]

(a) **General.** All persons generating hazardous waste within Oklahoma including on site treatment, storage, recycling, or disposal facilities, shall submit a report to the DEQ in a prescribed format which may include electronic submissions. The quarterly report shall be submitted no later than 60 days after the end of each quarter.

~~(b) **Content.** Quarterly reports shall include the total amount of hazardous waste generated and, when applicable, for each hazardous waste generated in a quarter:~~

~~(1) The appropriate waste stream number from the generator's disposal plan;~~

~~(2) The EPA ID number of all transporters who transported the waste;~~

~~(3) The EPA ID number of the receiving facility; and~~

~~(4) The handling code(s) corresponding to the method the generator expects the designated receiving facility to use.~~

~~(c) **Characteristic hazardous waste.** If characteristic hazardous waste is treated on site to render it non hazardous, the quarterly report shall so indicate.~~

~~(d) **Reporting exclusions.** This section does not apply to waste which is not subject to the substantive federal regulations adopted by reference by 252:205-3-2. There are many such exclusions, including but not limited to:~~

~~(1) Hazardous wastewater which is properly disposed of on site in facilities permitted under the Clean Water Act;~~

~~(2) Hazardous wastewater which is properly disposed of on site in Class I injection wells permitted under the Safe Drinking Water Act; and~~

~~(3) Hazardous wastes which are treated in elementary neutralization units to render them non hazardous.~~

## SUBCHAPTER 21. FEES

### 252:205-21-1. General fee provisions

Fees are payable to the DEQ. Monitoring fees and renewal fees are due and payable and must be postmarked within sixty days from the invoice date. Ranges of fees for ~~generator disposal plans, transporter registration,~~ permit application and application resubmittals, and facility monitoring are set by law. See 27A O.S. § 2-7-119. A late fee of 20% of the renewal fee will be charged as a penalty for late renewal of fees less than \$10,000. For fees of \$10,000 or more, see the penalty clause of 27A O.S. § 2-3-301. The DEQ will not re-assess fees at time of transfer of ownership if units and EPA I.D. number remain unchanged.

### 252:205-21-2. Generator fees

(a) **Disposal plan.** The fee for a disposal plan for one or two waste streams is \$100 per generator per year. Each additional waste stream is \$50 per year. There is no disposal plan fee for emergency incidents under 252:205-13-1. Disposal plans shall be canceled if the fees are not paid after the second notification.

(b) **Annual monitoring and inspection fee.** Oklahoma generators shall pay an annual fee of ~~\$100~~300, except small quantity generators who pay \$25. There is no monitoring fee for generators who obtain one time disposal plans issued under 252:205-5-1 for emergency cleanup or waste removal.



**252:205-21-4. Treatment, storage, off-site recycling, and disposal facility fees**

**(a) Permit fees.**

- (1) New permit application fees are listed in Appendix B.
- (2) Renewal and post closure application fees shall be 1/2 of the fees listed in Appendix B, subject to the statutory minimum.
- (3) Fees for re-submission of an application shall be the minimum amount established by 27A O.S. § 2-7-119(B). Re-submission is deemed to occur when an applicant, at the request of the Department, provides additional information to make an application complete, which constitutes substantial recomposition of the application.
- (4) Fees for Tier 3 modifications are the application fees listed in Appendix B.
- (5) Application fees for an off-site recycling facility shall be the statutory minimum established for permit applications by 27A O.S. § 2-7-119(B).

(b) **Refund of permit fees.** Ninety percent (90%) of the fee is refundable for any applications withdrawn within 30 days.

**(c) Monitoring and inspection fees.**

- (1) All ~~hazardous waste facilities~~ Small and Large Quantity Generators of hazardous waste shall be charged an annual fees for monitoring and inspection by the Department. ~~These fees are in addition to the \$100 monitoring fee for generators.~~
- (2) Facilities that treat, store, or dispose of hazardous waste, or receive off-site hazardous waste for recycling, are subject to the fee provisions of § 2-7-121(A) of the Act, except as provided by 27A O.S. § 2-7-121(B). The fee amounts and applicability are depicted in Appendix C of this Chapter. Facilities not subject to Appendix C of this Chapter shall be charged the minimum annual monitoring fee established at 27A O.S. § 2-7-119(B). (Appendix C of this Chapter is included for convenience and is subject to adjustment of the fees by statutory amendment.)

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## APPENDIX C. ANNUAL FACILITY MONITORING FEES [REVOKED]

## APPENDIX C. ANNUAL FACILITY MONITORING FEES [NEW]

Disposition of Waste	On-site	Off-site
Waste Storage, Treatment, or Land Disposal	\$9.50/ton (minimum \$20,000/yr per facility)	\$9.50/ton (minimum \$50,000/yr per receiving treatment or land disposal facility, minimum \$20,000/yr per storage facility*)
Waste Recycling	-----	\$4.00/Ton (minimum \$20,000/yr per receiving facility, excluding receiving facilities which consistently receive or recycle fewer than ten (10) tons of hazardous waste per month)
Underground Injection	\$0.03 per gallon	\$0.03 per gallon
Facilities Conducting Research & Design Tests	-----	\$9.00/ton treatment, storage, or disposal \$4.00/ton recycling (minimum \$10,000/yr per receiving facility)

\* For the purpose of the \$20,000/yr per receiving facility minimum fee only, storage includes physical separation or combining of wastes solely to facilitate efficient storage at the facility and/or efficient transportation. Any off-site facility which is permitted for treatment or land disposal in addition to storage will be subject to the \$50,000/yr per receiving facility minimum fee.

[OAR Docket #22-625; filed 7-14-22]

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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 221. BROWNFIELDS**

[OAR Docket #22-626]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
  - 252:221-1-4 [AMENDED]
  - 252:221-1-6 [AMENDED]
- Subchapter 3. The Brownfield Program
  - 252:221-3-2 [AMENDED]
  - 252:221-3-3 [AMENDED]
  - 252:221-3-5 [AMENDED]
- Subchapter 5. Verification of Brownfields Projects
  - 252:221-5-1 [AMENDED]
- Subchapter 7. Revolving Loan Funds (RLF)
  - 252:221-7-1 [AMENDED]
  - 252:221-7-2 [AMENDED]
  - 252:221-7-3 [AMENDED]
  - 252:221-7-4 [AMENDED]
  - 252:221-7-5 [AMENDED]
  - 252:221-7-7 [AMENDED]
  - 252:221-7-8 [AMENDED]
  - 252:221-7-9 [AMENDED]
  - 252:221-7-10 [AMENDED]
  - 252:221-7-11 [AMENDED]
  - 252:221-7-13 [AMENDED]

**AUTHORITY:**

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

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

August 24, 2021

**COMMENT PERIOD:**

September 15, 2021, to October 21, 2021

**PUBLIC HEARING:**

October 21, 2021, Hazardous Waste Management Advisory Council  
February 18, 2022, Environmental Quality Board

**ADOPTION:**

February 18, 2022

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

February 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions remove outdated legal citations, fix typos, reduce the amount of hard copies being sent to DEQ for review, allow for electronic files to be posted on our website, and remove outdated references to Oklahoma Department of Commerce. This will reduce the costs for participants in DEQ's Brownfields Certificate and Brownfields Revolving Loan Fund Programs. The Brownfields Rules were codified through the 2011 legislative session and have not been updated. Since that time, we have moved to an electronic filing system, the internet is now more widely used, EPA has changed our grant requirements, and our processes have changed. Also, the Oklahoma Department of Commerce is no longer our fund manager for the Brownfields Revolving Loan Fund. DEQ has managed the loan funds in-house for a couple of years. The gist of the rulemaking is to update the rules to be more in alignment with current processes.

**CONTACT PERSON:**

Aron Samwel, Brownfields Program, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101 - 1677, e-mail at aron.samwel@deq.ok.gov, phone 405-702-5123, or fax 405-702-5101.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**252:221-1-4. Terms not defined by Code or rule**

Any term not defined in the Oklahoma Environmental Quality Code (27A O.S. ~~§1-2-101-2-1-101~~*et seq*) or Title 252 of the Oklahoma Administrative Code shall be defined by:

- (1) The Dictionary of Geological Terms, latest revised edition, American Geological Institute,
- (2) Its generally accepted scientific meaning, or
- (3) Its standard dictionary meaning.

**252:221-1-6. Transitioning from Voluntary Cleanup Program to Brownfield Program**

A participant in the Voluntary Cleanup Program may transition to the Brownfield Program by notifying the Brownfield Program in writing and meeting the requirements in ~~27A O.S. §15-101 et seq~~ and the rules in this Chapter.

**SUBCHAPTER 3. THE BROWNFIELD PROGRAM**

**252:221-3-2. Process**

(a) **Eligibility.** The participant must provide sufficient information for the DEQ to determine whether:

- (1) the participant is eligible for liability protection under the state Brownfields law; and
- (2) the site qualifies for the EPA enforcement bar under CERCLA.

(b) **Information.** The participant shall provide the DEQ with information specified in 27A O.S. § 2-15-105 and this Chapter.

(c) **Project tracking database.** The participant shall submit the name of the site, with the latitude and longitude, legal description, and street address as well as contact information for the participant.

**252:221-3-3. Proposal**

The participant shall develop a Proposal in accordance with 27A O.S. § 2-15-105 and the rules in this Chapter and shall propose either a remedial option or a request for a no action necessary determination. DEQ and the participant shall

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consider the history of the site and surrounding area in determining the type of sampling and analysis to be conducted and risk-based decision making.

- (1) **Site characterization.** In addition to the requirements of 27A O.S. § 2-15-105, the participant shall submit a work plan for site characterization, which includes a plan to control the quality of the data generated for the project commensurate with the complexity of the site, a discussion of existing data, the data gaps, a sampling plan to delineate areas of contamination, and a contaminant and site-specific plan to protect worker and public health and safety during site work.
- (2) **Previously acquired data.** The participant may submit previously generated data, if appropriate, with corresponding Quality Assurance/Quality Control documentation. Temporal issues will be considered on a site by site basis. The DEQ may consider this information in determining the appropriateness of further investigation of the site.
  - (A) The DEQ may require verification sampling to validate the information submitted.
  - (B) If the information submitted does not fully address the requirements of the Brownfield program, the participant shall collect additional data as required by the DEQ.
  - (C) The DEQ may require additional analytes, at its discretion.
- (3) **Future use.** The participant shall identify the future use of the contaminated property. If the future use of the site is other than "unrestricted use", the Proposal must include a plan for the implementation and maintenance of engineering and institutional controls and a plan for long term stewardship.
- (4) **Risk evaluation.** On a site specific basis, the participant shall identify and evaluate all potential receptors and exposure pathways. If the proposal claims that an exposure pathway is not complete and therefore no receptor is threatened, specific information must be provided that documents and supports the claim.
- (5) **Risk-based cleanup levels.** Using risk evaluation methodology approved by the DEQ, the participant shall:
  - (A) compare site contaminant levels to published screening levels approved by the DEQ;
  - (B) calculate a default risk-based cleanup level in accordance with DEQ guidance; or
  - (C) conduct a risk assessment of the contaminated property to produce site-specific risk-based cleanup levels. DEQ must approve the model and input parameters used in any risk assessment.
- (6) **Remedial option evaluation.** The participant shall identify alternatives for remediation and shall submit narrative information which discusses each alternative's risk-based cleanup levels, protectiveness, economic feasibility, technical feasibility, and reliability of each remedial alternative considered. Additionally, the participant shall include a discussion of engineering and institutional controls needed for each option to maintain the remedy and

control the use of the property in the future. Examples of specific institutional controls must be included in the Proposal for evaluation unless the future use is "unrestricted use".

- (7) **Preferred option.** The participant shall identify its preferred option.
- (8) **No Action Determination.** A request for a no action determination does not require a remedial option evaluation as described in subsection (f) above.
- (9) **Submittal.** The Proposal must be written in plain language, with technical terms defined. The participant shall submit ~~two~~one paper ~~copies~~copy and one electronic copy, as instructed by the DEQ, of the Proposal to the DEQ for review and comment.

### 252:221-3-5. Public participation

- (a) **Public review.** The participant must make the Proposal and its amendments available to the public for review for 20 working days. The Proposal must be placed at a convenient location local to the site that provides easy access to the public to review or made available electronically to the public.
- (b) **Public notice.** The participant must place a public notice on a public website or in a newspaper of general circulation local to the site announcing the availability of the Proposal for public review and comment. The notice must include, at a minimum:
  - (1) the name(s) and contact information of the participant(s);
  - (2) the site name;
  - (3) the location (street address and legal description) of the site;
  - (4) the proposed future use of the property;
  - (5) the proposed remedy;
  - (6) the location where the Proposal may be reviewed;
  - (7) the beginning and ending dates for the 20 working day review and comment period;
  - (8) the opportunity to request a public forum on the Proposal and its amendments within the 20 working day review period; and
  - (9) the DEQ contact person and mailing address where comments will be received.
- (c) **Public forum.** If the DEQ receives a timely request for a public forum on the Proposal and its amendments and determines that there is a significant degree of public interest in the Proposal, the DEQ shall expeditiously schedule and hold a public forum. Notice of the forum shall be given to the public at least 10 working days prior to the public forum in the same manner as in subsection (b) above. The public forum shall be held at a location convenient to and near the Brownfield site. The participant must attend the meeting or send a designated representative.

## SUBCHAPTER 5. VERIFICATION OF BROWNFIELDS PROJECTS

**252:221-5-1. Applicability**

This Subchapter applies to Brownfields projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account pursuant to 82 O.S. §~~1084.1~~1085.51 *et seq.* and other state or federal funding sources.

**SUBCHAPTER 7. REVOLVING LOAN FUNDS (RLF)**

**252:221-7-1. Purpose, authority and applicability**

(a) **Purpose.** ~~The purpose of this Subchapter is to implement Executive Order 98-37, mandating state agencies to establish criteria for local project funding contracts~~ the Brownfields Revolving Loan Fund that originates from federal grants administered by EPA Region 6.

(b) **Authority.** This subchapter is adopted pursuant to 27A O.S. § 2-2-101 *et seq.* and § 2-15-101 *et seq.*, ~~and 75 O.S. § 302 and Executive Order 98-37.~~

(c) **Applicability.** The rules in this Subchapter apply to any private entity, political subdivision or unit of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use Revolving Loan Funds (RLF) for brownfield cleanup activities.

(d) ~~Oklahoma Department of Commerce~~ **RLF Fund Manager.** ~~The Oklahoma Department of Commerce (ODOC) is the RLF Fund Manager responsible for ensuring that the RLF applicants meet all financial requirements. Applicants are on notice that the ODOC may have specific rules governing loan applications and eligibility requirements. DEQ utilizes an RLF Fund Manager to ensure that loan applicants meet all financial requirements.~~

(e) **Federal "cross-cutting" requirements.** "Cross-cutting requirements" are those federal requirements in addition to CERCLA § 104(k) [42 U.S.C. § 9604(k)] and associated administrative authorities which are applicable to the RLF by operation of federal statutes, President's Executive Orders and federal regulations. These cross-cutting federal authorities apply by their own terms to projects and activities receiving federal financial assistance regardless of whether the statute authorizing the assistance mentions them specifically. ~~RLF cross-cutters include but are not limited to social and economic policy authorities such as equal employment opportunities (President's Executive Order 11246) and government wide debarment and suspension rules (President's Executive Order 12549), the Demonstration Cities and Metropolitan Development Act, procurement prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, Anti-lobbying provisions of 40 CFR Part 30, Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, the Contract Work Hours and Safety Standards Act, Anti-kickback Acts, the Women and Minority Business Enterprise Act, Section 13 of the Federal Water Pollution Act amendments, the Drugfree Workplace Act of 1988, Section 504 of the Rehabilitation Act of 1973 and Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988 and the Davis Bacon Act.~~

**252:221-7-2. Definitions**

In addition to the definitions found in OAC 252:221-1-3, the following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

**"Administrative Record"** means a record available to the public, containing all relevant site information and documents that form the basis for the selection of a cleanup.

**"Brownfield"** means, as used in this subchapter, is defined in 42 U.S.C. § 9601(39) and has a different meaning than the term as used in Subchapters 1, 3 and 5 of this Chapter.

**"Brownfields Revolving Loan Fund"** means funding, originating from grants from the United States Environmental Protection Agency or repaid loans, which are made available to eligible entities as low interest loans or subgrants for environmental cleanup of eligible sites.

~~"RLF response" means planned cleanup actions.~~

**"Borrower"** means a public or private entity that uses RLF funds for cleanup and cleanup-related activities and agrees to the terms of a loan agreement between itself and the DEQ ~~and ODOC.~~

**"Eligible response site"** means properties that do not meet the definition of a Brownfield but may be eligible if EPA makes a property-specific determination that the site is eligible for funding.

**"Grantee"** Means a grant given from the RLF Award to an eligible public entity or nonprofit.

**"Post-Closeout Program Income"** means program income received after a grant has been closed out by EPA.

**"Program Income"** means loan payments, interest, and fees received from borrowers, interest earned on accounts holding Program Income, and other income generated from RLF operations.

**"Governmental borrower"** means states, tribes and political subdivisions as defined at 40 CFR 35.6015.

**"Loan discount"** means a decision made by the DEQ and ODOC under OAC 252:221, to allow a borrower to repay less than the full amount of a loan, subject to certain restrictions.

~~"Nonprofit borrower" means "nonprofit organization" as defined in accordance with the Federal Financial Assistance Management Improvement Act of 1999, 31 U.S.C. 6101.~~

~~"Private borrower" means a for-profit company or private individual not representing a governmental entity or nonprofit organization.~~

**"Subgrant"** means a portion of the RLF award available as grants to eligible entities, at the DEQ's discretion.

**252:221-7-3. Borrower eligibility**

(a) Private entities, political subdivisions or units of local government, including municipal and county governments and school districts, non-profit borrowers, and federally recognized Indian tribes are eligible for low interest loans.

(b) Political subdivisions or units of local government, including municipal and county governments and school districts, non-profit borrowers, and federally recognized Indian tribes are eligible for subgrants.

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(ac) An owner/operator (o/o) who was the generator or transporter of contamination at the site is not eligible for a RLF loan/grant for that same site.

(bd) An owner who does not qualify as an innocent landowner, contiguous property owner, or bona fide prospective purchaser is not eligible for an RLF loan unless they are a public entity that is exempt under CERCLA § 104(k)(2)(C) [42 U.S.C. § 9604(k)(2)(C)].

(ee) A State or local government entity may borrow RLF funds to clean up property for which ~~acquired through eminent domain ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as a sovereign~~ CERCLA § 101(20)(D) [42 U.S.C. § 9601(20)(D)].

## 252:221-7-4. Eligible uses

(a) Eligible uses of RLF funds from active grants: The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum (contingent on funding), mine-scarred land and controlled substances as defined in the Controlled Substances Act, 21 U.S.C. § 802.

(b) Eligible uses of RLF funds from Post-Closeout Program Income: The Post-Closeout Program Income may have different eligible uses.

## 252:221-7-5. Ineligible fund uses

(a) **Ineligible activities.** RLF funds shall not be used for any of the following activities, including but not limited to:

- (1) Pre-cleanup environmental response activities, such as site assessment, identification, and characterization
- (2) Monitoring and data collection necessary to apply for, or comply with, environmental permits under other state and Federal laws, unless such a permit is required as a component of the cleanup action;
- (3) Development activities that are not cleanup actions (e.g., construction of a new facility or marketing of property);
- (4) To support job training; or
- (5) Indirect costs.

(b) **Ineligible sites of RLF Funds from active grants.** RLF funds shall not be used at any sites:

- (1) Listed, or proposed for listing, on the National Priorities List; or
- (2) That do not meet the definition of an eligible response site.

(c) **Ineligible uses.** The Post-Closeout Program Income may have different ineligible uses.

## 252:221-7-7. Project selection criteria

(a) **Funding available.** Loans will be made to eligible projects as funding allows.

(b) **Priority projects.** Priority will be given to projects that:

- (1) remove environmental risks as opposed to managing them long term;

(2) use deconstruction techniques to remove structures as opposed to demolition;

(3) use sustainable material management techniques for demolition/deconstruction wastes;

(4) redevelop property using LEED standards or promote energy efficiency;

(5) promote reuse by a green industry;

(6) use sustainable landscaping or sustainable redevelopment techniques;

(7) create green jobs;

(8) facilitate the creation of, preservation of or addition to a park, a greenspace; undeveloped property, recreational property or other property used for nonprofit purposes;

(9) meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community; or

(10) facilitate the use or reuse of existing infrastructure.

(bc) **Compliance with state and federal laws and rules.**

The borrower/grantee must comply with the ~~the~~ rules in this subchapter, the agency of jurisdiction's rules, and relevant and appropriate provisions of CERCLA and the NCP.

(ed) **Contribution to local community revitalization.** The borrower/grantee shall submit documentation to support its position that the cleanup of a particular site will significantly contribute to local community revitalization.

(de) **Environmental compliance history.** A borrower/grantee must submit information regarding its overall environmental compliance history. The DEQ will strongly consider this history in its analysis of the borrower/grantee as a cleanup and business risk. Each borrower/grantee must certify that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan. An entity that has been suspended, debarred or otherwise declared ineligible, ~~as those terms are defined in 40 CFR Part 32,~~ cannot be a borrower/grantee.

## 252:221-7-8. Protocol for demonstrating eligibility

The borrower/grantee shall provide the following documentation to the DEQ:

- (1) Description of project to be funded;
- (2) How loan or grant monies will be used;
- (3) Explanation of how the project, if selected, would be consistent with RLF program objectives;
- (4) Environmental compliance history; ~~and~~
- (5) Documentation showing that the potential borrower/grantee is an innocent landowner, contiguous property owner, bona fide prospective purchaser or other proof of non-responsibility for the environmental contaminants that are the subject of the cleanup; and
- (6) If the borrower/grantee is selected for a loan/grant, he/she must submit the following additional documents:
  - (A) Analysis of Brownfields Cleanup Alternatives (ABCA);
  - (B) Community ~~Involvement~~Relations Plan; and
  - (C) Quality Assurance Project Plan (QAPP).

**252:221-7-9. Public Involvement**

(a) **Community Involvement Relations Plan.** The Borrower/grantee must involve the public in the process prior to site cleanup. This public process involvement must be documented in the Community Involvement Relations Plan.

(b) **Administrative record.** The Borrower/grantee must establish an administrative record for this site and must make the administrative record available to the public for review for 30 calendar days during the public comment period for the ABCA. The administrative record must be placed at a convenient location that provides easy access ~~to~~for the public to review. The administrative record can be electronic and/or hard copy.

(c) **Public notice.** The Borrower/grantee must place a public notice in a newspaper of general circulation local to the site in accordance with 2-15-104(E)(3) and/or made available electronically, announcing the availability of the administrative record for public review and comment. The notice must include, at a minimum:

- (1) the name(s) and contact information of the participant(s);
- (2) the site name;
- (3) the location (street address and/or legal description) of the site
- (4) ~~the proposed future use of the property;~~
- (5) the proposed remedy;
- (6) the location where the administrative record may be reviewed;
- (7) the beginning and ending dates for the 30 calendar day review period; and
- (8) the DEQ contact person and mailing address where public comments will be received.

(d) **Evaluation of public comments.** The DEQ will consider all relevant comments and prepare a responsiveness summary.

**252:221-7-10. Final Decision Document**

The DEQ will issue a Final Decision Document ~~prior to a loan being made~~following the 30 calendar day public comment period for the ABCA.

**252:221-7-11. Special terms and conditions**

~~The following terms and conditions are incorporated by reference into each Borrower/grantee's loan agreement:~~

- (1) Borrower/grantee shall use funds only for eligible activities.
- (2) Borrower/grantee shall document all funds used.
- (3) Borrower/grantee shall maintain documentation for a minimum of three (3) years after the completion of the cleanup activity supported by the loan or for the length of the loan, whichever is longer. Borrower/grantee shall obtain written approval from the DEQ prior to disposing of records.
- (4) Borrower/grantee shall conduct RLF response activities in accordance with this Subchapter, relevant and appropriate provisions of CERCLA, applicable State regulations, and EPA's Revolving Loan Fund Grant Programs Administrative Manual, December 2008, as updated.

(6) Borrower/grantees shall modify response activities as required by the DEQ.

(7) Borrower/grantees shall comply with CERCLA § 104(g) [42 USC § 9604(g)(1), 40 U.S.C. § 276(a)-276(a)-5, and 42 U.S.C. § 3212] by requiring that laborers and mechanics employed by the Borrower/grantee or its contractors or subcontractors in the performance of construction, alteration, or repair work are paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act. Borrower/grantees shall submit copies of all Davis Bacon forms to the DEQ.

(8) Borrower/grantees must comply with the Uniform Relocation Act and other applicable federal "cross cutting" requirements.

(9) Borrower/grantees shall use funds promptly for costs incurred in connection with the cleanup.

(10) All distribution of funds will be as reimbursement for costs incurred.

(11) The Post-Closeout Program Income may have different requirements.

**252:221-7-13. Insurance**

~~Borrower/grantees~~ Borrower/grantee may purchase insurance, including environmental insurance, if the expense is necessary to carry out cleanup activities and associated cleanup activities are carried out in accordance with the terms and conditions of DEQ's loan/grant.

[OAR Docket #22-626; filed 7-14-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 301. LABORATORY ACCREDITATION**

[OAR Docket #22-627]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 7. Proficiency Testing
- 252:301-7-4 [AMENDED]
- 252:301-7-14 [AMENDED]
- 252:301-7-17 [AMENDED]
- Subchapter 9. Management and Technical Requirements
- Part 3. Standard Operating Procedures and Methods Manual
- 252:301-9-37 [AMENDED]
- Part 5. QA/QC Program Requirements
- 252:301-9-56 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. § 2-2-101; Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, 2-6-303, and 2-6-306.

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

November 2, 2021

**COMMENT PERIOD:**

December 1, 2021, to January 11, 2022

**PUBLIC HEARING:**

January 11, 2022, Water Quality Management Advisory Council  
February 18, 2022, Environmental Quality Board

# Permanent Final Adoptions

## ADOPTION:

February 18, 2021

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 25, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATION BY REFERENCE:

### Incorporated standards:

(1) "National Primary Drinking Water Regulations", 40 CFR Part 141, incorporation date is updated to July 1, 2021.

(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition as amended by Final Update I, II, IIA, IIB, III, IIIA, IIIB, IV, and VI Update VII is added to the incorporation by reference

(3) "Guidelines Establishing Test Procedures for the Analysis of Pollutants 40 CFR Part 136, incorporation date is updated to July 19, 2021.

### Incorporating rules:

252:301-9-37

### Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTk=>

### GIST/ANALYSIS:

The gist of these rules and the underlying reason for this rulemaking is to update incorporations by reference for EPA methodologies, and to make other amendments for conformity with the updated incorporations by reference. Updates include the most recent EPA Primary Drinking Water Regulations, National Standards for Solid Waste Test Methods and EPA Test Procedures for the Analysis of Pollutants. A significant result of these updates to rules is the use of alternate testing methods, clearer language, and reduced requirements which will apply to all permittees and accredited laboratories.

### CONTACT PERSON:

David Caldwell, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-1000 (phone), david.caldwell@deq.ok.gov (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 7. PROFICIENCY TESTING

### 252:301-7-4. Initial accreditation

To gain initial or interim accreditation, a laboratory shall successfully analyze two consecutive proficiency testing (PT) rounds. Proficiency testing (PT) rounds must have been performed within the last twelve (12) months and at least ~~fifteen~~ seven (7) calendar days apart.

### 252:301-7-14. PT criteria for laboratory accreditation

The following criteria apply individually to each analyte in each class of accreditation as defined by the laboratory seeking accreditation in its application:

(1) Results of the PT study shall be considered successfully analyzed when the results are "acceptable" and are within the acceptable limits established and published by the PT Provider.

(2) Successfully analyzed shall also mean an aggregate passing score of ninety percent (90%) for microbiological PT testing studies. No partial credit will be given;

(3) The DEQ shall consider PT results along with the other elements of these rules when determining a laboratory's accreditation status;

(4) For initial accreditation or supplemental testing, the studies must be at least ~~fifteen (15)~~ seven (7) calendar days apart.

### 252:301-7-17. Supplemental studies

A laboratory may elect to participate in PT studies more frequently than required by the semiannual schedule. Additional studies are not distinguished from the routinely scheduled studies. They are counted and scored the same way and must be at least ~~fifteen (15)~~ seven (7) calendar days apart.

## SUBCHAPTER 9. QUALITY ASSURANCE/QUALITY CONTROL

### PART 3. STANDARD OPERATING PROCEDURES AND METHODS MANUAL

### 252:301-9-37. Methodology incorporated by reference

The following EPA methods are hereby incorporated by reference:

(1) "National Primary Drinking Water Regulations", 40 CFR Part 141, published ~~July 1, 2018~~ July 1, 2021.

(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition as amended by Final Update I, II, IIA, IIB, III, IIIA, IIIB, IV, ~~and VI,~~ and VII. See further SW-846-ON-LINE.; and

(3) "Guidelines Establishing Test Procedures for the Analysis of Pollutants 40 CFR Part 136, ~~published July 1, 2018~~ effective July 19, 2021.

### PART 5. QA/QC PROGRAM REQUIREMENTS

### 252:301-9-56. QA/QC documentation

(a) Documentation shall be kept to insure quality control has been maintained and that proper methodologies have been used for the preparation and analysis of samples. All documentation shall be maintained and be readily available for reference or inspection.

(b) The following QC documentation shall be maintained in each laboratory.

(1) **Bench records.** Data associated with analysis, date, time, analyst, method, amounts, calculations, sample matrix, sample identification.



- (2) **Calibration data.** Calibration curve or coefficient of the linear equation which describes the calibration curve; concentration/response data (or relative response data) for standards; percent recovery of an initial calibration check standard and the date it was analytically determined; percent recovery of the continuing calibration check standard; and laboratory sample identification of the samples run with this curve.
- (3) **Extraction/digestion records.** Date, analyst, type of extraction or digestion for each sample, and laboratory sample identification.
- (4) **Surrogate records.** Amount of surrogate spiked, percent recovery of each surrogate, date, analyst, and laboratory sample identification.
- (5) **Maintenance logs.** By instrument, dates and description of repairs, preventive maintenance, malfunctions, and other actions or events affecting instrument performance.
- (6) **QC charts.** Quality control procedures for monitoring the validity of the environmental testing. The resulting data shall be recorded in such a way that trends are detectable, and statistical techniques shall be applied to the reviewing of the results. All laboratories shall have detailed written protocols in place for positive and negative controls, variability, repeatability, and accuracy of the methods.
- (7) **Sample login.** Procedures plan for sample login, unique sample identification, date, time, source of sample (including name, location and sample matrix), preservative used, analysis required, name of collectors and any pertinent field data.
- (8) **Spike/duplicate/spike-duplicate data.** Date, analyst, laboratory sample number, amount spiked, percent recovery, percent of difference, and makeup and concentration in the spiking solution.
- (9) **Temperature logs.** By oven, incubator, freezer, and or refrigerator, daily (during periods of use) temperature readings and any temperature excursions with corrective action, recorded in a bound logbook.
- (10) **Weight logs.** By balance, checked with the appropriate range of class S weights weekly (during periods of use) before use and results recorded in a bound logbook. Each balance serviced and calibrated at least once per year by an accredited technician.

[OAR Docket #22-627; filed 7-14-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 302. FIELD LABORATORY ACCREDITATION**

[OAR Docket #22-628]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. General Operations  
252:302-5-2 [AMENDED]

Subchapter 7. Proficiency Testing

252:302-7-3 [AMENDED]

252:302-7-7 [AMENDED]

252:302-7-9 [AMENDED]

Subchapter 9. Quality Assurance/Quality Control

Part 1. Quality Assurance/Quality Control General Criteria

252:302-9-2 [AMENDED]

252:302-9-3 [AMENDED]

Part 3. Standard Operating Procedures and Methods Manual

252:302-9-23 [AMENDED]

252:302-9-25 [AMENDED]

**AUTHORITY:**

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

Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, 2-6-303, and 2-6-306.

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

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**ADOPTION:**

February 18, 2022

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February 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

**Incorporated standards:**

Date of 40 CFR provisions incorporated by reference in these rules is changed to "effective July 19, 2021".

**Incorporating rules:**

252:302-9-25

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIYNtk=>

**GIST/ANALYSIS:**

The gist of these rules and the underlying reason for this rulemaking is to update incorporations by reference for EPA methodologies, and to make other amendments for conformity with the updated incorporations by reference. Updates include the most recent EPA Primary Drinking Water Regulations, National Standards for Solid Waste Test Methods and EPA Test Procedures for the Analysis of Pollutants. A significant result of these updates to rules is the use of alternate testing methods, clearer language, and reduced requirements which will apply to all permittees and accredited laboratories.

**CONTACT PERSON:**

David Caldwell, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-1000 (phone), david.caldwell@deq.ok.gov (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 5. GENERAL OPERATIONS**

# Permanent Final Adoptions

## 252:302-5-2. Laboratory technician

- (a) All field laboratories shall have at least one on-site employee meeting the minimum requirements of this chapter.
- (b) The laboratory technician shall have at least a high school diploma or equivalent, complete a method training program under an experienced analyst and have six months bench experience in the analysis of process samples.
- (c) The laboratory technician shall have knowledge of the use of analytical equipment and support equipment used for the analysis of pH, chlorine residual, turbidity, conductivity, temperature and dissolved oxygen.
- (d) Before analyzing compliance samples, the laboratory technician must demonstrate acceptable results on at least four (4) replicates of a known standard. These are analyzed as ~~unknown~~ samples over a period of 3 to 5 days ~~by the technician; after analyzing all required calibration standards, or~~ Alternately, demonstrate satisfactory participation on a PT ~~sample sample and~~ The technician shall adhere to method required QC procedures specified ~~in the methods~~ for blanks, precision, accuracy, sensitivity, and specificity. The demonstration must be documented according to the laboratory's QA plan.
- (e) Laboratory technicians must be under the supervision of a supervisor/consultant until the minimum requirements of this subsection are met.

## SUBCHAPTER 7. PROFICIENCY TESTING

### 252:302-7-3. Initial accreditation

To gain initial or interim accreditation, a laboratory shall have obtained acceptable results for two consecutive proficiency testing (PT) rounds. Proficiency testing (PT) rounds must have been performed within the last twelve (12) months and at least ~~fifteen (15)~~ seven (7) calendar days apart from the date of analysis.

### 252:302-7-7. PT criteria for laboratory accreditation

The following criteria apply individually to each analyte as defined by the laboratory seeking accreditation in its application:

- (1) Results of the PT study shall be considered successful when the results are "acceptable" and are within the acceptable limits established and published by the PT Provider.
- (2) The DEQ shall consider PT results along with the other elements of these rules when determining a laboratory's accreditation status;
- (3) For initial accreditation or supplemental testing, the studies must be at least ~~fifteen (15)~~ seven (7) calendar days apart from the date of analysis.

### 252:302-7-9. Supplemental studies

A laboratory may elect to participate in PT studies more frequently than required by the semiannual schedule. Additional studies are not distinguished from the routinely scheduled studies. They are counted and scored the same way

and must be at least ~~fifteen (15)~~ seven (7) calendar days apart from the date of analysis.

## SUBCHAPTER 9. QUALITY ASSURANCE/QUALITY CONTROL

### PART 1. QUALITY ASSURANCE/QUALITY CONTROL GENERAL CRITERIA

#### 252:302-9-2. Format

- (a) The QA plan shall list the following on the title page:
  - (1) a document title;
  - (2) the laboratory's full name and address;
  - (3) ~~the names, addresses and telephone numbers of all individuals responsible for the laboratory;~~
  - (4) the name of the quality manager (however titled);
  - (5) ~~the identification of all major organizational units which are to be covered by this QA plan; and~~
  - (6) the effective date of the version.
- (b) The QA plan shall also contain a Table of Contents, applicable lists of references and glossaries, and appendices.

#### 252:302-9-3. Management information required in QA plan

The QA plan and related quality documentation shall state the laboratory's policies established in order to meet the requirements of this rule. The QA plan and related quality documentation shall also contain:

- (1) a quality policy statement, including objectives and commitments, by top management;
- (2) the organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts;
- (3) the relationship between management, technical operations, support services and the quality assurance plan;
- (4) job descriptions of key staff and reference to the job descriptions of other staff;
- (5) identification of the laboratory's approved signatories; at a minimum, the title page of the QA plan must have the signed and dated concurrence, (with appropriate titles) of all responsible parties including the quality manager(s), technical director(s), and the agent who is in charge of all laboratory activities such as the supervisor/consultant; ~~and~~
- (6) ~~the laboratory management arrangements for exceptional departures from documented policies and procedures or from standard specifications.~~

### PART 3. STANDARD OPERATING PROCEDURES AND METHODS MANUAL

#### 252:302-9-23. Test method(s)

Each test method shall include or reference the following, where applicable:

- (1) Identification of the test method;
- ~~(2)~~ ~~Applicable matrix or matrices;~~
- ~~(3)~~ Detection limit;
- ~~(4)~~ ~~Scope and application, including components to be analyzed;~~
- ~~(5)~~ ~~Summary of the test method;~~
- ~~(6)~~ ~~Definitions;~~
- ~~(7)~~ ~~Interferences;~~
- ~~(8)~~ ~~Safety;~~
- ~~(9)~~ ~~Equipment and supplies;~~
- ~~(10)~~ Reagents and standards;
- ~~(11)~~ Sample collection, preservation, shipment and storage;
- ~~(12)~~ Quality control;
- ~~(13)~~ Calibration and standardization;
- ~~(14)~~ Procedure;
- ~~(15)~~ Calculations;
- ~~(16)~~ ~~Method performance;~~
- ~~(17)~~ ~~Data assessment and acceptance~~ Acceptance criteria for quality control measures;
- ~~(18)~~ ~~Corrective actions for out of control data;~~
- ~~(19)~~ ~~Contingencies for handling out of control or unacceptable data;~~
- ~~(20)~~ References; and
- ~~(21)~~ Any tables, diagrams, flowcharts and validation data.

**252:302-9-25. Methodology incorporated by reference**  
 "Guidelines Establishing Test Procedures for the Analysis of Pollutants" 40 CFR Part 136, ~~as published on July 1, 2018 effective July 19, 2021,~~ is hereby incorporated by reference.

[OAR Docket #22-628; filed 7-14-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
 CHAPTER 307. TNI LABORATORY ACCREDITATION**

[OAR Docket #22-629]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Introduction  
252:307-1-4 [AMENDED]
- Subchapter 5. Conditions of Accreditation  
252:307-5-1 [AMENDED]
- Subchapter 7. Onsite Assessment Requirements  
252:307-7-2 [AMENDED]
- Subchapter 9. Management and Technical Requirements
  - Part 1. Proficiency Testing  
252:307-9-2 [AMENDED]
  - 252:307-9-3 [AMENDED]
  - 252:307-9-8 [AMENDED]
  - 252:307-9-9 [AMENDED]
- Subchapter 9. Management and Technical Requirements
  - Part 7. Record keeping and reporting  
252:307-9-60 [AMENDED]

**AUTHORITY:**

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

Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, 2-6-303, and 2-6-306.

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

November 2, 2021

**COMMENT PERIOD:**

December 1, 2021, to January 11, 2022

**PUBLIC HEARING:**

January 11, 2022, Water Quality Management Advisory Council;  
February 18, 2022, Environmental Quality Board

**ADOPTION:**

February 18, 2021

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

February 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

**Incorporated standards:**

TNI Standard for the Environmental Laboratory Sector, Volume 1, "Management and Technical Requirements for Laboratories Performing Environmental Analysis." Modules 1, 2, 3, 4, 5, 6 and 7 updates the incorporation to "as adopted January 31, 2020."

"Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 CFR Part 136, updates the date of incorporation to "effective July 19, 2021."

"Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition adds update VII to the incorporation.

"Methodologies set forth in the National Primary Drinking Water Regulations," 40 CFR Part 141 is updated to "as published July 1, 2021."

**Incorporating rules:**

252:307-1-4

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTk=>

**GIST/ANALYSIS:**

The gist of these rules and the underlying reason for this rulemaking is to update incorporations by reference for the TNI Standard and EPA methodologies, and to make other amendments for conformity with the updated incorporations by reference. Updates include the most recent EPA Primary Drinking Water Regulations, National Standards for Solid Waste Test Methods and EPA Test Procedures for the Analysis of Pollutants, and the 2016 TNI Standard. A significant result of these updates to EPA test procedures and TNI Standards is the addition of alternate testing methods, clearer language, and reduced requirements which will apply to all permittees and accredited laboratories.

**CONTACT PERSON:**

David Caldwell, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-1000 (phone), david.caldwell@deq.ok.gov (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. INTRODUCTION**

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## 252:307-1-4. Incorporation by reference

(a) **TNI Standard.** ~~Except as provided in subsection (e),~~ Laboratories accredited under this Chapter shall meet the requirements of the TNI Standard for the Environmental Laboratory Sector, Volume 1, "Management and Technical Requirements for Laboratories Performing Environmental Analysis." Modules 1, 2, 3, 4, 5, 6 and 7 as adopted ~~September 8, 2009~~ January 31, 2020, which are hereby incorporated by reference.

(b) **EPA methodology.** Environmental analysis for compliance with the Federal Safe Drinking Water Act, Federal Clean Water Act and Federal Resource Conservation and Recovery Act require conformance with applicable EPA approved methodology. If EPA has approved a test procedure for analysis of a specific analyte, the laboratory must use an approved test procedure. The following EPA methods are hereby incorporated by reference:

(1) "Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 CFR Part 136, ~~published July 1, 2018~~ effective July 19, 2021;

(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA, IVB, V, ~~and VI, and VII.~~ See further SW-846-ON-LINE;

(3) "Methodologies set forth in the National Primary Drinking Water Regulations," 40 CFR Part 141 ~~as published July 1, 2018~~ July 1, 2021; and

(4) "Manual for the Certification of Laboratories Analyzing Drinking Water," Fifth Edition and Supplement 1 (EPA 815-5-05-004, January 2005 and EPA 815-F-08-006, June 2008).

~~(e) **Excluded provisions.** In Volume 1, Module 1 of the TNI Standard, subsections 4.1.3 and 4.2.1a are not incorporated by reference.~~

(d) **DEQ approved methodologies.** The following methods are specifically approved by the DEQ:

(1) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC6 to nC35) of June 1, 2001;

(2) Oklahoma GRO 8020/8015(Modified) of February 24, 1996;

(3) Oklahoma DRO 8000/8100(Modified) of October 22, 1997;

(4) ASTM mussels of 2006;

(5) ASTM E 1193-97 for whole effluent toxicity tests; and

(6) On a case by case basis as approved by DEQ.

(e) **Inconsistencies between test methods and rules.** In the event there are inconsistencies between the requirements of this Chapter and requirements of those provisions incorporated by reference, the laboratory must meet all applicable requirements. Laboratories are encouraged to consult with DEQ when in doubt about the proper or applicable test method.

## 252:307-5-1. Conditions applicable to all accreditations

The following conditions shall apply to all existing accreditations and shall be incorporated expressly or by reference into all accreditations issued or renewed after the effective date of this Chapter.

(1) **Proper operation and maintenance.** The laboratory shall at all times properly operate and maintain all facilities and equipment installed or used by the laboratory to achieve compliance with the laboratory accreditation requirements of 27A O.S. § 2-4-101 *et seq.*, rules for laboratory accreditation at OAC 252:307, and the provisions and conditions of its Accreditation. Proper operation and maintenance includes effective performance of operations and adequate funding, operator staffing and training, and the provision of appropriate sample-handling equipment. All operational practices and procedures used shall conform to the best possible public health and safety practices.

(2) **Duty to mitigate.** The laboratory shall take all reasonable steps to minimize or correct any endangerment of human health resulting from noncompliance with this Accreditation and to minimize or correct any adverse impact on the environment arising from its analytical activities.

(3) **Duty to provide information.** The laboratory shall furnish to the DEQ, within a time specified, any information which the DEQ may request to determine:

(A) whether cause exists for amending, suspending, or revoking Accreditation;

(B) compliance with Accreditation; or

(C) whether an accreditation should be issued or renewed.

(4) **Reporting requirements.** The laboratory shall give advance notice to the DEQ as soon as possible of any planned physical alterations, additions to the accredited facility or planned changes in the accredited facility which may result in noncompliance with accreditation requirements.

(5) **Signatory requirement.** All applications, reports, or information submitted to the DEQ shall be signed by the applicant.

(6) **Consent to conditions.** Commencing analytical activities as an accredited laboratory under DEQ accreditation shall constitute consent to all conditions of accreditation.

(7) **Transfer of accreditation.** Accreditation is not transferable. An accredited laboratory may apply to amend its accreditation to reflect a change of ownership or name change, provided that facilities, equipment, personnel and all other conditions of accreditation remain unchanged.

(8) **Duty to apply.** To maintain its accredited status, the laboratory shall make timely application for annual renewal of accreditation.

(9) **Severability.** The provisions of accreditation are severable, and if any of its provisions or the application of its provisions are held invalid, the application of such provisions to other circumstances and the remaining provisions of the accreditation shall not be affected thereby.

## SUBCHAPTER 5. CONDITIONS OF ACCREDITATION

(10) **Use of TNI logo.** The laboratory is allowed to use the TNI symbol on its reports or certificates issued within the scope of its accreditation. Misuse of the logo constitutes a failure to comply with accreditation requirements.

(11) **Withdrawal from TNI.** If a laboratory wishes to withdraw from this program, in total or in part, it must notify DEQ in writing.

(12) **Standard of Conduct.** The laboratory shall not use its accreditation in such a manner as to bring the DEQ LAP into disrepute.

**SUBCHAPTER 7. ONSITE ASSESSMENT REQUIREMENTS**

**252:307-7-2. Conduct of onsite assessments**

- (a) Onsite assessments may be unannounced.
- (b) During an onsite assessment the DEQ, or DEQ's subcontractor, may require analyses of proficiency test samples by laboratory personnel. Laboratories shall make all employees available for interviews including arrangements for observing accredited activities when requested and practicable during onsite assessments.
- (c) Following the onsite assessment, the DEQ will provide the laboratory with a written assessment report. The laboratory will be afforded 30 days from the date of receipt in which to develop a corrective action plan, and 90 days in which to correct any listed deficiencies unless extended by written agreement of the parties or unless the laboratory is under an administrative order.
- (d) All information included and documented in an assessment report is public information and is subject to the Oklahoma Open Records Act.

**SUBCHAPTER 9. MANAGEMENT AND TECHNICAL REQUIREMENTS**

**PART 1. PROFICIENCY TESTING**

**252:307-9-2. Participation required**

Except as provided in 252:307-1-4(e), a-The laboratory must meet the PT requirements for initial and continued accreditation as specified in the TNI Standard for each field of proficiency testing for which it seeks accreditation or maintenance of accreditation. PT samples must be obtained from a TNI accredited PT provider.

**252:307-9-3. Initial and continuing PT studies evaluation**

A laboratory seeking to obtain or maintain accreditation shall successfully complete two initial or continuing PT studies for each requested field of proficiency testing within the most recent three rounds attempted. For a laboratory seeking to obtain accreditation, the most recent three rounds attempted shall have occurred within 18 months of the laboratory's application

date. When a laboratory has been granted accreditation status, it shall continue to complete PT studies for each field of proficiency testing and maintain a history of at least two acceptable PT studies for each field of proficiency testing out of the most recent three. For initial accreditation, the laboratory must successfully analyze two sets of PT studies, the analyses to be performed at least 157 calendar days apart from the closing date of one study to the shipment date of another study for the same field of proficiency testing. For continuing accreditation, completion dates of successive proficiency rounds for a given field of proficiency testing shall be approximately six months apart. Failure to meet the semiannual schedule shall be regarded as a failed study on the last day of the seventh (7<sup>th</sup>) month. Initial or continuing PT studies must meet all applicable criteria described in this Chapter and the TNI Standard.

**252:307-9-8. Failure to perform PT**

A laboratory's accreditation for a field of proficiency testing will be suspended when a laboratory fails to comply with Subchapter 9 Section 3: failing to maintain a history of at least two acceptable PT studies out of the most recent three. The suspension will be temporary lasting no more than six months or when the accreditation expires whichever is less longer. The laboratory must notify the Laboratory Accreditation Program of its intent to regain accreditation through submission of a corrective action plan. Once accreditation for a field of proficiency testing has been lost, the procedures for initial or interim accreditation shall apply.

**252:307-9-9. Supplemental PT testing**

A laboratory may elect to participate in PT testing more frequently than required by the semiannual schedule. Any additional tests performed by a laboratory must be submitted to DEQ in the same manner as required tests. Additional PT tests are counted and scored the same way as required tests, and must be at least fifteen (15) seven (7) calendar days apart.

**PART 7. RECORD KEEPING AND REPORTING**

**252:307-9-60. Required records**

All required laboratory records must be written in a clear and unambiguous manner, be readily available for reference or inspection, and shall include:

- (1) **Records of accreditation.** The laboratory shall keep the following records on file at its main facility.
  - (A) Scope of accreditation and the application on which it is based;
  - (B) Copies of final reports and quality documents associated with reported data submitted to the DEQ or clients;
  - (C) Internal audits and quality assurance plans; also
  - (D) Each laboratory shall maintain on file the list of analytes for which it is accredited, and shall provide a copy of the list upon request.

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- (2) **Quality manual**, which is addressed in 252:307-9-42;
- (3) **Bench records**. All raw data, whether hard copy or electronic data associated with testing, including analysts' worksheets and data output records (chromatograms, strip charts, and other instrument response readout records); date, time, analyst, method, amounts (volume and weights), clean up, separation protocols, incubation periods, calculations, sample matrix, and sample identification.
- (4) **Calibration data**. Calibration criteria, frequency and acceptance criteria including the curve or coefficient of the linear equation which describes the calibration curve; measure of relative error; concentration/response data (or relative response data) for standards; percent recovery of all calibration checks (MRL, PSC initial) standard and the date it was analytically determined; percent recovery of the continuing calibration check standard; and laboratory sample identification of the samples run with the curve.
- (5) **Sample history and associated data**. All data is to be clearly and unambiguously documented so that all steps of the method are indicated. This shall include but is not limited to the following: Date, analyst, type of extraction or digestion for each sample, and laboratory sample identification.
- (6) **Surrogate and tracer records**. Surrogates or tracers, when required, are chosen to reflect the chemistries of the targeted components of the method and are added prior to sample preparation/extraction. The laboratory shall document the amount of surrogate or tracer spiked, percent recovery of each surrogate, date, analyst, and laboratory sample identification. The results are compared to the acceptance criteria as published in the method. If there are no established criteria, the laboratory shall determine internal criteria and document the method used to establish the limits.
- (7) **Maintenance logs**. Maintenance logs shall be kept for each instrument, to include dates and description of repairs, preventive maintenance, malfunctions, and other actions or events affecting performance. All instruments not in service must be tagged out of service. Maintenance logs shall also be kept for all devices that are necessary to support laboratory operations. These include, but are not limited to: balances, ovens, refrigerators, freezers, incubators, water baths, temperature measuring devices (including thermometers and thermistors), thermal/pressure sample preparation devices and volumetric dispensing devices (such as Eppendorf [Registered Trademark] or automatic dilutor/dispensing devices), if quantitative results are dependent on their accuracy, as in standard preparation and dispensing or dilution into a specified volume. Each balance shall be annually serviced and calibrated by a recognized accredited metrological service.
- (8) **Corrective action procedures**. Procedures for evaluating, documenting and reporting corrective action used for audits, PT failures, out-of-control situations and in response to enforcement actions.

- (9) **Quality protocols**. Procedures for monitoring the validity of the environmental testing and the resulting data shall be recorded in such a way that trends are detectable, and statistical techniques shall be applied to the reviewing of the results. All laboratories shall have documentation for positive and negative controls, variability, repeatability, and accuracy of the method.
- (10) **Chain of custody and sample accession**. Procedural plans for sample login, unique sample identification (all sample containers), date, time, source of sample (including name, location (location code) and sample matrix), preservative used, analysis required, name of collectors and any pertinent field data.
- (11) **Spike duplicates and spike-duplicate data**. The laboratory shall document procedures for determining the effect of the sample matrix on method performance. These procedures relate to the analyses of quality system matrix-specific quality control samples, and are designed as data quality indicators for a specific sample using the designated method. Information shall include but is not limited to: date, analyst, laboratory sample number, amount spiked, percent recovery, percent of difference, and make-up and concentration in the spiking solution.
- (12) **Electronic data**. All electronic data including security, software documentation and verification, software and hardware audits, backups, and records of any changes to automated data entries shall be preserved.
- (13) **Sensitivity, LOD/LOQ**. Procedures used for determining limits of detection and quantitation shall be documented. Documentation shall include the quality system matrix type. All supporting data shall be retained. LOQ shall be verified annually within the established control limits.

[OAR Docket #22-629; filed 7-14-22]

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### TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #22-630]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

- Subchapter 1. General Provisions  
252:410-1-7 [AMENDED]
- Subchapter 5. Certification of Industrial Radiographers  
252:410-5-5 [AMENDED]
- Subchapter 7. Radiation Management Authorizations; Procedures and Requirements
  - Part 1. General Provisions Common to All Authorizations  
252:410-7-1 [AMENDED]
  - 252:410-7-5 [AMENDED]
  - Part 3. Reciprocity Recognition  
252:410-7-31 [AMENDED]
- Subchapter 10. Radioactive Materials Program
  - Part 37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material  
252:410-10-37 [AMENDED]
  - Part 71. Packaging and Transporting Radioactive Material

252:410-10-71 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, and 2-2-104.  
Radiation Management Advisory Council; 27A O.S. § 2-2-201.  
Radiation Management Act; 27A O.S. §§ 2-9-104, and 2-9-105.

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

July 28, 2021

**COMMENT PERIOD:**

August 16, 2021 through September 29, 2021

**PUBLIC HEARING:**

September 30, 2021, Radiation Management Advisory Council  
February 18, 2022, Environmental Quality Board

**ADOPTION:**

February 18, 2022

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

February 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

**Incorporated standards:**

The date of incorporation for Title 10 of the Code of Federal Regulations is updated to "as amended through January 1, 2021" and Title 40 of the Code of Federal Regulations is updated to "as amended through July 1, 2020."

**Incorporating rules:**

252:410-1-7, 252:410-10-37, and 252:410-10-71

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNjk=>.

**GIST/ANALYSIS:**

The proposed rulemaking consists of four main elements: (1) The first element is to amend Chapter 410, Subchapter 1 (General Provisions) [See OAC 252:410-1-7(a) and (b)] to change the date for incorporation of federal regulations by reference to July 1, 2020 (for 40 CFR) and January 1, 2021 (for 10 CFR). (2) The second element of this rulemaking is to amend the regulations related to the industrial radiography certification. All industrial radiography certification requests for active-duty military personnel and their spouses will be processed pursuant to 59 O.S. § 4100.8. (3) The third element is to remove references to revoked Subchapter 19. (4) The fourth element is to clarify communication requirements in 252:410-10-37 and 252:410-10-71 by directing all correspondence regarding license requirements, and any notification or reports required by these Parts to DEQ.

The gist of the rule changes and the underlying reason for the rulemaking is to ensure that the Department of Environmental Quality is compatible with required federal regulations promulgated pursuant to the Title 10 of the Code of Federal Regulations, 59 O.S. § 4100.8 and Governor Stitt's Executive Order 2020-03.

**CONTACT PERSON:**

Mike Broderick, Environmental Programs Manager, Land Protection Division, Radiation Management Section, may be reached by phone at (405) 702-5100 or fax at (405) 702-5101. Please email written comments to [mike.broderick@deq.ok.gov](mailto:mike.broderick@deq.ok.gov). Mail should be addressed to Department of Environmental Quality, Radiation Management Section, P.O. Box 1677, Oklahoma City, OK 73101-1677.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**252:410-1-7. Incorporation of federal regulations by reference**

- (a) **10 CFR.** References in this Chapter to Title 10 of the Code of Federal Regulations (10 CFR) mean the January 1, ~~2019~~2021 publication of 10 CFR.
- (b) **40 CFR.** References in this Chapter to Title 40 of the Code of Federal Regulations (40 CFR) mean the July 1, ~~1998~~2020 publication of 40 CFR and 64 Fed. Reg. 5574 (February 3, 1999).
- (c) **Citations incorporated.** When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference.

**SUBCHAPTER 5. CERTIFICATION OF INDUSTRIAL RADIOGRAPHERS**

**252:410-5-5. Out-of-state certification; Reciprocity recognition**

An industrial radiographer certified by an out-of-state entity can become authorized under reciprocity to perform industrial radiography in Oklahoma without becoming DEQ-certified ~~if the individual or his licensee employer registers the individual's name, address, card number, expiration date, and name and address of the certifying entity with DEQ before the individual performs radiography work in Oklahoma. An applicant for reciprocity recognition must comply with the rules in Part 3 of Subchapter 7, except that the recognition of an industrial radiographer certification will not be limited to 180 days in a year but will remain valid until the primary authorization has expired or has been suspended or revoked by the issuing entity. All industrial radiography certification requests for active-duty military personnel and their spouse will be processed pursuant to 59 O.S. § 4100.8.~~

**SUBCHAPTER 7. RADIATION MANAGEMENT AUTHORIZATIONS; PROCEDURES AND REQUIREMENTS**

**PART 1. GENERAL PROVISIONS COMMON TO ALL AUTHORIZATIONS**

**252:410-7-1. Radiation management authorizations in general**

- (a) **Purpose.** This Subchapter sets forth the basic procedural requirements that apply to all radiation management authorizations.
- (b) **Applicability.** This Subchapter applies to all persons required by this Chapter to hold DEQ authorizations.
- (c) **Effect.** An authorization does not convey any property rights of any sort or any exclusive privilege; does not sanction any invasion of other private rights or any infringement of

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federal, state, or local law or rules; and does not legalize any radiation management activity outside its scope.

(d) **Types.** Authorizations include:

- (1) industrial radiographer certification (Subchapter 5);
- ~~(2) LBP XRF permit and registration (Subchapter 19);~~
- ~~(3) radiation machine operating permits and registration for:~~
  - (A) x-ray systems and particle accelerators used for therapeutic purposes (Subchapters 3 and 11);
  - (B) analytical and industrial x-ray systems (Subchapters 3 and 13);
  - (C) industrial x-ray radiography systems (Subchapters 3, 13 and 15); and
  - (D) particle accelerators used for purposes other than therapy (Subchapters 3 and 17);
- ~~(4) Radioactive Materials licenses (Subchapter 10);~~
- ~~(5) approval of Radioactive Materials license termination and/or decommissioning plans (Subchapter 10) and decontamination plans (Subchapter 20); and~~
- ~~(6) reciprocity recognition and registration (Part 3 of this Subchapter).~~

## 252:410-7-5. Authorization transfers

(a) **"Transfer" defined.** For purposes of this section, "transfer" means to convey from one person to another a majority ownership interest in an entity holding a DEQ authorization by any means other than gift or devise and includes the transfer of deed, transfer of more than 50 percent of the entity's assets or stock, and/or creation of a legal entity as a new holder of the authorization.

(b) **Transferability.** ~~Industrial radiographer certifications and reciprocity~~ **Reciprocity** recognitions are not transferable. ~~LBP XRF permits, radiation~~ **Radiation** machine operating permits and Radioactive Materials specific licenses are transferable. Transfers will be approved by DEQ only when:

- (1) A DEQ inspection has shown the transferor and transferee to be in compliance with this Chapter;
- (2) The transferee has agreed in writing to comply with this Chapter and the Act, all permit or license conditions, approved plans, and the terms of any orders issued pursuant thereto;
- (3) All monies owed to DEQ by transferor or transferee have been paid;
- (4) For permits or licenses requiring financial assurances, DEQ has reviewed and adjusted as needed the amount of financial assurance required and has received the requisite amount of new financial assurances from or on behalf of the transferee; and
- (5) For Radioactive Materials specific licenses, the licensees have also complied with all applicable requirements of 10 CFR.

(c) **Operation by transferee.** A transferee cannot commence radiation management activities under a DEQ authorization until the authorization has been fully transferred and approved by DEQ.

## PART 3. RECIPROCITY RECOGNITION

### 252:410-7-31. DEQ reciprocity recognition

Out-of-state authorizations eligible for DEQ recognition are:

- ~~(1) LBP XRF permits (Subchapter 19);~~
- ~~(2) Industrial radiographer certifications (Subchapter 5);~~
- ~~(3) NRC and Radioactive Materials licenses (Subchapter 10); and~~
- ~~(4) Radiation machine operating permits (Subchapters 3, 11, 13, 15 and 17).~~

## SUBCHAPTER 10. RADIOACTIVE MATERIALS PROGRAM

### PART 37. PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

#### 252:410-10-37. 10 CFR 37 Incorporations by reference

(a) **Incorporations by reference.** The following provisions are hereby incorporated by reference from 10 CFR 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material:

(1) **Subpart A; General Provisions.**

- (A) 37.1 - Purpose
- (B) 37.3 - Scope
- (C) 37.5 - Definitions
- (D) 37.7 - Communications
- (E) 37.9 - Interpretations
- (F) 37.11 - Specific exemptions
- (G) 37.13 - Information collection requirements: OMB approval

(2) **Subpart B; Background Investigations and Access Control Program.**

- (A) 37.21 - Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material
- (B) 37.23 - Access authorization program requirements
- (C) 37.25 - Background investigations
- (D) 37.27 - Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material
- (E) 37.29 - Relief from fingerprinting identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials
- (F) 37.31 - Protection of information
- (G) 37.33 - Access authorization program review

(3) **Subpart C; Physical Protection Requirements During Use.**



- (A) 37.41 - Security program
- (B) 37.43 - General security program requirements, except (d)(9)
- (C) 37.45 - LLEA coordination
- (D) 37.47 - Security zones
- (E) 37.49 - Monitoring, detection, and assessment
- (F) 37.51 - Maintenance and testing
- (G) 37.53 - Requirements for mobile devices
- (H) 37.55 - Security program review
- (I) 37.57 - Reporting of events
- (4) **Subpart D; Physical Protection in Transit.**
  - (A) 37.71 - Additional requirements for transfer of category 1 and category 2 quantities of radioactive material
  - (B) 37.73 - Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit
  - (C) 37.75 - Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material
  - (D) 37.77 - Advance notification of shipment of category 1 quantities of radioactive material.
  - (E) 37.79 - Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment
  - (F) 37.81 - Reporting of events
- (5) **Subpart E; Reserved.**
- (6) **Subpart F; Records.**
  - (A) 37.101 - Form of records
  - (B) 37.103 - Record retention
- (7) **Appendix A to Part 37.** Category 1 and Category 2 Radioactive Materials
- (b) Exceptions. Regarding the provisions for communication with NRC of 10 CFR 37.7, 37.23, 37.77 and 30.6 referenced in 37.45, all correspondence regarding license requirements, and any notification or reports required by this Part, shall be directed to DEQ as referenced in 410-10-2(b).

**PART 71. PACKAGING AND TRANSPORTING RADIOACTIVE MATERIAL**

**252:410-10-71. 10 CFR 71 incorporations by reference**

(a) The following provisions are hereby incorporated by reference from 10 CFR 71, Packaging and Transportation of Radioactive Material:

- (1) **Subpart A; General provisions.**
  - (A) 71.0 - Purpose and scope
  - (B) 71.1(b) - Communications and records
  - (C) 71.3 - Requirement for license
  - (D) 71.4 - Definitions
  - (E) 71.5 - Transportation of licensed material
  - (F) 71.7 - Completeness and accuracy of information
  - (G) 71.8 - Deliberate misconduct

- (H) 71.9 - Employee protection
- (2) **Subpart B; Exemptions.**
  - (A) 71.12 - Specific exemptions
  - (B) 71.13 - Exemptions of physicians
  - (C) 71.14(a) - Exemption for low-level materials
  - (D) 71.15 - Exemption from classification as fissile material
- (3) **Subpart C; General licenses.**
  - (A) 71.17 - General license: NRC-approved package
  - (B) 71.20 - General license: DOT specification container
  - (C) 71.21 - General license: Use of foreign approved package
  - (D) 71.22 - General license: Fissile material
  - (E) 71.23 - General license: Plutonium-beryllium special form material
- (4) **Subpart E; Package Approval Standards.** 71.47 - External radiation standards for all packages
- (5) **Subpart G; Operating controls and procedures.**
  - (A) 71.81 - Applicability of operating controls and procedures
  - (B) 71.83 - Assumptions as to unknown properties
  - (C) 71.85(d) - Preliminary determinations
  - (D) 71.87 - Routine determinations
  - (E) 71.88 - Air transport of plutonium
  - (F) 71.89 - Opening instructions
  - (G) 71.91(a), (c), and (d) - Records
  - (H) 71.93 - Inspection and tests
  - (I) 71.95 - Reports
  - (J) 71.97 - Advance notice of shipment of irradiated reactor fuel and nuclear waste
- (6) **Subpart H; Quality assurance.**
  - (A) 71.101(a), (b), (c)(1), (f), and (g) - Quality assurance requirements
  - (B) 71.103 - Quality assurance organization
  - (C) 71.105 - Quality assurance program
  - (D) 71.106 - Changes to quality assurance program
  - (E) 71.127 - Handling, storage and shipping control
  - (F) 71.129 - Inspection, test and operating status
  - (G) 71.131 - Nonconforming materials, parts or components
  - (H) 71.133 - Corrective action
  - (I) 71.135 - Quality assurance records
  - (J) 71.137 - Audits
- (7) Appendix A to Part 71--Determination of A<sub>1</sub> and A<sub>2</sub>.

(b) Regarding the provisions for communication with NRC of 10 CFR 71.101, all correspondence regarding license requirements, and any notifications or reports required by this Part, shall be directed to DEQ.

[OAR Docket #22-630; filed 7-14-22]

# Permanent Final Adoptions

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #22-631]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
252:515-1-2 [AMENDED]  
252:515-1-8 [AMENDED]  
Subchapter 9. Groundwater Monitoring/Corrective Action  
Part 3. Background Water Quality  
252:515-9-31 [AMENDED]  
Part 9. Assessment Monitoring  
252:515-9-94 [AMENDED]  
252:515-9-96 [AMENDED]  
Subchapter 13. Leachate Collection and Management  
Part 5. Leachate Management  
252:515-13-52 [AMENDED]  
Subchapter 17. Stormwater Management  
252:515-17-3 [AMENDED]  
Subchapter 19. Operational Requirements  
Part 5. Cover and Soil Borrow Requirements for Land Disposal Facilities  
252:515-19-50 [AMENDED]  
Part 13. Wheel Washes  
252:515-19-131 [REVOKED]  
252:515-19-133 [REVOKED]  
252:515-19-138 [REVOKED]  
Subchapter 21. Used Tire Processing, Certification, Permits and Compensation  
Part 7. Compensation from the Used Tire Indemnity Fund  
252:515-21-72 [AMENDED]  
252:515-21-74 [REVOKED]  
Subchapter 23. Regulated Medical Waste Management  
Part 3. Operational Requirements for all Commercial Regulated Medical Waste Processing Facilities  
252:515-23-31 [AMENDED]  
Subchapter 25. Closure and Post-Closure Care  
Part 5. Post-Closure  
252:515-25-54 [AMENDED]  
Subchapter 27. Cost Estimates and Financial Assurance  
Part 1. General Provisions  
252:515-27-4 [AMENDED]  
252:515-27-8 [AMENDED]  
Part 3. Cost Estimates  
252:515-27-34 [AMENDED]  
Subchapter 41. Roofing Material Recycling  
252:515-41-5 [REVOKED]  
252:515-41-6 [REVOKED]  
252:515-41-7 [REVOKED]  
252:515-41-8 [REVOKED]  
252:515-41-9 [REVOKED]  
252:515-41-10 [REVOKED]  
252:515-41-11 [REVOKED]  
Appendix H. Procedure for Calculating Closure Cost Estimates for Financial Assurance [REVOKED]  
Appendix H. Procedure for Calculating Closure Cost Estimates for Financial Assurance [NEW]  
Appendix I. Procedure for Calculating Post-closure Cost Estimates for Financial Assurance [REVOKED]  
Appendix I. Procedure for Calculating Post-closure Cost Estimates for Financial Assurance [NEW]

### AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-10-201;  
Solid Waste Management Advisory Council; 27A O.S. §§ 2-2-201 and 2-10-201.

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

November 23, 2021

### COMMENT PERIOD:

December 15, 2021, to January 19, 2022

### PUBLIC HEARING:

January 20, 2022, Solid Waste Management Advisory Council  
February 18, 2022, Environmental Quality Board

### ADOPTION:

February 18, 2022

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

February 25, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATION BY REFERENCE:

n/a

### GIST/ANALYSIS:

The Department of Environmental Quality (DEQ) is proposing to amend OAC 252:515 in response to Governor Stitt's Executive Order 2020-03. The gist of this rulemaking is to remove redundant and outdated regulations and make minor changes to clarify existing language. Included, are proposed changes to clarify background water quality and assessment monitoring sampling requirements, and leachate storage options.

### CONTACT PERSON:

David Cates, Land Protection Division, Solid Waste Permitting Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at public.comments@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 252:515-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. Any term not defined in this Chapter shall be defined as set forth in OAC 252:515-1-3.

**"Active"** means, when used to describe a solid waste disposal facility or a portion thereof (e.g., active MSWLF or active cell), any solid waste disposal facility, or portion thereof, accepting solid waste as of the effective date of this Chapter, regardless of whether such facility has obtained a solid waste permit from DEQ.

**"Active life"** means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities.

**"Active portion"** means:

- (A) that part of a land disposal facility that has or is receiving waste and that has not received either intermediate or final cover; or
- (B) solid waste process and storage areas at non-land disposal facilities.

**"Airport"** means a public-use airport open to the public without prior permission, and without restrictions within the physical capacities of available facilities.

**"Applicant"** means any person who applies for a new permit or a modification to an existing permit for a solid waste disposal facility identified in OAC 252:515-3-1(a) and (b).

**"Aquifer"** means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

**"Areas susceptible to mass movement"** means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the land disposal facility, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Such areas include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluxion, ~~fluxion~~ fluxion, block sliding, and rock fall.

**"ASTM"** means the American Society for Testing and Materials.

**"Bird hazard"** means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

**"Buffer zone"** means a designated waste-free area within the permit boundary of a disposal facility, to separate waste handling, processing, and/or disposal activities from adjacent areas.

**"Citizen collection station"** means a designated location that is established or sponsored by a governmental entity and equipped with waste receptacles for exclusive, non-commercial use by individual residents to deposit their own household waste for collection and transportation to a permitted disposal site.

**"CLIMOCS"** means the following publication of the Oklahoma Climatological Survey: Shafer, Mark A., CLIMOCS: A Climatological Summary of 168 Oklahoma Cooperative Stations, Oklahoma Climatological Survey, February 1993, 184 pp.

**"Composite liner"** means a system installed at a land disposal facility composed of a recompacted clay liner overlain with a flexible membrane liner.

**"C&D landfill"** means a construction/demolition landfill.

**"Composting facility"** means a facility in which material is converted, under thermophilic conditions, to a product with a high humus content for use as a soil amendment or to prevent or remediate pollutants in soil, air, and stormwater run-off.

**"Construction/demolition waste"** means waste composed of the following:

- (A) asbestos-free waste from construction and/or demolition projects that may include such materials as metal, concrete, brick, asphalt, glass, roofing materials, limited amounts of packing materials, sheetrock, or lumber;
- (B) wood waste that may include such materials as yard waste, lumber, woodchips, wood shavings, sawdust, plywood, tree limbs, or tree stumps;
- (C) yard waste that may include such materials as grass clippings, tree limbs, tree stumps, shrubbery, flowers, or other vegetative matter resulting from land clearing or landscaping operations; or
- (D) residential lead-based paint waste.

**"Contaminated stormwater"** means:

- (A) water such as leachate and gas collection condensate, or stormwater that has come into direct contact with solid waste or waste handling and/or treatment areas;
- (B) stormwater discharged from areas of a land disposal facility with less than six inches of waste-free, compacted earthen material; or
- (C) wastewater resulting from washing vehicles or areas that are or have been in direct contact with solid waste.

**"DEQ"** means the Oklahoma Department of Environmental Quality.

**"Disease vector"** means rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

**"Displacement"** means the relative movement of any two sides of a fault measured in any direction.

**"Disposal"** means the final disposition of waste and shall be taken to include any discharge, deposit, injection, dumping, spilling, leaking, or placing of waste into or on the land or water so that the waste or any constituent thereof may enter the environment, including the air and any surface waters or ground waters.

**"Disposal area"** means that part of a land disposal facility where waste is disposed.

**"Disposal facility"** means disposal site as defined at 27A O.S. § 2-10-103.

**"Engineer"** means a licensed, professional engineer.

**"EPA"** means the United States Environmental Protection Agency.

**"Existing"** means, when used to describe a solid waste disposal facility or portion thereof (e.g. existing MSWLF or existing cell), any solid waste disposal facility, or portion thereof, that had a solid waste permit as of the effective date of this Chapter.

**"Facility"** means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling, processing, storage, and/or disposal of solid waste.

**"Fault"** means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

**"Final closure"** means a disposal facility has permanently ceased to accept solid waste for disposal and all required closure activities have been completed for the entire facility in accordance with the approved closure plan. Final closure is not synonymous with phased closure.

**"Flood"** means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of a lake, stream, river or other body of surface water, or the unusual and rapid accumulation or runoff of surface waters from any source.

**"Flood, One hundred year (100 year)"** means a flood that has a one percent or greater chance of occurrence in any given one year period, or of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

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**"Flood plain"** means the lowland and relatively flat areas adjoining inland waters that are inundated by the 100-year flood.

**"Gas condensate"** means the liquid generated as a result of gas recovery processes.

**"Generator"** means, in the context of NHIW, any person, by site, whose act or process produces NHIW, or whose act first causes an NHIW to become subject to regulation.

**"Groundwater"** means water below the land surface in a zone of saturation.

**"Hazardous waste"** means those wastes subject to regulation under OAC 252:205.

**"HBV"** means hepatitis B virus.

**"HIV"** means human immunodeficiency virus.

**"Holocene"** means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

**"Household hazardous waste"** means household waste that is corrosive, toxic, ignitable, or reactive, including, but not limited to: freon-containing appliances or tanks; non-empty propane tanks; oil, antifreeze, and other motor vehicle fluids; gasoline, kerosene, or diesel fuel; liquid paints; solvents; pesticides, herbicides, fungicides, or rodenticides; caustic cleaners; lead-acid batteries; swimming pool chemicals; unused firearm rounds; and acids and bases.

**"Household waste"** means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

**"Injection well"** means a facility subject to regulation by OAC 252:652, Underground Injection Control.

**"Karst terrains"** means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic features of karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

**"Land disposal facility"** means a landfill, or any other discrete area of land or land excavation, where solid waste is placed for treatment, processing, and/or disposal. Land disposal facility does not include:

(A) land application where solid waste is placed onto, or incorporated into, the soil as a soil amendment, fertilizer, or other legitimate agricultural purpose;

(B) a surface impoundment that is either permitted by DEQ's Water Quality Division or is a part of an approved liquid waste management system at a permitted solid waste disposal facility;

(C) composting facilities;

(D) an injection well;

(E) a solid waste transfer station;

(F) a Used Tire Recycling Facility; or

(G) a Roofing Material Recycling Facility

**"Landfill"** means a discrete area of land or a land excavation in which solid waste is placed for permanent disposal.

**"Large NHIW generator"** means any business, by site, that generates over 10,000 tons of NHIW in Oklahoma during a calendar year. This definition does not include facilities that are permitted to receive and process solid waste generated by others.

**"Leachate"** means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. This includes:

(A) fluid collected in a leachate collection system, including its sumps, surface impoundments, tanks, or other similar locations; and

(B) fluid collected on top of the bottom liner of a disposal cell that has received solid waste; and

(C) leachate seeps from disposal cells that have received solid waste.

**"Liquid waste"** means any waste that is determined to contain "free liquids" as defined by the PFLT.

**"Lithified earth material"** means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

**"Litter fence"** means an easily portable fence to be located adjacent to the working face to assist with control of blowing material.

**"Lower explosive limit"** means the lowest percent by volume of a mixture of explosive gases that will propagate flame in air at 25°C and atmospheric pressure.

**"Maximum horizontal acceleration"** means the maximum expected horizontal acceleration of lithified earth material, depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

**"MSWLF"** means Municipal Solid Waste Landfill; a publicly or privately owned landfill that is or has received household waste. A MSWLF may also receive other types of non-hazardous solid wastes, such as nonhazardous sludge, NHIW, special waste, and construction/demolition waste.

**"Natural disaster"** means a natural occurrence or event (such as a tornado, flood, or forest or prairie fire) of such magnitude that the resultant damage and destruction produce quantities of wastes that overtax available solid waste management systems.

**"NHIW"** means non-hazardous industrial solid waste, as defined at 27A O.S. § 2-10-103. Examples of NHIW are listed in Appendix F of this Chapter.

**"Non-contaminated stormwater"** means:

(A) stormwater that has not come into direct contact with solid waste, waste handling and/or treatment areas;

(B) stormwater discharging from areas of a land disposal facility that has at least six inches of waste-free, compacted earthen material; and

(C) wastewater resulting from washing vehicles or areas that have not been in direct contact with solid waste.

**"Oklahoma Uniform Environmental Permitting Act"** means 27A.O.S. §2-14-101 *et seq.* and the rules adopted thereunder at OAC 252:4 ("Rules of Practice and Procedure").

**"Open burning"** means the combustion of solid waste without:

- (A) control of combustion air to maintain adequate temperature for efficient combustion;
- (B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
- (C) control of the emission of the combustion products.

**"Operating record"** means all of the collective records of the facility relating to the site. Such records include, but are not limited to: the permit, modifications, and approvals; records concerning waste received; any sampling or analyses performed by the facility; closure, post-closure and corrective action plans; financial assurance records; inspection and compliance evaluation correspondence; reports; and scale tickets and related fee payment documentation.

**"Owner/operator"** means the person who owns a solid waste disposal facility and/or is responsible for the overall operation of a facility or part of a facility.

**"OWRB"** means the Oklahoma Water Resources Board.

**"Permit boundary"** means the outermost edge of the area described by legal description in the owner/operator's permit. The permitted boundary includes the area in the buffer zone.

**"PFLT"** means Paint Filter Liquids Test, EPA Method 9095.

**"Phased closure"** means the closing of individual disposal cells at a land disposal facility as they become full. Phased closure is not synonymous with final closure.

**"Piezometer"** means a small-diameter well used to make groundwater elevation measurements.

**"Point source discharge"** means any discharge of water that, when leaving the permit boundary of a facility, has been channeled or altered by man's activity in working that site.

**"Poor foundation conditions"** means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a land disposal facility.

**"POTW"** means Publicly Owned Treatment Works; a waste water treatment system, as defined at 27A O.S. § 2-6-101(9), that is owned by a State or municipality for the treatment of municipal or industrial wastewaters.

**"Qualified groundwater scientist"** means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

**"Recharge area"** means an area where water is absorbed and added to the zone of saturation.

**"Regulated medical waste"** means a waste or reusable material that contains an etiologic agent and is generated in the diagnosis, treatment or immunization of human beings or animals; research pertaining to the diagnosis, treatment or immunization of human beings or animals; or the production or testing of biological products. Such waste includes, but is not limited to:

- (A) cultures and stocks of etiologic agents or live vaccines, and culture dishes, devices, paper, and cloth that has come into contact with such cultures, stocks or live vaccines;
- (B) human blood, blood products, and human body fluids, except urine or feces;
- (C) pathological wastes consisting of human tissues, organs, and body parts removed during surgery, autopsy, biopsy and other medical procedures;
- (D) untreated sharps;
- (E) used blood collection bags, tubes, and vials;
- (F) contaminated carcasses, body parts and bedding of animals intentionally exposed to pathogens in research, in the production of biologicals or the "in vivo" testing of pharmaceuticals;
- (G) items contaminated with blood or other human body fluids which drip freely or would release such materials in a liquid or semi-liquid state if compressed or are caked with dried blood or body fluids and are capable of releasing these materials;
- (H) isolation wastes unless determined to be non-infectious by the infection control committee at the health care facility;
- (I) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV;
- (J) all disposable materials that have come in contact with cytotoxic or antineoplastic agents during the preparation, handling, and administration of such agents. Such wastes include, but are not limited to, masks, gloves, gowns, empty IV tubing and bags, vials, and other contaminated materials; and
- (K) any other material or equipment which, in the determination of the health care facility staff, infection control committee or other responsible party, presents a significant danger of infection because it is contaminated with, or may reasonably be expected to be contaminated with, etiologic agents.

**"Residential lead-based paint waste"** means lead-based paint debris, chips, dust, sludges, and other similar wastes generated as a result of abatement, rehabilitation, renovation, or remodeling activities in individual residences.

**"Run-off"** means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

**"Run-on"** means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

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**"Saturated zone"** means that part of the earth's crust in which all voids are filled with water.

**"Scavenging"** means the uncontrolled, unorganized sorting, collecting, or removing of solid waste at the disposal site.

**"Seismic impact zone"** means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years;

**"Sludge"** means the definition found at 27A O.S. § 2-10-401.

**"Solid waste"** means the definition found at 27A O.S. § 2-10-103.

**"Special waste"** means those wastes that are not hazardous wastes but because of their nature or volume, require special or additional handling aside from that given to routine household refuse. This includes but is not limited to: sludge, septic tank pumpings, grease trap wastes, dead animals, packing house offal and tankage, waste fats and oils, hatchery wastes, cannery wastes, NHIW, tires, and asbestos wastes.

**"Structural components"** mean liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a land disposal facility that is necessary for protection of human health and the environment.

**"Surface impoundment"** means a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

**"Surface water"** means water that stands on the surface of the land in reservoirs, lakes, ponds, sloughs, or swamps, or that flows across the land in rivers, creeks, or streams.

**"SW-846"** means EPA Publication SW-846, Test Methods for the Evaluation of Solid Waste Physical/Chemical Characteristics.

**"Tremie pipe"** means a device, usually a small-diameter flexible or rigid pipe, that carries filter pack or bentonite cement from the bottom to the top of a borehole or annular space without forming void spaces. In some cases, a well casing or hollow stem auger can be considered a tremie pipe.

**"Unstable area"** means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the structural components responsible for preventing releases from a land disposal facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrains.

**"Uppermost aquifer"** means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

**"Used Tire"** means an unprocessed whole tire or tire part that can no longer be used for its original intended purpose, but can be beneficially reused as approved by the Department.

**"Used Tire Recycling Facility"** means the definition found at 27A O.S. § 2-11-401.1(15).

**"Waste pile"** means any non-containerized accumulation of solid, non-flowing waste.

**"Waters of the state"** means the definition found at 27A O.S. § 1-1-201(20).

**"Wetlands"** mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

**"Working face"** means the place within a land disposal facility where waste has been deposited and has not been covered with at least intermediate cover.

**"Yard waste composting facility"** means a composting facility that only accepts yard waste.

**"Zone of aeration"** means a subsurface zone containing water under a pressure lower than that of the atmosphere, including water held by capillarity; and containing air or gases generally under atmospheric pressure. This zone is bounded above by the land surface and below by the watertable; and is synonymous with vadose zone and unsaturated zone.

**"Zone of saturation"** means a subsurface zone in which essentially all the interstices are filled with water under pressure greater than that of the atmosphere. Although the zone may contain interstices filled with gas or liquids other than water, it is still considered saturated. This zone is separated from the zone of aeration by the water table and is synonymous with phreatic zone.

### 252:515-1-8. Special considerations

(a) **Existing permits.** Permits for active solid waste disposal facilities issued under previous rules, and those in the post-closure monitoring period on the effective date of this Chapter, remain in effect.

(b) **Permit upgrades.** ~~[RESERVED] Within 180 days of the effective date of this Chapter, the owner/operator of the following solid waste disposal facilities shall submit a permit modification application to the DEQ to ensure compliance with certain requirements of this Chapter.~~

(1) ~~**MSWLFs and C&D landfills.** Permit modifications for MSWLFs and C&D landfills shall include:~~

~~(A) a legal description, by metes and bounds; section, township, and range, or parts thereof; or book and page number of plat records for platted property, of both on- and off-site soil borrow areas, if applicable;~~

~~(B) a temporary easement in accordance with OAC 252:515-3-34(e);~~

~~(C) a stormwater management plan to demonstrate how compliance with the requirements of Subchapter 17 of this Chapter will be achieved and maintained;~~

~~(D) a disposal plan in accordance with OAC 252:515-19-34(e) through (f) for out-of-state waste, if applicable;~~

~~(E) a vegetative cover plan to ensure compliance with the requirements of OAC 252:515-19-54, if applicable;~~

~~(F) revised closure plans to ensure closure of on and off site soil borrow areas in accordance with OAC 252:515-25-32(b)(3)(A), if applicable;~~

~~(G) life of site calculations in accordance with OAC 252:515-27-8(c), except for those facilities owned by units of the federal government;~~

~~(H) revised closure, post-closure, and/or corrective action cost estimates calculated in accordance with Part 5 of Subchapter 27 of this Chapter, except for those facilities owned by units of the federal government;~~

~~(I) a new or revised waste exclusion plan meeting the requirements of Subchapter 29 of this Chapter; and~~

~~(J) sampling ports for gas monitoring probes to meet the requirement of OAC 252:515-15-4(a)(2).~~

~~(2) **NHIW landfills.** Permit modification applications for generator owned and operated NHIW landfills shall include those items identified in (1)(A), (1)(B), (1)(C), (1)(F), (1)(G) and (1)(H) of this Subsection, as well as a revision to the groundwater monitoring program to ensure compliance with OAC 252:515-9-31(d)(3).~~

~~(3) **Regulated medical waste processing facilities.** Permit modification applications for regulated medical waste processing facilities shall include the information identified in (1)(B) and (1)(H) of this Subsection.~~

~~(4) **Transfer stations.** Permit modification applications for transfer stations shall include the information in (1)(I) of this Subsection.~~

~~(5) **Yard waste composting facilities.** Permit applications for yard waste composting facilities operating under an approved plan shall be submitted for purposes of upgrading the plan to a permit and to ensure compliance with Subchapter 43 of this Chapter.~~

**(c) Compliance required. [RESERVED]**

~~(1) Except as provided in (2) of this Subsection, permit upgrades identified by (b) of this Section shall be implemented within one year of the effective date of this Chapter. Extensions may be granted by the DEQ for good cause shown.~~

~~(2) All solid waste disposal facilities required to establish and maintain financial assurance shall ensure financial assurance mechanisms are funded in the appropriate amount based on approved cost estimates.~~

**(d) MSWLFs prior to October 9, 1991.** MSWLFs that stopped receiving waste prior to October 9, 1991 are subject to the final cover and post-closure monitoring requirements of the permit and the rules in effect at the time of closure.

**(e) MSWLFs on or after October 9, 1991.** MSWLFs receiving waste on or after October 9, 1991 are subject to this Subsection.

**(1) Less than 100 tons per day of waste.** No later than October 9, 1994, MSWLFs that received less than an average of 100 tons per day of solid waste after October 9, 1991 and stopped receiving waste before April 9, 1994

shall install final cover meeting the requirements of OAC 252:515-19-53.

**(A) Post-closure monitoring requirements.** MSWLFs shall be subject to the post-closure monitoring requirements of the permit and rules in effect at the time of closure.

**(B) Failure to stop accepting waste or to apply final cover.** MSWLFs that accepted waste on or after April 9, 1994, or failed to install the final cover by October 9, 1994 shall be subject to all applicable requirements of this Chapter.

**(2) 100 tons or more per day of waste.** No later than October 9, 1994, MSWLFs that received an average of 100 tons or more per day of solid waste after October 9, 1991 and stopped receiving waste before October 9, 1993 shall install final cover meeting the requirements of OAC 252:515-19-53.

**(A) Post-closure monitoring requirements.** MSWLFs shall be subject to the post-closure monitoring requirements of the permit and the rules in effect at the time of closure.

**(B) Failure to stop accepting waste or to apply final cover.** MSWLFs that accepted waste on or after October 9, 1993 or failed to install the final cover by October 9, 1994 shall be subject to all applicable requirements of this Chapter.

**(f) Other disposal facilities.** Other solid waste disposal facilities that stopped receiving waste prior to the effective date of this Chapter shall close, and perform any applicable post-closure monitoring, in accordance with the permit and the rules in effect at the time of closure.

**(g) Corrective action.** The DEQ may require corrective action any time an inspection of a solid waste disposal facility or review of testing data indicates the actual release of contaminants into the environment. Such corrective action shall be performed in accordance with the requirements of this Chapter.

**SUBCHAPTER 9. GROUNDWATER MONITORING/CORRECTIVE ACTION**

**PART 3. BACKGROUND WATER QUALITY**

**252:515-9-31. Background water quality**

~~(a) **Existing facilities. [RESERVED]** Unless background water quality has previously been approved by the DEQ, each monitoring well at an active land disposal facility permitted prior to April 9, 1994 shall be sampled quarterly for two full years to determine background water quality.~~

**(b) New facilities, with exception.**

**(1)** Except as provided for in (2) of this Subsection, monitoring wells installed at new land disposal facilities permitted on or after April 9, 1994 shall be sampled quarterly for at least one full year and be consistent with the appropriate statistical procedures and performance standards in the facility statistical analysis plan in 9-52 of this Subchapter, to determine background water quality

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before waste may be deposited at the facility to determine background water quality.

(2) The quarterly background water quality determination at new C&D landfills shall begin no later than thirty (30) days after the initial receipt of waste.

(c) **New groundwater monitoring wells at existing facilities.** Unless otherwise approved by the DEQ, new groundwater monitoring wells installed after the effective date of this Chapter shall be sampled at least quarterly for one full year and be consistent with the appropriate statistical procedures and performance standards in the facility statistical analysis plan in 9-52 of this Subchapter to establish background water quality.

(d) **Required parameters.**

(1) **MSWLFs.** MSWLFs shall, as a minimum, be monitored for:

(A) the following groundwater quality constituents: pH, chemical oxygen demand, specific conductivity, chloride, sulfate, calcium, magnesium, nitrates, sodium, carbonates, potassium; and

(B) those constituents in Appendix A of this Chapter.

(2) **C&D landfills.** C&D landfills shall, as a minimum, be monitored for the following groundwater quality constituents: pH, chemical oxygen demand, and specific conductivity.

(3) **NHIW landfills.** NHIW landfills shall, as a minimum, be monitored for:

(A) the following groundwater quality constituents: pH, chemical oxygen demand, specific conductivity, chloride, sulfate, calcium, magnesium, nitrates, sodium, carbonates, potassium; and

(B) other parameters specified in the permit, based on the types of wastes to be disposed.

(4) **Other land disposal facilities.** Other land disposal facilities shall comply with the groundwater monitoring requirements for MSWLFs.

## PART 9. ASSESSMENT MONITORING

### 252:515-9-94. Minimum number of samples

(a) **Minimum requirements.** Groundwater samples shall be collected and analyzed ~~during each sampling event~~, as follows:

(1) ~~during each sampling event~~, a minimum of one sample from each downgradient well; and

(2) a minimum of four ~~quarterly independent~~ samples over one full year, or a number and frequency consistent with the appropriate statistical procedures and performance standards in the facility statistical analysis plan in 9-52 of this Subchapter, from each upgradient and downgradient well to establish background (unless already established) for any Appendix C constituents detected.

(b) **Subset of wells.** The DEQ may specify a subset of wells to be sampled and analyzed during assessment monitoring.

### 252:515-9-96. Groundwater protection standard

(a) **MCL established.** The maximum contaminant level (MCL) promulgated under the Safe Drinking Water Act shall be the groundwater protection standard for each Appendix A and C constituent detected in the groundwater.

(b) **MCL not established.** If MCL has not been established under the Safe Drinking Water Act for a particular constituent, the background level of the constituent shall be the groundwater protection standard.

(c) **Background above MCL.** If background level of a particular constituent is above the established MCL, or appropriate health-based levels if no MCL has been established, the background level shall be the groundwater protection standard.

(1) **Published health-based level.** For the purposes of this Subsection, the health-based level is a concentration that would result in an increased risk of no ~~of~~ greater than  $1 \times 10^{-5}$  for carcinogens or a Hazard Index of  $< 1$  for non-carcinogens as calculated by procedures specified in the most recent health-based levels publication by the EPA, EPA 540/R-95/128, Methods for Estimation of Contaminants in Groundwater That Can Migrate to a Receptor Point.

(2) **Health-based level not listed.** The DEQ shall be consulted if a health-based level is not listed for a particular constituent.

## SUBCHAPTER 13. LEACHATE COLLECTION AND MANAGEMENT

### PART 5. LEACHATE MANAGEMENT

#### 252:515-13-52. Storage

(a) **Above-ground tanks.** Above-ground storage tanks used to store leachate shall be equipped with either (a)(1) or (a)(2) below:

(1) adequate berming to contain the entire contents of the largest tank in the system; and either:

(2A) a composite liner made of two feet (2') of re-compacted clay with the hydraulic conductivity of  $1.0 \times 10^{-7}$  cm/sec overlain by a 60 mil HDPE liner; or

(3B) a DEQ approved alternative liner that will prevent infiltration of fluid.

(2) a double-walled system with leak detection.

(b) **Underground tanks.** Underground tanks used to store leachate shall be constructed in accordance with the most recent requirements for underground storage tank systems published by the Oklahoma Corporation Commission. Oklahoma Corporation Commission's General Requirements for Underground Storage Tank Systems., OAC 165-25, Subchapter 1, Part 8.

(c) **Surface impoundments.** A surface impoundment used to store leachate shall have a composite liner constructed in accordance with (a)(2)(1)(A) or (a)(3)(1)(B) of this Section.

(1) **Run-on control.** Surface water run-on control measures shall be provided.



(2) **Freeboard.** A minimum three feet of freeboard shall be maintained.

**SUBCHAPTER 17. STORMWATER MANAGEMENT**

**252:515-17-3. Discharges**

(a) **All disposal facilities.** All solid waste disposal facilities shall be operated to:

- (1) prevent the discharge of contaminated stormwater unless the proper permit is obtained from the DEQ's Water Quality Division;
- (2) prevent the discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the federal Clean Water Act, including, but not limited to, the Oklahoma Pollutant Discharge Elimination System (OPDES) requirements;
- (3) prevent the discharge of a non-point source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved in accordance with the federal Clean Water Act; and
- (4) comply with all requirements of their OPDES permit, if applicable. A copy of the OPDES permit shall be maintained in the operating record.

(b) **Land disposal facilities.** If required by OAC 252:606 (Oklahoma Pollutant Discharge Elimination System Standards - OPDES), active land disposal facilities shall have:

- (1) a Stormwater Pollution Prevention Plan (SWPPP) and a Sector L General Permit for Stormwater Discharges. A copy of the SWPPP and Sector L permit shall be maintained in the operating record; and
- (2) ~~an OPDES stormwater permit for construction sites for any on or off site soil borrow areas of one acre or more.~~ [RESERVED]

**SUBCHAPTER 19. OPERATIONAL REQUIREMENTS**

**PART 5. COVER AND SOIL BORROW REQUIREMENTS FOR LAND DISPOSAL FACILITIES**

**252:515-19-50. Slope limits**

- (a) **Interior slopes.** The slope of a waste disposal area shall be no steeper overall than 3 horizontal to 1 vertical (3:1) at any time when it adjoins an area within the permitted boundary proposed to accept waste.
- (b) **Exterior slopes.** The slope of a waste disposal area shall be no steeper overall than 4 horizontal to 1 vertical (4:1) at any time when located at the limits of the permitted boundary or adjoining an area not proposed to accept waste.

(c) **Working face.** The slope of the working face may vary during daily placement of waste but shall be graded to meet applicable slope requirements in (a) or (b) of this paragraph at the end of each operating day.

(d) **Slope correction.** A plan shall be submitted to DEQ within sixty (60) days of a determination that one or more slopes exceed the limits specified in this Section. The plan will specify tasks and the timeline needed to achieve compliance with this Section. ~~Failure to submit a plan within the time specified by DEQ may result in the initiation of the Administrative Enforcement Process. Failure to follow or maintain the plan submitted to DEQ may also result in the initiation of the Administrative Enforcement Process.~~

**PART 13. WHEEL WASHES [REVOKED]**

**252:515-19-131. Applicability [REVOKED]**

~~This part applies to owners and operators of active land disposal facilities who purchase and install a wheel wash system for use at the land disposal facility.~~

**252:515-19-133. Definitions [REVOKED]**

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

~~"Wheel wash system" means a permanent installation that uses an immersion bath or spray of water to clean mud, soil, rock, debris and other extraneous material from the tires and undercarriage of vehicles.~~

**252:515-19-138. Water management and control [REVOKED]**

- (a) ~~**Run-off of wash water prohibited.** There shall be no run-off of wash water from this system.~~
- (b) ~~**Recirculation.** Water used in the wheel wash system may be recaptured for recirculation within the system.~~
- (c) ~~**Modify plans.** If necessary, the owner/operator shall modify and update the stormwater pollution prevention plan to include the wheel wash system and to demonstrate compliance with Subchapter 17.~~
- (d) ~~**Recycled liquid.** Recycled liquid and settled solids shall be managed as solid waste.~~
- (e) ~~**Settled solids.** The settled solids may be put back in the landfill if they meet the requirements of OAC 252:515-19-71.~~

**SUBCHAPTER 21. USED TIRE PROCESSING, CERTIFICATION, PERMITS AND COMPENSATION**

**PART 7. COMPENSATION FROM THE USED TIRE INDEMNITY FUND**

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## 252:515-21-72. Ineligible for compensation

(a) **Previous compensation.** Any person that has received compensation from the fund for projects identified in Part 11 of this Subchapter shall not be eligible to receive other compensation from the fund for collection, transportation or delivery of used tires in conjunction with the same project.

(b) **Certain used tires.** The following used tires are not eligible for compensation from the fund:

- (1) used tires processed for TDF facilities identified in OAC 252:515-21-71(a) but are not in ready-to-use condition when received by such facilities;
- (2) used tires not used in the approved project by units of local or county governments identified in OAC 252:515-21-71(b)(c)(3);
- (3) processed or recycled used tires listed by the OTC in OAC 710:95-5 as being ineligible for compensation; and
- (4) processed or recycled used tires that originated outside the borders of the State of Oklahoma.

## 252:515-21-74. Partial compensation for projects identified in Part 9 [REVOKED]

~~(a) **Partial completion.** Before completion of the project, an applicant may apply to the DEQ in writing for approval of partial compensation from the fund. The application shall include an estimate of the number of used tires properly installed at the time the application is submitted.~~

~~(b) **Compliance.** DEQ may authorize partial compensation if the applicant is in compliance with the United States Army Corps of Engineers or local Conservation District permit or authorization and the project is properly installed.~~

~~(c) **Pro-rated.** Payment may be authorized in the same ratio that the installed portion has to the entire project.~~

## SUBCHAPTER 23. REGULATED MEDICAL WASTE MANAGEMENT

### PART 3. OPERATIONAL REQUIREMENTS FOR ALL COMMERCIAL REGULATED MEDICAL WASTE PROCESSING FACILITIES

#### 252:515-23-31. General

(a) **Other requirements.** Commercial regulated medical waste processing facilities are subject to the requirements of Part 3 of OAC 252:515-19.

(b) **Acceptable wastes.** Only regulated medical wastes shall be accepted at a regulated medical waste processing facility unless otherwise approved by DEQ.

(c) **DEQ approved plan.** A DEQ approved plan shall be implemented for:

- (1) excluding wastes that are not to be processed;
- (2) safely storing wastes until proper processing and disposal occurs; and
- (3) responding to emergencies.

(d) **Decontamination facilities.** Decontamination facilities must be provided.

## SUBCHAPTER 25. CLOSURE AND POST-CLOSURE CARE

### PART 5. POST-CLOSURE

#### 252:515-25-54. Post-closure operational requirements

(a) **All disposal facilities.** All disposal facilities in post-closure monitoring shall perform the following.

(1) **Security and access control.** Fences and locked gates shall be maintained and signs shall be posted on the outer perimeter to provide notice that the site is a closed solid waste disposal facility.

(2) **Annual post-closure report.** No later than April 1<sup>st</sup> of each year after the DEQ's approval of the certification of final closure, a post-closure maintenance and monitoring report shall be submitted to the DEQ until the post-closure period ends. This report shall document the maintenance performed and summarize all monitoring data for the previous year.

(b) **Land disposal facilities.** Land disposal facilities in post-closure monitoring shall also perform the following.

(1) **Monitoring.** The integrity of the groundwater and/or explosive gas monitoring systems shall be maintained.

(A) Groundwater monitoring shall be performed at least semi-annually, unless reduced in accordance with OAC 252:515-9-73(c).

(B) Explosive gas monitoring, if required during the active life, shall be performed at Least semi-annually.

(2) **Leachate collection, treatment and disposal.**

(A) The leachate collection system shall be maintained and operated to ensure leachate is collected, treated and/or disposed in accordance with Subchapter 13 of this Chapter.

(B) The leachate collection systems shall be equipped with a system for automatic and continuous removal of leachate not requiring intervention by the owner/operator.

(C) Untreated leachate shall not be stored on-site unless the permit provides a specified method and capacity.

(3) **Final cover.** The integrity and effectiveness of the final cover shall be maintained in compliance with OAC 252:515-19-53, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, ponding of water, or other events, and prevent run-on and run-off from eroding or otherwise damaging the final cover.

## SUBCHAPTER 27. COST ESTIMATES AND FINANCIAL ASSURANCE

### PART 1. GENERAL PROVISIONS

**252:515-27-4. Updating**

- (a) **Unit costs.** Provided they remain in effect, the unit costs and worksheets in Appendices H and I shall be updated no later than April 9, 2005, and at least every five years thereafter.
- (b) ~~Annual updates and adjustments. All references to and deadlines of "April 1 of each year" in this subchapter shall be postponed to April 9 of each year. Refer to 252:515-27-8(c) and 27-34(a). [RESERVED]~~

**252:515-27-8. Economic life of disposal facility**

(a) **New land disposal sites.** The economic life of a new land disposal facility shall be based on the area to be initially permitted for waste disposal, not on the total permitted area.

(1) **Economic life.** For the purposes of determining the pay-in period for a trust fund or escrow account used as a financial assurance mechanism, or another approved mechanism that allows pay-in over a specified period of time, the economic life for a new land disposal facility shall be the lesser of fifteen (15) years from the initial receipt of waste or the life as calculated in accordance with (2) of this Subsection.

(2) **Calculation.** The life shall be calculated according to the following formula:  $L = \{ [V - (P \times V)] \times D \} \div W$ , where

- (A) "L" equals the life of the disposal facility, in years;
- (B) "V" equals the total volume of airspace in cubic yards available for waste disposal and daily cover. V shall be calculated from the top of the protective layer to final contours minus the amount of air space taken up by final cover;
- (C) "P" is the anticipated percentage of V that will be taken up by daily cover. Until an alternative value based on a history of operational practice can be documented, including the use of alternative covers, P must not be less than 20% (0.20);
- (D) "D" is the anticipated density of waste compacted in place in pounds per cubic yard. Until an alternative value based on a history of operational practice can be documented, D must not be more than 1000 pounds per cubic yard (1000 lbs/cy); and
- (E) "W" is the amount of waste expected to be received during one year of operation in pounds per year. Until the owner/operator can document actual waste received based on a history of operational practice, W must be calculated at 4.4 pounds per capita per day multiplied by 365 days per year multiplied by the population served.

(b) **Existing land disposal sites.**

(1) For existing land disposal facilities, L shall be based on the remaining areas approved for waste disposal, according to the formula in paragraph (a)(2). W shall be determined based on scale records for the previous 12 months.

(2) **Economic life.** For the purposes of determining the pay-in period for a trust fund or escrow account used as a financial assurance mechanism, or another approved mechanism that allows pay-in over a specified period

of time, the economic life for an existing land disposal facility shall be the lesser of fifteen (15) years from April 9, 1997, or the life as calculated in accordance with (a)(2) and (b) of this Section.

(c) **Annual update.** No later than April 1<sup>st</sup>—9<sup>th</sup> of each year, the owner/operator of a land disposal facility, other than generator-owned and operated non-hazardous industrial waste monofills, shall submit calculations of the remaining life of the facility as of December 31<sup>st</sup> of the previous year. The remaining life shall be the actual life as calculated in accordance with (a)(2) and (b) of this Section, not the maximum economic life.

**PART 3. COST ESTIMATES**

**252:515-27-34. Annual adjustments to cost estimates and financial assurance mechanisms**

(a) **Adjustment required.** Cost estimates for closure, post-closure, and/or corrective action shall be adjusted and submitted to DEQ no later than April 1<sup>st</sup>—9<sup>th</sup> of each year.

(1) **Recalculation of maximum costs.** The maximum costs of closure, post-closure, and/or corrective action may be recalculated in current dollars using the procedure in Part 5 of this Subchapter (relating to determination of cost estimates).

(2) **Use of inflation factor.** If there are no significant changes to the closure or post-closure plan, corrective action plan, or facility conditions, cost estimates may be adjusted by use of an inflation factor derived from the most recent annual "Implicit Price Deflator for Gross National Product" or the "Implicit Price Deflator for Gross Domestic Product" published by the U.S. Department of Commerce in its Survey of Current Business in the year for which the adjustment is being made.

(A) The first adjustment shall be made by multiplying the approved cost estimate by the inflation factor. The result is the adjusted cost estimate.

(B) Subsequent adjustments shall be made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(3) **Place in operating record.** The approved adjusted cost estimates shall be placed in the operating record.

(b) **Annual Adjustment to financial assurance mechanism(s) required.** Except as provided in (c) and (d) of this Section, the financial assurance mechanism(s) shall be adjusted annually to reflect the approved cost estimates. The adjusted financial assurance mechanism(s) must be submitted to DEQ for approval no later than 30 days after approval of adjusted cost estimates.

(c) **Corporate test or guarantee as financial assurance mechanism.** When the corporate test (OAC 252:515-27-81) or guarantee (OAC 252:515-27-83) is used as the financial assurance mechanism, the financial strength information specified in OAC 252:515-27-81(c) shall be submitted to the DEQ for approval no later than 90 days after the close of the corporate fiscal year. The DEQ may provide up to an additional 45 days to submit the information upon demonstration that 90 days is insufficient time to acquire audited financial statements.

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(d) **Local government test or guarantee as financial assurance mechanism.** When the local government test (OAC 252:515-27-82) or guarantee (OAC 252:515-27-84) is used as the financial assurance mechanism, the financial strength information specified in OAC 252:515-27-82(h) shall be submitted to the DEQ for approval no later than 180 days after the close of the municipal government's fiscal year. The DEQ may provide up to an additional 45 days to submit the information upon demonstration that 180 days is insufficient time to acquire audited financial statements.

## SUBCHAPTER 41. ROOFING MATERIAL RECYCLING

### 252:515-41-5. Duration of permit [REVOKED]

- (a) **Life of site.** Permits shall be issued for the life of the roofing material recycling facility.
- (b) **Cessation of operations.** If a permitted roofing material recycling facility ceases to accept roofing material for 30 days or more without prior notice to DEQ, the roofing material recycling facility will be deemed to be in the process of final closure and shall begin closure activities.

### 252:515-41-6. Permit transfer [REVOKED]

- (a) **Transfer required.** If the ownership of a roofing material recycling facility is assumed by a new entity, the permit must be transferred from the previous owner/operator ("transferor") to the new owner/operator ("transferee").
- (b) **Exception.** Changes in corporate ownership from majority stock transfers do not require a permit transfer. However, such changes require notice to DEQ and submittal of an approved disclosure statement meeting the requirements of OAC 252:515-3-31(g).
- (c) **Transfer requirements.** Permits may be transferred from the transferor to the transferee upon the following conditions:
- (1) the transferor has submitted a written request to DEQ for transfer of the permit to the transferee;
  - (2) the transferee has submitted an approved disclosure statement meeting the requirements of OAC 252:515-3-31(g);
  - (3) the transferee has, if required, established an approved financial assurance mechanism in an appropriate amount and appropriately funded;
  - (4) the transferee has agreed in writing to comply with:
    - (A) all permit conditions;
    - (B) approved plans and specifications;
    - (C) the Oklahoma Solid Waste Management Act;
    - (D) the rules in this Chapter; and
    - (E) any final orders issued pursuant thereto;
  - (5) the transferee has complied with OAC 252:515-3-33 (relating to oath required); and
  - (6) the facility meets the compliance requirements of OAC 252:4-7-15. In lieu of demonstrating substantial compliance, the parties to the transfer may enter into a Consent Order with DEQ to schedule compliance.

(d) **Transferor responsible.** Until such time as DEQ approves transfer of the permit to the transferee, the transferor shall remain responsible for the operation of the facility.

### 252:515-41-7. Permit applications and requirements [REVOKED]

- (a) **All permit applications.** All permit applications are subject to the Oklahoma Uniform Environmental Permitting Act as well as the requirements of this Subchapter.
- (b) **New permit applications.** Applicants requesting a permit for a new roofing material recycling facility shall submit a permit application to DEQ meeting the requirements of this Subchapter.
- (c) **Modifications required.**
- (1) The permit must be modified before making any changes to the approved design, construction, or operation of the facility.
  - (2) The modification application shall contain any maps, drawings, plans or other documents identified in this Subchapter to ensure the modification will be in compliance with the applicable requirements of this Chapter.
- (d) **Administrative correction.** DEQ may make administrative corrections to the permit.
- (e) **Tier I and II permit modifications.** Applicants requesting a Tier I or Tier II modification of an existing permit shall submit a permit modification application to DEQ meeting the applicable requirements of this Subchapter, but are not required to comply with OAC 252:515-3-33 (relating to oath required), unless otherwise required by statute.
- (f) **Tier III permit modifications.** Applicants requesting a Tier III modification of an existing permit shall submit a permit modification application to DEQ meeting the applicable requirements of this Subchapter, and comply with OAC 252:515-3-33.
- (g) **Disclosure statement.** Persons submitting a permit application for a new roofing material recycling facility, or the transfer of an existing roofing material recycling permit, are subject to the disclosure statement requirements of 27A O.S. §§ 2-10-103 and 2-10-302.

### 252:515-41-8. Variance from the rules of this Chapter [REVOKED]

- (a) **Application.** Applicants may, in a permit application, request a variance from one or more provisions of this Chapter in accordance with 27A O.S. § 2-10-304.
- (b) **Technical considerations.** Applicants requesting a variance must demonstrate that operations under the variance will equal or exceed the protection accorded by the particular rule for which the variance is being requested, and will not result in a hazard to the health, environment, or safety of the people of this State or their property.

### 252:515-41-9. Oath required [REVOKED]

The applicant shall sign the permit application under oath on forms provided by DEQ.

**252:515-41-10. Legal right to property [REVOKED]**

(a) **Right of access.** The permit application for a new roofing material recycling facility, or expansion of the permit boundaries of an existing roofing material recycling facility, must contain:

- (1) a true and correct copy of a legal document filed in the county in which the facility is located, demonstrating that the applicant possesses a legal right to access and use the property in the manner for which the permit is sought, including any on- or off-site soil borrow areas, throughout the life of the site; and
- (2) a certification, by affidavit, that the applicant owns the real property, has a current lease or easement which is given to accomplish the permitted purpose, or has provided legal notice to the landowner.

(b) **Option for use.** If an option for right of access is predicated upon the issuance of a permit prior to the exercise of that option, then the applicant must submit a copy of the option with the permit application. Once the permit has been issued, the applicant must comply with (a) of this Section prior to beginning construction.

(c) **Easement to DEQ.** Unless the property owner is a unit of government, a temporary easement shall be executed allowing DEQ and/or its contractors the right to access the property to perform closure, post closure monitoring, or corrective action in the event of default by the owner/operator.

**252:515-41-11. Permit applications [REVOKED]**

(a) **New applications.** A permit application for a new roofing material recycling facility shall include all information required by the Oklahoma Uniform Environmental Permitting Act, including:

- (1) the owner/operator's name, mailing address, and phone number;
- (2) the name by which the facility will be known, the mailing address of the facility, the street address of the facility (if different from the mailing address), and the facility phone number;

(3) a disclosure statement completed in accordance with OAC 252:515-3-31(g);

(4) a legal description, by metes and bounds; section, township, and range, or parts thereof; or book and page number of plat records for platted property, of:

- (A) the proposed permit boundary;
- (B) the proposed waste processing and/or disposal areas

(5) latitude and longitude of all corners of the permit boundary and the facility entrance;

(6) the location of the site from the nearest town or city;

(7) a description of all processing, storage, and disposal operations and units;

(8) a description of the anticipated waste streams and amount received per day;

(9) data, plans, and specifications for the following:

(A) a demonstration the proposed facility meets the location restrictions of Subchapter 5 of this Chapter;

(B) an operational plan describing how compliance with the operational requirements of Subchapter 19 of this Chapter, as applicable to the proposed facility, will be achieved;

(C) a plan describing how compliance with the stormwater management requirements of Subchapter 17 of this Chapter will be achieved;

(D) plans for closure of the facility in accordance with Subchapter 25 of this Chapter; and

(E) establishment of financial assurance in accordance with Subchapter 27 of this Chapter.

(b) **Information not identified.** DEQ may require the applicant to submit additional data, revise design specifications or propose environmental safeguards as necessary to meet DEQ rules for the protection of human health and the environment.

(c) **Permit modification applications.** An applicant requesting a modification to an existing permit shall submit information identified in this Part related to the proposed modification.

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## APPENDIX H. PROCEDURE FOR CALCULATING CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [REVOKED]

## APPENDIX H. PROCEDURE FOR CALCULATING CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [NEW]

This Appendix presents the worksheet for calculating final closure cost estimates. The tasks and services included in this worksheet are based on the more complex closure requirements for MSWLFs. Some tasks and services may not be required for construction/demolition and non-hazardous industrial waste landfills, nor for other types of solid waste facilities requiring financial assurance. Owner/operators will be able to input site-specific information to calculate the necessary financial assurance.

### Table H.1

All site data necessary to calculate estimates of closure and post-closure costs can be gathered by completing Table H.1. Data from Table H.1 should be inserted into Table H.2 of this Appendix and Table I.1 of Appendix I to complete calculations.

### Table H.1 Site Data

FACILITY NAME:

PERMIT NUMBER:

DESCRIPTION	QUANTITY	UNITS
Total Permitted Area		acres
Active Portion		
Composite Lined		acres
Soil Lined		acres
Area of Largest Cell/Phase Requiring Final Cap		
Composite Lined		acres
Soil Lined		acres
Perimeter Fencing		linear feet
Groundwater Monitoring Wells		VLF
Methane Gas Probes		VLF
Terraces		linear feet
Letdown Channels		linear feet

Perimeter Drainage Ditches		linear feet
Average Daily Flow		tons/day
Landfill Disposal Cost		\$/ton

VLF = Vertical linear feet. The sum of the depths of all monitoring wells

**Table H.2**

Table H.2 can be used to calculate closure cost estimates for landfills for which site specific data are available. The table is designed to be executed as a computer spreadsheet, but will work equally as well using hand calculations.

- Input site-specific quantities from Table H.1 into Table H.2, making sure the requisite units are used. Some quantities are already given by the table.
- Input current year unit costs obtained from the ODEQ website.\*
- For each line of Task/Service items 1 through 4, multiply the value input for quantity by the multiplier and current year unit cost, and enter the resultant value in the Subtotal column.
- Line 5. Identify each task required by the Closure Plan that is not identified in Table H.2. Calculate cost estimates in accordance with OAC 252:515-27-51(d), and input total in the Subtotal column.
- Line 6. Add Subtotals for Task/Service items 1 through 5.
- Lines 7, 8, and 9. Compute Administrative Services, Technical and Professional Services and Closure Contingency costs by multiplying Line 6 by the multiplier for each respective Item. Enter the resultant values.
- Line 10. Add lines 6 through 9.

\* Unit costs for use in completing this table will be updated for inflation by ODEQ on an annual basis. Current costs will be posted on the ODEQ website. Users of this chart shall use costs prepared by the ODEQ or adjust currently approved costs for inflation as of April 9<sup>th</sup> of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).

**Table H.2 Closure Cost Estimate**

**FACILITY NAME:**

**PERMIT NUMBER:**

Task/Service	Quantity	Units	Multiplier <sup>a</sup>	Unit Cost <sup>b</sup>	Subtotal
1 PRELIMINARY SITE WORK					

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1.1	Conduct Site Evaluation	l	lump sum	l		
1.2	Dispose Final Wastes					
	Average Daily Flow	cc	tons/day			
	Disposal Cost	dd	tons/day	5(5 days of waste)	ee	
1.3	Remove Temporary Building(s)	l	lump sum	l		
1.4	Remove Equipment	l	lump sum	l		

1.5	Repair/Replace		linear feet	0.25(25% of fencing)		
1.6	Clean Leachate Line(s)	l	lump sum	l		
<b>2</b>	<b>MONITORING EQUIPMENT</b>					
2.1	Rework/Replace Monitoring Well(s)		VLF	0.25(25% of wells)		
2.2	Plug Abandoned Monitoring Well(s)		VLF	0.25 (25% of wells)		
2.3	Rework/Replace Methane Probe(s)		VLF	0.25 (25% of probes)		
2.4	Plug Abandoned Methane Probe(s)		VLF	0.25 (25% of probes)		
2.5	Rework/Replace Remediation and/or Gas Control Equipment	l	lump sum	0.05(5% of equipment capital cost)	ff	
<b>3</b>	<b>CONSTRUCTION</b>					
3.1	Complete Site Grading to include on-and off-site borrow areas		acres	l		
3.2	Construct Final Cap					



	Compacted On-site Clay Cap or		cubic yards	1		
	Compacted Off-site Clay Cap or		cubic yards	1		
	Install Geosynthetic Clay Liner Cap		square feet	1		
3.3	Construct Landfill Gas Venting Layer					
	Place Sand or		acres	1		
	Install Net and Geotextile		square feet	1		
3.4	Install Passive Landfill Gas Vents		acres	1		
3.5	Install Flexible Membrane		square feet	1		
3.6	Drainage Layer					
	Place Sand or		acres	1		
	Install Net and Geonet		square feet	1		
3.7	Place On-site Topsoil		cubic yards	1		
	Place Off-site Topsoil		cubic yards	1		
3.8	Establish Vegetative Cover, including on-and off-site borrow areas		acres	1		
<b>4</b>	<b>DRAINAGE/EROSION CONTROL</b>					
4.1	Construct Terraces		linear feet	1		
4.2	Construct Letdown Channels		linear feet	1		

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4.3	Clean Perimeter Drainage Ditches		linear feet	0.50(50% of ditches)		
5	<b>TASKS NOT IDENTIFIED</b>					
6	<b>SUBTOTAL</b>					
7	<b>ADMINISTRATIVE SERVICES</b>	l	lump sum	0.10(10%)	gg	
8	<b>TECHNICAL and PROFESSIONAL SERVICES</b>	l	lump sum	0.12(12%)	g	
9	<b>CLOSURE CONTINGENCY</b>	l	lump sum	0.10(10%)	g	
10	<b>TOTAL FINAL CLOSURE</b>					hh

- a. Multipliers are determined by the *Solid Waste Financial Assurance Program Report*, December 22, 2000.
- b. Unit costs for use in completing this table will be updated for inflation by ODEQ on an annual basis. Current costs will be posted on the ODEQ website. Users of this chart shall use costs prepared by ODEQ or adjust currently approved costs for inflation as of April 9th each year using the procedure in OAC 252:515-27-34(a)(2).
- c. New facilities: Insert the value for "W" in OAC 252:515-27-8(a)(2). Existing facilities: Insert reported total tonnage for the previous year, divided by 312 operating days per year (52 weeks per year x 6 operating days per week).
- d. Insert number of tons/day from above.
- e. Insert landfill disposal cost per ton of waste (\$/ton).
- f. Input capital cost for gas control/remediation equipment, if installed at the site. g. Input Subtotal from line 6.
- h. Add rows 6 through 9.

**APPENDIX I. PROCEDURE FOR CALCULATING POST-CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [REVOKED]**

**APPENDIX I. PROCEDURE FOR CALCULATING POST-CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [NEW]**

This Appendix presents the worksheet for calculating final post-closure cost estimates. The tasks and services included in this worksheet are based on the more complex closure requirements for MSWLFs. Some tasks and services may not be required for construction/demolition and non-hazardous industrial waste landfills, nor for other types of solid waste facilities requiring financial assurance. Owner/operators will be able to input site-specific information to calculate the necessary financial assurance.

**I.1 Calculating Post-closure Costs**

Table I.1 can be used to estimate Post-closure Costs. Table I.1 may be utilized in the same manner as Table H.2 of Appendix H.

- Input site-specific quantities from Table H.1 of Appendix H into Table I.1, making sure the requisite units are used. Some quantities are already given by the table. Input current year unit costs obtained from the ODEQ website.\*
- For each line of Task/Service items 1 through 5, multiply the value input for quantity by the multiplier and current year unit cost\*, and enter the resultant value in the subtotal column.
- Line 6. identify each task required by the Post-closure Plan that is not identified in Table I.2. Calculate cost estimates in accordance with OAC 252:515-27-51(d), and input total in the Subtotal column.
- Line 7. add Subtotals for Task/Service Items 1 through 6.
- Lines 8, 9, and 10. Compute Administrative Services, Technical and Professional Services and Post-closure Contingency costs by multiplying Line 7 by the multiplier for each respective Item. Enter the resultant values.
- Line 11. Add lines 7 through 10.

\* Unit costs for use in completing this table will be updated for inflation by ODEQ on an annual basis. Current costs will be posted on the ODEQ website. Users of this chart shall use costs prepared by the ODEQ or adjust currently approved costs for inflation as of April 9<sup>th</sup> of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).

**Table I.1 Post-closure Estimate**

**FACILITY NAME:**

**PERMIT NUMBER:**

	Task/Service	Quantity	Units	Multiplier <sup>a</sup>	Unit Cost <sup>b</sup>	Subtotal
<b>I</b>	<b>SITE MAINTENANCE</b>					
I.1	Site Inspections	4		30 (30 yrs)		
			per year	8 (8 yrs)		

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1.2	General Maintenance	1	per year	30 (30 yrs) 8 (8 yrs)		
1.3	Remediation and/or Gas Control Equipment	1	lump sum	0.3 <sup>c</sup>	dd	
<b>2</b>	<b>MONITORING EQUIPMENT</b>					
2.1	Rework/Replace Monitoring Well(s)		VLF	0.25(25% of wells)		
2.2	Plug Abandoned Well(s)		VLF	0.25(25% of wells)		
2.3	Final Plugging of Monitoring Wells		VLF	1		
2.4	Rework/Replace Methane Probe(s)		VLF	0.25(25% of probes)		
2.5	Plug Abandoned Probe(s)		VLF	0.25(25% of probes)		
2.6	Final Plugging of Methane Probes		VLF	1		
2.7	Final Plugging of Piezometer(s)		VLF	1		
<b>3</b>	<b>SAMPLING and ANALYSIS</b>					

3.1	Groundwater Monitoring Wells		wells	60(2/yr x 30yrs) 16(2/yr x 8 yrs)	MSWLF&NHIW ee C&D	
3.2	Methane Gas Probes		probes	60(2/yr x 30yrs)		
3.3	Surface Water Monitoring Points		points	60(2/yr x 30yrs)		

3.4	Leachate		sample	60(2/yr x 30yrs)		
<b>4</b>	<b>FINAL COVER MAINTENANCE</b>					
4.1	Mow and Fertilize Vegetative Cover		acres	30(30 yrs) 8(8 yrs)		
4.2	Repair Erosion, Settlement, and Subsidence for On-site Soils		acres	60(60 yrs) 16(16 yrs)		
	Repair Erosion, Settlement, and Subsidence for Off-site Soils		acres	30(30 yrs) 8(8 yrs)		

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4.3	Reseed Vegetative Cover		acres	0.20(20% reseeded over post-closure period)		
<b>5</b>	<b>LEACHATE MANAGEMENT</b>					
5.1	Clean Leachate Line(s)	1	per year	30 (30 yrs)		
5.2	Maintain Leachate Collection System and Equipment	1	per year	30 (30 yrs)		
5.3	Collect, Treat, Transport, and Dispose Leachate		gal/yr	30 (30 yrs)		
<b>6</b>	<b>TASKS NOT IDENTIFIED</b>					
<b>7</b>	<b>SUBTOTAL</b>					
<b>8</b>	<b>ADMINISTRATIVE SERVICES</b>	1	lump sum	0.06 (6%)	ff	
<b>9</b>	<b>TECHNICAL and PROFESSIONAL SERVICES</b>	1	lump sum	0.07 (7%)	f	
<b>10</b>	<b>POST-CLOSURE CONTINGENCY</b>	1	lump sum	0.10 (10%)	f	
<b>11</b>	<b>TOTAL POST CLOSURE</b>					gg

a. Multipliers are determined by the *Solid Waste Financial Assurance Program Report*, December 22, 2000.

b. Unit costs for use in completing this table will be updated for inflation by ODEQ on an annual basis. Current costs will be posted on the ODEQ website. Users of this chart shall use costs prepared by ODEQ or adjust currently approved costs for inflation as of April 9th of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).

c. 5% of equipment capital cost, maintenance performed once per 5 yrs for 30 years.

d. Input capital cost for gas control/remediation equipment, if installed at the site.

e. If the approved groundwater monitoring plan requires monitoring for alternative constituents, unit costs shall be calculated in accordance with OAC 252:515-27-52(b) or (c).

f. Input subtotal from line 7.

g. Add lines 7 through 10.

*[OAR Docket #22-631; filed 7-14-22]*

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# Permanent Final Adoptions

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## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS

[OAR Docket #22-632]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. Introduction  
252:606-1-4 [AMENDED]

**AUTHORITY:**  
Environmental Quality Board; 27A O.S. § 2-2-101.  
Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, and 2-6-203.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
November 4, 2021

**COMMENT PERIOD:**  
December 1, 2021, to January 11, 2022

**PUBLIC HEARING:**  
January 11, 2022, Water Quality Management Advisory Council  
February 18, 2022, Environmental Quality Board

**ADOPTION:**  
February 18, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
February 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATION BY REFERENCE:**  
**Incorporated standards:**

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as published on July 19, 2021."

**Incorporating rules:**  
OAC 252:606-1-4

**Availability:**  
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTMyOTI=GIST/ANALYSIS>

**GIST/ANALYSIS:**  
The gist of this proposed rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department's delegation agreement with the Environmental Protection Agency (EPA), and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination System (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2020, to July 19, 2021. The federal regulation updates being incorporated include the Environmental Protection Agency's (EPA's) Clean Water Act Methods Update Rule that became effective July 19, 2021. The rule finalized changes to test procedures required to be used by industries and municipalities when analyzing the chemical, physical, and biological properties of wastewater and other environmental samples for reporting under EPA's National Pollutant Discharge Elimination System (NPDES) permit program. It is anticipated that these changes will provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. In addition, this update to the Clean Water Act methods also incorporates technological advances in analytical technology.

**CONTACT PERSON:**

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

### SUBCHAPTER 1. INTRODUCTION

**252:606-1-4. Date of federal regulations incorporated**  
When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on ~~July 1, 2020~~ July 19, 2021.

[OAR Docket #22-632; filed 7-14-22]

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 631. PUBLIC WATER SUPPLY OPERATION

[OAR Docket #22-633]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. Introduction  
252:631-1-3 [AMENDED]

**AUTHORITY:**  
Environmental Quality Board; 27A O.S. § 2-2-101.  
Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, 2-6-303, and 2-6-306.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
November 4, 2021

**COMMENT PERIOD:**  
December 1, 2021, to January 11, 2022

**PUBLIC HEARING:**  
January 11, 2022, Water Quality Management Advisory Council  
February 18, 2022, Environmental Quality Board

**ADOPTION:**  
February 18, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
February 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATION BY REFERENCE:**  
**Incorporated standards:**

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2021."

**Incorporating rules:**  
OAC 252:631-1-3



**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTMyOTI=GIST/ANALYSIS>:

The gist of this rule and the underlying reason for the rulemaking is to ensure that the Department of Environmental Quality is in compliance with the federal regulations promulgated pursuant to the Reduction of Lead in Drinking Water Act (RLDWA) and Safe Drinking Water Act (SDWA). The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations (C.F.R.) from July 1, 2020, to July 1, 2021. The federal regulation updates being incorporated include EPA finalizing changes to existing regulations to protect the public from lead in plumbing materials used in public water systems or residential or nonresidential facilities providing water for human consumption. The rule changes codify aspects of the RLDWA of 2011 and the Community Fire Safety Act of 2013 (CFSA). The RLDWA amended section 1417 of the SDWA, which prohibits the use and introduction into commerce of certain plumbing products that are not "lead free." The RLDWA revised the definition of lead free to lower the allowable maximum lead content of plumbing products and established a statutory method for calculating lead content. EPA also established new requirements for manufacturers or importers that introduce into commerce products that must meet lead free requirements to certify such products as being in compliance with the lead free requirements in Section 1417 of the SDWA, as amended. EPA expects that these requirements for lead content in plumbing materials used in new installations and repairs will result in fewer sources of lead in drinking water and, consequently, will reduce adverse health effects associated with exposure to lead in drinking water. The final rule became effective October 1, 2020, and the compliance date for the product certification requirements in 40 C.F.R. 143.19 is September 1, 2023.

**CONTACT PERSON:**

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. INTRODUCTION**

**252:631-1-3. Adoption of U.S. EPA regulations by reference**

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on ~~July 1, 2020~~ **July 1, 2021**, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference.

*[OAR Docket #22-633; filed 7-14-22]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 690. WATER QUALITY  
STANDARDS IMPLEMENTATION**

*[OAR Docket #22-634]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Introduction  
252:690-1-4.1 Date of federal regulations incorporated [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201  
Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, and 2-6-203.

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

November 4, 2021

**COMMENT PERIOD:**

December 1, 2021, to January 11, 2022

**PUBLIC HEARING:**

January 11, 2022, Water Quality Management Advisory Council  
February 18, 2022, Environmental Quality Board

**ADOPTION:**

February 18, 2022

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

February 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

**Incorporated standards:**

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as published on July 19, 2021."

**Incorporating rules:**

OAC 252:690-1-4.1

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTMyOTI=GIST/ANALYSIS>:

**GIST/ANALYSIS:**

The gist of this rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department's delegation agreement with the Environmental Protection Agency (EPA), and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination System (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2020, to July 19, 2021. The federal regulation updates being incorporated include the Environmental Protection Agency's (EPA's) Clean Water Act Methods Update Rule that became effective July 19, 2021. The rule finalized changes to test procedures required to be used by industries and municipalities when analyzing the chemical, physical, and biological properties of wastewater and other environmental samples for reporting under EPA's National Pollutant Discharge Elimination System (NPDES) permit program. It is anticipated that these changes will provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. In addition, this update to the Clean Water Act methods also incorporates technological advances in analytical technology.

# Permanent Final Adoptions

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## CONTACT PERSON:

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. INTRODUCTION

### 252:690-1-4.1. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on ~~July 1, 2020~~ July 19, 2021.

*[OAR Docket #22-634; filed 7-14-22]*

## TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 25. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

*[OAR Docket #22-616]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Chapter 25. The Merit System of Personnel Administration Rules [AMENDED]

### AUTHORITY:

The Office of Management and Enterprise Services; The Director of the Office of Management and Enterprise Services 62 O.S. Section 34.6(8); The Human Capital Management Division of the Office of Management and Enterprise Services 62 O.S. Section 34.301; The Director of the Office of Management and Enterprise Services 74 O.S. Section 840-1.6A.

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

November 17, 2021

### COMMENT PERIOD:

December 15, 2021 through January 20, 2022

### PUBLIC HEARING:

January 20, 2022

### ADOPTION:

March 21, 2022

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

March 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ ANALYSIS:

The amendments to and revocations of the rules are necessary to clarify and avoid any inconsistencies and conflicts between Title 260, Chapter 130 and this Chapter. Title 260, Chapter 130 rules were promulgated as required

by the Civil Service and Human Capital Modernization Act codified at 62 O.S. Section 34.301.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### PART 1. GENERAL PROVISIONS

#### 260:25-1-1. Purpose

(a) ~~Application to the classified service.~~ The Merit System of Personnel Administration Rules, which are also known as the Merit Rules for Employment and the Merit Rules, are the administrative rules which govern classified employment with the State of Oklahoma. They outline many of the rights and responsibilities of applicants, employees, supervisors, administrators and others who are subject to the Oklahoma Merit System of Personnel Administration.

(b) ~~Application to the unclassified service.~~ A number of rules also apply to officers, employees, positions and agencies which are not subject to the Merit System of Personnel Administration, that is, the exempt unclassified or non-merit service. Such rules often contain references as to their applicability.

(e) Rulemaking entities. The Director of the Office of Management and Enterprise Services has promulgated the Merit System of Personnel Administration Rules which are included in this Chapter. ~~The Merit Protection Commission has promulgated the Merit System of Personnel Administration Rules which are in OAC 455:10.~~

(d) Statutory authority for the Merit Personnel Administration Rules. The authority for the ~~Merit System of Personnel Administration~~ Rules is found in the Oklahoma Statutes which are Oklahoma laws. The primary basis for the Merit Personnel Administration Rules is the Oklahoma Personnel Act, which is found in Sections 840-1.1 et seq. of Title 74 of the Oklahoma Statutes.

(e) Changes in the rules and interpretation of rules. Rules may be changed on an emergency or permanent basis as situations and needs demand. New federal or state laws may replace or affect the interpretation of the Merit Personnel Administration Rules.

(f) Effect of other laws on Merit Personnel Administration Rules. Some laws govern a specific personnel practice that applies only to a certain agency or in a certain situation. The provisions of all of these specialized laws are not referenced in the Merit Personnel Administration Rules. There may be cases where such a law will replace a rule or part of a rule in a certain agency or situation.

(g) Legal cites. Some of the Merit Personnel Administration Rules in this Chapter restate or exactly repeat language from laws. Italic type means the language exactly repeats language from a law or other legal instrument. The specific reference appears in brackets following the language in Italics. Language from laws or other legal instruments which is restated in other words is also followed by a reference in brackets, but it is not printed in Italics.

**260:25-1-2. Definitions**

~~In addition to terms defined in OAC 455:10-1-2, the~~The following words and terms, when used in the Merit Personnel Administration Rules, shall have the following meaning, unless the context clearly indicates otherwise.

**"Absence without leave"** and **"unauthorized absence"** means any absence of an employee from duty without specific approval.

~~"Absolute preference veteran"~~ means a veteran eligible for placement at the top of registers for appointment to the classified service because of a service connected disability of 30% or more.

**"Act"** means the Oklahoma Personnel Act.

**"Administrator"** means the Director of the Office of Management and Enterprise Services. As the term is used in the Merit Personnel Administration Rules, the term includes employees and the Administrator of the Human Capital Management Division of the Office of Management and Enterprise Services to whom the Administrator has lawfully delegated authority to act on his or her behalf. ~~The term, as used in the Merit rules, may also include Appointing Authorities to whom the Administrator has delegated authority under a duly executed delegation agreement.~~

~~"Adverse impact" or "disparate impact"~~ means a substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group. A common yardstick for determining adverse impact is the "4/5ths rule" which indicates adverse impact if the selection rate for any protected group is less than 4/5ths (80%) of the selection rate of the group with the highest selection rate.

**"Agency"** means any office, department, board, commission or institution of the executive branch of state government [74:840 1.3].

~~"Allocation" or "Position allocation"~~ means the process by which the Human Capital Management Division designates a position to an established job family. A position is allocated on the basis of duties, authority, responsibilities, classification guides, and other appropriate factors.

**"Appointing authority"** means the chief administrative officer of an agency [74:840 1.3]. As the term is used in the Merit Personnel Administration Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

~~"Assignment" or "Position assignment"~~ in the context of position allocation means the process by which an Appointing Authority designates a position to an established job family level.

~~"Balanced and representative work force"~~ means a work force whose composition at all levels approximates the composition of the relevant civilian labor force in terms of race, sex, and ethnicity.

~~"Base pay", "base rate", or "base salary"~~ means the hourly rate or salary established for a job performed. It does not include shift differentials, benefits, overtime, incentives, longevity, or any other pay elements.

**"Break in service"** means a period of time in excess of thirty (30) days during which an employee is not present at work and is not in paid leave status or on approved leave without pay.

**"Career progression"** means a type of intra-agency promotion in which an employee is advanced from one level of a job family to a higher non-supervisory level in the same job family.

~~"Certification", in the context of initial classified appointments, means the submission of available names of eligibles from the appropriate register to an Appointing Authority. Such a list is called a "certificate" or "e list". Individuals whose names appear on the certificate are said to be "certified". In the context of all other types of appointments, certification means the determination by the Office, or by an Appointing Authority to whom the Administrator has delegated authority, that a candidate possesses permanent classified status or is eligible for reinstatement to permanent classified status, and meets requirements for appointment to a specified job in the classified service.~~

**"Classification"** means:

- (A) the process of placing an employee into an appropriate job family and level within the job family, consistent with the allocation of the position to which the employee is assigned, or
- (B) an employee's job family and the level at which work is assigned [74:840-1.3].

**"Classification plan"** means the orderly arrangement of positions within an agency into separate and distinct job families so that each job family will contain those positions which involve similar or comparable skills, duties and responsibilities [74:840 1.3].

**"Classified employee"** means an employee in the classified service, or an employee currently on leave from the classified service in accordance with established Merit Rules governing leave.

**"Classified service"** means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration [74: 840 1.3].

**"Commission"** means the Oklahoma Merit Protection Commission [74:840 1.3].

**"Compensation plan"** means a schedule of salaries or hourly wages established for the jobs recognized in the agency classification plan so that all positions of a given job within an agency may be paid the same salary range established for the job.

**"Consider"** means a reasonable judgment based on job related criteria and on an individual's fitness for duties for initial or internal appointment.

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**"Demotion"** means the reclassification of a classified employee to a different job with a lower pay band assignment or to a lower level within the same job family. Demotion may be voluntary or involuntary.

**"Direct reclassification"** means a change made in a classified employee's classification by an Appointing Authority as a result of the adoption of a new or revised job family descriptor.

**"Discharge"** is defined in 455:10-11-3.

**"Displacement"** or **"displace"** means the process of an employee accepting an offer of employment to an occupied or funded vacant position [74:840-2-27B].

**"EEO Job Categories"**, as used in the context of affirmative action/equal employment opportunity, means the following occupational categories:

(A) **Officials and Administrators:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district, or area basis.

(B) **Professionals:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge.

(C) **Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post secondary school education or through equivalent on the job training.

(D) **Protective Service Workers:** Occupations in which workers are entrusted with public safety, security and protection from destructive forces.

(E) **Paraprofessionals:** Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status.

(F) **Administrative Support (Including Clerical and Sales):** Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office.

(G) **Skilled Craft Workers:** Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on the job training and experience or through apprenticeship or other formal training programs.

(H) **Service Maintenance:** Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property.

**"Eligible"** means a person who has met all requirements for appointment to a given job.

**"Employee"** or **"state employee"** means an elected or appointed officer or employee of an agency unless otherwise indicated [74:840-1.3].

**"Entrance examination"** means any employment test used by the Office of Management and Enterprise Services to rank the names of applicants who possess the minimum requirements of education, experience, or licensure for a job or group of similar jobs on a register of eligibles established by the Office of Management and Enterprise Services [74:840-1.3].

**"Executive Director"** means the appointing authority of the Oklahoma Merit Protection Commission [74:840-1.3].

**"FLSA"** means the federal Fair Labor Standards Act.

**"FLSA exempt"** means employees performing work which is considered to be exempt from the overtime payment provisions of the FLSA.

**"FLSA non-exempt"** means employees performing work which is considered to be under the overtime payment provisions of the FLSA.

**"Hiring range"** means a range within a pay band within which an Appointing Authority may establish the initial rate of pay for a given job.

**"Hiring rate"** means the initial rate of pay for a given job within the pay band assigned to the job family level.

**"Hiring rule"** refers to the names of the top 10 available eligibles certified to an Appointing Authority by the Administrator.

**"Human Capital Management Division"** as used within the Personnel Administration Rules means the Human Capital Management Division of the Office of Management and Enterprise Services.

**"Initial appointment"** or **"original appointment"** means the act of an Appointing Authority hiring a person, usually from a certificate, for a probationary period. Contrast the meaning of these terms with "internal action" and "internal appointment" which are also defined in this Section.

**"Interagency transfer"** means an action in which an employee leaves employment with one agency and enters employment with another agency while continuously employed with the state [74:840-1.3].

**"Internal action"** or **"Internal appointment"** means the reclassification of a current employee or the reinstatement, recall or reemployment from a Priority Reemployment Consideration Roster of a former employee.

**"Intra-agency transfer"** means moving an employee from one position to another position with the same agency either with or without reclassification [74:840-1.3].

**"Job"** means a position or job family level in a job family [74:840-1.3].

**"Job family"** means:

(A) jobs which require similar core skills and involve similar work, and

(B) a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the

work to warrant similar treatment as to title, typical functions, knowledge, skills and abilities required, and education and experience requirements [74:840-1.3].

**"Job family descriptor"** means a written document that:

- (A) describes a job family, including, but not limited to, the basic purpose, typical functions performed, various levels within the job family, and the knowledge, skills, abilities, education, and experience required for each level, and
- (B) identifies the pay band assigned for each level [74:840-1.3].

**"Job family level"** or **"level"** means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience [74:840-1.3].

**"Job related organization"** means a membership association which collects annual dues, conducts annual meetings and provides job related education for its members and which includes state employees, including any association for which payroll deductions for membership dues are authorized pursuant to paragraph 5 of subsection B of Section 7.10 of Title 62 of the Oklahoma Statutes [74:840-1.3].

**"Lateral transfer"** means the reassignment of an employee to another state job with the same pay band assignment as the job family level in which the employee was classified prior to the lateral transfer [74:840-1.3].

**"Leave of absence without pay"** means leave or time off from duty granted by the Appointing Authority, for which period the employee receives no pay.

**"Manifest imbalance"** means representation of females, Blacks, Hispanics, Asian/Pacific Islanders and American Indians/Alaskan natives in specific job groups or EEO job categories within the agency's work force that is substantially below its representation in the appropriate civilian labor force.

**"Merit Rules"** or **"Merit Rules for Employment"** or **"Merit System of Personnel Administration Rules"** means rules adopted by the Director of the Office of Management and Enterprise Services or the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act [74:840-1.3]. Merit Rules adopted by the Administrator are in OAC 260:25, and Merit Rules adopted by the Commission are in OAC 455:10.

**"Merit System"** means the Oklahoma Merit System of Personnel Administration [74:840-1.3].

**"Minimum qualifications"** means the requirements of education, training, experience and other basic qualifications for a job.

**"Minority"** means a person who appears to belong, identify with, or is regarded in the community as belonging to one of the following racial or ethnic groups:

- (A) **"Black"**, meaning all persons having origins in any of the Black racial groups of Africa;
- (B) **"Hispanic"**, meaning all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (C) **"Asian or Pacific Islander"**, meaning all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent,

or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(D) **"American Indian or Alaskan Native"**, meaning all persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition. For affirmative action purposes, persons who are reported as American Indian shall verify tribal affiliation by providing a certificate of Degree of Indian Blood from the U.S. Department of Interior, Bureau of Indian Affairs, or by providing the name and address of tribal officials who can verify tribal affiliation [74:840-2.1].

**"New position"** means a position not previously existing.

**"Noncompetitive appointment"** means the appointment of a person to a noncompetitive job level within a job family [74:840-1.3].

**"Noncompetitive job"** means an unskilled or semiskilled job designated by the Office of Management and Enterprise Services as noncompetitive. Noncompetitive jobs do not require written examinations for placement on registers of eligibles [74:840-1.3].

**"Office"** means the Office of Management and Enterprise Services [74:840-1.3].

**"Office of Management and Enterprise Services"** as used within the Merit Personnel Administration Rules, includes the Human Capital Management Division of the Office of Management and Enterprise Services.

**"Oklahoma Personnel Act"** means Sections 840 1.1 et seq. of Title 74 of the Oklahoma Statutes, creating the Merit System of Personnel Administration and any amendments or supplements.

**"Part-time employee"** means an employee who works less than full time.

**"Pay band"** means the pay range assigned to a job family level.

**"Payline"** means the relationship between a job's pay, its job evaluation points, and market survey data.

**"Permanent employee"** means a classified employee who has acquired permanent status in the classified service according to the Act and the Merit Rules.

**"Personnel Administration Rules"** means rules adopted by the Director of the Office of Management and Enterprise Services pursuant to the Oklahoma Personnel Act. The Merit Rules previously contained in this Chapter are replaced by the Personnel Administration Rules. Wherever the Merit Rules are referenced in this Chapter, that reference shall be construed to mean the Personnel Administration Rules.

**"Position"** means a group of specific duties, tasks and responsibilities assigned by the Appointing Authority to be performed by one person; a position may be part time or full time, temporary or permanent, occupied or vacant.

**"Priority reemployment consideration"** means the requirement that Appointing Authorities consider eligible former state employees who were separated as a result of a reduction in force whose names appear on Priority Reemployment

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Consideration Rosters before any vacant position is filled by any eligible initially appointed from an employment register.

**"Probationary employee"** means a classified employee who has not acquired permanent status in the classified service in accordance with the Act and the Merit Rules.

**"Probationary period"** means a working test period during which a classified employee is required to demonstrate fitness for the job to which appointed by the satisfactory performance of the duties and responsibilities of the job.

**"Promotion"** means the reclassification of a classified employee to a different job with a higher pay band assignment or to a higher level within the same job family.

**"Promotional examination"** means any employment test designated by the Human Capital Management Division to determine further the qualifications of a permanent classified employee of a state agency for employment in a different job for which the employee possesses the minimum qualifications of education, experience, or licensure within that agency [74:840 1.3].

**"Reallocation"** or **"Position reallocation"** means the process of reassigning an established position, occupied or vacant, from one job family to another.

**"Recall right"** means the entitlement of an eligible person to be offered reappointment to the job family level from which removed by a reduction in force before any other person may be appointed, except by recall.

**"Reclassification"** means the process of changing a classified employee from one job family to another job family or from one job family level to another job family level in the same job family, resulting in a change in the employee's assigned job code [74:840 1.3].

**"Register"** means a list of eligibles for original probationary appointment to a job.

**"Regular and consistent"** means, in connection with an employee's work assignments, the employee's usual and normal work assignments, excluding incidental, casual, occasional tasks, and activities the employee assumes without direction to do so. Temporary work assignments of less than 60 days in any 12 month period are not considered regular and consistent.

**"Regular unclassified service employee"** means an unclassified service employee who is not on a temporary or other time limited appointment [74:840 1.3].

**"Reinstatement"** means the reappointment of a former permanent classified employee as provided in the Merit Rules or the replacing of an eligible's name on a register.

**"Resignation"** means an employee's voluntary termination of his or her employment with the state. In the case of a classified employee, it includes the forfeiture of status in the classified service.

**"Salary administration plan"** means the plan adopted by an Appointing Authority and submitted to the Administrator for approval which establishes hiring ranges for positions. Components of a salary administration plan may include but are not limited to conditions for hiring above the midpoint of a pay range, skill based pay programs, and other pay movement mechanisms authorized by Section 840 2.17 of the Oklahoma Personnel Act.

**"Senior EEO Investigator"** means a person who has been designated by the Administrator to provide advice and support to persons completing the training requirements for discrimination complaints investigators as described in 260:25 3-22.

**"Successor job family level"** means a job family level that takes the place of another job family level.

**"Supervisor"** means a classified or unclassified employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education 74:840 3.1] who has been assigned authority and responsibility for evaluating the performance of [other state employees] 74:840 1.3].

**"Trial period"** means a working test period after promotion, voluntary demotion, or intra agency lateral transfer during which a classified employee is required to demonstrate satisfactory performance in the job to which promoted, voluntarily demoted, or transferred before acquiring permanent status in the job.

**"Unclassified service"** or **"exempt service"** means employees and positions excluded from coverage of the Oklahoma Merit System of Personnel Administration [74:840 1.3]. Such employees and positions are subject to various provisions of the Oklahoma Personnel Act and the Merit Rules.

**"Veteran"** means a person who has been honorably discharged from the Armed Forces of the United States and who has been a resident of Oklahoma for at least 1 year before the date of examination [74:840 1.3].

### 260:25-1-6. Violations; penalties [REVOKED]

(a) The Administrator shall issue orders directing agencies to comply with provisions of the Oklahoma Personnel Act, the Merit Rules, or written communications issued to agencies explaining the Oklahoma Personnel Act, the Merit Rules, and any other matter relating to the Merit System of Personnel Administration. [74:840 1.6A]

(b) The Oklahoma Merit Protection Commission or the Director of the Office of Management and Enterprise Services may levy an administrative fine not to exceed Five Thousand Dollars (\$5,000.00) against any person, whether subject to the provisions of the merit system or in unclassified service, who after proper notice fails or refuses, within a reasonable period of time, to implement a written order of the Oklahoma Merit Protection Commission or the Director of the Office of Management and Enterprise Services. Such fine shall be assessed against the person who violates the order and shall not be paid by any monies of the employing entity in which the person is employed or serves. [74:840 6.9(A)]

(c) Any person against whom an administrative fine is levied who continues the violation for an unreasonable period of time, as determined by the Oklahoma Merit Protection Commission or Director of the Office of Management and Enterprise Services, shall forfeit his or her position and shall be ineligible for appointment to or employment in state government for a period of five (5) years [74:840 6.9(B)].

(d) Any fines collected pursuant to this section shall be deposited to the revolving fund of the respective entity which levies the fine [74:840 6.9(C)].

**260:25-1-8. Compliance with federal standards, rules or regulations**

Any of the ~~Merit Personnel Administration~~ Rules which conflict with or are inconsistent with federal rules, regulations or standards governing the grant of federal funds to any agency or department, is not applicable to such agency or department.

**260:25-1-9. Self-Evaluation Plans, Best Practices, Consulting Services [REVOKED]**

~~The Administrator shall develop and make available to state agencies Self-Evaluation Plans, Best Practices and Consulting Services for the development of an efficient and effective system of personnel administration that meets the management needs of the various agencies [74:840 1.6A,1]. Self-Evaluation Practices, Best Practices and Consulting Services may include but not be limited to: Overtime Policies; Salary Administration Plans; New Employee Actions; Training and Development; Salary and Benefits; Health, Safety and Security; Record-keeping and Miscellaneous Requirements; Job Posting Requirements; and other areas as determined by the Administrator.~~

**260:25-1-11. Employee roster [REVOKED]**

~~The Human Capital Management Division shall establish and maintain a roster of all employees in the classified service, showing for each employee the title, salary, date of employment and such other employment data as is deemed pertinent. Also, for the purpose of identifying employees and positions, for payroll certification, the Human Capital Management Division shall maintain a list of unclassified personnel.~~

**PART 3. DELEGATION OF HUMAN RESOURCE FUNCTIONS [REVOKED]**

**260:25-1-30. Delegation authorization [REVOKED]**

~~The Director of the Office of Management and Enterprise Services, or his or her designee may approve applications from Appointing Authorities to be delegated the authority to administer human resources functions normally conducted by the Human Capital Management Division as provided in Section 840 1.15 of Title 74 of the Oklahoma Statutes.~~

**260:25-1-31. Functions which may be delegated [REVOKED]**

Upon the request of a state agency, and at the discretion of the Administrator, the Administrator may delegate any human resources functions normally conducted by the Human Capital Management Division. ~~[74:840 1.15(A)] Human resources functions that are under the jurisdiction of the Oklahoma Merit Protection Commission as described in 74:840 1.9 and Title 455 of the Oklahoma Administrative Code may not be delegated pursuant to the rules in this Part.~~

**260:25-1-33. Delegation application [REVOKED]**

~~Applications for delegation of human resource functions may be in any format. In addition to information identifying the agency, applications shall include the following information:~~

- ~~(1) A full description of the delegation authority sought.~~
- ~~(2) Name, title, and qualifications (including education and training, experience, and professional certification) of the personnel professional designated by the Appointing Authority as the professional administrator of delegated functions for the agency. Also, the professional's signed acceptance of the responsibility for administering delegated functions consistent with applicable state and federal laws and rules, and an approved delegation agreement.~~
- ~~(3) Names, titles, and qualifications (including education and training, experience, and professional certification) of all other personnel professionals and others the Appointing Authority designates to participate in, or support, the exercise of delegation authority. Also, a description of the duties and responsibilities of each person with respect to delegated functions.~~
- ~~(4) The Appointing Authority's expressed acceptance of overall responsibility for assuring the delegation authority is exercised in accordance with federal and state laws and rules, as evidenced by the signature of the Appointing Authority on the application and written memorandum of agreement.~~
- ~~(5) Documentation of agency employee participation in the development of the Appointing Authority's application for delegation authority. Also, a description of plans for employee participation following approval of the application and during the period delegation authority is exercised.~~
- ~~(6) A copy of procedures the agency will use to assure that internal agency procedures are properly coordinated with procedures required by the Administrator for the delegated functions.~~
- ~~(7) Any other information that may aid in the Administrator's evaluation of the Application.~~

**260:25-1-35. Response from Administrator [REVOKED]**

~~The Administrator shall respond to the application for delegation authority within 14 calendar days after its receipt. The Administrator may prepare a memorandum of agreement in cooperation with the Appointing Authority and approve the application; reject the application and list the reasons for its rejection; or provide the Appointing Authority with a list of actions or information needed before a memorandum of agreement and approval of the application can be executed.~~

**260:25-1-37. Staff qualifications [REVOKED]**

~~The Appointing Authority shall designate only employees who are eligible for certification as personnel professionals in accordance with Section 840 1.6A (18) of Title 74 of the Oklahoma Statutes and OAC 260:25-17, Part 13, to exercise the~~

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delegation authority. Others designated by the Appointing Authority to participate in support of delegated functions need not be eligible for certification as personnel professionals.

## **260:25-1-39. Training requirements [REVOKED]**

~~Each employee who will exercise delegation authority or who will participate in the support of delegated functions shall participate in initial training provided by the Human Capital Management Division staff on standards and procedures concerning delegated functions. The Administrator shall establish training requirements for employees based on previous training and the employee's duties and responsibilities related to delegated functions. The Administrator may require employees to participate in additional training during the life of a delegation agreement.~~

## **260:25-1-41. Standards, procedures, records and reports [REVOKED]**

~~The Administrator shall provide standards and procedures manuals for delegated functions to the Appointing Authority and employees who are trained. The standards and procedures manuals shall include a description of required records and reports. When changes occur during the life of a delegation agreement, the Administrator shall advise the Appointing Authority and the administrator of the delegated functions of changes and shall attach the changes as riders to the delegation agreement.~~

## **260:25-1-43. Written memorandum of agreement of delegated authority [REVOKED]**

~~(a) Before the Administrator approves the application for delegation authority, a memorandum of agreement shall be prepared by the Administrator in cooperation with the Appointing Authority. This delegation agreement shall include or incorporate by reference the following documents and information:~~

- ~~(1) A description of the delegation authority;~~
- ~~(2) An outline of the terms and conditions of the agreement, including an effective date for the agreement;~~
- ~~(3) A description of audit activities, reports to the Administrator, and a description of records to be maintained by the Appointing Authority.~~
- ~~(4) The application for delegation authorization, as amended before execution of the delegation agreement.~~
- ~~(5) The list of delegation audit activities provided by the Administrator to the Appointing Authority.~~
- ~~(6) The delegation standards, procedures, records, and reports required by the Administrator.~~
- ~~(7) The timing of and methodology for conducting scheduled audits.~~
- ~~(8) A statement describing the degree to which the personnel professional designated as the professional administrator of the delegated functions will act in the Appointing Authority's stead in regards to the delegated authority during the life of the agreement. The Appointing Authority shall not delegate ultimate responsibility for the agency's exercise of the delegated authority, or authority to sign or terminate the delegation agreement.~~

~~(b) The delegation agreement shall be dated and signed by the Appointing Authority of the requesting agency and then by the Administrator. The Administrator's signature on the agreement shall constitute approval of the application for delegation authority. Approval of this application for delegation authority shall constitute authority for the Appointing Authority or designee to implement the approved delegation of personnel authority. [74:840-1.15] The Administrator shall send the Appointing Authority and the agency administrator of the delegated functions a copy of the agreement within five calendar days after signing the agreement.~~

## **260:25-1-45. Changes in personnel [REVOKED]**

~~(a) During the life of a delegation agreement, the Appointing Authority is responsible for submitting the following documents to the Administrator immediately upon any changes in personnel:~~

~~(1) Changes in the names and titles of the Appointing Authority and all personnel professionals and others the Appointing Authority designates to participate in, or support, the exercise of delegation authority.~~

~~(2) The Appointing Authority's designation of a new professional administrator of the delegated functions and the designee's signed acceptance of the responsibility for administering delegated functions consistent with applicable state and federal laws, and the delegation agreement.~~

~~(b) These documents shall be added as riders to the memorandum of agreement.~~

## **260:25-1-47. Audit by the Administrator [REVOKED]**

~~Delegated functions shall be subject to audit by the Administrator to determine compliance with applicable laws, Merit Rules, and the delegation agreement. Audits may be conducted with or without notice to the Appointing Authority. The Administrator shall supply the Appointing Authority with a list of audit activities before the delegation agreement is signed, and during the life of the agreement, the Administrator shall notify the Appointing Authority of changes in audit activities before changes are implemented. The Administrator shall also add a description of changes as riders to the agreement.~~

## **260:25-1-49. Corrective actions [REVOKED]**

~~If audit findings reveal deficiencies or when deficiencies are otherwise identified, the Administrator shall order corrective action. The Administrator's order may include the date by which the Appointing Authority shall implement corrective action as ordered by the Administrator. Depending on the nature of the deficiency, the deadline for implementation may be up to 90 days after the date of the order. Corrective Actions may include but are not limited to:~~

- ~~(1) Correction of deficiencies consistent with Merit Rules, applicable laws, and the delegation agreement.~~
- ~~(2) Training or retraining of agency personnel.~~
- ~~(3) Unannounced audits.~~
- ~~(4) A temporary suspension of delegated authority.~~



**260:25-1-51. Termination or partial revocation of delegation authority [REVOKED]**

(a) A delegation agreement may be terminated at the discretion of the Administrator or at the request of the Appointing Authority. Some infractions of Merit Rules, applicable laws, or the delegation agreement may result in partial revocation or termination of the agreement. The Administrator shall provide the Appointing Authority with reasonable notice of termination or partial revocation of the agreement and the effective date of the action. The Administrator may terminate or partially revoke authorization for delegation for any of the following reasons:

- (1) The Appointing Authority fails to comply with corrective action ordered by the Administrator.
- (2) Delegation functions are not administered in accordance with the delegation agreement, the Oklahoma Personnel Act, other applicable laws, the Merit Rules, or Office of Management and Enterprise Services requirements, policies, directives, standards, guidelines, or practices.
- (3) Problems or circumstances occur that affect either the Office of Management and Enterprise Services or the agency in fulfilling its defined responsibilities.

(b) On the effective date of the termination or partial revocation of the delegation agreement, the authority and responsibility for delegated human resource functions that have been terminated or partially revoked shall be returned to the Administrator, together with records and documents relate to the delegated functions. However, unless otherwise specified by the Administrator, delegated actions initiated before the effective date of the termination or partial revocation of the agreement may be completed under the terms of the agreement.

**260:25-1-53. Evaluation [REVOKED]**

The Administrator shall evaluate the overall results and effects of delegation agreements at least annually for the first three years of an agreement and subsequently at least once every five years. Evaluations shall include but not be limited to an assessment of the results and effects (including costs) of the delegation authorization by various stakeholders. Anyone, including the Administrator, may provide comments, but the Administrator shall extend invitations to do so to the Appointing Authority of the delegation agency, the personnel professional responsible for the delegated function in the agency, and delegation coordinators with the Office of Management and Enterprise Services, and employees of the delegation agency. The Administrator shall analyze, compile, and summarize the responses and make the report of the results available for public inspection.

**PART 5. MODEL PROJECTS [REVOKED]**

**260:25-1-60. Purpose [REVOKED]**

The purpose of model projects is to allow agencies to design model human resource projects to test and evaluate the effect of innovative policies, standards, and procedures. [74:840-1-15].

**260:25-1-61. Authorization of model projects [REVOKED]**

The Administrator may approve applications for model projects. Approval of an application for a model project by the Administrator shall constitute authority for the agency to implement the approved model project for a length of time to be specified by the Administrator. [74:840-1-15].

**260:25-1-65. Effect of Merit Rules on model projects [REVOKED]**

The Administrator may waive applicability of Merit Rules adopted by the Administrator if necessary to implement a model project. The waiver shall apply only to the model project specified by the Administrator and shall be effective only for the duration of the model project. The waiver shall end immediately upon termination or completion of the model project.

**SUBCHAPTER 3. DIVERSITY AND EQUAL EMPLOYMENT OPPORTUNITY [REVOKED]**

**PART 1. DISCRIMINATION [REVOKED]**

**260:25-3-1. Purpose [REVOKED]**

The purposes of the rules in this Part are to assure equal employment opportunity [74:840-1.6A(7)]; repeat, as a convenience to the reader, statutory language in Section 840-2.9 of the Oklahoma Personnel Act; and define sexual harassment as a form of discrimination. The rules in this Part apply to all persons in the state service unless the context clearly indicates otherwise.

**260:25-3-2. Discrimination and other prohibited acts [REVOKED]**

(a) No person in the state service, whether subject to the provisions of the Merit System or in unclassified service, shall be appointed to or demoted or dismissed from any position in the state service, or in any way favored or discriminated against with respect to employment in the state service because of political or religious opinions or affiliations, race, creed, gender, color, [age] [74:954] or national origin or by reason of any...handicap [74:954]...[74:840-2.9(A)].

(b) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. Letters of inquiry, recommendation and reference for public employees by public officials shall not be considered official authority or influence unless such letter contains a threat, intimidation, or irrelevant, derogatory or false information [74:840-2.9(B)].

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(c) No person shall make any false statement, certificate, score, rating or report with regard to any test, certification or appointment made under any provision of the State Personnel Act or in any manner commit any fraud preventing the implementation of the provisions of the State Personnel Act and rules made pursuant thereto [740:840 2.9(C)].

(d) No employee, examiner or other person shall deny, deceive or obstruct any person in his or her right to examination, eligibility, certification or appointment or furnish to any person any special or secret information for the purpose of effecting the rights or prospects of any person with respect to employment in the classified service [74:840 2.9(D)].

(e) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or as a result of any appointment, proposed appointment, promotion or proposed promotion to or any advantage in, a position in the classified or unclassified service [74:840 2.9(E)].

(f) Alleged violation of this section shall be reported to the Merit Protection Commission [74:840 2.9(F)].

### 260:25-3-3. Sexual harassment [REVOKED]

(a) Sexual harassment is discrimination on the basis of gender (sex) under 260:25-3-2, Discrimination and other prohibited acts. No officer or employee of any agency shall permit or engage in sexual harassment.

(b) Unwelcome sexual advances, requests for sexual favors, and verbal, graphic or physical conduct of a sexual nature constitute sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

## PART 2. DISCRIMINATION COMPLAINTS INVESTIGATIONS [REVOKED]

### 260:25-3-20. Purpose [REVOKED]

Section 840 2.1 (F)(1) of Title 74 of the Oklahoma Statutes requires persons who investigate complaints of discrimination after December 1, 1995, to be trained according to the requirements of the Administrator unless otherwise provided by state or federal law. The rules in this Part establish training requirements for persons who investigate complaints of employment discrimination in executive branch agencies. The rules in this Part are not intended to require Appointing Authorities to train an agency employee as a discrimination complaint investigator; but rather, are intended to ensure that complaints of discrimination are investigated by persons who meet the training requirements of the Administrator, unless

otherwise provided by state or federal law, regardless of whether the investigation is conducted by persons internal or external to the agency.

### 260:25-3-22. Training requirements for discrimination complaints investigators [REVOKED]

(a) Unless otherwise provided by state or federal law, all persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall be subject to the following initial training and initial certification provisions:

(1) completion of four days of initial discrimination complaints investigator training either conducted by the Human Capital Management Division or approved by the Administrator. The initial discrimination complaints investigator training shall provide participants with a current knowledge of:

- (A) equal employment opportunity laws and rules;
- (B) theories of discrimination and burdens of proof;
- (C) planning and conducting complete and impartial investigations;
- (D) techniques for interviewing witnesses;
- (E) collecting relevant evidence;
- (F) documenting the record of investigation; and
- (G) preparing the written report of investigation.

(2) a person who has completed the EEO Training for New Investigators conducted by the U.S. EEOC Training Institute shall not be subject to the initial training requirements of (a) (1) of this section.

(3) In addition to the requirements referenced in (a) (1) of this Section a minimum of one investigation must be completed under the guidance of a senior EEO investigator, designated by the Administrator. The senior EEO investigator shall advise and support the investigator in developing competency in investigating complaints of discrimination.

(4) a person who has completed the initial training requirements established in (a) (1) of this Section and who is conducting an investigation under the guidance of a senior EEO investigator required in (a) (2) of this Section shall be considered as conditionally meeting the training requirements of the Administrator and shall be considered to be in compliance of this Part for that investigation.

(5) the Administrator will certify that a person has completed the training requirements for investigating complaints of discrimination after the Administrator:

- (A) determines the person has completed the initial training requirements established in (a) (1) of this Section, and
- (B) receives recommendation from the senior EEO investigator under whose guidance one or more investigations have been conducted as required in (a) (2) of this Section that the person seeking certification has demonstrated competency in conducting investigations; or the Administrator waives the recommendation requirement.

- (6) the Administrator shall send notice of certification to the person certified and to the certified person's Appointing Authority if the person is a state employee.
- (b) All persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall be subject to the following continuing education training requirements:
  - (1) A minimum of six hours of classroom instruction or 0.6 Continuing Education Units (CEUs) in training related to the subjects listed in (b) (2) of this section each calendar year or other annual training that may be announced by the Administrator. Investigators who complete annual training shall submit proof of completion that is acceptable to the Administrator no later than December 31st of each year.
  - (2) Discrimination complaints investigator annual training shall provide participants with a current knowledge of:
    - (A) equal employment opportunity laws and rules; including the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., and court cases;
    - (B) theories of discrimination and burdens of proof;
    - (C) planning and conducting complete and impartial investigations;
    - (D) techniques for interviewing witnesses;
    - (E) collecting relevant evidence;
    - (F) documenting the record of investigation; and
    - (G) preparing the written report of investigation.
    - (H) investigating discrimination complaints;
    - (I) personnel practices and procedures;
    - (J) alternative dispute resolution; or
    - (K) diversity and multi-culturalism.
  - (3) Discrimination complaints investigators who do not complete the annual training described in (b) (1) , or who fail to report such training by January 30th of the following year, will be placed on an "inactive" list and shall not conduct discrimination complaints investigations until the training requirement for the previous year has been met and reported.

**260:25-3-24. Discrimination complaints investigator training verification [REVOKED]**

Before any person investigates a complaint of employment discrimination in the executive branch of state government, the Appointing Authority shall verify that the investigator has either met the training requirements of the Administrator or is not subject to the requirements.

**260:25-3-26. Discrimination complaint investigation training program or course approval [REVOKED]**

(a) The Administrator may approve training that is not conducted by the Human Capital Management Division as meeting

- the four days of initial discrimination complaints investigator training required in 260:25-3-22.
- (b) To request approval of discrimination complaints investigation training, an Appointing Authority shall submit the following course information to the Administrator for review:
  - (1) Course title and a brief description;
  - (2) Classroom hours or Continuing Education Units (CEUs); and
  - (3) Course outline.
- (c) The Human Capital Management Division shall maintain lists of approved discrimination complaint investigation training courses, and may withdraw its approval of courses by notifying employing agencies.
- (d) Persons who complete approved training courses shall submit proof of completion on a form that is prescribed or approved by the Administrator.
- (e) The Administrator shall send notice of the acceptability of training to a person submitting proof of completion. If the person is a state employee, the Administrator shall also send the notice to the Appointing Authority.

**SUBCHAPTER 5. POSITION ALLOCATION AND EMPLOYEE CLASSIFICATION SYSTEM [REVOKED]**

**PART 1. GENERAL PROVISIONS [REVOKED]**

**260:25-5-1. Purpose and scope [REVOKED]**

- (a) The purposes of the rules in this Subchapter are to establish:
  - (1) an employee classification system for all classified employees; and
  - (2) standards and procedures for conducting audits of classified positions.
- (b) The rules in this Subchapter apply only to employees and positions in the classified service, unless otherwise specified.

**260:25-5-2. Authority and responsibility of the Office of Management and Enterprise Services [REVOKED]**

- (a) The Office of Management and Enterprise Services shall develop and maintain a classification system [74:840-1.6A] in which all positions within a job family and level are sufficiently similar in duties and responsibilities that:
  - (1) the same descriptive title may be used to designate each position; and
  - (2) essentially the same selection requirements and procedures may be used to select employees; and
  - (3) under like working conditions, the same pay band may be applied.
- (b) The Office of Management and Enterprise Services shall be responsible for the adoption, revision and abolishment of job family descriptors; for the audit of positions to determine the proper job family to which a position is allocated [74:840-4.3]; and for the assignment of position identification codes.

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### 260:25-5-3. Authority and responsibility of Appointing Authorities [REVOKED]

(a) Appointing Authorities have control of positions within their agency and have the authority to organize their agencies, to create positions, to abolish positions and to prescribe or change the duties and responsibilities assigned to any position or employee at any time. Appointing Authorities shall determine the level within a job family at which duties and responsibilities are assigned [74:840 4.3]. Appointing Authorities have the authority to reclassify employees in accordance with other provisions of the Merit Rules.

- (b) Appointing Authorities are responsible for ensuring that:
- (1) managers and supervisors assign work to employees on a regular and consistent basis that conforms with the employee's classification;
  - (2) employees are classified in accordance with the work they are assigned on a regular and consistent basis as an integral part of their normal job [74:840 4.3];
  - (3) all records relied on by the Appointing Authority in making changes to the job family level are maintained.

### 260:25-5-4. Rights and responsibilities of employees [REVOKED]

(a) Employees shall be familiar with the job family descriptor, Position Description Questionnaire if one exists, and list of accountabilities for the position they occupy.

(b) Employees shall participate in the processes and procedures pertaining to the allocation of positions and classification of employees. This is a duty of all employees. Employees shall supply timely and accurate information about duties and responsibilities of other employees and positions when requested to do so.

(c) An employee has the right and responsibility to file a classification grievance, as provided by law and rule, when duties performed on a regular and consistent basis do not conform to the employee's job family descriptor and level of assignment [74:840 4.3].

(d) Employees are entitled to the job family level they are currently assigned [74:840 4.3] and to perform work consistent with their classification. An employee is entitled to the compensation assigned to the job family level for which duties were performed on a regular and consistent basis. This provision does not entitle the employee to a higher job family level [74:840 4.3] and does not prohibit reclassification in accordance with other Merit Rules. Employees have no right to reclassification, to occupy a specific position, or to the continued assignment of specific duties and responsibilities.

(e) An employee is not required to perform all of the work operations described in a job family descriptor in order to be eligible for classification thereunder. An employee is not eligible or entitled to classification by reason of performing isolated or singular duties incidental to the job but which are described in another job family descriptor. Employees are entitled to the job family level they are currently assigned. [74:840 4.3]

(f) An employee normally performs some of the work of higher rated jobs and some of the work of lower rated jobs when required. The normal duties of an employee may include assistance to [other employees]. [74:840 4.3] An employee is

required to perform the work operations and duties described or appraised as being covered by a job family descriptor pursuant to that degree or amount of guidance or instruction which is considered usual and normal in order to qualify for the classification [74:840 4.3].

(g) The fact that the list of accountabilities used in the appraisal of the employee's work performance in accordance with 260:25 17 31 does not include all of the tasks assigned to the employee, does not exempt the employee from performance of such tasks.

### 260:25-5-6. Notice of creation of positions, changes in positions and abolishment of positions [REVOKED]

(a) After a position is created, the Appointing Authority shall furnish the Human Capital Management Division with a completed Position Description Questionnaire form. OAC 260:25 5 55 describes this form.

(b) The supervisor and the manager of a position shall review the Position Description Questionnaire each time the position becomes vacant to ensure that the duties assigned to the position are in substantial agreement with the job family descriptor and that both continue to identify the work the Appointing Authority wants assigned to the position.

(c) An Appointing Authority may change the duties and responsibilities of positions at any time. When there is a significant change in a position or if there is reason to believe the position is not properly allocated, the Appointing Authority shall request an audit of the position in accordance with 260:25 5 50.

(d) An Appointing Authority shall promptly notify the Human Capital Management Division when a position is abolished.

### 260:25-5-7. Filling of vacant positions prohibited [REVOKED]

(a) No newly created position shall be filled by initial or internal appointment or otherwise encumbered until the position has been initially allocated by the Human Capital Management Division.

(b) An Appointing Authority shall not fill a vacant position being audited until the audit has been completed and the final allocation decision has been made. This prohibition does not apply during the conduct of survey audits of positions pursuant to 260:25 5 57.

### 260:25-5-8. Job family descriptors [REVOKED]

(a) Purpose and use of job family descriptors. Job family descriptors shall be used to distinguish one job family from another as clearly and definitively as possible [74:840 4.3]. Job family descriptors shall also be used as a basis for:

- (1) allocating positions to job families [74:840 4.3];
- (2) selecting employees to fill positions;
- (3) assigning jobs to pay bands;
- (4) ensuring that employees are properly classified [74:840 4.3]; and

- (5) assigning positions to levels by the Appointing Authority.
- (b) Format and content of job family descriptors. The Human Capital Management Division shall determine the format to be used in preparing job family descriptors.
  - (1) A job family descriptor shall consist of:
    - (A) a title and code, including a code for each level in the job family descriptor;
    - (B) a basic purpose describing duties, and responsibilities of employees in the job family;
    - (C) typical functions performed;
    - (D) knowledge and skills necessary to perform work at each level; and
    - (E) the minimum qualifications, such as those for education and experience, that are required for initial or internal appointment to a job included in the job family.
  - (2) A job family descriptor may also include identification information and other information, such as position allocation standards, which facilitates the allocation of positions to job families, the selection of qualified employees, and the assignment of appropriate pay bands.
- (c) Adoption, revision and abolishment of job family descriptors. After the initial conversion of classes to job families on November, 1, 1999, the Administrator shall have a public hearing before adopting a new job family descriptor or revising a job family descriptor to the extent that the allocation of positions or the pay band for the job family is affected, so that interested persons will have an opportunity to express their views. However, the Administrator may make other revisions to job family descriptors and may abolish unused job families as the need to do so is identified.
- (d) Distribution of job family descriptors.
  - (1) Before the effective date of the adoption or revision of a job family descriptor for which positions in an agency have been allocated, the Human Capital Management Division shall provide the Appointing Authority with a copy of the job family descriptor.
  - (2) The Human Capital Management Division shall provide all agencies with a summary of all job family descriptors adopted, revised, or abolished within 1 month after the action.
  - (3) Appointing Authorities shall give employees notice of new and revised job family descriptors and give copies of job family descriptors to employees in the job family and their supervisors upon request.

**PART 3. ALLOCATION OF POSITIONS  
[REVOKED]**

**260:25-5-31. Authority for allocation of positions  
[REVOKED]**

The Office of Management and Enterprise Services has the authority to allocate a position to the appropriate job family. The Human Capital Management Division shall audit both vacant and occupied positions in accordance with Part 5 of this

Subchapter, to determine if positions are properly allocated and shall reallocate positions if it is necessary.

**260:25-5-33. Source of information for allocation of positions [REVOKED]**

The Office of Management and Enterprise Services shall allocate positions on the basis of relevant information supplied by the Appointing Authority. An incumbent employee will be given an opportunity to respond; however, the Office of Management and Enterprise Services will rely on the appointing authority for an official listing of the duties and responsibilities of the position [74:840 4.3(A)]. Except in processing classification reviews according to 260:25-5-51, the Human Capital Management Division shall not make a determination about what duties and responsibilities have been assigned to an employee in the past. The Human Capital Management Division shall not make a determination about what duties and responsibilities should be assigned to an employee in the future.

**260:25-5-34. Determination of appropriate job family [REVOKED]**

- (a) Job family descriptors shall be used in the determination of the allocation of positions. In determining the job family to which a position shall be allocated, a Position Description Questionnaire and a job family descriptor shall be interpreted and applied as a composite picture of positions the job family includes [74:840 4.3].
- (b) Relevant information about the position shall be considered. This may include, but is not limited to, individual position descriptions, information submitted by the Appointing Authority and employee, job audit reports, organizational charts, and lists of accountabilities to be used in appraising performance in the position.
- (c) Consideration shall be given to the specific tasks and duties, levels of authority and responsibility, supervision received and exercised, discretion and judgment required, management of work processes and programs, organizational relationships to other positions, and any other factors which assist in the proper allocation of the position.
- (d) The Human Capital Management Division may consider the relationship of positions to gain a better understanding of the duties and responsibilities of a position being allocated.
- (e) The fact that all of the tasks of a position do not appear in the job family descriptor to which the position has been allocated shall not be taken to mean that the position is necessarily excluded from the job family, nor shall any one example of a typical task, taken without relation to the other parts of the job family descriptor, be construed as determining that a position should be allocated to the job family.
- (f) If a job family descriptor which clearly encompasses the duties and responsibilities of a position does not already exist, the Human Capital Management Division shall allocate the position to the most appropriate existing job family, revise an existing job family descriptor, or prepare a new job family descriptor to describe the position.

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## PART 4. ASSIGNMENT OF JOB FAMILY LEVELS [REVOKED]

### 260:25-5-41. Authority for assignment of positions [REVOKED]

Appointing Authorities have the authority to assign a position to the appropriate job family level, consistent with the job family allocation made by the Human Capital Management Division. Appointing Authorities will be responsible for maintaining appropriate records to track and monitor the level assigned and any changes based on significant changes in duties and responsibilities.

### 260:25-5-44. Determination of appropriate job family level [REVOKED]

(a) Appointing Authorities shall use job family descriptors and the job family allocation made by the Administrator in assigning positions to job family levels. In determining the job family level to which a position shall be assigned, Appointing Authorities shall interpret and apply the Position Description Questionnaire, and the job family descriptor as a composite picture of positions the job family level includes [74:840 4.3]. Appointing Authorities may also use a Supplemental Position Description Questionnaire in assigning positions to job family levels.

(b) Relevant information about the position shall be considered. This may include, but is not limited to, individual position descriptions, information submitted by the Appointing Authority and employee, job audit reports, organizational charts, and lists of accountabilities to be used in appraising performance in the position.

(c) Consideration shall be given to the specific tasks and duties, levels of authority and responsibility, supervision received and exercised, discretion and judgment required, management of work processes and programs, organizational relationships to other positions, and any other factors which assist in the proper allocation of the position.

(d) Appointing Authorities may consider the relationship of positions to gain a better understanding of the duties and responsibilities of a position in assigning a position to a job family level.

## PART 5. AUDIT OF POSITIONS [REVOKED]

### 260:25-5-50. Initiation of audits [REVOKED]

(a) The Office of Management and Enterprise Services may initiate audits of individual positions or survey audits of positions as any need to do so is identified.

(b) Audits of positions shall be conducted by the Human Capital Management Division at the written request of an Appointing Authority [74:840 4.3]. The written request shall include a Position Description Questionnaire completed according to 260:25-5-55.

(c) Audits of positions shall be conducted by the Human Capital Management Division at the written request of the Executive Director of the Merit Protection Commission in connection with a complaint filed with the Commission.

(d) The Human Capital Management Division shall conduct audits on receipt of a Classification Dispute Review Request form completed according to 260:25-5-55.

### 260:25-5-51. Classification Disputes [REVOKED]

(a) An employee has the right and responsibility to file a classification grievance, as provided by law and rule, when duties performed on a regular and consistent basis do not conform to the job family descriptor [74:840 4.3]. The Human Capital Management Division shall not accept classification grievances directly from employees. A formal classification grievance shall be filed with the employing agency according to the rules for filing classification grievances promulgated by the Merit Protection Commission (OAC 455:10-19-1 et seq.). An internal classification grievance must be concluded within the agency before an employee may file a Classification Dispute Review Request form with the Human Capital Management Division. If the resolution decision by the Appointing Authority is to advise the employee to complete a Human Capital Management Division Classification Dispute Review Request form, as provided in OAC 455:10-19-35, the form will be submitted through appropriate supervisory channels to the agency office responsible for human resources functions.

(b) Upon receipt of a Classification Dispute Review Request form submitted through appropriate supervisory channels, the agency office responsible for human resources functions will review it along with any other appropriate records, including the internal grievance file, to determine the nature and scope of the grievance. If the grievance concerns only the job family level to which the position is assigned, a position audit will be conducted by a designated agency representative who has been assigned the responsibility to complete positions audits, to determine the proper job family level. If an Appointing Authority has been delegated position allocation authority in accordance with OAC 260:25-1-30, designated agency representatives will also be responsible for conducting classification grievance audits to determine both the appropriate job family and job family level. In conducting these audits, consideration shall be given to all relevant information concerning the position according to OAC 260:25-5-34.

(c) If the review of the Classification Dispute Review Request and other related information indicates that the grievance includes the job family to which the position is allocated, and the agency has not been delegated position allocation authority, the form will be forwarded within 20 days to the Human Capital Management Division requesting that a position audit be completed. The Human Capital Management Division will then be responsible for completing the audit and determining an appropriate job family for the position. Upon receipt of the allocation decision made by the Human Capital Management Division, a designated agency representative will be responsible for determining the proper job family level for the position.

(d) If an incumbent employee does not agree with the job family level assigned to a position by the Appointing Authority after completion of a grievance audit, the employee may request a review by the Human Capital Management Division. The employee shall submit the request to the agency office responsible for the agency's human resources management functions within 20 calendar days of the date of the notice of the final decision by the agency. Within 7 calendar days of receipt, the agency shall attach all documents considered by the agency in determining the job family level to the request for review and submit it to the Human Capital Management Division. Within 14 calendar days of receipt, the Human Capital Management Division will review the information submitted and make a final decision concerning the proper level of assignment. Such decision shall be based solely on a review of the written documentation submitted.

(e) An employee may request a Human Capital Management Division review of the job family to which a position has been allocated by an agency which has delegated position allocation authority. The request for review must be received in the agency office responsible for the agency's human resource management functions no later than 20 calendar days after the date of the final notice of the decision by the agency.

(f) An employee is entitled to the compensation assigned to the job family level for which duties were performed on a regular and consistent basis [74:840-4.3].

(g) If a classification grievance or a classification dispute review indicates an employee has not received the compensation assigned to the job family level for which duties were performed on a regular and consistent basis, the Appointing Authority shall compensate an employee for the difference between the employee's actual rate of pay and the rate of pay the employee would have received on promotion to the job family level that was consistent with the duties and responsibilities of the employee. Back pay shall be limited to the date the employee filed the classification grievance pursuant to Section 840-6.2 of the Oklahoma Personnel Act.

**260:25-5-52. Demotion resulting from position audit or reclassification [REVOKED]**

If an employee in the classified service is demoted as a result of a position audit or reclassification, the agency shall provide notice, to include all position description documentation, of such demotion to the Office of Management and Enterprise Services. The Office of Management and Enterprise Services shall review the findings of the agency prior to such demotion occurring, to ensure compliance with the law. The Office of Management and Enterprise Services shall complete the review and respond within ten (10) business days of receipt of notice. The provisions of this subsection shall not apply to demotions that are a result of a position audit or reclassification performed by the Office of Management and Enterprise Services. [74:840-6.5(B)]

**260:25-5-53. Effect when an occupied position is vacated during an audit [REVOKED]**

If a position being audited is vacated, the person who filled the position will no longer have any involvement in the audit or the allocation of the position. The Human Capital Management Division will complete the audit and allocate the position on the same basis as any other vacant position.

**260:25-5-54. Collection and exchange of information about positions [REVOKED]**

(a) In addition to the forms described in 260:25-5-55, the Human Capital Management Division may request other information from the Appointing Authority and from the employee if the position is occupied. Additionally, the Human Capital Management Division may collect information through on-site job audits, meetings or other methods. Only the Human Capital Management Division shall have authority to determine when an on-site audit is appropriate.

(b) A list of accountabilities to be used in the appraisal of an employee's work performance in the position in accordance with 260:25-17-31, does not by itself contain sufficient information to make a determination of appropriate allocation for the position.

(c) Upon completion of an audit and the allocation of a position in accordance with 260:25-5-56, the Human Capital Management Division shall send one copy of the allocated Position Description Questionnaire (or the Classification Dispute Review Request Form) to the Appointing Authority and one copy to the employee if the position is occupied. Other materials submitted to, or collected by, the Human Capital Management Division which were considered in the allocation of the position shall become the property of the Office of Management and Enterprise Services and shall not be returned. All such documents are open to the public.

(d) The Human Capital Management Division shall determine those records which are relevant to the proper allocation of a specific position and may refuse or return other records, such as, training manuals, operations manuals, evaluations of individual employee performance, work samples, magnetic tapes and disks, photographs, clippings, etc.

(e) Throughout the process that leads to the allocation of a position, the Appointing Authority shall give the employee who occupies the position being audited copies of any completed Position Description Questionnaire (if the audit was initiated by the Appointing Authority, the Human Capital Management Division, or the Executive Director of the Commission) and any additional written material about the position or the audit before the agency submits the material to the Human Capital Management Division.

(f) Any employee who occupies the position being audited shall provide written comments through appropriate supervisory channels in the agency. The employee shall send a copy of any Classification Dispute Review Request form (if the audit was initiated by a classification grievance) and any additional written material about the position or the audit through appropriate supervisory channels in the agency to the Human Capital

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Management Division. The Appointing Authority shall not alter the statements made by the employee and shall forward materials submitted by the employee to the Human Capital Management Division.

(g) Appointing Authorities shall ensure that employees occupying positions being audited are informed about appropriate supervisory channels in the agency, including when and where to submit information concerning the audit.

### 260:25-5-55. Forms used to describe positions [REVOKED]

(a) ~~Position Description Questionnaire.~~ The basic document for the collection of information about positions is the Position Description Questionnaire, a form prescribed by the Human Capital Management Division. This form shall be completed by the Appointing Authority or a person designated by the Appointing Authority who is familiar with the duties and responsibilities the Appointing Authority has assigned to the position to be audited. The completed form and organizational chart shall be submitted to the Human Capital Management Division according to this Section. The purpose of the Position Description Questionnaire is to help the person completing the form supply the information about a position that is needed to properly allocate the position.

(b) ~~Classification Dispute Review Request form.~~ A completed Classification Dispute Review Request form shall be used as the basis for the allocation and assignment of a position instead of a Position Description Questionnaire if the audit is initiated as a result of a classification dispute according to 260:25-5-51. This form shall be completed by the employee who occupies the position and is the only form authorized for use in completing an audit or review of a position as a result of a classification grievance. The completed form and organizational chart shall be submitted to the Human Capital Management Division according to this Section. The purposes of the Classification Dispute Review Request form are to help the employee completing the form supply the information about his or her duties and responsibilities, to help the Appointing Authority in comparing what the employee does or has done with what the Appointing Authority wants done, and to help persons who are allocating the position or reviewing the classification of the employee to make the correct decision.

(c) ~~Supplemental Position Description Questionnaire.~~ An additional document for the collection of information about positions is the Supplemental Position Description Questionnaire. This form is designed primarily for the collection of information concerning significant changes in the duties and responsibilities assigned to a position since it was last audited and may be used by agencies in conducting reviews related to the job family level to which a position is assigned to determine whether assignment to another level is appropriate. This form will be completed by the Appointing Authority or a person designated by the Appointing Authority who is familiar with the duties and responsibilities the Appointing Authority has assigned or wishes to be assigned to the position. Agencies may also use other forms or methods for collecting the information needed, if desired.

### 260:25-5-56. Conduct of position audits [REVOKED]

(a) ~~The conduct of an audit of a position begins when a properly completed Position Description Questionnaire or a Classification Dispute Review Request form is received in the Human Capital Management Division. The Human Capital Management Division reserves the right to refuse to accept incomplete or improperly completed forms.~~

(b) ~~The Human Capital Management Division shall send a written notice of the allocation of the position and its effective date to the Appointing Authority and the employee if the position is occupied. If the Human Capital Management Division finds that an allocation shall not be made within 30 calendar days after the receipt of a properly completed form according to (a) of this Section, both the Appointing Authority and the employee shall be sent written notice of the expected date of allocation. If the audit is conducted at the request of the Executive Director of the Merit Protection Commission, a notice shall be sent to the Executive Director.~~

(c) ~~After an allocation has been made by the Human Capital Management Division, the Appointing Authority shall assign an appropriate level to the position based on the duties and responsibilities assigned. If the position is occupied, the Appointing Authority shall send a written notice of the level assignment and its effective date to the employee within 20 calendar days of receipt of the Human Capital Management Division allocation.~~

(d) ~~Position audits by an agency, either to determine the proper job family level or to determine an appropriate allocation under a position allocation delegation agreement, shall begin upon receipt of a properly completed Position Description Questionnaire, Classification Dispute Review Request, Supplemental Position Description Questionnaire, or other information prescribed by the agency. These audits shall be completed within 30 calendar days after the receipt of required information, or the requesting official and the incumbent employee shall be provided written notice of the expected date of completion.~~

### 260:25-5-57. Conduct of classification survey audits [REVOKED]

(a) ~~The Human Capital Management Division may conduct audits of positions within job families to resolve internal inequities in the allocation of positions and to determine the need to adopt, revise or abolish job family descriptors. While survey audits are being conducted, the timing and methods for collection of information and issuance of notices provided for individual audits shall not apply. The Human Capital Management Division shall notify Appointing Authorities and employees of the procedures to be followed during survey audits as survey audits are conducted.~~

(b) ~~The allocation of positions may be delayed by the Human Capital Management Division until after the completion of the survey audit and the effective date of adoption, revision or abolishment of job family descriptors as appropriate. At such time, the provisions of 260:25-5-56 shall become applicable.~~



**260:25-5-58. Reinitiation of audit after the allocation of a position becomes final [REVOKED]**

Once the allocation of a position to a job family becomes final in accordance with the Merit Rules in this Subchapter, the Appointing Authority shall not reinitiate an audit unless the duties and responsibilities of the position are significantly changed, a new job family descriptor is adopted, an existing job family descriptor is revised, or a classification survey is conducted that results in a better understanding of the duties and responsibilities of the position.

**PART 9. STATUS OF EMPLOYEES WHEN POSITIONS ARE REALLOCATED [REVOKED]**

**260:25-5-90. Status of incumbent when job family is adopted or revised [REVOKED]**

(a) Direct reclassification does not require individual position audit or promotional posting. In all cases where licensure, certification, or examination is required by law, the requirement shall be met by the employee within any time limits prescribed by law. Otherwise, the employee shall not be required to possess the minimum qualifications or be examined for the successor job family level.

(b) An Appointing Authority shall directly reclassify a probationary or permanent employee in a position which has been reallocated to the job family level to which the position was reallocated, if the:

(1) Human Capital Management Division determines that the duties and responsibilities corresponding with an employee's job family level are identified as part of a new or revised job family descriptor; and

(2) employee had status in the former job family level on a regular basis, that is, not on detail to special duty; however, direct reclassification shall not cancel or otherwise affect a probationary period with the agency or a trial period after promotion.

(c) Direct reclassification shall take place within 30 calendar days after the effective date of the adoption of the new or revised job family descriptor.

(d) If the employee is ineligible for direct reclassification and the Appointing Authority does not or cannot directly reclassify, promote, demote, or transfer the employee, or detail the employee to special duty, the applicable provisions in the Merit Rules for reductions in force shall apply.

**260:25-5-91. Other position reallocations [REVOKED]**

(a) If a position is reallocated under conditions other than those outlined in 260:25-5-90, and the classification of an incumbent employee does not match the new allocation of the position, the Appointing Authority shall take action within 60 calendar days after the effective date of the allocation to ensure that the employee is properly classified. The Appointing Authority may:

(1) transfer a permanent employee to another position in the agency allocated to the job family matching the classification of the employee in accordance with the Merit Rules governing transfers; or

(2) change the duties of the position to the extent necessary to reflect the classification of the employee and initiate another audit of the position; or

(3) reclassify or promote a permanent employee to the job family to which the position occupied by the employee was reallocated.

(b) If the employee is ineligible or is not selected to continue in the reallocated position, and if the Appointing Authority does not or cannot promote, demote or transfer the employee, detail the employee to special duty or change the duties of the position to match the classification of the employee, the applicable provisions in Merit Rules for reductions in force shall apply.

**SUBCHAPTER 7. SALARY AND PAYROLL**

**PART 1. SALARY AND RATE OF PAY**

**260:25-7-1. Purpose and general provisions**

(a) The purpose of the rules in this Part is to establish salary, rates of pay, and payroll regulations, pay regulations, regulations for performance pay increases, rates for pay differentials, on-call pay, and other types of pay incentives and salary adjustments [74:840 1.6A].

(b) Pay raises are prohibited unless specifically authorized by legislation or the Merit Rules. A cost of living raise or any other type of raise that would be given to state employees on an across the board basis is prohibited unless specifically authorized by the Legislature [74:840 2.17].

(c) The rules in this subchapter provide for market adjustments, increases upon lateral transfer, skill based adjustments, equity based adjustments, career progression increases, salary adjustments upon completion of the initial probationary period or trial period, and performance based adjustments. Appointing Authorities may use these pay mechanisms only if funds are available in the agency's budget for the current and subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency. Upon certification from the Director of State Finance that an Appointing Authority has exceeded the agency's budget for the current or subsequent fiscal year due to the use of the pay movement mechanisms listed in this subsection, the Administrator may withdraw authorization for the agency to use the following pay movement mechanisms during the next appropriations cycle: market adjustments, increases upon lateral transfer, equity based adjustments, performance based adjustments, and career progression increases [74:840 2.17].

(d) The rules in this subchapter do not apply to employees and positions in the unclassified service unless stated otherwise.

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## **260:25-7-1.1. Salary administration plans [REVOKED]**

~~An Appointing Authority shall adopt a salary administration plan for the agency's classified positions and submit the plan for the approval of the Administrator. In the salary administration plan, the Appointing Authority may establish conditions under which the Appointing Authority may establish skill-based pay programs and other pay movement mechanisms authorized by 74:840 2.17 except performance-based adjustments. Proposed amendments to the salary administration plan may be submitted to the Administrator for approval at any time.~~

## **260:25-7-2. Salary schedule [REVOKED]**

~~The rate of pay of employees shall be maintained within pay band structures established by the Human Capital Management Division of the Office of Management and Enterprise Services [74:840 4.6] for the job family level and kept within the established minimum and maximum rates of pay, except as provided by law or Merit Rule.~~

## **260:25-7-3. Entrance salary [REVOKED]**

~~(a) Appointing Authorities may establish the hiring rate for a classified job at any point between the minimum and maximum of the pay band for the job family level without prior approval of the Administrator. Hiring rates shall not be established below the minimum or above the maximum rate of pay established for a pay band.~~

~~(b) Appointing Authorities shall establish hiring rates for jobs included in a pay band based on the work performed, the duties and responsibilities assigned, and other relevant factors. This may include consideration of recruitment and retention issues, internal pay equity, market rates, previous hiring rates, and the training and qualifications of the employee being appointed.~~

## **260:25-7-4. Rate of pay upon reinstatement to the classified service [REVOKED]**

~~(a) When an Appointing Authority reinstates a person to the classified service in accordance with 260:25 9 102, the Appointing Authority may set the person's base salary at any point within the pay band for the job to which the person is reinstated which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors, except as provided in Subsection (b).~~

~~(b) When an Appointing Authority reinstates a person within the same agency to the classified service in accordance with 260:25 9 102 to a position in the same job family level as the employee's previous position after less than a 30-day break in service, the Appointing Authority shall set the employee's base salary at any rate within the pay band that does not exceed the employee's previous base salary.~~

## **260:25-7-6. Sign-on pay incentive [REVOKED]**

~~(a) Appointing Authorities may implement a pay incentive for the following individuals who are appointed to positions~~

~~in job families for which there are critical recruitment and retention problems as identified by the Appointing Authority [74:840 1.6A(11)]:~~

~~(1) individuals not currently employed in state government;~~

~~(2) Carl Albert Executive Fellows and other professional trainees and students employed pursuant to paragraphs 10 and 11(a) and (b) of Section 840 5.5(A) of Title 74 of the Oklahoma Statutes; or~~

~~(3) individuals employed pursuant to the Cooperative Engineering Trainee Program.~~

~~(b) Appointing Authorities who choose to implement the pay incentive shall file a plan with the Office of Management and Enterprise Services which contains information related to the implementation of the pay incentive within the agency. The plan shall provide documentation of the critical recruitment and retention problems and shall include a project description, specific prerequisites that each employee shall meet in order to receive the pay incentive, and information concerning the funding of the incentive from the agency's existing budget. The plan shall be signed by the Appointing Authority, and this signature requirement may not be delegated. No payment shall be made under this Section until the plan has been reviewed and accepted by the Administrator.~~

~~(c) The pay incentive shall not exceed \$5,000.00 and is payable to eligible individuals as a lump sum payment or in two equal payments during the first six months of state employment. Former state employees may be eligible for the pay incentive following a break in service of at least 180 days.~~

~~(d) To receive the pay incentive, an eligible individual shall be required to sign an agreement form acknowledging that the individual is obligated to repay the entire incentive, including tax withholdings on the incentive, if the individual leaves state employment or accepts employment with another state agency within 1 year after he or she receives the pay incentive. Appointing Authorities may use the agreement form developed by the Administrator or any other agreement form which is consistent with the provisions of this Section.~~

~~(e) An individual may receive only one sign-on pay incentive during his or her state employment.~~

## **260:25-7-7. Pay differential [REVOKED]**

~~(a) The Administrator may authorize a pay differential [74:840 1.6A(11)] for a position within a job family because of special duty requirements related to the position. This may include shift pay, on-call pay, skill-based pay adjustments, and other types of differentials based on special work requirements, as approved by the Administrator. These payments shall be over and above the employee's base pay and shall be paid only as long as the employee occupies the particular position under the circumstances which have necessitated the differential. The request for the differential shall be submitted in writing by the requesting agency and shall adequately identify the need.~~

~~(b) An Appointing Authority shall determine whether pay differentials will be paid while employees are in paid leave status or provided only for hours actually worked. Appointing~~

Authorities shall apply such practices uniformly. Pay differentials shall not be provided for hours that an employee is not in pay status. Pay differentials are not limited by the maximum of the pay band.

**260:25-7-8. Rate of pay upon recall to job family level from which removed by reduction-in-force [REVOKED]**

The base rate of pay of an employee who has been recalled to the job family level from which removed by a reduction in force in accordance with OAC 260:25-13, Part 5, shall be fixed at the rate of pay received immediately before the reduction in force. The employee's rate of pay shall be adjusted according to any across the board increases for agency employees in that job family level made in the interim. If the pay band for the job family level has been changed in the interim, the employee's rate of pay shall be adjusted in accordance with 260:25-7-13.

**260:25-7-9. Rate of pay for positions that become classified [REVOKED]**

Whenever a position in an agency is brought under the classified service, the rate of base pay of the continuing incumbent shall be placed in the pay band for the job family and level to which the position is allocated, without adjustment, if such base rate is equal to or greater than the minimum rate of pay established for that job. If it is not, the rate of pay shall be increased to the minimum rate established by the agency for that job. Unless otherwise provided by statute, pay adjustments and required classification actions for incumbent employees shall be retroactive to the effective date of the placement of the employee in the classified service. No employee's base rate of pay shall be reduced as a direct result of becoming classified.

**260:25-7-10. Rate of pay higher than maximum [REVOKED]**

Where the base rate of pay of an employee is higher than the maximum rate of pay for the pay band to which the job is assigned, the base rate will remain the same as long as the employee retains the present classification, but no further increases will be approved unless provided by statute.

**260:25-7-11. Continuous Service Incentive Plan [REVOKED]**

(a) Appointing Authorities may implement a pay incentive plan [74:840 1.6A(10)] intended to promote continuous service within the first two years of state employment. The plan shall be limited to job families for which there are critical recruitment and retention problems as identified by the Appointing Authority.

(b) The pay incentive shall consist of scheduled periodic payments over the employee's first two (2) years of continuous service in the targeted job families, not to exceed a total of \$2,500 in any twelve (12) month period. Payments may not be made prospectively or prorated. No payment shall be made under the plan until the employee has completed at least six (6) months of continuous service in the targeted job family.

(c) At the discretion of the Appointing Authority, the following persons filling positions in the targeted job families may be included in the plan:

- (1) Persons not currently employed in state government;
- (2) Current state employees during their first two (2) years of continuous state employment in the targeted job family; and
- (3) Former state employees following a break in service of at least thirty (30) days.

(d) Appointing Authorities who choose to implement the pay incentive shall submit a written plan to the Administrator of the Human Capital Management and the Director of the Office of Management and Enterprise Services prior to implementation. The plan shall identify the job families to which the pay incentive will be applicable and shall document the critical recruitment and retention problems and the agency's rationale for the plan. The plan may provide for different pay incentives for different job families at the discretion of the Appointing Authority. The plan shall also identify the criteria for eligibility and shall include information concerning the funding of the pay incentive from the agency's existing budget. The plan shall be signed by the Appointing Authority, and this signature requirement may not be delegated. No payment shall be made under this Section until the plan has been reviewed and accepted by the Administrator.

**260:25-7-13. Adjustments in rates of pay when pay bands are changed [REVOKED]**

When a pay band is changed for a job family level, all employees in that classification, including persons whose base rate of pay exceeds the maximum of the old pay band, shall receive an adjustment to the new pay band. No person's base salary may be reduced as a result of such a change. All employees of an agency in that job shall be given uniform treatment using one of the following methods: providing adjustment to the minimum of the new pay band; providing a percent increase given to each employee, which shall not exceed the percent of difference between the minimum of the old pay band and the minimum of the new pay band; or any other uniform method of adjustment approved by the Administrator. At the discretion of the Appointing Authority, no change in employee base salary need occur provided that all affected salaries fall within the new pay band. OAC 260:25-7-10 does not apply to adjustments made in accordance with this Section.

**260:25-7-14. Rate of pay upon reclassification, promotion, career progression, demotion, and transfer [REVOKED]**

(a) **Rate of pay when incumbent is reclassified directly.** When an employee is reclassified directly under 260:25-5-90, the base rate of pay shall be fixed in accordance with 260:25-7-13.

(b) **Rate of pay upon promotion or career progression.**  
(1) An Appointing Authority shall adopt objective written criteria for the amount of salary advancements on promotion or career progression. These criteria shall be a

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part of the agency salary administration plan established under 260:25-7-1.1 and shall be consistent with state and federal statutes prohibiting discrimination.

(2) The Appointing Authority shall set an employee's base salary on promotion or career progression at no less than 5% and no more than the maximum of the assigned pay band.

(3) The Appointing Authority shall not lower the base salary of an employee on promotion or career progression. If the employee's base salary before promotion or career progression exceeds the maximum of the new pay band, the employee's base salary shall remain the same.

(c) **Rate of pay when demoted.** The base rate of pay of an employee who is demoted shall be set by the Appointing Authority at any rate of pay within the pay band for the job to which demoted, which does not exceed that employee's last base rate of pay; however, in the event an approved Salary Administration Plan is in effect, the Appointing Authority may increase the base rate of pay for the job to which the employee is demoted into which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors. An Appointing Authority may delay setting the base rate of pay upon demotion for up to 1 year when the demotion is due to an agency reorganization. For the purposes of this subsection, "agency reorganization" means the reclassification of employees in lieu of reduction in force.

(d) **Rate of pay upon intra-agency lateral transfer.** An Appointing Authority may provide up to a 5% increase in base rate of pay, not to exceed the maximum rate of pay for the pay band, for an employee upon intra-agency lateral transfer to a position in the same job family and level or another job family and level with the same pay band assignment, based on the needs of the agency. [74:840-2.17]

(e) **Rate of pay upon interagency lateral transfer.** An Appointing Authority may set the base rate of pay for an employee on an interagency lateral transfer at any rate of pay within the pay band for the job to which the person is transferred which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors.

### 260:25-7-15. Salary reduction [REVOKED]

No employee salary shall be reduced except as specifically provided in the Merit Rules.

### 260:25-7-16. On-call pay [REVOKED]

An Appointing Authority shall compensate a classified employee for a minimum of two (2) hours work if the employee is required to report to a work location while on call. Employees are guaranteed compensation for each occasion in which a call back is made after having left the regular work station. The compensation may be in the form of compensatory time in lieu of cash payment. [74:840-2.29]

### 260:25-7-17. Rate of pay upon detail to special duty [REVOKED]

The pay of an employee who is detailed to special duty in accordance with 260:25-11-110 shall not be reduced, but must be increased to at least the minimum base rate but not more than the maximum base rate the employee could receive upon promotion to that job family and level, provided:

(1) any such temporary increase shall not affect eligibility for increase in the regular job family and level which the Appointing Authority could grant if the employee had not been detailed.

(2) at the conclusion of the detail, pay shall revert to the authorized base rate of pay in the employee's regular job family and level.

### 260:25-7-20. Market adjustments [REVOKED]

Upon approval by the Administrator, an Appointing Authority may make market adjustments for employee(s) in a job family or job family levels. An Appointing Authority making such a request shall provide the Administrator with information supporting the request, such as relevant market data, information on recruitment or retention problems, or other appropriate data. The Appointing Authority shall also certify that an adjustment can be made within the agency's budget for the current and subsequent fiscal year without the need for additional funding. An Appointing Authority may limit market adjustments to employees rated at least "Meets Standards" on the most recent performance evaluation.

### 260:25-7-21. Relocation Incentive [REVOKED]

(a) Appointing Authorities may implement a pay incentive plan intended to encourage employees to relocate when it is determined that there is difficulty recruiting qualified candidates for the position. The plan must be approved by the Human Capital Management Division and must identify the job family or families to which the incentive will be applicable. The plan will also identify factors that establish the need for the incentive, which may include, but need not be limited to, one or more of the following:

(1) Recent turnover in similar positions in the locality involved;

(2) Employment trends and labor market factors that may affect the agency's ability to recruit candidates for the locality involved;

(3) Special or unique qualifications required for the position;

(4) Failure of non-pay authorities, such as special training or work scheduling flexibilities, to resolve difficulties in recruiting candidates;

(5) The desirability of the duties, work or organizational environment, or geographic location of the position; and

(6) Other supporting factors.

(b) The plan must contain a certification that the additional costs associated with the proposed incentive can be accommodated within the agency's existing budget. The plan shall be

signed by the Appointing Authority, and this signature requirement may not be delegated. No payment shall be made under this Section until the plan has been reviewed and accepted by the Administrator.

(e) A position is considered to be in a different geographic area if the worksite of the new position is 50 or more miles from the worksite of the position held by the employee immediately before the move. The employee must establish a residence in the new geographic area before an appointing authority may pay a relocation incentive.

(d) The relocation pay incentive shall not exceed 20% of the employee's base pay in the new position. The determination to pay a relocation incentive must be made before the employee enters on duty in the position. An agency may pay a relocation incentive:

- (1) As an initial lump sum payment at the commencement of a 2 year service period required by a service agreement;
- (2) In installments throughout the 2 year service period; or
- (3) As a final lump sum payment upon the completion of the 2 year service period.

(e) To receive the incentive, employees shall be required to sign an agreement form acknowledging they are obligated to repay the entire incentive, including tax withholdings on the incentive, if they leave state employment or accept employment with another state agency prior to the expiration of 2 year service period.

(f) An employee may receive no more than two relocation pay incentives during his or her state employment. A relocation pay incentive will not be approved if an earlier relocation pay incentive was approved within the previous five year period.

**260:25-7-22. Salary adjustments upon completion of initial probation or trial period [REVOKED]**

An Appointing Authority may provide base salary adjustments not to exceed 5% to probationary classified employees achieving permanent status following the initial probationary period. An Appointing Authority may also provide this base salary adjustment to employees reinstated to the classified service after a break in service upon completion of a probationary period, and to permanent classified employees successfully completing trial periods after intra agency lateral transfer or promotion to a different job family level or career progression to a different job family level. [74:840 2.17]

**260:25-7-24. Skill-based pay adjustments [REVOKED]**

(a) An Appointing Authority may develop skill based pay programs upon the approval of the Administrator. Such programs shall be related to the acquisition or possession of additional skills and abilities which can be applied to the work to be performed and which will increase the value of the employee to the agency. The skills or abilities must be verifiable through certification, licensure, diploma, or some other

method and must be beyond the qualifications required to perform the primary or essential functions and responsibilities of the employee's position. Requests to establish skill based pay programs shall include a complete description of the training or education required, how it will benefit the agency, the proposed salary adjustment, and any other information that will assist in evaluating the request.

(b) Skill based pay adjustments may be provided as a differential over and above an employee's base pay or as lump sum payment. Lump sum skill based pay adjustments may be awarded upon initial certification and any subsequent recertification as may be required by the certifying organization and identified in the agency's skill based pay plan. Lump sum payments shall be limited to 10% of an employee's annual salary, and differentials shall be limited to 10% of an employee's monthly salary for employees paid on a monthly basis, and 10% of an employee's biweekly salary for employees paid on a biweekly basis. Except as provided in Subsection (c), skill based pay adjustments shall be paid only as long as the employee occupies a position to which the skill is applicable in accordance with the agency's salary administration plan. An employee may receive multiple skill based pay differentials so long as the combined total of all skill based pay differentials does not exceed 15%. All eligible employees of an agency in jobs affected by a skill based pay adjustment shall be given uniform treatment.

(c) Skill based pay differentials shall not be included in the employee's base salary and are subject to being discontinued under circumstances described in Subsection (b). [74:840-2.17]

**260:25-7-26. Equity-based pay adjustments [REVOKED]**

An Appointing Authority may provide equity based pay adjustments when employees are significantly underpaid relative to other employees performing the same or similar duties, or employees with the same role or accountabilities, in the same job family and level within the same agency. An Appointing Authority may limit equity based pay adjustments to employees rated at least "Meets Standards" on the most recent performance evaluation. All eligible employees of an agency in jobs affected by an equity based adjustment shall be given uniform treatment. No employee may receive more than one equity based adjustment in the same job family and level in a twelve month period.

**260:25-7-27. Performance-based adjustments [REVOKED]**

(a) Performance based adjustments enable Appointing Authorities to award a salary increase or lump sum payment to employees who have achieved an overall rating of "meets standards" or better on their most recent performance evaluation. This performance evaluation shall be conducted with the standard performance management system provided by 260:25-17-31.

(b) Appointing Authorities may adopt a performance based adjustment program for permanent classified full time and

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~~part time employees pursuant to this Section. The program may allow performance based adjustments for part time employees on a prorated basis.~~

~~(c) In order to adopt a performance based adjustment program, an Appointing Authority must submit a written performance based adjustment plan to the Administrator for approval. The plan must:~~

~~(1) Indicate the manner in which the Appointing Authority intends to award performance based adjustments, including a determination that performance based adjustments will be awarded for overall ratings of "meets standards" and "exceeds standards," or "exceeds standards" only. The plan shall include the amount or percentage that the Appointing Authority will award to qualifying employees;~~

~~(2) Indicate whether the Appointing Authority will award performance based adjustments as an increase to the employee's salary, a lump sum payment, or a combination thereof;~~

~~(3) Include certification by the Appointing Authority that the agency can fund the performance based adjustment program for the current and subsequent fiscal year without the need for additional funding; and~~

~~(4) Include a statement that the Appointing Authority may discontinue performance based adjustments at any time should it be necessary to prevent a budget shortfall. The Appointing Authority shall notify employees of the discontinuation of the plan and the reason therefore.~~

~~(d) The performance based adjustment plan must be approved by the Administrator before the Appointing Authority may grant performance based adjustments to any permanent classified employee.~~

~~(e) An Appointing Authority shall not grant performance based salary increases which cause an employee's base salary to exceed the maximum of the pay band to which the employee is assigned. [260:25-7-10] Such employees may be given performance based salary increases up to the maximum of the pay band to which assigned and may also receive the remainder of the increase as a lump sum payment.~~

~~(f) An Appointing Authority may grant only one performance based adjustment to any employee for any 12 month evaluation cycle. An Appointing Authority shall not award a performance based adjustment to any employee based upon a performance evaluation which is more than one year old.~~

### PART 3. PAYROLL

#### 260:25-7-31. Certification of payrolls

(a) **Certification.** No state disbursing or auditing officer shall make, approve or take part in making or approving any payment for personal service to any person holding a position in state government ~~the classified service~~, unless the payroll voucher or account of such pay bears the certification of the Appointing Authority that the persons named therein have been appointed and employed in accordance with the provisions of the applicable Oklahoma law ~~Personnel Act and the Merit Rules~~ [74:840-1.18(D)].

(b) **Withholding of certification.** The Appointing Authority may for proper cause withhold certification from an entire payroll or from any specific item or items [74:840-1.18(D)]. Whenever the Office of Management and Enterprise Services finds that any person is employed or is proposed to be paid as an employee in ~~the classified service~~ in any amount not provided for under the provisions of ~~the Oklahoma Personnel Act and the Merit Rules~~ applicable law, the Office of Management and Enterprise Services shall notify the concerned state disbursing or auditing officer. After such notice, the concerned state disbursing or auditing officer shall not approve any payment to such person except in accordance with the provisions of the Act or the Merit Rules.

~~(c) Suit to restrain disbursement.~~ Any citizen may maintain a suit to restrain a disbursing officer from making any payment in contravention of any provision of ~~the Oklahoma Personnel Act or the Merit Rules~~ [74:840-1.18(D)].

~~(d) Recovery of erroneous payments.~~ Any sum paid contrary to any provision of ~~the Oklahoma Personnel Act or the Merit Rules~~ applicable law may be recovered in an action maintained by any citizen, from any officer who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment, or from the sureties on the official bond of any such officer [74:840-1.18(D)]. All monies recovered in any such action shall be paid into the State Treasury [74:840-1.18(D)].

~~(e) Right of action by employees employed in contravention to the Merit Rules~~ applicable law. Any person appointed or employed in contravention of any provision of ~~the Oklahoma Personnel Act or the Merit Rules~~ applicable law and who performs service for which unpaid, may maintain an action against the officer or officers who purported to appoint or employ the person in order to recover the agreed pay for such services, or the reasonable value thereof if no pay was agreed upon. [74:840-1.18(D)] No officer shall be reimbursed by the state at any time for any sum paid to such person on account of such services [74:840-1.18(D)].

~~(f) Action to compel payroll certification.~~ If the Appointing Authority wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain an action or proceeding in the courts to compel the Appointing Authority to certify such payroll voucher or account [74:840-1.18(D)].

### SUBCHAPTER 9. RECRUITMENT AND SELECTION [REVOKED]

#### PART 1. GENERAL PROVISIONS [REVOKED]

##### 260:25-9-1. Purpose [REVOKED]

~~The purpose of the rules in this Subchapter is to establish policies and procedures for the recruitment of qualified persons, including the administration of valid job related nondiscriminatory selection procedures providing for competitive examinations... and for other reasonable selection criteria [74:840-1.6A(6)]; for the referral of capable candidates for~~

vacancies... and the employment of individuals on other types of appointments as necessary [74:840 1.6A(8)]; and for impartial consideration of applicants for employment [74:840 1.6A(3)].

**260:25-9-3. Selection procedures [REVOKED]**

(a) Selection procedures may consist of written tests; ratings of training and experience; performance tests; physical, educational, and work experience requirements; interviews; oral examinations; application forms and any other type of examination.

(b) When a job requires a written test, the Administrator shall administer tests to applicants or employees with disabilities that impair sensory, manual, or speaking skills in formats that do not require the use of the impaired skill, if the applicant or employee notifies the Administrator before the test is administered.

(c) Before appointment, applicants may be required to pass a physical examination specified by the Appointing Authority when requirements of the job demand specific physical condition or capabilities. Such physical examinations shall be uniform in nature and applied to all persons in that job within the agency. The responsibility for administering the physical examinations lies with the Appointing Authority.

**260:25-9-4. Announcements [REVOKED]**

The Administrator shall make public announcements of all entrance examinations in advance of the issuance of certificates. Such announcement shall include the waiting period between the date of the announcement and the release of names of eligible applicants to the appointing authority. An announcement may state the duties and salaries of positions in the jobs for which examinations are to be held; the qualifications required for admission to examinations; the time, place and manner of application; the proposed relative weights to be given the parts of the examination; and such other information as the Administrator may consider pertinent and useful.

**260:25-9-5. Applications [REVOKED]**

An application for employment shall be made on a form prescribed by the Administrator and shall be considered part of the examination. The application form solicits information from the applicant regarding residence, veterans preference, education, training, experience and other eligibility information. The form may also ask for demographic information, such as race, sex, and ethnicity, for statistical analysis and state and federal record keeping and reporting requirements. Demographic information may also be used for special employment programs specifically authorized by law. Information provided by applicants shall be subject to verification. All applications shall be signed in writing or by electronic signature by the applicant certifying the truth of all statements he or she made in the application. Applications must be filed with the Human Capital Management Division on or before the closing date specified in the announcements or postmarked before midnight on that date.

**260:25-9-6. Establishment of minimum qualifications [REVOKED]**

The minimum qualifications established for each job family level shall constitute the entrance requirements for classified positions.

**260:25-9-9. Disqualifications [REVOKED]**

(a) Except as provided in 260:25-9-131, an Appointing Authority or the Administrator may permanently or temporarily refuse to certify, disqualify or remove a person's name from a register if:

- (1) the person lacks any of the education, experience, or certification requirements for the job.
- (2) the person lacks any other requirement established by Oklahoma statute or federal law for the job.
- (3) the person fails any part of an Appointing Authority's background investigation.
- (4) the person made a false statement of material fact in an application for employment or otherwise misrepresented himself or herself during the application process.
- (5) the person has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment process.
- (6) even with reasonable accommodation, the person is unable to perform the duties of the job or position(s) or is unable to do so without risk to himself or herself, the agency, or others, beyond that risk normally associated with such duties.
- (7) the person has obtained information regarding examinations to which an applicant is not entitled, or the person has taken part in the development, administration, or correction of the examinations.
- (8) the person is in possession of unauthorized materials or electronic device during an examination.
- (9) the person has failed to submit an application correctly or within the prescribed time limits.
- (10) the person has failed to maintain a record of current address at the Human Capital Management Division evidenced by the return of a letter by the U.S. Post Office, if properly addressed to the last address of record.
- (11) the person has, within two (2) years prior to the date of certification, been discharged for delinquency, misconduct, absenteeism, inability to perform the same type job for which applying or other disciplinary reason or has resigned in lieu of such dismissal from any public or private employer. The Appointing Authority may extend the two (2) year restriction for good cause.
- (12) the agency has exercised a selective qualification as established in 260:25-9-74.
- (13) an individual is ineligible for employment due to citizenship or residence requirements as prescribed in 260:25-9-75.
- (14) the person fails to reply to a request for an interview or fails to appear for a scheduled interview.

(b) The Administrator may remove or an Appointing Authority may request that the Administrator remove a person's name from all registers for a period of up to two (2) years from

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the date of an incident as described in (a)(4), (a)(5), (a)(8), (a)(11), and (a)(14).

(e) Action initiated by an Appointing Authority under (a)(1), (a)(7), and (a)(9) of this Section shall be subject to the approval of the Administrator. Any person who is disqualified shall be notified electronically. Applicants who have not provided an e-mail address shall be notified in writing of this action and the reason for it. At the appropriate time, the Administrator shall notify an individual of the right to appeal. The party initiating the action, whether the Administrator or an Appointing Authority, shall be independently responsible for justifying the action, for both the nature and accuracy of the supporting information, and for the retention of that information pending appeal of the action.

## 260:25-9-10. Required certification of qualifications before promotions [REVOKED]

(a) The Administrator shall certify that a candidate meets the necessary job qualifications of a job family level in the classified service for the purpose of allowing the candidate to be appointed. Subsections (b), (c), and (d) of this Section describe exceptions to these requirements. The Appointing Authority shall use the electronic form made available online by, or accepted by, the Administrator to request certification of qualifications. The form solicits information about the candidate's qualifications.

(b) An employee who is demoted shall meet the minimum qualifications of the lower job to which he or she is demoted unless the demotion is to a job:

- (1) within the same job family, or
- (2) in which the employee previously has had permanent status, or
- (3) in the same job family as and below one in which he or she previously has had permanent status.

(c) Career progression promotions shall be exempt from subsection (a). The exception shall apply only after an employee has been in a lower level of the job family for an amount of time equal to the difference in the lengths of the experience requirements of the two levels. This exception shall not apply in any case to entry into a job family or where the next higher level is a supervisory position.

(d) The Administrator may delegate certification of qualifications to an Appointing Authority according to a written agreement made under Section 840 1.15 of the Act and the rules in Part 3 of Subchapter 1 regarding delegation of human resources functions.

## 260:25-9-13. Error in certification, scoring, or recording applicant information [REVOKED]

An error in certifying, scoring, or recording applicant information, which affects the relative ranking or application status of an applicant for initial or internal appointment, shall be corrected. The error shall be corrected by the Administrator, or if the error was made by an Appointing Authority to whom the Administrator has delegated certification of qualifications, the error shall be corrected by that Appointing Authority. The

correction shall not affect a good faith offer of appointment already made that is otherwise in accordance with the Act and the Merit Rules. The Appointing Authority who corrects an error shall promptly notify the Administrator of the correction.

## PART 3. WRITTEN AND PERFORMANCE TESTS [REVOKED]

### 260:25-9-32. Proficiency certificates [REVOKED]

(a) The Administrator shall accept certificates of proficiency issued within the last 12 months by accredited private or public schools, colleges, or the Oklahoma Employment Security Commission in lieu of typing and key entry tests [74:840 4.12]. The proficiency certificate solicits information about the applicant, the typing and/or key entry test upon which the applicant has demonstrated proficiency, and the name and address of the certifying official and agency or school.

(b) The proficiency certificate shall be based on the results of a performance test which is comparable to the Human Capital Management Division performance test for the same job.

### 260:25-9-33. Licensure [REVOKED]

If required to be ranked, applicants who have been previously tested and are currently licensed by the State of Oklahoma, shall be rated (ranked) according to training and experience when applying for jobs that require such testing and licensure [74:840 4.12].

### 260:25-9-35. Testing for promotions, demotions, transfers and reinstatements [REVOKED]

Examinations for promotion, demotion, transfer, and reinstatement shall not be required unless specified in the agency's promotional plan.

### 260:25-9-37. Repeating examinations [REVOKED]

(a) A person with a current and qualifying application may repeat a multiple-choice test 60 days from the original test date. A performance test may be repeated daily for as long as an applicant has a current and qualifying application that requires the performance test.

(b) The repeat interval for a written or performance test shall apply to both entrance and promotional examinations. The most recent, valid score on a written test will be used. An applicant may request to be certified with a score on a performance test other than the most recent one, provided that the score requested on a test is consistent with guidelines issued and made public by the Administrator. Otherwise, the examination is considered void.

### 260:25-9-38. Reviewing examinations [REVOKED]

Applicants shall be entitled to inspect their own rating and examination papers maintained in the Human Capital Management Division up to 30 days after the date of the examination. Such inspection shall be permitted only during regular business



hours at the Human Capital Management Division and shall include only those materials which would not compromise the security of the selection procedure. Any person who reviews an examination may not participate in the same examination for one year from the date of the review.

**260:25-9-39. Identification numbers [REVOKED]**

An identification number shall be used to identify all test materials of each applicant.

**260:25-9-40. Test results [REVOKED]**

Applicants who take an examination shall be notified electronically of the results. Applicants who have not provided an e-mail address shall be notified in writing.

**PART 5. REGISTERS [REVOKED]**

**260:25-9-50. Establishment of registers [REVOKED]**

The Human Capital Management Division shall establish and maintain registers as necessary to provide an adequate supply of qualified eligibles for positions in the classified service. The names of such persons shall be placed on the register in the order of their final score except as provided by law for veterans. Registers shall not be open for public inspection.

**260:25-9-51. Duration of registers; periods names may remain on registers [REVOKED]**

(a) The Administrator shall determine the duration of each register. After notice to affected eligibles, the Administrator may abolish a register or may shorten or extend the time that an eligible's name may remain on a register.

(b) If an eligible's name is not removed from a register under subsection (a) of this Section or other provisions of the Merit Rules, that eligible's name may remain on the register for a specific class for a period consistent with guidelines issued and made public by the Administrator and applied uniformly to all applicants. Subsequent applications for a job will be accepted only if the register for that job is open for recruitment.

(c) An applicant's name shall not appear on any register on the basis of a void examination as defined in 260:25-9-37.

**260:25-9-52. Removal of names from registers [REVOKED]**

(a) In addition to the reasons set forth in 260:25-9-9, when a written request which states the reason for such action is received from an Appointing Authority or based upon an action of the Human Capital Management Division, the Human Capital Management Division may temporarily or permanently remove an eligible from a register for any of the following reasons:

- (1) Removal requested by eligible applicant.
- (2) Appointment through certification to fill a permanent position in the same job.

(3) Failure to respond within 7 calendar days exclusive of the date of mailing of a written inquiry by the Appointing Authority relative to availability for appointment. Such inquiry shall include the date and time by which the eligible must contact the Appointing Authority.

(4) Failure to respond within 72 hours to an electronic message from the Appointing Authority relative to availability for appointment. Such inquiry shall include the date and time by which the eligible must contact the Appointing Authority and must be sent to the contact information provided by the eligible.

(5) Failure to appear for a scheduled interview.

(6) Declination of further consideration for selection.

(7) Declination of appointment.

(8) Failure to report for duty within the time specified by the Appointing Authority. (See 260:25-9-94.)

(9) Abolition of register by the Human Capital Management Division.

(b) Any person so affected shall be notified of this action and the reason for it.

**260:25-9-55. Statement of availability [REVOKED]**

It shall be the responsibility of eligibles to notify the Human Capital Management Division of any change in address or other change affecting availability for employment. Whenever an eligible notifies the Human Capital Management Division of conditions which restrict his or her availability or limit the locations where employment will be accepted, the eligible's name shall be withheld from all certificates which do not meet the stated conditions and locations. At any time, an eligible may file a new statement of conditions under which he or she will be available for employment.

**PART 7. CERTIFICATION [REVOKED]**

**260:25-9-70. Request for certification [REVOKED]**

When a new employee is needed to fill a vacancy in a classified position, the Appointing Authority may submit a request for certification to the Human Capital Management Division. The Appointing Authority may submit such a request only after the position has been allocated. The request shall include information necessary in order to issue a certificate, such as job family level and code, type of job, location of work, and certification method requested by the Appointing Authority. With the approval of the Administrator, the Appointing Authority may request certification as provided in 260:25-9-71.

**260:25-9-71. Certification methods [REVOKED]**

(a) Availability. The Administrator shall issue certificates which include the names of eligibles whose statements of availability and qualifications match the conditions of employment specified by the Appointing Authority on the request for certification.

(b) Work location.

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(1) The Administrator may certify all eligibles on a register, regardless of availability, if the conditions of employment are the same for all positions in that job family within the agency.

(2) When filling vacancies, an Appointing Authority may request that the Administrator issue a local certificate or certify available eligibles on the basis of score rank only. A "local certificate" is a subset of eligible applicants on a register who are residents of the locality, i.e., the county where the local office is located or said county and adjacent counties or a group of contiguous counties comprising a service area of an agency [74:840 4.13], and whose conditions of availability for a job correspond to those of the vacant position. On a local certificate, eligible applicants from the locality are ranked by examination score, including any awards of veterans preference, and are certified ahead of other available applicants who live outside the locality.

(c) Number of names. After receiving a request, the Administrator shall issue a certificate to the Appointing Authority. The certificate shall include the names of the top 10 available eligibles on the register for a job, plus anyone who is tied with the lowest ranked eligible within the hiring rule [74:840 4.13]. At the request of the Appointing Authority, the Administrator may also issue additional names to be considered in accordance with 260:25-9-92.

## 260:25-9-74. Selective qualifications [REVOKED]

Selective qualifications are job specific requirements authorized by the Human Capital Management Division for positions within a particular job family which are consistent with the duties and responsibilities of the particular position being filled. These qualifications may include special experience, education, or measurable competency in a non-English language. When requesting a certificate for a job family, an Appointing Authority may, upon written request to and approval by the Human Capital Management Division, use any Human Capital Management Division approved selective qualifications for that job for filling a particular position within that job family. Selective qualifications approved by the Human Capital Management Division for any job or position shall not reduce or add to the quantity of experience or education in the minimum qualifications established for that job family level.

## 260:25-9-75. Certification of alien applicants [REVOKED]

An eligible who is not a citizen of the United States and who is certified to an agency for employment under conditions which the applicant cannot legally accept, may be passed for cause.

## 260:25-9-76. Life of certificate [REVOKED]

If an appointment is not made within 90 calendar days of the date a certificate is issued, such certification shall be voided.

## PART 9. CLASSIFIED APPOINTMENTS [REVOKED]

### 260:25-9-91. Filling vacancies [REVOKED]

All vacancies in classified positions shall be filled as provided by the Oklahoma Personnel Act and the Merit Rules. All appointments shall be made at a hiring rate established for the job as provided in the agency's salary administration plan. No appointment shall be made to any classified position nor shall the position be otherwise encumbered until the position has been allocated in accordance with the Act and the Merit Rules.

### 260:25-9-92. Appointments from certificates [REVOKED]

After receipt of a certificate, the Appointing Authority may consider and select anyone whose name is within the hiring rule, i.e. the top 10 available eligibles, or anyone whose name is tied with the lowest ranked eligible within the hiring rule [74:840 4.13]. In selecting persons from among those certified, the Appointing Authority shall have the right, and is encouraged to examine applications, reports of investigations and interview eligibles.

(1) The Appointing Authority shall interview in person any Absolute Preference Veteran(s) within the hiring rule in order to allow the veteran(s) to demonstrate any transferable skills acquired in the military service [74:840-4.14(D)].

(2) The Appointing Authority shall not deny employment to, and pass over, an available Absolute Preference Veteran except as provided in the Act and this Section and in 260:25-9-131.

(3) If the Appointing Authority passes over an available Absolute Preference Veteran(s) as provided in the Act and Section in 260:25-9-131, the Appointing Authority shall interview in person any available veteran(s) who are within the hiring rule in order to allow the veteran(s) to demonstrate any transferable skills acquired in the military service [74:840 4.14(D)].

(4) The Appointing Authority may give preference in all cases to persons who have resided in Oklahoma for at least 1 year prior to the date of examination [74:840 4.13].

(5) The Appointing Authority need not consider any eligible who is currently in probationary status in the classified service, or permanent status with that agency in a job with the same or a higher pay band assignment.

(6) The Appointing Authority may take action to remove eligibles from consideration only as permitted and provided in the statutes or Merit Rules.

(7) If the Administrator has certified the names of eligibles in addition to those within the hiring rule, and if 1 or more eligibles initially within the hiring rule are removed from consideration in accordance with the Merit Rules, then the next lower eligible(s) may be added to fill in the hiring rule and anyone tied with the lowest such eligible may be considered and selected.

(8) The Appointing Authority is responsible for making the final selection.

**260:25-9-95. Appointments to noncompetitive classes [REVOKED]**

- (a) ~~An Appointing Authority of an agency having unskilled, semi-skilled, or similar jobs designated by the Administrator as noncompetitive, may appoint qualified veterans or non-veterans to such jobs in accordance with 260:25-9-71 and 260:25-9-92.~~
- (b) ~~On certificates issued for noncompetitive jobs, an Appointing Authority may appoint persons not certified by the Human Capital Management Division if the scores of such persons would place them within the hiring rule among those certified. An Appointing Authority shall not deny employment to, and pass over, an Absolute Preference Veteran except as provided in the Act, 260:25-9-92, and 260:25-9-131.~~
- (c) ~~Applicants for such positions may apply directly to agencies having such positions. Records of applicants shall be maintained by the Appointing Authority in accordance with U.S. Equal Employment Opportunity Commission's guidelines. The Appointing Authority shall notify the Human Capital Management Division of a noncompetitive appointment and enclose a completed application within 30 calendar days after the appointment, except for agencies with delegation authority to certify candidates for promotion, demotion, transfer or reinstatement within their agency.~~

**260:25-9-96. Project indefinite appointments [REVOKED]**

~~If the staff of an agency increases as a result of a project contract with another governmental agency or special purposes grant funds, the Appointing Authority shall select such personnel in accordance with 260:25-9-92. These persons shall be informed in writing at the time of appointment as to the terms and conditions of the appointment and the specific contract or grant funding this position. This information will be forwarded to the Human Capital Management Division with the appointment certification. These employees will be appointed for a regular probationary period and upon successful completion of such period shall be subject to all conditions, and eligible for all benefits, set forth in these Rules for permanent employees except that should the project be canceled or completed in less than 3 years, probationary and permanent Project Indefinite Appointment employees shall be released before regular probationary and permanent employees. Such action shall be subject to reduction in force in accordance with 260:25-13-3. Only upon completion of 3 years of Project Indefinite Appointment status, shall these employees become permanent career employees. No employee shall be maintained on a Project Indefinite Appointment for more than 3 years.~~

**260:25-9-100. Optional Program for Hiring Applicants with Disabilities [REVOKED]**

- (a) ~~Appointing Authorities may employ persons with severe disabilities who are legal residents of Oklahoma through the Optional Program for Hiring Applicants with Disabilities ("Program") [74:840-4.12]. Program participants shall meet all minimum qualifications of education and experience, but shall be exempt from entrance examinations and hiring~~

- ~~procedures administered by the Human Capital Management Division [74:840-4.12]. Program participants shall be certified as having disabilities in accordance with the standards and procedures in subsection (b) of this Section [74:840-4.12]. Persons with severe disabilities are not required to participate in this Program, and they may elect to be considered for employment through regular selection procedures [74:840-4.12].~~
- (b) ~~The Department of Rehabilitation Services shall certify an applicant as having disabilities according to the definition for "individual with severe disability" in OAC 612:10-1-2, which the Administrator has established as the standard for disability certification, and shall provide electronic or written verification to the applicant and to the Human Capital Management Division.~~
- (c) ~~The Administrator shall give each Program applicant certified according to (b) , a letter of notification of all job family levels for which the applicant has applied and possesses the minimum qualifications of education and experience.~~
- (d) ~~Letters of notification as described in (c) shall be valid for an initial 12-month period. Applicants may renew eligibility every 12 months by reapplying with the Human Capital Management Division.~~
- (e) ~~An applicant for the Program may apply directly to employing agencies. In order to be eligible for appointment to fill a vacant position, an applicant shall be a legal resident of Oklahoma. The applicant shall submit to the Appointing Authority of the employing agency a current letter from the Administrator as described in subsections (c) and (d) indicating the applicant possesses the qualifications of education and experience for the vacancy.~~
- (f) ~~Persons with severe disabilities hired pursuant to this Program shall be subject to the Merit Rules [74:840-4.12].~~

**260:25-9-102. Reinstatement to the classified services [REVOKED]**

- (a) ~~A permanent employee who leaves the classified service is eligible for reinstatement.~~
- (b) ~~If an Appointing Authority elects to appoint a person who is eligible for reinstatement, the person shall be certified according to 260:25-9-10. A test may be required under 260:25-9-35 before his or her reinstatement.~~
- (c) ~~The Appointing Authority may place the person in probationary status with the agency for the maximum period required for original appointments or for a shorter period. The Appointing Authority may not extend the probationary period, but may adjust the probationary period due to an extended absence as provided for in 260:25-11-36(b). If the Appointing Authority requires a probationary period, the Appointing Authority shall notify the reinstated employee and the Human Capital Management Division in writing of the length of the probationary period before the employee's entry on duty. The Appointing Authority may cancel the probationary period at any time and grant permanent status to the employee.~~

**PART 11. DIRECT HIRE AUTHORITY [REVOKED]**

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## 260:25-9-110. Purpose

The purpose of the rules in this Part is to establish policies and procedures by which the Administrator may authorize agencies to directly fill positions requiring professional practice licensure and hard to fill positions, to establish criteria for identifying professional practice licensure positions and hard to fill positions which shall not require establishment of an employment list of eligible persons or the application of veterans preference... and to establish recordkeeping and reporting procedures and the conditions under which the Administrator may withdraw authorization for agencies to directly hire persons into hard to fill positions [74:840 4.13(C)].

## 260:25-9-111. Definitions [REVOKED]

In addition to terms defined in 260:25-1-2 the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

**"Adequate applicant pool"** means 10 or more available qualified eligibles on open competitive announcements maintained by the Human Capital Management Division for the location of a vacancy under the conditions of employment required for the position.

**"Conditions for employment"** means requirements for the position established by the agency and approved by the Human Capital Management Division such as willingness to travel, perform shift work, or work in a particular geographic location, or possession of any selective qualifications or special requirements for the position.

**"Direct hire authority"** means the authorization for an Appointing Authority to certify the qualifications of and appoint an eligible applicant to a position requiring professional practice licensure or to a position which has been identified by the Administrator as hard to fill.

**"Hard to fill positions"** means a vacant position or positions in a job family for which a state agency has been unable to identify an adequate applicant pool within the past 2 weeks of open competitive announcement.

**"Professional practice licensure positions"** means those positions within a job family for which the Administrator has determined the minimum qualifications for the job require professional licensure with the State of Oklahoma to legally practice in the profession. Such a job shall involve work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction or study such as a bachelor's degree from an accredited college or university. The Administrator shall maintain a list of jobs requiring professional practice licensure and shall make the list available to all state agencies with positions allocated to these job families.

## 260:25-9-112. Scope of direct hire authority [REVOKED]

Direct hire authority shall not waive any requirement for any job classification or position established by statute or the Administrator, such as testing or promotional posting requirements, except as provided in 74:840 4.13(C). An Appointing

Authority who has been authorized direct hire authority shall assure equal employment opportunity to all applicants.

## 260:25-9-114. Application for direct hire authority [REVOKED]

(a) Applications for direct hire authority shall be in accordance with 260:25-1-33, and shall include a description of how the position meets the definition of a "hard to fill position" or a "professional practice licensure" position.

(b) The Administrator shall respond to the application for direct hire authority according to 260:25-1-35. If the application for direct hire authority is to be approved, the Administrator shall prepare a written memorandum of agreement according to 260:25-1-43 for delegation authority.

## 260:25-9-115. Duration of direct hire authority [REVOKED]

(a) Professional practice licensure positions. An Appointing Authority who has been authorized direct hire authority for professional practice licensure positions may retain the authority indefinitely, provided:

- (1) the job family or job families to which the positions have been allocated remain authorized for the agency's use by the Human Capital Management Division;
- (2) the professional practice licensure requirement for the positions is not removed; and
- (3) the authority is not terminated by the Administrator as provided in 260:25-9-121.

(b) Hard to fill positions. An Appointing Authority who has been authorized direct hire authority for hard to fill positions may retain the authority indefinitely unless the authority is terminated by the Administrator as provided in 260:25-9-121. The Appointing Authority may reapply to continue direct hire authority in the same manner as in the initial request.

## 260:25-9-117. Concurrent certification by the Human Capital Management Division [REVOKED]

The Human Capital Management Division may continue to establish registers and issue certificates for any job affected by the rules in this Part. An Appointing Authority who has been granted direct hire authority also may request certificates of eligibles from the Human Capital Management Division. Eligibles certified from an Human Capital Management Division certificate shall be considered by the Appointing Authority as required by the Act and Merit Rules governing certification.

## 260:25-9-118. Reporting and recordkeeping [REVOKED]

(a) **Reporting.** Appointing Authorities shall report all appointments made through direct hire authority to the Administrator as required by 260:25-11-3. The notification shall include a copy of the application, transcripts, and certification of qualifications of the person appointed; and for professional

practice licensure positions, a copy of the verification of licensure. Failure to notify the Administrator of appointments made through direct hire authority within 30 days after the effective date shall be cause for termination of the authority.

(b) **Recordkeeping.** Appointing Authorities shall maintain all records made or considered in the selection and hiring process, regardless of whether the applicant was appointed to the position, for the minimum length of time required by state and federal law. Appointing Authorities shall make the records available for inspection by staff members of the Human Capital Management Division Management upon request.

**260:25-9-120. Correction of errors [REVOKED]**

(a) Errors in the certification of qualifications shall be corrected according to 260:25-9-13.

(b) Errors in the certification of qualifications may result in termination of the direct hire authority according to 260:25-9-121.

(c) Willful violations of the Act or Merit Rules in connection with the exercise of the direct hire authority may result in administrative fines according to 74:840-6-9.

(d) Other corrective actions may be required by the Administrator as described in 260:25-1-49.

**260:25-9-121. Audit and termination of direct hire authority [REVOKED]**

(a) Audits.— The Administrator may audit appointments made under the rules in this Part according to 260:25-1-47.

(b) Termination.— The Administrator may terminate the agreement according to 260:25-1-51. Reasons for terminating direct hire authority shall include, but not be limited to, a finding by the Administrator that the authority has been used to appoint applicants who do not meet the education, experience or professional practice licensure requirement established for the class.

**260:25-9-123. Expedited recruitment [REVOKED]**

(a) The Administrator may select positions or job family levels for expedited recruitment when in the opinion of the Administrator the education, experience or certification requirements for such positions or job family levels substantially limit the pool of available applicants to less than an adequate applicant pool as defined by 260:25-9-111. Applicants for positions selected for expedited recruitment who have been approved by the Human Capital Management Division as meeting the minimum qualifications for the job may be referred to agencies having such vacancies without examination and ranking, provided that the register for the job has been publicly announced for at least 14 calendar days. Applicants for positions selected for expedited recruitment are eligible for appointment upon referral. [74:840-1-6A]

(b) An Appointing Authority may request that positions or job family levels be considered for expedited recruitment by submitting a written request to the Administrator. The request shall describe the unique education, experience or certification

requirements that substantially limit the pool of available applicants, the recruitment efforts made by the agency, the suggested duration of the expedited recruitment designation, and shall be accompanied by a Position Description Questionnaire (HCM-39) for the position(s). The Administrator may request clarification or additional information from the agency. The Administrator shall provide the agency with written notification of his approval or denial of the request. The decision of the Administrator shall be final.

(c) An Appointing Authority who has expedited recruitment authority may retain that authority for 12 months from the date of approval by the Administrator unless that authority is terminated by the Administrator pursuant to 260:25-9-121. The Appointing Authority may reapply to continue expedited.

**PART 13. VETERANS PREFERENCE [REVOKED]**

**260:25-9-130. Veterans preference on list of eligible [REVOKED]**

In establishing employment lists of eligible persons for competitive and noncompetitive appointment, certain preferences shall be allowed for veterans honorably discharged from the Armed Forces of the United States [74:840-4.14(A)].

(1) Five points shall be added to the final grade of any person who has passed the examination and has submitted proof of having status as a:

- (A) veteran [74:840-4.14(A)(1)]; or
- (B) unmarried surviving spouse of a veteran [74:840-4.14(A)(1)]; or
- (C) spouse of a veteran who is unemployable due to a service connected disability as certified by the Veterans Administration or agency of the Defense Department within six (6) months of the date of application [74:840-4.14(A)(2)].

(2) Ten points shall be added to the final grade of any veteran who has passed the examination and has submitted proof of having a service connected disability as certified by the Veterans Administration or Agency of the Defense Department within six (6) months of date of application [74:840-4.14(A)(3)].

(3) In addition to the 10 points preference provided in (2) of this subsection, such eligible veterans who are in receipt of benefits payable at the rate of 30% or more because of the service connected disability, shall be considered Absolute Preference Veterans. Their names shall be placed at the top of the register, ranked in order of their examination scores. Absolute Preference Veterans shall not be denied employment and passed over for others without showing cause. [74:840-4.14(A)(3)]

**260:25-9-131. Pass for cause of an absolute preference veteran [REVOKED]**

(a) An Appointing Authority who finds it necessary to pass over an Absolute Preference Veteran for cause must receive written approval from the Administrator before taking such action. Any Appointing Authority who, without prior approval,

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passes an Absolute Preference Veteran for cause on any certificate returned to Human Capital Management shall be required to hire the preferenced applicant, if such pass for cause is subsequently rejected by the Administrator. No offer of initial employment may be made to any applicant ranked below such veterans in the absence of this approval; such offers and any subsequent initial appointments shall be void. [74:840 4.14(A)(3)]

(b) Nothing in this Section prohibits or limits passing an Absolute Preference Veteran to hire another Absolute Preference Veteran within the hiring rule, or hiring any other eligible through means other than an initial appointment.

(c) A request to pass over or disqualify an Absolute Preference Veteran shall include a detailed written explanation and justification provided by the Appointing Authority documenting why the Appointing Authority believes:

(1) the applicant cannot be reasonably expected to satisfactorily perform at the required level of the position [74:840 4.14(A)(3)]; or

(2) it is necessary to disqualify the applicant because of 1 or more of the causes for disqualification listed in 260:25-9-9, Disqualifications.

(d) Any person who is so disqualified shall be notified in writing by the Administrator of the right to appeal.

## 260:25-9-132. Opening closed registers for veterans [REVOKED]

War veterans, as defined by Section 67.13a of Title 72 of the Oklahoma Statutes, who have been awarded the Purple Heart or have a service incurred disability rated by the Veterans Administration or a branch of the Armed Forces of the United States ..., shall be authorized to open any closed register [74:840 4.14(B)].

## SUBCHAPTER 11. EMPLOYEE ACTIONS

### PART 1. GENERAL PROVISIONS

#### 260:25-11-1. Purpose

The purposes of the rules in this Subchapter are to establish policies and procedures for probationary periods of employment [74:840 4.13(D)], transfers, promotions, demotions, and separations, while protecting employees from arbitrary dismissal or unfair treatment [74:840 1.6(A)(3)], for various employee actions.

#### 260:25-11-3. Reports of personnel change [REVOKED]

Appointing Authorities shall use such forms and follow such procedures as may be prescribed by the Human Capital Management Division to effect personnel changes. In addition, for purposes of payroll certification, Appointing Authorities shall use such forms as may be prescribed by the Human Capital Management Division to report personnel actions with respect to unclassified employees. Unless otherwise provided

in the Merit Rules, forms effecting personnel changes, including appointments, shall be submitted to the Human Capital Management Division within 30 days after the effective date. Classified employees shall receive a copy of forms effecting changes in their personnel status.

#### 260:25-11-7. No previous Merit System status [REVOKED]

When a position occupied by an unclassified employee is made subject to the Merit System by Executive Order or legislation, the Administrator shall allocate the position as it exists on the effective date of becoming subject to the Merit System. Unless there is conflicting legislative direction, the unclassified employee who occupies the position on that date shall be given status in the job family level to which the position is allocated by the Administrator. The effective date of the allocation shall be the same as the effective date of the Executive Order or legislation. The employee shall not be required to take any examination or qualify for the job family level, and the salary of the employee shall not be reduced as a result of such initial allocation. The status of the employee shall be determined as follows:

(1) An employee who has been continuously employed by the agency for a minimum of twelve (12) months immediately preceding the date on which the employee is made subject to the provisions of the Merit System shall be given permanent status in the classified service.

(2) An employee who has been continuously employed by the agency for less than twelve (12) months on the date the employee is made subject to the provisions of the Merit System shall be given probationary status in the classified service. Such employee may obtain permanent status in the classified service twelve (12) months after the employee's entry on duty date with the agency pursuant to the provisions of the Merit System. [74:840 4.2]

### PART 3. PROBATIONARY EMPLOYEES [REVOKED]

#### 260:25-11-30. Probationary employees; general provisions [REVOKED]

(a) All original appointments to classified positions shall be made from certificates, except as provided elsewhere in the Merit Rules or by statute, for a probationary period of 1 year, unless the length of the probationary period is reduced according to the provisions of this Section [74:840 4.13]. At the end of the probationary period, the employee shall automatically become permanent [74:840 4.13]. At any time after the probationary employee has served 6 months, the Appointing Authority may waive the remainder of the probationary period by notifying the employee and the Human Capital Management Division in writing as to the waiver and the reasons for it [74:840 4.13]. The Appointing Authority may not extend the probationary period, but may adjust the probationary period due to extended absence as provided in 260:25-11-36. The final working day of the probationary period shall be made known to the employee at the time of entry on duty and at the

time of any adjustment or waiver of the probationary period. Some positions may have statutory probationary periods that differ from the conditions of this Section.

(b) Except as provided in 260:25-9-102, the provisions of this Part apply to probationary periods made in accordance with those Merit Rules.

(c) An employee on an original probationary appointment with the agency or any adjustment of the original probationary appointment, or on a probationary period with the agency after reinstatement, or an adjustment of such a probationary period may be released or dismissed in accordance with 260:25-11-32.

(d) The Appointing Authority may establish a written policy describing any agency standard for waiving the probationary period after 6 months and the reasons for the standard.

**260:25-11-31. Permanent status [REVOKED]**

Permanent status in the classified service shall not be granted until the probationary period has been successfully completed. Such status shall begin at the end of the final working day of the probationary period [74:840 4.13(D)] except as otherwise provided in the following Sections: 260:25-11-30; 260:25-11-36; and 260:25-11-32.

**260:25-11-32. Termination during probationary period [REVOKED]**

The probationary appointment of any person may be terminated at any time during the probationary period without the right of appeal [74:840 4.13(D)].

**260:25-11-33. Change in part-time or full-time status of probationary employees [REVOKED]**

Probationary employees originally appointed part time shall not be changed to full time until the probationary period has been completed. However, a probationary employee originally appointed full time may request and be changed to part time.

**260:25-11-35. Annual and sick leave of probationary employees [REVOKED]**

Annual and sick leave, as provided in 260:25-15-10, 260:25-15-11 and 260:25-15-12, shall be granted to probationary employees. A probationary employee who resigns and is reappointed by the same agency through an open competitive process within 10 calendar days shall be credited the annual and sick leave accumulated during the previous probationary period.

**260:25-11-36. Leave of absence for probationary employees: Adjustment of probationary period [REVOKED]**

(a) Upon written request, a probationary employee may be granted leave of absence without pay from the agency in accordance with 260:25-15-47, Leave of absence without pay, or

260:25-15-49, Leave because of absence due to job related illness or injury.

(b) If a probationary employee is absent from work in excess of thirty (30) non continuous working days, the probationary period shall be adjusted by the number of working days the probationary employee was absent. The employee shall be notified at the earliest date that the probationary period is to be adjusted. Upon the employee's return to work, notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the probationary period.

**260:25-11-37. Salary advancement of probationary employees [REVOKED]**

No probationary employee shall receive a performance pay increase.

**260:25-11-38. Promotion or demotion of probationary employees [REVOKED]**

A probationary employee shall not be eligible for promotion or demotion to another job.

**260:25-11-39. Transfer of probationary employees [REVOKED]**

A probationary employee shall not be transferred to a position in another job family level or agency except as provided in Section 840 2.21 of Title 74 of the Oklahoma Statutes, 260:25-15-49, or 260:25-11-74. No probationary employee appointed from a local certificate, issued in accordance with 260:25-9-71(b), shall be transferred from that locality until the probationary period has been completed.

**260:25-11-40. Probationary employee shift assignment [REVOKED]**

A change in shift assignment, in excess of 30 calendar days, shall not be made for a probationary employee without prior approval of the Human Capital Management Division.

**PART 5. PROMOTIONS [REVOKED]**

**260:25-11-51. Promotional posting [REVOKED]**

(a) The appointing authority shall post announcements of a vacancy or vacancies in accordance with a promotional plan filed by the agency with the Office of Management and Enterprise Services. [A copy of this plan shall be posted throughout the agency.] Promotional posting shall be required for initial entry into a job family at any level. Promotional posting shall also be required for entry into any supervisory position or level. Each agency's promotional posting plan shall describe the method by which all agency employees will be notified of vacancy announcements. [74:840 4.15] The Appointing Authority shall post all promotional opportunities to vacant positions. Promotional posting is not required for career progression or for reallocation of occupied positions.

(b) The posting shall include:

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- (1) Identification of the job family level of the vacancy or vacancies;
- (2) A listing of job title, major work duties and minimum qualifications;
- (3) The pay band and range;
- (4) The anticipated number of vacancies;
- (5) The specific location of work;
- (6) The time limits and procedure for filing an application with the appointing authority; and
- (7) Any additional factors which the appointing authority will consider in filling the vacancy. [74:840-4.15]

## 260:25-11-53. Promotional posting for continuous multiple vacancies [REVOKED]

The appointing authority may elect to post general promotional opportunities in cases where there are usually continuous multiple vacant positions within a given job family; provided the appointing authority maintains a promotional applicant list for each job family which is posted on the basis of general promotional opportunities. In such cases, the posting must include the length of time and conditions under which the promotional application of the candidate will remain available for active consideration by the appointing authority [74:840-4.15] as well as the information required by 260:25-11-51.

## 260:25-11-54. Promotional action appeals [REVOKED]

If an employee feels treated unfairly with regard to a promotional action after such complaint has been reviewed in a formal grievance procedure conducted in accordance with the grievance procedure of the agency, the employee may seek a remedy through the procedures established in the Oklahoma Personnel Act [74:840-4.15(C)]. If a violation of Section 841.10 [renumbered 840-2.9] of this title has been committed, the Oklahoma Merit Protection Commission may declare a position open [74:840-4.15(C)].

## 260:25-11-55. Trial period and probationary period for promoted employees [REVOKED]

- (a) Trial period after intra agency promotions:
  - (1) When a classified employee is promoted intra agency, the employee shall serve a 6 month trial period in the job to which the employee has been promoted unless the Appointing Authority waives the trial period according to the provisions of this Section. The Appointing Authority may waive the trial period at any time by giving the employee written notice of the cancellation. Waiver of the trial period makes the promotion final.
  - (2) If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to the former position or another in the same job family level, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy

filed with the Human Capital Management Division. The employee shall not have the right to appeal [74:840-4.12].

- (3) The promotion shall automatically become permanent at the end of the final working day of the trial period.
- (4) The Appointing Authority may establish a written policy describing any agency standard for waiving the trial period and the reasons for the standard.
- (b) Trial period after interagency promotion:

- (1) An employee who is promoted interagency may, at the discretion of the receiving Appointing Authority, be required to serve a six (6) month trial period in the new job only if the receiving agency has the job family from which the employee was promoted in its classification plan.

- (2) The trial period may be canceled at any time, making the promotion final. Before the effective date of the promotion, the employee shall be informed in writing by the Appointing Authority whether the employee will be required to serve a trial period before such promotion becomes final. The promotion shall be permanent if the Appointing Authority fails to notify the employee in writing before the effective date of the promotion that a trial period is required under this paragraph. If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to a position in the former job family in the same pay band for which the employee is qualified with the receiving agency, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. The promotion shall automatically become permanent at the end of the final working day of the trial period.

- (e) If an employee on a trial period is absent from work in excess of thirty (30) non continuous working days the trial period may be adjusted by the number of working days the employee was absent. The employee shall be notified at the earliest date that the trial period is to be adjusted. Upon the employee's return to work notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the trial period.

## PART 7. TRANSFERS AND VOLUNTARY DEMOTIONS [REVOKED]

### 260:25-11-71. Intra-agency transfer [REVOKED]

- (a) The intra agency transfer of a permanent employee from one position to another position in the same job family or another job in the same pay band, for which the employee has currently qualified, may be made at any time by the Appointing Authority.
- (b) Upon intra agency lateral transfer, an employee shall serve a six month trial period in the job level to which the employee is transferred, unless the trial period is waived in writing by the Appointing Authority. [74:840-4.12] The trial



period may be adjusted pursuant to 260:25-11-55(c). If an employee does not prove to be satisfactory in the new job during the trial period, the employee may be reinstated to the former position or another in the same job family level, at the salary the employee would have received if the transfer had not taken place. The employee shall be informed in writing of any action taken pursuant to this provision.

(c) A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have jurisdiction to entertain an appeal of an employee from action of the employing agency transferring the employee from one county or locality to another, changing the assigned duties of the employee, or relieving the employee from performance of duty at a particular place and reassigning to the employee duties to be performed at another place, unless:

- (1) the action results in a change in job classification or reduction of base salary; or
- (2) an investigation by the Commission indicates that a violation of the provisions of Section 840-2.5 or 840-2.9 of . . . [the Oklahoma Personnel Act] may have occurred; or
- (3) it is established that the action was clearly taken for disciplinary reasons and to deny the employee the right of appeal. [74:840-4.19]

**260:25-11-72. Interagency transfer [REVOKED]**

(a) An interagency transfer is an action in which an employee leaves employment with one agency and enters employment with another agency while continuously employed with the state [74:840-1.3]. A permanent classified employee retains his or her permanent status in the classified service on interagency transfer.

(b) The interagency transfer of a permanent employee from one position to another in the same job or another job family in the same pay band, for which the employee has currently qualified, may be made at any time with the concurrence of the Appointing Authorities concerned, provided that such transfer has been requested in writing by the employee. Such a transfer may be made simultaneously with a promotion or demotion in accordance with the provisions of the Merit Rules.

**260:25-11-74. Interagency transfer of personnel resulting from transfer of facility or function [REVOKED]**

When a facility or function is transferred from one state agency to another, classified employees may be transferred without change or modification in status. Such transfer of personnel is subject to the following conditions and provisions:

- (1) Positions created in the receiving agency as a result of the transfer of a facility or function which are filled by employees being transferred in accordance with this Section need not be posted as vacant.

(2) If the job family level of transferring employees is not in the receiving agency's classification plan, the appropriate job families must be added to the plan on a temporary basis, not to exceed 6 months after the effective date of the transfer. Any such employee may be detailed to special duty, if necessary, to ensure that work assigned on a regular and consistent basis conforms to the employee's classification.

(3) The receiving agency shall give a transferring employee credit for all unused sick and annual leave the employee has accrued.

(4) The receiving agency shall not reduce the base salary of any employee at the time of the interagency transfer. If an employee must be reclassified to a higher job after transfer, a salary advancement is not required unless the rate of pay before promotion is below the new range. Subsequent salary changes must be in accordance with the Merit Rules.

(5) Except as specifically provided in this Section, all other Merit Rules governing the actions of employees and agencies remain in full force and effect, during and after the interagency transfer.

**260:25-11-76. Voluntary demotion [REVOKED]**

(a) An Appointing Authority may demote an employee, provided the employee voluntarily makes such a request in writing and meets the current minimum qualifications for the job family level to which demotion is requested as certified by the Administrator. Provided, however, that possession of the current minimum qualifications shall not be required where the demotion is to a job:

- (1) within the same job family, or
- (2) in which the employee has previously had permanent status, or
- (3) in the same job family as, and below, a job in which the employee has previously had permanent status.

(b) The Appointing Authority may require an employee to serve a trial period in the job to which the employee requests to be demoted. This trial period may not exceed 6 months and may be for shorter periods as determined by the Appointing Authority. The Appointing Authority shall notify the employee in writing before the effective date of the demotion that a trial period be served before such demotion shall become final. The Appointing Authority shall send the Human Capital Management Division written notice when a trial period is required for a demoted employee. The Appointing Authority may cancel such trial period at any time. If the employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to the former position or another in the same job family. The Appointing Authority shall give the employee written notice of the reasons for the failure to allow the employee to acquire permanent status in the job to which demoted and shall file a copy with the Human Capital Management Division.

**PART 9. EMPLOYEE GUIDELINES**

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### 260:25-11-91. Conduct of classified employees

(a) Every classified employee shall fulfill to the best of his or her ability the duties of the office or position conferred upon the employee and shall behave at all times in a manner befitting the office or position the employee holds. In performing official activities the classified employee shall pursue the common good, and, not only be impartial, but act so that there can be no question of impartiality.

(b) A classified employee shall not engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible, or in conflict with his or her duties as a classified employee or with the duties, functions or responsibilities of the Appointing Authority by which the person is employed.

(c) Each Appointing Authority shall determine and prescribe those activities within applicable laws, which, for employees under its jurisdiction, will be considered inconsistent, incompatible or in conflict with their duties as classified employees. In making this determination, the Appointing Authority shall give consideration to employment, activity or enterprise which:

(1) involves the use for private gain or advantage of state time, facilities, equipment and supplies; or, the badge, uniform, prestige or influence of one's state office or employment, or

(2) involves receipt or acceptance by the classified employee of any money or other consideration from anyone, other than the state, for the performance of an act which the classified employee would be required or expect to render in the regular course or hours of state employment or as a part of the duties as a state classified employee, or

(3) involves the performance of an act which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by such classified employee.

(d) Each classified employee shall devote full time, attention and effort to the duties and responsibilities of his or her position during assigned hours of duty.

### 260:25-11-93. Resignation prior to prohibited activity

Before any classified employee can participate in any prohibited activity described in the constitution or laws of the State of Oklahoma or rules promulgated thereunder, such employee must resign or be subject to the penalty provided by law. The Appointing Authority shall report such alleged prohibited activity to the appropriate authority in writing.

## PART 11. OTHER TRANSACTIONS

### 260:25-11-110. Detail to special duty [REVOKED]

(a) ~~When the services of a permanent classified employee are temporarily needed in a job family or level other than the one to which the incumbent is regularly assigned the employee may be detailed to special duty, at the discretion of the Appointing Authority, to perform the duties of the job to which temporarily assigned.~~

(b) ~~A detail to special duty in no way shall affect the status, title or job family held before the detail.~~

(c) ~~An employee shall not be placed on detail to special duty more than twelve (12) months in any thirty six (36) month period.~~

(d) ~~Pay upon detail to special duty is covered in 260:25-7-17.~~

(e) ~~Detail to special duty is not required when an employee is temporarily assigned duties of another job for a period of less than sixty (60) days in any twelve (12) month period. Detail to special duty is also not required when an employee is temporarily performing such duties as part of a return to work program as a result of a work related illness or injury, regardless of whether that period exceeds sixty (60) days in any twelve (12) month period. Such temporary placement related to a return to work program shall not exceed six (6) months.~~

### 260:25-11-120. Suspension with pay

(a) An Appointing Authority may suspend ~~a~~ an ~~classified~~ employee from duty with pay for internal investigatory purposes ~~to give a classified employee the required notice and opportunity to respond before involuntary demotion, suspension without pay, or discharge;~~ or to require the employee to undergo a fit-for-duty examination to determine whether the employee is capable of performing the essential functions of the position in which employed. The Appointing Authority may require the employee to remain available during specified working hours to meet with investigators or other agency officials as required. A notice of suspension with pay, stating the beginning and ending dates and times and specifying any reporting requirements shall be issued to the employee in writing.

(b) If the employee was suspended with pay for investigatory purposes and is cleared, the Appointing Authority shall fully clear the employee's records in the custody of the agency and shall make every reasonable effort to fully clear any such records which are not in the custody of the agency. If the charges against the employee are confirmed, in whole or in part, a suspension with pay in accordance with this Section shall not preclude an Appointing Authority from taking disciplinary action in accordance with Oklahoma law and ~~the Merit Rules~~ applicable rules.

## PART 13. RESIGNATIONS

### 260:25-11-134. Resignation or leave without pay to accept an unclassified position [REVOKED]

(a) ~~No classified employee may be assigned to an unclassified or exempt position unless the employee so desires and such acceptance shall be transmitted in writing to the Administrator.~~

(b) ~~Any classified employee shall be deemed to have resigned the classified position on the date of accepting an appointment to a position in the exempt or unclassified service of the state; except that, a person appointed to a temporary or acting position in the exempt or unclassified service, including appointment as an acting incumbent as provided in Section 840-5.5(A)(50)-(49) of Title 74 of the Oklahoma Statutes, may alternatively request leave without pay status in the classified~~

position while assigned to the unclassified or exempt position. Such leave without pay shall not exceed 2 years from the date of the appointment to the unclassified service.

**SUBCHAPTER 13. REDUCTION-IN-FORCE  
[REVOKED]**

**PART 1. GENERAL PROVISIONS FOR  
REDUCTION-IN-FORCE [REVOKED]**

**260:25-13-1. Purpose [REVOKED]**

The purpose of the rules in this Subchapter is to implement the provisions of Sections 840 2.27A through 840 2.27(I) of the Oklahoma Personnel Act which pertain to reductions in force. The rules in this Subchapter establish general provisions for reductions in force and policies and procedures for recall and priority consideration for reemployment. The rules in this Subchapter governing reductions in force apply to classified employees within the executive branch only. This Subchapter is not a comprehensive listing of state and federal statutory provisions related to reductions in force and regulations promulgated thereunder, and is not intended to conflict with either state or federal law and regulations.

**260:25-13-2. Definitions [REVOKED]**

In addition to terms defined in 260:25 1 2 and 455:10 1 2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

**"Affected job family levels"** means those containing affected positions.

**"Affected employees"** means classified employees in affected positions.

**"Affected positions"** means positions being abolished or positions which are subject to displacement action.

**"Agency"** means any office, department, board, commission, or institution of all branches of state government, except institutions within The Oklahoma State System of Higher Education.

**"Displacement or displace"** means the process of an employee accepting an offer of employment to an occupied or funded vacant position.

**"Displacement limit"** means any area within an agency in which displacement may not occur. These areas may include, but are not limited to, job families, units, and geographic areas within an agency.

**"Displacement opportunity"** means the circumstances under which an occupied or funded vacant position is subject to displacement by an affected employee.

**"Displacement privilege"** means the privilege an affected employee has to utilize a displacement opportunity.

**"Educational institution"** means an institution within The Oklahoma State System of Higher Education, a facility under the management or control of the Oklahoma State Department of Vocational and Technical Education, or a licensed private educational institution in the State of Oklahoma.

**"Personnel transaction"** means the record of the separation as a result of a reduction in force of a classified affected employee from an agency, or the record of the transfer or demotion of a classified affected employee. [74:840 2.27B]

**"Reduction in force"** means abolition of positions in an agency or part of an agency and the corresponding nondisciplinary removal of affected employees from such positions through separation from employment or through displacement to other positions.

**"Reorganization"** means the planned elimination, addition or redistribution of functions or duties either wholly within an agency, any of its subdivisions, or between agencies.

**"Severance benefits"** means employee benefits provided by the State Government Reduction in Force and Severance Benefits Act to affected employees separated through a reduction in force.

**"Years of service"** means current and prior service which is creditable for the Longevity Pay Plan. An affected employee shall not be required to have been continuously employed for two (2) years to be given credit for either current or prior service pursuant to the State Government Reduction in Force and Severance Benefits Act.

**260:25-13-6. Equal employment opportunity (EEO)  
[REVOKED]**

In planning and conducting a reduction in force, the Appointing Authority shall consider the effect of decisions, such as establishment of displacement limits and selection of job family levels containing positions to be abolished, on the composition of the work force of the agency. If displacement limits are established in accordance with 260:25 13 5 and Section 840 2.27C of the Oklahoma Personnel Act, adverse impact will be assessed as recognized in state and federal laws, rules and guidelines. The Appointing Authority shall take appropriate action consistent with state and federal laws, rules and guidelines governing adverse impact.

**260:25-13-8. Required freeze on personnel actions  
[REVOKED]**

(a) **Cabinet Secretary approval.** Prior to the posting of any reduction in force notice, the notice shall be approved by the cabinet secretary for the agency conducting the reduction in force. [74:840 2.27C] If there is no incumbent cabinet secretary for the agency or if the appointing authority is governed by an elected official, the approval requirement shall not apply.

(b) **Notice.** At least 60 days before the scheduled beginning of reduction in force separations or as otherwise provided by law, the Appointing Authority shall post a notice in each office affected by the proposed reduction in force that a reduction in force will be conducted in accordance with the Oklahoma Personnel Act and Merit Rules. Such notice shall be posted for 5 days. The Appointing Authority shall provide a copy of the notice to the Administrator. A reduction in force shall not be used as a disciplinary action. [74:840 2.27C(A)]

(c) **Implementation plan.** The reduction in force implementation plan and subsequent personnel transactions directly related to the reduction in force shall be in compliance with

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rules adopted by the Administrator. The reduction in force implementation plan, including the description of and reasons for displacement limits and protections from displacement actions, and severance benefits that will be offered shall be posted in each office affected by the plan within 5 business days after posting of the reduction in force notice. At the discretion of the Appointing Authority, the reduction in force implementation plan may be posted concurrently with the reduction in force notice. The reduction in force implementation plan shall:

- (1) Specify the position or positions to be abolished within specified units, divisions, facilities, agency wide or any parts thereof, as determined by the Appointing Authority;
  - (2) Provide for retention of affected employees based on type of appointment;
  - (3) Require separation of probationary classified affected employees in affected job family levels, except those affected employees in probationary status after reinstatement from permanent classified status without a break in service, prior to the separation of any permanent classified affected employee in an affected job family level;
  - (4) Provide for the retention of permanent classified affected employees in job family levels and those affected employees in probationary status after reinstatement, based on years of service;
  - (5) Provide for exercise of displacement opportunities by permanent classified affected employees and those affected employees in probationary status after reinstatement if any displacement opportunities exist; and
  - (6) Provide for outplacement assistance and employment counseling from the Oklahoma Employment Security Commission and any other outplacement assistance and employment counseling that may be available. [74:840 2.27C(B)]
- (d) **Review of fiscal components.** The Director of the Office of Management and Enterprise Services shall, within 5 business days of receipt, review the fiscal components of the reduction in force implementation plan and reject any plan that does not meet the requirements of Section 840 2.27C(D) of Title 74 of the Oklahoma Statutes.
- (e) **Notice to State Employee Retirement Systems.** Within 30 days after the approval of a reduction in force implementation plan by the Office of Management and Enterprise Services, the Appointing Authority shall provide written notice of the approved plan to the Oklahoma Public Employees Retirement System or the Oklahoma Teachers' Retirement System, or a combination thereof to facilitate the possible purchase of termination credit if the affected employee(s) is a member of the aforementioned retirement system.

### **260:25-13-9. Continuation of insurance upon separation by reduction-in-force [REVOKED]**

The Appointing Authority shall notify employees who are separated because of a reduction in force and who are ineligible for or who decline severance benefits pursuant to Section 840 2.27D of Title 74 of the Oklahoma Statutes of their rights to continue their insurance coverage under the Public Health Service Act, 42 U.S.C. § 300bb 1, et seq.

### **260:25-13-10. Appeal of reduction-in-force [REVOKED]**

Employees may only appeal a reduction in force to the Merit Protection Commission on the basis of procedural errors in the application of the reduction in force plan of the employing agency [74:840 6.2(J)]. A reduction in force shall not be used as a disciplinary action.

### **260:25-13-11. Option in lieu of reduction-in-force [REVOKED]**

Agencies may provide voluntary out benefits to eligible employees in accordance with the provisions of Section 840 2.28 of Title 74 of the Oklahoma Statutes.

### **260:25-13-12. Severance benefits [REVOKED]**

- (a) Agencies shall provide mandatory severance benefits in accordance with the provisions of Section 840 2.27D of Title 74 of the Oklahoma Statutes to eligible classified employees, eligible classified employees on probationary status after reinstatement from permanent classified status without a break in service, and regular unclassified employees who are separated as a result of the same reasons that a reduction in force is conducted for classified employees. Employees who are eligible for Priority Reemployment Consideration in accordance with Section 8402.27C of Title 74 of the Oklahoma Statutes and Part 7 of this Subchapter who are employed by any agency before the scheduled date of reduction in force separations, are not eligible for severance benefits. Employees who are reemployed by the agency from which separated by a reduction in force less than 1 year after receiving severance benefits are required to repay such benefits in accordance with Section 840 2.27E of Title 74 of the Oklahoma Statutes.
- (b) An agency which is separating only unclassified employees with 1 year or more continuous service for budgetary reasons may provide severance benefits pursuant to Sections 840 2.27D and 840 5.1A of Title 74 of the Oklahoma Statutes.
- (c) An eligible employee who accepts severance benefits shall be required to sign an agreement, in a form prescribed by the Administrator, acknowledging that the employee accepts the severance benefits provided by the Appointing Authority pursuant to the provisions of Section 840 2.27D of Title 74 of the Oklahoma Statutes. The form provides information to the affected employee concerning his or her rights and responsibilities under Section 840 2.27E of Title 74 of the Oklahoma Statutes. [74:840 2.27E]

**260:25-13-13. Reduction-in-Force Educational Voucher Fund [REVOKED]**

There is hereby created in the State Treasury a revolving fund for the Office of Management and Enterprise Services to be designated the "Reduction in Force Education Voucher Action Fund." The fund is to be used to provide education vouchers to eligible employees exercising rights to severance benefits or voluntary out benefits in accordance with Sections 840 2.27D and 840 2.28 of Title 74 of the Oklahoma Statutes. The vouchers are to be used to make payment to eligible educational institutions.

**PART 3. REDUCTION-IN-FORCE PLAN REQUIREMENTS [REVOKED]**

**260:25-13-31. Abolishing positions and retaining positions [REVOKED]**

The Appointing Authority shall determine the specific position or positions to be abolished within specified units, divisions, facilities, agency wide or any parts thereof [74:840 2.27C]. The Appointing Authority shall determine which vacant positions will be retained. [74:840 2.27C].

**260:25-13-32. Order of employee removal [REVOKED]**

(a) Agency wide, or within displacement limits, if established, retention of affected employees shall be based on job family level and type of appointment [74:840 2.27C]. Subject to eligible classified employees accepting displacement offers, agencies shall separate probationary classified employees in affected job family levels, except those affected employees on probationary status after reinstatement from permanent classified status without a break in service, prior to the separation or voluntary demotion of any permanent classified employee from the same job family level [74:840 2.27C].

(b) Retention of permanent classified employees in affected job family levels and within displacement limits, if any are established, shall be based on years of service [74:840 2.27C].

(c) The Appointing Authority shall calculate retention points for all eligible classified employees, including those on an approved leave of absence. Eligible classified employees with more retention points shall be ranked higher; with the order of removal from a job family level in inverse order of that ranking. If tie scores occur, the ranking of employees who have the same total retention points shall be determined first by giving a veteran's preference over affected nonveterans who have equal retention points to the affected veteran and then by giving preference for retention according to years of service in the agency. If a tie continues to exist, retention status shall be determined by a method established by the Appointing Authority and described in the reduction in force implementation plan [74:840 2.27C].

(d) For purposes of a reduction in force, any permanent classified employee on a detail to special duty shall be ranked on the basis of base job family level, not on the basis of the job to which detailed.

**260:25-13-33. Calculation of retention points for years of service [REVOKED]**

(a) Affected employees shall be given credit for all current and prior service which is creditable for the Longevity Pay Plan, Section 840 2.18 of Title 74 of the Oklahoma Statutes. An employee shall not be required to have been continuously employed for 2 years to be given credit for either current or prior service.

(b) An employee shall be granted 1 point for each full month of full time service. Points shall not be granted for any work in excess of full time. Points will be prorated for each month during which the employee worked less than full time or less than the full month. In no case shall more than 1 point per month be granted. Appointing Authorities shall make sure that pro rata computations are consistent in application and calculation within the agency.

(c) A break in service or leave without pay period of more than 30 calendar days shall not be included in the calculation of retention points unless the employee was on military leave or on leave without pay in accordance with Section 840 2.21 of Title 74 of the Oklahoma Statutes. Periods of leave without pay of 30 calendar days or less shall be counted as full time service.

(d) The end date for the calculation of years of service shall be uniform within an agency and shall approximate the date the reduction in force implementation plan is posted.

**260:25-13-34. Displacement opportunities and limits [REVOKED]**

(a) Limitations on displacement opportunities. Except as provided in this Section, displacement opportunities shall be offered to eligible classified employees. Displacement opportunities shall not be offered if the result would be to cause the displacement of a permanent classified employee with higher retention points. Employees who have no displacement opportunities or who choose not to exercise a displacement opportunity, employees who do not respond to an offer in accordance with 260:25 13 37, and employees who refuse an offer shall be separated in accordance with 260:25 13 38. The appointing authority may protect from displacement action up to twenty percent (20%) of projected post reduction in force employees in affected positions within displacement limits; provided that any fractional number resulting from the final mathematical calculation of the number of those positions shall be rounded to the next higher whole number. The appointing authority must explain why affected employees are being protected. Employees must have received an overall rating of "meets standards" on the most recent performance evaluation in order to exercise a displacement opportunity. For the purposes of this Section, employees who have not been rated within the past 12 months shall be deemed to have received an overall rating of "meets standards" on the most recent performance evaluation. [74:840 2.27C]

(b) Offers of displacement opportunities. Starting with the employee having the highest retention points, displacement opportunities shall be offered to eligible classified employees and to displaced employees. Such offers shall be confined within

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any displacement limits established by the Appointing Authority. Options available will be offered in the order listed below. If an opportunity at one level, e.g. (1)(A), does not exist, an opportunity at the next lower level, e.g. (1)(B), shall be offered, if available. If the affected employee has not held within the last five (5) years a position in the job family level or predecessor class in which the affected employee is otherwise eligible for a displacement opportunity, the appointing authority may determine that the affected employee does not possess the recent relevant experience for the position and deny in writing the displacement opportunity. [74:840 2.27C]

- (1) Transfer within the same job family and level into a retained position which is currently:
  - (A) vacant and available for displacement in accordance with 260:25-13-31,
  - (B) held by a non-permanent employee (in order of appointment type), or
  - (C) held by the employee with the lowest retention points.
- (2) Lateral transfer to a retained position in another job family previously held in the reverse order in which they were held by the employee on a permanent basis which is currently:
  - (A) vacant and available for displacement in accordance with 260:25-13-31,
  - (B) held by a non-permanent employee (in order of appointment type), or
  - (C) held by the employee with the lowest retention points.
- (3) Voluntary demotion to a retained position in the next available lower level of the same job family which is currently:
  - (A) vacant and available for displacement in accordance with 260:25-13-31,
  - (B) held by a non-permanent employee (in order of appointment type), or
  - (C) held by the employee with the lowest retention points.
- (4) Voluntary demotion to a retained lower level position in another job family previously held in the reverse order in which they were held by the employee on a permanent basis which is currently:
  - (A) vacant and available for displacement in accordance with 260:25-13-31,
  - (B) held by a non-permanent employee (in order of appointment type), or
  - (C) held by the employee with the lowest retention points.
- (e) An eligible employee who exercises a displacement privilege shall be required to sign an agreement, in a form prescribed by the Administrator, acknowledging that the employee had an opportunity to receive severance benefits and affirmatively elected to exercise a displacement privilege and to forego such benefits. The form provides information to the affected employee concerning his or her rights and responsibilities under Section 840 2.27C of Title 74 of the Oklahoma Statutes. [74:840 2.27C(C)]

### 260:25-13-35. Reduction-in-force implementation plan [REVOKED]

As provided in Section 840 2.27C of Title 74 of the Oklahoma Statutes and OAC 260:25-13-3, Appointing Authorities of executive branch agencies shall post the reduction in force implementation plan in all offices of the agency within 5 business days after posting the reduction in force notice. A copy of the implementation plan shall be provided to the Office of Management and Enterprise Services, the Oklahoma Merit Protection Commission and any state employee association representing state employees at such time and as defined at OAC 260:15-1-2 no later than the time it is posted in the agency. The reduction in force implementation plan is not subject to the approval of the Administrator or the Commission. In addition to the information required by 260:25-13-3(b), the reduction in force implementation plan shall include:

- (1) a statement of the conditions necessitating the reduction in force;
- (2) the estimated time schedule for the reduction in force;
- (3) a description of the displacement process, and limits;
- (4) listings of affected positions and employees, to include the following information (or if such lists are not posted, the location of the office where they are available for review):
  - (A) all occupied and vacant positions to be abolished, showing in each case: geographical and administrative location, job family, level, and pay band for the position; the name, job family, level, and pay band, of the incumbent; and, for permanent employees, retention points and other lateral or lower level job families in which the employee previously held permanent status, listed in the reverse order in which they were held;
  - (B) all positions and employees which are subject to displacement, showing the same information;
  - (C) other occupied and vacant positions and employees in affected job families, showing the same information. The agency may include all other positions in the agency in affected job families or may limit posting to ten percent of positions occupied by employees with the least number of retention points based on longevity dates in affected job families, and
  - (D) all retained funded vacant positions anywhere in the agency.
- (5) the schedule and procedure to be followed if an eligible employee chooses to accept a displacement offer for transfer or voluntary demotion in lieu of separation;
- (6) the agency policy on issues related to partial payment of moving expenses for transferred employees in accordance with Section 500.51 of Title 74 of the Oklahoma Statutes;
- (7) such other information as the Appointing Authority deems appropriate; and
- (8) the method established by the Appointing Authority to break ties in retention points.

**260:25-13-36. Written notice to employees [REVOKED]**

Appointing Authorities of executive branch agencies shall provide individual written notice to affected employees in abolished positions within 5 calendar days after posting of the implementation plan. Other employees affected through the exercise of a displacement opportunity shall be notified within 5 calendar days after being identified as being displaced. The written notice to employees shall:

- (1) provide a description of the employee's retention status, including retention points calculation;
- (2) offer an opportunity to notify a specified agency official in writing of any possible errors in the retention points calculation, and to request in writing a meeting with supervisors or agency officials;
- (3) include the effective date of separation and instructions for exercising a displacement opportunity, if one is available; and
- (4) provide notice of appeal rights for classified employees in accordance with 260:25-13-10.

**260:25-13-37. Exercise of displacement privileges [REVOKED]**

To exercise a displacement privilege in lieu of separation, eligible employees shall follow the schedule and procedure included in the reduction in force implementation plan. Such procedure shall provide employees no less than 24 hours to respond following their receipt of a specific offer. An Appointing Authority may require employees to submit specific requests for transfer or voluntary demotion in writing, either by mail or in individual or group meetings.

**260:25-13-38. Employee separations [REVOKED]**

An affected employee who does not agree pursuant to Section 840 2.27E of Title 74 of the Oklahoma Statutes to accept severance benefits and who does not have a displacement opportunity shall be separated by the reduction in force and shall not receive any severance benefits that would otherwise have been provided. [74:840 2.27C(D)]

**PART 5. RECALL RIGHTS [REVOKED]**

**260:25-13-50. Eligibility for recall [REVOKED]**

- (a) Consistent with any displacement limits adopted pursuant to Section 840 2.27C of Title 74 of the Oklahoma Statutes, permanent classified employees and employees in probationary status after reinstatement from permanent classified status without a break in service who are removed from a job family level as a result of a reduction in force in an agency shall be eligible for recall by that agency to the job family level from which removed for 18 months after the effective date of separation or demotion [74:840 2.27C].
- (b) If there are persons eligible for recall to a job family level, an Appointing Authority may not appoint or reclassify persons to the job family level from the employment register, by internal action, such as promotion or reinstatement,

or from Priority Reemployment Consideration Rosters [840-2.27C]. However, an Appointing Authority may reclassify an employee by involuntary demotion for cause to a job family level for which there is a recall list. The salary of a recalled employee shall be set in accordance with 260:25-7-8.

(e) Affected employees who are reemployed by the agency from which separated as a result of a reduction in force less than 1 year after receiving severance benefits are required to repay such benefits in accordance with Section 840 2.27E of Title 74 of the Oklahoma Statutes.

(d) Employees who accept voluntary out benefits in accordance with Section 840 2.28 of Title 74 of the Oklahoma Statutes shall not be eligible for recall.

**260:25-13-51. Order of recall [REVOKED]**

Individuals who are eligible for recall shall be ranked in order of their retention points at the time the reduction in force implementation plan is posted, from high to low. [74:840-2.27C(E)] Offers of recall as described in 260:25-13-50 for classified positions shall be made first to the eligible individual having the highest retention points, regardless of whether the individual was separated or was removed from the job family level by voluntary demotion or lateral transfer to another job family level.

**260:25-13-52. Forfeiture and expiration of recall rights [REVOKED]**

The right of an individual to be recalled to the job family level from which removed is subject to the following provisions and conditions:

- (1) Limitations on recall rights. Recall rights pertain only to the job family level from which an employee is removed in the agency that conducted the reduction in force [74:840 2.27C]. An individual has no right to be recalled to a specific position or to be recalled by any other agency.
- (2) Forfeiture of recall rights. The right of an individual to be recalled is forfeited if the person:
  - (A) submits a written notice to the agency that waives the right to be recalled.
  - (B) declines an offer of recall [74:840 2.27C].
  - (C) fails to respond to a written inquiry from the Appointing Authority relative to an offer of recall within 7 calendar days after the date of its mailing or 4 calendar days after the date of its delivery by personal service. The inquiry must include the date and time by which the person must contact the Appointing Authority.
  - (D) fails to report for duty within the time specified by the Appointing Authority; provided the person is given at least 14 calendar days.
  - (E) accepts an offer of recall.
- (3) Expiration of recall rights. The right of an individual to be recalled expires if the agency:
  - (A) makes no appointments to the job family level within the 18 months after the effective date of the removal of the person from the job family level [74:840-2.27C];

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~~(B) in making offers of recall to a job family level, does not reach the name of the individual on the recall list within 18 months after the effective date of the removal of the person from the job family level [74:840 2.27C].~~

### **260:25-13-53. Recall after multiple reductions-in-force [REVOKED]**

~~If any agency conducts a reduction in force which requires the removal of permanent employees from a job family level for which there is already an unexpired recall list from a previous reduction in force, the names of the persons removed from the job family level will be merged with names already on the list based on retention points.~~

## **PART 7. PRIORITY CONSIDERATION FOR REEMPLOYMENT [REVOKED]**

### **260:25-13-70. Eligibility for priority reemployment consideration [REVOKED]**

~~(a) Permanent classified employees, and employees on probationary status after reinstatement from permanent classified status without a break in service, who have been separated as a result of an officially conducted reduction in force or the abolition of all or part of a state agency, are eligible for priority reemployment consideration [74:840 2.27C] for jobs in the classified service. In addition, affected employees shall be eligible for Priority Reemployment Consideration beginning with the date the implementation plan is posted, for a period not to exceed 12 months before the scheduled date of separation, if the agency:~~

- ~~(1) has posted a reduction in force notice and implementation plan and the employees are in positions covered by the plan and within the displacement limits established by the Appointing Authority; or~~
- ~~(2) is scheduled to be closed or abolished by law or court order. [74:840 2.27C]~~

~~(b) To be placed on the Priority Reemployment Consideration Roster for a job family level, a person shall apply to the Human Capital Management Division and meet all requirements for the job [74:840 2.27C]. The job family level need not be announced for recruitment. The names of the persons on Rosters shall be ranked in order of their individual final earned ratings [74:840 2.27C].~~

~~(c) Employees who accept severance benefits:~~

- ~~(1) are eligible for Priority Reemployment Consideration in accordance with the provisions of Section 840-2.27C of Title 74 of the Oklahoma Statutes,~~
- ~~(2) who are reemployed less than 1 year after receiving severance benefits by the agency from which they separated are required to repay such benefits in accordance with Section 840 2.27E of Title 74 of the Oklahoma Statutes.~~

~~(d) Employees who accept voluntary out benefits in accordance with Section 840 2.28 of Title 74 of the Oklahoma Statutes shall not be eligible for Priority Reemployment Consideration.~~

### **260:25-13-71. Agency priority reemployment consideration requirements [REVOKED]**

~~(a) Before any vacant position in the classified service is filled by the initial appointment of any person from an employment register, an Appointing Authority shall request a list of the names of persons appearing on the Priority Reemployment Consideration Roster for the appropriate job family level [74:840 2.27C]. The Appointing Authority shall give such persons priority consideration for reemployment and may appoint any person whose name appears on such list regardless of rank [74:840 2.27C].~~

~~(b) An Appointing Authority may make an initial appointment from a certificate of eligibles as provided in 260:25-9-92, only after certifying in writing to the Administrator that any and all persons whose names appear on the Priority Reemployment Consideration Roster for the job family level were first given priority consideration for reemployment. This requirement does not mandate the appointment of a person from a Priority Reemployment Consideration Roster and does not apply to internal appointments and actions, such as, promotions and reinstatements.~~

### **260:25-13-72. Conditions of employment and entrance salary [REVOKED]**

~~Persons who are appointed from a Priority Reemployment Consideration Roster shall be employed in accordance with 260:25-9-102, if they are eligible for reinstatement as provided in that Section. The entrance salary of such persons shall be fixed in accordance with 260:25-7-4.~~

### **260:25-13-73. Expiration and forfeiture of eligibility [REVOKED]**

~~(a) The eligibility of an individual to remain on any Priority Reemployment Consideration Roster and to be given priority consideration for reemployment shall expire 18 months after separation as a result of a reduction in force or abolition of an agency [74:840 2.27C]. A person's eligibility shall also be forfeited upon:~~

- ~~(1) declination of an offer of reemployment to a job having the same or higher rate of pay than the job from which removed [74:840 2.27C], that is located in a county in which the person has indicated a willingness to work;~~
- ~~(2) acceptance of an offer of reemployment to a job having the same or higher rate of pay than the job from which removed;~~
- ~~(3) failure to report for duty within the time specified by the Appointing Authority; provided the person is given at least 14 calendar days;~~
- ~~(4) recall to the job family level from which removed; or~~
- ~~(5) failure to meet any of the requirements for the job.~~

~~(b) It is the responsibility of the person to maintain a current address with the Human Capital Management Division.~~

## **SUBCHAPTER 15. TIME AND LEAVE**



**PART 1. GENERAL PROVISIONS**

**260:25-15-1. Purpose**

The purpose of the rules in this Subchapter is to establish leave regulations [74:840-1.6a(11); 74:840- 2.20] for ~~classified and unclassified~~ employees of the State of Oklahoma who are subject to leave rules. [O]ffices and positions of the State Senate and House of Representatives shall not be subject to . . . [the Merit Rules governing] involuntary leave without pay or furlough . . . No person chosen by election or appointment to fill an elective office shall be subject to any leave plan or regulation or shall such person be eligible for accrual of any leave benefits [74:840-5.1]

**260:25-15-2. General leave provisions**

- (a) Employees are responsible for following applicable ~~Merit Personnel Administration~~ Rules and agency policy established in accordance with the ~~Merit Personnel Administration~~ Rules when they request and use leave. Appointing Authorities have the authority and responsibility to monitor employee's leave usage and to take appropriate action when they have facts to show that an employee has abused leave or used leave fraudulently. Except as otherwise provided by law and the ~~Merit Personnel Administration~~ Rules, agency policy regarding time and leave must be applied uniformly to all employees.
- (b) ~~All classified employees remain subject to the provisions of the Oklahoma Personnel Act while on leave.~~
- (c) An employee who is requested or required by the Appointing Authority to undergo drug or alcohol testing during his or her normal hours of work shall be entitled to time-off from work without loss of compensation or leave.

**PART 3. ANNUAL AND SICK LEAVE POLICIES**

**260:25-15-10. General Annual and Sick Leave Policies**

- (a) ~~Permanent and probationary classified employees and regular unclassified employees~~ Employees are eligible for annual leave and sick leave with full pay according to law and the rules in this Chapter. Temporary employees and other limited term employees are ineligible to accrue, use or be paid for sick leave and annual leave [74:840-2.20(A) (3)].
- (b) The tables in Appendix B of this Chapter list leave accrual rates and accumulation limits. OAC 260:25-15-11 and 260:25-15-12 also govern annual and sick leave.
- (c) Annual and sick leave accrual rates and accumulation limits are based on cumulative periods of employment calculated in the manner that cumulative service is determined for longevity purposes [74:840-2.20(A) (1)]. For purposes of this Subchapter and the longevity pay program, cumulative service shall be calculated as prescribed in this subsection.
  - (1) State employment with any ~~classified or unclassified~~ agency in any branch of state government including service under the administrative authority of the Regents for Higher Education and the Department of Vocational and Technical Education shall be qualifying for purposes of calculating cumulative service. Cumulative service

includes periods of part-time qualifying employment in excess of 2/5 time that were continuous for at least 5 months and any period of full-time employment described in (A) through (G) of this paragraph:

- (A) ~~Employment as a permanent classified employee; Full-time or part-time employment;~~
  - (B) ~~Employment as a probationary classified employee;~~
  - (C) ~~Employment as a regular unclassified employee;~~
  - (D) Temporary or other time-limited unclassified employment;
  - (E) Paid leave;
  - (F) Leave without pay of 30 continuous calendar days or less; and
  - (G) Leave without pay in excess of 30 calendar days taken under Section 840-2.21 of Title 74 of the Oklahoma Statutes. Any other leave without pay in excess of 30 calendar days shall not be counted as cumulative service.
- (2) Periods of service that are described in (1) of this subsection, shall be combined for purposes of determining cumulative service and the total shall be expressed in whole years. Partial years, less than 12 months, are dropped.

- (d) Annual leave and sick leave shall accrue only when an employee is actually working, on authorized leave with pay, or during the time the employee is using paid leave to supplement workers compensation benefits under Section 332 of Title 85. Leave shall not accrue after the last day the employee works.
- (e) An employee using paid leave to supplement workers compensation benefits under Section 332 of Title 85 of the Oklahoma Statutes shall be in leave without pay status.
- (f) An Appointing Authority may terminate an employee who is absent from work after the employee has exhausted all of his or her sick and annual leave accumulations unless the absence is covered by 260:25-15-45 or 260:25-15-49. ~~Termination of a permanent classified employee under this subsection is subject to the pretermination hearing requirements of Section 840-6.4 of Title 74 of the Oklahoma Statutes.~~ This subsection does not prevent an Appointing Authority from granting leave without pay according to 260:25-15-47.

**PART 5. MISCELLANEOUS TYPES OF LEAVE**

**260:25-15-40. Enforced leave**

- (a) The Appointing Authority may grant a ~~probationary or permanent~~ employee time off from regular duties, with compensation for absence necessary when some member of his or her immediate family or household requires the employee's care because of illness or injury, when an employee's son or daughter requires care and supervision due to unavailability of the dependent's routine caregiver or caregiving facility, or in the case of death in the immediate family or household or in the case of personal disaster. Enforced leave shall be charged against the employee's sick leave and may not be granted in excess of accumulated sick leave. The number of days granted

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will be governed by the circumstance of the case, but in no event shall they exceed 10 working days in any calendar year.

(b) Immediate Family is defined as spouse, children, parents, brothers, sisters, including step, grand, half, foster, or in-law relationships.

(c) Household is defined as those persons who reside in the same home, who have reciprocal duties and provide financial support for one another. This term shall include foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house or when the living style is primarily that of a dormitory or commune.

(d) Personal Disaster is defined as an unforeseeable, catastrophic event such as the destruction of the employee's residence.

(e) Son or daughter is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability.

### **260:25-15-41. Organizational leave**

(a) ~~A permanent classified employee or a regular unclassified~~ An employee shall be entitled to take leave with pay for not to exceed three (3) days a year to attend meetings of job-related professional organizations of which that employee is a member upon receiving permission from the appointing authority. The denial by an appointing authority ... [of] organizational leave shall be in writing and state the reasons for denying said leave [74:840-2.25(A)].

(b) The leave authorized by this section shall not be used for lobbying activities which include the lobbying of legislative or executive branch elected officials within state-owned or leased buildings[74:840-2.25(B)].

### **260:25-15-44. Military leave of absence and restoration to position**

(a) Military leave of absence and right to restoration to former position shall be granted in accordance with Section 209 of Title 44, Sections 25.4, 25.5 and 25.7 of Title 51, and Section 48 of Title 72 of the Oklahoma Statutes; the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C., 4301 et seq.); and such rights and privileges as these laws provide.

(b) Military leave shall be granted to ~~classified and unclassified~~ employees who are a member of any component of the Armed Forces of the United States or the Reserve Components, to include the Army & Air National Guard and the Army, Navy, Air Force, Marine Corps & Coast Guard Reserves, when ordered by proper authority to active or inactive duty (includes weekend drills and training exercises) or service. Such employees are entitled to leave of absence without loss of status or seniority.

(c) The National Guard and Reserves Component - The first 30 regularly scheduled work days of military leave of absence during any federal fiscal year (October 1 to September 30) are with pay. If the period of military status extends beyond 30

days, the employee's absence for the period beyond 30 days is governed by applicable leave rules. Accrued compensatory leave, holiday leave, annual leave, or leave without pay may be requested to cover this period of time. During the remainder of such leave of absence the Appointing Authority may elect to pay the employee an amount equal to the difference between his or her regular state pay and his or her military pay, except that the employee shall receive the difference between his or her full regular pay and his or her military pay when ordered by proper authority to active or inactive service during the period that Operation Enduring Freedom is in effect. The military pay could be verified through a Leave and Earnings Statement provided by the Military.

(d) An employee who is requested to report for physical examination in connection with military service is not considered absent from duty during the time required for the examination and travel.

(e) An employee must notify the immediate supervisor of the requirement for military leave and provide as much advance notice as possible.

(f) A supervisor does not have the right to request an employee or the federal government to reschedule military exercises for the convenience of the agency.

### **260:25-15-47. Leave of absence without pay**

(a) **Conditions and provisions.** An Appointing Authority may approve a request from a ~~permanent or probationary~~ an employee for leave without pay. The request shall be in writing and shall include the reasons for the leave and the estimated length of the leave requested by the employee. The approval of the leave shall also be in writing, and it shall specify the date the employee is to return to work. Leave without pay is subject to the following conditions:

(1) Leave without pay shall not be approved for more than 12 months. However, an employee on leave without pay may submit a written request for an extension before the end of the approved leave period. The Appointing Authority may grant extensions if the total length of the original leave without pay plus any extensions does not exceed 2 years. Any extension granted shall be to a specified expiration date.

(2) An employee may return to work before the specified date of return if the Appointing Authority approves a written request from the employee to return earlier.

(3) Failure of a ~~classified~~ an employee to report for work on the specified date of return shall be cause for disciplinary action.

(4) ~~Leave without pay for probationary employees shall be in accordance with 260:25-11-36.~~

(5) The Appointing Authority may cancel leave without pay at any time and require the employee to return to work before the specified date of return. The employee shall be notified of the reasons for cancellation by certified mail or personal service and given 7calendar days to return to work. Failure of a ~~classified~~ an employee to report for work as directed shall may be cause for disciplinary action.

~~(6) Section 260:25-13-9 provides for a special type of leave without pay so that an employee can continue insurance coverage after a reduction in force. A leave without pay period in accordance with 260:25-13-9 is not subject to other Merit Rules about leave of absence without pay.~~

(75) If an employee is absent from work without proper authorization, the employee shall not receive pay for such absence. An Appointing Authority has the authority and responsibility to take appropriate action if fraudulent leave usage or leave abuse is detected.

(86) Leave without pay in accordance with this Section shall not for any purpose be considered a break in service.

(b) **Rights upon return from leave of absence without pay.** A properly executed leave of absence without pay shall accord the employee the right to be returned by the Appointing Authority to a position in the same job family and level code as the original position and in the same geographical area unless waived by the employee. ~~The layoff provisions of the Oklahoma Personnel Act and the Merit Rules shall apply if there are no positions in that job family level and geographical area or if the job family has been abolished.~~

**260:25-15-48. Involuntary leave without pay (furlough)**

(a) **Policy.** An Appointing Authority may place ~~classified and unclassified~~ employees on involuntary leave without pay (furlough) for up to a total of 184 hours in any 12 month period in accordance with this Section. An Appointing Authority may only furlough employees when it is necessary to reduce expenditures or when it is required because of a temporary decline or cessation of work activities.

(b) **Required announcement of reasons for furlough.** Before beginning a furlough, an Appointing Authority shall announce in writing the reasons that require it. The Appointing Authority shall post this announcement throughout the agency and send it to the Governor, the Office of Management and Enterprise Services. This announcement is not part of the furlough plan required in (c) of this Section, and it is not subject to the approval of the Administrator.

(c) **Required plan for implementation of furlough.**

(1) Before beginning a furlough, an Appointing Authority shall develop an equitable and systematic plan for the furlough and shall submit the plan to the Human Capital Management Division for review and approval. The Administrator of the Human Capital Management Division shall disapprove any plan that is not in substantial compliance with the Merit Personnel Administration Rules.

(2) After approval of the plan by the Administrator of the Human Capital Management Division, the Appointing Authority shall post the approved plan throughout the agency a minimum of 2 working days before furloughing any employee.

(3) ~~The plan shall apply uniformly to employees regardless of classified or unclassified status [74:840-2-27C].~~ As far as possible, the Appointing Authority shall furlough all full-time employees, including those on paid leave, the same number of hours and shall prorate the

number of hours for part-time employees. The Appointing Authority shall address the application of the furlough to employees who are on other types of leave without pay.

(d) **Non-uniform treatment of employees.** The Appointing Authority may find non-uniform treatment of employees necessary during a furlough. The Appointing Authority must certify the reasons for non-uniform treatment as described in paragraph (1) of this subsection. It is possible that more than one reason may apply in any specific furlough. Paragraph (2) of this subsection describes how the Appointing Authority may limit the effect of a furlough on specified employees. Any certifications issued by an Appointing Authority shall be included in the furlough plan.

(1) **Certification of reasons for non-uniform treatment.**

(A) If the Appointing Authority certifies that uniform treatment of all employees would cause undue hardship on lower paid employees and uniform treatment is not required to meet the reduced revenue levels which made the furlough necessary, the Appointing Authority may limit the applicability of a furlough on lower paid employees.

(B) If the Appointing Authority certifies that uniform treatment of all employees would endanger public health, safety, or property, or continued operations of critical agency functions, the Appointing Authority may limit the applicability of the furlough on specified employees, positions, jobs, or organizational units as needed to avoid the danger.

(C) If the Appointing Authority certifies that a furlough is due to a decline or loss of funding to the agency that supports specific positions, jobs, or organizational units, the Appointing Authority may limit a furlough to specific employees supported by the funding that is lost or reduced.

(D) If the Appointing Authority certifies that a furlough is due to a budgetary shortfall which results in a decline or loss of funding to the agency, the Appointing Authority may limit the furlough to employees who request to participate in a furlough and certify that they have done so without coercion, undue influence, threat or intimidation of any kind or type.

(2) **Types of non-uniform treatment.** In certifying the reasons for non-uniform treatment of employees, the Appointing Authority may use any of the following types of limits. The Appointing Authority may:

(A) exclude specified employees from the furlough,

(B) place specified employees on a lesser number of hours without pay than other employees,

(C) make the furlough of specified employees subject to early cancellation or periodic call-back, or

(D) limit the furlough to employees who have certified that they have requested to participate in a furlough without any coercion, undue influence, threat, or intimidation of any kind or type.

(e) **Required notice to employee.** The Appointing Authority shall provide a written notice to any employee of such

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agency who will be furloughed by the agency at least thirty (30) days prior to the first date that the furlough period is scheduled to begin. The notice shall provide information about the anticipated first date of the furlough period and an estimate of the duration of the furlough or the day or days during which the furlough will be in effect. written notice shall explain the reasons for the furlough and how the furlough will affect the employee. The notice shall also include the dates and times leave is to begin and end. A copy of this Section shall be enclosed with the written notice to the employee. If an Appointing Authority makes leave for employees subject to early cancellation or periodic call-back, the employee's notice of furlough shall describe the reasons for, and conditions of, the cancellation or call-back.

(f) **Continuation of benefits while on furlough.** While on furlough, employees who would otherwise accrue leave shall continue to accrue annual and sick leave as though the furlough had not occurred. The Appointing Authority shall schedule the furlough so the furlough does not interrupt the agency's payment of the employees' insurance premiums.

(g) **Failure to return as directed cause for discipline.** Failure on the part of an employee to return from such leave to his or her previous work status as directed in writing shall be cause for discipline.

(h) **Appeal rights.** ~~Furlough, as provided for by rules adopted by the Director of the Office of Management and Enterprise Services, or his or her designee, shall not be appealable under the provisions of the Oklahoma Personnel Act [74:840-2.27C].~~

### 260:25-15-49. Leave and first preference due to work related illness or injury

(a) **Purpose.** The purpose of this Section is to interpret Section 840-2.21 of Title 74 of the Oklahoma Statutes (Section 840-2.21) . Section 840-2.21 establishes the rights and benefits of state employees who are absent from work because of an illness or injury arising out of and sustained in the course of employment with the State. These employees have a right to return to work if certain conditions are met. In applying Section 840-2.21 and this Section, employing agencies shall return an employee to work as soon as possible, either to the original position or to an alternate position if an employee, with reasonable accommodation, is unable to return to the original position.

(b) **Employee eligibility.** An employee shall file a claim for workers compensation benefits to be eligible [74:840-2.21].

(c) **Termination of rights.** All rights and benefits under Section 840-2.21 and this Section shall end 1 year after the start of leave without pay under this Section and shall end immediately if the claim for workers compensation is denied or otherwise concluded within the 1 year period [74:840-2.21].

(d) **Employing agency practice, policy, and procedure.** An agency's policy, procedure and practice affecting employees who file claims for workers compensation benefits shall agree with Section 840-2.21.

(e) **Required notice to employees.** Appointing Authorities shall give employees who report a job related illness or injury copies of this Section, Section 840-2.21, and the agency's

policies and procedures for complying with this Section and the law. The procedures shall include instructions about requesting leave without pay under Section 840-2.21.

(f) **Placement of employee on leave without pay.** Appointing Authorities shall refer to this Section when they place an employee on leave without pay under Section 840-2.21. The Appointing Authority shall not require employees to exhaust paid sick and annual leave accumulations before placing them on leave without pay [74:840-2.21]. The Appointing Authority shall continue paying the employee's basic plan insurance coverage and dependent insurance benefit allowance while the employee is on leave without pay, and the leave shall not be a break in service [74:840-2.21].

(g) **Medical reports.** At least every 3 months, an employee on leave without pay under this Section shall give the Appointing Authority a medical statement as to his or her ability to perform the essential duties of the original position [74:840-2.21]. The medical statement shall be made by a physician as defined in Section 14 of Title 85 of the Oklahoma Statutes.

(h) **Inability to perform essential duties of original position.** If an employee on leave without pay under this Section cannot perform the essential duties of the original position, the employing agency shall give the employee first preference for other ~~classified and unclassified~~ positions according to Section 840-2.21.

(1) Appointing Authorities shall establish a procedure for giving employees on leave without pay under this Section first preference to fill ~~classified and unclassified~~ positions that do not represent a promotion to the employee, if the employee is medically able to do the essential duties and has the minimum qualifications for positions the Appointing Authority seeks to fill.

(2) Appointing Authorities do not have to notify employees on leave without pay under this Section when the Appointing Authority fills a vacant position temporarily ~~(by temporary unclassified appointment or detail to special duty)~~.

(3) Before an Appointing Authority may give a ~~classified or unclassified~~ an employee first preference for a classified position, the employee shall be certified by the as meeting the minimum required qualifications, if any. ~~Neither classified nor unclassified employees shall be required to compete through the open competitive process for a classified position. The Appointing Authority shall submit the necessary paperwork to the Human Capital Management Division for review.~~

(4) Before an Appointing Authority assigns an employee to an alternate position (a position that is not the original position) , the Appointing Authority shall give the employee written notice of the requirement to return to the original position under (i) of this Section. While in an alternate position, an employee shall submit medical reports at least every 3 months and whenever the medical condition changes enough to affect his or her ability to return to the original position.

(i) **Return to original position.** An employee on leave without pay or working in an alternate position shall have the right to return to his or her original position according to this

Section and Section 840-2.21. When a medical report indicates the employee is able to perform the essential duties of the original position, with or without reasonable accommodation, the Appointing Authority shall return the employee to the original position. The employee and the Appointing Authority may agree in writing to waive the requirement to return the employee to the original position from an alternate position.

(j) **Failure to return to work.**

(1) The Appointing Authority may discipline a ~~permanent classified employee or a probationary classified employee or an unclassified employee~~ if:

(A) a medical report states the employee is able to do the essential duties of the original position or an alternate position (for which the employee is qualified) ; and

(B) the employee does not return to work within 7 days after the Appointing Authority mails a notice to the employee's last known address or delivers a notice to the employee.

(2) If an employee does not return to the original position or an alternate position within 1 year after the start of leave without pay, the Appointing Authority may terminate the employee under Section 840-2.21. An Appointing Authority that uses Section 840-2.21 as authority to terminate an employee shall give the employee a copy of (k) of this Section. ~~Termination of a permanent classified employee under this Section is subject to the pretermination hearing requirements of Section 840-6.4 of Title 74 of the Oklahoma Statutes.~~

(k) Reinstatement upon separation. ~~A classified or unclassified employee shall be eligible for reinstatement to either classified or unclassified employment with any state agency for 12 months after the date of separation under (j) (2) of this Section. An unclassified employee shall be eligible for reinstatement to unclassified employment with any state agency for 12 months after the date of separation under (j) (2) of this Section. This does not reduce eligibility under other general reinstatement or reemployment laws or rules, such as 260:25-9-102. [74:840-2.21]~~

**PART 7. LEAVE WHEN OFFICES ARE CLOSED OR SERVICES REDUCED**

**260:25-15-70. Leave when state agency services are temporarily reduced or when a state office is temporarily closed**

(a) The rules in this Part are special leave rules which may be exercised if state offices (that is, agencies or parts of agencies) are temporarily closed or services are temporarily reduced for the safety of the public or state employees. The rules in this Part are applicable to all classified and unclassified employees of the state, including those on temporary and other limited term appointments.

(b) The rules in this Part do not prevent agencies from approving leave as usual to employees who request time off in accordance with other Merit Personnel Administration Rules governing leave, such as sick and annual leave. The rules in

this Part do not apply to agencies or employees if a voluntary or involuntary leave without pay (furlough) is in effect.

(c) Appointing authorities of affected agencies shall notify the Office of Management and Enterprise Services of agency closings and reductions in services [74:840-2.20A(C)].

**260:25-15-71. Leave when a state office building is temporarily closed due to unsafe working conditions or hazardous weather; or when services are temporarily reduced due to hazardous weather (paid administrative leave)**

(a) If agency office buildings are closed because of an imminent peril threatening the public health, safety, or welfare of state employees or the public, or when state office buildings are temporarily closed or reduced due to hazardous weather conditions, the Appointing Authority shall place employees who are scheduled to work in the affected work areas on paid administrative leave or, if applicable, shall assign them to work in another location, including, but not limited to, a telework location. During their normal duty hours, employees on paid administrative leave due to unsafe working conditions are on stand-by or on-call status. Appointing Authorities may call employees to return to their normal duties or respond to the demands of the situation as necessary. [74:840-2.20A(A)]

(b) As used in this Section, paid administrative leave means leave granted to affected employees if offices of agencies are closed because of an imminent peril threatening the public health, safety, or welfare of state employees or the public, or when state offices are temporarily closed or reduced due to hazardous weather. Examples of reasons for temporarily closing an office due to unsafe working conditions are: leaks of toxic fumes in buildings; life threatening damage to building structures; or emergency operations which would be disrupted by the presence of the usual work force; or any other condition which poses a significant threat to the safety of the work force.

(c) Paid administrative leave shall be accorded to all affected employees only when a state office building is temporarily closed or services are temporarily reduced due to hazardous weather in accordance with 260:25-15-70 and this Section. Upon its reopening, normal Merit Personnel Administration Rules governing leave and agency procedures shall apply. The granting of administrative leave applies only to employees scheduled to work onsite in a state office building during the time period of the closure or reduced services. Administrative leave shall not be granted to employees that telework or have the ability to telework unless otherwise approved by the Appointing Authority or on a case-by-case basis. Administrative leave does not apply to employees who are absent during the closure or reduction on any previously approved leave. Employees who are not eligible to accrue leave, such as temporary employees, shall not be granted administrative leave under this section when state services are temporarily closed or temporarily reduced due to hazardous weather conditions.

(d) When the Governor or a designee of the Governor authorizes agencies or parts of agencies to maintain basic minimum services because hazardous weather conditions impede or delay the movement of employees to and from work, employees

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responsible for providing such basic minimum services shall report to work. Appointing Authorities of agencies shall be responsible for determining essential agency functions [basic minimum services] and ensuring that employees who staff such functions are so informed. [74:840-2.20A(B)] Employees who are considered responsible for basic minimum services and who are required to work when state services are temporarily reduced due to hazardous weather conditions shall be entitled to accrue administrative leave on a straight-time basis up to eight hours per day for hours worked in their regularly scheduled work periods during such reduction. Administrative leave accrued under this provision must be taken within 180 days of its accrual or the employee shall be paid for the leave. An extension of the time period for taking the leave may be approved for up to an additional 180 days, providing the Appointing Authority submits a written request with sufficient justification to the Human Capital Management Division. Accrued administrative leave must be used before granting of any annual leave except when the employee may lose accrued leave under 260260:25-15-10 and 260:25-15-11(b) (5).

(e) Employees who are responsible for basic minimum services who do not report to work have the following options to account for leave:

- (1) Charge the absence to accumulated compensatory time;
- (2) Charge the absence to accumulated annual leave;
- (3) Make up lost time in a manner consistent with the FLSA, if the Appointing Authority determines that office hours and schedules permit.

(f) An employee who leaves earlier than a designated early dismissal time, or who arrives later than a designated late arrival time, shall be charged leave for the excess time.

(g) An employee who is not responsible for basic minimum services shall not be allowed to accrue administrative leave in accordance with (d) of this Section for time worked.

(h) Employees who are placed on paid administrative leave shall receive up to eight hours per day of paid administrative leave.

## SUBCHAPTER 17. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS [REVOKED]

### PART 1. GENERAL PROVISIONS [REVOKED]

#### 260:25-17-1. Purpose [REVOKED]

~~The purposes of the rules in this Subchapter are to establish policies and procedures pertaining to employee performance appraisal systems and the state personnel interchange program. The rules in this Subchapter apply to both the classified and unclassified services.~~

### PART 3. EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM [REVOKED]

#### 260:25-17-31. Employee performance management system [REVOKED]

~~(a) The Office of Management and Enterprise Services shall make available one standard performance management system that shall be used by all agencies for completing employee performance evaluations. The purpose of this employee performance management system is to evaluate the performance of each employee in the executive branch of state government except those in the exempt unclassified service as specified in paragraphs 1 and 2 of subsection A of Section 840 5.5 and those employees employed by the institutions under the administrative authority of The Oklahoma State System of Higher Education.~~

~~(b) The employee performance management system shall provide for the following:~~

~~(1) An objective evaluation by the immediate supervisor of the performance of the employee within the assigned duties of the job. The evaluation shall contain the agency number, date of review, and employee identification number;~~

~~(2) The identification by the immediate supervisor of accountabilities and behaviors upon which the employee will be evaluated;~~

~~(3) A mid-term interview with the immediate supervisor for the purpose of discussing the progress of the employee in meeting the accountabilities and behaviors upon which the employee will be evaluated;~~

~~(4) Identification of performance strengths and performance areas for development;~~

~~(5) A final interview with the employee by the immediate supervisor who shall provide the employee with a copy of the performance evaluation; and~~

~~(6) The opportunity for the employee to submit written comments regarding the performance evaluation.~~

~~(c) Each classified employee in probationary status shall be rated at least thirty days prior to the end of the probationary period. All unclassified and permanent classified employees not otherwise exempt from this requirement shall have an evaluation period of no more than twelve months. Supervisors may perform as many additional evaluations as they deem necessary in order to effectively manage the performance of a subordinate.~~

~~(d) The immediate supervisor shall hold a meeting with the employee at least three times during a 12-month evaluation period.~~

~~(1) One meeting shall take place at the beginning of the evaluation period in order to communicate the accountabilities and behaviors upon which the employee will be evaluated. A copy shall be provided to the employee.~~

~~(2) One meeting shall take place during the rating period for the purpose of discussing the progress of the employee in meeting the accountabilities upon which the employee will be evaluated.~~

~~(3) One meeting shall take place at the end of the review period to provide the final evaluation. A copy of the evaluation shall be provided to the employee, and the employee shall have the opportunity to provide written comments.~~

(e) The agency shall use the performance evaluations of current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases, and discharges. Reductions in force shall not be considered discharges. With or without the performance evaluations the Appointing Authority can make decisions regarding demotions and discharges on current state employees if determined necessary.

(f) The agency shall retain a copy of the performance evaluation for each employee of the agency. A copy of the performance evaluation shall be retained in the employee's personnel file.

(g) The basic document to be used in conducting performance evaluations is the Performance Management Process form, a form prescribed by the Administrator. The form contains spaces for the supervisor to describe a list of accountabilities on which the employee will be evaluated. The form also lists behaviors on which state employees will be evaluated. The form provides spaces for the supervisor to enter an overall accountability rating, an overall performance rating, and a summary/development plan. The form requires signature by the employee, the supervisor, and the reviewer.

**PART 5. STATE PERSONNEL INTERCHANGE PROGRAM [REVOKED]**

**260:25-17-50. Purpose [REVOKED]**

The purpose of the rules in this Part is to implement the public policy stated in the State Personnel Interchange Program, Sections 840 3.9 et seq. of the Oklahoma Personnel Act.

**260:25-17-52. State personnel interchange agreements and contracts [REVOKED]**

Employee interchanges made in accordance with the Act and the Merit Rules shall be executed by mutual agreement or contract by the sending agency, the receiving agency and the participating employee, subject to the following conditions and provisions:

- (1) The agreement or contract shall be in the standard format and on the standard form provided by the Human Capital Management Division. Both the personnel interchange agreement and the personnel interchange contract contain information regarding the terms and conditions of the interchange and are signed by the Appointing Authority of the sending and receiving agencies and by the participating employee. Employee interchanges shall be by agreement if the receiving agency does not reimburse the sending agency and by contract if the receiving agency reimburses the sending agency.
- (2) The agreement or contract shall be signed voluntarily by the sending agency, the receiving agency, and the participating employee.
- (3) The receiving agency shall submit an original agreement or contract signed by the Appointing Authorities of the sending and receiving agencies and the participating employee to the Human Capital Management Division. The Administrator shall review and

approve each agreement or contract before the effective date of the interchange.

**PART 7. CARL ALBERT PUBLIC INTERNSHIP PROGRAM [REVOKED]**

**260:25-17-70. Purpose [REVOKED]**

(a) The rules in this Part establish policies and procedures to implement the Carl Albert Public Internship Program in accordance with Sections 840 3.2 through 840 3.7 of Title 74 of the Oklahoma Statutes.

(b) The Carl Albert Public Internship Program consists of Executive Fellows Internships, Undergraduate Internships and Senior Undergraduate Internships. The purposes of the program shall be to assist students at institutions of higher education in gaining experience and knowledge in state government and to encourage recruitment of such students to pursue careers in state government service [74:840 3.2]. The rules governing the program apply to both merit system and non-merit system employing agencies.

(c) This part contains 4 groups of Sections:

- (1) Section 260:25-17-74 pertains only to Undergraduate Internships;
- (2) Sections 260:25-17-75 and 260:25-17-84 pertain only to Executive Fellows Internships;
- (3) Section 260:25-17-76 pertains only to Senior Undergraduate Internships; and
- (4) Sections 260:25-17-77 through 260:25-17-82 pertain generally to the Carl Albert Public Internship Program.

**260:25-17-74. Undergraduate internship program [REVOKED]**

(a) Eligibility. The undergraduate internship program consists of temporary positions for students enrolled in institutions of higher education and working toward an undergraduate degree which shall include associate's degrees or certifications by the Oklahoma Department of Career and Technology Education; [74:840 3.4(A)(1)]. To be considered for eligibility determination, applicants shall have at least a 2.5 cumulative grade point average on a 4.0 scale. Applicants shall follow the procedures in 260:25-17-77 for eligibility determination.

(b) Conditions of employment. Participants in the Undergraduate Internship Program who receive internship appointments shall:

- (1) be employed in accordance with paragraph 8 of Section 840 5.5 of Title 74 of the Oklahoma Statutes, for not more than 2 semesters or 999 hours per year;
- (2) continue making progress toward an undergraduate degree;
- (3) maintain the grade point average set out in (a) of this Section; and
- (4) complete the training requirements described in (d) (3) of this Section.

(c) Benefits. Undergraduate interns shall not be eligible for paid leave, or health and retirement benefits.

(d) Responsibilities of appointing authorities.

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(1) The Appointing Authority or designee shall ensure that the intern provides verification to the Human Capital Management Division that the intern is:

- (A) continuing to make progress toward an undergraduate degree during each semester employed, and
- (B) maintaining the grade point average set out in (a) of this Section.

(2) If this information is not transmitted to the Human Capital Management Division within 30 days after the end of the previous semester, the Administrator shall notify and the Appointing Authority of the termination of the internship agreement in accordance with Section 260:25-17-82(a).

(3) Each Appointing Authority shall provide a minimum of 4 clock hours of job related training for undergraduate interns during the internship.

### 260:25-17-75. Executive Fellows program [REVOKED]

(a) **Eligibility.** An Executive Fellows Program consists of six month to two year placements in professional or managerial level positions for students [74:840 3.4(A) (3)]. No person is eligible to participate in the Executive Fellows program for more than 2 years. To be considered for eligibility determination, applicants shall have completed a baccalaureate degree and at least 6 semester hours of graduate level coursework with at least a 3.0 grade point average on a 4.0 scale [74:840 3.4(A) (3)]. Applicants shall follow the procedures in 260:25-17-77 for eligibility determination.

(b) The Administrator or designee may waive the completion of 6 semester hours of graduate level coursework required by subsection (a) of this section for 1 semester, if:

(1) An individual currently employed by a state agency as a Carl Albert Public Internship Program undergraduate intern provides verification to the Human Capital Management Division that he or she has:

- (A) completed an undergraduate degree, and
- (B) is enrolled in 6 semester hours of approved graduate level work; and

(2) The Appointing Authority or designee of the agency where the undergraduate intern is currently employed certifies to the Human Capital Management Division that the agency intends to employ the undergraduate intern as a Carl Albert Public Internship Program Executive Fellow immediately upon the undergraduate intern's completion of an undergraduate degree.

(c) The appointment of an Executive Fellow in accordance with subsection (b) is not effective until the Administrator or designee approves the waiver of the 6 semester hours of graduate level course work.

(d) At the end of the semester for which the waiver of the 6 semester hours of graduate level coursework was approved by the Administrator pursuant to subsection (b), the individual employed as a Carl Albert Public Internship Program Executive Fellow shall meet the eligibility requirements in subsection (a) of this section or be removed from the Carl Albert Public Internship Program. [74:840 3.5]

(e) **Conditions of employment.** Participants in the Executive Fellows Program who receive internship appointments shall:

(1) be appointed in accordance with paragraph 10 of Section 840 5.5 of Title 74 of the Oklahoma Statutes [74:840 3.5(4)];

(2) be granted leave benefits commensurate with regular state employees [74:840 3.5(5)];

(3) be enrolled in the state health insurance and retirement benefits programs, if expected to work one thousand (1,000) or more hours per year;

(4) continue to make scholastic progress toward their graduate degrees during each fall and spring semester until completion of all graduate degree requirements;

(5) maintain the grade point average set out in (a) of this Section; and

(6) complete the training requirements described in (f) (3) of this Section.

(f) **Responsibilities of appointing authorities.**

(1) The Appointing Authority or designee shall ensure that the intern provides verification to the Human Capital Management Division that the intern is:

(A) continuing to make scholastic progress toward a graduate degree, until completion of all graduate degree requirements, and

(B) maintaining the grade point average set out in (a) of this Section.

(2) If this information is not transmitted to the Human Capital Management Division within 30 days after the end of the previous semester, the Administrator shall notify the Appointing Authority of the termination of the internship agreement in accordance with Section 260:25-17-82(a).

(3) Each Appointing Authority shall provide a minimum of 8 clock hours of job related training for Executive Fellows during each 6 month period.

(4) Each Appointing Authority shall rate the performance of participants in the Executive Fellows Program in accordance with Section 840 4.17 of Title 74 of the Oklahoma Statutes. [74:840 3.4]

### 260:25-17-76. Senior Undergraduate Program [REVOKED]

(a) **Eligibility.** The Senior Undergraduate Program consists of positions for a term of up to 24 months for students who are currently enrolled in institutions of higher education and working toward a baccalaureate degree. [74:840 3.4(A)(2)]. No person is eligible to participate in the Senior Undergraduate Program for more than 2 years. To be considered for eligibility determination, applicants shall have at least 90 semester hours of undergraduate coursework with at least a 2.5 grade point average on a 4.0 scale [74:840 3.4(A)(2)]. Applicants shall follow the procedures in 260:25-17-77 for eligibility determination.

(b) **Conditions of employment.** Participants in the Senior Undergraduate Program who receive internship appointments shall:

(1) be appointed in accordance with paragraph 10 of Section 840 5.5 of Title 74 of the Oklahoma Statutes [74:840 3.5(4)];

(2) be granted leave benefits commensurate with regular state employees [74:840 3.5(4)];



- (3) be enrolled in the state health insurance and retirement benefits programs, if expected to work one thousand (1,000) or more hours per year;
- (4) continue to make scholastic progress toward their baccalaureate degrees during each fall and spring semester until completion of all undergraduate degree requirements;
- (5) maintain the grade point average set out in (a) of this Section, and
- (6) complete the training requirements described in (c) (3) of this Section.

(e) **Responsibilities of appointing authorities.**

- (1) The Appointing Authority or designee shall ensure that the intern provides written verification to the Human Capital Management Division that the intern is:
  - (A) continuing to make scholastic progress toward a baccalaureate degree, until completion of all undergraduate degree requirements, and
  - (B) maintaining the grade point average set out in (a) of this Section.
- (2) If this information is not transmitted to the Human Capital Management Division within 30 days after the end of the previous semester, the Administrator shall notify the Appointing Authority of the termination of the internship in accordance with Section 260:25-17-82(a).
- (3) Each Appointing Authority shall provide a minimum of 4 clock hours of job related training for Senior Undergraduate Interns during each 6 month period
- (4) Each Appointing Authority shall rate the performance of participants in the Senior Undergraduate Program in accordance with Section 840 4.17 of Title 74 of the Oklahoma Statutes. [74:840 3.4]

**260:25-17-77. Application form and procedure**  
[REVOKED]

(a) **Application form.**

- (1) The Carl Albert Public Internship Program application is available from Human Capital Management. The public announcement provides information about the application process and eligibility requirements. The application solicits information about applicants and their qualifications for participation in the program.
- (2) Applicants may apply at any time.

(b) **Communication with the Human Capital Management.** Interested persons may direct communications to the attention of the Carl Albert Public Internship Program in accordance with 260:25-29-12.

(c) **Application procedure.** Applicants for the internship program shall provide the following information to the Human Capital Management Division for review and determination of eligibility:

- (1) A completed on-line application form as prescribed by Human Capital Management;
- (2) Transcript(s) of coursework from accredited higher education institutions;
- (3) A letter of recommendation from the current Appointing Authority, if the applicant is a state employee [74:840 3.4(C)];

- (4) A Resume
- (5) Verification of current enrollment.

(d) **Notification.** Human Capital Management shall notify applicants if the documents they submit are sufficient for eligibility. A notice of eligibility does not mean the applicant will be employed as an intern.

(e) **Length of eligibility.** Applicant information on file at the Human Capital Management Division shall remain active if eligible applicants submit verification of current enrollment and an updated transcript each semester. If applicants fail to provide updated information within 90 days after the end of the previous semester, they will no longer be eligible for employment as an intern and their names will be removed from the list of eligible applicants made available to state agencies.

(f) **Appointment.** Human Capital Management shall provide a list of all eligible applicants for the Carl Albert Public Internship Program to state agencies periodically and at an agency's request. An agency may request an eligible applicant list and copies of individual eligible intern files at any time.

(g) **State employees.** State employees may apply to participate in the Carl Albert Public Internship Program. Permanent classified and regular unclassified employees who receive internship appointments may request leave without pay from their permanent or regular employment in accordance with 260:25-15-47, Leave of absence without pay. Probationary employees and regular unclassified employees with less than 12 months continuous service shall resign before entry on duty as an intern.

**260:25-17-80. General conditions of employment**  
[REVOKED]

(a) **No expectation of continued employment.**

- (1) Persons participating in the Carl Albert Public Internship Program shall be employed in the unclassified service of the state in accordance with Section 840 5.5 of Title 74 of the Oklahoma Statutes and Sections 260:25-17-74 and 260:25-17-75.
- (2) An intern has no right or expectation of continued employment in any classified or unclassified position with the state because of participation in the Carl Albert Public Internship Program.

(b) **Compensation plan for interns.**

- (1) The employing agency shall establish compensation plans that include rates of pay for Carl Albert Public Internship Program positions which are consistent with positions having like duties and responsibilities within the agency.
- (2) The Administrator may establish job descriptions for interns in accordance with Section 260:25-5-8.
- (3) Carl Albert interns who are not exempt from the provisions of the Fair Labor Standards Act (29U.S.C. 201 et seq.) are subject to its overtime provisions and 260:25-7-12.
- (4) Salary adjustments may be made in accordance with Section 840 2.17 of Title 74 of the Oklahoma Statutes.

(c) **Report of work performance to educational institution.** The Appointing Authority or designee of the employing

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agency shall provide the internship faculty member with information necessary to evaluate the intern's work experience for academic purposes at the faculty member's request.

(d) **Intercession by the Human Capital Management Division.** The Human Capital Management Division may intercede in an internship if the Office determines, at the request of the intern, the agency, or the institution of higher education at which the intern is enrolled, that an internship is not functioning [74:042-3.5(8)] in accordance with the rules in this Part, and the individual internship agreement. The intercession process may include, but is not limited to the following actions: modification of certain internship terms, reassignment, and separation or early release from the internship.

(e) **State employees; continuation of benefits.** State employees leaving classified or exempt positions in state government in order to take an internship shall continue to receive all fringe benefits they would have received in their previous classified or exempt positions [74:840-3.5(2)].

(f) **Training requirements.** Each intern shall complete the training requirements prescribed by the employing agency and the Administrator.

### 260:25-17-82. Carl Albert Public Internship Program; termination of internship [REVOKED]

(a) **Termination of internship agreement and separation.** An agency may continue to employ a person as an intern only during the period of the internship agreement as provided by the rules in this Part. The agency, the intern, or the Administrator may terminate the internship agreement at any time without notice. The agency may separate the intern with or without cause.

(b) **State employees; right of return and recall to previous position.**

(1) State employees leaving classified or exempt positions in state government in order to take an internship shall have the right to return to the previous position at any time during the internship or upon completion of the internship [74:840-3.5(2)].

(2) The Appointing Authority may require a state employee participant to return to the original state agency position before the internship termination date stated on the agreement form. The employee shall be notified by certified mail and given 7 calendar days to return to work. The notification shall include reasons for requiring the employee to return to work. If the employee fails to return as directed, the Appointing Authority may discipline the employee.

### 260:25-17-84. Executive Fellows program; conversion [REVOKED]

(a) **Eligibility.** An Executive Fellow, Senior Undergraduate, and Undergraduate shall be eligible for appointment to a position in the classified or unclassified service of the state and shall be deemed as meeting all other statutory requirements if the participant has:

(1) Been certified by the Appointing Authority as having successfully completed an internship; and

(2) Upon successful completion of an internship in the Undergraduate or Senior Undergraduate Internship Program or Executive Fellows Program, a participant who has met all requirements of education and experience shall be eligible for appointment to a position in the classified or unclassified service of the state and shall be deemed as meeting all other statutory requirements;

(b) **Direct conversion.** If there is no break in service after successful completion of an internship, the conversion to a position in the classified service shall be exempt from the posting requirements in Part 5 of 260:25-11, if the conversion is to a job which is consistent with the duties and responsibilities of the Executive Fellow, Senior Undergraduate, or Undergraduate internship.

(c) **Salary upon direct conversion.** If there is no break in service, the salary shall be determined in accordance with 260:25-7-3.

(d) **Probation period upon direct conversion.** If there is no break in service, the probation period may be waived by the Appointing Authority.

(e) **Conversion following a break in service.** If the Executive Fellow, Senior Undergraduate, or Undergraduate is separated after successful completion of an internship and before being converted to the classified service, the agency shall meet the internal posting requirements of Part 5 of 260:25-11 before the person is reinstated and converted to the classified service, and may require a probationary period in accordance with 260:25-9-102.

## PART 9. MANDATORY SUPERVISORY TRAINING [REVOKED]

### 260:25-17-90. Purpose [REVOKED]

The rules in this Part implement Section 840-3.1 of Title 74 of the Oklahoma Statutes, which requires training for supervisors in both the classified and unclassified services in the executive branch of state government, excluding those within The Oklahoma State System of Higher Education. The rules establish policies and procedures necessary to implement supervisory training requirements.

### 260:25-17-91. Definitions [REVOKED]

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

**"One hour of training"** means one (1) hour of learner interaction with the content of the learning activity, which includes classroom, self-paced instruction, assignments, or assessments that support the stated learning outcome. The Administrator shall develop a standard for assessing and assigning hours to learning content.

**"Online learning format"** means any live or self-paced learning content delivered remotely using online technology.

**"Supervisory training"** means courses or training related to the effective performance of an agency manager or supervisor [74:840-3.1].

~~"Twelve hours of training" means twelve (12) hours of learner interaction with no more than six (6) hours spent on online learning formats. Twelve hours (12) of training are also equivalent to 1.2 continuing education units (CEUs).~~

~~"Twenty-four hours of training" means twenty-four (24) hours of learner interaction with no more than twelve (12) hours spent on online learning formats. Twenty-four (24) hours of training are also equivalent to 2.4 continuing education units (CEUs).~~

**260:25-17-93. Supervisory training requirements [REVOKED]**

~~(a) Beginning November 1, 1999, all supervisors shall complete 12 hours of supervisory training according to this Part each calendar year [74:840-3.1].~~

~~(b) Persons appointed to supervisory positions after November 1, 1999, shall complete 24 hours of supervisory training according to this Part within 12 months before or after assuming a supervisory position [74:840-3.1]. Supervisors shall complete training courses in the State of Oklahoma Performance Management Process and progressive discipline within the first 12 months of being appointed to a supervisory position.~~

~~(c) The appointing authority of each agency shall make sure each supervisory employee is notified and scheduled to attend required supervisory training and shall make time available for each supervisory employee to complete the training [74:840-3.1].~~

~~(d) Training courses conducted by employing agencies, public and private schools, and colleges and universities may count toward supervisory training requirements if the coursework meets the definition for supervisory training in 260:25-17-91.~~

**260:25-17-95. Supervisory training reporting requirements [REVOKED]**

~~Employing agencies shall keep records of the training of all supervisory employees and shall submit reports of supervisory training to the Human Capital Management Division at the request of the Administrator of the Human Capital Management Division.~~

**260:25-17-97. Reporting of training compliance [REVOKED]**

~~Each spring, the Administrator will notify agencies of the method for reporting their level of compliance with these requirements for the previous calendar year. The Administrator shall provide a summary of the reports to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.~~

**PART 11. CERTIFIED PUBLIC MANAGER PROGRAM [REVOKED]**

**260:25-17-110. Purpose [REVOKED]**

~~(a) The rules in this Part establish policies and procedures to implement the Certified Public Manager Program<sup>®</sup> in accordance with Section 840-1.6A(9) of Title 74 of the Oklahoma Statutes. The Program is administered by the Office of Management and Enterprise Services.~~

~~(b) It is the purpose of the Certified Public Manager Program<sup>®</sup> to develop the management skills of public sector employees and to assist state agencies and other public sector organizations in the identification and development of future leaders.~~

**260:25-17-111. Definitions [REVOKED]**

~~In addition to words and defined in OAC 455:10-1-2 or 260:25-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise.~~

~~"Organizations" means municipalities, counties, Indian Nations, and the federal government.~~

~~"Program" means the Certified Public Manager Program<sup>®</sup> authorized by Section 840-1.6A(10) of Title 74 of the Oklahoma Statutes.~~

~~"Training section" means a group of participants who complete the program in the same period of time.~~

**260:25-17-112. Program description [REVOKED]**

~~(a) Eligibility. Employees of state agencies in all branches of state government who are nominated by the Appointing Authority or designee may participate in the Program. Additionally, employees of organizations, who are nominated by the chief administrative officer or designee may participate in the Program.~~

~~(b) Nomination procedure.~~

~~(1) The nomination process and/or criteria will be determined by each agency. The Certified Public Manager Program<sup>®</sup> nomination form and information booklet are available from the Human Capital Management Division. The nomination form solicits information about the nominee and the nominating agency or organization and shall be signed by the nominee, the nominee's supervisor, and the agency's Appointing Authority or designee or the organization's chief administrative officer or designee. The information booklet provides information about the nomination process, a description of the Program, courses required to complete the Program, and the role of Higher Education in the Program.~~

~~(2) The agency or organization may nominate an employee for participation in the Program during designated enrollment periods by forwarding a completed nomination form to the Certified Public Manager Program<sup>®</sup> at the Human Capital Management Division prior to the end of the enrollment period.~~

~~(c) Enrollment in the Program. The Administrator shall enroll an employee in the Certified Public Manager Program<sup>®</sup> who has been nominated by his or her agency or organization in the first available training section.~~

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(d) Communication with the Human Capital Management Division. Interested persons may direct communications to the attention of the Oklahoma Certified Public Manager Program<sup>®</sup> in accordance with 260:1-1-12.

(e) Experience credit. Graduation from the Program as a "Certified Public Manager<sup>®</sup>" shall substitute for one (1) year of professional experience in business or public administration on any Merit System job class requiring such experience as part of the minimum qualifications.

### 260:25-17-113. Program requirements for candidates [REVOKED]

(a) Graduation requirements. To graduate from the Program as a "Certified Public Manager<sup>®</sup>", a candidate shall complete all of the following graduation requirements offered during the eighteen (18) month training section:

(1) Attend all scheduled courses, project sessions and learning events prescribed by the Human Capital Management Division and specified in the information packet described in 260:25-17-112. The remaining hours shall be in program pre-work requirements and other assignments;

(2) Attend at least 75 percent of the scheduled class dates. Make-up work will be provided for all in-person classes. Even if all make-up work is completed, but the candidate has failed to attend at least seventy-five (75) percent of the required scheduled sessions, they are eligible to be removed from the training section.

(3) Pay the Program fees described in 260:25-17-115 in full before graduation.

(b) Removal of a candidate from the Program. The nominating agency or organization and the Administrator shall have the right to remove a candidate from the Program. Any candidate who fails to complete a training section will be given the greater of two (2) additional training section cycles or three (3) years to re-enroll in another training section without being charged. Hours earned for sessions attended or work completed in a previous training section are not transferrable to another training section.

### 260:25-17-114. Program requirements for nominating agency or organization [REVOKED]

The nominating agency or organization shall:

(1) Provide time for the candidate, during his or her work day, to attend training courses, including the Capstone, prepare class assignments, study for examinations, and work on Program projects;

(2) Allow candidates to use agency or organization issues for classroom, project, and portfolio assignments;

(3) Provide financial support to agency candidates, as required by the Program;

(4) Review and approve employee absences for scheduled cohort dates prior to sending the nomination to HCM; and

(5) Allow managers to participate in the employee's involvement in the program for activities such as attending project presentations, answering survey questions or providing employee assessments.

### 260:25-17-115. Program fees [REVOKED]

(a) The fee for participation shall be established by the Administrator pursuant to 74:840-1.6A(9).

(b) Should the fee structure change during the course of an employee's participation in the program, fees shall remain consistent with the fee assessed at the time of enrollment.

## PART 13. PERSONNEL PROFESSIONALS TRAINING AND CERTIFICATION [REVOKED]

### 260:25-17-130. Purpose [REVOKED]

The rules in this Part implement Section (Section 840-1.6A(14) of Title 74 of the Oklahoma Statutes, which requires continuing training and certification of personnel professionals in the executive branch of state government, excluding institutions within The Oklahoma State System of Higher Education. The rules in this Part apply to both Merit System and non-Merit System agencies, and to both classified and unclassified personnel professionals. The rules establish policies and procedures necessary to implement personnel professionals training requirements.

### 260:25-17-131. Definitions [REVOKED]

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

"**Annual training requirements**" means a curricula approved by the Administrator for certified personnel professionals to maintain certification.

"**Certification**" means the successful completion of the course curricula or service as an instructor for the course curricula, and the successful completion of the examination established by the Administrator for testing competency in professional personnel practices.

"**Certified Personnel Professionals**" means employees who have achieved and maintained certification.

"**Personnel professional**" means an employee in the classified or unclassified service, who on a regular and consistent basis as an integral part of his or her normal work assignment and job family descriptor, performs professional duties developing or implementing personnel administration policies, practices and procedures.

"**Personnel professional**" includes persons performing such duties in the job families of Human Resources Programs Manager, Human Resources Management Specialist, Personnel Programs Analyst, Personnel Programs Coordinator, Human Resources Programs Director, or in other job families designated by the Administrator as professional personnel positions; and those persons in classified or unclassified positions occupying comparable positions or performing comparable duties as determined by the Administrator. The Administrator may waive the training requirements for personnel professionals whose primary assigned duties are in the areas of benefits, payroll, training, affirmative action/equal employment opportunity, retirement, safety, workers compensation, or employee assistance programs, according to 260:25-17-136.

**260:25-17-132. Personnel professionals training requirements [REVOKED]**

(a) Beginning July 15, 1996, all employees assigned to professional personnel positions in the executive branch, excluding employees within The Oklahoma State System of Higher Education, shall attend training in professional personnel administration conducted and determined by the Human Capital Management Division, and successfully complete an examination prescribed by the Administrator in order to attain certification as a personnel professional. In lieu of training conducted by the Human Capital Management Division, employees can complete a Professional in Human Resources (PHR) or a Senior Professional in Human Resources (SPHR) certification from the Human Resource Certification Institute (HRCI) or a Certified Professional or Senior Certified Professional certification from the International Public Management Association for Human Resources (IPMA-HR). Employees appointed to personnel professional positions after July 15, 1996, shall attend the training and successfully complete the examination within one (1) year of appointment. [74:840 1.6A(14)]

(b) Service as an instructor for all or part of the course may be counted toward the training requirement. Employees serving as instructors must successfully complete the prescribed examination to attain certification as a personnel professional.

(c) Employees who have been certified as personnel professionals by the Administrator shall thereafter annually complete training conducted and determined by the Human Capital Management Division in professional personnel administration to maintain certification. [74:840 1.6A(14)] The Administrator may approve training that is not conducted by the Human Capital Management Division as meeting the annual training requirements.

(d) The Appointing Authority of each agency with an employee assigned to a professional personnel position shall ensure the employee is notified and scheduled to attend required personnel professionals training and shall make time available for the employee to complete the training. [74:840 1.6A(14)]

**260:25-17-134. Course approval of annual training requirements [REVOKED]**

(a) To request approval of training not conducted by the Human Capital Management Division as meeting the annual training requirements, the Appointing Authority shall submit the following course information to the Administrator for review:

- (1) Course title and a brief description;
- (2) Classroom hours or Continuing Education Units (CEUs); and
- (3) Course outline.

(b) The Administrator shall maintain lists of courses approved as meeting the annual training requirements, and may withdraw his or her approval of courses by notifying employing agencies.

(c) Certified Personnel Professionals who complete approved training courses shall submit proof of completion that is acceptable to the Administrator.

**260:25-17-136. Application for waiver of training requirements [REVOKED]**

(a) The Administrator may waive the personnel professional training requirements for employees:

- (1) Whose primary assigned duties are in the areas of benefits, payroll, training, affirmative action/equal employment opportunity, retirement, safety, workers compensation, or employee assistance programs; and,
- (2) Whose primary assigned duties do not include classification, compensation, recruitment, or selection.

(b) Employees who are eligible for a waiver according to Subsection (a) of this Section, may apply by submitting a written request signed by the Appointing Authority, along with a position description, job family descriptor, or a description of the employee's primary assigned duties, to the Human Capital Management Division.

(c) The Administrator shall be responsible for granting or denying waivers under this Section. The decision of the Administrator to grant or deny such a waiver shall be final.

**260:25-17-138. Personnel professionals training fees [REVOKED]**

The fee for participation shall be established by the Administrator pursuant to 74:840 1.6A(9).

**PART 15. WORKFORCE EDUCATION PROGRAM**

**260:25-17-140. Purpose**

The rules in this part implement Section 840-3.1A of Title 74, which authorizes agencies in the executive branch of state government to establish education and training programs for positions critical to the missions of those agencies. The rules in this Part apply to both Merit System and non Merit System agencies, and to both classified and unclassified executive branch state employees.

**PART 17. STATE WORK INCENTIVE PROGRAM [REVOKED]**

**260:25-17-170. Purpose**

(a) The rules in this Part establish policies and procedures to implement the State Work Incentive Program in accordance with Section 840 5.16 of Title 74 of the Oklahoma Statutes.

(b) The State Work Incentive Program is aimed at employing participants in the Temporary Assistance to Needy Families Program in Oklahoma and vocational rehabilitation clients of the Department of Rehabilitation Services in entry level positions within state service. [74:840 5.16]

(c) The rules in this Part, except for Section 260:25-17-177, apply to both merit system and non merit system agencies employing participants in the State Work Incentive Program. Section 260:25-17-177 shall apply to merit system agencies only.

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## 260:25-17-173. Eligibility and length of appointment [REVOKED]

To be eligible for hire under the State Work Incentive Program, a person must be certified as a participant in the Temporary Assistance to Needy Families Program by a State Work Incentive Referral Form issued by the State of Oklahoma Department of Human Services, or be certified as an eligible individual by a State Work Incentive Program Certificate issued by the Department of Rehabilitation Services. A copy of the required certification will be provided to the Human Capital Management Division at the time of appointment. Agencies may employ eligible persons in the State Work Incentive Program for up to 2 years in full time or part time unclassified status.

## 260:25-17-175. Conditions of employment [REVOKED]

(a) **No right of continued employment.** Employees hired under the State Work Incentive Program shall be employed in the unclassified service of the state. Employees hired under the State Work Incentive Program shall have no right or expectation of continued employment in any classified or unclassified position because of participation in the State Work Incentive Program.

(b) **Eligibility for leave and benefits.** Employees hired under the State Work Incentive Program are eligible for leave and other benefits of state employment available to regular unclassified employees. Employees hired under the State Work Incentive Program must meet any other eligibility requirements established for such benefits. [74:840-5.16]

(c) **Leave without pay.** Employees hired under the State Work Incentive Program may be granted leave of absence without pay from the agency in accordance with 260:25-15-47. Leave without pay in excess of a total of 5 working days shall extend the employee's 2 years of eligibility under the State Work Incentive Program by the number of working days the employee is on leave without pay.

(d) **Eligibility for promotion.** Employees hired under the State Work Incentive Program may be reassigned or promoted while they are participating in the program. [74:840-5.16]

(e) **Performance evaluation.** Appointing Authorities shall evaluate the performance of employees hired through the State Work Incentive Program according to the provisions of Section 840-4.17 of Title 74 of the Oklahoma Statutes.

## 260:25-17-177. Conversion [REVOKED]

(a) **Eligibility.** Persons employed by merit system agencies under the State Work Incentive Program shall be eligible for conversion to permanent classified status at the discretion of the Appointing Authority if the employee has:

- (1) completed 2 years of continuous participation in the State Work Incentive Program, not including periods of leave without pay in accordance with 260:25-17-175;
- (2) performed satisfactorily as evidenced by performance evaluations conducted according to Section 840-4.17 of Title 74 of the Oklahoma Statutes; and
- (3) met the minimum requirements for the position.

(b) **Direct conversion.** Direct conversion means the conversion of an employee to permanent classified status immediately following the successful completion of 2 years service under the State Work Incentive Program. Conversion shall be to a job consistent with the duties assigned to the employee under the State Work Incentive Program. The conversion of employees who meet the requirements of subsection (a) to permanent classified status shall be exempt from:

- (1) the application, certification, and appointment requirements of Subchapter 9 of these rules;
- (2) the probationary period requirements of Part 3 of Subchapter 11 of these rules; and
- (3) the promotional posting requirements of Part 5 of Subchapter 11 of these rules.

(c) **Conversion following a break in service or to a different job.** If an employee completes a 2 year appointment under the State Work Incentive Program and is separated from the unclassified appointment under this program without being directly converted, the employee will be eligible for future appointment for up to 2 years following the completion of the State Work Incentive Program and eligible persons may make application for employment directly with state agencies. Additionally, a person may be converted to a different job which is not consistent with the duties and responsibilities performed under the State Work Incentive Program appointment subject to the following conditions. Prior to appointment and conversion of a person under this authorization, the agency shall meet the internal posting requirement of Part 5 of 260:25-11 and may require a probationary period in accordance with 260:25-9-102. The following requirements must also be met:

- (1) The Administrator must certify that the person meets the current minimum qualifications for the job;
- (2) The date the person enters on duty must be within 2 years after the completion of the State Work Incentive Program appointment; and
- (3) The probationary period must be in accordance with 260:25-11-30.

(d) **Salary upon conversion.** If there is no break in service and conversion is to a job which is consistent with the duties and responsibilities performed during the State Work Incentive Program appointment, the salary shall be fixed at the rate of pay in effect for the employee at the time of conversion. If the conversion is to a different job, or the conversion follows a break in service, the salary shall be determined in accordance with 260:25-7-3.

## SUBCHAPTER 29. HUMAN CAPITAL MANAGEMENT DIVISION

### PART 1. GENERAL PROVISIONS

## 260:25-29-12. Location for information and for filing

(a) The address and telephone number for communications with HCM is: Human Capital Management Division, Will

Rogers Building, Suite 106, 2401 North Lincoln Boulevard, Oklahoma City, OK 73105-4904, Telephone (405) 521-2177.

(b) The normal business hours of HCM are 8:00 a.m. to 5:00 p.m., Monday through Friday.

(c) Anyone may file a document with HCM by mail or hand-delivery during normal business hours. The "filing date" is the date HCM receives a document by mail or hand-delivery, not the date it is mailed or postmarked.

~~(d) HCM does not accept facsimiles or "FAXs" instead of original official documents except for the following documents:~~

- ~~(1) Agency Payroll Initialization (HCM 38);~~
- ~~(2) Agency Transfer (HCM 30);~~
- ~~(3) Carl Albert Public Internship Program application materials, and completed and signed agreement forms;~~
- ~~(4) Certified Public Manager nomination;~~
- ~~(5) Classification Grievance Audit Request (HCM 70);~~
- ~~(6) Dependent birthday change (EBC 20);~~
- ~~(7) Delegated authority application;~~
- ~~(8) Documents and related correspondence on legislation, rules, and Employment Relations Services (except for Employee Assistance Program participant documents and alleged discrimination complaint documents);~~
- ~~(9) HRDS Course Nomination;~~
- ~~(10) Interagency employee transfer correspondence;~~
- ~~(11) Mandatory Supervisory Training Report;~~
- ~~(12) Model Project application;~~
- ~~(13) Notice to Announce (HCM 29);~~
- ~~(14) PEP Nomination (HCM 102);~~
- ~~(15) Personnel Transaction Freeze Exception Request;~~
- ~~(16) Position Description Questionnaires~~
- ~~(17) Quality Oklahoma Project Report;~~
- ~~(18) Reallocation Forms;~~
- ~~(19) Request for personnel action;~~
- ~~(20) State Mentor Program nomination forms, application materials, and Appointing Authority endorsement forms;~~
- ~~(21) State Personnel Interchange Program completed and signed agreement and contract forms;~~
- ~~(22) Test Use and Security Agreement; and~~
- ~~(23) Voluntary Payroll Deduction Application (VPD 1) and related correspondence.~~

~~(e) HCM does not accept electronic mail or "e-mails" instead of original official documents except for the following documents:~~

- ~~(1) Carl Albert Public Internship Program transcripts, enrollment verifications, and resumes;~~
- ~~(2) Certified Public Manager nomination;~~
- ~~(3) HRDS Course Nomination;~~
- ~~(4) Mandatory Supervisory Training Report; and~~
- ~~(5) Quality Oklahoma Project Report.~~

~~(f) Unless a document clearly states otherwise, the signature of a person on a document filed with HCM shall mean the person has read it and has personal knowledge of the information it contains, that every statement is true, that no statements are misleading; and that filing the document is not a delay tactic. If any document is not signed or is signed with intent to defeat~~

the purposes of the rules in this Title, the Administrator may ignore it and continue as though it had not been filed.

**PART 3. FORMAL AND INFORMAL PROCEDURES**

**260:25-29-31. Purpose**

The rules in this Subchapter describe general formal and informal procedures the Administrator uses to take action and make decisions. Other Chapters in this Title describe informal procedures that apply specifically to individual programs under the Administrator's authority. ~~Chapter 10 of Title 455 contains formal and informal procedures authorized by the Oklahoma Personnel Act, Section 840.1 et seq. of the Oklahoma Statutes, that are under the jurisdiction of the Oklahoma Merit Protection Commission.~~

**260:25-29-39. Hearings (individual proceedings)**

- (a) The Administrator follows the provisions of Article II of the Administrative Procedures Act, Sections ~~309 to 323~~308a et seq. of Title 75 of the Oklahoma Statutes, and the rules in this Chapter in conducting hearings (individual proceedings). The Administrator or a person named by the Administrator as the hearing officer shall conduct hearings. This Section does not apply to public hearing to receive comments on proposed rules.
- (b) The Administrator shall send a notice of hearing to the parties. It shall be at least 20 days after the Administrator mails the notice unless the parties agree to an earlier date.
- (c) The hearing officer may set a time limit on oral presentations during a hearing.
- (d) The Administrator's decision after a hearing conducted under this Section is final.

[OAR Docket #22-616; filed 7-13-22]

**TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES  
CHAPTER 40. EMPLOYEE BENEFITS DEPARTMENT**

[OAR Docket #22-588]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 25. Dependent Care Reimbursement Account Option 260:40-25-2. Definitions [AMENDED]
- Subchapter 27. Health Care Reimbursement Account Option 260:40-27-2. Definitions [AMENDED]

**AUTHORITY:**

The Office of Management and Enterprise Services; 74 O.S. Section 1366; The Director of the Office of Management and Enterprise Services; 62 O.S. Section 34.6(8)

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

November 17, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 20, 2022

**PUBLIC HEARING:**

January 20, 2022

# Permanent Final Adoptions

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## ADOPTION:

February 22, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 3, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ ANALYSIS:

These rules amend the plan document for the State Employees Flexible Benefit Plan. The Consolidated Appropriations Act of 2021 allows certain plan amendments for health flexible spending arrangements and dependent care flexible spending arrangements. The rules extend the grace period for both the health flexible spending arrangement and the dependent care flexible spending arrangement for Plan Year 2020 and Plan Year 2021.

## CONTACT PERSON:

Tracy Osburn, Deputy General Counsel, General Counsel Section, OMES, 2401 North Lincoln Blvd, Oklahoma City, Oklahoma, 73105, (405) 522-3428, tracy.osburn@omes.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 25. DEPENDENT CARE REIMBURSEMENT ACCOUNT OPTION

### 260:40-25-2. Definitions

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

**"Dependent"** means any individual who is:

(A) A dependent of the participant who is under the age of 13 with respect to whom the participant is entitled to an exemption under Section 15(c) of the Internal Revenue Code or, is otherwise, a qualifying individual as provided in Section 21(d)(2) of the Internal Revenue Code, or

(B) A dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

**"Dependent care expenses"** means expenses incurred by a participant which are incurred for the care of a dependent of the participant or for related household services, and are eligible expenses as allowed under and defined in the prevailing Internal Revenue Code and rules promulgated thereunder and as allowed by the Plan Administrator.

**"Dependent care reimbursement account"** means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

**"Eligible period of coverage"** means that time period in which the participant contributes to the dependent care reimbursement account and that the participant is on an active pay status.

**"Grace Period"** means the period from the end of the Plan Year through March 15th of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance. For the Plan Year effective January 1, 2020, the grace period will be extended for twelve months (12) after the end of that Plan Year. For the Plan Year effective January 1, 2021, the grace period will be extended for twelve (12) months after the end of that Plan Year.

**"Run Out Period"** means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

## SUBCHAPTER 27. HEALTH CARE REIMBURSEMENT ACCOUNT OPTION

### 260:40-27-2. Definitions

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

**"Dependent"** means an individual, who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.

**"Health care reimbursement account"** means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

**"Medical care expenses"** means any expenses incurred by a participant or by a spouse or dependent of such participant for medical care as described in Section 213 of the Internal Revenue Code and subject to the limitations of section 125 and this Flexible Benefits Plan, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense through insurance or otherwise.

**"Grace Period"** means the period from the end of the Plan Year through March 15th of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance. For the Plan Year effective January 1, 2020, the grace period will be extended for twelve months (12) after the end of that Plan Year. For the Plan Year effective January 1, 2021, the grace period will be extended for twelve (12) months after the end of that Plan Year.

**"Rollover Distributions"** means distributions to a Health Savings Account of balances remaining at year end for employees who qualify pursuant to State and federal law.

**"Run-Out Period"** means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

[OAR Docket #22-588; filed 7-12-22]



TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 45. EMPLOYEES GROUP INSURANCE DIVISION - ADMINISTRATIVE AND GENERAL PROVISIONS

[OAR Docket #22-466]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Grievance Panel Procedures 260:45-5-2. Notice of hearing [AMENDED] 260:45-5-8. Scheduling of hearings [AMENDED]

AUTHORITY:

74 O.S. Section 1304.1 Office of Management and Enterprise Services Employees Group Insurance Division; The Director of the Office of Management and Enterprise Services: 62 O.S. §34.3.1; 62 O.S. Section 34.6(8).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 17, 2021

COMMENT PERIOD:

December 15, 2021 through January 18, 2022

PUBLIC HEARING:

January 18, 2022

ADOPTION:

February 22, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 3, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ ANALYSIS:

The rules and regulations are necessary to promote and enhance effective operation of the Employees Group Insurance Division. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency, responsiveness, the correction of citations and scrivener's errors, and changes to improve the clarity of the rules.

CONTACT PERSON:

Byron Knox, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 5. GRIEVANCE PANEL PROCEDURES

260:45-5-2. Notice of hearing

Upon receipt of a Grievance request, after a member has exhausted EGID's applicable internal review procedures, a hearing number shall be assigned in grievances involving the three [3] member Grievance Panel and notice shall be forwarded to the claims administration contractor by email,

secure workflow, or by regular mail at its closest office. The employee shall be notified of the hearing date by mail with delivery confirmation. A copy of all rules pertinent to the hearing shall be forwarded with the Notice, along with a statement of claimant's rights.

260:45-5-8. Scheduling of hearings

All requests for hearings assigned to the three [3] member Grievance Panel shall be presented to, and heard by placed on the Grievance Panel docket to be heard in open court within sixty [60] days of following the receipt of a properly submitted Request For Grievance Panel Hearing form, unless the matter is settled to the satisfaction of both parties; continued by agreement of the parties; or the parties; or the Panel orders a continuance for good cause shown.

[OAR Docket #22-466; filed 6-23-22]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 50. EMPLOYEES GROUP INSURANCE DIVISION - HEALTH, DENTAL, VISION AND LIFE PLANS

[OAR Docket #22-467]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Purpose and Definitions 260:50-1-2. Definitions [AMENDED] Subchapter 3. Administration of Plans 260:50-3-8. Refunds [AMENDED] Subchapter 5. Coverage and Limitations Part 3. HealthChoice Plans [AMENDED] 260:50-5-3. HealthChoice approval for emergency treatment by non-Network providers [REVOKED] 260:50-5-14. Timely filing of HealthChoice health and dental claims [AMENDED] 260:50-5-15. HealthChoice examination [AMENDED] 260:50-5-17. Program integrity [NEW]

AUTHORITY:

74 O.S. Section 1304.1; Office of Management and Enterprise Services Employees Group Insurance Division; The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. §34.6(8)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 17, 2021

COMMENT PERIOD:

December 15, 2021 through January 18, 2022

PUBLIC HEARING:

January 18, 2022

ADOPTION:

February 22, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 3, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. Purpose and Definitions

# Permanent Final Adoptions

260:50-1-2. Definitions [AMENDED]  
Subchapter 5. Coverage and Limitations  
Part 3. HealthChoice Plans  
260:50-5-3. HealthChoice approval of emergency treatment by non-Network providers [AMENDED]

## Gubernatorial approval:

October 29, 2021

## Register publication:

39 Ok Reg 06

## Docket number:

21-767

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The rules and regulations are necessary to promote and enhance effective operation of the Employees Group Insurance Division. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency, responsiveness, the correction of citations and scrivener's errors, and changes to improve the clarity of the rules.

The effect of the amended rules is to allow the Employees Group Insurance Division to comply with the new federal law, No Surprises Act of the 2021 Consolidated Appropriations Act.

260:50-1-2. This rule is necessary to avoid serious prejudice to the public interest and to avoid violation of new federal law. It will allow for reimbursement for certain emergency services at all facilities that are licensed by their state of operations to perform emergency services and allow for a method of contracting for network participation under the Employees Group Insurance Division health plans, HealthChoice. Current rules require facilities be certified by Medicare and/or accredited from one of Medicare's deeming authorities. This will contradict new federal law effective Jan. 1, 2022, which requires most health plans, including HealthChoice, to pay for certain emergency services when the treating facility is merely licensed by the state of operations to perform emergency services.

## CONTACT PERSON:

Byron Knox, Deputy General Counsel, (405) 717-8744

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. PURPOSE AND DEFINITIONS

### 260:50-1-2. Definitions

The following words and terms as defined by EGID, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:

**"Administrative error"** occurs when the coverage elections the member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member misrepresentation. When such an administrative error results in underpaid premiums, full payment to EGID shall be required before coverage elected by the member can be made effective. If overpayment occurs, EGID shall refund overpaid funds to the appropriate party.

**"Administrator"** means the Administrator of the Employees Group Insurance Division or a designee.

**"Allowable fee"** means the maximum allowed amount based on the HealthChoice Network Provider Contracts payable to a provider by EGID and the member for covered services.

**"Attorney representing EGID"** means any attorney designated by the Administrator to appear on behalf of EGID.

**"The Board"** means the seven [7] Oklahoma Employees Insurance and Benefits Board members designated by statute [74 O.S. §1303(1)].

**"Business Associate"** shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.

**"Carrier"** means the State of Oklahoma.

**"Comprehensive benefits"** means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by EGID. Such benefits shall be provided on a co-payment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by EGID. [74 O.S. §1303 (14)]

**"Cosmetic procedure"** means a procedure that primarily serves to improve appearance.

**"Current employee"** means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, current employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]

**"Custodial care"** means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

**"Dependent"** means the primary member's spouse (if not legally separated by court order), including common-law. Dependents also include a member's daughter, son, stepdaughter, stepson, eligible foster child, adopted child, child for whom the member has been granted legal guardianship or child legally placed with the primary member for adoption up to the child's

twenty-sixth [26<sup>th</sup>] birthday. In addition other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support. A child that meets the definition of a disabled dependent in this section and also all requirements in 260:50-3-18, may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §1303(14)]. See additional eligibility criteria for disabled dependents over the age of twenty-six [26] at 260:50-3-18. Participating employer groups may have a more restrictive definition of Dependent.

**"Durable medical equipment"** means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member and is designed for prolonged use. Specific criteria and limitations apply.

**"Eligible Provider"** means a practitioner who or a facility that is recognized by EGID as eligible for reimbursement. EGID reserves the right to determine provider eligibility for network and non-Network reimbursement.

**"Emergency"** means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act (42 U.S.C. 1395dd (e)(1)(A)). (In that provision of the Social Security Act, clause (i) refers to placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; clause (ii) refers to serious impairment to bodily functions; and clause (iii) refers to serious dysfunction of any bodily organ or part.)

**"Enrollment period"** means the time period in which an individual may make an election of coverage or changes to coverage in effect.

**"Excepted Benefits"** means the four categories of benefits as established in section 2791 of the PHS Act, section 733 of ERISA and section 9832 of the Internal Revenue Code, as summarized in IRS Bulletin 2015-14 and subsequent regulatory guidance. These Excepted Benefits include but are not limited to vision coverage, dental coverage, long-term care insurance, Medicare supplement coverage, automobile liability insurance, workers compensation, accidental death and dismemberment insurance and specific disease coverage (such as cancer).

**"Facility"** ~~means any organization as defined by EGID which is duly licensed under the laws of the state of operation, and also either Medicare certified as applicable, or accredited by a CMS approved Medicare accreditation organization means~~ any organization as defined by EGID which is duly licensed

under the laws of the state of operation and meets credentialing criteria established by EGID.

**"Fee schedule"** means a listing of one or more allowable fees.

**"Former participating employees and dependents"** means eligible former employees who have elected benefits within thirty [30] days of termination of service and includes those who have retired, or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through Consolidated Omnibus Budget Reconciliation Act (COBRA) or the Oklahoma Personnel Act. An eligible dependent is covered through the participating former employee or the dependent is eligible as a survivor or has coverage rights through COBRA.

**"Health information"** means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.

**"Home health care"** means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home health care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.

**"Hospice care"** means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.

**"Inaccurate or erroneous information"** means materially erroneous, false, inaccurate, or misleading information that was intentionally submitted in order to obtain a specific coverage.

**"Initial enrollment period"** means the first thirty [30] days following the employee's entry-on-duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.

**"Insurance Coordinator"** means Insurance/Benefits Coordinator for Education, Local Government, and State Employees.

**"Insured(s)"** means both the Primary insured and covered Dependents.

**"Maintenance care"** means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.

**"Medically necessary"** means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by EGID. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means

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that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.

**"Members"** means all persons covered by one or more of the group insurance plans offered by EGID including eligible current and qualified former employees of participating entities and their eligible covered dependents.

**"Mental health and substance abuse"** means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.

**"Network provider"** means a practitioner who or facility that is duly licensed or operates under the laws of the state, satisfies credentialing criteria as established by EGID, and has entered into a contract with EGID to accept scheduled reimbursement for covered health care services and supplies provided to members.

**"Non-Network out-of-pocket"** means the member's expenses include the total of the member's deductibles and co-insurance costs plus all amounts that continue to be charged by the non-Network provider after the HealthChoice allowable fees have been paid.

**"OEIBB"** means Oklahoma Employees Insurance and Benefits Board.

**"Open enrollment period"** means a limited period of time as approved by either EGID or the Legislature in which a specified group of individuals are permitted to enroll.

**"Option period"** means the time set aside at least annually by EGID in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by EGID.

**"Orthodontic limitation"** means an individual who enrolls in the Dental Plan will not be eligible for any orthodontic benefits for services occurring within the first twelve [12] months after the effective date of coverage. Continuing orthodontic services for newly hired employees who had previous group dental coverage will be paid by prorating or according to plan benefits.

**"Other hospital services and supplies"** means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless of whatever such services are rendered under the direction of the hospital or otherwise.

**"Participating entity"** means any employer or organization whose employees or members are eligible to be participants in any plan authorized by or through the Oklahoma Employees Insurance and Benefits' Act.

**"The Plan or Plans"** means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by EGID. Such benefits shall be provided

on a coinsurance basis and the insured pays a proportion of the cost of such benefits.

**"Primary insured"** means the member who first became eligible for the insurance coverage creating eligibility rights for dependents.

**"Prosthetic appliance"** means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.

**"Provider"** means a practitioner who or facility that is duly licensed or operates under the laws of the state in which the Provider practices and is recognized by this Plan, to render health and dental care services and/or supplies.

**"Qualifying Event"** means an event that changes a member's family or health insurance situation and qualifies the member and/or dependent for a special enrollment period. The most common qualifying life events are the loss of health care coverage, a change in household (such as marriage or birth of a child), or a change of residence or other federally required mandates. A complete summary of qualifying events are set out in Title 26, Treasury Regulations, Section 125.

**"Schedule of benefits"** means the EGID plan description of one or more covered services.

**"Skilled care"** means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.

### SUBCHAPTER 3. ADMINISTRATION OF PLANS

#### 260:50-3-8. Refunds

(a) **Refunds of premium overpayments.** Any refund of payment for any premium overpayment shall be made only when EGID is notified in writing ~~no later than sixty [60] days after the actual date~~ of the overpayment, ~~unless lack of notification is beyond control as determined by EGID.~~

(b) **Administrative Error.** Refunds for overpayment due to administrative error, as limited and defined in the rules in this title, of the Insurance/Benefits Coordinator or the payroll clerk for EGID, shall be made at one hundred percent [100%].

(c) **Refunds on behalf of employees.** Refunds on behalf of employees shall be paid to the appropriate party. For an entity to receive a refund, the entity must have a credit balance.

(d) **Inaccurate or erroneous information.** If EGID finds that materially erroneous, false, inaccurate, or misleading information was intentionally submitted in order to obtain a specific coverage, then:

(1) For optional or supplemental life insurance coverage in excess of any guaranteed amounts of coverage, EGID shall extinguish its liability by tendering a refund of premiums paid to the insured or the beneficiary;

(2) Health or dental coverage would be canceled retroactive to the effective date of the coverage obtained

by the misrepresentation. Refunded premiums would be reduced by any claims paid by HealthChoice.

(e) **Medicare eligibility.** There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to EGID. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to EGID within thirty [30] days after the member's notification of the Social Security Administration award. A member's sixty-fifth [65<sup>th</sup>] birthday is considered automatic notification of Medicare eligibility.

(f) **Deceased member.** All refunds for overpayment resulting from the death of an employee or former employee will be capped at the overpayment amount received by EGID within twenty four [24] months of notification.

**SUBCHAPTER 5. COVERAGE AND LIMITATIONS**

**PART 3. HEALTHCHOICE PLANS**

**260:50-5-3. HealthChoice approval for emergency treatment by non-Network providers [REVOKED]**

~~Members may have benefits available for medical emergencies when non-Network services occur. Notification to EGID is required.~~

**260:50-5-14. Timely filing of HealthChoice health and dental claims**

Proof of health and dental claims for services received (bill/receipt) must be furnished ~~by an employee no later than three hundred sixty five [365] days after the date of per the Plan policy.~~ If such proof is not furnished within the time allowed, at EGID's discretion the claim will still be considered if the ~~employee~~ Insured or Provider shows that it was not reasonably possible to furnish the notice of proof within the specified time and that the notice of proof was furnished as soon as reasonably possible.

**260:50-5-15. HealthChoice examination**

EGID reserves the right and opportunity to order the examination of ~~examine~~ the person whose injury or sickness is the basis of a claim as often as may be reasonable during the pending of the claim.

**260:50-5-17. Program integrity**

EGID may have a Program Integrity Initiative. The purpose is to identify, recover, and prevent inappropriate provider billings and payments through provider audits. The provider shall furnish any and all claims information and medical documentation, upon request and at no cost, to EGID. The requested documentation will be verified to substantiate the provision of

medical, dental, or durable medical equipment/supplies, and the charges for such services, if the member and the provider are seeking reimbursement through EGID. EGID will ensure appropriate payment to providers and recovery of misspent funds, while providers shall ensure they only provide appropriate services and exercise appropriate billing practices. EGID may implement additional procedures and processes to effectuate this section.

[OAR Docket #22-467; filed 6-23-22]

**TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES  
CHAPTER 90. ALTERNATIVE FUELS PROGRAM**

[OAR Docket #22-580]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions [REVOKED]
- 260:90-1-21. Purpose [REVOKED]
- 260:90-1-23. Definitions [REVOKED]
- 260:90-1-25. Duties and responsibilities of the Committee of Alternative Fuels Technician Examiners [REVOKED]
- 260:90-1-27. Duties and responsibilities of the Alternative Fuels Technician Hearing Board [REVOKED]
- 260:90-1-29. Alternative Fuels Technician Certification Revolving Fund [REVOKED]
- Subchapter 5. Testing, Certification and Recertification [REVOKED]
- 260:90-5-1. Applications for examination, certification or renewal certification [REVOKED]
- 260:90-5-2. Contents of application [REVOKED]
- 260:90-5-4. Certificate required by agency [REVOKED]
- 260:90-5-6. Fees [REVOKED]
- 260:90-5-8. Processing and handling of applications and examinations [REVOKED]
- 260:90-5-10. Certificate qualification and transfer or loan of certificate [REVOKED]
- 260:90-5-12. Change of address of holder of certificate or registration [REVOKED]
- 260:90-5-13. Insurance requirements [REVOKED]
- 260:90-5-14. Guidelines for certificate renewal [REVOKED]
- Subchapter 7. Standards for Alternative Fuels Technicians - Conversion and Compression [REVOKED]
- 260:90-7-1. Work of alternative fuels technician by non-certified person [REVOKED]
- 260:90-7-3. Standards for equipment installation and inspection [REVOKED]
- 260:90-7-4. Decals and conversion reporting procedure [REVOKED]
- Subchapter 9. Violations [REVOKED]
- 260:90-9-1. Alternative Fuels Technician Hearing Board; complaints, investigations, false or fraudulent representation, suspension or revocation of certificate [REVOKED]
- 260:90-9-3. Violations; criminal penalties [REVOKED]
- 260:90-9-4. Violations to public safety [REVOKED]
- 260:90-9-5. Violations; civil penalties; determination of penalty amount; surrender of certificate in lieu of fine [REVOKED]

**AUTHORITY:**

74 O.S. §63(A); Director of the Office of Management and Enterprise Services.

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

November 17, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 20, 2022

**PUBLIC HEARING:**

January 20, 2022

# Permanent Final Adoptions

## ADOPTION:

February 17, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 22, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The Alternative Fuels program was transferred by statute from OMES to the Oklahoma Department of Labor in 2014. The OK Department of Labor has adopted their own rules for the Alternative Fuels program, making these rules redundant and out-dated.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

### 260:90-1-21. Purpose [REVOKED]

The purpose of this chapter is to fulfill the mandate of Title 74 Section 130.18 by establishing rules in accordance with the Alternative Fuels Technician Certification Act.

### 260:90-1-23. Definitions [REVOKED]

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

**"Administrator"** means the Program Administrator and Recording Secretary of the Committee.

**"Agency"** means the Division of Capital Assets Management of the Office of Management and Enterprise Services.

**"Alternative fuels"** means fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulate matter or any combination thereof and includes CNG, LPG, LNG, methanol, ethanol, reformulated gasoline and electricity.

**"Alternative fuels compression technician"** means any person who installs, services, modifies, repairs or renovates fill stations.

**"Alternative fuels equipment technician"** means any person who installs, modifies, repairs or renovates equipment used in the conversion of any engines to engines fueled by alternative fuels and includes OEM vehicles either dedicated to operate on an alternative fuel or manufactured bi-fueled, i.e., capable of operating on gasoline or an alternative fuel.

**"Alternative Fuels Technician Certification Act"** means O.S. Title 74, Section 130.11 through 130.24.

**"Board"** means the Alternative Fuels Technician Hearing Board.

**"Capable of operating on an alternative fuel"** means any motor vehicle converted or designed to operate on an alternative fuel.

**"Charge station"** means the physical device that provides a connection from a power source to an electric vehicle as defined by the Electric Power Research Institute, and the Society of Automotive Engineers.

**"CNG"** means compressed natural gas.

**"Committee"** means the Committee of Alternative Fuels Technician Examiners.

**"Electric vehicle technician"** means any person who installs, modifies, repairs, performs maintenance on, motors, controllers, on board power sources, or the drive systems of vehicles powered by electricity. This includes vehicles originally equipped as electric vehicles, vehicles converted from gliders, and vehicles converted from internal combustion engine vehicles.

**"Engine"** means the propulsion system of a motor vehicle. Nothing in this definition is meant to cover any stationary engine.

**"Fill station"** means the property which is directly related to the delivery of compressed natural gas, liquefied natural gas, liquefied petroleum gas otherwise known as propane, into the fuel tank of a motor vehicle propelled by such fuel including the compression equipment and storage vessels for such fuel at the point where the fuel is delivered. Compressed Natural Gas and Liquefied Petroleum Gas are subject to the NFPA code 52 and 58 respectively.

**"Glider"** means a vehicle built without an engine or fuel system for the purpose of converting it to an electric vehicle.

**"LNG"** means liquefied natural gas.

**"LPG"** means liquefied petroleum gas otherwise known as propane.

**"Motor vehicle"** means every vehicle which is self propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails; provided, however, the definition of "motor vehicle" herein shall not include implements of husbandry.

**"NFPA"** means the National Fire Protection Association.

**"OEM"** means original equipment manufacturers.

**"Person"** means individuals, corporations, partnerships, cooperatives, associations and governmental subdivisions.

**"Work"** means any procedure involved in the physical installation or servicing of all components used in the conversion of motor vehicles to operate on alternative fuels and the servicing of original equipment manufacturers vehicles that operate on alternative fuels, including:

- (A) LPG and CNG components;
  - (i) tubing;
  - (ii) fittings;
  - (iii) valves;
  - (iv) gauges;
  - (v) brackets;
  - (vi) fuel lines;

- (vii) cylinders;
- (viii) tanks; and
- (ix) electronic or electrical devices.
- (B) Electric vehicle components;
  - (i) traction battery packs or modules;
  - (ii) motor controllers;
  - (iii) subsystem controllers;
  - (iv) inverters;
  - (v) drive motors;
  - (vi) auxiliary components powered by high voltage; and
  - (vii) any high voltage circuits.

~~"Written" or "In writing" means a tangible or electronic record of a document, communication or representation, including handwriting, typewriting, printing, photostating, photography, e mail or other electronic format or record. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.~~

**260:90-1-25. Duties and responsibilities of the Committee of Alternative Fuels Technician Examiners [REVOKED]**

- (a) ~~The Committee shall assist and advise the agency on all matters relating to the formulation of rules and standards in accordance with the Alternative Fuels Technician Certification Act.~~
- (b) ~~The Committee shall administer the examination to applicants for certification as alternative fuels technicians provided that such examination is in accordance with the provisions of the Alternative Fuels Technician Certification Act.~~

**260:90-1-27. Duties and responsibilities of the Alternative Fuels Technician Hearing Board [REVOKED]**

- (a) ~~The Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any certified alternative fuels technician or certified alternative fuels installation company, partnership or corporation.~~
- (b) ~~The Board is authorized to suspend or revoke any certificate; in addition, the board is authorized to impose civil penalties pursuant to the Administrative Procedures Act.~~

**260:90-1-29. Alternative Fuels Technician Certification Revolving Fund [REVOKED]**

- (a) ~~Funds derived from the "Alternative Fuels Technician Certification Act" shall be deposited with the State Treasurer and credited to the "Alternative Fuels Technician Certification Revolving Fund".~~
- (b) ~~The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the control and management of the Agency.~~

- (c) ~~Expenditures from this fund shall be made pursuant to the purposes of the Alternative Fuels Technician Certification Act and shall include, but not be limited to:
 
  - (1) Payment of administrative costs and other operational costs supporting program existence; and,
  - (2) Payment of the costs of programs designed to promote public awareness of the alternative fuels industry; and,
  - (3) Expenditures for the preparation and printing of regulations, bulletins or other documents and the furnishing of copies of such documents to those persons engaged in the alternative fuels industry or the public.~~

**SUBCHAPTER 5. TESTING, CERTIFICATION AND RECERTIFICATION [REVOKED]**

**260:90-5-1. Applications for examination, certification or renewal certification [REVOKED]**

- (a) ~~All applications for examination, certification or renewal of certification shall be made in writing to the agency on forms provided, if necessary, by the agency.~~
- (b) ~~All applications shall be accompanied by the appropriate fee as set forth in section 260:90-5-6.~~

**260:90-5-2. Contents of application [REVOKED]**

- ~~The application shall be verified, and shall contain the following information, together with any additional information that the agency may require:~~
- (1) ~~Name of the applicant;~~
  - (2) ~~Mailing Address;~~
  - (3) ~~Address of all locations that the applicant proposes to engage in the installation or modification of vehicles using an alternative fuel; and~~
  - (4) ~~The type of service, set forth specifically, which the applicant intends to perform and the type of permit that the applicant seeks to secure, such as LPG, CNG, LNG, EV or other alternative fuel.~~

**260:90-5-4. Certificate required by agency [REVOKED]**

~~The mere filing of an application for a certificate does not of itself authorize the engaging in any of the installations or modifications of any equipment listed in the definition of "Work" in 260:90-1-23.~~

**260:90-5-6. Fees [REVOKED]**

- (a) ~~The fee schedule for the Alternative Fuels Technician Certification Act is as follows:
 
  - (1) ~~Alternative fuels technician examination—\$50~~
  - (2) ~~Alternative fuels technician certificate—\$50~~
  - (3) ~~Company, partnership or corporation—\$100~~
  - (4) ~~Training program certification (one time)—\$500~~
  - (5) ~~Alternative fuels installation certification per location—\$1,000~~~~

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- (6) Certificate renewal (if made within 30 days after expiration):
  - (A) Alternative fuels technician certificate—\$50
  - (B) Company, partnership or corporation—\$100
  - (C) Alternative fuels installation certification—\$1,000 per location
- (7) Penalty for late certification renewal—\$10
- (8) Prorated fee for new technician certification after March first of each year—\$25; after June 1 of each year—\$12.50
- (b) Form of payment from non governmental entities and general public:
  - (1) Payment may be only in the form of:
    - (A) Certified funds;
    - (B) Business check;
    - (C) Personal check;
    - (D) Money order, or
    - (E) Cashier's check.
  - (2) The presenter of a check must present a valid driver license or other picture form of identification at the time of payment.
  - (3) Unguaranteed checks and 2 party checks shall not be accepted.
  - (4) Payment refunds. All payments received are non-refundable.

### 260:90-5-8. Processing and handling of applications and examinations [REVOKED]

- (a) Upon receipt of an application for a certificate, required documentation, and appropriate fees, the Administrator shall schedule the applicant for an examination.
- (b) Examinations shall be administered in the following manner:
  - (1) Questions for an examination shall be selected from appropriate sources deemed applicable by the committee.
  - (2) The format of examination questions shall be varied and include multiple choice and true/false.
  - (3) Prior to being put into the reservoir, the questions shall be reviewed by the committee.
  - (4) For each examination, a total of 75 questions shall be drawn from the reservoir.
  - (5) Applicants testing during a scheduled examination session will not be given identical versions of the examination.
  - (6) The examination shall be administered in a manner that the identity of the applicant shall be unknown during the grading process.
  - (7) Examinations for certification as alternative fuels technician shall be uniform and practical in nature as determined by the committee for alternative fuels technician certification and shall be sufficiently strict to test the qualifications and fitness of the applicants for certification.
  - (8) An oral examination may be administered by prior arrangement.
  - (9) The committee shall conduct examinations twice a year and at such times as it deems necessary.
  - (10) A score of eighty percent (80%) correct shall be a passing grade for all examinations.

- (11) Any applicant initially failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days. Any applicant subsequently failing to pass the examination shall not be permitted to take another examination for a period of ninety (90) days.
- (12) All applicants can petition the committee if they feel the committee's grade was incorrect. An applicant may petition the committee if the applicant disagrees with his or her examination grade issued by the committee. The applicant must notify the administrator of the petition prior to the next scheduled committee meeting in order for the petition to be placed on the meeting agenda.
- (13) All decisions of the committee are final.
- (14) Applicants that pass the examination and are notified by the committee of such must make arrangements for certification within one hundred and eighty (180) days of such notification.
- (15) After the one hundred and eighty (180) days, and such applicant has not been certified (i.e., paid the fee and provided proof of insurance), the applicant must retest prior to their certification.
- (16) The agency shall enforce the provisions of this section.

### 260:90-5-10. Certificate qualification and transfer or loan of certificate [REVOKED]

- (a) The Agency issues a certificate as:
  - (1) An alternative fuels equipment technician to any person who has been certified by the Committee as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act.
  - (2) An alternative fuels compression technician to any person who has been certified by the Committee as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act.
- (b) The agency shall have the authority to determine the validity of a certificate issued by another governmental entity.
- (c) The agency shall assess the required certification fee and ascertain that an applicant has also complied with the provisions of the Alternative Fuels Technician Certification Act.
- (d) In the case of a company, partnership or corporation engaged in the business of installing, servicing, repairing, modifying or renovating equipment used in the conversion of engines to engines fueled by alternative fuels, a separate certificate shall be issued by the agency to that individual company, partnership or corporation. The certificate is for the purpose of recognizing that the company, partnership or corporation is an authorized alternative fuels conversion business and employs state certified alternative fuels technicians.
- (e) Any violation by a certified alternative fuels equipment or compression technician shall be deemed a violation by the



certified company, partnership or corporation employing such certified technician.

(f) The agency shall issue an alternative fuels equipment installation certification to any public entity or private company, partnership or corporation that operates commercial, private or public fleets of vehicles and employs ten (10) or more auto service technicians per location. The certification shall be based on the ability of the applicant to provide their own alternative fuels technician training program, which shall be certified by the committee. This certification applies only to the conversion or service of vehicles owned or operated by such public entity or private company, partnership or corporation.

(g) All alternative fuels technician equipment or compression certificates shall be non transferable.

(h) It shall be unlawful for any person certified pursuant to the provisions of the Alternative Fuels Technician Certification Act to loan or allow the use of such certificate by any other person.

**260:90-5-12. Change of address of holder of certificate or registration [REVOKED]**

Any holder of a certificate or registration issued in accordance with the provisions of the Alternative Fuels Technician Certification Act shall notify the agency of any change in such holders address no later than thirty (30) days of such change.

**260:90-5-13. Insurance requirements [REVOKED]**

A certificate shall not be issued to any applicant unless and until the agency has received proof of insurance as required by this section.

(1) Alternative fuels technicians and conversion companies, partnerships or corporations engaged in the installation of alternative fuel equipment are required to have on file with the agency proof of certificate holders liability insurance coverage, with limits of not less than fifty thousand dollars (\$50,000.00) general liability, that is in full force and effect covering the plant, garage, equipment and motor vehicles used in such business.

(2) Insurance under this section shall be kept and remain in force during the lifetime of the certification issued hereunder. An insurance certificate or certificates showing that the required insurance coverage is in force must be filed with the agency.

(3) Such insurance coverage will not be canceled or terminated unless written notice of such cancellation or termination is given to the agency thirty (30) days prior to cancellation date.

(4) Nothing in this section shall be deemed or construed to require product liability insurance coverage.

(5) If in the event insurance is canceled and the agency is not notified within the thirty (30) day period or not provided with proof of insurance renewal, the agency will notify the board of such action and request that the certificate be revoked or suspended.

**260:90-5-14. Guidelines for certificate renewal [REVOKED]**

(a) All certificates issued under the agency shall expire on September 1st of each year.

(b) A late fee of Ten Dollars (\$10.00) will be charged after September 1st.

(c) After September 30<sup>th</sup>, re-testing will be required to retain certification status.

(d) At the time of recertification, proof of insurance coverage will be required.

(e) Applicants failing to provide proof of insurance at said time of renewal will be subject to the late penalty, outlined in 260:90-5-6, if insurance verification is made after the September 1st date.

(f) All Alternative Fuel Technicians are required to re-test every three (3) years to receive a renewal of certification.

(g) All applications for examination for the renewal of certification shall be made in writing to the agency on forms provided by the agency.

(h) All applications shall be accompanied by the appropriate fee as set forth in section 260:90-5-6.

**SUBCHAPTER 7. STANDARDS FOR ALTERNATIVE FUELS TECHNICIANS - CONVERSION AND COMPRESSION [REVOKED]**

**260:90-7-1. Work of alternative fuels technician by non-certified person [REVOKED]**

(a) From and after July 1, 1991, it shall be unlawful for any person to perform the work or offer, by advertisement or otherwise, to perform the work of an alternative fuels technician until such person is certified as an alternative fuels technician by the agency.

(b) Nothing in this Chapter shall prevent a non-certified person from converting the engine of a farm tractor, as defined in Sections 1-118 of Title 47 of the Oklahoma Statutes, to an engine fueled by alternative fuels, as long as such farm tractor is not operated on the roads and highways of this state.

(c) Activities directly related to normal, vehicle maintenance and service are exempt from the definition of work. It is not the intent of this section to prevent any individual, corporation, company from servicing, repairing or maintaining general systems not directly related to the alternative fuel delivery system. Such non alternative motor fuels related activities include:

- (1) For LPG and CNG vehicles;
  - (A) Tune ups;
  - (B) Filter replacement;
  - (C) Oil changes;
  - (D) Electrical/electronic component replacement;and;
- (E) Belts and hoses.
- (2) For Electric vehicles;
  - (A) Replace auxiliary battery;
  - (B) Replace hoses or coolant, not affecting high voltage circuits or components;

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- (C) Replace brake and suspension components not linked to any high voltage circuits or components
- (d) Non-certified individuals participating in a agency authorized training program, under the guidance of a state certified instructor, are exempt from the certification requirement during the training period.

### 260:90-7-3. Standards for equipment installation and inspection [REVOKED]

- (a) The standards for the equipment installation and inspection of liquefied petroleum gas vehicular fuel systems adopted by NFPA are published in the latest edition of its pamphlet No. 58.
- (b) The standards for the equipment and compression installation and inspection of compressed natural gas vehicular fuel systems adopted by NFPA are published in the latest edition of its pamphlet No. 52.

### 260:90-7-4. Decals and conversion reporting procedure [REVOKED]

- (a) After an alternative fuel conversion or modification of equipment is completed for any motor vehicle, the technician shall affix a blue CNG diamond, black propane diamond or green EV diamond, whichever is applicable, according to NFPA pamphlet No. 52.
- (b) No certified technician shall install, service, repair or modify any motor vehicle, capable of operating on an alternative fuel that does not have the required decals.
- (c) Converted fueled vehicles and OEM alternative fueled vehicles shall have placed on the vehicle, decals & labels required by NFPA and the following:
  - (1) The date of installation;
  - (2) The name of the installing technician; and,
  - (3) State of Oklahoma Certification number of the alternative fuels equipment technician.
  - (4) The expiration date of time sensitive parts and components used in the conversion.
  - (5) Converted vehicle information: year, make, model, and vehicle identification number (VIN).
  - (6) New gross vehicle weight (GVW)
- (d) The following reporting procedure must be performed after each vehicle conversion:
  - (1) On forms, provided by the Administrator, each vehicle converted shall be reported to the Administrator by the alternative fuels technician. Information deemed necessary by the agency shall be included on the form. These forms must be sent to the Administrator no later than ten (10) days after the completion of the conversion. Photocopying of these forms is permissible.
  - (2) The penalty for failure to comply shall be determined by the Board.

## SUBCHAPTER 9. VIOLATIONS [REVOKED]

### 260:90-9-1. Alternative Fuels Technician Hearing Board; complaints, investigations, false or fraudulent representation, suspension or revocation of certificate [REVOKED]

- (a) A person or persons designated by the Agency Director or designee and the Committee shall act as the Alternative Fuels Technician Hearing Board and shall comply with the provisions of the Administrative Procedures Act.
- (b) The Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any certified alternative fuels equipment or compression technician.
- (c) The Board shall suspend or revoke any certificate or registration obtained by false or fraudulent representation.
- (d) The Board shall also suspend or revoke any certificate or registration for any of the following reasons:
  - (1) Making a material misstatement in the application for a certificate or registration, or the renewal of a certificate or registration;
  - (2) Loaning or illegally using a certificate;
  - (3) Demonstrating incompetence to act as an alternative fuels equipment or compression technician;
  - (4) Violating any provisions of the Alternative Fuels Technician Certification Act, or any rule or order prescribed by the agency; or
  - (5) Willfully failing to perform normal business obligations without justifiable cause.
- (e) The Board shall convene at the request of the committee and/or the agency director and shall have as its counsel the general counsel of the agency.
- (f) The Board shall authorize the general counsel to investigate the matter or matters being considered by the Board.
- (g) The General Counsel of the Agency may elect to delegate the investigation to a person or persons of his choice.
- (h) Investigations are to be secret until presented to the Board for recommendations.
- (i) Upon the review of the facts of the investigation, the Board may determine whether or not to hear a case.
- (j) The Board and its activities shall comply with the Administrative Procedures Act.
- (k) Any person whose Alternative Fuels Equipment or Compression Technician Certificate has been revoked by the Board may apply for a new certificate one (1) year from the date of such revocation.

### 260:90-9-3. Violations; criminal penalties [REVOKED]

- (a) Any person convicted of violating any provision of the Alternative Fuels Technician Certification Act shall be guilty of a misdemeanor.
- (b) The continued violation of any provision of the Alternative Fuels Technician Certification Act during each day shall be deemed to be a separate offense.
- (c) Upon conviction thereof the person shall be punished by imprisonment in the county jail not to exceed one (1) year, or by a fine of not more than one thousand dollars (\$1,000.00) or by both such fine and imprisonment for each offense.

(d) If the Board makes a determination of a violation, it may request the appropriate district attorney to prosecute such violation and seek an injunction against such practice.

**260:90-9-4. Violations to public safety [REVOKED]**

(a) Pursuant to the authority of 47 O.S. §12-101 A. 1., 47 O.S. §13-101, it shall be unlawful for any person to operate on any highway:

- (1) A vehicle that has not been converted according to, or does not meet the standards stated in section 260:90-7-3;
- (2) An OEM alternative fueled vehicle that fail the manufacturer's standards.

(b) An alternative fuels technician shall notify the Administrator within three (3) business days of any instance where the driver and, or owner of a vehicle that was found unsafe refused to correct safety issues with a vehicle.

**260:90-9-5. Violations; civil penalties; determination of penalty amount; surrender of certificate in lieu of fine [REVOKED]**

(a) Any person who has been determined by the Board to have violated any provision of the Alternative Fuels Technician Certificate Act or any rule or order issued pursuant to the provisions of the Alternative Fuels Technician Certification Act may be liable for a civil penalty of not more than one hundred dollars (\$100.00) for each day that said violation occurs.

(b) The maximum civil penalty shall not exceed one thousand dollars (\$10,000) for any related series of violations.

(c) The amount of the penalty shall be assessed by the Board pursuant to the provisions of 269:90-9-1, after notice and hearing.

(d) In determining the amount of the penalty, the Board shall include but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person or persons found to have committed the violation, the degree of culpability and any show of good faith in attempting to achieve compliance with the provisions of the Alternative Fuels Technician Certification Act.

(e) All monies collected from such civil penalties shall be deposited with the State Treasurer of Oklahoma and placed in the Alternative Fuels Technician Certification Revolving Fund.

(f) Any certificate holder may elect to surrender his certificate in lieu of said fine but shall be forever barred from obtaining a reissuance of said certificate.

[OAR Docket #22-580; filed 7-11-22]

**TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES  
CHAPTER 115. PROCUREMENT**

[OAR Docket #22-589]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 260:115-1-1. Purpose and authority [AMENDED]
- Subchapter 7. Procurement
- Part 1. General Procurement
- 260:115-7-3. State Agency acquisitions [AMENDED]

**AUTHORITY:**

74 O.S. Section 85.3 Office of Management and Enterprise Services Purchasing Division; 62 O.S. §34.6(8) the Director of the Office of Management and Enterprise Services.

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

February 22, 2022

**COMMENT PERIOD:**

December 15, 2021 through January 20, 2022

**PUBLIC HEARING:**

January 20, 2022

**ADOPTION:**

February 22, 2022

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

March 3, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ ANALYSIS:**

The rules and regulations are necessary to promote and enhance effective operation of Central Purchasing. The effect of the amended rules is to provide for the continued efficiency, responsiveness, the correction of citations and scrivener's errors, and changes to improve the clarity of the rules.

The purpose of this rulemaking action is to make the rules consistent with statutory changes, to update citations and scrivener's errors, to improve the clarity of the rules, correct omissions and streamline to promote and enhance operation through the removal of inaccurate or redundant verbiage and simplify language. Changes may also be made to reduce administrative burdens on state agencies where possible. These changes do not constitute any intrusion or add any costs which would not exist if there were no rules.

**CONTACT PERSON:**

Tim Tuck, Deputy General Counsel, (405) 521-2403

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**260:115-1-1. Purpose and authority**

(a) **Procurement rules purpose.** The purpose of this Chapter is to provide information, requirements and procedures for state procurement staff, suppliers and state agencies subject to the Oklahoma Central Purchasing Act, 74 O.S. §§ 85.1 et seq., referred to in this Chapter as the "Purchasing Act", to establish fair and consistent acquisition processes that satisfy the needs of the state. It is the policy of the State to make acquisitions from suppliers through a competitive selection process that is fair, open and objective in order to achieve optimum value, quality and serve the best interest of the taxpayers. All

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suppliers and state agencies are responsible for knowing the requirements of this Chapter. These rules are administered by the Office of Management and Enterprise Services to provide direction and ensure compliance with the Purchasing Act and other applicable state laws and rules. These rules have been promulgated by the Director of the Office of Management and Enterprise Services in accordance with the Administrative Procedures Act and pursuant to the authority of 74 O.S. §85.5., 74 O.S. 85.45§§. and 62 O.S. §34.28

(b) **Information technology acquisitions.** Unless otherwise provided by law, state agencies shall make information technology and telecommunications acquisitions in accordance with the Purchasing Act, the Oklahoma State Finance Act [62 O.S. §§34 et seq.], the Information Technology Consolidation and Coordination Act, 62 O.S. §§35.1 et seq., the rules of this chapter, and requirements established by the Chief Information Officer and the OMES Information Services Division.

(c) **Official directives.** The State Purchasing Director or Chief Information Officer, as applicable, shall issue directives, instructions or written communications to state agencies regarding required procurement practices and procedures to ensure compliance with provisions of the Central Purchasing Act, procurement rules and any other matter relating to state agency acquisitions.

## SUBCHAPTER 7. PROCUREMENT

### PART 1. GENERAL PROCUREMENT

#### 260:115-7-3. State agency acquisitions

(a) **State Use Committee.** State Use Committee contracts are mandatory contracts provided the conditions of 74 O.S. §3007(A) are satisfied. If an acquisition is available from both the State Use Committee procurement schedule and the Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule. 74 O.S. §3001 et seq.

(b) **Oklahoma Correctional Industries.** If an acquisition is not available from the State Use Committee, pursuant to 74 O.S. §3007(A) state agencies shall make acquisitions from the Oklahoma Correctional Industries ("OCI") provided the conditions of 57 O.S. §549.1 are satisfied. If OCI is unable to meet state agency requirements for an acquisition even though the acquisition is listed in its distributed catalog or on its website, OCI shall certify to the State Purchasing Director that it is not able to provide the acquisition.

(c) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or non-mandatory.

(1) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price unless the State Purchasing

Director provides prior written approval of an acquisition from another supplier. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

(2) **Non-mandatory statewide contracts.** State agencies are encouraged to use non-mandatory statewide contracts. Whenever a state agency acquires a product or service from an alternate source, the acquisition shall be made in accordance with the Central Purchasing Act, the rules of this chapter and any other laws and rules applicable to the acquisition.

(d) **Open Market Acquisitions.** State agencies may make acquisitions within their approved acquisition authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of this Chapter, any other applicable laws or rules, and the agency's approved internal purchasing procedures.

(e) **Acquisitions from other governmental agencies.** Although a state agency may contract with another department of state government or institution in certain instances pursuant to 74 O.S. §581 or §1001 through §1008, acquisition shall not be made under any such contract with the intent of evading provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(f) **Competitively Bid Acquisitions.**

(1) **Sealed Bids.** A competitive sealed bid process shall be utilized as required by state law and rules of this Chapter or when it is determined by the acquiring agency to be in the best interest of the state. Competitive sealed bids shall be required for all solicitations.

(2) **Bid contents and solicitation amendment.** The procurement documents shall indicate specifications of the acquisition, all information to be submitted with a bid and may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition. If a solicitation is amended, notice shall be provided online.

(3) **Supplier notification.** The State Purchasing Director will use reasonable efforts to notify suppliers recommended by a state agency for a solicitation.

(4) **Limited contact.** All communication between potential bidders and staff of the acquiring agency related to a solicitation shall:

(A) be limited to the acquiring agency's designated procurement personnel;

(B) strictly prohibited from any other acquiring agency personnel, unless otherwise stated in the instructions to bidders; and,

(C) be documented in writing and filed in the acquisition file.

(5) **Evaluation method.** Bidder instructions in connection with a solicitation shall clearly identify the evaluation method as lowest and best or best value and applicable evaluation criteria.

(6) **Terms and conditions.** All state terms and conditions for the acquisition shall be included in the procurement documents.

(7) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(8) **Rejection of bids.** In addition to reasons outlined in 260:115-7-32, if determined to be in the best interest of the State of Oklahoma, any or all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(9) **Pre-bid conference.** Bidder instructions may state that a pre-bid conference will be held and shall state whether bidder attendance is mandatory or non-mandatory.

(10) **Closing date and time.** Instructions to bidders shall include the bid response due date and time. In the event it is determined that a significant error or event occurred that affected the receipt of a bid, the State Purchasing Director may authorize acceptance of a bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.

(11) **Bid receipt.** Upon receipt, the outside of all envelopes or containers shall be clearly marked with the receipt date and time. Electronic submission of bids must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(g) **Agency acquisitions over \$25,000.00 and not exceeding an agency acquisition threshold amount.**

(1) **Basic requirements.** State agencies that have an internal or statutorily designated CPO and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions exceeding \$25,000.00 but not exceeding the agency's approved acquisition threshold amount and make all acquisitions pursuant to all applicable requirements of the Purchasing Act, any other applicable state laws and rules and by means of a formal method of competitive solicitation utilizing a sealed bid process.

(2) **Certifications, verifications and other required documents.**

(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for an acquisition. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(B) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a

substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

~~(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. §85.4~~

~~(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]~~

(C) **Bonds and sureties.** Bidders may be required to submit a bid bond, performance bond, or other type of approved surety with the bid.

(i) **Form of bond.** The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashiers check.

(ii) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit.

(iii) **Bond or surety return.** When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

~~(iv)D~~ **Verification of registration and status with Secretary of State.** Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and § 1204. Documentation of verification of registration and status with the Secretary of State must include, at a minimum, a copy of the entity summary information from the Secretary of State's website or the supplier's statement providing specific details supporting the exemption claimed, must be filed in the acquisition file.

(h) **State agency acquisitions processed by the OMES Purchasing Division.** A state agency submitting requisitions to the OMES Purchasing Division for issuance of a solicitation shall comply with this section. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

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- (1) **Forms.** State agencies shall use forms and the process for requisitions provided or approved by the State Purchasing Director.
- (2) **Evaluation criteria and evaluators.** Prior to issuance of the solicitation, an agency shall identify and provide contact information for the bid evaluators and written criteria necessary to evaluate a responsive bid such as technical scope, cost, experience, references etc.
- (3) **Requisition acceptance or rejection.** The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify the state agency if the State Purchasing Director rejects a requisition. The State Purchasing Director may also require a state agency to submit additional information with a requisition.
- (4) **Competitive bid award.** The State Purchasing Director shall award a contract resulting from the solicitation to the responsible bidder(s) that provides the lowest and best, or best value bid, as applicable.
- (i) **Trade-ins.** State agencies may trade in items when they make an acquisition of a like item. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. Written documentation of the fair market value analysis shall be filed in the acquisition file by the state agency. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.
- (j) **Recycled materials.** State agencies shall procure products or materials with recycled content as stated in the Oklahoma State Recycling and Recycled Material Procurement Act, when such products or materials are available and practical. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.

[OAR Docket #22-589; filed 7-12-22]

## TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 130. CIVIL SERVICE AND HUMAN CAPITAL MODERNIZATION RULES

[OAR Docket #22-611]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Chapter 130. Civil Service and Human Capital Modernization Rules [NEW]

**AUTHORITY:**  
The Office of Management and Enterprise Services; The Director of the Office of Management and Enterprise Services 62 O.S. Section 34.6(8); The Human Capital Management Division of the Office of Management and Enterprise Services 62 O.S. Section 34.301.

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

November 17, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 20, 2022

**PUBLIC HEARING:**

January 20, 2022

**ADOPTION:**

March 21, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Chapter 130. Civil Service and Human Capital Modernization Rules [NEW]

**Gubernatorial approval:**

November 17, 2021

**Register publication:**

39 Ok Reg 227

**Docket number:**

21-840

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ ANALYSIS:**

The rules establish the processes for complaints filed pursuant to the Civil Service and Human Capital Modernization Act, the State Employee Dispute Resolution Program, the Confidential Whistleblower Program, the position allocation and job catalog code system, the salary and payroll uniform structure, processes for recruitment and selection, performance evaluation and career enhancement programs, the Office of Veterans Placement, and the process for disciplinary actions.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 260:130-1-1. Purpose

The rules in this Chapter are the administrative rules of Human Capital Management of the Office of Management and Enterprise Services (Human Capital Management) which govern complaints and associated processes as required by the Civil Service and Human Capital Modernization Act, Section 34.301 of Title 62 of the Oklahoma Statutes. These rules establish procedures and standards necessary for the Civil Service Division to perform its duties and functions. The Administrator of Human Capital Management of the Office of Management and Enterprise Services has adopted the rules in this Chapter.

(1) Authority. The authority for these rules is the Civil Service and Human Capital Modernization Act, Section 34.301 of Title 62 of the Oklahoma Statutes.

(2) **Legal cites.** Some of these rules may restate language from statutes. Italic type means the language repeats language from statutes and the specific statutory reference will appear in brackets following the language in italics.

**260:130-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning:

**"Act"** means the Oklahoma Civil Service and Human Capital Modernization Act.

**"Action"** or **"disciplinary action"** means issuing a written reprimand, punitively transferring an employee, suspending an employee without pay, involuntarily demoting an employee, or terminating an employee. The action is taken by providing a document in person that specifically states the type of action taken against the employee. In the event the Appointing Authority is unable to provide the document to the employee in person, the Appointing Authority may utilize acceptable electronic means, and the action will be complete upon receipt by the employee.

**"Action occurred"** means the date the action was taken.

**"Administrative Law Judge"** or **"ALJ"** means a person appointed by the Civil Service Division and empowered to preside over prehearing conferences and hearings with power to administer oaths, take testimony, rule on questions of evidence and make final decisions. All ALJs shall be licensed to practice law in the State of Oklahoma and in good standing with the Oklahoma Bar Association.

**"Administrative Procedures Act"** or **"APA"** means the Oklahoma Administrative Procedures Act set forth at Section 250 et seq. of Title 75 of the Oklahoma Statutes.

**"Administrator"** means the Director of the Office of Management and Enterprise Services. As the term is used in the Civil Service and Human Capital Modernization Rules, the term includes employees and the Administrator of Human Capital Management of the Office of Management and Enterprise Services to whom the Administrator has lawfully delegated authority to act on his or her behalf.

**"Affidavit"** means a sworn written statement, made voluntarily, and taken before a person with authority to administer an oath or affirmation.

**"Affidavit of service"** means a sworn written statement certifying that a motion, request or other document has been provided to other persons.

**"Agency"** means any office, department, board, commission or institution of the executive branch of state government.

**"Allegation"** means the claims of a party.

**"Allege"** means to state, assert or charge; to make an allegation.

**"Allocation"** or **"Position allocation"** means the process by which a position is assigned to an established job profile. A position is allocated on the basis of duties, authority, responsibilities, and other appropriate factors.

**"Appointing Authority"** means the chief administrative officer of an agency. As the term is used in the Rules, the term includes employees of an agency to whom the Appointing

Authority has lawfully delegated authority to act on his or her behalf.

**"Burden of proof"** means the obligation of a party to establish alleged fact(s) by a preponderance of evidence.

**"Civil Service Division"** means the division within Human Capital Management that is responsible for receiving and hearing complaints as described in the Civil Service and Human Capital Modernization Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes.

**"Civil Service Division Director"** means the person designated by Human Capital Management to take action on behalf of the Civil Service Division.

**"Complainant"** means the state employee filing the complaint.

**"Complaint"** means, as a verb, the filing of a complaint petition, or as a noun, the procedure that takes place after a complaint petition is filed.

**"Consolidation"** means the combining of complaints containing the same or similar issues but filed by two (2) or more complainants into a single complaint.

**"Continuance"** means a postponement of a matter scheduled by Human Capital Management or the mediator to a date certain.

**"Demotion"** means the reduction in salary of an employee with or without a change in job profile. Demotion may be voluntary or involuntary.

**"Deny"** means to refuse to grant or accept.

**"Disciplinary file"** means the record of all disciplinary actions leading up to a written reprimand, punitive transfer, suspension without pay, demotion, or termination, the final action taken, and all relevant supporting documents.

**"Dismiss"** means to close without further consideration.

**"Evidence"** means relevant documents or testimony offered to prove or disprove the existence or non-existence of a fact.

**"Exempted employee"** means an employee to whom the provisions of the Act do not apply. Exempted employees are:

(A) Persons employed by the Governor, Lieutenant Governor, Oklahoma House of Representatives, Oklahoma State Senate, Legislative Service Bureau, or the Legislative Office of Fiscal Transparency;

(B) Elected officials;

(C) Political appointees;

(D) District attorneys, assistant district attorneys or other employees of the district attorney's office;

(E) The state judiciary or persons employed by the state judiciary; or

(F) Not more than five percent (5%) of an agency's employees designated as executive management as determined by the agency director. The number of employees shall be determined by the number of active position identification numbers an agency has.

**"Exhibit"** means items offered as evidence.

**"Ex-parte communication"** means communications by anyone with an ALJ or the Civil Service Division Director on the merits of a complaint which could affect its outcome.

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**"File" or "Filing"** means submitting a complaint or other documents on the Civil Service Division's on-line filing system, or any acceptable means determined by the Civil Service Division or the receipt of documents by the Civil Service Division.

**"Grant"** means to give or permit.

**"Hearing"** means an open, formal proceeding conducted by an ALJ. The proceeding is to provide each party with an opportunity to present evidence in support of their side of the case. The hearing is governed by the Oklahoma Administrative Procedures Act, Sections 309 through 316 of Title 75 of the Oklahoma Statutes.

**"Human Capital Management" or "HCM"** means Human Capital Management of the Office of Management and Enterprise Services.

**"Initial appointment" or "original appointment"** means the act of an Appointing Authority hiring a person for the first time as a state employee.

**"Job code"** means an identifying code that:

- (A) corresponds to a job profile, including, but not limited to, the basic purpose, typical functions performed, and the knowledge, skills, abilities, education, and experience required, and
- (B) does not include FLSA status or pay rate type, and
- (C) identifies the suggested pay range.

**"Job family"** means:

- (A) jobs which require similar core skills and involve similar work, and
- (B) a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills, abilities, education, and experience required.

**"Job level" or "level"** means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience.

**"Job profile"** means a level in a job family.

**"Joinder"** means the combining of two (2) or more complaints of one complainant.

**"Jurisdiction"** means the authority of the Civil Service Division to complete its duties and responsibilities.

**"Jurisdictional limitations"** means the statutory restrictions on the scope, time limits, and type of appeals which may be considered by the Civil Service Division.

**"Mediator"** means a person who assists and facilitates the parties involved in a complaint to come to a resolution.

**"Minimum qualifications"** means the requirements of education, training, experience and other basic qualifications for a job.

**"Moot"** means no longer in dispute because issues have already been decided or when rendered, a decision could not have any practical effect on the existing dispute.

**"Motion"** means a request for a ruling to be made by a ALJ or the Civil Service Division Director.

**"New position"** means a position not previously existing.

**"Office of Management and Enterprise Services"** means the Human Capital Management Division of the Office of Management and Enterprise Services.

**"Order"** means a command or directive given by an ALJ or the Civil Service Division Director.

**"Party"** means a complainant or respondent.

**"Position"** means a group of specific duties, tasks and responsibilities assigned by the Appointing Authority to be performed by one person; a position may be part time or full time, temporary, occupied or vacant.

**"Prehearing conference"** means a proceeding conducted by an ALJ with the parties to identify the issues, documents, witnesses and motions which will guide the ALJ in the conduct of the hearing.

**"Preponderance of evidence"** means information or evidence which is more convincing or believable than the information or evidence offered in opposition.

**"Punitive transfer"** means a transfer that is directed at and affects only one employee employed by the Appointing Authority. A punitive transfer must relocate the affected employee to a new worksite that is fifty (50) or more miles from the employee's previous worksite. A transfer that results from a closure of a worksite location or building or affects two or more employees does not qualify as a punitive transfer.

**"Reallocation" or "Position reallocation"** means the process of reassigning an established position, occupied or vacant, from one job profile to another.

**"Reassignment"** means the process of changing an employee from one job family to another job family or from one job level to another job level in the same job family, resulting in a change in the employee's assigned job profile.

**"Regular and consistent"** means, in connection with an employee's work assignments, the employee's usual and normal work assignments, excluding incidental, casual, occasional tasks, and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) month period are not considered regular and consistent.

**"Reinstatement"** means the reappointment of a former employee and does not trigger the trial period.

**"Relevant"** means directly related to the issue or issues being examined.

**"Remedy"** means corrective action sought by or afforded to a party.

**"Representative"** means the designated attorney of record, who shall be licensed to practice law in the state of Oklahoma identified in the complaint petition or through an entry of appearance or other written means, acting on behalf of a party. An individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator or ALJ.

**"Resignation"** means an employee's voluntary termination of his or her employment with the state.

**"Respondent" or "Responding agency"** means the state agency which the complaint has been filed against.

**"Rules"** means the Civil Service and Human Capital Modernization Rules.



"State employee" or "employee" means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] in state service afforded the protections under the Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes and these Rules.

"Stipulation" means a voluntary admission of fact.

"Subpoena" means an order to appear at a certain time and place to give testimony.

"Subpoena Duces Tecum" means an order requiring the production of books, papers and other documents.

"Supervisor" means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] who has been assigned authority and responsibility for evaluating the performance of other state employees.

"Sustain" means to grant a request; to grant a complaint.

"Testimony" means statements given by a witness under oath or affirmation.

"Trial period" means a working test period lasting for a period of one year following the initial hiring of a state employee into state service, the hiring of an employee who is transferring from one state agency to another state agency, or the hiring of an employee returning to state service following a break in service. The Appointing Authority has the authority to waive the trial period at any time at their discretion.

"Veteran" means any person who served the full obligation for active duty, reserves or National Guard service in the military, or received an early discharge for a medical condition, hardship or reduction in force; and has been separated or discharged from such service honorably or under honorable conditions.

**260:130-1-3. State employees to aid and comply**

All state employees under the Act shall conform to, comply with, and aid in carrying out the provisions of the Act, the Rules, and all other applicable state and federal law.

**260:130-1-4. Severability clause**

The provisions of the Rules are severable and if any part or provision is held void by the decision of a court, this shall not affect or impair any of the remaining parts or provisions of these Rules.

**260:130-1-5. Compliance with federal standards, rules, or regulations**

Any of the Rules which conflict with, or are inconsistent with, federal rules, regulations or standards governing the grant of federal funds to any agency or department, is not applicable to such agency or department.

**260:130-1-6. Request for promulgation, amendment, or repeal of a rule**

(a) Any person may request Human Capital Management to adopt, amend or repeal a rule in this chapter. The request shall be made in writing and shall include an explanation to support the request. A request shall also include:

- (1) the name, address and telephone number of the person making the request;
  - (2) the name, address and telephone number of the agency or organization the person represents, if any;
  - (3) the number used to identify the rule if the request is to amend or repeal an existing rule; and
  - (4) the proposed language if the request is to amend an existing rule or adopt a new rule.
- (b) It is Human Capital Management's policy to respond to such requests within a reasonable time.

**SUBCHAPTER 3. STATE EMPLOYEE DISPUTE RESOLUTION PROGRAM**

**260:130-3-1. Purpose, use and scope of State Employee Dispute Resolution Program**

(a) **General.** The Civil Service Division shall establish and maintain a State Employee Dispute Resolution Program, which may include mediation, to provide dispute resolution services to state agencies and state employees [62:34.301(B)(1)].

(b) **Purpose.** The purpose of the State Employee Dispute Resolution Program is to provide an economical means and access to effective alternative dispute resolution services to all state agencies and state employees. The State Employee Dispute Resolution Program affords the parties to a complaint the same equity and impartiality as the hearing process while offering faster, less costly and more flexible ways to resolve disputes.

(c) **Use and Scope.** Complaints relating to written reprimands shall only be administered through mediation. Complaints relating to punitive transfer must first go through mediation before proceeding to a hearing if the mediation is unsuccessful. Mediation may also be available for suspensions without pay, involuntary demotions, and terminations.

**260:130-3-2. Mediation**

(a) **General.** Mediation provides an opportunity for the parties to present and discuss settlement with each other and a mediator in order to resolve the issues of a complaint. The parties may discuss, negotiate and settle any differences or issues to reach a resolution to the complaint. The Civil Service Division will assign a mediator to the complaint as set forth in 260:130-3-4.

(b) **Party responsibility.** Each party shall be present and on time. Complainant's failure to do so may result in dismissal of the complaint unless good cause is shown. Each party is expected to negotiate in good faith, without time constraints, and put forth his or her best efforts with the intention to settle, if possible. Even if the parties do not reach a complete settlement, they may reach agreement on various issues.

- (1) The complainant shall speak for himself or herself or with the assistance of a Representative.
- (2) The Appointing Authority shall send one person to speak and act on behalf of the Appointing Authority with full settlement authority and a Representative.

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(c) **Party submissions.** At the mediation, each party shall provide to the mediator a copy of a mediation statement, which shall include a proposed settlement offer.

(d) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, accompany him or her to the mediation. Representatives will be expected to take an active role in mediation, but will not be allowed to interrogate or question any party. As set forth above in 260:130-1-1, an individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator or ALJ.

(e) **Mediator.** The mediator shall:

(1) take an active role in the mediation to aid the parties in the discussion of settlement and resolution of the complaint;

(2) have the flexibility to adapt the mediation to the situation at hand;

(3) have the authority to require any party to produce documents, limited to the disciplinary file as defined within these Rules, for review at the mediation if to do so will aid in the discussion of settlement and resolution of the complaint. Documents produced and reviewed at the mediation shall not become part of the complaint record at that time; and

(4) terminate the mediation because of the disruptive behavior or conduct of a party or representative.

(f) **Mediation.** The mediation shall be informal, structured by the mediator, and not open to the public. The mediation shall be a confidential procedure and shall not be filmed or taped.

(1) **Notice.** At least seven (7) calendar days before the scheduled mediation, the mediator shall notify the parties of the date, time and location of the mediation.

(2) **Location.** The mediation shall be held at the appointing authority office or any other location determined appropriate by the mediator.

(3) **Witnesses.** Witnesses shall not appear or give testimony at the mediation.

(4) **Caucus.** The mediator may call a caucus at any stage of the mediation.

(5) **Continuance.** A request for continuance shall be submitted to the mediator in writing no less than three (3) calendar days before the mediation date. The mediator shall follow the requirements of OAC 260:130-5-13 and shall reschedule the mediation ensuring the timing requirements of OAC 260:130-5-13 are followed.

(g) **Agreement.** If agreement between the parties is reached, it shall be reduced to writing and signed by each party and the mediator. The agreement shall be reviewed and approved by the Civil Service Director for complaints arising from termination, suspension without pay, involuntary demotion, or punitive transfer before dismissal of the complaint shall be entertained. The agreement shall become part of the complaint record. All mediation agreements are enforceable by a court of competent jurisdiction.

(h) **Conclusion.** The mediator shall end the mediation when an agreement is reached and reduced to writing. If an agreement is not reached, the mediator shall end the mediation when

he or she determines settlement is not possible, unless sooner terminated for just cause. If agreement is not reached:

(1) a complaint arising from termination, suspension without pay, involuntary demotion, or punitive transfer shall continue on for a prehearing conference and hearing.

(2) a complaint arising from written reprimand will be considered closed and the agency's action will stand.

### **260:130-3-3. State Employee Dispute Resolution Program Mediators**

The Civil Service Division shall be responsible for offering mediation training and certifying all mediators available through the State Employee Dispute Resolution Program. The Civil Service Division will maintain a list of all available mediators. Mediators will be state employees who have completed the Civil Service Division-approved program and applied to the Civil Service Division to be mediators within this program. State employees will not receive additional compensation for working as mediators. Serving as a mediator will be included within the employees' job duties. An employee must have had satisfactory performance ratings, must obtain written approval from his or her supervisor before applying to be a mediator, and submit such approval with his or her application. In the event the Civil Service Division does not have an adequate pool of mediators to assign to complaints and ensure the complaints are mediated within enough time to either resolve the complaint or have the hearing take place within the twenty-five (25) business day requirement set forth in 62 O.S. Section 34.301, the Civil Service Division may utilize other methods of obtaining mediators.

### **260:130-3-4. Assignment of mediators**

The Civil Service Division will assign a mediator to every complaint regarding written reprimand and punitive transfer. The Civil Service Division will assign a mediator to complaints regarding termination, suspension without pay, and involuntary demotion if mediation is requested by the complainant in the complaint. A mediator that is a current or former employee of the employing agency named in the complaint will not be assigned.

## **SUBCHAPTER 5. JURISDICTION, RIGHTS AND PROCESSES**

### **260:130-5-1. Location for information and filing**

All complaints and all other documents will be filed with the online filing system developed and maintained by the Civil Service Division or any acceptable means determined by the Civil Service Division. The process for filing will be published on the website maintained by the Civil Service Division. Every Appointing Authority must designate an agency representative(s) to receive notice of complaints filed. The Appointing Authority shall be responsible for keeping the Civil Service Division informed of the current agency representative and his or her up-to-date contact information.

**260:130-5-2. Time**

Complaints shall be filed with the Civil Service Division within five (5) business days of the date of when the termination, suspension without pay, involuntary demotion, written reprimand, or punitive transfer occurred. The action occurs when the employee receives the written notice of the disciplinary action either in person or via acceptable electronic means.

**260:130-5-3. Jurisdiction**

The Civil Service Division's jurisdiction to assign cases to hearing or review by the ALJ is limited to complaints arising from termination, suspension without pay, involuntary demotion, and punitive transfer. The review of the merits of the complaint shall be limited to the employee disciplinary file directly at issue [62:34.301(D)]. The Civil Service Division will accept complaints arising from written reprimand and punitive transfer and will assign such complaints to mediation.

**260:130-5-4. Notice of complaint**

Upon receipt of a complaint petition, the Civil Service Division shall send a notice of the complaint to the appointing authority's designated representative(s). The Civil Service Division may order a person or agency added as a party of record and that person or agency shall be sent a notice of the complaint.

**260:130-5-5. Notice of complaint rights**

When a state employee receives a written reprimand, punitive transfer or is suspended without pay, involuntarily demoted, or terminated, the state employee shall be provided:

- (1) notice of the right to file a complaint with the Civil Service Division, the time limits for receipt of the complaint and the method and location for filing a complaint
- (2) a citation of the statute, rule, policy, employee handbook, procedure or practice under which the action was taken; and
- (3) a copy of the Civil Service Division's complaint petition.

**260:130-5-6. Complaint petition**

(a) A complaint petition shall contain the following information:

- (1) the name, address and telephone number of the complainant. The complainant shall maintain a current address with the Civil Service Division throughout the complaint process. Failure to do so shall be cause for dismissal of the complaint.
- (2) the name of the agency against whom the complaint is filed;
- (3) the date the action (written reprimand, punitive transfer, suspension without pay, involuntary demotion, or termination) occurred;
- (4) if the action taken did not occur in person, a description of how the state employee was provided notice of the action;

- (5) the basis for the complaint stating the facts.
- (6) a statement of the remedy the complainant is seeking;
- (7) the name, address and telephone number of the complainant's representative, if any;
- (8) signature of the complainant and representative, if any.

(b) Failure to provide any of the above listed information may result in immediate dismissal of the complaint.

(c) Complaints shall not exceed twenty (20) pages inclusive of exhibits.

**260:130-5-7. Consolidation and joinder of complaint**

The Civil Service Division, on its own initiative or upon written request of a party, may order the consolidation or joinder of complaints if to do so will expedite the processing of the complaints and not adversely affect the interest of the parties.

**260:130-5-8. Settlement of complaints**

Settlement discussions are appropriate and encouraged at any stage of the complaint process. The parties may elect to enter into settlement discussions on their own. The settlement agreement shall be submitted with the Civil Service Division and shall be reviewed and approved before dismissal of the complaint will be entertained. All settlement agreements are enforceable by a court of competent jurisdiction. All settlement agreements will be treated as confidential.

**260:130-5-9. Dismissal of complaints**

(a) A complaint petition, or an issue in the complaint petition, may be dismissed if:

- (1) it is moot or the complainant has not provided evidence to support the allegations;
- (2) the complainant fails to provide any of the information listed in 260:130-5-6;
- (3) the complainant fails or refuses to appear for a scheduled meeting;
- (4) the complainant refuses to accept a settlement offer which affords the relief he or she could reasonably expect if he or she prevailed in the complaint; or
- (5) it is not timely filed or is not within the Civil Service Division's jurisdiction or authority.

(b) The Civil Service Division Director may order a person or agency dismissed as a party of record.

**260:130-5-10. Complaint record**

(a) Content. A complaint record shall be limited to:

- (1) the complaint petition, notices, motions, and intermediate rulings;
- (2) evidence considered in making a final decision;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing;

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(7) any proposed or final orders issued by the Civil Service Division; and

(8) all other evidence or data submitted to a ALJ in connection with his or her consideration of the complaint.

(b) **Transmission to reviewing court.** Within sixty (60) calendar days after proper service of a petition for review or equivalent process upon it, or within such further time as the reviewing court may allow, the Civil Service Division shall transmit to the reviewing court a certified copy of the complaint record under review.

### **260:130-5-11. Transcripts**

(a) Hearings shall be recorded by digital recordings. The Civil Service Division's recording will serve as the official recording for purposes of creating an official written transcript. The Civil Service Division shall prepare a written transcript of the recording only upon written request and receipt of a deposit of cash or cashier's check in an amount determined to be appropriate to cover the costs associated with the transcription, except as prohibited by statute.

(b) Upon application, the Civil Service Division shall pay transcription costs on behalf of an indigent respondent if the respondent establishes indigent conditions through execution of an *in forma pauperis* affidavit upon a form approved by the Civil Service Division. Should the indigent respondent receive a financial recovery, the respondent shall reimburse the Civil Service Division from those proceeds.

(c) Any party desiring to have a hearing recorded by a court reporter shall request approval by the ALJ before initiating such action. The party making the request shall bear the associated expenses and costs and shall provide a copy of the written transcript to the Civil Service Division at no cost.

### **260:130-5-12. Motions and requests**

Oral motions may be made during a prehearing conference or hearing. All other motions and requests shall be filed in writing and shall state the reason for the motion or request and shall include an affidavit of service to all other parties. Any response to a motion or request shall be filed within the time frame set by the ALJ at the prehearing conference. The ALJ shall ensure that the time frame set for the filing of motions, requests, and responses does not extend past the twenty-five (25) business day limit as set forth in Section 62 O.S. Section 34.301(C).

### **260:130-5-13. Continuances**

A request for continuance shall be filed in writing and shall include the cause for the request and a statement of agreement or disagreement by the other party(s). A prehearing conference or hearing may be continued or adjourned by the Civil Service Division or the ALJ. A continuance shall be granted only in those instances where extraordinary circumstances exist and has been shown. If granted, a continuance shall be made to a date certain. A request for continuance that extends the hearing or mediation past the twenty-five (25) business day limit as set forth in 62 O.S. Section 34.301(C) will not be granted.

(1) If granted on behalf of the Civil Service Division or the responding agency, and the complainant is subsequently sustained in the complaint, back pay and other benefits shall be awarded for the entire judgment as determined appropriate by the ALJ.

(2) If granted on behalf of the complainant and he or she is subsequently sustained in the complaint, back pay and other benefits shall be awarded only for the period of time that the complainant did not delay the complaint as determined appropriate by the ALJ.

### **260:130-5-14. Ex-parte communication**

Ex-parte communications are communications by anyone with an ALJ or the Civil Service Division Director on the merits of a complaint which could affect its outcome. Ex-parte communications are prohibited from the time a complaint is filed until a final decision is issued.

### **260:130-5-15. Judicial review**

Within thirty (30) calendar days after exhausting all remedies under the Administrative Procedures Act, either party may appeal an adjudicated complaint to a higher court of competent jurisdiction.

### **260:130-5-16. Stay of enforcement**

A petition for judicial review shall not automatically stay enforcement of the original decision.

## **SUBCHAPTER 7. HEARING PROCESS**

### **260:130-7-1. Prehearing conference**

(a) **Purpose.** The Civil Service Division may schedule a prehearing conference on any complaint set for hearing. The conference provides an opportunity for the parties to clarify, isolate and dispose of procedural matters prior to the hearing.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Complainant's failure to do so may result in dismissal of the complaint unless extraordinary circumstances exist and are shown. Prior to the prehearing conference each party shall file with the Civil Service Division and provide to each other party and the ALJ a copy of:

(1) a brief statement of his or her respective case, to include a list of stipulations and requested remedy;

(2) the names of the witnesses allowed at the hearing and their contact information; and;

(3) a description of the documents and exhibits allowed at the hearing and copy of each document and exhibit to be offered.

(c) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, to speak and act on his or her behalf.

(d) **ALJ responsibility.** The ALJ shall:

(1) consider, facilitate and rule on settlement;

(2) consider any matters which will aid in the fair and prompt resolution and disposition of the complaint;

- (3) hear and rule on pending requests or motions;
- (e) **Conference.** The conference shall be informal, structured by the ALJ and not open to the public. The ALJ shall record the conference by digital recording.
  - (1) **Notice.** Each party shall be notified of the date, time and location at least seven (7) calendar days prior to the scheduled conference.
  - (2) **Location.** The conference shall be conducted at the Human Capital Management offices or any other location determined appropriate by the ALJ.
  - (3) **Witnesses.** Witnesses shall not appear or present evidence at the conference.
  - (4) **Continuance.** A request for continuance shall be filed in accordance with OAC 260:130-5-13 no less than three (3) calendar days prior to the scheduled conference. The ALJ, or in his or her absence, the Civil Service Division, shall rule on the request in accordance with OAC 260:130-5-13.
- (f) **Conclusion.** The ALJ shall end the conference when preparation for the hearing is complete, unless sooner terminated as a result of settlement or for other just cause.

**260:130-7-2. Furnishing of information, attendance of witnesses and production of books, records, etc. and issuing subpoenas**

The Civil Service Division or the ALJ, by and through the Civil Service Division, shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for purposes of the proceeding as allowed by 75 O.S. Section 315 of the Administrative Procedures Act. The Civil Service Division or the ALJ, by and through the Civil Service Division, shall issue subpoenas for witnesses, issue subpoenas duces tecum, and quash subpoenas or subpoenas duces tecum so issued as allowed by and in accordance with 75 O.S. Section 315 of the Administrative Procedures Act.

**260:130-7-3. Taking of depositions**

Either party to the complaint may take depositions of witnesses which shall be admissible at the hearing in accordance with 75 O.S. Section 315 of the Administrative Procedures Act.

**260:130-7-4. Hearing**

- (a) **Purpose.** The hearing provides each party the opportunity to present witnesses and evidence as allowed by these Rules in support of his or her respective case for decision by an ALJ. Hearings shall be conducted in accordance with the Act, the Administrative Procedures Act and the Rules in this chapter.
- (b) **Party responsibility.** Each party shall be present, on time and prepared. Complainant's failure to do so may result in dismissal of the complaint unless extraordinary circumstances exist and are shown.
- (c) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, to speak and act on his or her behalf.

- (d) **ALJ responsibility.** The ALJ shall rule on questions of admissibility of evidence, competency of witnesses and any other matters or questions of law.
- (e) **Process.** The hearing shall be formal, structured by the ALJ and open to the public. Parts of a hearing may be ordered closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons. The ALJ shall record the hearing by digital recording and such recording shall constitute the official recording of the hearing.
  - (1) **Notice.** Each party shall be notified of the date, time and location at least seven (7) calendar days prior to the scheduled hearing.
  - (2) **Location.** The hearing shall be held at the Civil Service Division offices or any other location determined appropriate. At the prehearing conference any party may request the hearing be changed to a more convenient location. The ALJ shall rule on the request and may change the location when to do so is in the best interests of the Civil Service Division and parties.
  - (3) **Witnesses.** The ALJ shall administer an oath or affirmation to each witness.
  - (4) **Continuance.** A request for continuance shall be filed in accordance with OAC 260:130-5-13 no less than three (3) calendar days prior to the scheduled hearing. The ALJ, or in his or her absence, the Civil Service Division, shall rule on the request in accordance with OAC 260:130-5-13.
- (f) **Witnesses allowed at the hearing.** The witnesses allowed at the hearing shall be limited to
  - (1) the Human Resources Director or designee;
  - (2) the supervisor;
  - (3) the employee bringing the complaint;
- (g) **Documents allowed at the hearing.** The documents allowed at the hearing shall be limited to the documents contained in the disciplinary file.
- (h) The ALJ has the discretion to approve the request to provide additional witnesses and documents as necessary.
- (i) **Burden of proof.** The following burden of proof shall apply to all hearings under the jurisdiction of the Civil Service Division (termination, involuntary demotion, suspension without pay, or punitive transfer). The burden of proof shall be upon the complainant who must prove his or her case by a preponderance of the evidence.
  - (1) Upon a finding that a reasonable basis existed for the action taken, an ALJ shall dismiss the complaint.
  - (2) Upon a finding that a reasonable basis did not exist for the action taken, an ALJ may order the reinstatement of the employee, with or without back pay and other benefits. An ALJ may also order that documentation of the disciplinary action be expunged from any and all of the employee's personnel records and disciplinary file.
  - (3) An ALJ who orders reinstatement with back pay and other benefits under (B) above, may consider the deduction of any income the employee may have received for the period of time the employee was not performing his or her duties.

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### **260:130-7-5. Methods of testimony**

(a) This section shall not limit the authority of the Civil Service Division to compel any witness to appear and offer testimony. Upon written request and approval by the ALJ, an affidavit, video conference, electronic communication, and telephone communication may be used when a witness or party is unable to attend or testify because of good reason.

(b) The parties to any action before the Civil Service Division are responsible for ensuring that the technology is available to all participants for conducting a video conference.

### **260:130-7-6. Closing the record**

The record shall be closed when each party has had an opportunity to be heard and present evidence. Once the record is closed, no additional evidence or arguments shall be considered.

### **260:130-7-7. Decisions**

The ALJ shall file a proposed order with the Civil Service Division within ten (10) calendar days after the record is closed. The proposed order shall include findings of fact and conclusions of law, written in clear and concise language.

(1) The Civil Service Division shall issue the final decision to each party, by personal service or certified mail and by submission on the online filing system, within fifteen (15) calendar days after receipt of the proposed order.

(2) The determination of the ALJ and decision by the Civil Service Division shall be final and conclusive except as provided in the Administrative Procedures Act.

### **260:130-7-8. Petition for rehearing, reopening or reconsideration of the final decision**

The final decision of the Civil Service Division shall be subject to rehearing, reopening, or reconsideration. A petition for rehearing, reopening, or reconsideration must be filed by the aggrieved party within ten (10) days from the date of the entry of the final decision. Such petitions and the resolution of such petitions must be in accordance with 75 O.S. Section 317 of the Administrative Procedures Act. In accordance with 75 O.S. Section 317(d), the Civil Service Division will send the petition for rehearing, reopening, or reconsideration to an ALJ to act as the hearing examiner. The hearing examiner will review the petition for rehearing, reopening, or reconsideration and any other evidence and data submitted by the parties. The hearing examiner will not permit oral arguments. If the petition for rehearing, reopening, or reconsideration is granted by the hearing examiner, the hearing examiner will order the matter referred to the same presiding ALJ or another ALJ, separate and apart from the hearing examiner, for further consideration of the matter on those grounds upon which the petition for rehearing, reopening, or reconsideration was granted.

## **SUBCHAPTER 9. ATTORNEY FEES AND COSTS**

### **260:130-9-1. Award**

(a) **General.** The ALJ of any hearing may order payment of reasonable attorney fees and costs to the prevailing party if the position of the non-prevailing party was without reasonable basis or was frivolous.

(b) **Burden of proof.** The prevailing party shall bear the burden of proof that he or she is entitled to an award of attorney fees and costs by a preponderance of the evidence.

(c) **Showing of proof.** To be entitled to an award of attorney fees and costs, the prevailing party shall be deemed to have prevailed if he or she received all or a significant part of the relief sought through the complaint. Attorney fees shall not be awardable for non-attorney pro-se representation. There shall be a finding that the non-prevailing party's position was without reasonable basis or was frivolous.

(d) **Standards.** The without reasonable basis or frivolous standard includes, but is not limited to:

(1) where the non-prevailing party's action was clearly without merit or was wholly unfounded;

(2) where the non-prevailing party initiated an action against the prevailing party in bad faith, including where the action was brought to harass or intimidate the prevailing party;

(3) where the non-prevailing party committed a gross procedural error which prolonged the proceeding or severely prejudiced the prevailing party; and

### **260:130-9-2. Reasonable costs**

Reasonable costs shall be determined primarily through costs associated with the defense of the specific action before the Civil Service Division.

### **260:130-9-3. Reasonable attorney fees**

Hours devoted to the complaint multiplied by a reasonable hourly billing rate. Reasonable attorney fees may be determined by looking at fees awarded the attorney in the past.

(1) The prevailing community rate is considered a reasonable hourly rate.

(2) The fee agreement between an attorney and a party to the complaint or any organization, or association representing a party, establishes a presumption that the amount agreed upon is the maximum reasonable amount.

(3) The actual rate of pay for a state attorney representing a party shall be the base pay of the attorney.

### **260:130-9-4. Request**

A request for the award of attorney fees or costs shall be filed with the Civil Service Division within ten (10) calendar days after the issue date of the final decision and shall include an affidavit of service to all other parties.

(1) **Grounds.** The request shall specifically state why an award of attorney fees or costs should be made and shall be supported by evidence to substantiate the request and evidence to determine whether or not the amount claimed is reasonable.

(2) **Evidence.** Evidence submitted with the request shall include, as a minimum:

(A) adequate time records so the reasonableness of the claimed fee can be ascertained;

(B) a copy of any fee agreement between the attorney and the client or any fee agreement between the attorney and any organization, or association representing the client;

(C) the attorney's customary billing rate for similar work, provided the attorney has a billing practice to report;

(D) evidence of the prevailing community rate sufficient to establish a market value for the services rendered;

(E) specific evidence of the prevailing rate for similar work of attorneys of comparable experience and reputation; and

(F) specific detailed documentation identifying the actual costs associated with the request.

(3) **Response.** Any party may file a response in opposition to the request within ten (10) calendar days after the date the request is filed with Human Capital Management. The response shall include an affidavit of service to all other parties.

(4) **Rejection.** Requests and responses which are not timely filed or do not meet the requirements of this section shall be rejected by The Civil Service Division.

**260:130-9-5. Frivolous appeals**

Any party may be assessed attorney fees and costs if the Civil Service Division or the ALJ determines a complaint is frivolous. A request for attorney fees and costs of processing a complaint shall comply with the provisions of this section.

**SUBCHAPTER 11. CONFIDENTIAL WHISTLEBLOWER PROGRAM**

**260:130-11-1. Confidential whistleblower program**

The Civil Service Division will act as the central repository for all whistleblower complaints. All whistleblower complaints will be maintained as confidential and be routed to the appropriate party for review and disposition. Whistleblower complaints will be limited to agency or employee mismanagement and the misuse of state funds or property.

**SUBCHAPTER 13. POSITION ALLOCATION AND JOB CATALOG AND CODE SYSTEM**

**260:130-13-1. Purpose**

The purpose of the rules in this Subchapter are to establish a job catalog and code system for all employees under the administration of Human Capital Management.

**260:130-13-2. Job catalog and codes**

Human Capital Management will establish and maintain a master catalog of all state employment jobs. Each job profile will be assigned a code. Agencies will work with Human Capital Management to ensure all jobs are organized into the master catalog and code structure.

**SUBCHAPTER 15. SALARY AND PAYROLL UNIFORM STRUCTURE**

**260:130-15-1. Purpose and general provisions**

The purpose of the rules in this Part is to establish a uniform structure for salary and pay and pay increases.

**260:130-15-2. Pay range and pay increase catalog and codes**

Human Capital Management will establish and maintain a master catalog of all state pay ranges and reasons for pay increases. Each reason for pay increase will be assigned a code. Human Capital Management will provide guidance, assistance, and information regarding the pay range and pay increase catalog and codes.

**SUBCHAPTER 17. RECRUITMENT AND SELECTION**

**260:130-17-1. Purpose**

The purpose of the rules in this Subchapter is to establish policies and procedures for the recruitment of qualified persons, for the referral of capable candidates for vacancies and the employment of individuals on other types of appointments as necessary and for impartial consideration of applicants for employment.

**260:130-17-2. Selection procedures**

(a) Selection procedures may consist of written tests; ratings of training and experience; performance tests; physical, educational, and work experience requirements; interviews; oral examinations; application forms and any other type of examination.

(b) When a job requires a test, the Appointing Authority shall administer tests in accordance with the Americans with Disabilities act to applicants or employees with disabilities that impair sensory, manual, or speaking skills in formats that do not require the use of the impaired skill, if the applicant or employee notifies the Appointing Authority before the test is administered.

(c) Before appointment, applicants may be required to pass a physical examination specified by the Appointing Authority when requirements of the job demand specific physical condition or capabilities. Such physical examinations shall be uniform in nature and applied to all persons in that job within the agency. The responsibility for administering the physical examinations lies with the Appointing Authority.

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## **260:130-17-3. Applications**

An application for a posted job shall be made on a form prescribed by the Administrator. The application form solicits information from the applicant regarding residence, education, training, experience and other eligibility information. The form may also ask for demographic information, such as race, sex, ethnicity, and disability for statistical analysis and state and federal record keeping and reporting requirements. The form may also ask for veteran status. Information provided by applicants shall be subject to verification. All applications shall be signed in writing or by electronic signature by the applicant certifying the truth of all statements he or she made in the application. Applications must be filed with the Human Capital Management Division on or before the closing date specified in the announcements.

## **260:130-17-4. Establishment of qualifications**

Minimum and preferred qualifications will be determined by the Appointing Authority and HCM.

## **260:130-17-5. Testing**

The Appointing Authority and HCM will collaborate to develop testing requirements for positions and job families.

## **260:130-17-6. Posting jobs**

All posted jobs shall be posted through the central system of record established and maintained by Human Capital Management. Human Capital Management shall grant Appointing Authorities an exception to this Rule based on documented business needs.

## **SUBCHAPTER 19. EMPLOYEE ACTIONS**

### **PART 1. GENERAL PROVISIONS**

## **260:130-19-1. Purpose**

The purposes of the rules in this Subchapter are to establish policies and procedures for trial periods of employment transfers, promotions, demotions, and separations, while protecting employees from arbitrary dismissal or unfair treatment.

## **260:130-19-2. Agency personnel records**

Each agency shall maintain an adequate set of applicant and employee personnel records. These records shall include: performance evaluations, promotional forms, attendance records, the employee disciplinary file, and any other documents that affect an individual's employment status with the agency.

## **260:130-19-3. Reports of personnel changes**

All personnel changes shall be recorded in the system of record provided by OMES.

## **260:130-19-4. Review of agency personnel files**

Each employee shall have the right to review his or her individual personnel records in the system of record.

## **260:130-19-5. Voluntary demotion**

An Appointing Authority may approve the employee's request for voluntary demotion provided the employee voluntarily makes such a request in writing and meets the current minimum qualifications for the job family level to which demotion is requested.

## **260:130-19-6. Method of resignation**

(a) To resign in good standing, an employee must give the Appointing Authority, or designee, at least fourteen (14) calendar days prior notice unless the Appointing Authority, or designee, agrees in writing to permit a shorter period of notice. The Appointing Authority, or designee, will supply the employee written confirmation of any shorter period of notice that is allowed.

(b) Verbal resignations may be accepted by the Appointing Authority and implemented at his/her discretion.

(c) An employee who is absent from work without prior approval and who has not contacted his/her supervisor or agency representative within three working days is deemed to have resigned from state service.

## **260:130-19-7. Detail to special duty**

(a) When the services of a state employee are temporarily needed in a job profile other than the one to which the incumbent is regularly assigned, the employee may be detailed to special duty, at the discretion of the Appointing Authority, to perform the duties of the job to which temporarily assigned.

(b) A detail to special duty in no way shall affect the status, title or job profile held before the detail.

(c) An employee shall not be placed on detail to special duty more than twelve (12) months in any thirty-six (36) month period.

(d) Detail to special duty is not required when an employee is temporarily assigned duties of another job for a period of less than sixty (60) days in any twelve (12) month period. Detail to special duty is also not required when an employee is temporarily performing such duties as part of a return-to-work program as a result of a work-related illness or injury, regardless of whether that period exceeds sixty (60) days in any twelve (12) month period. Such temporary placement related to a return-to-work program shall not exceed six (6) months.

## **260:130-19-8. Suspension with pay**

(a) An Appointing Authority may suspend a state employee from duty with pay for internal investigatory purposes or to require the employee to undergo a fit-for-duty examination to determine whether the employee is capable of performing the essential functions of the position in which employed. The Appointing Authority may require the employee to remain available during specified working hours to meet with investigators or other agency officials as required. A notice of suspension



with pay, stating the beginning and ending dates and times and specifying any reporting requirements shall be issued to the employee in writing.

(b) If the employee was suspended with pay for investigatory purposes and is cleared, the Appointing Authority shall fully clear the employee's records in the custody of the agency and shall make every reasonable effort to fully clear any such records which are not in the custody of the agency. If the charges against the employee are confirmed, in whole or in part, a suspension with pay in accordance with this Section shall not preclude an Appointing Authority from taking disciplinary action in accordance with Oklahoma law and these Rules.

**PART 3. EMPLOYEES IN A TRIAL PERIOD**

**260:130-19-30. Trial period**

Appointing Authorities may require an employee to be in a trial period for up to one year for individuals who have been initially hired as a state employee, employees who are transferring from one state agency to another state agency, or employees returning to state service following a break in service. The Appointing Authority may not extend the trial period but may adjust the trial period due to extended absence. The length of the trial period shall be made known to the employee at the time of entry on duty and at the time of any adjustment or waiver of the trial period.

**260:130-19-31. Disciplinary action during trial period**

The employment of any state employee may be terminated at any time during the trial period without the right of complaint as set forth in and these Rules. The employee may also be disciplined at any time during the trial period without the right of complaint.

**260:130-19-32. Adjustment of the trial period**

If a trial employee is absent from work in excess of thirty (30) non-continuous working days, the trial period shall be adjusted by the number of working days the trial employee was absent. The employee shall be notified at the earliest date that the trial period is to be adjusted. Upon the employee's return to work, notification of such adjustment shall be provided to the employee and HCM and shall include the adjusted date of the final working day of the trial period.

**PART 5. EMPLOYEE GUIDELINES**

**260:130-19-50. Conduct of employees**

(a) Every employee shall fulfill to the best of his or her ability the duties of the office or position conferred upon the employee and shall behave at all times in a manner befitting the office or position the employee holds. In performing official activities, the employee shall pursue the common good, and not only be impartial, but act so that there can be no question of impartiality.

(b) An employee shall not engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible, or in conflict with his or her duties as an employee or with the duties, functions or responsibilities of the Appointing Authority by which the person is employed.

(c) Each Appointing Authority shall determine and prescribe those activities within applicable laws, which, for employees under its jurisdiction, will be considered inconsistent, incompatible or in conflict with their duties as employees. In making this determination, the Appointing Authority shall give consideration to employment, activity or enterprise which:

(1) involves the use for private gain or advantage of state time, facilities, equipment and supplies; or the badge, uniform, prestige or influence of one's state office or employment, or

(2) involves receipt or acceptance by the employee of any money or other consideration from anyone, other than the state, for the performance of an act which the employee would be required or expect to render in the regular course or hours of state employment or as a part of the duties as a state employee, or

(3) involves the performance of an act which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by such employee.

(d) Each employee shall devote full time, attention and effort to the duties and responsibilities of his or her position during assigned hours of duty.

**SUBCHAPTER 21. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS**

**PART 1. GENERAL PROVISIONS**

**260:130-21-1. Purpose**

The purposes of the rules in this Subchapter are to establish policies and procedures pertaining to employee performance appraisal systems, the state personnel interchange program, and the state internship program.

**PART 3. EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM**

**260:130-21-30. Employee performance management system**

(a) Human Capital Management shall make available one standard performance management system that will be used by all agencies to complete employee performance evaluations. The purpose of this employee performance management system is to evaluate the performance of each employee in the executive branch of state government.

(b) The employee performance management system shall provide for the following:

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- (1) An objective evaluation by the immediate supervisor of the performance of the employee within the assigned duties of the job. The evaluation shall contain the date of review and employee identification number;
  - (2) A mid-term interview with the immediate supervisor for the purpose of discussing the progress of the employee in meeting the performance criteria upon which the employee will be evaluated;
  - (3) A final interview with the employee by the immediate supervisor who shall provide the employee with a copy of the performance evaluation; and
  - (4) The opportunity for the employee to submit written comments regarding the performance evaluation.
- (c) The immediate supervisor shall hold a meeting with the employee at least three times during a 12-month evaluation period.
- (1) One meeting shall take place at the beginning of the evaluation period in order to communicate the criteria upon which the employee will be evaluated. A copy shall be provided to the employee.
  - (2) One meeting shall take place during the rating period for the purpose of discussing the progress of the employee in meeting the criteria upon which the employee will be evaluated.
  - (3) One meeting shall take place at the end of the review period to provide the final evaluation. A copy of the evaluation shall be provided to the employee, and the employee shall have the opportunity to provide written comments.
- (d) The agency may use the performance evaluations of current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases, and discharges.
- (e) The agency shall retain a copy of the performance evaluation for each employee of the agency. A copy of the performance evaluation shall be retained in the employee's personnel file.

### **PART 5. STATE PERSONNEL INTERCHANGE PROGRAM**

#### **260:130-21-50. Purpose**

The purpose of the rules in this Part is to implement the State Personnel Interchange Program.

#### **260:130-21-51. State personnel interchange agreements and contracts**

Employee interchanges made in accordance with the Act and these Rules shall be executed by mutual agreement or contract by the sending agency, the receiving agency and the participating employee, subject to the following conditions and provisions:

- (1) The agreement or contract shall be in the standard format and on the standard form provided by the Human Capital Management Division. Both the personnel interchange agreement and the personnel interchange contract contain information regarding the terms and conditions of

the interchange and are signed by the Appointing Authority of the sending and receiving agencies and by the participating employee. Employee interchanges shall be by agreement if the receiving agency does not reimburse the sending agency and by contract if the receiving agency reimburses the sending agency.

(2) The agreement or contract shall be signed voluntarily by the sending agency, the receiving agency, and the participating employee.

(3) The receiving agency shall submit an original agreement or contract signed by the Appointing Authorities of the sending and receiving agencies and the participating employee to the Human Capital Management Division. The Administrator shall review and approve each agreement or contract before the effective date of the interchange.

### **PART 7. STATE INTERNSHIP PROGRAM**

#### **260:130-21-70. Purpose**

The rules in this Part establish policies and procedures to implement the State Internship Program.

#### **260:130-21-71. State Internship Program**

(a) **Eligibility.** The State Internship Program consists of temporary part-time or full-time positions for students enrolled in institutions of higher education working toward an undergraduate degree, which shall include associate's degrees or certifications by the Oklahoma Department of Career and Technology Education, or a graduate degree.

(b) **Conditions of employment.** Participants in the State Internship Program who receive internship appointments shall:

- (1) be granted leave benefits commensurate with regular state employees, if they qualify for leave benefits;
- (2) be enrolled in the state health insurance and retirement benefits programs, if expected to work one thousand (1,000) or more hours per year; and
- (3) continue to make progress toward his or her degree until completion of all undergraduate and graduate degree requirements.

(c) **Internal Appointing Authority unpaid internship programs.** Nothing in this Rule shall limit an Appointing Authority from developing and offering internal unpaid internship programs.

#### **260:130-21-72. Application form and procedure**

(a) **Application form.** The State Internship Program application is available from Human Capital Management. Applicants may apply at any time.

(b) **Communication with the Human Capital Management Division.** Interested persons may direct communications to HCM with attention to the State Internship Program.

(c) **Application procedure.** Applicants for the internship program shall provide the following information to the Human Capital Management Division for review and determination of eligibility: A completed on-line application form as prescribed

by Human Capital Management; Transcript(s) of coursework from accredited higher education institutions; Verification of current enrollment.

(d) **Notification.** Human Capital Management shall notify applicants if the documents they submit are sufficient for eligibility. A notice of eligibility does not mean the applicant will be employed as an intern.

(e) **Length of eligibility.** Applicant information on file at the Human Capital Management Division shall remain active if eligible applicants submit verification of current enrollment and an updated transcript each semester. If applicants fail to provide updated information within 90 days after the end of the previous semester, they will no longer be eligible for employment as an intern and their names will be removed from the list of eligible applicants made available to state agencies.

(f) **Appointment.** Human Capital Management shall provide a list of all eligible applicants for the State Internship Program to state agencies periodically and at an agency's request. An agency may request an eligible applicant list and copies of individual eligible intern files at any time.

(g) **State employees.** State employees may apply to participate in the State Internship Program. Employees who receive internship appointments may request leave without pay from their permanent or regular employment in accordance with the leave of absence without pay rules. Trial employees and employees with less than 12 months continuous service shall resign before entry-on-duty as an intern.

(h) **State employees; continuation of benefits.** State employees leaving positions in state government in order to take an internship shall continue to receive all fringe benefits they would have received in their previous positions.

**260:130-21-73. General conditions of employment**

(a) **No expectation of continued employment.** An intern has no right or expectation of continued employment in any position with the state because of participation in the State Internship Program.

(b) **Compensation plan for interns.** The employing agency shall establish compensation plans that include rates of pay for State Internship Program positions which are consistent with positions having like duties and responsibilities within the agency. Human Capital Management may establish job descriptions for interns in accordance with these Rules. State interns who are not exempt from the provisions of the Fair Labor Standards Act (29U.S.C. 201 et seq.) are subject to its overtime provisions. Salary adjustments may be made in accordance with these Rules.

(c) **Report of work performance to educational institution.** The Appointing Authority or designee of the employing agency shall provide the internship faculty member with information necessary to evaluate the intern's work experience for academic purposes at the faculty member's request.

**260:130-21-74. Termination of internship**

The agency, the intern, or the Administrator may terminate the internship agreement at any time without notice. The agency may separate the intern with or without cause.

**PART 9. MANDATORY SUPERVISORY TRAINING**

**260:130-21-90. Purpose**

The rules establish policies and procedures necessary to implement supervisory training requirements.

**260:130-21-91. Definitions**

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

**"One hour of training"** means one (1) hour of learner interaction with the content of the learning activity, which includes classroom, self-paced instruction, assignments, or assessments that support the stated learning outcome. The Administrator shall develop a standard for assessing and assigning hours to learning content.

**"Online learning format"** means any live or self-paced learning content delivered remotely using online technology.

**"Supervisory training"** means courses or training related to the effective performance of an agency manager or supervisor.

**"Twelve hours of training"** means twelve (12) hours of learner interaction. Twelve (12) hours of training are also equivalent to 1.2 continuing education units (CEUs).

**"Twenty-four hours of training"** means twenty-four (24) hours of learner interaction. Twenty-four (24) hours of training are also equivalent to 2.4 continuing education units (CEUs).

**260:130-21-92. Supervisory training requirements**

All supervisors shall complete twelve (12) hours of supervisory training according to this Part each year. Persons appointed to supervisory positions shall complete twenty-four (24) hours of supervisory training according to this Part within twelve (12) months before or after assuming a supervisory position. Supervisors shall complete training courses in the State of Oklahoma Performance Management Process and progressive discipline within the first twelve (12) months of being appointed to a supervisory position. The appointing authority of each agency shall make sure each supervisory employee is notified and scheduled to attend required supervisory training and shall make time available for each supervisory employee to complete the training. Training courses conducted by employing agencies, public and private schools, and colleges and universities may count toward supervisory training requirements if the coursework meets the definition for supervisory training in 260:130-21-91.

**260:130-21-93. Supervisory training reporting requirements**

Employing agencies shall keep records of the training of all supervisory employees and shall submit reports of supervisory training to the Human Capital Management Division at the request of the Administrator of the Human Capital Management Division. Agencies shall record employee training in

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the system of record for evaluating statewide learning and reporting purposes.

## **260:130-21-94. Reporting of training compliance**

Each spring, the Administrator will notify agencies of the method for reporting their level of compliance with these requirements for the previous calendar year. The Administrator shall provide a summary of the reports to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

## **PART 11. CERTIFIED PUBLIC MANAGER PROGRAM**

### **260:130-21-110. Purpose**

The rules in this Part establish policies and procedures to implement the Certified Public Manager Program®. The Program is administered by the Office of Management and Enterprise Services. It is the purpose of the Certified Public Manager Program® to develop the management skills of public sector employees and to assist state agencies and other public sector organizations in the identification and development of future leaders.

### **260:130-21-111. Definitions**

In addition to words and terms defined in OAC 260:130-1-2, the following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise.

"Organizations" means municipalities, counties, Indian Nations, and the federal government.

"Program" means the Certified Public Manager Program®.

"Training section" means a group of participants who complete the program in the same period of time.

### **260:130-21-112. Program description**

(a) **Eligibility.** Employees of state agencies in all branches of state government who are nominated by the Appointing Authority or designee may participate in the Program. Additionally, employees of organizations who are nominated by the chief administrative officer or designee may participate in the Program.

(b) **Nomination procedure.** The nomination process and/or criteria will be determined by each agency. The Certified Public Manager Program® nomination form and information booklet are available from the Human Capital Management Division. The nomination form solicits information about the nominee and the nominating agency or organization and shall be signed by the nominee, the nominee's supervisor, and the agency's Appointing Authority or designee or the organization's chief administrative officer or designee. The information booklet provides information about the nomination process, a description of the Program, courses required to complete the Program, and the role of Higher Education in the Program. The

agency or organization may nominate an employee for participation in the Program during designated enrollment periods by forwarding a completed nomination form to the Certified Public Manager Program® at the Human Capital Management Division prior to the end of the enrollment period.

(c) **Enrollment in the Program.** The Administrator shall enroll an employee in the Certified Public Manager Program® who has been nominated by his or her agency or organization in the first available training section.

(d) **Communication with the Human Capital Management Division.** Interested persons may direct communications to the attention of the Oklahoma Certified Public Manager Program®.

(e) **Experience credit.** Graduation from the Program as a "Certified Public Manager®" shall substitute for one (1) year of professional experience in business or public administration on any job class requiring such experience as part of the minimum qualifications.

### **260:130-21-113. Program requirements for candidates**

(a) **Graduation requirements.** To graduate from the Program as a "Certified Public Manager®", a candidate shall complete all of the following graduation requirements offered during the eighteen (18) month training section:

(1) Attend all scheduled courses, project sessions, and learning events prescribed by the Human Capital Management Division and specified in the information packet.

(2) The remaining hours shall be in program pre-work requirements and other assignments.

(3) Attend at least 75 percent of the scheduled class dates. Make-up work will be provided for all in-person classes. Even if all makeup work is completed, but the candidate has failed to attend at least seventy-five (75) percent of the required scheduled sessions, they are eligible to be removed from the training section.

(4) Pay the Program fees described in 260:130-21-115 in full before graduation.

(b) **Removal of a candidate from the Program.** The nominating agency or organization and the Administrator shall have the right to remove a candidate from the Program. Any candidate who fails to complete a training section will be given the greater of two (2) additional training section cycles or three years to re-enroll in another training section without being charged. Hours earned for sessions attended or work completed in a previous training section are not transferable to another training section.

### **260:130-21-114. Program requirements for nominating agency or organization**

The nominating agency or organization shall:

(1) Provide time for the candidate, during his or her work day, to attend training courses, including the Capstone, prepare class assignments, study for examinations, and work on Program projects.

(2) Allow candidates to use agency or organization issues for classroom, project, and portfolio assignments;

Provide financial support to agency candidates, as required by the Program.

(3) Review and approve employee absences for scheduled cohort dates prior to sending the nomination to HCM.

(4) Allow managers to participate in the employee's involvement in the program for activities such as attending project presentations, answering survey questions or providing employee assessments.

**260:130-21-115. Program fees**

The fee for participation shall be established by the Administrator. Should the fee structure change during the course of an employee's participation in the program, fees shall remain consistent with the fee assessed at the time of enrollment.

**PART 13. HUMAN RESOURCES PROFESSIONALS TRAINING REQUIREMENTS**

**260:130-21-130. Purpose**

The rules in this Part prescribe the continuing training and certification of personnel professionals in the executive branch of state government, excluding institutions within The Oklahoma State System of Higher Education. These rules establish policies and procedures necessary to implement human resources professionals training requirements.

**260:130-21-131. Definitions**

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

**"Annual training requirements"** means a curricula approved by the Administrator for certified human resources professionals to maintain certification.

**"Certification"** means the successful completion of the course curricula or service as an instructor for the course curricula, and the successful completion of the examination established by the Administrator for testing competency in professional human resources practices.

**"Certified Human Resources Professionals"** means employees who have achieved and maintained certification.

**"Human resources professional"** means an employee in state service, who on a regular and consistent basis as an integral part of his or her normal work assignment and job family descriptor, performs professional duties developing or implementing human resources administration policies, practices and procedures. The Administrator may waive the training requirements for personnel professionals whose primary assigned duties are in the areas of benefits, payroll, training, affirmative action/equal employment opportunity, retirement, safety, workers compensation, or employee assistance programs, according to 260:130-23-136.

**260:130-21-132. Human resources professionals training requirements**

All employees assigned to professional human resources positions in the executive branch, excluding employees within The Oklahoma State System of Higher Education, shall attend training in professional human resources administration conducted and determined by the Human Capital Management Division, and successfully complete an examination prescribed by the Administrator in order to attain certification as a human resources professional. In lieu of training conducted by the Human Capital Management Division, a professional certification in the Human Resources field that is nationally recognized may qualify. Employees appointed to human resources professional positions shall attend the training and successfully complete the examination within one (1) year of appointment. Employees who have been certified as human resources professionals by the Administrator shall thereafter annually complete training conducted and determined by the Human Capital Management Division in professional human resources administration to maintain certification. The Administrator may approve training that is not conducted by the Human Capital Management Division as meeting the annual training requirements. The Appointing Authority of each agency with an employee assigned to a professional human resources position shall ensure the employee is notified and scheduled to attend required human resources professionals training and shall make time available for the employee to complete the training.

**260:130-21-133. Course approval of annual training requirements**

To request approval of training not conducted by the Human Capital Management Division as meeting the annual training requirements, the Appointing Authority shall submit the following course information to the Administrator for review: Course title and a brief description; Classroom hours or Continuing Education Units (CEUs); and Course outline. The Administrator shall maintain lists of courses approved as meeting the annual training requirements and may withdraw his or her approval of courses by notifying employing agencies. Certified Human Resources Professionals who complete approved training courses shall submit proof of completion that is acceptable to the Administrator.

**260:130-21-134. Application for waiver of training requirements**

The Administrator may waive the human resources professional training requirements for employees: Whose primary assigned duties are in the areas of benefits, payroll, training, affirmative action/equal employment opportunity, retirement, safety, workers compensation, or employee assistance programs; and, whose primary assigned duties do not include classification, compensation, recruitment, or selection. Employees who are eligible for a waiver according to Subsection (a) of this Section, may apply by submitting a written request

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signed by the Appointing Authority, along with a position description, job family descriptor, or a description of the employee's primary assigned duties, to the Human Capital Management Division. The Administrator shall be responsible for granting or denying waivers under this Section. The decision of the Administrator to grant or deny such a waiver shall be final.

### **260:130-21-135. Human resources professionals training fees**

The fee for participation shall be established by the Administrator.

## **PART 17. STATE WORK INCENTIVE PROGRAM**

### **260:130-21-170. Purpose**

(a) The rules in this Part establish policies and procedures to implement the State Work Incentive Program.

(b) The State Work Incentive Program is aimed at employing participants in the Temporary Assistance to Needy Families Program in Oklahoma and vocational rehabilitation clients of the Department of Rehabilitation Services in entry-level positions within state service. [74:840-5.16]

### **260:130-21-171. Eligibility and length of appointment**

To be eligible for hire under the State Work Incentive Program, a person must be certified as a participant in the Temporary Assistance to Needy Families Program by a State Work Incentive Referral Form issued by the State of Oklahoma Department of Human Services, or be certified as an eligible individual by a State Work Incentive Program Certificate issued by the Department of Rehabilitation Services. A copy of the required certification will be provided to the Human Capital Management Division at the time of appointment. Agencies may employ eligible persons in the State Work Incentive Program for up to 2 years in full-time or part-time status.

### **260:130-21-172. Conditions of employment**

(a) **No right of continued employment.** Employees hired under the State Work Incentive Program shall have no right or expectation of continued employment in any position because of participation in the State Work Incentive Program.

(b) **Eligibility for leave and benefits.** Employees hired under the State Work Incentive Program are eligible for leave and other benefits of state employment available to regular employees. Employees hired under the State Work Incentive Program must meet any other eligibility requirements established for such benefits

(c) **Leave without pay.** Employees hired under the State Work Incentive Program may be granted leave of absence without pay from the agency. Leave without pay in excess of a total of 5 working days shall extend the employee's two (2) years of eligibility under the State Work Incentive Program by the number of working days the employee is on leave without pay.

(d) **Eligibility for promotion.** Employees hired under the State Work Incentive Program may be reassigned or promoted while they are participating in the program

(e) **Performance evaluation.** Appointing Authorities shall evaluate the performance of employees hired through the State Work Incentive Program.

### **260:130-21-173. Conversion**

Persons employed under the State Work Incentive Program shall be eligible for conversion to regular state employment status bypassing the trial period at the discretion of the Appointing Authority if the employee has:

(1) completed two (2) years of continuous participation in the State Work Incentive Program, not including periods of leave without pay,

(2) performed satisfactorily as evidenced by performance evaluations conducted, and

(3) met the minimum requirements for the position.

## **SUBCHAPTER 23. OFFICE OF VETERANS PLACEMENT**

### **260:130-23-1. Office of Veterans Placement**

The Office of Veterans Placement is created within Human Capital Management of the Office of Management and Enterprise Services. Services of the Office of Veterans Placement shall include employment counseling, assistance in identifying transferable military skills, qualifications and career assessment, assistance in drafting competitive resumes, instruction in developing comprehensive job search strategies and job placement assistance. Veterans who utilize the Office of Veterans Placement shall be guaranteed a reasonable offer of an interview for qualifying state service positions. Questions regarding reasonable interview offers will be reviewed by the Office of Veterans Placement. Such veterans will only be granted an interview for those jobs that the Office of Veterans Placement have determined to be an appropriate match for each veteran. The veteran will be required to present a letter from Oklahoma's Office of Veterans Placement to the hiring agency evidencing this requirement. This section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in this section.

## **SUBCHAPTER 25. WORKFORCE PLANNING**

### **260:130-25-1. Workforce Planning**

Human Capital Management of the Office of Management and Enterprise Services provides workforce planning to assist state agencies in analyzing the workforce, determining future workforce needs, and implementing solutions that may include but not be limited to workforce plans, succession strategies,

and other employee-related interventions and programs so that agencies may accomplish their missions.

**SUBCHAPTER 27. DISCIPLINARY ACTIONS**

**260:130-27-1. General**

Each appointing authority is responsible for developing and maintaining a safe and productive work environment. Each appointing authority and each supervisor is responsible for promptly applying discipline when necessary that is equitable and suitable for the offense considering the circumstances.

**260:130-27-2. Purpose**

The rules in this subchapter provide the framework for developing standards and guidelines for applying prompt, equitable and suitable discipline.

**260:130-27-3. Progressive discipline**

Progressive discipline is a system designed to ensure not only the consistency, impartiality and predictability of discipline, but also the flexibility to vary penalties if justified by aggravating or mitigating conditions. Each employee has a duty and responsibility to comply with the agency's progressive discipline policy.

**260:130-27-4. Records**

(a) The Appointing Authority shall maintain documentation of discipline in the employee's agency disciplinary file as defined within these Rules consistent with the General Records Schedule of the Oklahoma Department of Libraries, Office of Archives and Records.

(b) An employee shall be given a copy of any disciplinary action document when it is placed in his or her agency disciplinary file.

(c) Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, Oklahoma Open Records Act, shall govern access to disciplinary documents.

(1) An employee shall have a right to review disciplinary documents in his or her agency personnel record.

(2) The Civil Service Division, because of statutory responsibility, shall have a right of access to disciplinary documents.

(d) The Appointing Authority may specify procedures in the agency's progressive discipline plan for the review and removal of disciplinary documents from the employee's agency disciplinary record. Any such procedures shall be applied consistently and uniformly.

**260:130-27-5. Progressive Discipline standards**

The Civil Service Division shall establish and maintain standards of progressive discipline that shall be followed by all Appointing Authorities unless the Appointing Authority has received an exemption from the Civil Service Division from

the standards. In order to request an exemption from the standards, the Appointing Authority must provide the Civil Service Division with a progressive discipline plan the Appointing Authority will follow in lieu of the standards. The Civil Service Division will review the exemption request and notify the requesting Appointing Authority in writing whether the request has been approved or denied. The standards can be found on the website maintained by the Civil Service Division. The progressive discipline standards shall not be required for employee separations that occur as a result of voluntary buy outs or reductions-in-force as set forth in the applicable Oklahoma statutes.

*[OAR Docket #22-611; filed 7-13-22]*

**TITLE 265. STATE FIRE MARSHAL COMMISSION  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #22-477]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

265:1-1-1 [AMENDED]  
265:1-1-2 [REVOKED]  
265:1-1-3 [REVOKED]  
265:1-1-5 [AMENDED]  
265:1-1-6 [AMENDED]  
265:1-1-9 [AMENDED]  
265:1-1-10 [REVOKED]  
265:1-1-11 [REVOKED]

**AUTHORITY:**

State Fire Marshal Commission; 74 O.S. §§ 324.1, 324.2, 324.4, 324.7, 324.8, 324.14

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

October 26, 2021

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

November 26, 2021

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

January 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**GIST/ANALYSIS:**

Amends and deletes language to clarify procedures and remove redundant language that already exists in current state statutes. 74 O.S. §§ 324.1, 324.2, 324.4, 324.7, 324.8, 324.14.

**CONTACT PERSON:**

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

## 265:1-1-1. Purpose and scope

The ~~State Fire Marshal~~ State Fire Marshal's Office agency is charged with the responsibility of enforcing the codes and standards relative to fire safety adopted by the State Fire Marshal Commission and as designated by state statutes. The ~~State Fire Marshal~~ State Fire Marshal's Office or his agents investigate ~~investigates~~ investigates fires, acts of arson, or attempted arson, or conspiracy to defraud, and ~~keep~~ keeps records of such investigations. The ~~agents of the State Fire Marshal~~ State Fire Marshal's Office carry out an extensive ~~conducts~~ conducts fire prevention inspection ~~in-~~ inspections program in nursing homes, assisted living centers, schools, child care centers, hospitals, and other public-use buildings. The ~~agency~~ State Fire Marshal's Office issues orders for condemnation or repair of dangerous or dilapidated buildings that constitute a hazard to life or other property. The ~~State Fire Marshal~~ State Fire Marshal's Office examines plans and specifications of certain types of new construction or remodeling, ~~ensuring that to see that they meet~~ ensuring that to see that they meet minimum fire and life safety requirements are met. ~~This agency~~ The State Fire Marshal's Office is authorized to assist any city, town or county in the enforcement of the building codes and standards herein adopted. ~~The complete records~~ Records of all activities of the ~~State Fire Marshal~~ State Fire Marshal's Office agency are on file in ~~the fire marshal's office~~ in Oklahoma City. As an agency of the state of Oklahoma, it is necessary that ~~These guidelines~~ These guidelines are established to ensure proper efficiency, discipline and uniform procedures with the duties and responsibilities of the ~~State Fire Marshal's Office~~ State Fire Marshal's Office in the various facets of our responsibilities to the citizens of the ~~state~~ State of Oklahoma and our fellow employees.

## 265:1-1-2. State Fire Marhsall commission, membership, tenure [REVOKED]

~~There is hereby re created the State Fire Marshal Commission, which shall consist of seven (7) members appointed by the Governor. The Governor shall appoint initially one member who shall serve for a term of five (5) years; one member from a statewide association of career and volunteer firefighters who shall serve for a term of four (4) years; one member from a statewide association of municipalities who shall serve for a term of three (3) years; one member from a statewide association of Fire Chiefs, both career and volunteer, who shall serve for a term of two (2) years; one member, who shall be a Fire Investigator who shall serve for a term of one (1) year; one member representing a statewide association of electrical workers who shall serve a term of one (1) year; and one member representing a statewide organization of exclusively professional firefighters who shall serve for a term of two (2) years. The members of the Commission shall thereafter be appointed for a term of five (5) years and the appointments shall~~

~~be subject to Senate confirmation, provided the associations named shall be represented by at least one member. [74 O.S., Section 324.1]~~

## 265:1-1-3. Commission chairman, meetings [REVOKED]

~~The Commission shall select a chairman and is hereby authorized to adopt rules for conducting its proceedings. Any four members shall constitute a quorum. The commission shall meet monthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the chairman or by any four members. Complete minutes of each meeting shall be kept and filed in the office of the State Fire Marshal and shall be available for public inspection during reasonable office hours. The Commission shall report annually to the Governor and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate of the affairs of the Commission and the office of the State Fire Marshal. [74 O.S., Section 324.2]~~

## 265:1-1-4. Commission compensation

Each member of the ~~commission~~ State Fire Marshal Commission, while engaged in the performance of his or her duties, shall receive mileage and per diem as provided by Chapter 17, Title 74, O.S., Laws 1965, c. 257, Section 3. Amended Laws 1972, c.123, Section 1, emergency effective February 21, 1972. Revoked by Section 81, House Bill #1164, State Travel Reimbursement Act.

## 265:1-1-5. Fire marshal

~~The State Fire Marshal Commission shall appoint a full-time State Fire Marshal. The State Fire Marshal shall administer and enforce the provisions of law pertaining to the Office of the State Fire Marshal to include, but not be limited to, fire and arson investigations, code enforcement, and public education under the supervision of the State Fire Marshal Commission and in accordance with Commission policies. (Other than the provisions outlined by statute, the commission may also require additional qualifications of the Fire Marshal.) [74 O.S., Section 324.4]~~ The State Fire Marshal Commission may require additional qualifications of the State Fire Marshal that exceed those outlined by statute.

## 265:1-1-6. Assistant State Fire Marshal

~~The Commission shall appoint a full time Assistant State Fire Marshal upon recommendations from the State Fire Marshal. (Other than the provisions outlined by statute, the Commission may also require additional qualifications of the Assistant State Fire Marshal. [74 O.S., Section 324.4])~~ The State Fire Marshal Commission may require additional qualifications of the Assistant State Fire Marshal that exceed those outlined by statute.



**265:1-1-9. Administrative procedures**

The State Fire Marshal Commission and the State Fire Marshal shall be subject to the provisions of Title 75 on Administrative Rule Making and shall conduct all hearings and administrative procedures in conformity therewith, and judicial review of any order issued or action taken by the State Fire Marshal Commission or the State Fire Marshal shall be as provided for therein.

**265:1-1-10. Legal advisor [REVOKED]**

*The Attorney General shall be the legal advisor for the Office of the State Fire Marshal and the Fire Marshal Commission and shall appear for and represent the State Fire Marshal, the Fire Marshal Commission, and any of his deputies or agents in any and all litigation that may arise in the discharge of their respective duties. [74 O.S., Section 324.14]*

**265:1-1-11. Fees [REVOKED]**

~~(a) In accordance with the Oklahoma Open Records Act [Oklahoma Statutes Title 51 Section 24A.1 24A.20] and Oklahoma Statute Title 74 Section 324 the Oklahoma State Fire Marshal Agency shall charge the following fees for reproduction of records:~~

- ~~(1) Copying fee—\$.25 per page~~
- ~~(2) Certified copying fee—\$1.00 per page~~

~~(b) In accordance with the Oklahoma Open Records Act [Oklahoma Statutes Title 51 Section 24A.1 24A.20] and Oklahoma Statutes Title 74 Section 324.21 the Oklahoma State Fire Marshal Agency shall charge the following fees for reproduction of records when the request is solely for commercial purpose, or clearly would cause excessive disruption of the State Fire Marshal Agency essential functions. The State Fire Marshal Agency may charge a reasonable fee to recover the direct cost of document search [Oklahoma Statutes Title 51 Section 24A.5(3)]. Payment with cash, check or money order shall be for exact amount. Office hours are 8:00 a.m. through 4:30 p.m. Monday through Friday. Upon the submission of the request accompanied by the appropriate fee, the Agency will forward within ten (10) working days, via First Class Mail, the requested information.~~

- ~~(1) Non-Certified "Origin and Cause" Fire Investigations Report—\$1.00 per page.~~
- ~~(2) Certified "Origin and Cause" Fire Investigations Report—\$2.00 per page.~~
- ~~(3) Evidence photographs—\$20.00 per roll.~~
- ~~(4) Video tape reproduction—\$25.00 per tape.~~
- ~~(5) Roster of all fire departments—hard copy \$20.00 per copy.~~
- ~~(6) Roster of all fire departments—disk copy \$20.00 per disk.~~
- ~~(7) Roster of all fire departments for SARA reporting, disk only \$20.00 per disk.~~
- ~~(8) Computer search or excessive disruption of office functions (3 hour minimum) per employee—\$25.00 per hour (\$75.00).~~

~~(e) In accordance with Oklahoma Statutes Title 28 Section 91 the Oklahoma State Fire Marshal Agency shall charge the following fees for expert witness fees:~~

- ~~(1) Expert Witness Fee—\$150.00 per 4 hours (1/2 day minimum)~~
- ~~(2) Deposition Fee—\$150.00 per 4 hours (1/2 day minimum)~~
- ~~(3) Court Testimony Fee—\$150.00 per 4 hours (1/2 day minimum)~~

[OAR Docket #22-477; filed 6-28-22]

**TITLE 265. STATE FIRE MARSHAL COMMISSION  
CHAPTER 3. INDIVIDUAL PROCEEDINGS**

[OAR Docket #22-478]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 265:3-1-1 [AMENDED]
- 265:3-1-4 [AMENDED]
- Subchapter 3. Procedures
- 265:3-3-1 [AMENDED]
- 265:3-3-9 [AMENDED]

**AUTHORITY:**

State Fire Marshal Commission; 74 O.S. §§ 311-326.11

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

October 26, 2021

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

November 26, 2021

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

January 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**GIST/ANALYSIS:**

Amends language to clarify procedures and language clean-up. 74 O.S. §§ 311-326.11.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

# Permanent Final Adoptions

## SUBCHAPTER 1. GENERAL PROVISIONS

### 265:3-1-1. Purpose

The rules and regulations of this chapter ~~are intended as aids to provide guidance with the efficient operation, administration, and enforcement by of the Office of the State Fire Marshal, the orderly administration of the act, and to provide meaningful avenues for realizing and enforcing the statutory rights and obligations of individuals who fall within the jurisdiction of the State Fire Marshal and the office of the State Fire Marshal.~~

### 265:3-1-4. "Act" defined

"Act", as ~~that term is used in this chapter,~~ shall refer to the provisions set forth in Title 74 O.S. Sections 311-326.11.

## SUBCHAPTER 3. PROCEDURES

### 265:3-3-1. Filing of documents

- (a) All complaints, pleadings, submissions, petitions, reports, exceptions, briefs, memoranda, discovery requests, and other papers required to be filed with the Office of the State Fire Marshal shall be filed at the Office of the State Fire Marshal.
- (b) Such papers may be sent by mail or hand ~~carried~~ delivered to the Office of the State Fire Marshal within the time limit, if any, for such filing.
- (c) The date on which the papers are actually received by the Office of the State Fire Marshal shall be deemed to be the date of filing.
- (d) All papers must be signed in ink by the party, by duly authorized officer of the party, or by its attorney. The signature of the person signing the document constitutes a certification that such person has read the document; that to the best of such person's knowledge, information, and belief, every statement contained in the instrument is true and correct and no such statements are misleading; and that the document is not interposed for delay. If any document submitted is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may continue as though the document had not been served or filed.
- (e) Unless otherwise specifically provided by a particular rule, regulation, or order of the State Fire Marshal, the original and five copies of the papers, with certification of service on all parties, shall be filed.
- (f) The documents indicating any proceeding shall state on the first page thereof the name, mailing address, and telephone number of the person or persons who may be served with any documents filed thereafter in the proceeding.
- (g) The document filed shall be stamped with the date of filing and recorded in a file record book.

### 265:3-3-9. Transcripts

An official transcript of the proceedings before the Fire Marshal shall be electronically recorded. The ~~state~~ State Fire Marshal shall designate the person by whom the

recorded proceedings shall be made. A party shall be entitled to a certified copy of the recorded oral proceedings and/or transcript of the recorded oral proceedings upon request, but shall be obligated to pay for the cost incurred in obtaining either. Request for transcripts ~~should~~ shall be made through the office of the State Fire Marshal either on the record or in writing. If either party to the proceeding requests a court reporter, the requesting party shall be obligated to pay for the costs incurred. That portion of the hearing constituting adjudicative or quasi adjudicative deliberations of the State Fire Marshal shall not be reported.

[OAR Docket #22-478; filed 6-28-22]

## TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 10. SMOKE DETECTORS

[OAR Docket #22-479]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Rationalization

265:10-3-1 [AMENDED]

Subchapter 5. Compliance

265:10-5-1 [AMENDED]

### AUTHORITY:

State Fire Marshal Commission; 74 O.S. §§ 317 and 324.11 et seq.

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

October 26, 2021

### COMMENT PERIOD:

November 15, 2021 through December 15, 2021

### PUBLIC HEARING:

None held or requested

### ADOPTION:

November 26, 2021

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

January 14, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### GIST/ANALYSIS:

Amends language to clarify procedures and language clean-up. 74 O.S. §§ 317 and 324.11.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

SUBCHAPTER 3. RATIONALIZATION

265:10-3-1. Institutional

- (a) Definitions. (1) "Hospital" means a building or part thereof used for the medical, psychiatric, obstetrical or surgical care on a 24-hour basis of three or more inpatients. Hospital wherever used in these rules and regulations shall include General Hospitals, Mental Hospitals, Tuberculosis Hospitals, Children's Hospitals, Specialized Hospitals and any such facilities providing inpatient care. (2) "Nursing home" means a building or part thereof used for the lodging, boarding and nursing care on a 24-hour basis of three or more persons who because of mental or physical incapacity may be unable to provide for their own needs and safety without the assistance of another person. Nursing Home wherever used in these rules and regulations shall include nursing homes, convalescent homes, skilled nursing facilities and infirmaries in homes for the aged. (3) "Rest home" means a facility that contains a group housing arrangement for three or more persons that provides at least two meals per day and such social and personal care services needed by the residents because of age or physical incapacity may be unable to provide for their own needs, but that do not provide intermediate or skilled nursing care. (b) All hospitals, nursing homes, rest homes and convalescent homes, as defined in (a) of this section shall install smoke detectors as follows: (1) New facilities: smoke detectors/detection systems must shall be installed as per the requirements set out in the building codes as most recently adopted by the Oklahoma Uniform Building Code Commission. (2) Existing facilities: approved single station or multiple station detectors must be installed in all sleeping rooms, except in facilities which have an approved corridor smoke detection system and are protected by an approved automatic sprinkler system.

SUBCHAPTER 5. COMPLIANCE

265:10-5-1. Period allowed for compliance

- (a) All new construction shall conform to the applicable requirements of this Chapter on certification by the authority having jurisdiction, as described in (b) and (c) of this Section, upon completion of the construction. (b) All Hospitals, Nursing Homes, Rest Homes, Convalescent Homes, Hotels, Motels, Dormitories, Apartment Houses, including Apartments for the Elderly, and Rooming Houses of less than 10 units, which can not conform with the requirements of this Chapter on the effective Date of November 1, 1986, shall be in compliance with this Subchapter. (c) All Hospitals, Nursing Homes, Rest Homes, Convalescent Homes, Hotels, Motels, Dormitories, Apartment Houses,

Including Apartments for the Elderly, and Rooming Houses of 10 units or more, which can not conform with the requirements of this Chapter on the effective date of November 1, 1986, shall be in compliance with this Subchapter.

[OAR Docket #22-479; filed 6-28-22]

TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 20. EXPLOSIVES [REVOKED]

[OAR Docket #22-480]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 265:20-1-1 [REVOKED]
265:20-1-2 [REVOKED]
265:20-1-3 [REVOKED]
265:20-1-4 [REVOKED]
265:20-1-5 [REVOKED]
265:20-1-6 [REVOKED]
265:20-1-7 [REVOKED]
265:20-1-8 [REVOKED]
265:20-1-9 [REVOKED]
Appendix A. American Table of Distances [REVOKED]

AUTHORITY:

State Fire Marshal Commission; 74 O.S. §§ 324.1, 324.2, 324.4, 324.7, 324.8, 324.14

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 26, 2021

COMMENT PERIOD:

November 15, 2021 through December 15, 2021

PUBLIC HEARING:

None held or requested

ADOPTION:

November 26, 2021

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 14, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

Delete Chapter 20 in its entirety. 74 O.S. §§ 324.7; 75 O.S. § 250 et seq.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308E, WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

# Permanent Final Adoptions

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## 265:20-1-1. Purpose [REVOKED]

The rules of this Chapter shall have the effect of law and any person, firm, company or corporation engaging in the manufacture, sale, transportation, storage, or use of explosive material or blasting agents in the State of Oklahoma shall comply with the laws, rules and regulations established by the State Legislature and the State Fire Marshal Commission.

## 265:20-1-2. Reporting theft or loss of explosive materials, including blasting caps [REVOKED]

(a) Any manufacturer, dealer, transporter, or user who has legally acquired a stock of explosive material shall report in writing any theft, loss or mysterious disappearance of explosive material and/or blasting caps from his stock within 24 hours of discovery or loss to the State Fire Marshal in Oklahoma City.

(b) Transporters of explosive materials shall file with the State Fire Marshal a duplicate copy of the D.O.T. incident report, Form F 5800, when a reportable incident (as defined by D.O.T.) occurs.

## 265:20-1-3. Discontinuance of business or operation [REVOKED]

Where an explosive materials business or operation is either discontinued or succeeded by a new owner, the owner of the business or operation discontinued or succeeded shall within 30 days thereof notify the State Fire Marshal in writing of the discontinuance of the business or operation.

## 265:20-1-4. Inspection of site of accidents, explosions, or fires, right of entry [REVOKED]

The State Fire Marshal or his agents may inspect the site of any accident, explosion, or fire in which there is reason to believe that explosive materials were involved. The State Fire Marshal or his agents may enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in otherwise unauthorized locations.

## 265:20-1-5. Compliance with law [REVOKED]

(a) **Engaging in business without a valid and proper permit.** Any person engaging in the business of importing, manufacturing, dealing, or transporting explosive materials without a valid and proper permit shall be subject to a fine of not more than \$5,000, or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(b) **False entry in records.** Any person required by this act to keep records who knowingly makes any false entry into required records shall be subject to a fine of not more than \$5,000, or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(c) **Unlawful storage.** Any person who stores any explosive material regulated by this act in a manner not in conformity with the provisions of the State Law shall be subject to a fine

of not more than \$5,000, or by imprisonment of not more than five (5) years, or by both such fine and imprisonment.

(d) **Seizure of explosives.** Any explosive material involved or used or intended to be used in any violations of the provisions of this act or any violation of any criminal law of the State of Oklahoma shall be subject to seizure by the State Fire Marshal or his agents. Explosive materials seized in the enforcement of this act shall not be destroyed without written order from the district court in the county in which explosive materials were seized.

(e) **False statement or representation.** Any person who knowingly withholds information or makes any false or fictitious oral or written statement or furnishes or exhibits any false, fictitious or misrepresented identification intended or likely to deceive, for the purpose of obtaining explosive materials or a State permit, shall be subject to a fine of not more than \$5,000, or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(f) **Failure to report a theft or loss.** Any person who has knowledge of the theft or loss of any explosive materials from his stock and fails to report such theft or loss to the State Fire Marshal within (24) hours of discovery thereof, or as soon as practicable, shall be subject to a fine of not more than \$5,000, or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(g) **Unlawful use.** If any unlawful act or violation of this law is committed with the knowledge that any explosive or blasting agent involved was to be used to kill, injure, or intimidate any person or unlawfully to damage any real or personal property, the person or persons committing such violations shall, upon conviction, be guilty of a felony, and subject to a fine and/or imprisonment prescribed in State Law.

(h) **Right of entry and inspection.** The State Fire Marshal or his agents may enter during normal business hours the premises, including places of storage, of any persons, company, or corporation regulated by this act, for the purpose of examining records required under this law and inspecting storage facilities for compliance with regulations prescribed in this Chapter.

## 265:20-1-6. Correct records [REVOKED]

(a) The user of explosive material or blasting agents shall maintain a written record of his stock of explosives including blasting caps, and fuses. He shall keep his records up to date. The records shall contain: date of all purchases of explosive materials, name and address of dealer purchased from, type and quantity purchased, quantity in storage, dates and quantity used. He shall keep the records available and upon request of the inspecting authority, he shall produce the records for examination by the State Fire Marshal or his agents. All records shall be kept a minimum of five (5) years.

(b) To avoid duplicating of records, the State of Oklahoma will accept copies of the records required by Federal regulations of manufacturers, and dealers required to have a Federal license as meeting the State records requirements.

(c) The State will also accept copies of completed (D.O.T) incident report Form F 5800 for incidents involving transporters of explosives.

**265:20-1-7. Transporting for hire [REVOKED]**

- (a) In addition to all other applicable requirements set forth in this Chapter and in other applicable State laws and local ordinances, the transportation of explosive materials over public streets, roads and highways, rails, and waterways shall be in strict compliance with the U.S. Department of Transportation regulations.
- (b) Explosive material shall not be carried or transported in or upon a public conveyance or vehicle carrying passengers for hire, except in accordance with U.S. Department of Transportation regulations.
- (c) Explosive materials shall not be transferred from one vehicle to another on any public street, road or highway except in case of emergency. In the event of a collision, the State Highway Patrol, and if accident occurs within a city or town the local police authority, shall be promptly notified to help safeguard such emergencies.
- (d) Whenever a vehicle transporting explosives or other dangerous articles is stopped or disabled on the highway or adjacent shoulder special care shall be taken to protect and guard the vehicle and its load and to guard against the hazards of its cargo. Whenever possible, the vehicle shall be moved to a location where such protection can be afforded. Emergency warning devices as prescribed by the Department of Transportation shall be used. Vehicle must not be left unattended.
- (e) Blasting caps shall not be transported in the same vehicle with other explosives except in accordance with U.S. Department of Transportation regulations.
- (f) Motor vehicles when used for transporting any quantity of explosive materials shall be marked on the front, both sides, and the rear with placards or lettering as specified in U.S. Department of Transportation regulations.
- (g) Motor vehicles transporting explosive material must be equipped with the same Size and Type Fire Extinguisher required by the U.S. Department of Transportation. Said extinguisher shall be maintained in good operating condition at all times.
- (h) Every motor vehicle which contains Class A or Class B Explosives must be in strict compliance at all times with the U.S. Department of Transportation Regulations pertaining to attendance and surveillance of motor vehicles.

**265:20-1-8. Proper storage [REVOKED]**

- (a) **Alternate storage facilities.** No person shall store any explosive material not in conformity with the provisions of this Chapter. The Fire Marshal may authorize alternate storage facilities for the storage of explosive material when he is shown that such alternate facilities are or will be constructed in a manner substantially equivalent to the standards of construction contained in this Section.
- (b) **Exception to storage requirement.** All persons must keep explosive material, (including caps) in a magazine unless such materials are in the process of being manufactured, handled, transported or used.
- (c) **Record keeping.** A daily summary of explosive materials moving in and out of the magazine must be maintained and recorded.

- (d) **Inspection of storage facilities.** Any person storing explosive material shall open and inspect his storage facilities at intervals not greater than 3 days to determine whether the explosives therein are intact and to determine whether there has been unauthorized entry or attempted entry into storage facilities or the unauthorized removal of facilities or their contents.
- (e) **Location of storage facilities.**
  - (1) Except as otherwise provided in this Chapter, storage facilities in which any explosive materials are stored shall be located at minimum distances from inhabited buildings, passenger railways, public highways, and from other storage facilities in which explosive materials are stored as specified in the American Table of Distances (see Appendix A of this Chapter), PROVIDED, that this table shall not apply to any indoor storage facility. When a storage facility is not barricaded, the distances shown in the American Table of Distances shall be doubled. For purposes of this paragraph, a storage facility shall be deemed barricaded when it is effectually screened from inhabited buildings, passenger railways, public highways, and other storage facilities in which explosive materials are stored either by a natural or artificial barricade of such height that a straight line from the top of any sidewall of the storage facility to the eave line of such other inhabited building or storage facility, or to a point 12 feet above the center of a passenger railway or public highway, will pass through such intervening barricade.
  - (2) If any two or more storage facilities are separated from each other by less than the distances specified in Tables I and II (see Appendix A of this Chapter), then such two or more storage facilities as a group, shall be considered as one storage facility, and the total quantity of explosive materials stored in such group shall be treated as if stored in a single facility and shall comply with the minimum of distances specified in Tables I and II (see Appendix A of this Chapter) from other storage facilities, inhabited buildings, passenger railways, and public highways.
  - (3) Storage facilities in which low explosives are stored shall be located at minimum distances from inhabited buildings, passenger railways, public highways, and from other storage facilities in which explosive materials are stored as specified in the Table of Distances for Storage of Low Explosives—Table III, Appendix A of this Chapter, PROVIDED, that this table shall not apply to any indoor storage facility. The distances shown therein shall not be reduced by the presence of barricades.
  - (4) Ammonium nitrate and storage facilities in which blasting agents are stored shall be located at minimum distances from storage facilities containing high explosives or blasting agents as specified in the Table of Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents (see Table II of Appendix A of this Chapter).
- (f) **Construction of type 1 storage facilities.** A type 1 storage facility shall be a permanent structure: a building, an igloo or Army type structure, a tunnel, or a dugout. It shall be bullet resistant, fire resistant, weather resistant and well ventilated.

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(1) **Buildings.** All building type storage facilities shall be constructed of masonry, wood, metal, or a combination of these materials and shall have no openings except for entrances and ventilation. Ground around such storage facility shall slope away for drainage.

(2) **Masonry wall construction.** Masonry wall construction shall consist of brick, concrete, tile, cement block, or cinder block and shall be not less than 6 inches in thickness. Hollow masonry units used in construction shall have all hollow spaces filled with well tamped coarse dry sand or weak concrete (a mixture of one part cement and eight parts of sand with enough water to dampen the mixture while tamping in place). Interior walls shall be covered with a nonsparking material.

(3) **Fabricated metal wall construction.** Metal wall construction shall consist of sectional sheets of steel or aluminum not less than number 14 gauge, securely fastened to a metal framework. Such metal wall construction shall be either lined inside with brick, solid cement blocks, hardwood not less than 4 inches in thickness, or shall have at least a 6 inch sand fill between interior and exterior walls. Interior walls shall be constructed of or covered with a nonsparking material.

(4) **Wood frame wall construction.** The exterior of outer wood walls shall be covered with iron or aluminum not less than number 26 gauge. An inner wall of nonsparking material shall be constructed so as to provide a space of not less than 6 inches between the outer and inner walls, which space shall be filled with coarse dry sand or weak concrete.

(5) **Floors.** Floors shall be constructed of nonsparking material and shall be strong enough to bear the weight of the maximum quantity to be stored.

(6) **Foundations.** Foundations shall be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the building shall be enclosed with metal.

(7) **Roof.** Except for buildings with fabricated metal roofs, the outer roof shall be covered with no less than number 26 gauge iron or aluminum fastened to a 7/8 inch sheathing.

(8) **Bullet-resistant ceilings or roof.** Where it is possible for a bullet to be fired directly through the roof and into the storage facility at such an angle that the bullet would strike a point below the top of inner walls, storage facilities shall be protected by one of the following methods:

(A) **Sand tray.** A sand tray shall be located at the tops of inner walls covering the entire ceiling area, except that necessary for ventilation, lined with a layer of building paper, and filled with not less than 4 inches of coarse dry sand.

(B) **Fabricated metal roof.** A fabricated metal roof shall be constructed of 3/16 inch plate steel lined with 4 inches of hardwood. (For each additional 1/16 inch of plate steel, the hardwood lining may be decreased 1 inch.)

(9) **Doors.** All doors shall be constructed of 1/4 inch plate steel and lined with 2 inches of hardwood. Hinges and hasps shall be attached to the doors by welding, riveting or bolting (nuts on inside of door). They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(10) **Locks.** Each door shall be equipped with two mortise locks; or with two padlocks fastened in separate hasps and staples; or with a combination of mortise lock and a padlock; or with a mortise lock that requires two keys to open; or a three point lock. Locks shall be five tumbler proof. All padlocks shall be protected with 1/4 inch steel caps constructed so as to prevent sawing or lever action on the locks or hasps.

(11) **Ventilation.** Except at doorways, a 2 inch air space shall be left around ceilings and the perimeter of floors. Foundation ventilators shall be not less than 4 by 6 inches. Vents in the foundation, roof, or gables shall be screened and offset.

(12) **Exposed metal.** No sparking metal construction shall be exposed below the top of walls in the interior of storage facilities, and all nails therein shall be blind nailed or countersunk.

(13) **Igloos, army type structures, tunnels, and dugouts.** Igloo, Army type, tunnel, and dugout storage facilities shall be constructed of reinforced concrete, masonry, metal or a combination of these materials. They shall have an earthbound covering of not less than 24 inches on the top, sides and rear. Interior walls and floors shall be covered with a nonsparking material. Storage facilities of this type shall also be constructed in conformity with the requirements of paragraph (5) and paragraphs (9) through (12) of this Subsection.

(g) **Construction of type 2 storage facilities.** A type 2 storage facility shall be a box, a trailer, a semitrailer or other mobile facility. It shall be bullet resistant, fire resistant, weather resistant, theft resistant, and well ventilated. Hinges and hasps shall be attached to the covers or doors in the manner prescribed in (f) (9) of this Section, and the locking system shall be that prescribed in (f) (10) of this Section.

(1) **Outdoor storage facilities.** Outdoor storage facilities shall be at least 1 cubic yard in size and supported in such a manner so as to prevent direct contact with the ground. The sides, bottoms, tops, and covers or doors shall be constructed of 1/4 inch steel and shall be lined with 2 inches of hardwood. Edges of metal covers shall overlap sides at least 1 inch. The ground around such storage facilities shall slope away for drainage. When unattended, vehicular storage facilities shall have wheels removed or shall be otherwise effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) **Indoor storage facilities.** No indoor facility for the storage of high explosives shall be located in a residence or dwelling. When located in a warehouse, wholesale or

retail establishment, such storage facilities shall be provided with substantial wheels or casters to facilitate removal therefrom. No more than two indoor storage facilities shall be kept in any one building. Two storage facilities may be kept in the same building only when one is used for the storage of blasting caps, squibs or similar items and the other facility shall be located on the floor nearest the ground level and within 10 feet of an outside exit. Indoor storage facilities within one building shall be separated by a distance of not less than 10 feet. no indoor storage facility shall contain a quantity of high explosives in excess of 50 pounds or more than 5,000 blasting caps. Indoor facilities shall be of wood or metal construction as prescribed in (1) or (2) of this Subsection

(3) **Wood construction.** Wood indoor storage facilities shall have sides, bottoms, and covers or doors constructed of 2 inch hardwood and shall be well braced at corners. They shall be covered with sheet metal of not less than number 20 gauge. Nails exposed to the interior of such facilities shall be countersunk.

(4) **Metal construction.** Metal indoor storage facilities shall have sides, bottoms, covers or doors constructed of number 12 gauge metal and shall be lined inside with a nonparking material. Edges of metal covers shall overlap sides at least 1 inch.

(5) **Cap boxes.** Storage facilities for blasting caps in quantities of 100 or less shall have sides, therefrom and covers constructed of number 12 gauge metal and lined with a nonparking material. Hinges and hasps shall be attached thereto by welding. A single five tumbler proof lock shall be sufficient for locking purposes.

(h) **Construction of type 3 storage facilities.** A type 3 storage facility shall be a "day box" or other portable facility. It shall be constructed in the same manner prescribed for type 2 outdoor storage facilities in (g) of this Section, except that it may be less than 1 cubic yard in size, and shall be bullet resistant, fire resistant, theft resistant, weather resistant and well ventilated. Hinges, hasps, locks and lock protection shall be in conformity with the requirements of (f) and (k) of this Section. The ground around such storage facilities shall slope away for drainage. No explosive materials shall be left in such facilities if unattended. The explosive materials contained therein must be removed to types 1 and 2 storage facilities for unattended storage.

(i) **Construction of type 4 storage facilities.** A type 4 storage facility may be a building, an igloo or Army type structure, a tunnel, a dugout, a box, a trailer, or a semitrailer or other mobile facility and shall be fire resistant, weather resistant, and theft resistant. They shall be constructed of masonry, metal covered wood, fabricated metal, or a combination of these materials. The walls and floors of such storage facilities shall be lined with a nonparking material. The doors or covers shall be metal or solid wood covered with metal. The foundations, locks, lock protection, hinges, hasps, and interior shall be in conformity with the requirements of (f)(6), (9), (10) and (12) of this Section.

(1) **Outdoor storage facilities.** The ground around such storage facilities shall slope away for drainage.

When unattended, vehicular storage facilities shall have wheels removed or shall be otherwise effectively immobilized by kingpin locking devices or other methods approved by the State Fire Marshal or Director, A.T.F.U., Washington, D.C.

(2) **Indoor storage facilities.** No indoor facility for the storage of low explosives shall be located in a residence or dwelling. When located in a warehouse, wholesale or retail establishment, such storage facilities shall be provided with substantial wheels or casters to facilitate removal therefrom. No more than one indoor storage facility shall be kept in any one building. It shall be located on the floor nearest ground level and within 10 feet of an outside exit. No indoor storage facility shall contain a quantity of low explosives in excess of 50 pounds.

(j) **Construction of type 5 storage facilities.** A type 5 storage facility may be a building, an igloo or Army type structure, a tunnel, a dugout, a bin, a box, a trailer or a semitrailer or other mobile facility and shall be theft resistant. The doors or covers thereof shall be solid wood or metal. The hinges, hasps, locks and lock protection shall be in conformity with the requirements of (f) (9) and (10) of this Section.

(1) **Outdoor storage facilities.** The ground around such storage facilities shall slope away for drainage. When unattended, vehicular storage facilities shall have wheels removed or shall be otherwise effectively immobilized by kingpin locking devices or other methods approved by the State Fire Marshal or Director, A.T.F.U., Washington, D.C.

(2) **Indoor storage facilities.** No indoor storage facility for the storage of blasting agents shall be located in a residence or dwelling.

(k) **Smoking and open flames.** Smoking, matches, open flames and spark producing devices shall not be permitted in, or within 50 feet of, any outdoor storage facility.

(l) **Quantity and storage restrictions.** Explosive materials in excess of 300,000 pounds and blasting caps in excess of 20 million shall not be stored in one storage facility. Blasting caps shall not be stored with other explosive materials in the same storage facility.

(m) **Storage within types 1, 2, 3 and 4 facilities.**

(1) Explosive materials within a storage facility shall not be placed directly against interior walls. Any devices constructed or placed within a storage facility shall not interfere with ventilation.

(2) Containers of explosive materials shall be stored by being laid flat with top sides up. Corresponding classes, grades and brands shall be stored together within a storage facility in such a manner that class, grade, and brand marks are easily visible upon inspection. Stocks of explosive materials shall be stored so as to be easily counted and checked.

(3) Except with respect to fiberboard containers, containers of explosive materials shall not be unpacked or repacked inside a storage facility or within 50 feet thereof, and shall not be unpacked or repacked in close proximity to other explosive materials. Containers of explosive materials shall be securely closed while being stored.

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(4) Tools used for opening or closing containers of explosive materials shall be of nonsparking materials, except that metal slitters may be used for opening fiberboard containers. A wood wedge and a fiber, rubber or wooden mallet shall be used for opening or closing wood containers of explosive materials. Metal tools other than nonsparking transfer conveyors shall not be stored in any storage facility containing high explosives.

(n) **Housekeeping.** Storage facilities shall be kept clean, dry and free of grit, paper, empty packages and containers, and rubbish. Floors shall be regularly swept. Brooms and other utensils used in the cleaning and maintenance of storage facilities shall have no spark producing metal parts. Floors stained by leakage from explosive materials shall be cleaned according to instructions of the manufacturer. When any explosive material has deteriorated to the extent that it is in a dangerous condition, or if a liquid leaks therefrom, it shall be destroyed in accordance with the instructions of its manufacturer. The area surrounding storage facilities shall be kept clear of rubbish, brush, dry grass, or trees for not less than 25 feet in all directions. Any other combustible materials shall be kept a distance of not less than 50 feet from outdoor storage facilities.

(o) **Lighting.** No lighting shall be placed or used in a storage facility of type 1, 2, 3, or 4 except battery activated safety lights or battery activated safety lanterns.

(p) **American table of distances for storage of explosive materials.** See Appendix A, Tables I, II, and III, of this Chapter.

### 265:20-1-9. Barrier [REVOKED]

Properly constructed separated artificial or substantial natural barricades are effective means for protecting structures or operations, thereby permitting reduction of quantity distance requirements of bulk explosives and explosives loaded items having mass detonating characteristics. General rules concerning barricades are listed below:

(1) Barricades are ineffective and shall not be used to reduce distances for fire hazard materials (propellants), missile producing items (projectiles, mines, rocket motors) or more than 250,000 net pounds of Class "A" explosives.

(2) Protection is considered effective when a line drawn from the top of any side wall of the explosives building or magazine to all parts of the other locations to be protected will pass through the intervening barricade.

(3) For railroads and highways to be considered effectively screened by a barricade, such a line must pass 12 feet above the center of the highway or railroad.

(4) A barricade must be separated from the building, magazine containing the explosives. The nearest toe of the barricade must not be less than four (4) feet nor more than 40 feet from such building, magazine or truck. A barricade may be located adjacent to the structure being protected and the same minimum and maximum distance shall apply.

(5) The slope of the sides of a barricade may be decreased by riveting with either wood or concrete, well

braced to prevent collapse and possible injury to personnel.

(6) Barricades may be natural or artificial earth mounds having natural sloping sides, or single riveted with either wood or concrete and having a natural slope on one side. The earth mound shall be a minimum width of three (3) feet at the top. Barricades in excess of twenty (20) feet in height will have a minimum width of five (5) feet at the top. Double riveted artificial barricades with a minimum width of three (3) feet at the top with sides sloped and with proper anchorage to give stability against overturning forces are approved for having quantity distance requirements for a maximum of 50,000 net pounds of explosives. For quantities in excess of 50,000 net pounds, natural or single riveted barricades as described above are the only types approved.

(7) Reinforced concrete barricades, fifteen (15) inches wide at the top as a minimum, with faces having a slope of one to four may be used for reducing quantity distance separations by one half when the quantities of bulk high explosives and explosive filled items having mass detonating characteristics do not exceed 5,000 net pounds of explosives.

(8) The earth fill for artificial barricades shall be a select cohesive material, free from deleterious organic matter, trash, debris, frozen material and stones heavier than 10 pounds or larger than six inches. The larger stones should be predominantly limited to the lower center of fills. Compaction and surface preparation shall be provided as necessary to maintain structural integrity and erosion protection. Barricades are intended to protect against the blast damage effects of explosion but not against missile hazards of fire exposure hazards.

(9) **"Barricaded"** means that a building containing explosives is effectively screened from a magazine, building, railway or highway, either by a natural barricade, or by an artificial barricade of such height that a straight line from the top of any sidewall of the building containing explosives to the eave line of any magazine, or building, or to a point twelve feet above the center of a railway or highway, will pass through such intervening natural or artificial barricade.

(10) **"Natural barricade"** means natural features of the ground, such as hills, or timber or sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

(11) **"Artificial barricade"** means natural an artificial mound or riveted wall of earth of a minimum thickness of three feet.

(12) When a building or magazine containing explosives is not barricaded, the distances shown in the Table shall be doubled.

(13) When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways, and in addition, they should be separated from each other by not less than the distance



shown for "Separation of Magazines" except that the quantity of explosives contained in cap magazines shall govern in regard to the spacing of said cap magazine from magazines containing other explosives. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosives stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

(14) The permanent storage of more than 250,000 pounds of commercial explosives in one magazine or in a group of magazines which is considered as one magazine is not permitted except by specific approval of the enforcing official.

(15) This table applies only to the manufacture and permanent storage of commercial explosives. It is not applicable to transportation of explosives, or any handling or

temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

(16) All types of blasting caps in strengths through No. 8 caps shall be treated at one and one half (1 1/2) pounds of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the authority having jurisdiction.

(17) For quantity distance purposes, detonating fuse should be calculated as equivalent to 10 pounds of high explosive per 1,000 feet.

(18) If at any time the distance from a magazine to the nearest building, highway or railroad is decreased through the construction of a new building, highway or railroad, the quantity of explosives kept or stored in the magazine shall be reduced to correspond with that specified for the new distance by the quantity distance table. The quantity need not be reduced, however, in the event that a new building is constructed in bad faith and with the intent to annoy, harass, oppress, or hinder the owner of the magazine.

APPENDIX A. AMERICAN TABLE OF DISTANCES [REVOKED]

TABLE I

EXPLOSIVES		DISTANCES IN FEET WHEN STORAGE IS BARRICADED			
Pounds Over	Pounds Not over	Inhabited Buildings	Passenger Railways	Public Highways	Separation of Magazines
2	5	70	30	30	6
5	10	90	35	35	8
10	20	110	45	45	10
20	30	125	50	50	11
30	40	140	55	55	12
40	50	150	60	60	14
50	75	170	70	70	15
75	100	190	75	75	16
100	125	200	80	80	18
125	150	215	85	85	19
150	200	235	95	95	21
200	250	255	105	105	23
250	300	270	110	110	24
300	400	295	120	120	27
400	500	320	130	130	29
500	600	340	135	135	31
600	700	355	145	145	32
700	800	375	150	150	33
800	900	390	155	155	35
900	1,000	400	160	160	36
1,000	1,200	425	170	165	39
1,200	1,400	450	180	170	41
1,400	1,600	470	190	175	43
1,600	1,800	490	195	180	44
1,800	2,000	505	205	185	45
2,000	2,500	545	220	190	49
2,500	3,000	580	235	195	52
3,000	4,000	635	255	210	58
4,000	5,000	685	275	225	61
5,000	6,000	730	295	235	65
6,000	7,000	770	310	245	69
7,000	8,000	800	320	250	72
8,000	9,000	835	335	255	75
9,000	10,000	865	345	260	78
10,000	12,000	875	370	270	82
12,000	14,000	885	390	275	87
14,000	16,000	900	405	280	90
16,000	18,000	940	420	285	94
18,000	20,000	975	435	290	98
20,000	25,000	1,055	470	315	105
25,000	30,000	1,130	500	340	112

TABLE I (Continued)

EXPLOSIVES		DISTANCES IN FEET WHEN STORAGE IS BARRICADED			
Pounds Over	Pounds Not over	Inhabited Buildings	Passenger Railways	Public Highways	Separation of Magazines
30,000	35,000	1,205	525	360	119
35,000	40,000	1,275	550	380	124
40,000	45,000	1,340	570	400	129
45,000	50,000	1,400	590	420	135
50,000	55,000	1,460	610	440	140
55,000	60,000	1,515	630	455	145
60,000	65,000	1,565	645	470	150
65,000	70,000	1,610	660	485	155
70,000	75,000	1,655	675	500	160
75,000	80,000	1,695	690	510	165
80,000	85,000	1,730	705	520	170
85,000	90,000	1,760	720	530	175
90,000	95,000	1,790	730	540	180
95,000	100,000	1,815	745	545	185
100,000	110,000	1,835	770	550	195
110,000	120,000	1,855	790	555	205
120,000	130,000	1,875	810	560	215
130,000	140,000	1,890	835	565	225
140,000	150,000	1,900	850	570	235
150,000	160,000	1,935	870	580	245
160,000	170,000	1,965	890	590	255
170,000	180,000	1,990	905	600	265
180,000	190,000	2,010	920	605	275
190,000	200,000	2,030	935	610	285
200,000	210,000	2,055	955	620	295
210,000	230,000	2,100	980	635	315
230,000	250,000	2,155	1,010	650	335
250,000	275,000	2,215	1,040	670	360
275,000	300,000	2,275	1,075	690	385

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TABLE II

DONOR WEIGHT		MINIMUM SEPARATION DISTANCE OF RECEPTOR WHEN BARRICADED (FT.)		
Pounds Over	Pounds Not over	Ammonium Nitrate	Blasting Agent	Minimum Thickness of Artificial Barricades
	100	3	11	12 (in.)
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

TABLE III  
 TABLE OF DISTANCES FOR STORAGE OF LOW EXPLOSIVES

Pounds Over	Pounds Not over	Inhabited Building Distance	Public RR & Highway Distance	Above Ground Magazine
0	1,000	75 ft.	75 ft.	50 ft.
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

[OAR Docket #22-480; filed 6-28-22]

# Permanent Final Adoptions

## TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 25. REFERENCED STATE CODES AND STANDARDS: PERMITS

[OAR Docket #22-481]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

265:25-1-1 [AMENDED]  
265:25-1-3 [AMENDED]  
265:25-1-4 [AMENDED]  
265:25-1-5 [AMENDED]  
265:25-1-6 [AMENDED]  
265:25-1-7 [AMENDED]  
265:25-1-8 [AMENDED]  
265:25-1-9 [AMENDED]  
265:25-1-10 [AMENDED]

### AUTHORITY:

State Fire Marshal Commission; 74 O.S. Supp. 2007, § 324.11

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

October 26, 2021

### COMMENT PERIOD:

November 15, 2021 through December 15, 2021

### PUBLIC HEARING:

None held or requested

### ADOPTION:

November 26, 2021

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

January 14, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### GIST/ANALYSIS:

Amends language to clarify procedures and language clean-up. 74 O.S. Supp. 2007, § 324.11.

### CONTACT PERSON:

Susie Cain, Executive Secretary to the State Fire Marshal, OKSFM,  
2401 NW 23<sup>rd</sup> Street, Suite 4, Oklahoma City, OK 73107, 405-522-5009,  
Susie.Cain@fire.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

### 265:25-1-1. Purpose

The rules and regulations of this Chapter are intended as ~~aids to assist in~~ the efficient operation of the Office of the State Fire Marshal, and to provide meaningful avenues for enforcing the statutory obligations of the State Fire Marshal.

### 265:25-1-3. Referenced national and state codes and standards

The following building codes and standards are incorporated by reference:

(1) ~~The~~Those codes most recently adopted by the Oklahoma Uniform Building Code Commission;

~~(A) Pursuant to the International Building Code®, Section 109.2: A fee for each plan examination, building permit, and inspection shall be paid in accordance with the following schedule:~~

~~(i) Exemptions: the following entities are exempt from the fees associated with this section, except for archiving fees: Detention centers that require an annual inspection are exempt from annual inspection fees and Fire Departments duly constituted and meeting the reporting requirements of the State Fire Marshal Office.~~

~~(ii) Building Plan Review:~~

~~(I) Review of plans submitted with an application for a building permit. Total permit fee is due at the time of submittal.~~

~~(II) Minimum permit fee \$50.00~~

~~(III) Rates where total exceeds the minimum:~~

~~a. industrial buildings: per square foot \$ .10~~

~~b. sprinkler plan review only: per square foot \$ .03~~

~~c. fire alarm plan review only: per square foot \$ .03~~

~~d. fire suppression plan review only: per square foot \$ .03~~

~~e. carbon monoxide system plan review: per square foot \$ .03~~

~~f. electrical smoke detection system (fire alarm) plan review: per square foot \$ .03~~

~~g. smoke control system plan review: per square foot \$ .03~~

~~h. access control system plan review: \$50.00 per set of access points~~

~~(iii) Above Ground Fuel Storage: Inspection and permit fee \$100.00~~

~~(iv) Fireworks:~~

~~(I) Class B (1.3G) Fireworks display inspection and permit \$125.00~~

~~(II) Class C (1.4G) pyrotechnic display inspection and permit \$250.00~~

~~(v) Field Inspections, per hour \$40.00, one hour minimum~~

~~(I) Explosive Storage Facility: Inspection and permit fee is a minimum of \$108.00 per magazine.~~

~~(II) Permit fees include the cost of a 50% and 100% on site inspection and occupancy permit. Additional onsite inspection caused by failure to comply with applicable codes or deviation from approved plans will be billed at \$40.00 per hour the actual cost to the agency.~~

- (vi) ~~Third Party Review:~~
  - (I) ~~In order to expedite review of plans, approved third party reviewers may be voluntarily used.~~
  - (II) ~~Third Party fees will be payable to the plan reviewer in addition to the Oklahoma State Fire Marshal Office's customary permit fees.~~
  - (III) ~~Third Party reviewers may not be current employees of the Oklahoma State Fire Marshal's Office.~~
- (vii) ~~Required Plan Review Fees: Fees may be waived or reduced due to plan review charges by local authority.~~
- (B) ~~Section 114.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by these codes, or cause same to be done, in conflict with or in violation of, any of the provision of the most recently adopted building codes and standards by the Oklahoma Uniform Building Code Commission and shall be subject to an administrative fine as per State Statute 74 O.S., Section 324.9. The first repeat notice of violation or failure to provide a plan of correction a person may be subject to a warning, or a fine of \$100.00. Second violation notice \$150.00, third violation notice \$200.00. Also, each day that a violation continues after due notice has been served shall be deemed a separate offense.~~
- (C) ~~Procedures to be followed when appealing condemnation shall be those outlined in 74 O.S. §317.~~
- (D) ~~Section 114.4 adding new wording: Fine of not less than \$50.00 or more than \$200.00.~~
- (E) ~~All smoke detector installation shall comply with State Statute 74 O.S., Section 324.11a concerning installation of smoke detectors.~~
- (2) NFPA #99 Health Care Facilities Code, latest Edition, as it applies for ~~the~~ life safety inspections of existing facilities and as required by other state referenced codes and federal mandates.
- (3) NFPA #101 Life Safety Code , latest Edition, as it applies for ~~the~~ life safety inspections of existing facilities and as required by other state referenced codes and federal mandates.
  - (a) ~~buildings: per square foot \$ .10~~
  - (b) ~~sprinkler plan review only: per square foot \$ .03~~
  - (c) ~~fire alarm plan review only: per square foot \$ .03~~

**265:25-1-4. Building permits**

(a) ~~Application for building permit shall be made to, and such building permit shall be issued by, any city, town or county in whose jurisdiction the construction or alteration is planned. In all geographical areas wherein no such building permit is required by local authorities such permit must~~ shall be obtained from the State Fire Marshal's Office for all Use and Occupancy Classifications identified in the International

Building Code<sup>®</sup>—and Specific Situations identified in the International Fire Code by submitting applications, checklists, building plans and, if new construction only, site plans for review and, upon approval, be permitted by the State Fire Marshal's Office.

(b) Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structures, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical, or plumbing systems, the installation of which is regulated by the state-adopted building codes, or to cause any such work to be performed, shall first make application to the State Fire Marshal's Office and obtain the required permit.

(c) After any change of ownership, change in occupancy use or classification, and/or the building has remained unoccupied or vacated for at least 90 days involving any of the use and occupancy classifications identified in the International Building Code<sup>®</sup> and Specific Situations identified in the International Fire Code<sup>®</sup>, ~~shall~~ must be brought up to current code requirements.

~~(d) All State owned or State occupied projects must be permitted by the State Fire Marshal's Office.~~

(d) All cities, towns, or counties that assume building permitting jurisdiction must complete an AHJ letter or form provided by the State Fire Marshal's Office every three (3) years. Any city, town, or county designated as the authority having jurisdiction is considered by the State Fire Marshal's Office to be the Authority Having Jurisdiction for all code requirements and responsibilities within its jurisdiction as set forth in the AHJ letter or form. This section shall not prohibit the State Fire Marshal's Office from providing code assistance to any local entity, regardless of jurisdictional boundaries; including State Fire Marshal enforcing state-adopted minimum codes.

(e) The Authority Having Jurisdiction (AHJ) hierarchy is as follows:

(1) All State owned or State occupied projects must be permitted by the State Fire Marshal's Office.

(2) The State Fire Marshal's Office has jurisdiction for the entire State of Oklahoma unless the County or City/Town has provided the State Fire Marshal's Office with approved documentation, entirely filled out with no alterations (AHJ letter) a completed AHJ letter or form.

~~(23) A County assumes the responsibility from the State Fire Marshal's Office and has jurisdiction for the entire County within the State of Oklahoma and unless a City/Town has provided the State Fire Marshal's Office with approved documentation, entirely filled out with no alterations (AHJ letter) a completed AHJ letter for form.~~

(34) A City/County/Town assumes the responsibility from the State Fire Marshal's Office and has jurisdiction for the entire within their city/town limits within the State of Oklahoma and that has provided the State Fire Marshal's Office with approved documentation, entirely filled out with no alterations (AHJ letter) a completed AHJ letter or form.

~~(4) Subdivision assumes the responsibility from the State Fire Marshal's Office and has jurisdiction for the entire subdivision limits within the State of Oklahoma~~

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and has provided the State Fire Marshal's Office with approved documentation.

(f) All cities, towns, or counties that assume building permitting jurisdiction will be asked to provide an AHJ letter in writing every three (3) years as provided by the State Fire Marshal's Office. Any city, town, or county designated as the authority having jurisdiction will be considered by the State Fire Marshal's Office as responsible for the entire jurisdiction identified by the State Fire Marshal's Office in the AHJ letter.

(g) Only a positive pressure primary water source and/or tanks can be used as a reliable primary water source:

- (1) No ponds;
- (2) No pools;
- (3) No open top containers;
- (4) No cisterns; or
- (5) No similar sources as identified above.

## 265:25-1-5. Carbon dioxide

All occupancies under the jurisdiction of the State Fire Marshal's Office with a carbon dioxide system with more than 100 pounds of accumulative CO<sub>2</sub>, including those used in beverage dispensing applications, must have properly installed carbon dioxide detector(s). If there is a fire alarm system installed, the carbon dioxide detector(s) must be tied/connected to the fire alarm system and sound a general alarm both in the with both audible and visual form/warnings. If there is not a fire alarm system, the carbon dioxide detector(s) must provide a local alarm both in the with audible and visual form/warnings. Plans must be submitted to and reviewed for approval/approved and a permit issued by the State Fire Marshal's Office. ~~All carbon dioxide permitting requirements are identified on the State Fire Marshal's Office website. NFPA 72 and NFPA 55.~~

## 265:25-1-6. Smoke detection

All occupancies under the jurisdiction of the State Fire Marshal's Office with a smoke detection system tied directly to the electrical system (as permitted by the International Building Code and the International Fire Code) and not tied to the fire alarm system must follow all the permitting requirements for a fire alarm system as identified on the State Fire Marshal's website. Smoke detection systems connected to the electrical system (as allowed by the International Building Code and International Fire Code, but not connected to a fire alarm system, shall follow all permitting requirements for a fire alarm system. Plans must/shall be submitted to and reviewed for approval/approved and a permit issued by the State Fire Marshal's Office. NFPA 72, International Building Code and International Fire Code.

## 265:25-1-7. Access control

All occupancies under the jurisdiction of the State Fire Marshal's Office with access controlled entrance and/or egress must initially make contact with the appropriate fire alarm company to discuss proper connections/shall be permitted. Plans must/shall be submitted to and reviewed for approval/approved and a permit issued by the State Fire Marshal's Office. All permitting requirements are identified on the

State Fire Marshal's Office website. NFPA 72, NFPA 101 Life Safety Code, International Building Code and International Fire Code.

## 265:25-1-8. Smoke control

All occupancies ~~under the jurisdiction of the State Fire Marshal's Office~~ with a smoke control system must/shall be permitted ~~initially make contact with the appropriate fire alarm company and heating ventilation and air conditioning company to discuss proper connections, activation and desired results.~~ Plans must/shall be submitted to and reviewed for approval/approved and a permit issued by the State Fire Marshal's Office. All permitting requirements are identified on the State Fire Marshal's website. NFPA 92, NFPA 92A, International Building Code and International Fire Code.

## 265:25-1-9. Carbon monoxide

All occupancies ~~under the jurisdiction of the State Fire Marshal's Office~~ with a carbon monoxide system must/shall have properly installed carbon monoxide detector(s). If there is a fire alarm system installed, the carbon monoxide detector(s) must be tied/connected to the fire alarm system and sound a general alarm with both in the audible and visual form/warnings. If there is not a fire alarm system, the carbon monoxide detector(s) must provide a local alarm, with both in the audible and visual form/warnings. Plans must be submitted to and reviewed for approval by the State Fire Marshal's Office. All permitting requirements are identified on the State Fire Marshal's Office website. NFPA 72, NFPA 720, International Building Code and International Fire Code.

## 265:25-1-10. Inspections

(a) As referenced by 74 O. Section 324.11, all Correctional facilities ~~are required to~~ shall be annually inspected by the State Fire Marshal's Office. All inspections will be conducted using the NFPA 101 Life Safety Code.

(b) As referenced by the Oklahoma Department of Human Services in Title 10, Ch. 51, Section 1430.12, the State Fire Marshal's Office is required to inspect all Day Care Facilities that fall under the State Fire Marshal's Office jurisdiction. All inspections will be conducted using the NFPA 101 Life Safety Code.

(c) The State Fire Marshal's Office conducts inspections of Education facilities up to the 12<sup>th</sup> grade that fall under the jurisdiction of the State Fire Marshal's Office. All inspections will be conducted using the NFPA 101 Life Safety Code.

(d) As referenced by the Oklahoma Department of Health in Title 63, Ch. 1, Article 8, Section 1-828, the State Fire Marshal's Office is required to annually inspect all Assisted Living Facilities ~~that fall under the jurisdiction of the State Fire Marshal's Office.~~ All inspections will be conducted using the NFPA 101 Life Safety Code.

(e) The State Fire Marshal's Office conducts inspections of state-owned facilities and facilities rented by the State of Oklahoma. All inspection will be conducted using the NFPA 101 Life Safety Code.



(f) As referenced by the Horse Racing Commission in Title 3A O.S., Ch. 2, Section 205.5, all State licensed horse race tracks are required to be annually inspected by the State Fire Marshal's Office. All inspections will be conducted using the NFPA 101 Life Safety Code.

(g) All Educational facilities are required to have a commercial fire alarm system installed in accordance with NFPA 72. The commercial fire alarm system shall be monitored by a central station.

(h) Only a positive pressure primary water source and/or tanks can be used as a reliable primary water source for fire protection.

- (1) No ponds;
- (2) No pools;
- (3) No open top containers;
- (4) No cisterns; or
- (5) No similar sources as identified above.

[OAR Docket #22-481; filed 6-28-22]

**TITLE 265. STATE FIRE MARSHAL COMMISSION  
CHAPTER 30. INSPECTION OF RACE TRACKS [REVOKED]**

[OAR Docket #22-482]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

265:30-1-1 [REVOKED]

**AUTHORITY:**

State Fire Marshal Commission; 74 O.S. § 324.7; Amusement and Sports; 3A § 205.5

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

October 26, 2021

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

November 26, 2021

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

January 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**GIST/ANALYSIS:**

Delete Chapter 30 in its entirety. 74 O.S. § 324.7.

**CONTACT PERSON:**

Susie Cain, Executive Secretary to the State Fire Marshal, OKSFM, 2401 NW 23<sup>rd</sup> Street, Suite 4, Oklahoma City, OK 73107, 405-522-5009, Susie.Cain@fire.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

**265:30-1-1. Race tracks [REVOKED]**

The State Fire Marshal Commission shall adopt rules and regulations for conducting fire safety inspections on a regular basis at operating tracks as follows: all operating State licensed horse race tracks shall be inspected annually in compliance with adopted codes/standards.

[OAR Docket #22-482; filed 6-28-22]

**TITLE 265. STATE FIRE MARSHAL COMMISSION  
CHAPTER 35. FIELD CITATIONS, FINES AND APPEALS**

[OAR Docket #22-483]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

265:35-1-1 [AMENDED]

**AUTHORITY:**

State Fire Marshal Commission; 74 O.S. § 324.9

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

October 26, 2021

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

November 26, 2021

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

January 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**GIST/ANALYSIS:**

Amends language to clarify procedures and language clean-up. 74 O.S. § 324.9.

**CONTACT PERSON:**

Susie Cain, Executive Secretary to the State Fire Marshal, OKSFM, 2401 NW 23<sup>rd</sup> Street, Suite 4, Oklahoma City, OK 73107, 405-522-5009, Susie.Cain@fire.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

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### 265:35-1-1. Field citations, fines and appeals

(a) ~~Only the~~The Office of the State Fire Marshal ~~designated employees will be~~is authorized to issue a field ~~citation~~citations for violations of the ~~Adopted Codes~~any lawful order of the State Fire Marshal. The field citation ~~will~~shall describe the nature of the violation.

(b) ~~If the alleged violator disagrees with the citation, he/she has the right to request a hearing before the Administrative Hearing Officer. The hearing will be set within ten (10) days of receipt by the Office of the State Fire Marshal of the request for a hearing. If a hearing is held and the person is found to be responsible for the violation, administrative costs of \$100.00 shall be assessed, in addition to the fine listed in the International Building Code, Section 114; International Fire Code, Section 109~~Violators have the right to appeal. The appeal request must be submitted in writing and received by the State Fire Marshal within ten (10) days of the fine notice. Upon receipt of an appeal request, an appeal hearing shall be set for the next scheduled meeting of the State Fire Marshal Commission.

(c) ~~If the alleged violator does not contest the field citation, then the alleged violator will have thirty (30) days from the date the citation is issued in which to remit to the Office of the State Fire Marshal the amount identified on the citation. The checks should be made payable to the Office of the State Fire Marshal~~After hearing the appeal, the State Fire Marshal Commission may affirm, modify, revoke or vacate the order and/or fine at the hearing. If a hearing is held and the violator is found to be responsible for the violation, administrative costs of \$100.00 shall be assess, in addition to the fine.

(d) ~~Failure to pay the amount noted on the citation, or failure to appear and contest the field citation, will result in other enforcement actions and requests for assessment of additional penalties, or administrative assessments as set forth in (B) above.~~If the violator does not contest the field citation, or is found guilty of the violation after appeal, the violator shall have thirty (30) days from the date the citation is issued in which to remit to the Office of the State Fire Marshal the amount identified on the citation. Checks, cashier's checks and/or money orders should be made payable to the Office of the State Fire Marshal.

(e) ~~Fines for field citations shall be assessed as shown in the International Building Code, Section 114; International Fire Code, Section 109~~Failure to pay the amount noted on the citation, or failure to appear and contest the field citation, will result in other enforcement actions and requests for assessment of additional penalties, or administrative assessments as set forth in (c) above.

(f) Issuance or payment of field citations shall in no way preclude other enforcement proceedings, administrative penalties, fines or order of the Office of the State Fire Marshal if the alleged violator fails to correct a violation in a reasonable manner, as determined by the Office of the State Fire Marshal.

(g) Proceeds from payment of field citations shall be deposited into the Office of the State Fire Marshal revolving fund.

*[OAR Docket #22-483; filed 6-28-22]*

## TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 40. FIRE SAFETY STANDARDS FOR CIGARETTES

*[OAR Docket #22-484]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

265:40-1-1 [AMENDED]

### **AUTHORITY:**

State Fire Marshal Commission; 74 O.S. § 324.11

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

October 26, 2021

### **COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

### **PUBLIC HEARING:**

None held or requested

### **ADOPTION:**

November 26, 2021

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

January 14, 2022

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

### **FINAL ADOPTION:**

June 21, 2022

### **EFFECTIVE:**

September 11, 2022

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **GIST/ANALYSIS:**

Amends language to clarify procedures and language clean-up. 74 O.S. § 324.11.

### **CONTACT PERSON:**

Susie Cain, Executive Secretary to the State Fire Marshal, OKSFM, 2401 NW 23<sup>rd</sup> Street, Suite 4, Oklahoma City, OK 73107, 405-522-5009, Susie.Cain@fire.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **265:40-1-1. Scope**

(a) On and after January 1, 2009, no cigarettes subject to the provisions of the Fire Safety Standard and Firefighter Protection Act or this Chapter shall be sold or offered for sale in this State unless:

- (1) the cigarettes have been tested in accordance with the test method prescribed in OAC 265:40-1-3;
- (2) the cigarettes meet the performance standard specified in OAC 265:40-1-4;
- (3) a written certification has been filed by the manufacturer with the Office of the State Fire Marshal, 2401 N.W. 23<sup>rd</sup> Street, Suite 4, Oklahoma City, Oklahoma 73107 in accordance with OAC 265:40-1-6; and
- (4) the cigarettes have been marked in accordance with OAC 265:40-1-8.

(b) Nothing in this Chapter shall prohibit:

(1) ~~wholesale dealers or retail dealers from selling their inventory of cigarettes existing on January 1, 2009, provided that the wholesale dealer or retail dealer can establish that Oklahoma State tax stamps were affixed to these cigarettes prior to January 1, 2009, and provided further that the wholesale dealer or retail dealer can establish that the inventory was purchased prior to January 1, 2009 in comparable quantity to the inventory purchased during the same period in the prior year; provided that in no event may a wholesale dealer or retail dealer sell or offer to sale a cigarette in this State that does not comply with the Act or this Chapter after January 1, 2010;~~

(2) ~~wholesale dealers or retail dealers from selling, until July 1, 2009, cigarettes manufactured in this State as determined by the State Fire Marshal;~~

(3) ~~any person or entity from manufacturing or selling cigarettes that do not meet the requirements of this Chapter, if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States pursuant to 74 O.S. Supp. 2008 § 326.10 and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered to sale to persons located in this State; and~~

(4) ~~the sale of cigarettes solely for the purpose of consumer testing. For purposes of this Chapter, the term 'consumer testing' means an assessment of cigarettes that is conducted by a manufacturer or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.~~

[OAR Docket #22-484; filed 6-28-22]

**TITLE 265. STATE FIRE MARSHAL COMMISSION  
CHAPTER 50. FIRE EXTINGUISHER INDUSTRY**

[OAR Docket #22-485]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
265:50-1-3 [AMENDED]

**AUTHORITY:**

State Fire Marshal Commission; 59 O.S. Supp. 2007, §§ 1820.1 et seq.

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

October 26, 2021

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

November 26, 2021

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

January 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**GIST/ANALYSIS:**

Amends language to reference current state adopted codes. 59 O.S. Supp. 2007, § 1820.1 et seq.

**CONTACT PERSON:**

Susie Cain, Executive Secretary to the State Fire Marshal, OKSFM, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5009, Susie.Cain@fire.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**265:50-1-3. Adopted references**

The Oklahoma State Fire Marshal Commission hereby incorporates by reference the following standards governing the materials, services and conduct of the licenses and the employees of licensees in regard to the fire extinguisher industry: ~~International Code Council (ICC) 2009 Edition International Building Code (IBC)®; 2009 Edition International Fire Code (IFC)®; the National Fire Protection Association (NFPA) 2010 Edition Standard for Portable Fire Extinguishers (NFPA 10)®; the 2011 Edition Standard on Carbon Dioxide Extinguishing Systems (NFPA 12)®; the 2009 Edition Standard on Halon 1301 Fire Extinguishing Systems (NFPA 12A)®; the 2009 Edition Standard for Dry Chemical Extinguishing Systems (NFPA 17)®; the 2009 Edition Standard for Wet Chemical Extinguishing Systems (NFPA 17A)®; the 2011 Edition National Electrical Code (NFPA 70)®; the 2013 Edition National Fire Alarm Code (NFPA 72)®; the 2011 Edition Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations (NFPA 96)®; the 2012 Edition Standard on Clean Agent Fire Extinguishing Systems (NFPA 2001)®; the 2010 Edition Standard on Water Mist Fire Protection Systems (NFPA 750)®; and 2012 Edition Code for Safety to Life from Fire in Buildings and Structures (NFPA 101)®~~ as the minimum standard for installation for the fire extinguisher industry in Oklahoma the most recently adopted International Building Code® (IBC) and the International Fire Code® (IFC) by the Oklahoma Uniform Building Code Commission, and the referenced codes identified within the IBC and the IFC. If a conflict exists between any of the above-referenced installation standards, the more stringent shall apply. If a conflict exists between any of the above-referenced codes or standards and this chapter, the requirements in this chapter shall apply.

[OAR Docket #22-485; filed 6-28-22]

# Permanent Final Adoptions

## TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 55. FIREFIGHTER TRAINING ADVISORY COMMITTEE

[OAR Docket #22-486]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Purpose and Responsibilities  
265:55-1-1 [AMENDED]

### AUTHORITY:

State Fire Marshal Commission; 74 O.S. Supp. 2007, § 325.1, et seq.

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

October 26, 2021

### COMMENT PERIOD:

November 15, 2021 through December 15, 2021

### PUBLIC HEARING:

None held or requested

### ADOPTION:

November 26, 2021

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

January 14, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### GIST/ANALYSIS:

Amends language clean-up. 74 O.S. Supp. 207, § 325.1 et seq.

### CONTACT PERSON:

Susie Cain, Executive Secretary to the State Fire Marshal, OKSFM,  
2401 NW 23<sup>rd</sup> Street, Suite 4, Oklahoma City, OK 73107, 405-522-5009,  
Susie.Cain@fire.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 1. PURPOSE AND RESPONSIBILITIES

#### 265:55-1-1. Purpose

The rules of this chapter ~~is~~are to implement the Firefighter Training Advisory Committee in accordance with Title 74 O.S. Section 325.1.

[OAR Docket #22-486; filed 6-28-22]

## TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 60. FEE SCHEDULE

[OAR Docket #22-487]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

265:60-1-1 [NEW]  
265:60-1-2 [NEW]

### AUTHORITY:

State Fire Marshal Commission; 74 O.S. § 324; Officers. (Oklahoma Open Records Act), 51 O.S. §§ 24A.1-24A.201; Fees, 28 O.S. § 91; and International Building Code®, Section 109.2

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

October 26, 2021

### COMMENT PERIOD:

November 15, 2021 through December 15, 2021

### PUBLIC HEARING:

None held or requested

### ADOPTION:

November 26, 2021

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

January 14, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### GIST/ANALYSIS:

Provides a new chapter to list existing fee schedule. 74 O.S. § 324; 51 O.S. §§ 24A.1-24A.201; 28 O.S. § 91; International Building Code®, Section 109.2

### CONTACT PERSON:

Susie Cain, Executive Secretary to the State Fire Marshal, OKSFM,  
2401 NW 23<sup>rd</sup> Street, Suite 4, Oklahoma City, OK 73107, 405-522-5009,  
Susie.Cain@fire.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

#### 265:60-1-1. Purpose

The purpose of this chapter is to establish a fee schedule for the State Fire Marshal's Office.

#### 265:60-1-2. Fees

(a) In accordance with the Oklahoma Open Records Act [Oklahoma Statutes Title 51 Section 24A.1-24A.201] and Oklahoma State Statute Title 74 Section 324, the State Fire Marshal's Office shall charge the following fees for reproduction of records:

(1) Copying fee - \$.25 per page

(2) Certified copying fee - \$1.00 per page

(b) In accordance with the Oklahoma Open Records Act [Oklahoma Statutes Title 51 Section 24A.1-24A.201] and

Oklahoma State Statute Title 74 Section 324, the State Fire Marshal's Office shall charge the following fees for reproduction of records when the request is solely for commercial purpose, or clearly would cause excessive disruption of the State Fire Marshal's Office essential functions. The State Fire Marshal's Office may charge a reasonable fee to recover the direct cost of document search [Oklahoma Statute Title 51 Section 24A.5(3)]. Payment with cash, credit card, check or money order shall be for exact amount. Office hours are 8:00 a.m. through 4:30 p.m. Monday through Friday. Upon the submission of the request accompanied by the appropriate fee, the State Fire Marshal's Office will forward within ten (10) working days, via First Class Mail, the requested information.

- (1) Non-Certified "Origin and Cause" Fire Investigation Report - \$1.00 per page.
- (2) Certified "Origin and Cause" Fire Investigation Report - \$2.00 per page.
- (3) Evidence photographs - \$20.00 per electronic copy.
- (4) Roster of all Fire Departments - \$20.00 per hard copy or electronic copy.
- (5) Computer search or excessive disruption of office functions - \$75.00 per employee.

(c) In accordance with Oklahoma Statutes Title 28 Section 91, the State Fire Marshal's Office shall charge the following fees for expert witness fees:

- (1) Expert Witness Fee - \$150.00 per 4 hours (4 hour minimum).
- (2) Deposition Fee - \$150.00 per 4 hours (4 hour minimum).
- (3) Court Testimony Fee - \$150.00 per 4 hours (4 hour minimum).

(d) Pursuant to the International Building Code®, Section 109.2: A fee for each plan examination, building permit, and inspection shall be paid in accordance with the fee schedule outlined in this chapter:

- (1) Exemptions: Detention centers that require an annual inspection are exempt from annual inspection fees. Duly constituted Fire Departments meeting the reporting requirements of the State Fire Marshal's Office are exempt from plan reviews, permits and inspection fees.
- (2) Review of plans submitted with an application for a building permit. Total permit fee is due at the time of submittal. Fees may be waived or reduced when in the opinion of the State Fire Marshal the reduction of fees is in the best interest of both parties.
- (3) Permit fees include the cost of a 50% and 100% on-site inspection and occupancy permit. Additional on-site inspections caused by failure to comply with applicable codes or deviation from approved plans will be billed at \$40.00 per hour the actual cost to the State Fire Marshal's Office.
- (4) Minimum permit fee - \$50.00.
- (5) Rates where total exceeds the minimum:
  - (A) Industrial buildings: per square foot - \$.10
  - (B) Sprinkler plan review only: per square foot - \$.03
  - (C) Fire alarm plan review only: per square foot - \$.03

- (D) Fire Suppression plan review only: per square foot - \$.03
- (E) Carbon monoxide system plan review: per square foot - \$.03
- (F) Electrical smoke detection system (fire alarm) plan review: per square foot - \$.03
- (G) Smoke control system plan review: per square foot - \$.03
- (H) Access control system plan review: \$50.00 per set of access points
- (I) Carbon dioxide system plan review (more than 100 pounds of accumulative CO2, including those used in beverage dispensing applications): per square foot - \$.03
- (6) Above Ground Fuel Storage: inspection and permit fee - \$125.00
- (7) Fireworks:
  - (A) Class B (1.3G) Fireworks display inspection and permit - \$125.00
  - (B) Class C (1.4G) pyrotechnic display inspection and permit - \$250.00
- (8) Field Inspections - \$40.00 per hour (one hour minimum)
- (9) Explosive Storage Facility - inspection and permit fee - \$108.00 per magazine

[OAR Docket #22-487; filed 6-28-22]

**TITLE 300. GRAND RIVER DAM  
AUTHORITY  
CHAPTER 20. ACQUISITION POLICY**

[OAR Docket #22-645]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

300:20-1-1 [AMENDED]

**AUTHORITY:**

Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B)

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

December 21, 2021

**COMMENT PERIOD:**

January 19, 2022 through February 18, 2022

**PUBLIC HEARING:**

March 1, 2022

**ADOPTION:**

March 9, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

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## GIST/ANALYSIS:

Consulting services were included in the services that are exempt from the competitive bidding processes. In addition, the Authority has clarified that utility acquisitions include services, equipment, and materials related to the supply or provision of electrical power and energy. The proposed changes will streamline the processes as internal GRDA policies govern the details.

## CONTACT PERSON:

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16<sup>th</sup> Street, Tulsa, OK 74128.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 300:20-1-1. Introduction to acquisition rules

(a) **General.** These rules explain and facilitate understanding of the Authority's functions related to acquisitions.

(b) **Application of the rules.** These rules are expressly designed to implement the Board's policy and state law. Procedures will conform to changes in rule or law and when necessary, procedures will be modified to refine the acquisition process. These rules shall apply to all GRDA acquisitions except where noted otherwise herein. These rules do not apply to repairs, construction, or improvements to GRDA facilities or land that are governed by Title 61 of the Oklahoma Statutes.

(c) **Repairs, construction, or improvements to GRDA facilities and land.** For purchases for repair, construction or improvements to GRDA facilities or land that are governed by the provisions of Title 61 of the Oklahoma Statutes, GRDA will utilize forms and processes comparable to those prescribed by the Office of Management and Enterprise Services ("OMES") Construction and Properties Division. Where the provisions of Title 61 and the rules promulgated thereunder refer to the "Construction and Properties Division" the GRDA Central Purchasing Unit shall perform the duties of the OMES Construction and Properties Division for GRDA purchases when GRDA is allowed under Title 61 to perform such processes or assume such responsibilities. Where the provisions of Title 61 or related administrative rules applicable thereto refer to the "Construction and Properties Division Administrator" or "Administrator" the employee designated by the GRDA Chief Financial Officer shall assume such responsibilities, in instances where the Construction and Properties Division has delegated such authority to state agencies or GRDA.

(d) **Exempt from competitive bidding processes.** Acquisitions of professional services as defined in Section 803 of Title 18 or acquisitions pursuant to the Oklahoma State Interlocal Cooperation Act, as well as power capacity, energy, transmission and ancillary services, insurance, banking, consulting services, government relations or business expense acquisitions described in Section 300:20-1-15(c), employee training, conference registration, employment services, or utility acquisitions (including services, equipment, and materials related to the supply or provision of electrical power and energy) are exempt from the competitive bidding processes described herein. Similarly, the acquisition of coal, natural gas, or other energy resources may be confidential or may

require special acquisition processes. Therefore the selection of vendors for these products or services may deviate from the guidelines set forth herein. Acquisitions for financial services, underwriting, or other bond issuance services ~~and consulting services related to customer rates, load forecasts, and related financial/engineering services~~ may require special acquisition processes that will be coordinated with the State Bond Advisor's office or the Board of Director's Audit, Finance, Budget and Policy Committee.

### (e) Definitions.

- (1) **Acquisition.** The process of obtaining items, products, materials, supplies, services (including construction), and equipment by purchase, lease-purchase, lease with option to purchase or rental pursuant to the GRDA Acquisition Policy and Procedures and applicable State laws and directives.
- (2) **Acquisition approval or signature authority.** The approval delegated by the Board of Directors or General Manager for a GRDA employee to approve a purchase order or resulting payment thereof.
- (3) **Bid.** The cost proposal submitted by a vendor in response to a request or solicitation from the GRDA for a project described in plans and/or specifications provided by GRDA.
- (4) **Board of directors.** The rule-making authority and governing body of the Grand River Dam Authority as defined by 82 O.S. § 863.2.
- (5) **Central purchasing unit.** The specialist unit within the GRDA Finance Department that is responsible for supervising and managing the acquisitions of materials, supplies, and services that are used by the Authority and for administering acquisition policies, rules, and procedures.
- (6) **Emergency acquisition.** An acquisition made without following normal acquisition procedures in order to obtain goods or services to meet an urgent and unexpected requirement. An "Emergency" shall be identified as: an event that consists of one or more of the following:
  - (A) Correction of an immediate hazardous condition which affects the safety of personnel or the public health;
  - (B) Prevention of immediate damage to property or the reduction in reliability of electric generating equipment;
  - (C) Avoidance of purchase of alternative power to replace otherwise generated power;
  - (D) Maintenance of the efficient and orderly completion of work-in-progress;
  - (E) Correction of an immediate regulatory compliance deficiency;
  - (F) To obtain needed items when market conditions (e.g. natural disaster, terrorist act, etc.) limit the product or service availability, or when vendors may not be able to quote firm prices as would be possible under normal market conditions;
  - (G) To prevent or minimize the serious disruption of services to customers;

(H) To keep facilities operating, to ensure continuous transmission service, or when a Board meeting has been cancelled and thus it is necessary to avoid disruption of the acquisition process when a bid may expire prior to the next regularly scheduled Board meeting;

(I) Emergency acquisitions made pursuant to Title 61 of the Oklahoma Statutes.

(7) **General manager or chief executive officer.** The GRDA employee who has oversight and managerial responsibility over all GRDA functions and is selected by the Board of Directors of the Grand River Dam Authority as authorized by 82 O.S. § 864.A.2.

(8) **GRDA or authority.** The Grand River Dam Authority, a governmental agency of the State of Oklahoma, as defined by 82 § 816, et seq.

(9) **Low Dollar Acquisition.** An acquisition for goods or services that does not exceed the competitive bid dollar threshold as determined by the General Manager.

(10) **Procedures.** Procedures are the prescribed means of complying with the applicable statutes and rules. Procedures provide GRDA personnel with the guidelines and, where appropriate, specific action sequences to ensure uniformity, compliance and control of all policy-related activities.

(11) **Solicitation.** An invitation for bids, a request for proposal, telephone calls, or any document or method used to obtain bids or proposals for the purpose of entering into a contract.

[OAR Docket #22-645; filed 7-19-22]

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

[OAR Docket #22-646]

**RULEMAKING ACTION:**  
PERMANENT final adoption  
**RULES:**

- Subchapter 1. Definitions, Purpose and Application  
300:35-1-1 [AMENDED]
- Subchapter 3. General Provisions  
300:35-3-12 [AMENDED]  
300:35-3-14 [AMENDED]  
300:35-3-15 [AMENDED]
- Subchapter 11. Permits for Wharves, Landings, Buoys, Breakwaters and Docking Facilities  
300:35-11-3 [AMENDED]  
300:35-11-4 [AMENDED]  
300:35-11-14 [NEW]
- Subchapter 13. Permits for Dikes, Excavations, Dredgings, Erosion Control Devices, Retaining Walls, and Shoreline Stabilization  
300:35-13-2 [AMENDED]  
300:35-13-4 [AMENDED]  
300:35-13-7 [NEW]
- Subchapter 15. Commercial Use of the Lakes and Lands of GRDA  
300:35-15-2 [AMENDED]
- Subchapter 21. Administration of Rules and Hearings [REVOKED]  
300:35-21-1 [REVOKED]  
300:35-21-2 [REVOKED]  
300:35-21-3 [REVOKED]

- 300:35-21-4 [REVOKED]
- 300:35-21-5 [REVOKED]
- 300:35-21-6 [REVOKED]
- 300:35-21-7 [REVOKED]
- 300:35-21-8 [REVOKED]
- Subchapter 23. Four-Wheel Vehicles, Off-Road Vehicles and All Terrain Vehicles  
300:35-23-8 [AMENDED]
- Subchapter 27. Vegetation Management Plan  
300:35-27-4 [AMENDED]
- 300:35-27-8 [AMENDED]
- Subchapter 30. Flowage Easements [NEW]  
300:35-30-1 [NEW]

**AUTHORITY:**  
Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B)

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

December 21, 2021

**COMMENT PERIOD:**

January 19, 2022 through February 18, 2022

**PUBLIC HEARING:**

March 1, 2022

**ADOPTION:**

March 9, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

A definition for flowage easement has been added, as well as two new paragraphs governing flowage easement activities. A new paragraph has been included addressing the prohibition of habitable structures or Dock-o-miniums after November 12, 2008. Structures existing before this date must meet health, safety and construction guidelines approved by the Grand River Dam Authority Board of Directors. The Administration of Rules and Hearings subchapter has been stricken and is being proposed for promulgation as new Chapter 45 Administration of Rules and Hearings. Other general clarifications have been made.

**CONTACT PERSON:**

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16th Street, Tulsa, OK 74128.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. DEFINITIONS, PURPOSE AND APPLICATION**

**300:35-1-1. Definitions**

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

"**Authority or GRDA**" means the Grand River Dam Authority.

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**"Board"** means the Board of Directors for the Grand River Dam Authority.

**"GM" or "CEO"** means the ~~General Manager and/or the~~ Chief Executive Officer of the Grand River Dam Authority.

**"Flowage Easement"** means the perpetual right of one party to overflow, flood, and submerge the lands subject to a flowage easement, reserving unto the fee owner such rights and privileges as may be enjoyed without interference with the rights granted in the flowage easement.

**"GRDA land" or "GRDA property" or "lands of GRDA"** means the land owned by GRDA. The location and boundaries of GRDA land is determined by a legal description (generally described by metes and bounds). A survey is necessary to determine the boundary of GRDA land. A particular elevation does not determine the boundary of GRDA land. Additionally, GRDA and/or the U.S. Army Corps of Engineers may have flowage easements over land.

**"Habitable Structure" or "Dock-o-miniums"** means structures used as living quarters constructed in conjunction with new or existing docks, piers, and floats. These structures generally resemble cabins and/or homes, placed on floating structures such as covered or enclosed docks, over boathouses and other similar structures where a building is or may be occupied by people overnight or for extended periods. Generally, these structures may contain water supply and/or waste disposal facilities such as sinks, showers, toilets, kitchen facilities, food preparation areas, etc.

**"Neosho Bottoms"** means all GRDA lands owned in Ottawa County along the Neosho River that lie West of U.S. Highway 69 not used in the delivery and transmission of electricity.

**"Normal Idle Speed"** means the vessel is in the forward gear with no additional throttle applied.

**"Paddleboard"** means a board or surfboard propelled through the water by an occupant by arms or paddle while lying, kneeling or standing on the board.

**"Restricted Areas"** means any area designated by GRDA where the public is prohibited from engaging in certain activities due to safety concerns or because the activity interferes with the business of GRDA.

**"Rollover Protection System" or "ROPS"** means a system or structure which can withstand the weight of the vehicle and is intended to protect a vehicle and passengers from being crushed.

**"Shoreline Management Plan" or "SMP"** means the rules relating to management of the shoreline as approved by the Federal Energy Regulatory Commission.

**"Wake"** means the track of waves left by a vessel or other object moving through the water and such waves are greater than the natural waves in the immediate area of the vessel or are cresting and showing white water or may cause injury to any person or property. However, a "no wake zone" is not violated when a vessel is safely proceeding with engine(s) engaged at normal idle speed.

**"Water Jet Pack Unit"** means the system propelling a person in the air by water and includes any vessel/PWC used to propel the person into the air. This system may also be known as a jetlev, aquaboard, aquaflyer, or flyboard.

**"Waters of GRDA"** means and refers to the waters of the Grand River and its tributaries, including, but not limited to, Grand Lake O' the Cherokees, Lake Hudson, and the W.R. Holway Reservoir. This Chapter 35 does not apply to the Illinois River in Oklahoma.

### SUBCHAPTER 3. GENERAL PROVISIONS

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

- (a) All sanitary rules, regulations, and laws shall be complied with prior to the granting or renewal of any GRDA permit.
- (b) In the interest of public health, sanitation and safety, there shall be no camping on GRDA's lands except in a designated camping area.
- (c) Bottles, Styrofoam goods, cans, garbage, rubbish, refuse, debris, wreckage, bilge water containing oil or grease, or materials used in the process of cleaning the outer surfaces of vessels, or any other material of any kind shall not be thrown into or released upon the lakes or deposited or dumped upon the shores of the lakes or upon any land under the jurisdiction of GRDA.
- (d) No septic tank, lateral line or lagoon shall be placed on GRDA property. No portable toilet shall be used within the flowage easement. No sewage shall be disposed of in the waters or on GRDA property. No person shall operate a vessel equipped with a marine toilet which is not a total retention system in accordance with federal regulations regarding marine toilets. The preparation and marking of beaches shall be in such manner as to provide reasonable safety in their use. Commercial beaches shall be provided with adequate and sanitary dressing rooms, toilets, showers and other necessary accessories for public convenience and safety.

#### 300:35-3-14. Permit applications

- (a) Applications for GRDA permits required by these Rules are available at the permitting office inside the GRDA Ecosystems & Education Center located at the west end of Pensacola Dam in Langley, Oklahoma or visit the website at [www.GRDA.com](http://www.GRDA.com).
- (b) In addition to any other requirement that may be applicable to a permit application, GRDA may, in its sole discretion, forward any application to fish and wildlife resource agencies, environmental agencies, and/or tribes for comment.
- (c) These Rules cover the following types of GRDA permits:
  - (1) Private and commercial docks, wharves, landings, anchorages, and boat houses;
  - (2) Buoys;
  - (3) Private and commercial breakwaters;
  - (4) Private and commercial rail-systems and tram systems;
  - (5) Boat ramps;
  - (6) Retaining walls;
  - (7) Dredging (and excavation);
  - (8) Erosion control devices;
  - (9) Shoreline stabilization;



- (10) Commercial operations (including, but not limited to, a dock installer, dredging contractor, commercial boat operator, vessel rentals, or Water Jet Pack Unit rentals);
  - (11) Taking of raw water;
  - (12) Vegetation management plans; and
  - (13) Sanctioned event.
  - (14) Construction within the Flowage Easement
- (d) Permit applications are subject to change without notice. Permitted activities must comply with all standards, rules and regulations in effect at the time the activity commences.

**300:35-3-15. Penalty**

After notice and an opportunity to be heard in accordance with ~~Subchapter 21 herein, any~~ Any person, firm, partnership, corporation or other entity which violates any Rule in this Chapter (i.e. Chapter 35 Lake Rules), shall be required to pay all costs (including attorneys fees, GRDA staff time, and mitigation) related to the violation including the repair, restoration and reclamation of GRDA lands and waters. Other penalties may include, but are not limited to, suspension or revocation of a permit; and any other fee, penalty or fine as authorized by statute. Also, GRDA may seek an injunction to prevent any violation or unauthorized activity.

**SUBCHAPTER 11. PERMITS FOR WHARVES, LANDINGS, BUOYS, BREAKWATERS AND DOCKING FACILITIES**

**300:35-11-3. Waivers**

- (a) Upon written application and hearing, the Board of Directors of GRDA may grant a waiver, exception or modification to the requirements imposed on private and/or commercial permit applicants. Additionally, the Board of Directors may impose additional requirements upon any such applicant. Such waivers, exceptions, modifications, or additional requirements shall be based upon the totality of the circumstances, in consideration of public and environmental concerns.
- (b) In approving waivers of these rules, the Board shall consider the SMP and all positive and negative impacts to the following:
  - (1) Characteristics of existing permitted and recreational uses within a half-mile radius of the proposed activity;
  - (2) Shoreline topography and geometry;
  - (3) Safety and navigation;
  - (4) Environment;
  - (5) Potential economic development and tourism benefits;
  - (6) Recreational use; and
  - (7) Statutory mandates.
- (c) The applicant shall be required to give notice and the Board shall allow for public comment before acting on any request for a waiver of these rules.
- (d) Public notice of the waiver request shall be given in accordance with guidelines established by the GRDA staff and shall include:

- (1) Publication in a ~~newspaper~~ newspapers of general circulation, ~~including~~ the county in which the property is located; and
- (2) Mailing of written notice, via certified mail, return receipt requested, to all owners of property within one hundred fifty (150) feet from the outer edge of the proposed dock(s). Copies of certified mail receipts must be submitted to GRDA prior to any hearing and before GRDA posts any notice.
- (3) The waiver application shall be posted on GRDA's website for a period of at least thirty (30) days.
- (4) Any other notice as required by GRDA.

**300:35-11-4. Electrical inspections**

- (a) Each commercial and private boat dock (or any other type of floating structure) shall comply with and be maintained in accordance with all laws, regulations and codes regarding electrical systems and wiring.
- (b) All commercial and private boat docks constructed, modified, relocated, or transferred shall provide to GRDA a current certificate signed by an Oklahoma licensed electrical contractor, evidencing compliance with all laws, regulations and codes regarding electrical systems and wiring.
- (c) A dock will not have any permanent electrical supply installed without first obtaining written approval from GRDA. No temporary electric supply shall be used and no new or unpermitted submersible ~~pump~~ pumps shall be allowed in the water.

**300:35-11-14. Habitable structures and Dock-o-miniums prohibited**

Habitable Structures or Dock-o-miniums are prohibited on the Waters of GRDA. Any Habitable Structure or Dock-o-miniums existing prior to November 12, 2008 must meet health, safety and construction guidelines approved by the Board to remain on the Waters of GRDA.

**SUBCHAPTER 13. PERMITS FOR DIKES, EXCAVATIONS, DREDGINGS, EROSION CONTROL DEVICES, RETAINING WALLS, AND SHORELINE STABILIZATION**

**300:35-13-2. Erosion control devices**

- (a) Erosion control devices may be permitted to protect the existing shoreline. These types of structures must not be for the purpose of landscaping or beautifying the area and will only be permitted if GRDA staff determines that the device is necessary for effective erosion control. In some cases, permission may also be required from the U.S. Army Corps. of Engineers.
- (b) During construction activities, GRDA shall require that appropriate erosion and sediment control measures be utilized to prevent pollution of GRDA waters.
- (c) All material which accumulates behind sediment control devices shall be removed from GRDA land and placed at an up-land site above the applicable flowage easement.

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(d) Disturbed sites must be promptly stabilized with GRDA approved methods associated with seeding, vegetative planting, erosion control netting, and/or mulch or sediment stabilization material.

(e) ~~If any vegetation is~~ ~~Vegetation~~ removed for erosion control projects ~~GRDA may require the applicant to replace the vegetation must be replaced~~ with GRDA approved species of native vegetation.

### 300:35-13-4. Shoreline stabilization and retaining walls

(a) GRDA may issue permits allowing adjacent residential landowners to stabilize eroding shorelines on GRDA-owned residential access shoreland. GRDA will determine if shoreline erosion is sufficient to approve the proposed stabilization treatment. No shoreline stabilization activities may be conducted until a permit from GRDA is issued. Shoreline stabilization may include i) the use of biostabilization, ii) the use of riprap to stabilize eroded shorelines, or iii) the use of a retaining wall.

(b) Biostabilization of eroded shorelines.

- (1) Moderate contouring of the bank may be allowed to provide conditions suitable for planting of vegetation.
- (2) Native vegetation may be planted within the shoreline management zone to help minimize further erosion.
- (3) Riprap may be allowed along the base of the eroded area to prevent further undercutting of the bank.

(c) Use of riprap to stabilize eroded shorelines.

- (1) The riprap material must be ~~quarry run stone, natural stone, or other material~~ approved by GRDA.
- (2) Rubber tires, concrete rubble, or other debris shall not be used to stabilize shorelines.
- (3) Riprap material must be placed so as to follow the existing contour of the bank.
- (4) Site preparation must be limited to the work necessary to obtain adequate slope and stability of the riprap material.

(d) Use of retaining walls for shoreline stabilization.

- (1) Retaining walls shall be allowed only where the erosion process is severe and GRDA determines that a retaining wall is the most effective erosion control option.
- (2) GRDA shall inspect the site of the proposed construction and consider whether the planting of vegetation or the use of riprap would be adequate to control erosion.
- (3) GRDA shall determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.
- (4) The retaining wall must be constructed of stone, concrete blocks, poured concrete, or other materials acceptable to GRDA. Railroad ties, rubber tires, broken concrete (unless determined by GRDA to be of adequate size and integrity), brick, creosote timbers, and asphalt are not allowed.
- (5) Reclamation of GRDA land that has been lost to erosion is not allowed.
- (6) No existing retaining wall shall be repaired or rebuilt without a permit from GRDA. Repairs must be made with approved and acceptable material by GRDA.

### 300:35-13-7. Activities within the flowage easement

All individuals performing any activity subject to this subchapter 13 shall comply with the guidelines for flowage easements if the activity is performed within the flowage easement area.

## SUBCHAPTER 15. COMMERCIAL USE OF THE LAKES AND LANDS OF GRDA

### 300:35-15-2. Dock installer's permit

(a) Any person, firm, partnership, corporation, or any other entity operating for pecuniary gain or profit or any business that, directly or indirectly, is engaged in the building, placing, transfer, demolition or removal, of piers, wharves, landings, anchorages, floating boat houses, docks, barges or other floating structures of a stationary or semi-stationary nature upon the waters of GRDA shall obtain an annual permit. Such person or entity shall not build, place, transfer, demolish or remove a pier, wharf, landing, anchorage, floating boat house, dock, barge or other floating structure of a stationary or semi-stationary nature upon the waters of GRDA until a Dock Installer's permit has been issued by GRDA.

(b) At the time a new or significantly modified dock is installed, a sign shall be prominently displayed stating the installer's name and ~~permit number~~ ~~the year the dock was installed~~.

(c) A dock installer shall build, construct, place, transfer, demolish and remove docks in strict compliance with the plans and specifications approved by GRDA and in accordance with all applicable laws, regulations, rules and building codes. All Styrofoam, trash and construction materials shall be disposed in an environmentally appropriate fashion and shall not be allowed to remain or float in the waters of GRDA. All Styrofoam, trash and construction materials shall be stored off GRDA property and above the flowage easement. No dock shall be stored on GRDA property for longer than six (6) months. GRDA property shall not be used without prior written permission.

(d) A dock installer's permit may be revoked at any time during the permit period for the following reasons:

- (1) Nonpayment of permit fee.
- (2) Failure to comply with current dock standards.
- (3) Installation of a dock not permitted by GRDA.
- (4) Upon three sustained complaints of the public regarding the dock installer's business practices.
- (5) Upon conviction of a felony or fraud misdemeanor crime by a court of competent jurisdiction of the owner of the dock installer business or dock installer related to the dock installer's business.
- (6) Failure to maintain insurance required by GRDA and to provide GRDA with a certificate of insurance.
- (7) Improper disposal or storage of waste and other dock materials upon GRDA property or flowage easement.

**SUBCHAPTER 21. ADMINISTRATION OF RULES AND HEARINGS [REVOKED]**

**300:35-21-1. General manager duties [REVOKED]**

The General Manager of the Grand River Dam Authority is authorized to administer these Rules and Regulations. The General Manager, or the General Manager's designee, shall issue all permits and licenses provided for herein and may, at the sole discretion of the General Manager or the designee, hold such public meetings or hearings as deemed necessary related to such matters.

**300:35-21-2. GRDA Board of Directors duties [REVOKED]**

The Board of Directors of the Grand River Dam Authority retains the right to authorize and issue any and all permits and licenses not specifically provided for in these Rules and Regulations. No fees, charges or any of these Rules and Regulations shall be changed in any manner without the approval of the Board of Directors.

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

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

- (1) The name of the person or entity responsible for the violation (the "respondent");
- (2) A description of the nature of the violation;
- (3) The remedial action and/or the relief required, which may include the imposition of a fee, penalty or fine as authorized by statute and/or the correction of any deficiency;
- (4) A reasonable time to comply with the remedial action and/or the relief required;
- (5) That the respondent may submit a response to the Notice of Violation, how and where a response may be submitted, and the deadline to submit a response; and
- (6) That, in connection with the submission of a response to the Notice of Violation, the respondent may request a hearing before the General Manager or his designee to challenge the Notice of Violation.

(b) **Service of the Notice of Violation.** At the election of the GRDA, a Notice of Violation shall be served upon the respondent in the same manner as a civil summons is served or in the event the dock is not permitted in the current owner's name or the permit owner is deceased and no probate is pending, service can be made by posting the Notice on the dock or walkway to the dock.

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

(d) **Response to Notice of Violation.** In the event that the respondent submits a response to the Notice of Violation, the

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

(e) **Hearing.** A respondent who requests a hearing must also submit a response to the Notice of Violation and must provide an address and telephone number that the GRDA may use to communicate with the respondent concerning the hearing and final order. Upon timely receipt of a request for a hearing, the General Manager or his designee shall set the matter for hearing and shall notify the respondent in writing of the hearing at least ten (10) calendar days before the hearing. Notice of the hearing shall be delivered to the respondent using the address specified in the response to the Notice of Violation and shall state the date, time and location of the hearing.

**300:35-21-4. Hearing officer [REVOKED]**

The GRDA General Manager, or his designee, shall preside over all hearings as the hearing officer. The GRDA General Manager may appoint an individual who is not employed by GRDA to preside over any hearing as the hearing officer. The authority of the hearing officer shall commence upon his appointment and terminate upon the entry of a Final Order issued by the GRDA Board of Directors. The hearing officer shall have the duty to conduct a fair hearing, to take all reasonable action to avoid delay, and to maintain order. The hearing officer's authority shall include, but not be limited to:

- (1) Arrange and change the date, time and place of hearings and issue notices of hearings;
- (2) Hold conferences to settle, simplify or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;
- (3) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;
- (4) Administer oaths and affirmations;
- (5) Regulate the course of hearings;
- (6) Examine witnesses and direct witnesses to testify;
- (7) Receive, rule on, admit, exclude or limit evidence.
- (8) Rule on pending motions and procedural items; and
- (9) Allow for continuances.

**300:35-21-5. Report and record [REVOKED]**

As soon as practicable after the time for the parties to file proposed findings of fact and conclusions of law has expired, the hearing officer shall prepare a report containing the following:

- (1) Findings of fact and conclusions of law with the reasons therefore.
- (2) Recommendation to the GRDA Board of Directors.

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## 300:35-21-6. Final order [REVOKED]

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

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

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

## 300:35-21-7. Administrative appeal [REVOKED]

A challenge from the Board of Director's Final Order shall be made within twenty (20) days from the date of respondent's receipt of the Final Order to the District Court.

## 300:35-21-8. Noncompliance, violations and penalties [REVOKED]

Any person, firm or corporation that fails to comply with, or violates any Rule promulgated by GRDA shall, after notice and an opportunity for hearing as provided for herein, be required to reimburse GRDA for any direct cost and overhead incurred as a result of such failure to comply or violation. Such costs may include, but are not limited to, the costs associated with the repair, restoration and reclamation of the lands and waters of GRDA and any storage costs for the respondent's personal property and any other fee, penalty or fine as authorized by statute. Additionally, GRDA may cancel any permit or license which has been issued in connection with said boat, structure or facility and may remove or cause it to be removed from GRDA's lands and waters at the owner's expense.

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

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

Oklahoma state law regarding alcoholic beverages shall be applicable to all Waters and Land of GRDA, including areas in which off-road activities occur, but shall not have any effect on the codified rules found in Chapter 40 of Title 300~~630~~ of the Oklahoma Administrative Code.

## SUBCHAPTER 27. VEGETATION MANAGEMENT PLAN

## 300:35-27-4. Vegetation management

(a) The following acts are prohibited on GRDA Project Land:

(1) Herbicides shall not be used for control/removal of vegetation.

(2) Only environmentally approved pesticides ~~Pesticides~~ labelled for use around water shall not be applied on GRDA land.

(3) The sale of any tree or other vegetation that is removed or cut is prohibited.

(4) Fertilizers shall not be applied on GRDA land.

(5) Vegetable gardens are prohibited on GRDA land.

(6) The introduction or planting of invasive plant species is prohibited on GRDA Project Lands.

(7) Any Vegetation Management Activity that results in significant soil disturbance is prohibited.

(b) Machinery or equipment may be used to accomplish a permitted Vegetation Management Activity, subject to the following:

(1) Unless prohibited by GRDA, the following may be used in the performance of permitted activities:

(A) Hand-held tools including chainsaws and brush cutters.

(B) Mechanized equipment with a maximum power output not greater than 30 horsepower (hp), provided the use does not result in the unauthorized movement of soil, rocks, or existing live vegetation.

(2) The use of machinery with a maximum power output greater than 30 hp may be allowed with prior express approval from GRDA.

(3) All mechanized equipment used on GRDA lands shall have rubber wheels or rubber tracks unless previously approved by GRDA.

## 300:35-27-8. General permits for natural disasters and other emergencies

In the event a natural disaster or other emergency situation causes significant vegetation damage or debris accumulation within the project boundary to the extent that site specific permitting is impractical or would result in undue delay, the Chief Executive Officer ~~General Manager~~ may issue a general vegetation permit governing all management activities within an affected area in lieu of requiring site specific permits. A general permit shall clearly identify the scope of allowed activities, the areas in which the permit is applicable, and the period of time for which the permit is valid.

## SUBCHAPTER 30. FLOWAGE EASEMENTS

## 300:35-30-1. Lands subject to flowage easements

GRDA owns the flowage easement rights for Grand Lake and Lake Hudson. Prior to initiation of activity to occur on lake property owned by a party other than GRDA, the landowner should consult their abstract of title, or the county land records to determine if their property is subject to a flowage easement. If the property is subject to a flowage easement, the landowner

shall consult with GRDA regarding what activities may or may not occur on the land subject to the flowage easement.

[OAR Docket #22-646; filed 7-19-22]

TITLE 300. GRAND RIVER DAM AUTHORITY CHAPTER 40. SCENIC RIVERS RULES

[OAR Docket #22-647]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Licensing and Use Permits [NEW] 300:40-1-1 [NEW] 300:40-1-2 [NEW] 300:40-1-3 [NEW] 300:40-1-4 [NEW] 300:40-1-5 [NEW] 300:40-1-6 [NEW] Subchapter 2. Public Access Areas [NEW] 300:40-2-1 [NEW] 300:40-2-2 [NEW] 300:40-2-3 [NEW] Subchapter 3. Boater Safety [NEW] 300:40-3-1 [NEW] 300:40-3-2 [NEW] 300:40-3-3 [NEW] Subchapter 4. Protection of Natural Resources [NEW] 300:40-4-1 [NEW] 300:40-4-2 [NEW] 300:40-4-3 [NEW] 300:40-4-4 [NEW] 300:40-4-5 [NEW] 300:40-4-6 [NEW] 300:40-4-7 [NEW]

AUTHORITY:

Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 21, 2021

COMMENT PERIOD:

January 19, 2022 through February 18, 2022

PUBLIC HEARING:

March 1, 2022

ADOPTION:

March 9, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 17, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Effective July 1, 2016, the Scenic Rivers Commission created pursuant to Section 1461 of Title 82 of the Oklahoma Statutes was terminated and the rights and authorities of the Scenic Rivers Commission were transferred to the Grand River Dam Authority. 82 O.S. § 896.1. Further, Chapters 10 and 15 of Title 630 of the Oklahoma Administrative Code relating to licensing, use permits, and the protection of natural resources were transferred to the Grand River Dam Authority. 82 O.S. § 896.2. Additionally, the Authority is

authorized to promulgate rules protecting the natural resources of the scenic rivers, regulating public use areas, establishing use permits for scenic rivers, establishing licensing requirements for commercial float operators and setting fees for the issuance of the licenses. Id. The proposed rules concern licensing of commercial float operations and flotation devices, and the collection of fees to preserve the Illinois River as a Scenic River located within the counties of Adair, Cherokee, and Delaware in Oklahoma. Additionally, rules have been proposed regarding public access areas, camping restrictions, and boater safety to protect the natural resources of the Illinois River.

CONTACT PERSON:

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16th Street, Tulsa, OK 74128.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. LICENSING AND USE PERMITS

300:40-1-1. Purpose

The purpose of this Chapter is to establish a system of rules and licensing of Commercial Float Operations and commercial Flotation Devices and the collection of commercial and private fees to preserve the Scenic Rivers, meaning those portions of the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County, in their natural state and to preserve the health and safety of the patrons.

300:40-1-2. Authority

The rules and regulations set forth in this chapter are adopted pursuant to the authority granted the Grand River Dam Authority ("GRDA") in 82 O.S.2016 Section 896.1, et. seq., as amended.

300:40-1-3. Definitions

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

"Camping" means any method used for remaining overnight in a Public Access Area which includes, but is not limited to tents, vehicles, cots, trailers, recreational vehicles, and sleeping bags.

"Campsites" means a single site located within a Public Access Area which has been designated as open to Camping by the CEO.

"CEO" means the Chief Executive Officer of the Grand River Dam Authority and/or his designee.

"Commercial Float Operators" or "Operations" means any person or business, other than the GRDA or its contractors, that rents, sells or leases Flotation Devices commercially to the public for use upon Scenic Rivers within the jurisdiction of the GRDA.

"Flotation Device" means a canoe, boat, kayak, raft, inner tube, or other similar device, other than those belonging to

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the GRDA or its contractors, designed to transport one or more individuals on a Scenic River and not intended to solely transport food or drink.

**"Floating Public"** means any person who is floating upon the Scenic Rivers privately or by use of a licensed commercial Flotation Device.

**"Public Access Areas"** means an area within the jurisdiction of the GRDA which has been designated by the CEO as open for use by the public for Camping and day use activities under the terms and conditions of this subchapter.

**"Scenic Rivers"** means the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County, which are within the jurisdiction of the GRDA pursuant to 82 O.S. § 896.5.

### **300:40-1-4. Commercial licensing procedures, requirements, and annual use fees**

(a) The statutory annual river use license fee per commercially owned and operated Flotation Device shall be paid at the time of licensing.

(b) The license required for Commercial Float Operations shall be an annual license covering a calendar year. Licenses shall be properly displayed on each Flotation Device prior to its use on the river.

(c) Applications for new float licenses may be filed with the GRDA in January of each year. Commercial Float Operators shall file applications to renew their existing licenses during the month of September each year.

(1) Any Commercial Float Operator that fails to submit a renewal application in September shall only be eligible to renew 85% of the previous number of licenses, and the other 15% shall be released in January of the following year as new licenses. No renewal application shall be accepted after November.

(2) Any Commercial Float Operator that applies to renew his licenses must pay the statutory annual use fees, and pay or complete any outstanding GRDA obligations, by the last working day of November, or the application shall be denied and the number of licenses released as new licenses in January.

(3) In addition, any Commercial Float Operator, applying for license renewal, must be able to demonstrate a history of compliance with all applicable statutes and administrative rules regarding operation of their business. If such a showing cannot be made, the CEO has the discretion to deny issuance of licenses for the upcoming year. In addition to a failure of compliance, a Commercial Float Operator may be denied a license or licenses due to environmental and/or safety reasons. In determining whether to issue licenses for the upcoming year, the CEO may consider the following factors:

(A) Whether the Operator has engaged in a pattern of willful violation of GRDA rules and regulations;

(B) Whether the ecosystem of the river section within which the particular Flotation Device is authorized to float is, or is in danger of being, harmed

by the number of Flotation Devices authorized, and it is necessary for the protection of that section of the river to limit the number of licenses;

(C) The health and safety of individuals floating on the river is threatened by the number of Flotation Devices currently licensed to float on a particular section of the river; or

(D) The Commercial Float Operator has failed to comply with licensing requirements of rule 300:40-1-5 in previous float seasons.

(4) Any person may apply in January for new commercial Flotation Device licenses which may be available, up to the number provided in 300-40-1-5. The GRDA may then process the applications, evenly divide the numbers of licenses among the proper applications and issue them in February. If there are remaining licenses that are unable to be issued equally among applicants, the CEO may implement a random draw lottery process for the remaining licenses.

(5) Except for temporary licenses, new licenses shall not be issued unless the number of licenses renewed in the previous year was below the number authorized in 300:40-1-5.

(6) Use of Public Access Areas owned or controlled by the GRDA may be denied by the CEO based on expected adverse impacts to the Public Access Areas, on historical usage and regulatory compliance considerations and on the user's cooperation with other users.

(d) Application for such licenses shall be made on the form prescribed by the GRDA which shall include:

(1) The name and address of the Commercial Float Operation;

(2) The name and address of the owner or owners thereof;

(3) A description of lands owned or leased, and/or intended for use in the operation, including the launch and retrieval points;

(4) An inventory of usable Flotation Devices containing the following information: vessel type, manufacturer and model, color, serial number, and inventory number;

(5) A description of how the requirements of paragraph (h) of this section will be met; and

(6) An agreement to abide by all State laws and all GRDA rules and regulations.

(e) Licenses shall be issued in such form as is prescribed by the CEO, and shall be displayed on the right front (starboard bow) of Flotation Devices that have bows or conspicuously on the outside surface area above the water line of Flotation Devices without a discernable bow. If licenses are lost, the CEO may collect the reasonable replacement value of the licenses from the Commercial Operator needing replacement licenses.

(f) Licenses granted by this Chapter shall not be transferable between Commercial Float Operations or Operators. Prior to a transfer being made, notice must be given to and approval must be received from the CEO.

(g) The number of Flotation Devices to be licensed for commercial use shall be limited as provided in 300:40-1-5.

(h) All Commercial Float Operators must maintain clean and sanitary facilities, maintain in good working order their Flotation Devices offered for use, and also:

- (1) Provide access to toilet facilities to the Floating Public.
- (2) Provide trash bags and disposal information to all customers.
- (3) Conspicuously post signage on business premises and at launch points warning the Floating Public regarding:
  - (A) Flotation Devices may not be tied together;
  - (B) No trespassing;
  - (C) Water safety;
  - (D) Properly discard trash in trash bags or cans;
  - (E) Flotation Devices and ice chests are subject to random inspection by GRDA Police;
  - (F) Alcoholic spirits are prohibited on the Scenic Rivers and in public access areas;
  - (G) Drunk and disorderly conduct is cause for arrest.
- (4) All signs placed along the river corridor shall be informational in nature and shall comply to standards established by the GRDA.
- (5) Display on each Flotation Device the name of the Commercial Float Operation and an identification number at least three (3) inches high and two (2) inches wide on both the right and left sides (port and starboard sides), or once if it has no sides.
- (6) Assist in river and bank clean-up in their float area at least once each week during all weeks their Flotation Devices are operated on the river. Operators must also immediately notify GRDA of any navigational hazards on the river and provide assistance to GRDA as needed.
- (7) Provide, in each Flotation Device used, at least one U.S. Coast Guard approved wearable personal flotation device (life jacket) in good and serviceable condition for each person on board so placed as to be readily accessible and of a size suitable to the person who is or will be wearing it.
- (8) The GRDA can better protect the river and deploy its resources with knowledge of how many people are floating the river during various times. Accordingly, each Operator shall track and report monthly to the CEO the number of their customers per commercial float area from May through September.
- (9) All vehicular equipment owned or operated by a Commercial Float Operator or Operation, including trailers, must be properly registered, licensed, insured, and operated in accordance with all federal and state law and regulations. All vehicular equipment used must be in sound mechanical condition and trailer lights must light up when vehicle brakes are applied. In the event a school bus is put into service for the use of transporting (shuttling) visitors, the words "School Bus", the extension arm "Stop" sign, and all flashing lights must be removed, as required by applicable laws. Shuttle drivers must have the appropriate class of license for the vehicle being driven.

(i) Non-profit organizations may elect to obtain temporary licenses for their Flotation Devices as commercial Flotation Devices provided they do not exceed the float area restrictions of the Scenic Rivers as described in 300:40-1-5.

**300:40-1-5. Limitation on licensing of Flotation Devices**

- (a) It is the intent of the GRDA in issuing commercial flotation licenses to protect the ecosystem and environment and the aesthetic, scenic, historic, archaeological, and scientific features of the Scenic River areas as well as the public health and safety of individuals using the Scenic River areas.
- (b) It is the determination of the GRDA that at this time the Scenic Rivers cannot assimilate the damages to their ecosystems, environments, and aesthetic, scenic, historic, archaeological, and scientific features if more than 3,900 licenses are issued. Further, the protection of public health and safety requires that the GRDA not grant additional licenses.
- (c) The GRDA recognizes the current interests and property rights of persons with respect to Flotation Devices presently available for hire within its jurisdiction subject to the GRDA Commercial Float Area limitations. The number of such devices shall be set at a maximum of 3,900 for the combined Scenic River areas.
- (d) Any licensing of Flotation Devices in excess of said 3,900 shall be subject to approval of the GRDA. In order to receive an excess license, an applicant must reasonably demonstrate there will not be an adverse impact on the waterways within the jurisdiction of the GRDA. Such additional licensing shall be determined on the basis of density of current usage, number of licenses requested, and other considerations necessary for river protection.
- (e) In the event the GRDA determines that the requested licenses may harm the ecosystem, environment, or aesthetic, scenic, historic, archaeological or scientific features of the section of the river for which the licenses are sought, the GRDA shall deny the issuance of any licenses irrespective of the number of licenses currently issued. The GRDA shall also deny the issuance of any licenses irrespective of the number of licenses currently issued in circumstances when, in the opinion of the CEO, the health and safety of individuals floating on the river may be threatened by the addition of new Flotation Devices. Any license issued above 3,900 in any calendar year shall be temporary, for a stated period of time, and shall not be renewed during the annual licensing process.
- (f) The Illinois River Scenic River area is divided into the following sections for Commercial Flotation Operation and licensing purposes:
  - (1) From the Arkansas-Oklahoma state boundary (Illinois River mile 0) southward to Round Hollow Public Access Area (Illinois River mile 27.7) shall be known as GRDA Commercial Float Area One (GRDA CFA One).
  - (2) From Chewey Bridge (Illinois River Mile 23.6) southward to the No Head Hollow Public Access Area (Illinois River Mile 41.5) shall be known as GRDA Commercial Float Area Two (GRDA CFA Two).
  - (3) From Comb's Bridge (Illinois River mile 36.1) southward to and including the confluence of the Barren

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Fork Creek with the Illinois River shall be known as GRDA Commercial Float Area Three (GRDA CFA Three).

(g) Commercial Flotation Devices may only be floated in the commercial float area where they are licensed. Non-profit groups and persons wishing to engage in extended overnight float trips for the purposes of camping and/or fishing along the Scenic Rivers may float in areas outside of their licensed areas so long as a float plan is filed with the CEO and his approval is received.

(h) The operation of a commercial Flotation Device within a GRDA Commercial Flotation Area in violation of 300:40-1-5, shall subject that Commercial Float Operation to a fine not to exceed One Hundred Dollars (\$100.00).

### **300:40-1-6. Non-commercial fee procedures**

(a) Private, non-commercial Flotation Devices and persons who use them are subject to such statutory fees that are in effect while they are floating on state-designated Scenic Rivers.

(b) The CEO shall develop forms and procedures for the collection and administration of non-commercial fees.

(c) Businesses and commercial float operations ("collectors") may, on behalf of the GRDA, collect non-commercial fees and issue receipts or usage indicators when they are approved by the CEO and use the current forms and procedures of the GRDA. Collectors shall remit the non-commercial fees they collect to the GRDA using the current forms and procedures. Collectors may retain a percentage of statutory non-commercial fees for administering the non-commercial fee process in the amount that is currently designated by the GRDA but not more than 10%.

(d) GRDA Police and the CEO may require anyone using a non-commercial Flotation Device on or leaving the waters of a scenic river, who does not establish that they are exempt from statutory fees, to either show a receipt for or pay the statutory annual non-commercial fee.

## **SUBCHAPTER 2. PUBLIC ACCESS AREAS**

### **300:40-2-1. Camping fees**

(a) Camping shall only be allowed in campsites that are located within Public Access Areas and are designated by the CEO. Only one tent, along with one tent for children, is allowed per campsite.

(b) Camping fees shall be the same as the camping rates charged by the Oklahoma Tourism and Recreation Department. The GRDA shall post the current fee schedule. See, 82 O.S. § 896.16.

(c) The regular camping fee shall be discounted 50%:

(1) where one or more campers are 62 years of age or older, as documented by a valid driver's license, state-issued identification card, or passport;

(2) where one or more campers are certified as totally (100%) disabled or blind, as documented by a Medicare card or other federal or state-issued instrument; or

(3) for groups that provide at least 25 hours each year of beneficial service to the environment such as tree planting, refuse clean up or wildlife habitat improvement, as approved by the CEO.

(d) The CEO may waive or suspend camping fees for certain periods in the public interest.

### **300:40-2-2. Time limits and extensions**

(a) The duration of the authorized Camping shall be noted on each camping receipt, based on the number of days paid for in advance.

(b) Camping within the same Campsite or Public Access Area for longer than 7 consecutive days is prohibited without prior written approval from the CEO.

(c) The CEO may grant extensions beyond the 7 consecutive day limit in writing after consideration of the extent of public access area use, the particular recreation season, and anticipated holiday or weekend occupancy.

(1) Persons receiving extended camping privileges shall be limited to specific Campsites.

(2) Extensions shall be requested at least 48 hours prior to the date on which the extension would commence.

(d) Persons with a medical disability, who can verify that they are currently under a physician's care for such disability, may maintain the same Campsite for periods longer than 7 days with prior written approval from the CEO.

### **300:40-2-3. Use of public access areas**

(a) No person shall camp in a Campsite under the jurisdiction of the GRDA without paying the fee established by this section.

(b) Camping fee receipts shall be retained by campers for the duration of their stay and shall be available for review upon request of the CEO, a Camp Host or the GRDA Police.

(c) Camping fees receipts entitle the named holder to use a Campsite for the duration indicated on the receipt under the conditions set forth in this section. All camping fee receipts are non-transferable.

(d) The daily camping fee covers use of Campsites from 5:00 p.m. on the day of payment until 5:00 p.m. on the following day. Occupants shall vacate the Campsite by removing their personal property from the Campsite prior to 5:00 p.m. on the day they are scheduled to leave.

(e) The following activities are prohibited in all Public Access Areas:

(1) Excavation or leveling of the ground.

(2) Hanging a propane or gas operated lantern on any tree or plant.

(3) Leaving refuse or human waste at a campsite after departure.

(4) Camping within 25 feet of a water hydrant or within 100 feet of a stream, river or body of water, except where otherwise designated.

(5) Creating or sustaining unreasonable noise at a campsite as determined by the CEO or GRDA Police considering the nature and purpose of the actor's conduct, the impact on other users, and other factors which would



govern the conduct of a reasonably prudent person under the circumstances.

(6) Constructing permanent Camping facilities or dwellings.

(7) Camping or parking vehicles outside of Campsites and parking areas designated by the CEO.

(8) Parking a vehicle in, blocking access to, or occupying any designated Campsites without having first paid camping fees for that Campsite.

(9) Using the utility services in a Campsite or Public Access Area without having first paid Campsite or utility fees.

(10) Connecting more than one water, electrical or sanitary connection per Campsite or connecting to a utility which exceeds its manufactured design or capacity.

(11) There may not be more than two vehicles per campsite.

(12) Camping longer than duration of stay noted on the Camping receipt or exceeding the time limits set forth in this subchapter without prior written approval from the CEO.

(13) Entering or remaining in a Public Access Area for any purpose other than camping or authorized day use activities, except fishing.

(14) Possession or use of fireworks in Public Access Areas. The CEO may authorize fireworks on the 4th of July.

(15) Fires may only be built in fire pits or cookers established by the GRDA.

(16) Cutting or defacing trees, destroying vegetation, breaking limbs and branches from live trees for firewood in Public Access Areas.

(17) Pets must be leashed at all times when outside tents or recreational vehicles.

(f) Day use of Public Access Areas for general recreational activities, such as swimming, picnicking, fishing, and boat launching is permissible without charge only during open hours as defined and posted by the CEO.

(g) Entering or remaining in a day use area during closed hours is prohibited for any purpose, except for lawful fishing.

(h) Possession of an open container, or consumption, of alcohol (including Spirits, wine, beer and light or 3.2 beer) is prohibited in seven Public Access Areas: Todd, US 62 Bridge Access on the Illinois River, US 412 Bridge Access on Flint Creek, Lake Frances Dam Public Access Site, US 59 Illinois River Bridge Crossing Access Area, and Carnes Ford Area.

(i) Commercial Operators who use a Public Access Area to launch and retrieve Flotation Devices shall not block or discourage private use and shall police the area and its gravel bars for litter after each use. Commercial operators may not remain parked on gravel bars, block signage, trash receptacles, roads, access points, or life jacket loaner stations.

(j) Violations of GRDA regulations or state law may result in the suspension or revocation of Camping authorization or day use privileges. Other penalties prescribed by law may also apply.

**300:40-3-1. Life jackets**

All persons in a Flotation Device on a Scenic River must possess a U.S. Coast Guard-approved personal flotation device that is appropriately-sized and in good working order. All children 12 years of age and younger must wear their personal flotation device at all times while floating on a Scenic River.

**300:40-3-2. Alcoholic beverages**

The GRDA has found that drunk and disorderly conduct on the Scenic Rivers and in Public Access Areas is a danger to the public and to the Rivers, and is therefore a public nuisance for which the public has demanded abatement.

(1) Possession of any beverage defined as "Spirits" in the Oklahoma Alcoholic Beverage Control Act is prohibited on the Scenic Rivers and in Public Access Areas at all times. The Oklahoma Alcoholic Beverage Control Act defines "Spirits" to mean, in part, *any beverage other than wine, beer or light beer, which contains more than one-half of one percent (1/2 of 1%) alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall not include any alcohol liquid completely denatured* (2015 Title 37 O.S. Section 506).

(2) Wine, beer and light beer in the original, non-glass packaging may be possessed and consumed by persons 21 years of age or older while floating on Scenic Rivers and in the Stunkard, Peavine, Edmondson, Round Hollow, No Head and Echota public access areas.

**300:40-3-3. River Hazards and Closures**

In emergency circumstances, GRDA may close the Scenic Rivers, or sections of the Scenic Rivers, to private and commercial use. In order to help ensure the safety of the Floating Public, Commercial Float Operators must remain cognizant of changing river levels and conditions in their commercial float areas. River levels are determined by the USGS gage at Chewey Bridge when operating upstream of River Mile 40 and the USGS gage at Tahlequah when operating below River Mile 40.

(1) Commercial Operations are prohibited when river levels are determined to be at flood stage or the river is still rising and approaching flood stage as determined by the USGS gages.

(2) When river levels are higher than 6' foot at the USGS Chewey Bridge gage or 6'6" at the USGS Tahlequah gage, Commercial Float Operators will practice due diligence in informing clients regarding the inherent dangers of floating at high river levels.

(3) Commercial Float Operators will use discretion in providing service to people who appear to be incapacitated to the point of being harmful to themselves or others.

**SUBCHAPTER 3. BOATER SAFETY**

**SUBCHAPTER 4. PROTECTION OF NATURAL RESOURCES**

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## **300:40-4-1. Protection of Scenic Rivers' natural resources**

The purpose of Sections 40-4-1 through 40-4-7 is to establish standards for the GRDA to protect the natural resources of the Scenic Rivers located within its current operating area, which includes the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County (referred to in this chapter as "Scenic Rivers").

## **300:40-4-2. Recreational vehicles**

No vehicle shall drive upon the Scenic River streambeds for purposes of enjoyment or recreation.

## **300:40-4-3. Certain containers prohibited**

Containers made of glass or Styrofoam (bottles, jars, plates, etc.) and jello-shot containers are not allowed on Scenic Rivers; except, however, that prescription medicine and the contents of trash containers from river cleanups are exempt.

## **300:40-4-4. Gravel mining operations prohibited**

(a) When used in this section, the following definitions apply:

(1) The term "River Bank" means the area lying directly adjacent to the River Bed with a width of 100 feet on either side of the River Bed.

(2) The term "River Bed" means any area of the river lying below the ordinary high water mark.

(b) Gravel mining operations which remove gravel from the River Beds of Scenic Rivers are prohibited and are declared a public nuisance.

(c) Gravel mining operations are prohibited and declared a public nuisance where such operations remove gravel from the banks of Scenic Rivers if such removal negatively impacts the river by causing turbidity, erosion, pollution, or otherwise damages the Scenic River environment.

(d) This section shall apply to restrict state permits to mine gravel that are pending as of April 20, 1993 or new permit applications submitted after that date. The CEO may authorize site-specific exemptions for good cause, such as to remove gravel that was deposited above the ordinary high water mark by floods.

## **300:40-4-5. Ice chest restrictions**

To prevent littering, no Flotation Device shall contain an ice chest that does not have a secured lid to prevent spilling its contents or is larger than 52-quart capacity on a Scenic River.

## **300:40-4-6. Tying Flotation Devices prohibited**

To minimize environmental damage to the stream and river banks and increase public safety, no person shall tie or otherwise connect two or more Flotation Devices together on Scenic Rivers except during rescue and retrieval. Drink coolers must be so closely tied to Flotation Devices as to be within arms-

reach of the occupant of the Flotation Device to which it is attached.

## **300:40-4-7. Vessel restrictions**

Except for GRDA and law enforcement personnel, and during GRDA authorized search and rescue training and operations, no person shall:

(1) operate a commercial Flotation Device on Flint Creek in Delaware County or on those portions of Barren Fork Creek in Cherokee County;

(2) operate a jet ski, airboat, hovercraft or similar water craft on a Scenic River; or

(3) operate a vessel with a motor of more than 10 horsepower on a Scenic River. Provided, however, that vessels with up to 25 horsepower may be used by anyone gigging during gigging season defined by the Oklahoma Department of Wildlife Conservation, and by Commercial Float Operators to rescue floaters; and

(4) All vessels must meet U.S. Coast Guard and State of Oklahoma requirements. Commercial Float Operators shall notify GRDA Police when searching for floaters.

*[OAR Docket #22-647; filed 7-19-22]*

## **TITLE 300. GRAND RIVER DAM AUTHORITY CHAPTER 45. ADMINISTRATION OF RULES AND HEARINGS**

*[OAR Docket #22-648]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

300:45-1-1 [NEW]

300:45-1-2 [NEW]

300:45-1-3 [NEW]

300:45-1-4 [NEW]

300:45-1-5 [NEW]

300:45-1-6 [NEW]

300:45-1-7 [NEW]

300:45-1-8 [NEW]

### **AUTHORITY:**

Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B)

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

December 21, 2021

### **COMMENT PERIOD:**

January 19, 2022 through February 18, 2022

### **PUBLIC HEARING:**

March 1, 2022

### **ADOPTION:**

March 9, 2022

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

March 17, 2022

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

### **FINAL ADOPTION:**

June 21, 2022

### **EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules detail the duties of the Chief Executive Officer and the Board of Directors for enforcement proceedings related to the issuance of permits, and licenses by the agency. The proposed rules allow for a Notice of Violation to be issued, a hearing officer to preside over any hearing and prepare a written report which shall be presented to the Board of Directors for action. The text of the proposed rules is currently included in Title 300, Chapter 35 Lake Rules and has been revised and is proposed as a separate chapter.

**CONTACT PERSON:**

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16<sup>th</sup> Street, Tulsa, OK 74128.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**300:45-1-1. Chief Executive Officer duties**

The Chief Executive Officer of the Grand River Dam Authority is authorized to administer the Rules and Regulations promulgated by the Grand River Dam Authority. The Chief Executive Officer, or the Chief Executive Officer's designee, shall issue all permits and licenses provided for herein and may, at the sole discretion of the Chief Executive Officer or the designee, hold such public meetings or hearings as deemed necessary related to such matters.

**300:45-1-2. GRDA Board of Directors duties**

The Board of Directors of the Grand River Dam Authority retains the right to authorize and issue any and all permits and licenses not specifically provided for in these Rules and Regulations. No fees, charges or any of these Rules and Regulations shall be changed in any manner without the approval of the Board of Directors.

**300:45-1-3. Hearings for violation of rules**

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

- (1) The name of the person or entity responsible for the violation (the "Respondent");
- (2) A description of the nature of the violation;
- (3) The remedial action and/or the relief required, which may include revocation of the permit or the imposition of a fee, penalty or fine as authorized by statute and/or the correction of any deficiency;
- (4) A reasonable time to comply with the remedial action and/or the relief required;
- (5) That the Respondent may submit a response to the Notice of Violation, how and where a response may be submitted, and the deadline to submit a response; and

(6) That, in connection with the submission of a response to the Notice of Violation, the Respondent may request a hearing before the Chief Executive Officer or his designee to challenge the Notice of Violation.

(b) Service of the Notice of Violation. At the election of the GRDA, a Notice of Violation shall be served upon the Respondent in the same manner as a civil summons is served. In the event the violation relates to a dock that is not permitted in the current owner's name or the permit owner is deceased and no probate is pending, service can be made by posting the Notice on the dock or walkway to the dock.

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

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

(e) Hearing. A Respondent who requests a hearing must also submit a response to the Notice of Violation in order to provide an address and telephone number that the GRDA may use to communicate with the Respondent concerning the hearing and final order. Upon timely receipt of a request for a hearing, the Chief Executive Officer or his designee shall set the matter for hearing and shall notify the Respondent in writing of the hearing at least ten (10) calendar days before the hearing. Notice of the hearing shall be delivered to the Respondent using the address specified in the response to the Notice of Violation and shall state the date, time and location of the hearing.

**300:45-1-4. Hearing officer**

The GRDA Chief Executive Officer shall appoint an individual who is not employed by GRDA to preside over any hearing as the Hearing Officer. The authority of the Hearing Officer shall commence upon his appointment and terminate upon the issuance of his written recommendation to the GRDA Board of Directors. The Hearing Officer shall have the duty to conduct a fair hearing, to take all reasonable action to avoid delay, and to maintain order. The Hearing Officer's authority shall include, but not be limited to:

- (1) Arrange and change the date, time and place of hearings and issue notices of hearings;
- (2) Hold conferences to settle, simplify or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;
- (3) Administer oaths and affirmations;
- (4) Regulate the course of hearings;
- (5) Examine witnesses and direct witnesses to testify;
- (6) Receive, rule on, admit, exclude or limit evidence.
- (7) Rule on pending motions and procedural items; and

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(8) Allow for continuances.

## **300:45-1-5. Report and record**

The Hearing Officer shall prepare a report containing the following:

- (1) Findings of fact and conclusions of law with the reasons therefore.
- (2) Recommendation to the GRDA Board of Directors regarding the pending Notice of Violation.

## **300:45-1-6. Board Action**

After the Hearing Officer has sent his recommendation to the GRDA Board of Directors as provided in 300:35-21-5 or after the time to remedy the violation has passed in the event the Respondent does not request a hearing, the Board of Directors shall adopt, amend, or reject any findings or conclusions presented to the Board.

## **300:45-1-7. Administrative appeal**

A challenge from the Board of Director's decision shall be made within twenty (20) days from the date of Respondent's receipt of such decision to the District Court.

## **300:45-1-8. Noncompliance, violations and penalties**

Any person, firm or corporation that fails to comply with, or violates any Rule promulgated by GRDA shall, after notice and an opportunity for hearing as provided for herein, be required to reimburse GRDA for any direct cost and overhead incurred as a result of such failure to comply or violation. Such costs may include, but are not limited to, the costs associated with the repair, restoration and reclamation of the lands and waters of GRDA and any storage costs for the Respondent's personal property and any other fee, penalty or fine as authorized by statute. Additionally, GRDA may cancel any permit or license which has been issued in connection with said boat, structure or facility and may remove or cause it to be removed from GRDA's lands and waters at the owner's expense.

*[OAR Docket #22-648; filed 7-19-22]*

## **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 1. PROCEDURES OF THE OKLAHOMA STATE BOARD OF HEALTH**

*[OAR Docket #22-590]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Meetings  
310:1-3-2. Location [AMENDED]  
Subchapter 5. General Course and Method of Operations  
310:1-5-1. Principal office [AMENDED]

**AUTHORITY:**  
Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

October 18, 2021

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

December 15, 2021

**ADOPTION:**

January 20, 2022

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

January 20, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions update the Department of Health's address from 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117 to 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma 73102.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## **SUBCHAPTER 3. MEETINGS**

### **310:1-3-2. Location**

The Board may convene at any location or institution ~~within~~within the jurisdiction of the Board or of the State Commissioner of Health, or at such other location as the Board may specify. Provided, that unless otherwise specified, meetings shall be conducted at the room provided for that purpose at the ~~Oklahoma State Department of Health Building, 1000 NE Tenth Street~~123 Robert S. Kerr Ave., Oklahoma City, Oklahoma, 73102-6406.

## **SUBCHAPTER 5. GENERAL COURSE AND METHOD OF OPERATIONS**

### **310:1-5-1. Principal office**

The principal office of the Board of Health is ~~Suite 305, Department of Health Building, 1000 N.E. Tenth Street, Oklahoma City, Oklahoma 73117-1299;~~ Oklahoma State Department of Health, Attention: Board of Health, 123 Robert S. Kerr Ave., Oklahoma City, OK 73102-6406.

*[OAR Docket #22-590; filed 7-12-22]*

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

[OAR Docket #22-591]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 7. Additional Procedures for Administrative Penalty Proceedings
Part 1. Environmental Health Penalties
310:2-7-1. Applicability [AMENDED]
Subchapter 11. Environmental Consumer Health Service License Processing Times
310:2-11-1. Purpose and applicability [AMENDED]
310:2-11-2. Definitions [AMENDED]
310:2-11-3. Application submittal [AMENDED]
310:2-11-4. Common procedures Application processing and review [AMENDED]
310:2-11-5. Pending failures [AMENDED]
Subchapter 21. Rules of Procedure Governing Individual Proceedings
310:2-21-10. Pre-hearing procedure [AMENDED]
310:2-21-28. Video teleconference Videoconference hearings [AMENDED]
Subchapter 25. Discovery
310:2-25-5. Enforcement of discovery rules and orders [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 18, 2021

COMMENT PERIOD:

November 15, 2021 through December 15, 2021

PUBLIC HEARING:

December 15, 2021

ADOPTION:

January 20, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 20, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Various subchapters of Chapter 2 are being revised. Subchapter 11 has been updated to accurately reflect that it applies to all Consumer Health Service licenses, not just environmental licenses, and to reduce the completeness review period from 60 to 30 days. Subchapter 21 has been updated to allow an individual to use his/her phone or laptop for videoconference hearings, rather than driving to a county health department location and using its equipment. Lastly, Subchapter 25 has been revised to correct a scrivener's error made in a legal reference.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 7. ADDITIONAL PROCEDURES FOR ADMINISTRATIVE PENALTY PROCEEDINGS

PART 1. ENVIRONMENTAL HEALTH PENALTIES

310:2-7-1. Applicability

The requirements of Part 1 of this Subchapter, Environmental Health Penalties, are in addition to other requirements of this Chapter governing individual proceedings and are applicable to matters where the Department is a party brought under 63 O.S. § 1-1701.1A.

SUBCHAPTER 11. ENVIRONMENTAL CONSUMER HEALTH SERVICE LICENSE PROCESSING TIMES

310:2-11-1. Purpose and applicability

(a) Purpose. The rules in this Subchapter are intended to establish time periods for issuance or denial of licenses that are required by law for submittals made after the effective date of this Subchapter.

(b) Licenses included. The provisions of this Subchapter apply to licenses reviewed by the Consumer Protection Service Division or the Occupational Licensing Service and their successors Division, both within Consumer Health Service.

(c) Supersedes inconsistent rules. Except as otherwise provided by statute, the provisions of this Subchapter shall supersede any inconsistent provision of other Chapters of this Title.

310:2-11-2. Definitions

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

"Administratively complete" means an application that contains the information specified in the application form and rules in sufficient detail to allow the Department to begin technical regulatory review.

"Application" means a document prepared in accordance with the rules and the forms and instructions provided by the Environmental Consumer Health Service and submitted with the expectation of providing that information necessary for review and determination of the permit. The application consists of the initial submittal and all supplements.

"Division" means those portions of the Department that are specified in Section 310:2-11-1 and which are part of the Environmental Consumer Health Service.

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"**Submittal**" means each separately submitted document or document package that forms a part of an application.

"**Supplement**" means a response to a request for additional information following completeness and ~~technical~~ regulatory reviews, and information submitted voluntarily by the applicant.

## 310:2-11-3. Application submittal

(a) **Application forms.** Each Division ~~shall~~ will make available to the public, for each type of ~~environmental~~ permit or license required, a detailed, comprehensive permit application package, including rules, forms, checklists, instructions and guidance.

(b) **Filing.** Applications and submittals ~~shall~~ be filed with the respective Division.

(c) **Format.** Each submittal must be ~~separately fastened, labeled and tabbed, including maps and drawings complete and legible,~~ so required information can be easily found and to clearly preserve the chronology.

## 310:2-11-4. ~~Common procedures~~ Application processing and review

(a) **Filing of applications.** Unless otherwise provided in this Subchapter, upon the receipt of an application and the proper fee, each Division ~~shall~~ will:

- (1) file-stamp the application with the date of receipt, the Division name and the application number; and
- (2) assign each application to a named person who will do the review. This information ~~shall~~ will be timely logged.

(b) **Administrative completeness review.** Unless otherwise provided in this Subchapter, the reviewer ~~shall have 60~~ has 30 calendar days ~~in which~~ to initially determine if the filed application is administratively complete.

(1) **Not complete.** Upon determining that the application is not administratively complete, the reviewer ~~shall~~ will immediately notify the applicant ~~by mail~~ and ~~shall~~ indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification ~~shall~~ does not require or preclude further review of the application and further requests for specific information. If the reviewer fails to notify the applicant as specified in this Paragraph, the period for ~~technical~~ regulatory review ~~shall~~ will begin at the close of the administrative completeness review period.

(2) **Complete.** Upon a determination that the application is administratively complete, the reviewer ~~shall~~ log the date and immediately notify the applicant by mail. ~~The period for technical~~ regulatory review period begins.

(c) **Technical/Regulatory review.** Each Division involved ~~shall~~ will have ~~thirty (30)~~ 30 days from the date a ~~completed~~ an application is ~~filed~~ determined to be administratively complete to review each application for ~~technical~~ compliance with the relevant regulations and reach a final determination.

(d) **When times are tolled.** The time period for ~~technical~~ regulatory review is ~~toll~~ tolled (the clock stops) during litigation, during public review (public meetings or hearings,

administrative hearings, public comment periods, and review by other federal or State agencies) or when the Division has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(e) **Supplements.** To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for ~~technical~~ regulatory review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified.

(f) **Delays/Failure to provide supplemental information.** ~~Failure by an applicant to supplement an application within 180 days after the request shall be deemed to be withdrawn unless the time is extended by agreement for good cause. An application is considered withdrawn, if an applicant fails to provide supplemental information within 180 days from the date of request. The 180 day time period may be extended by agreement for good cause.~~

(g) **Extensions.** Extensions may be ~~made~~ allowed as provided by law or at Consumer Health Service's discretion.

## 310:2-11-5. Pending failures

(a) **Circumstances outside agency control.** ~~Technical review~~ Review times ~~shall~~ may be tolled ~~for specified when, prior to the deadline, when~~ the Commissioner certifies that a failure to meet a deadline is imminent and is caused by circumstances outside the control of the Department. Such circumstances include, but are not limited to, acts of God, a substantial and unexpected increase in the number of applications filed, ~~and~~ or additional review duties imposed on the Department from an outside source.

(b) **Other circumstances.** ~~Where circumstances which are not clearly outside the control of the Department may cause a failure to meet a deadline, then:~~

(1) ~~At least thirty (30) calendar days prior to the deadline the Department shall reassign staff and/or retain outside consultants to meet such deadline.~~

(2) ~~The Applicant may agree to an extension of time for a specific purpose and period of time with a refund of the entire application fee, unless a refund is prohibited by law. When the Department is unable to meet an application deadline for reasons within its control, the applicant can agree to an extension or withdraw the application and receive a refund for the application fee, unless the refund is prohibited by law.~~

## SUBCHAPTER 21. RULES OF PROCEDURE GOVERNING INDIVIDUAL PROCEEDINGS

### 310:2-21-10. Pre-hearing procedure

(a) **Purpose.** All matters pending before the Office of Administrative Hearings are subject to pre-hearing procedures determined by the assigned administrative law judge to be appropriate for a prompt and efficient resolution to matter. At least one pre-hearing conference will routinely be ordered

unless the assigned administrative law judge determines the same to be unnecessary.

(b) **Initial Disclosure Statement.** Within thirty (30) days after the filing of an answer, each party shall file the following information, and shall provide copies to the assigned administrative law judge and all parties:

- (1) A brief statement of the case, together with a list of stipulations to which the party will agree, and requested remedies;
- (2) A list of all known witnesses who have knowledge of the facts surrounding the issues of the case and who may be expected to be called at the hearing. The list shall include a brief summary of the expected testimony of each witness;
- (3) A list of any known documents or other exhibits together with the original or a copy of each document or exhibit that may be offered into evidence at the hearing. Non-documentary exhibits shall be described and a date given when they can be made available to the opposing party for inspection;

(c) **Pre-hearing Conference procedure.** The assigned administrative law judge shall provide notice to the parties of the date, time, and place of any pre-hearing conference at least ten (10) days prior to the scheduled date. The conference shall be informal, structured by the assigned administrative law judge, and not open to the public. If a record is deemed advisable by the assigned administrative law judge or requested by the parties, the conference may be recorded by audio tape and/or transcribed by a court reporter at the requesting party's expense. The pre-hearing conference shall be used to resolve any dispute or matter the resolution of which would promote the orderly and prompt conduct of the pre-hearing process or the hearing on the merits. The administrative law judge shall issue an order reciting any agreements made by the parties as to any matter considered. No witnesses shall appear or present evidence. The assigned administrative law judge may convert a pre-hearing conference into a scheduling conference, which may be held telephonically.

(d) **Final Pre-hearing Conference.** The assigned administrative law judge may hold more than one pre-hearing conferences or a final pre-hearing conference to formulate the final plan to streamline the hearing on the merits. If a final pre-hearing conference is ordered, the attorneys and any unrepresented parties shall confer prior to the final pre-hearing conference and prepare a single suggested Pre-hearing Conference Order for use during the conference and the hearing on the merits. Any party unable to secure the cooperation of another party may submit their own Proposed Final Pre-hearing Conference Order and, if the other party's cooperation is shown to be without cause, request that the other party's Proposed Final Pre-hearing Conference Order be stricken. The Final Pre-hearing Conference Order may follow substantially the form provided in Rule 5 of the Rules for District Court, 12, O.S., Ch.2, App. Such order, when entered, controls the subsequent course of the proceeding, unless modified to prevent manifest injustice. The assigned administrative law judge may waive the requirement of a pre-hearing conference order unless such order is requested by a party.

**310:2-21-28. ~~Video teleconference~~ Videoconference hearings**

(a) **General.** Any hearing may be held using ~~by video teleconference~~ videoconference technology using the capability provided for such transmissions at qualified local county health department locations. The proceedings will be conducted in a manner that is similar to those conducted when all parties are in the same room. ~~Participants will be~~ A participant is required to sit in front of a television monitor and a device (e.g. phone, laptop, computer monitor, television) that allows the person to see the parties at the other locations.

(b) **Procedure.** The opposing party witnesses are required to arrive at the designated video teleconference venue at least twenty (20) minutes prior to the time of hearing. At the commencement of a ~~video teleconference~~ videoconference the presiding administrative law judge, hearing clerk or video coordinator will check that the link has been established. The administrative law judge will confirm that the ~~remote~~ participants at the remote location can be seen and heard clearly and in like manner ~~insure~~ verify that the ~~remote~~ participants at the remote venue can clearly see and hear the participants and administrative law judge at the hearing venue. The assigned administrative law judge will decide and explain the procedure for the ~~video teleconference~~ videoconference prior to testimony being taken. Identification for each participant, such as a driver's license or photo I.D., may be required. At the beginning of the docket, each case will be called and the parties will be given the number in which their case will be heard. Only the case being heard by the presiding administrative law judge will be in video contact with the tribunal. ~~Parties are to remain at the video teleconference location until their case is called and their hearing has been conducted.~~ The administrative law judge may dismiss witnesses prior to conclusion of the hearing.

(c) **Seating and configuration of the participants.** ~~The Department's representative and witnesses will sit on the right side of the table as they are facing the tribunal. The opposing party and witnesses will sit on the left side of the table as they are facing the tribunal. Depending upon the arrangement of the particular room at the remote venue, seating arrangements may change. All persons present will use good manners and maintain a civil attitude. All persons present will dress and act appropriately as conduct themselves as if they were in a formal courtroom, including turning off or silencing all cell phones or other electronic devices. No hats will be worn in either venue. Once a hearing begins, all video teleconference participants at all locations connected to the conference shall be in full view of the camera at all times, with minimal visual obstructions.~~

(d) **Hearing procedure.** The administrative law judge will be in charge of the proceedings. Parties will be sworn in and testimony taken as in a courtroom proceeding. The entire proceeding will be recorded using both audio and video means. Only one person shall talk at a time as directed by the administrative law judge.

(e) **Recesses.** If a recess is taken, the administrative law judge will indicate for the record when it starts and stops and when the record is to continue. The administrative law judge

will also note the presence or absence of those attending and previously identified prior to the recess.

(~~f~~) **Exhibits.** All exhibits that a party intends to present at a hearing must be submitted to the administrative hearing clerk and opposing party/counsel at least five (5) days prior to the hearing. All exhibits must be identified numerically and indicate if the exhibit is by petitioner or respondent. (Example: Respondent's Exhibit 1). If the author of a document is not present to provide a foundation for admission, and the document does not otherwise qualify for an exception, it may be denied admission into evidence unless the administrative law judge determines it has probative value to the issues of the case. Other than a request for a hearing letters to the tribunal or letters to the Department are not part of the evidence unless offered by one of the parties and admitted.

(~~g~~) **Witnesses.** In some cases, witnesses may be required to wait outside the hearing room at a remote venue because of limitations on space or because of a procedural requirement. In most cases, all witnesses will be sworn in at the beginning of the hearing and admonished not to discuss their testimony with other witnesses.

(~~h~~) **Continuances.** A request to continue a video-teleconference hearing must be made no later than five (5) days before the hearing unless there is a showing of good cause. The request must be in writing and either mailed, faxed or emailed to the hearing clerk within the time specified. The request must explain why a continuance is necessary, must indicate the person requesting the continuance, and must indicate if the opposing counsel has been contacted and whether opposing counsel objects to the continuance request. If the hearing is continued, it will be scheduled on the next available docket.

(~~j~~) **Technical difficulties.** If a video link is interrupted or cannot be established, the hearing may be postponed or proceed as a telephone hearing at the discretion of the tribunal.

## SUBCHAPTER 25. DISCOVERY

### 310:2-25-5. Enforcement of discovery rules and orders

The sanctions available in OAC ~~310:2-25-24~~310:2-21-24 are applicable to this Subchapter, and failure or refusal to comply with a discovery order may result in the imposition of one or more sanctions against the offending party. In addition, the Department may seek enforcement by District Court order if deemed necessary for the proper and just disposition of the case.

*[OAR Docket #22-591; filed 7-12-22]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 233. BODY PIERCING AND TATTOOING

*[OAR Docket #22-592]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:233-1-1. Purpose [AMENDED]

310:233-1-2. Definitions [AMENDED]

310:233-1-3. Prohibited acts [NEW]

Subchapter 3. Body Piercing Artist and Tattoo Artist ~~Requirements and Professional Standards~~

310:233-3-1. Records [REVOKED]

310:233-3-1.1. Hygienic Standards [NEW]

310:233-3-2. Prohibited acts [REVOKED]

310:233-3-2.1. Preparation and care of the body art area [NEW]

310:233-3-3. Standards [REVOKED]

310:233-3-3.1. Reusable equipment [NEW]

310:233-3-4. Exemptions [REVOKED]

310:233-3-4.1. Single use items [NEW]

310:233-3-5. Public notification requirements [REVOKED]

310:233-3-5.1. Client identification [NEW]

310:233-3-6. Client records [REVOKED]

310:233-3-6.1. Consent form [NEW]

310:233-3-7. Preparation and care of the body art area [REVOKED]

310:233-3-7.1. Aftercare instructions [NEW]

310:233-3-8. Records retention [NEW]

Subchapter 5. Sanitation and Sterilization Procedures

310:233-5-1. Reusable equipment [REVOKED]

310:233-5-2. Single use items [REVOKED]

Subchapter 7. Requirements for Premises

310:233-7-1. Physical construction and maintenance [REVOKED]

310:233-7-1.1. Establishment physical construction [NEW]

310:233-7-2. Location requirements and limitations [REVOKED]

310:233-7-2.1. Procedure areas [NEW]

310:233-7-3. Decontamination room [NEW]

310:233-7-4. Waste Disposal [NEW]

Subchapter 9. License Requirements

310:233-9-1. Body piercing or tattoo license [REVOKED]

310:233-9-1.1 Artist and establishment license [NEW]

310:233-9-2. Artist license [REVOKED]

310:233-9-2.1. Event and establishment license application [NEW]

310:233-9-3. Prohibitions [REVOKED]

310:233-9-3.1. Event license [NEW]

310:233-9-4.1. Individual license and certificate applications [NEW]

310:233-9-5. Apprentice sponsor [REVOKED]

310:233-9-5.1. License and certificate fees [NEW]

310:233-9-6. Apprentice program [REVOKED]

310:233-9-6.1. Student curriculum [NEW]

310:233-9-7. Apprentice [REVOKED]

310:233-9-7.1. Suspension or withdrawal of sponsor certificate [NEW]

310:233-9-8. License application and review process [REVOKED]

Subchapter 11. Enforcement

310:233-11-1. General requirements [REVOKED]

310:233-11-1.1. Waivers [NEW]

310:233-11-2. Investigation, filing of actions and hearing procedures [REVOKED]

310:233-11-2.1. Time frame for correction [NEW]

310:233-11-3. Suspension or revocation of licenses [REVOKED]

310:233-11-3.1. Investigation and enforcement [NEW]

310:233-11-4. Suspension or withdrawal of apprentice sponsor [REVOKED]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

October 18, 2021



**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

December 15, 2020

**ADOPTION:**

January 20, 2022

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

January 20, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Subchapter 1: 310:233-1-1 The current rule cites the purpose and source law. The proposed rule reduces redundant language.

310:233-1-2 The current rule defines terms used in the chapter. The proposed rule reduces redundant language and clarifies and adds definitions.

310:233-1-3 There is no current rule. The proposed rule lists out all prohibited acts in the current chapter.

Subchapter 3: The current rule sets professional standards. The proposed rule reduces redundant language.

310:233-3-1 The current rule describes the information required to be retained at the establishment. The current rule has been revoked.

310:233-3-1.1 There is no current rule. The proposed rule describes the hygienic standards of the artist.

310:233-3-2 The current rule describes prohibited acts. The current rule has been revoked.

310:233-3-2.1 There is no current rule. The proposed rule describes the preparation of the body art area.

310:233-3-3 The current rule describes the hygienic standards of the artist. The current rule has been revoked.

310:233-3-3.1 There is no current rule. The proposed rule describes how to clean and sterilize reusable instruments.

310:233-3-4 The current rule exempts the piercing of the ear lobe. The current rule has been revoked.

310:233-3-4.1. There is no current rule. The proposed rule describes how single use items are to be used.

310:233-3-5. The current rule describes the public notification requirements. The current rule has been revoked.

310:233-3-5.1. There is no current rule. The proposed rule describes the identification requirements.

310:233-3-6. The current rule describes what information the artist must document to perform a procedure. The current rule has been revoked.

310:233-3-6.1. There is no current rule. The proposed rule describes what information the artist must document to perform a procedure.

310:233-3-7. The current rule describes the preparation of the body art area. The current rule has been revoked.

310:233-3-7.1. There is no current rule. The proposed rule describes what information is required on after care instructions.

310:233-3-8. There is no current rule. The proposed rule describes record retention limits.

Subchapter 5: The current rule describes sanitation and sterilization procedures. The current rule has been revoked.

310:233-5-1. The current rule describes how to clean and sterilize reusable instruments. The current rule has been revoked.

310:233-5-2. The current rule describes how single use items are to be used. The current rule has been revoked.

Subchapter 7: 310:233-7-1. The current rule describes the physical construction of an establishment. The current rule has been revoked.

310:233-7-1.1. There is no current rule. The proposed rule describes the physical construction of an establishment.

310:233-7-2. The current rule prohibits a mobile establishment. The current rule has been revoked.

310:233-7-2.1. There is no current rule. The proposed rule describes the procedure area.

310:233-7-3. There is no current rule. The proposed rule describes the decontamination room.

310:233-7-4. There is no current rule. The proposed rule describes proper waste disposal.

Subchapter 9: 310:233-9-1. The current rule describes the requirements and cost of establishment license. The current rule has been revoked.

310:233-9-1.1. There is no current rule. The proposed rule describes the requirements and limitations for obtaining a license.

310:233-9-2. The current rule describes the requirements and cost for an artist license. The current rule has been revoked.

310:233-9-2.1. There is no current rule. The proposed rule describes the information needed to apply for and be issued an establishment or event license.

310:233-9-3. The current rule describes prohibitions to holding a license. The current rule has been revoked.

310:233-9-3.1. There is no current rule. The proposed rule describes the requirements and standards for events.

310:233-9-4.1. There is no current rule. The proposed rule describes the requirements for all artist licenses and certificates.

310:233-9-5. The current rule describes the requirements to be a sponsor. The current rule has been revoked.

310:233-9-5.1. There is no current rule. The proposed rule details the license and renewal fees for artist and establishment licenses.

310:233-9-6. The current rule describes the requirements of the apprentice program. The current rule has been revoked.

310:233-9-6.1. There is no current rule. The proposed rule describes the student curriculum requirements.

310:233-9-7. The current rule describes the requirements for an apprentice. The current rule has been revoked.

310:233-9-7.1. There is no current rule. The proposed rule describes how a sponsor certificate may be suspended.

310:233-9-8. The current rule tells applicant to submit document as required by another section. The current rule has been revoked.

Subchapter 11: 310:233-11-1. The current rule describes the investigation and enforcement process. The current rule has been revoked.

310:233-11-1.1. There is no current rule. The proposed rule provides a method for variances and waivers to be granted on a case-by-case basis.

310:233-11-2. The current rule describes the investigation and enforcement process. The current rule has been revoked.

310:233-11-2.1. There is no current rule. The proposed rule sets a timeframe for the correction of violations.

310:233-11-3. The current rule describes how a license may be suspended or revoked. The current rule has been revoked.

310:233-11-3.1. There is no current rule. The proposed rule describes the investigation and enforcement process.

310:233-11-4. The current rule describes how a sponsor certificate may be suspended. The current rule has been revoked.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**310:233-1-1. Purpose**

This Chapter ~~is to be used by operators of body piercing and tattooing establishments, by artists and apprentices. The rules are to implement~~ implements the provisions of 21 O.S. Section ~~Sections~~ 842.1 et seq, 842.2 and 842.3. ~~Nothing in OAC 310:233 shall be construed to require an artist to perform a body piercing or tattoo procedure upon a client.~~

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### 310:233-1-2. Definitions

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

**"Aftercare"** means written instructions given to the client, specific to the body piercing or tattooing procedure(s) rendered, on caring for the body piercing or tattoo and surrounding area.

**"Antiseptic"** means an agent that destroys disease-causing microorganisms on human skin or mucosa.

**"Apprentice"** means any person who is training under the supervision of a licensed tattoo artist. That person cannot independently perform the work of tattooing. Apprentice also means any person who is training under the supervision of a licensed body piercing artist. That person cannot independently perform the work of body piercing [21:842.1(C)(6)(D)(6)].

**"Apprentice program"** means an approved body piercing or tattooing training program conducted by an approved apprentice sponsor.

**"Apprentice sponsor"** means an individual approved by the Department to ~~conduct~~ sponsor a body piercing or tattooing apprentice program.

**"Artist"** means *the person who actually performs the body piercing or tattooing procedure* [21:842.1.B][21:842.1(D)(5)].

**"Aseptic technique"** means a hygienic practice which prevents and hinders the direct transfer of microorganisms, regardless of pathogenicity, from one person or place to another person or place.

**"Autoclave"** means a piece of medical equipment that employs the steam under pressure method of sterilization.

**"Bloodborne pathogen certification"** means a training program that shall contain a general explanation of epidemiology and symptoms of bloodborne diseases.

**"Body piercing"** means a procedure in which an opening is created in a human body solely for the purpose of inserting jewelry or other decoration; provided, however, the term does not include ear piercing [21:842.1.B][21:842.1(D)(1)].

**"Body piercing operator"** means any person who owns, controls, operates, conducts, or manages any permanent body piercing establishment, whether actually performing the work of body piercing or not [21:842.1(C)(3)].

**"Church"** means an establishment, other than a private dwelling, where religious services are usually conducted [21:842.3(C)(3)(b)].

**"Client"** means a person requesting the application of a body piercing or tattoo.

**"Contaminated waste"** means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations Part 1910.1030, known as "Occupational Exposure to Bloodborne Pathogens".

**"CPR Certification"** means Cardiopulmonary Resuscitation and shall include instruction for the basic adult CPR training.

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

**"Disinfection"** means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling; a process of reducing the number of microorganisms on cleaned procedure surfaces and equipment to a safe level with germicidal solution as has been approved by the Department.

**"Ear piercing"** means puncturing the lobe of the ear not to include cartilage.

**"Ear piercing gun"** means a device that pierces an individual's ear lobe using a single-use stud and clasp ear piercing system.

**"Equipment"** means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with body piercing and tattooing procedures.

**"First aid certification"** means a training program that includes instruction in injury and acute illness.

**"Germicidal solution"** means a cleansing agent that kills disease-causing microorganisms on hard surfaces and is a disinfectant or sanitizer registered with the Environmental Protection Agency.

**"Germicidal soap"** means an agent designed for use on the skin that kills disease-causing microorganisms.

**"Handwashing facility"** means a sink equipped with hot and cold or tempered running water under pressure, used for washing hands, arms or other portions of the body.

**"HBV"** means Hepatitis B virus and is a DNA virus that attacks the liver causing serious disease.

**"HCV"** means Hepatitis C virus and is a RNA virus found in the blood of persons who have the disease which attacks the liver causing serious disease.

**"HIV"** means human immunodeficiency virus.

**"Hot water"** means water that attains at least 100°F and maintains a temperature as specified in OAC 158:30.

**"Instruments used for body piercing"** means disposable or reusable instruments that may contact a client's body or body fluids during body piercing procedures.

**"Instruments used for tattooing"** means disposable or reusable instruments that may contact a client's body or body fluids during tattooing procedures.

**"Integrator strips"** means strips or devices used in pouches or autoclave chambers that prove the condition of sterilization has been met.

**"Jewelry"** means any personal ornament inserted into a newly pierced area.

**"License"** means written approval by the Department for an artist to perform body piercing or tattooing or written approval by the Department to operate a body piercing or tattoo establishment.

**"Operator"** means:

(A) body piercing operator, which is any person who owns, controls, operates, conducts, or manages any permanent body piercing establishment, whether actually performing the work of body piercing or not. A mobile unit, including, but not limited to, a mobile

home, recreational vehicle, or any other nonpermanent facility, shall not be used as a permanent body piercing establishment [21 O.S. § 84201(D)(3)]; or (B) tattoo operator, which is any person who owns, controls, operates, conducts, or manages any permanent tattooing establishment whether performing the work of tattooing or not, or a temporary location that is a fixed location at which an individual tattoo operator performs tattooing for a specified period of not more than seven (7) days in conjunction with a single event or celebration, where the primary function of the event or celebration is tattooing [21 O.S. § 84201(D)(4)].

"Playground" means a place, other than grounds at a private dwelling, that is provided by the public or members of a community for recreation [21:842.3(C)(3)(C)].

"Procedure surface" means any part of furniture or fixtures designed to contact the client's body during a body piercing or tattooing procedure or any surface where instruments and equipment have come into contact with the client during the procedure.

"Regulatory authority" means a representative, such as an onsite inspector, of the Department.

"Release form" means a release of liability that shall be completed by the client previous to receiving a body piercing or tattoo procedure.

"School" means an establishment, other than a private dwelling, where the usual processes of education are usually conducted [21:842.3(C)(3)(a)].

"Sharps" means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized single use piercing or tattooing needles and razor blades.

"Sharps container" means a puncture-resistant, leak-proof container that is labeled or color coded that can be closed for disposal.

"Single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing and tattooing needles and protective gloves.

"Skills challenge" means a testing mechanism that enables persons who have received training in tattooing and have experience in performing tattooing procedures to challenge the training requirements by satisfactorily completing the written examination.

"Spore test" means a biological monitoring process in which a third party laboratory culturing service is engaged to monitor spore growth on media processed in an autoclave.

"Statim autoclave" means a brand of autoclave utilizing the steam flush pressure pulse method of sterilization.

"Sterilization" means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

"Student" means an individual approved for the curriculum portion of the training program and cannot perform tattoo or body piercing procedures on a human.

"Tattooing" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment; provided that medical micropigmentation, performed pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act, shall not be construed to be tattooing [21:842.1(C)(2)].

"Tattoo operator" means any person who owns, controls, operates, conducts or manages any permanent tattooing establishment whether performing the work of tattooing or not [21:842.1(C)(4)].

"Temporary artist license" means a person that is not licensed through the State of Oklahoma that is a body piercing artist or tattoo artist doing temporary work at a licensed body piercing or tattoo establishment not to exceed 30 days.

"Ultrasonic cleaning unit" means a piece of medical equipment utilizing ultrasound energy to thoroughly clean instruments for body piercing or tattooing.

"Universal precautions" means an approach to infection control that treats all human blood and certain human body fluids as if known to be infectious for Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and other bloodborne pathogens.

**310:233-1-3. Prohibited acts**

(a) In addition to the prohibited acts stated in 21 O.S. §§ 842.1, 842.2, and 843.3, an artist can only use an ear-piercing gun on the portion of the earlobe that does not contain any cartilage.

(b) Artist shall not perform body piercing or tattoo procedures:

(1) Without a valid artist license in the appropriate category issued by the Department;

(2) Outside of a licensed body piercing or tattooing establishment or event;

(3) Upon another person if the other person is under the influence of alcohol or a controlled substance;

(c) Tattoo and body piercing establishments shall not:

(1) Operate or solicit business as a body piercing or tattoo establishment without a valid establishment license, in the appropriate category, issued by the Department;

(2) Allow eating or drinking by anyone within the procedure areas;

(3) Allow smoking or vaping of any substance within the establishment;

(4) Allow a person with an exposed infectious sore to work in any area of the establishment where there is a likelihood that they could contaminate instruments, supplies, or procedure surfaces with body substances or pathogenic organisms; and

(5) Allow animals of other than fish in a fish tank except service animals used by persons with disabilities as defined in 28 CFR § 36.104.

(d) Tattoo procedures shall not be performed on a person under eighteen (18) years of age.

(e) Body Piercing procedures shall not be performed on a person under eighteen (18) years of age unless the legal parent

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or legal guardian of such a child gives written consent and is present for the procedure.

(f) No person shall be allowed to purchase or possess tattoo equipment or supplies without being licensed either as an Oklahoma Medical Micropigmentologist or as an Oklahoma tattoo artist.

(g) A mobile unit, including, but not limited to, a mobile home, recreational vehicle, cargo trailer or any other non-permanent facility, shall not be used as a body piercing or tattoo establishment.

## SUBCHAPTER 3. BODY PIERCING ARTIST AND TATTOO ARTIST REQUIREMENTS AND PROFESSIONAL STANDARDS

### 310:233-3-1. Records [REVOKED]

The following information shall be kept on file on the premises of a body piercing or tattooing establishment and shall be available for inspection by the Department:

- (1) Artist information shall include:
  - (A) Full name and exact duties of each artist;
  - (B) Date of birth of each artist; and
  - (C) Identification photo of each artist.
- (2) Body piercing or tattoo establishment information shall include:
  - (A) Body piercing or tattoo establishment name;
  - (B) Hours of operation;
  - (C) Owner's name and address;
  - (D) Operator's name and address (if different from the owner);
  - (E) A complete definition of all body piercing procedures performed;
  - (F) An inventory of all instruments and supplies, including body jewelry, sharps used for any and all body piercing or tattooing procedures, including names of manufacturers and serial or lot numbers, if applicable, which may be satisfied by retaining invoices or orders; and
  - (G) Proof that all artists have either started or completed or were offered and declined, in writing, using the form provided by the Department, the Hepatitis B vaccination series.

### 310:233-3-1.1. Hygienic standards

(a) General. An artist must comply with all hygienic practices and procedures described in this section.

(b) Personal Hygiene. When performing procedures an artist maintains a high degree of personal cleanliness, wears clean clothes, and closed-toe shoes.

(c) Washing and Drying Hands. To properly wash and dry hands, an artist will:

- (1) thoroughly wash his/her hands in warm running water that is at least 100 °F with germicidal soap;
- (2) rinse his/her hands in warm running water that is at least 100 °F; and
- (3) dry with disposable paper towels.

(d) When to Wash and Dry Hands. An artist will wash and dry his/her hands as described in (c) of this Section:

- (1) immediately before donning gloves to perform a procedure;
- (2) immediately after removing gloves at the conclusion of a procedure;
- (3) when leaving the work area;
- (4) as soon as feasibly possible after potential contact with a contaminated surface; and
- (5) after eating, drinking, vaping, or smoking.

(e) Disposable Gloves. An artist wears disposable exam gloves to minimize the possibility of transmitting infection to the client. Exam gloves are put on and removed in accordance with aseptic technique.

(1) At least one new pair of exam gloves is used for each of the following stages:

- (A) Hard surface disinfection;
- (B) Setup of instruments;
- (C) Preparation of the body art area; and
- (D) The procedure.

(2) If the glove is pierced or torn while performing a procedure, then the contaminated gloves are discarded immediately, and the artist's hands are washed and dried as described in (c) of this Section before a fresh pair of gloves are applied.

(f) Item or Instrument Contamination. Any item or instrument that has come into contact with a surface other than the procedure surface or the client during the procedure is discarded and replaced immediately with a new disposable item or a new sterilized instrument.

(g) Disinfect Surface Area. All procedure surfaces are disinfected with a germicidal solution immediately after completing a procedure.

### 310:233-3-2. Prohibited acts [REVOKED]

(a) It shall be unlawful for any artist to perform body piercing or tattoo procedures outside of a licensed body piercing or tattooing establishment.

(b) Eating or drinking by anyone is prohibited in the area where body piercing or tattooing is performed by the licensed artist in a licensed body piercing or tattoo establishment. Smoking is prohibited in any licensed establishment.

(c) No person under eighteen (18) years of age shall be allowed to receive a tattoo. No person under eighteen (18) years of age shall be allowed to receive a body piercing procedure unless the legal parent or legal guardian of such a child gives written consent for the procedure and the legal parent or legal guardian of the child is present during the procedure [21:842.1(A)].

(d) No person with an exposed infectious sore shall work in any area of a body piercing or tattoo establishment where there is a likelihood that they could contaminate body piercing or tattoo instruments, supplies or procedure surfaces with body substances or pathogenic organisms.

(e) No animals of any kind shall be allowed in a body piercing or tattoo establishment except service animals used by persons with disabilities or as allowed in 310:233-7-1.

- (f) A person shall not perform body piercing or tattoo upon another person if the other person is under the influence of alcohol or a controlled substance.
- (g) An ear piercing gun shall not be used on any body part other than the ear lobe, which does not contain cartilage. This device must be autoclave sterilized between clients after each use or be single use and disposable.
- (h) No person shall be allowed to purchase or possess tattoo equipment or supplies without being licensed either as an Oklahoma Medical Micropigmentologist or as an Oklahoma tattoo artist [21:842.1(A)].
- (i) All body piercing operators, tattoo operators and artists shall be prohibited from performing body piercing or tattooing unless licensed in the appropriate category by the Department [21:842.3(A)].

**310:233-3-2.1. Preparation and care of the body art area**

- (a) Before a procedure is performed, the immediate and surrounding area of the skin shall be prepared with an approved antiseptic skin preparation.
- (b) Oral piercing shall be prepared with an oral antiseptic mouth rinse.
- (c) If shaving is necessary, single use disposable razors shall be used and discarded into a sharps container.
- (d) Any utensil used for marking the skin shall be single use and disposed of after the procedure.
- (e) Any skin or mucosa surface being prepared for a procedure shall be free of rashes or any visible signs of infection.
- (f) Any jewelry inserted into a fresh piercing shall be:
  - (1) Autoclave sterilized while fully disassembled; and
  - (2) Inspected and found free of nicks, scratches or irregular surfaces before insertion into a fresh body piercing.
- (g) Jewelry shall be made of:
  - (1) 316L or 316LVM stainless steel;
  - (2) Solid 14k or 18k yellow or white nickel-free gold;
  - (3) Niobium;
  - (4) Titanium or platinum;
  - (5) Poly Tetra Fluoro Ethylene (PTFE); or
  - (6) Tygon.

**310:233-3-3. Standards [REVOKED]**

- (a) ~~The artist shall maintain a high degree of personal cleanliness, conform to hygienic practices and wear clean clothes, including closed toed shoes, when performing body piercing or tattoo procedures. Before performing body piercing or tattoo procedures, the artist must thoroughly wash their hands in hot running water (with a minimum temperature of 100° F) with germicidal soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants. At a minimum this includes:~~
  - (1) ~~Immediately prior to donning gloves to perform a body piercing or tattoo procedure;~~
  - (2) ~~Immediately after removing gloves at the conclusion of a body piercing procedure or tattoo procedure;~~
  - (3) ~~When leaving the work area;~~

- (4) ~~As soon as feasibly possible after potential contact with contaminated surface(s) has occurred; and~~
- (5) ~~Before and after eating, drinking or smoking.~~
- (b) ~~In performing body piercing or tattoo procedures, the artist shall wear disposable exam gloves to minimize the possibility of transmitting infection to the client being pierced or tattooed. Exam gloves must be changed in accordance with aseptic technique. Under no circumstances shall a single pair of exam gloves be used during the entire piercing or tattoo procedure. The use of disposable exam gloves does not preclude or substitute for hand washing procedures as part of a good personal hygiene program. A minimum of one pair of exam gloves should be used for each stage of piercing or tattooing to include:~~
  - (1) ~~Hard surface disinfection;~~
  - (2) ~~Setup of instruments used for body piercing or tattooing;~~
  - (3) ~~Preparation of the body art area; and~~
  - (4) ~~The body piercing or tattoo procedure.~~
- (c) ~~If, while performing a body piercing or tattoo procedure, the artist's glove is pierced or torn, the contaminated gloves shall be discarded immediately and the hands washed thoroughly before a fresh pair of exam gloves are applied. Any item or instrument that has come into contact with a surface other than the procedure surface or the client during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument before the procedure resumes.~~
- (d) ~~All procedure surfaces must be disinfected with a germicidal solution immediately after completing a body piercing or tattoo procedure.~~
- (e) ~~Contaminated waste which may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled shall be placed in a biohazard bag or container which is properly labeled. Sharps ready for disposal shall be placed in an approved sharps container. Contaminated waste which may release blood, body fluids, dried blood or dried body fluids and sharps must be disposed of consistent with OAC 252:515. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal disposal methods.~~

**310:233-3-3.1. Reusable equipment**

- (a) **General.** After each use, non-disposable instruments and reusable equipment must comply with the cleaning and sterilizing processes and procedures stated in this Section.
- (b) **Preclean.** To remove residue an instrument is pre-cleaned either manually or mechanically.
  - (1) Manual scrubbing is performed by thoroughly scrubbing with an appropriate detergent and water solution with items fully submerged. While manually scrubbing, the person will wear appropriate personal protective equipment including:
    - (A) full length sleeves;
    - (B) elbow-high gloves;
    - (C) apron; and

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(D) face mask with eye protection.

(2) Mechanical cleaning consists of following the instructions provided with the device.

(c) **Enzyme Cleaner in Ultrasonic Devise.** After precleaning and rinsing the instruments, they are then placed in an ultrasonic cleaning unit and submerged in a protein-dissolving enzyme cleaner or detergent per the manufacturer's instructions.

(d) **Packaging.** After the instruments have been placed in an ultrasonic cleaner, all packaged, non-disposable instrument are instruments are dried and packed individually in sterilized pouches. These sterilized pouches contain either an indicator or integrator strip. Additionally, the expiration date stated on the pouch cannot exceed 6 months from when the instrument was packed into the sterilized pouch.

(e) **Autoclave.** All packaged, non-disposable instruments are sterilized in a steam autoclave. The autoclave is used, cleaned, and maintained according to the manufacturer's instructions. A copy of the manufacturer's recommended procedures for the autoclave is kept on site and available for inspection.

(g) **Storing.** After properly packaged, instruments are immediately stored in a dry, clean cabinet or tightly covered container reserved for the storage of such instrument. All instruments remain properly stored in their sterile pouches until just before performing a procedure. Sterile equipment can only be handled with clean gloves and cannot be used if the package has been breached or after the expiration date without first repackaging and resterilizing.

(h) **Statim Autoclave Option.**

(1) For establishments utilizing a Statim autoclave, an operator will need to take monthly spore tests that are verified through an independent laboratory to confirm that the Statim autoclave is capable of attaining sterilization.

(2) The reusable items are sterilized in a bulk load without sterilization pouches, just before the procedure.

(3) Items are used immediately after opening the Statim autoclave cassette.

(4) The items contained in the cassette are used for one client only and include the use of an integrator strip.

(i) **Assembling.** When assembling instruments, the artist will wear disposable exam gloves and use aseptic techniques to ensure that the instruments and gloves are not contaminated.

## **310:233-3-4. Exemptions [REVOKED]**

Individuals who pierce only the lobe of the ear as defined herein are exempt from OAC 310:233.

## **310:233-3-4.1. Single use items**

Single use items cannot be used on more than one client for any reason. After use, all needles, razors and other sharps shall be immediately disposed of in an approved sharps container.

## **310:233-3-5. Public notification requirements [REVOKED]**

(a) Before starting the procedure, the operator or artist, shall provide verbal and written aftercare instructions for the body piercing or tattoo procedure to each client. These instructions

shall include information about when to seek medical treatment, if necessary. The written aftercare instructions shall advise the client to consult a physician at the first sign of infection and contain the name, address and telephone number of the body piercing or tattoo establishment. In addition, all body piercing or tattoo establishments shall prominently display a Disclosure Statement, provided by the Department, which advises the clients of the risks and possible consequences of body piercing or tattoo procedures. The Disclosure Statement and the Notice for Filing a Complaint shall be included in the body piercing or tattoo establishment Application Packet.

(b) The disclosure statement requires the following:

(1) Clients should be aware that the establishment complies with the all rules of sanitation and sterilization;

(2) The client can still have possible transmission of a bloodborne disease or infection contracted as a result of a body piercing or tattoo;

(3) A signature of the client is required with understanding of the Disclosure Statement and acknowledges the possible effects or consequences; and

(4) Filing a complaint gives the Department knowledge that a body piercing or tattoo establishment or artist may be in violation of 310:233.

## **310:233-3-5.1. Client identification**

(a) Acceptable forms of government issued identification shall include the client's name, picture, and date of birth.

(b) To pierce a minor, the identification in (a) of this section is required from the legal parent or legal guardian. Identification for the minor shall include an original birth certificate and a photo ID of the minor, or court documentation verifying legal guardianship and a photo ID of the minor.

## **310:233-3-6. Client records [REVOKED]**

(a) In order for the artist to properly evaluate the client's medical condition previous to receiving a body piercing or tattoo procedure and not violate the client's rights or confidential medical information, the following information shall be included in the release form:

(1) To ensure proper healing of your body piercing or tattoo procedure, we ask that you disclose if you have or have had any of the following conditions:

(A) Diabetes;

(B) History of hemophilia or excessive bleeding;

(C) History of skin disease, skin lesions or skin sensitivities to soaps or disinfectants;

(D) History of allergies, adverse reactions or other skin sensitivities as they pertain to body piercing or tattooing procedures;

(E) History of epilepsy, seizures, fainting or narcolepsy;

(F) Taking medications such as anticoagulants, which interfere with blood clotting;

(G) Last time you ate;

(H) Pertinent medical history or medical condition that might affect the healing process; and

(I) Pregnant and/or nursing.

(b) The operator or artist shall ask the client to sign a release form confirming that the above information was obtained or attempted to be obtained.

- (c) Each operator shall keep records consisting of:
- (1) Release forms of all body piercing or tattoo procedures administered;
  - (2) Photocopy of client's identification;
  - (3) Name, date of birth, address of the client;
  - (4) Signature of the client or consent form (if the client is less than 18 years of age for a body piercing procedure);
  - (5) Date of the procedure;
  - (6) Identification and location of the body piercing or tattoo procedure(s) performed; and
  - (7) The artist's name and license number.

(d) All client records shall be confidential, and they shall be made available to the Department upon request. After being retained for three (3) years, records shall be destroyed by shredding or appropriate destruction methods.

(e) Acceptable forms of photo identification shall include: driver's license, passport, and state or government issued identification that includes the client's name, picture and date of birth. If a date of birth is not included on the form of identification an original birth certificate must be presented to and copied by the artist or operator.

(f) To pierce a minor, the above identification in 310:233-3-6(d) shall be required from the legal parent or legal guardian and the minor. Identification shall include an original birth certificate of the minor. Court documentation verifying legal guardianship shall be provided by the guardian to the artist.

**310:233-3-6.1. Consent form**

(a) A client must sign a consent form before receiving a body piercing or tattoo. The consent form summarizes the procedure information. It shall include:

- (1) The name, and address of the establishment;
- (2) The name, date of birth, and address of the client;
- (3) The date of the procedure;
- (4) Identification and location of procedure(s) performed;
- (5) The artist's name and license number;
- (6) The signature of the artist; and
- (7) The signature of the client or guardian.
- (8) A photocopy of the client's government issued photo identification, or
- (9) A photocopy of the guardian's government issued photo identification if the client is a minor.

(b) In order for the artist to properly evaluate the client's condition prior to a procedure, the following questions shall be asked of the client in the consent form:

- (1) Does the client have a history of:
  - (A) Diabetes;
  - (B) Hemophilia or excessive bleeding;
  - (C) Skin disease, skin lesions or skin sensitivities to soaps or disinfectants;
  - (D) Allergies, adverse reactions or other skin sensitivities; or
  - (E) Epilepsy, seizures, fainting or narcolepsy.
- (2) If the client is:

- (A) Taking medications such as anticoagulant;
  - (B) Pregnant and/or nursing; and
  - (C) When the client last ate.
- (3) Other pertinent medical history or condition that might affect the healing process.

**310:233-3-7. Preparation and care of the body art area [REVOKED]**

(a) Before a body piercing or tattoo procedure is performed, the immediate and surrounding area of the skin where the body piercing or tattoo procedure is to be performed shall be prepared with an approved antiseptic skin preparation, depending on the type of body art to be performed. Oral piercing shall be prepared with an oral antiseptic mouth rinse. If shaving is necessary, single use disposable razors shall be used and discarded into a sharps container after each use.

(b) Any utensil used for marking the skin where the body piercing or tattoo procedure is to be performed shall be single use and disposable.

(c) Any skin or mucosa surface being prepared for a body piercing or tattoo procedure shall be free of rashes or any visible signs of infection.

(d) Any jewelry inserted into a fresh body piercing shall be autoclave sterilized while fully disassembled to allow for sterilization of the entire piece of jewelry. The jewelry must be checked by the artist and free of nicks, scratches or irregular surfaces before insertion into a fresh body piercing. All removable parts shall be removed from threaded jewelry for sterilization.

(e) Jewelry shall be made of 316L or 316LVM stainless steel, solid 14k or 18k yellow or white nickel free gold, niobium, titanium or platinum, Poly Tetra Fluoro Ethylene (PTFE) or Tygon.

**310:233-3-7.1. Aftercare instructions**

Before starting the procedure, the operator or artist, shall provide verbal and written aftercare instructions regarding the procedure to include:

- (1) The name, address, and telephone number of the establishment;
- (2) The artist name;
- (3) That it is still possible to have transmission of a bloodborne disease or infection as a result of a body piercing or tattoo;
- (4) To consult a physician at the first sign of infection;
- (5) That the establishment complies with this Chapter;
- (6) That complaints may be filed with the department; and
- (7) Caring for the body piercing or tattoo and surrounding area.

**310:233-3-8. Records retention**

The following information shall be kept on file on the premises of a body-piercing or tattooing establishment and shall be available for inspection by the regulatory authority:

- (1) A complete definition of all body piercing procedures performed;

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- (2) An inventory of all instruments and supplies, including body jewelry, sharps used for any and all body piercing or tattooing procedures, including names of manufacturers and serial or lot numbers, if applicable, which may be satisfied by retaining invoices or orders;
- (3) Autoclave testing records as described in OAC 233 3-3.1.
- (4) Signed consent forms for all body piercing or tattoo procedures administered;
- (5) Client records of procedures performed shall be
  - (A) Confidential;
  - (B) Made available to the regulatory authority upon request;
  - (C) Retained for three (3) years; and
  - (D) Destroyed by shredding or other appropriate destruction methods after three (3) years.

### SUBCHAPTER 5. SANITATION AND STERILIZATION PROCEDURES [REVOKED]

#### 310:233-5-1. Reusable equipment [REVOKED]

(a) ~~After each use, non disposable instruments or reusable equipment used for body piercing or tattooing procedures shall be processed through all of the following steps of the sterilization process:~~

- ~~(1) Manually or mechanically preclean the instruments with care taken to ensure removal of residue. Manual scrubbing shall be done per Centers for Disease Control and Prevention (CDC) guidelines, fully submerged under water, to reduce the likelihood of making bloodborne pathogens airborne. This must be done while wearing appropriate personal protective equipment including but not limited to full length sleeves, elbow high gloves, apron, and face mask with eye protection;~~
- ~~(2) Thoroughly rinse the instruments after precleaning and soak them in a protein dissolving enzyme cleaner or detergent per manufacturer's instructions; and~~
- ~~(3) Rinse the instruments after soaking and clean the instruments further in an ultrasonic cleaning unit fully submerged in an enzymatic cleaner, per manufacturer's instructions.~~

~~(b) After cleaning, all non disposable instruments used for body piercing or tattooing procedures shall be rinsed thoroughly, dried and packed individually in sterilization pouches and subsequently sterilized. All sterilization pouches containing non disposable instruments shall contain either an indicator or an integrator strip. Sterilization pouches shall be dated with an expiration date not to exceed six (6) months.~~

~~(c) All packaged, non disposable instruments used for body piercing or tattooing shall be sterilized in a steam autoclave. The autoclave shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of their autoclave sterilization unit shall be available for inspection by the Department. Sterile equipment shall only be handled with clean gloves and shall not be used if the package has been breached~~

~~or after the expiration date without first repackaging and re-sterilizing.~~

~~(d) Each operator of a body piercing or tattooing establishment shall demonstrate that the autoclave(s) used is capable of attaining sterilization by monthly spore tests. These tests shall be verified through an independent laboratory. These spore test records shall be retained by the operator for a minimum of three (3) years and made available to the Department upon request.~~

~~(e) After sterilization, the instruments used for body piercing or tattooing shall be immediately transported with clean exam gloves and stored in a dry, clean cabinet or tightly covered container reserved for the storage of such instruments.~~

~~(f) All instruments used for body piercing or tattooing shall remain properly stored in their sterile pouches until just before performing a body piercing or tattooing procedure. When assembling instruments used for performing body piercing or tattooing procedures, the artist shall wear disposable exam gloves and use aseptic techniques to ensure that the instruments and gloves are not contaminated.~~

~~(g) All needles, instruments and equipment shall be specifically manufactured for performing body piercing and tattooing procedures.~~

~~(h) For body piercing and tattooing establishments primarily utilizing a Statim autoclave, reusable items shall be sterilized in an autoclave in a bulk load without sterilization pouches, previous to sterilization in the Statim autoclave, for the body piercing or tattoo procedure. Reusable instruments and single use items sterilized in a Statim autoclave cassette must be used immediately after opening the Statim autoclave cassette. The items contained in the Statim autoclave cassette shall be used for one client only and shall include use of an integrator strip.~~

#### 310:233-5-2. Single use items [REVOKED]

~~Single use items shall not be used on more than one client for any reason. Each needle shall be used for one body piercing or tattoo procedure only. After use, all needles, razors and other sharps shall be immediately disposed of in an approved sharps container.~~

### SUBCHAPTER 7. REQUIREMENTS FOR PREMISES

#### 310:233-7-1. Physical construction and maintenance [REVOKED]

~~(a) All walls, floors, and procedure surfaces of a body piercing or tattoo establishment shall be smooth, free of open holes or cracks, washable, in good repair, and clean. All procedure surfaces, including client chairs/benches shall be of such construction as to be easily cleaned and disinfected after each client. All body piercing or tattoo establishments shall be completely separated by solid walls extending from floor to ceiling, from any room used for human habitation, retail sales not associated with body piercing or tattooing, or other such activity which may cause potential contamination of procedure surfaces. The solid wall may not contain doors or operable~~



windows. Body piercing or tattooing shall not be performed in an establishment where food is prepared or served, or where services other than body piercing or tattooing is provided including but not limited to places such as hair, nails and tanning services.

(b) Effective measures shall be taken by the body piercing or tattoo operator to protect against the entrance of insects, vermin, and rodents. Insects, vermin, and rodents shall not be present in any part of the body piercing or tattoo establishment.

(c) There shall be a minimum of forty five (45) square feet of floor space for each artist in the body piercing or tattoo establishment for each artist working station. Each body piercing or tattoo establishment shall have an area which may be screened from public view for clients requesting privacy. The material used for the partition/screen must be non porous and can be easily cleaned and disinfected. Multiple body art stations shall be separated at a minimum by a seven (7') foot wall that is smooth, nonporous and easily disinfected.

(d) The establishment shall have a separate fully enclosed room for the decontamination and packaging of contaminated instruments. This decontamination room shall contain all equipment and supplies used for decontaminating instruments and will be where all steps of the sterilization process shall take place until the transfer of the packaged contaminated instruments to the autoclave. The establishment shall have a separate area or room where the autoclave is housed and utilized and shall only be exposed to contaminated packaged instruments that are loaded directly into the autoclave from the decontamination room. The area or room that contains the autoclave shall not be part of the procedure room or area where clients have access.

(e) The body piercing or tattoo establishment shall comply with OAC 158:40 and OAC 158:50. In addition, an artificial light source equivalent to at least twenty (20) foot candles three (3) feet off the floor shall be provided in all areas, except that at least 100 foot candles of intensity shall be provided at the level where the body piercing or tattoo procedure is being performed, and where instruments and sharps are assembled.

(f) Fish aquariums shall be allowed in waiting rooms and non-procedural areas where body piercing and tattooing procedures are not performed.

(g) The body piercing or tattoo establishment shall comply with OAC 158:30. In addition, each body piercing or tattoo procedure area shall be equipped with a handwashing facility with hot and cold running water, under pressure, equipped with wrist or foot operated controls and supplied with liquid germicidal soap, and disposable paper towels shall be located at each station.

(h) At least one covered waste receptacle shall be provided in each piercing or tattoo area and each toilet room. Receptacles in the piercing or tattooing area shall be emptied daily and solid waste shall be removed from the premises at least weekly. All refuse containers shall be lidded, capable of being disinfected and kept clean.

(i) No reusable cloth item shall be used in a licensed body piercing or tattoo establishment.

**310:233-7-1.1. Establishment physical construction**

(a) A mobile unit, including, but not limited to, a mobile home, recreational vehicle, cargo trailer or any other non-permanent facility, shall not be used as a body piercing or tattoo establishment.

(b) All walls, floors, and procedure surfaces of an establishment shall be smooth, free of open holes or cracks, washable, in good repair, and clean.

(c) Establishments shall be completely separated by solid walls, with no doors or windows, from any room used for human habitation, where food is prepared or served other than an employee break room, where services other than body piercing or tattooing is provided such as hair, nails and tanning services, or other such activity which may cause potential contamination of procedure surfaces.

(d) Establishments must comply with all applicable building laws.

(e) Reusable cloth items cannot be used in the licensed establishment.

(f) Establishment shall have an area which may be screened from public view for clients requesting privacy.

(g) Artificial light equivalent to at least twenty (20) foot candles shall be provided in all areas.

(h) A restroom with at least 1 toilet and not fewer than the toilets required by law shall be provided.

(1) The restroom shall be completely enclosed and provided with a self-closing door.

(2) A restroom used by females shall be provided with a covered receptacle for sanitary napkins.

(3) A supply of toilet tissue shall be available at each toilet.

(4) It shall be equipped with a handwashing sink with:

(A) Hot and cold running water, under pressure;

(B) Liquid germicidal soap;

(C) Disposable paper towels; and

(D) A covered waste receptacle.

**310:233-7-2. Location requirements and limitations  
[REVOKED]**

~~A mobile unit, including, but not limited to, a mobile home, recreational vehicle, cargo trailer or any other non permanent facility, shall not be used as a permanent body piercing or tattoo establishment.~~

**310:233-7-2.1. Procedure areas**

(a) Multiple procedure areas shall be separated from each other by a wall or rigid divider to visually define the space and limit potential contamination of neighboring procedure areas.

(b) Each procedure area shall:

(1) Have a minimum of forty-five (45) square feet of floor space;

(2) Have a sharps container available;

(3) Be equipped with a handwashing facility with:

(A) Hot and cold running water, under pressure;

(B) Wrist or foot operated controls;

(C) Liquid germicidal soap;

(D) Disposable paper towels; and

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- (E) A covered waste receptacle.
- (c) All procedure area surfaces, including client chairs and benches shall be cleaned and disinfected after each client.
- (d) Artificial light equivalent to at least one hundred (100) foot candles of intensity shall be provided.

### **310:233-7-3. Decontamination room**

- (a) The establishment shall have a separate:
  - (1) Fully enclosed room for the decontamination and packaging of contaminated instruments; and
  - (2) An area or room where the autoclave is housed and utilized that is only exposed to contaminated, packaged instruments that are loaded directly into the autoclave from the decontamination room.
    - (A) This decontamination room shall contain all equipment and supplies used for decontaminating instruments; and
    - (B) Will be where all steps of the sterilization process take place until the transfer of the packaged contaminated instruments to the autoclave.
- (b) The area or room that contains the autoclave shall not be part of the procedure room or area where clients have access.

### **310:233-7-4. Waste disposal**

- (a) Contaminated waste which may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled shall be placed in a biohazard bag or container which is properly labeled and disposed of consistent with OAC 252:515.
- (b) Sharps ready for disposal shall be placed in a sharps container and disposed of consistent with OAC 252:515.

## **SUBCHAPTER 9. LICENSE REQUIREMENTS**

### **310:233-9-1. Body piercing or tattoo license [REVOKED]**

- (a) ~~No person, firm, partnership, joint venture, association, business trust, corporation, legal entity or any organized group of persons shall operate a body piercing or tattoo establishment unless it has received a body piercing or tattoo establishment license from the Department.~~
- (b) ~~A license for a body piercing or tattoo establishment shall be issued for the physical location of the body piercing or tattoo establishment and shall not be transferable. A license for a body piercing or tattoo establishment shall be valid from the date of issuance and shall expire one (1) year from the date of issuance.~~
- (c) ~~A current body piercing or tattoo establishment license shall be posted in a prominent and conspicuous area where clients may readily observe it.~~
- (d) ~~Temporary body piercing or tattoo establishment licenses may be issued for body piercing or tattoo procedures provided outside of the physical site of a licensed facility for the purposes of product demonstration, industry trade shows or for educational reasons. A temporary body piercing or tattoo establishment license may be issued for body piercing~~

~~or tattooing services provided outside of the physical site of a licensed facility for the purpose of body piercing or tattooing in a fixed location at which an individual body piercing or tattoo operator performs body piercing or tattooing for a specified period of not more than three (3) days in conjunction with a single event or celebration, where the primary function of the event or celebration is body piercing or tattooing and the location does not otherwise violate the provisions of 310:233-7-2. A temporary license may be issued if the applicant satisfies the following:~~

- ~~(1) The applicant shall be affiliated with a body piercing or tattoo establishment that has a current license;~~
- ~~(2) The temporary body piercing or tattoo establishment meets the requirements outlined in OAC 310:233-7-1 and 2;~~
- ~~(3) The applicant's establishment is inspected and approved by the Department prior to issuance of the temporary license;~~
- ~~(4) The applicant submits to the Department a request for a temporary demonstration license in writing at least thirty (30) days before the event. The request shall specify:
  - (A) The purpose for which the license is requested;
  - (B) The period of time for which the license is requested;
  - (C) The location where the temporary demonstration license shall be used; and
  - (D) Names and license numbers if applicable of the artists participating.~~
- ~~(e) The applicant's temporary establishment shall be contained in a completely enclosed, non-mobile facility.~~
- ~~(f) The applicant shall provide facilities to properly sterilize instruments or shall use only single use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers.~~
- ~~(g) Temporary licenses are not transferable from one special event to another.~~
- ~~(h) License fees shall be as follows:
  - (1) \$1,000.00 for an initial license for tattoo establishments;
  - (2) \$500.00 for a renewal tattoo license; and
  - (3) \$750.00 for late renewal when the tattoo license is not renewed within thirty (30) days after expiration.
  - (4) \$500.00 for an initial license for body piercing establishments;
  - (5) \$250.00 for a renewal body piercing license;
  - (6) \$350.00 for late renewal when the body piercing license is not renewed within thirty (30) days after expiration;
  - (7) \$250.00 for a temporary license for body piercing establishments; and
  - (8) \$500.00 for a temporary license for tattooing establishments.~~
- ~~(i) The certification fee required by 21 O.S. §42.3(D) shall be paid before an application for license is processed.~~
- ~~(j) Proof of publication evidence compliant with 21 O.S. §42.3(E) shall be filed before an application for license is processed.~~

**310:233-9-1.1. Artist and establishment license**

- (a) The license holder must be a minimum of eighteen (18) years of age to be eligible for a license.
- (b) A license will need to be renewed annually as it expires one year from the date of issuance, unless it is revoked or suspended by the Department before the expiration date.
- (c) Each license shall be posted in a prominent and conspicuous area where it can be readily observed by clients.
- (d) A license for a body piercing or tattoo establishment is issued for the physical location of the establishment. The license cannot be transferred to another owner or location.

**310:233-9-2. Artist license [REVOKED]**

- (a) ~~The artist must be a minimum of eighteen (18) years of age to be eligible for a license.~~
- (b) ~~No person shall practice body piercing or tattooing procedures without first obtaining an artist license from the Department.~~
- (c) ~~The artist license shall be valid from the date of issuance and shall automatically expire one (1) year from the date of issuance unless revoked or suspended by the Department. The artist shall have a current bloodborne pathogen certificate, CPR certificate and current first aid certification for license or renewal of license.~~
- (d) ~~The application for an artist license shall include:~~
  - (1) ~~Name;~~
  - (2) ~~Date of birth;~~
  - (3) ~~Sex;~~
  - (4) ~~Residence address;~~
  - (5) ~~Mailing address;~~
  - (6) ~~Telephone number;~~
  - (7) ~~Place(s) and licensed license number of employment as an artist;~~
  - (8) ~~Proof of training and experience which shall include one of the following:~~
    - (A) ~~Documentation of two (2) years' experience acquired in another state in compliance with applicable requirements of that state. Documentation may include copies of licenses, statements from the state's regulatory authority, statements from the facility operator where the applicant worked, membership in an entity for which practice as an artist is a requisite, or government forms such as tax returns filed by the artist showing employment as an artist; or~~
    - (B) ~~Documentation of completion of an Oklahoma apprentice program that complies with 310:233-9-5, 310:233-9-6 and 310:233-9-7, or documentation from another state showing completion of training that is substantially equivalent to an Oklahoma apprentice program and sponsorship per 310:233-9-5, 310:233-9-6 and 310:233-9-7;~~
  - (9) ~~Current bloodborne pathogen certification recognized from a nationally accredited program compliant with 310:233-9-2(m); and~~
  - (10) ~~Current first aid certification compliant with 310:233-9-2(n); and~~
  - (11) ~~Current CPR certification compliant with 310:233-9-2(o).~~

- (e) ~~Each artist license shall be conditioned upon continued compliance with the provisions of this section as well as all applicable provisions of OAC 310:233.~~
- (f) ~~Each artist license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.~~
- (g) ~~License fees shall be as follows:~~
  - (1) ~~\$250.00 for an initial license;~~
  - (2) ~~\$250.00 for a renewal license;~~
  - (3) ~~\$350.00 for late renewal when the license is not renewed within thirty (30) days after expiration; and~~
  - (4) ~~\$50.00 temporary artist license, not to exceed 7 days.~~
- (h) ~~A person who has acceptable proof of experience or training as required in 310:233-9-2(d)(8)(A and B) in performing tattooing may be approved by the Department to take the test specified in 310:233-9-2(j). A candidate shall have a minimum passing score of 70% on the written examination that will include:~~
  - (1) ~~Knowledge of Anatomy, Physiology, and Disease;~~
  - (2) ~~Theory and application of ink;~~
  - (3) ~~Safety and Aseptic Technique;~~
  - (4) ~~Professionalism; and~~
  - (5) ~~Client Consultation Services.~~
- (i) ~~A candidate who does not meet this score can retest up to two (2) times. A candidate who does not pass the written examination must wait at least seven (7) days before retesting. Any candidate who is unable to attain competency after three attempts shall be required to enroll or re-enroll in an apprentice program. To apply, the candidate shall submit an application that requires the following:~~
  - (1) ~~Notarized copy of the applicant's certificate of birth;~~
  - (2) ~~Notarized copy of the applicant's driver's license or other similar photo identification;~~
  - (3) ~~Notarized copy of his/her credentials and professional resume of satisfactory completion of any programs they have completed for proof of experience; and~~
  - (4) ~~Proof of experience as required in 310:233-9-2(d)(8)(A and B).~~
- (j) ~~The Department shall accept the test administered by the Oklahoma Department of Career Technology with results to be evidenced by a completed testing verification provided to the Department by the Oklahoma Department of Career Technology.~~
- (k) ~~Within 30 days after receipt of a completed application, the Department shall notify the applicant in writing of its decision to approve or disapprove the applicant to take the examination. An applicant who is eligible for the testing process must present a letter of notification from the Department to administer the test given by Oklahoma Department of Career and Technology Education.~~
- (l) ~~Upon successful completion of the testing process, the applicant is eligible for issuance of a permanent artist license. In order to request issuance of a license, the applicant must submit the following to the Department:~~
  - (1) ~~Any changes in the application previously submitted as required in 310:233-9-2(d); and~~

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- (2) Completed Testing Verification Form provided by the Department which includes:
  - (A) Skills evaluation information; and
  - (B) Written certification examination records.
- (m) Bloodborne training certification shall contain at a minimum the following elements:
  - (1) A general explanation of the epidemiology and symptoms of bloodborne diseases;
  - (2) An explanation of the modes of transmission of bloodborne pathogens;
  - (3) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;
  - (4) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;
  - (5) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;
  - (6) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;
  - (7) An explanation of the basis for selection of personal protective equipment;
  - (8) Information on the Hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated;
  - (9) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;
  - (10) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow up that will be made available;
  - (11) Information on the post exposure evaluation and follow up that the employer is required to provide for the employee following an exposure incident; and
  - (12) An explanation of the signs and labels and/or color coding required.
- (n) First aid certification shall include instruction in:
  - (1) Injury and acute illness as a health problem;
  - (2) Interactions with the local emergency medical services system;
  - (3) Responsibility for maintaining a current list of emergency telephone numbers (police, fire, ambulance, poison control) easily accessible to all employees;
  - (4) Instruction in the principles and performance of bandaging of the head, chest, shoulder, arm, leg, wrist, elbow, foot, ankle, fingers, toes, and knee; and
  - (5) Apprentices shall be provided with adequate instruction on the need for and use of universal precautions that should include:
    - (A) The meaning of universal precautions;
    - (B) Which body fluids are considered potentially infectious, and which are regarded as hazardous;
    - (C) The value of universal precautions for infectious diseases;

- (D) The necessity for keeping gloves and other protective equipment readily available and the appropriate use of them; and
  - (E) The appropriate tagging and disposal of any sharp item or instrument requiring special disposal measures such as blood soaked material, and the appropriate management of blood spills.
- (o) CPR training certification shall include instruction in:
    - (1) Performing a primary survey of each victim including airway, breathing, and circulation assessments;
    - (2) The presence of any bleeding, establishing and maintaining adult airway patency;
    - (3) Performing adult breathing resuscitation; and
    - (4) Performing choking assessments and appropriate first aid intervention.

## **310:233-9-2.1. Event and establishment license application**

- (a) A completed application shall include:
  - (1) For the applicant:
    - (A) Name;
    - (B) Mailing address;
    - (C) Telephone number; and
    - (D) E-mail address.
  - (2) For the establishment:
    - (A) Name;
    - (B) If tattooing, body piercing, or both are to be conducted;
    - (C) Information specifying whether the establishment is owned by an association, corporation, individual, partnership, or other legal entity;
    - (D) Mailing address;
    - (E) Physical address;
    - (F) Telephone number; and
    - (G) E-mail.
    - (H) Other information as required by the Department.
- (b) **Event.** In addition to the information identified in OAC 310:233-9-3.1, an event application shall be submitted at least thirty (30) days prior to the event and include:
  - (1) Event Operator Name;
  - (2) The physical location of the event;
  - (3) The purpose of the event;
  - (4) The start and end time of the event; and
  - (5) The names and license numbers of the artists participating.
- (c) **Issuance.** The Department will issue a license to the event or establishment after:
  - (1) A properly completed application is received;
  - (2) The required fees are received; and
  - (3) A pre-licensing inspection shows that the event or establishment is in compliance with this Chapter and meets the Department's criteria for licensure.

## **310:233-9-3. Prohibitions [REVOKED]** The following acts shall be prohibited:

- ~~(1) Owning, operating or soliciting business as a body piercing or tattoo establishment or operator without first obtaining all necessary licenses and approvals from the Department, unless specifically exempted by OAC 310:233.~~
- ~~(2) Obtaining or attempting to obtain a body piercing or tattoo establishment license or an artist license by means of fraud, misrepresentation or concealment.~~

**310:233-9-3.1. Event license**

- (a) An event license may be issued for body piercing or tattoo procedures for the purposes of:
  - (1) Product demonstration;
  - (2) Industry trade shows; or
  - (3) Educational reasons.
- (b) The event shall:
  - (1) Be for a specified period not to exceed three (3) consecutive days;
  - (2) Be a single event, where the primary function of the event is body piercing or tattooing;
  - (3) Be affiliated with an establishment that has a current license issued by the Department;
  - (4) Be contained in a completely enclosed, non-mobile environment;
  - (5) Have artists that meet the requirements outlined in OAC 310:233-9-4.1; and
  - (6) Ensure a safe and sanitary environment by:
    - (A) Providing facilities to properly sterilize instruments; or
    - (B) Only using single use, prepackaged, sterilized equipment.
- (c) Temporary licenses are not transferable from one special event to another.

**310:233-9-4.1. Individual license and certificate applications**

- (a) The complete application for any individual license or certificate shall include:
  - (1) Name;
  - (2) License number if applicable;
  - (3) List of Alias;
  - (4) Date of birth;
  - (5) Sex;
  - (6) Residence address;
  - (7) Mailing address;
  - (8) Email address;
  - (9) Telephone number;
  - (10) Location of current practice Identified;
  - (11) The license type, tattooing or body piercing, Identified;
  - (12) Copy of the applicant's certificate of birth;
  - (13) Copy of the applicant's government-issued photo identification (e.g. a valid driver's license, passport, etc.);
  - (14) Other information as required by the Department; and
  - (15) Any applicable fees.

- (b) Documents. In addition to the information identified in (a) of this section, an initial application for apprentice, permanent, or temporary artist shall include:
  - (1) Current certification from a recognized nationally accredited program for:
    - (A) Bloodborne pathogens;
    - (B) First aid certification; and
    - (C) CPR certification.
  - (2) Proof of experience such as:
    - (A) Proof of the successful completion of an apprenticeship program as described in OAC 310:233-9-8.1, or
    - (B) Documentation of two (2) years of appropriate licensure by another government entity such as:
      - (i) Copies of licenses,
      - (ii) Statements from the state's regulatory authority,
      - (iii) Statements from the facility operator where the applicant worked,
      - (iv) Membership in an entity for which practice as an artist is a requisite, or
      - (v) Government forms such as tax returns filed by the artist showing employment as an artist;
- (c) Skills challenge. A person who has acceptable proof of experience or training as required in (a) or (b) of this section, may be approved by the Department to take the skills challenge to obtain an apprentice or permanent license.
  - (1) Within thirty (30) days after receipt of a completed application, the Department shall notify the applicant of its decision to approve or disapprove the applicant to take the examination.
  - (2) An applicant who is eligible for the skills challenge must present a letter of notification from the Department to administer the test given by Oklahoma Department of Career and Technology Education.
  - (3) The Department shall accept the test administered by the Oklahoma Department of Career and Technology Education with results to be evidenced by a completed testing verification provided to the Department by the Oklahoma Department of Career and Technology Education.
  - (4) The written examination will include:
    - (A) Knowledge of Anatomy;
    - (B) Physiology, and Disease;
    - (C) Theory and application;
    - (D) Safety and Aseptic Technique;
    - (E) Professionalism; and
    - (F) Client Consultation Services.
  - (5) Minimum passing score for the written examination is 70%.
  - (6) A candidate who does not meet this score may retest up to two (2) times, however
    - (A) They must wait at least seven (7) days before retesting; and
    - (B) After three attempts are required to repeat the student program.
- (d) Renewals. In addition to the information identified in (a) of this section, a renewal of an artist license shall include

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current certification from a recognized nationally accredited program for:

- (1) Bloodborne pathogens;
- (2) First aid certification; and
- (3) CPR certification.

(e) **Student and apprentice.** In addition to the information identified in (a) of this section, a student or apprentice shall identify their sponsor.

(f) **Sponsor.** In addition to the information identified in (a) of this section, a sponsor shall provide:

- (1) An approved curriculum; or
- (2) A proposed curriculum if none has been approved prior.
- (3) The applicant for a sponsor certification shall meet the following qualifications:
  - (A) Holds a current Oklahoma artist license in the appropriate field;
  - (B) Provides documentation of legally practicing in the appropriate field for at least five (5) years;
  - (C) Supervises no more than one student in each curriculum at any one time;
  - (D) Supervises no more than one apprentice in each curriculum at any one time.

## 310:233-9-5. Apprentice sponsor [REVOKED]

(a) Upon filing an application with the Department any person meeting the qualifications set forth in this section shall be able to sponsor a body piercing or tattoo apprentice if the person:

- (1) ~~Holds an Oklahoma body piercing or tattoo artist license; and~~
- (2) ~~Provides documentation of legally practicing body piercing or tattooing for at least five years; and~~
- (3) ~~Provides a curriculum to the Department for approval.~~

(b) ~~The sponsor shall develop a curriculum as listed in 310:233-9-6 for body piercing or tattooing in the apprentice program.~~

(c) ~~The sponsor shall not have more than one apprentice working on their curriculum at one time. The sponsor shall have no more than one apprentice working under supervision with an apprentice license.~~

## 310:233-9-5.1. License and certificate fees

(a) Tattoo or body piercing artist license and registration fees are as follows:

- (1) Student: \$0;
- (2) Sponsor: \$0;
- (3) Apprentice: \$250.00;
- (4) Initial: \$250.00;
- (5) Renewal: \$250.00;
- (6) Renewal thirty (30) days after expiration: \$350.00;
- and
- (7) Temporary: \$50.00;
  - (A) Not to exceed seven (7) consecutive days; and
  - (B) Not to exceed thirty (30) total days per year.

(b) Establishment license fees are as follows:

- (1) Tattoo:
  - (A) Initial: \$1,000.00.
  - (B) Renewal: \$500.00.
  - (C) Renewal thirty (30) days after expiration: \$750.00.
  - (D) Event: \$500.00.
- (2) Body piercing:
  - (A) Initial: \$500.00.
  - (B) Renewal: \$250.00.
  - (C) Renewal thirty (30) days after expiration: \$350.00.
  - (D) Event: \$250.00.

## 310:233-9-6. Apprentice program [REVOKED]

(a) ~~Curriculum requirements shall be taught over a minimum of 1500 hours to include the following:~~

- (1) ~~Microbiology;~~
- (2) ~~Sanitation and disinfection;~~
- (3) ~~Safety;~~
- (4) ~~Bloodborne pathogen standards;~~
- (5) ~~Professional standards; and~~
- (6) ~~Body piercing or tattooing.~~

(b) ~~The apprentice program shall be a minimum of one (1) year and no more than two (2) years in length.~~

(c) ~~After completion of the curriculum program the apprentice shall be given challenge status. The apprentice shall take the test administered by the Oklahoma Department of Career and Technology Education with a passing minimum score of 70%. The apprentice license to practice body piercing or tattooing shall be under the direct face to face supervision of their apprentice sponsor.~~

## 310:233-9-6.1. Student curriculum

(a) Curriculum requirements shall be taught over 1500 hours over the course of one year to include the following:

- (1) Microbiology;
- (2) Sanitation and disinfection;
- (3) Safety;
- (4) Bloodborne pathogen standards;
- (5) Professional standards; and
- (6) Body piercing or tattooing procedures based on the field of teaching.

(b) The sponsor shall sign off on the successful completion of the student curriculum with the completion of 1500 hours.

(c) The sponsor shall sign off on the successful completion of the Apprentice program with the completion of one (1) year of supervised, licensed work.

(d) The licensed apprentice procedures shall be under the direct face to face supervision of their apprentice sponsor.

## 310:233-9-7. Apprentice [REVOKED]

(a) ~~Any person desiring to enroll in the body piercing or tattoo apprentice program shall be required to provide their documentation as specified in 310:233-9-2(i)(1-4) to the Department before beginning their apprentice program. The apprentice shall identify their sponsor and the apprentice program in their application.~~

(b) The applicant for an apprentice license must have completed a bloodborne pathogens certification, first aid certification and CPR certification.

(c) The license shall be \$250.00 for an apprentice for one (1) year after completion of the curriculum program. The apprentice shall renew the license through the Department as an apprentice license or be eligible for an artist license after one year from the date of the initial apprentice license that was issued.

(d) The sponsor of the apprentice shall sign off on the successful completion of the curriculum program with the completion of 1500 hours. The sponsor shall sign off on the completion of one year of supervision practicing as a licensed apprentice.

**310:233-9-7.1. Suspension or withdrawal of sponsor certificate**

(a) A sponsor certificate may be withdrawn or suspended temporarily by the Department for failure of the sponsor to comply with this chapter.

(b) The sponsor shall be notified in writing by the Department of the action and the ability to challenge the decision.

**310:233-9-8. License application and review process [REVOKED]**

An individual applying for license shall provide the application in completion with the information identified in 310:233-9-2 for review by the Department for eligibility of testing and licensure.

**SUBCHAPTER 11. ENFORCEMENT**

**310:233-11-1. General requirements [REVOKED]**

(a) Body piercing or tattooing establishments that continue to operate without proper establishment licenses and artist licenses from the Department or operate in violation of OAC 310:233 shall be subject to legal remedial actions and sanctions as provided by law, the APA, 75 O.S.1991, Section 250 et seq. as amended and the Oklahoma Public Health Code, 63 O.S. Section 1-101 et seq.

(b) A representative of the Department shall present official credentials and provide notice of the purpose and intent upon entering a body art piercing or tattooing establishment to make an inspection. Such an inspection shall be conducted a minimum of two times a year or as often as necessary to ensure compliance with OAC 310:233.

(c) If, after investigation, the Department finds that an artist or operator is in violation of OAC 310:233 or 21:841.1 et seq., the Department shall advise the artist or operator, in writing, of its findings and give a date of correction within a reasonable period of time, not to exceed thirty (30) days.

(d) If the Department has reasonable cause to suspect that a communicable disease is being or may be transmitted by an artist, unapproved or malfunctioning equipment is being used, or unsanitary or unsafe conditions which may adversely impact the health of the public are present in the establishment, upon

written notice to the owner or operator, the Department shall take such action as necessary and appropriate, including but not limited to the following:

(1) Issue an emergency order summarily excluding the performance of body piercing or tattoo procedures by the body piercing or tattooing establishment and any or all artists who are responsible, or reasonably appear responsible, for the transmission of a communicable disease until the Department determines there is no further risk to public health; or

(2) Issue an order to summarily suspend the license of the licensed body piercing or tattoo establishment and the licenses of any and all artists who are responsible, or reasonably appear responsible, until the Department determines there is no further risk to the public health.

(e) In taking any action to deny, revoke, suspend, or refuse renewal of a license, the Department shall comply with the provisions of the APA, 75 O.S.1991, Section 250 et seq. as amended and the Oklahoma Public Health Code, 63 O.S. Section 1-101 et seq.

(f) Administrative fines may be levied for violations of OAC 310:233. Fines for violations shall include, but not be limited to:

(1) Failure of an apprentice sponsor to supervise and comply with 310:233, up to \$5,000.00 per day or withdrawal or suspension of approval;

(2) Failure to obtain appropriate licenses, up to \$5,000.00 per day or denial of license per violation;

(3) Failure to observe procedures to prevent the transmission of a bloodborne pathogen, up to \$5,000.00 per day per violation;

(4) Failure to maintain instruments used in body piercing or tattooing in a sterile condition, up to \$5,000.00 per day per violation;

(5) Failure to install and maintain appropriate hand-washing facilities, up to \$5,000.00 per day or revocation per violation;

(6) Failure to maintain client records, artist information, operator information, or monthly spore test records, up to \$5,000.00 per day per violation; and

(7) Failure of an artist to change exam gloves between clients, up to \$5,000.00 per day per violation.

(g) In addition to administrative fines the Department may deny, revoke, suspend, withdraw or refuse to renew licensure for violations of this Chapter or 21 O.S. Section 842.1 et seq.

**310:233-11-1.1. Waivers and variances**

(a) The operator of an establishment may request that a waiver be granted on any nonconforming use that may then exist, on or before the effective date of the rule change, at the license holder's place of operation.

(b) The operator of an establishment may request that a variance be granted to portions of this chapter.

(c) Waivers and variances requested pursuant to this Subchapter are subject to approval by the Department.

(d) An operator must submit a written request detailing:

(1) The nature of the nonconforming use;

(2) The relevant section of this Chapter; and

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- (3) A timeline for correction of the nonconforming use; and
- (4) A justification of how any public health concerns will be addressed.
- (e) If a request is approved, then the Department will send a notice of approval. If the operator has not received a notice of approval within sixty (60) calendar days from when the request was submitted, then the request has been denied.
- (f) Waivers and variances are not considered to be part of the license and may be revoked at any time, for any reason, by the Department. The licensee is not entitled to a hearing prior to revocation of a waiver or variance, but will be provided written notice of any revocation along with instructions that the licensee must become compliant by a certain date.

## **310:233-11-2. Investigation, filing of actions and hearing procedures [REVOKED]**

- (a) If the Department determines that a possible violation of the Body Piercing or Tattoo statutes or Rules has occurred, the Department may commence an investigation of the complaint.
- (b) A body piercing or tattooing establishment and body piercing or tattoo artist, or applicant for licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:233-11-2(a), shall not:
  - (1) Knowingly make a false statement of material fact; or
  - (2) Fail to disclose a fact necessary to correct a misapprehension known by the establishment, artist or applicants for licensure to have arisen in the application or the matter under investigation; or
  - (3) Fail to comply with a demand for information made by the Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of OAC 310:2, in which case the establishment, artist or applicant may await the decision concerning the issuance or denial of a protective order before making any response.
- (c) The Department may begin a disciplinary action against an establishment or artist who is not exempt from licensure by following the procedures in OAC 310:2. The Department shall specifically state the violation(s) and shall request the appropriate remedy. Remedies include revocation of a license, suspension of a license, and administrative penalty.
- (d) If in the course of an investigation the Department determines that a licensee or applicant for licensure has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the establishment or artist's license or authorization for sponsoring an apprentice.
- (e) Hearings shall be conducted by the Commissioner of Health or his designee as specified in OAC 310:2. The Department shall recommend the most appropriate penalty at the conclusion of the evidence.
- (f) The Department, either by order of the Commissioner or an Administrative Law Judge, shall issue a final order on

all disciplinary matters. Final orders are appealable under the Administrative Procedures Act to the district courts.

(g) Any person found to be practicing body piercing or tattooing without being either properly licensed, approved for supervisor status, exempt or under the approved supervision of an apprentice sponsor as part of the licensure process shall be ordered to cease practicing or supervising and may be subject to an administrative penalty. The Department may seek the assistance of the courts if the actions continue.

(h) The Department may assess an administrative penalty against an individual or licensee if the order includes a finding that the individual or licensee:

- (1) Violated any provision of the Body Piercing and Tattooing statutes, including practicing body piercing or tattooing without licensure, exemption or under the approved supervision of an approved sponsor; or
  - (2) Violated any rule within this Chapter; or
  - (3) Violated any order issued pursuant to this Chapter.
- (i) The total amount of the administrative penalty assessed shall not exceed ten thousand dollars (\$10,000.00) for any related series of violations.

## **310:233-11-2.1. Time frame for correction**

The license holder shall correct violations by a date and time agreed to or specified by regulatory authority but no later than thirty (30) calendar days after the inspection.

## **310:233-11-3. Suspension or revocation of licenses [REVOKED]**

- (a) A license issued under the provisions of OAC 310:233 may be suspended temporarily by the Department for failure of the holder to comply with the requirements of OAC 310:233 or 21 O.S. Section 841.1 et seq.
- (b) Whenever an artist has failed to comply with any notice issued under the provisions of OAC 310:233 or 21 O.S. Section 841.1 et seq., the Department shall send notice to the artist that the license is immediately suspended. A hearing shall be provided if a written request for a hearing is filed with the Department's Office of Administrative Hearings.
- (c) For repeated or serious violations that threaten the health of the client or artist, for violations of the requirements of OAC 310:233 or 21 O.S. Section 841.1 et seq. or for refusal to allow Department personnel to inspect the licensed facility, including documents and records, a license may be revoked after a hearing.

## **310:233-11-3.1. Investigation and enforcement**

- (a) If the Department determines that a possible violation of the Body Piercing or Tattoo statutes or Rules has occurred, the Department may commence an investigation of the complaint.
- (b) Hearings and disciplinary actions are conducted in accordance with the Administrative Procedures Act and Chapter 2 of this Title.
- (c) The Department will specifically state the violation(s) and request the appropriate remedy. Remedies may include revocation or suspensions of a license, and/or an administrative penalty.



(d) The total administrative penalty amount assessed for all violations found through an investigation cannot exceed \$10,000.00.

(e) If the Department determines that a licensee or applicant for licensure has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the establishment or artist's license or authorization for sponsoring a student or apprentice.

(f) An applicant for licensure shall not:

- (1) Knowingly make a false statement of material fact; or
- (2) Fail to disclose a fact necessary to correct a misapprehension regarding the application for licensure or the matter under investigation; or
- (3) Fail to comply with a request for information made by the Department or any designated representative thereof.

(g) The Department may notify the district attorney of any violation of 21 O.S. §842.1 or this Chapter [21 O.S § 842.3]

(h) Additionally, an individual can also report criminal acts directly to a district attorney's office.

**310:233-11-4. Suspension or withdrawal of apprentice sponsor [REVOKED]**

~~(a) An approval from the Department for an apprentice sponsor issued under the provisions of OAC 310:233 may be withdrawn or suspended temporarily by the Department for failure of the apprentice sponsor to provide adequate training to the apprentice under the requirements of OAC 310:233.~~

~~(b) Whenever an apprentice sponsor has failed to comply with the provisions of OAC 310:233 the Department shall send notice to the apprentice sponsor that the approval is immediately withdrawn or suspended. A hearing shall be provided if a written request for a hearing is filed with the Department's Office of Administrative Hearings.~~

*[OAR Docket #22-592; filed 7-12-22]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 234. MEDICAL MICROPIGMENTATION**

*[OAR Docket #22-593]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- Subchapter 1. General Provisions
  - 310:234-1-1. Purpose [AMENDED]
  - 310:234-1-2. Definitions [AMENDED]
  - Subchapter 3. Medical Micropigmentation Certification
  - 310:234-3-2. Certification requirements [AMENDED]
  - 310:234-3-3. Training and testing [AMENDED]
  - 310:234-3-3.1. Reciprocity [AMENDED]
  - 310:234-3-4. Certificate by completion of medical micropigmentation training program and certification testing process [AMENDED]

310:234-3-5. Certificate by skills challenge and certification testing [REVOKED]

Subchapter 7. Requirements for Premises  
310:234-7-1. Physical facilities [AMENDED]

Subchapter 9. Standards for Medical Micropigmentation  
310:234-9-1.1. Medical Micropigmentation Records [AMENDED]

**AUTHORITY:**  
Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; Title 63 O.S. § 1-1450

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

October 18, 2021

**COMMENT PERIOD:**  
November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**  
December 15, 2021

**ADOPTION:**  
January 20, 2022

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

January 20, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
310:234-1-1. Purpose [AMENDED] Rule reduction for clarity, outdated language, or reduction of burden to the licensee.

310:234-1-2. Definitions [AMENDED] Rule reduction for clarity, outdated language, or reduction of burden to the licensee.

310:234-3-2. Certification requirements [AMENDED] Rule reduction for clarity, outdated language or reduction of burden to the licensee.

310:234-3-3. Training and testing [AMENDED] Rule reduction for clarity, outdated language, or reduction of burden to the licensee.

310:234-3-3.1. Reciprocity [AMENDED] Rule reduction for clarity, outdated language or reduction of burden to the licensee.

310:234-3-4. Certificate by completion of medical micropigmentation training program and certification testing process [AMENDED] Rule reduction for clarity, outdated language, or reduction of burden to the licensee.

310:234-3-5. Certificate by skills challenge and certification testing [REVOKED] Rule reduction for clarity, outdated language, or reduction of burden to the licensee.

310:234-7-1. Physical facilities [AMENDED] Rule reduction for clarity, outdated language, or reduction of burden to the licensee.

310:234-9-1.1. Medical Micropigmentation Records [AMENDED] Rule reduction for clarity, outdated language, or reduction of burden to the licensee.

310:234-9-5. Preparation and care of the target area [AMENDED] Rule reduction for clarity, outdated language or reduction of burden to the licensee.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

# Permanent Final Adoptions

## 310:234-1-1. Purpose

This Chapter is to be used by physicians, nurses and other individuals who are certified to perform medical micropigmentation. The rules implement the provisions of the Oklahoma Medical Micropigmentation Regulation Act, 63 O.S. Section 1-1450 et seq.

## 310:234-1-2. Definitions

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

**"Aftercare"** means written instructions given to the client, specific to the micropigmentation procedure(s) rendered, on caring for the micropigmentation area and surrounding area.

**"Antiseptic"** means an agent that destroys disease causing microorganisms on human skin or mucosa.

**"Autoclave bag"** means a bag for holding instruments or other items, which are to be put into an autoclave for sterilization.

**"Certification"** means written approval by the Department for a person to perform medical micropigmentation.

**"Clinical certification examination"** means the examination is a clinical scenario that tests the candidate's ability to perform micropigmentation procedures. The candidate demonstrates technical competency by scoring 100% on the clinical certification examination. The clinical certification examination consists of one scenario with three skills components, one of which may be retaken two (2) times before retraining is required.

**"Committee"** MMAC means the Medical Micropigmentation Advisory Committee means the Consumer Protection Licensing Advisory Council.

**"Contaminated waste"** means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood and other potentially infectious materials, as defined in the "Occupational Exposure to Blood-borne Pathogens." [29 CFR § 1910.1030]

**"Department"** OSDH means the Oklahoma State Department of Health.

**"Disinfection"** means the destruction of disease causing microorganisms on inanimate objects or surface.

**"Equipment"** means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with medical micropigmentation procedures.

**"Handsink"** means a lavatory equipped with hot and cold running water under pressure used solely for washing hands, arms or other portions of the body.

**"Hot water"** means water that attains and maintains a temperature as specified in OAC 158:30 of 100 °F.

**"Instruments used for medical micropigmentation"** means handpieces, needles, needle bars and other instruments that may contact a client's body or body fluids during medical micropigmentation.

**"Licensing board"** means the Oklahoma State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners and/or the Board of Dentistry. [21:841.5-63 O.S. Section 1-1451(1)]

**"Liquid chemical germicide"** means a disinfectant or sanitizer registered with the Environmental Protection Agency or an approximate 1:100 dilution of household chlorine bleach (500ppm, ¼ cup/gal. or 2 tablespoons/quart of tap water) made fresh daily and dispensed from a spray bottle.

**"Medical micropigmentation"** means a medical procedure in which any color or pigment is applied with a needle or electronic machine:

(A) To produce a permanent mark visible through the skin;

(B) Above the jawline and anterior to the ear and frontal hairline including but not limited to application of eyeliner, eye shadow, lips, eyebrows, cheeks, and scars; and/or

(C) For regimentation of areas involving reconstructive surgery or trauma. [21:841.563 O.S. Section 1-1451(2)]

**"Physician"** means a person licensed to practice:

(A) Allopathic medicine and surgery by the Oklahoma State Board of Medical Licensure and Supervision pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act. [Title 59 O.S. Section 481 et seq.]

(B) Osteopathic medicine by the State Board of Osteopathic Examiners pursuant to the Oklahoma Osteopathic Medicine Act, [Title 59 O.S. 620 et seq.] or

(C) Dentistry by the Board of Dentistry pursuant to the State Dental Act. [Title 59-63 O.S. Section 328.1 et seq. 1-1451(3)].

**"Procedure surface"** means any part of equipment designed to contact the client's unclothed body during a medical micropigmentation procedure.

**"Sanitize/sanitization procedure"** **"Sanitize"** means a process of reducing the number of microorganisms on cleaned surfaces and equipment to a safe level and has been approved by the Department.

**"Sharps"** means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, scalpel blades and razor blades.

**"Sharps container"** means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the International Biohazard Symbol.

**"Single use"** means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, and protective gloves.

**"Skills area evaluation"** means an evaluation given at the end of instruction for a particular skills area that consists of two parts: technique and theory. Mastery of technique shall

be demonstrated by performing the skills on the job sheet(s) for that skills area in the presence of an approved evaluator (supervising physician or instructor) with 100% accuracy. A candidate shall demonstrate mastery of micropigmentation theory by scoring 85% or greater on a written test over the material in that skills area.

~~"Skills Challenge" means a mechanism that enables persons who are currently performing supervised micropigmentation to challenge the training requirement through previous training and experience. Candidates who satisfactorily challenge the training requirement by satisfactorily completing all skills area evaluations can take the written and clinical certification examinations. Candidates who do not satisfactorily challenge the training requirement must enroll in a medical micropigmentation training program.~~

"Sterilization" means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

"Ultrasonic" means ultrasonic sound, which is pertaining to acoustic frequencies above the range audible to the human ear, or, above approximately 20,000 cycles per second. There are several types of ultrasonic devices.

~~"Universal precautions" means a set of guidelines and controls, published by the Centers for Disease Control (CDC) as "Guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B to health care and public safety workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S 6, and as "Recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure prone invasive procedures" in MMWR, July 12, 1991, Vol. 40, No. RR 8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, proper handling and disposal of needles, sharps disposal, and disposal of products contaminated with blood and body fluids.~~

~~"Written certification examination" means an the state examination taken upon satisfactory completion of all skills area evaluations. An applicant demonstrates written competency by scoring 70% or greater on the written certification examination. The written certification examination may be retaken up to two (2) times before retraining is required.~~

**SUBCHAPTER 3. MEDICAL MICROPIGMENTATION CERTIFICATION**

**310:234-3-2. Certification requirements**

(a) An individual shall be eligible to apply for a certificate to practice medical micropigmentation by satisfying all of the following criteria:

- (1) Applicant shall ~~have~~has received a high-school diploma or its equivalent;
- (2) Applicant shall ~~be~~is at least twenty-one years of age;

(3) Applicant shall provide a notarized copy of his/her certificate of birth;

(4) Applicant shall ~~provide~~provides a notarized copy of his/her driver's license or other similar photo identification;

(54) Applicant shall ~~provide~~provides a notarized copy of his/her credentials and professional resume that documents years of practice and number of procedures performed (if applicable);

(65) Applicant shall ~~provide~~provides proof of satisfactory completion of an OSDH-approved medical micropigmentation training and testing program.

(b) The State Commissioner of Health shall not issue a certificate or renew a certificate to perform medical micropigmentation procedures to ~~certain~~ persons as specified in Title 63, Section 1-1454(~~b~~B).

(c) **Certification fees.** Fees to obtain a certificate to practice medical micropigmentation in Oklahoma shall ~~bear~~ are as follows:

- (1) \$500.00 for a new application for certification, ~~which does not include subsequent cost of exams and re-exams;~~
- (2) \$100.00 for a renewal of certification;
- (3) \$375.00 for reinstatement of certification if the renewal of the certification is 30 days or more after the expiration date; and/or
- (4) \$125.00 for the replacement of a certificate.
- (5) Applicant shall be responsible for the cost of the examination or re-examination and background checks relating to licensing or certification.

(d) **Period of validity for certificate.** Certification is valid for one (1) year after date of issuance.

**310:234-3-3. Training and testing**

An individual shall satisfy the training and testing requirement for certification by meeting ~~one (1) of~~ the following criteria:

~~(1) Satisfactory completion of an OSDH-approved medical micropigmentation training program and the certification testing process shall include skills area evaluations and written certification test. A clinical skills test may be required if deemed necessary by the Oklahoma Department of Career and Technology Education.~~

~~(2) Granted challenge status after being deemed by OSDH to have met requirements for preparedness through training and experience and satisfactory completion of all components of the certification testing process shall include skills area evaluations and written certification test. A clinical skills test may be required if deemed necessary by the Oklahoma Department of Career and Technology Education.~~

**310:234-3-3.1. Reciprocity**

*The State Department of Health upon recommendation of the Medical Micropigmentation Advisory Committee may approve applicants for certification by reciprocity. An applicant shall qualify for certification by reciprocity if the applicant:*

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- (1) *Has qualifications and training comparable to those required under the Oklahoma Medical Micropigmentation Regulation Act;*
- (2) *Provides documentation verifying two (2) years of experience and a minimum of two hundred (200) procedures; ~~and~~*
- (3) *Has successfully completed the Oklahoma certification examination- [63:O.S. Section 1-1455(E)]; ~~and~~*
- (4) *Provides documentation verifying possession of licensing or certification from another state in good standing.*

## 310:234-3-4. Certificate by completion of medical micropigmentation training program and certification testing process

- (a) Training in medical micropigmentation obtained through the Oklahoma Department of Career and Technology Education or other training course shall consist of at least 300 hours or equivalent of competency based instruction ~~[63:1-1455]~~ encompassing both theory and clinical training and is approved by the Department as meeting the training and curriculum requirements of this section.
- (b) Medical Micropigmentation training shall be in the following skills area including theory and lab training:
  - (1) Safety and Aseptic Technique;
  - (2) Knowledge of Facial Anatomy, Physiology, and Disease;
  - (3) Theory and Application of Micropigmentation;
  - (4) Color Theory;
  - (5) Client Consultation Services;
  - (6) Professionalism; and
  - (7) Micropigmentation procedures (eyeliner, lips, eyebrows, eye shadow, cheeks, scars, and/or reconstructive surgery, or trauma, or repigmentation of the areola):
    - (A) Basic procedures on clients (eyeliner, lips, and eyebrows),
    - (B) Advanced procedures (eye shadow, cheeks, scars, and/or reconstructive surgery, or trauma or repigmentation of the areola).
- (c) The instructor for micropigmentation procedures and techniques shall be:
  - (1) ~~An~~ Oklahoma Certified Micropigmentologist who has performed procedures for three (3) years that shall include eye procedures, full lip procedures, and eyebrow procedures; ~~or~~
  - (2) ~~A physician as defined by OAC 310:234-1-2. Subject matter experts may be utilized to teach technique and theory in other skill areas.~~
- (d) **Skills area evaluations.**
  - (1) During the training program, a candidate must satisfactorily complete an evaluation for each skills area. The evaluation verifies that micropigmentation concepts and/or techniques presented in that skills area have been mastered.
  - (2) Mastery of medical micropigmentation technique in a skills area shall be demonstrated when the candidate performs all skills presented on all job sheets contained

within that skills area to the instructor with 100% accuracy.

(3) Mastery of medical micropigmentation theory in a skills area shall be demonstrated when the candidate scores 85% on the written test over material covered in that skills area (if applicable).

### (e) **Written certification examination.**

(1) Candidates shall be eligible to sit for the written certification examination upon satisfactory completion of training and skills area evaluations. ~~The written certification examination for medical micropigmentation shall be offered at Health Certification Project testing sites located in Technology Centers. Documentation of satisfactory completion of the written certification exam shall be is required before a candidate is permitted to take the clinical certification examination.~~

(2) A passing score of 70% shall be required to show competency. A candidate who does not meet this score can retest up to two (2) times. Candidates who do not pass the written certification examination must wait at least seven (7) days before retesting. Candidates who are unable to attain competency after three attempts shall be required to re-enroll in the medical micropigmentation training program.

### (f) **Clinical certification examination.**

(1) ~~Candidates shall be eligible to take the clinical certification examination upon satisfactory completion of the written certification examination. The clinical certification examination for medical micropigmentation shall be offered at selected Technology Center test sites and shall be offered two (2) times per year or as deemed necessary by the Department. The clinical certification examination shall consist of three (3) components.~~

(2) ~~Candidates shall provide all equipment and supplies for the clinical certification examination. Competency shall be verified by documentation of the clinical certification examination. A candidate must attain a score of 100% to pass the clinical certification examination. A candidate shall be permitted to retest one (1) clinical component up to two (2) times. Candidates who are unable to pass all three components within these guidelines shall be required to re-enroll in a medical micropigmentation program.~~

(g) **Application for certification.** Upon satisfactory completion of the medical micropigmentation training and certification testing process, the applicant is eligible to apply for a Medical Micropigmentation Certificate. In order to apply for a Certification, the candidate must submit the following to OSDH:

- (1) Completed application;
- (2) ~~Notarized copy~~ Copy of the candidate's certificate of birth;
- (3) ~~Notarized copy~~ Copy of the candidate's driver's license or other similar form of photo ID;
- (4) ~~Notarized copy~~ Copy of the candidate's professional credentials; and
- (5) Completed Training and Testing Verification Form.

(hg) **Issuance of certificates.** The State Commissioner of Health shall award a certificate to eligible applicants as set forth in Section 5 of the Act within thirty (30) days of receipt of the completed application and required documents.

**310:234-3-5. Certificate by skills challenge and certification testing [REVOKED]**

(a) A person who has received training in micropigmentation and has experience in performing micropigmentation procedures may be deemed to have met the Department approved preparedness requirements. Attaining challenge status enables the applicant to bypass micropigmentation training if he/she is able to score 100% on the Skills area evaluations for each of the areas:

- (1) Safety and Aseptic Technique;
- (2) Knowledge of Facial Anatomy, Physiology, and Disease;
- (3) Theory and Application of Micropigmentation;
- (4) Color Theory;
- (5) Client Consultation Services;
- (6) Professionalism; and
- (7) Micropigmentation Procedures on Clients.
  - (A) Basic procedures (eyeliner, lips, and eye brows);
  - (B) Advanced procedures (eye shadow, cheeks, scars, and/or reconstructive surgery, trauma, or repigmentation of the areola)

(b) **Application for certification by skills challenge and certification testing.**

- (1) To apply for challenge status, the applicant must submit all of the following to OSDH:
  - (A) Completed application for challenge status;
  - (B) Notarized copy of the applicant's certificate of birth;
  - (C) Notarized copy of the applicant's driver's license or other similar photo identification;
  - (D) Notarized copy of his/her credentials and professional resume of satisfactory completion of Medical Micropigmentation procedures for a minimum of six months experience and 60 procedures performed;
  - (E) Letter from supervising physician detailing the types of micropigmentation procedures that shall be performed under his/her supervision or letter of recommendation;
- (2) OSDH shall notify the applicant in writing of its decision to approve/disapprove the applicant's challenge status within 60 days of receipt of a completed application. Applicants who are not eligible to challenge must enroll in a micropigmentation training program before entering the certification testing process. Applicants who are eligible to challenge must present the letter of notification from OSDH upon enrolling in the skills challenge and certification testing process.

(c) **Skills area evaluations.**

- (1) A skills challenge candidate must score 100% on each skills area evaluation. The evaluation verifies those micropigmentation concepts and/or techniques presented

in the training program have been mastered through previous training and experience.

(2) Mastery of medical micropigmentation technique in a skills area shall be demonstrated when the candidate performs all skills presented on all job sheets contained within that competency area to the instructor with 100% accuracy. A skills challenge candidate shall perform all skills presented on a job sheet in the presence of his/her supervising physician. Each job sheet must document the procedure performed and include the signature of the supervising physician who witnessed and evaluated the procedure. In order to take the written portion of the skills area evaluation, the candidate must present signed and completed job sheets for each skill presented in that competency area.

(3) Mastery of medical micropigmentation theory in a skills area shall be demonstrated when the candidate scores 85% on the written test (if applicable). Candidates who fail to score 85% on the written portion of each skills area evaluation can re-test in no more than two (2) competency areas. Candidates who fail to score 85% after three (3) attempts shall be required to enroll in a micropigmentation program. Unsuccessful challenge candidates must remediate in all areas where they scored less than 85% through an approved micropigmentation program. Competency will be determined by successful completion of the associated written skill evaluation(s). Candidates who satisfactorily complete all skills area evaluations shall be eligible to register for the written certification examination.

(d) **Written certification examination.**

(1) Candidate shall be eligible to sit for the written certification examination upon satisfactory completion of training and skills area evaluations. The written certification examination for medical micropigmentation shall be offered at Health Certification Project testing sites located in Technology Centers. Documentation of satisfactory completion of the written certification exam shall be required before a candidate is permitted to take the clinical certification examination.

(2) A passing score of 70% shall be required to show competency. A candidate who does not meet this score can retest up to two (2) times. Candidates who do not pass the written certification examination must wait at least seven (7) days before retesting. Candidates who are unable to attain competency after three attempts shall be required to re-enroll in the medical micropigmentation training program.

(e) **Clinical certification examination.**

(1) Candidates shall be eligible to take the clinical certification examination upon satisfactory completion of the written competency examination. The clinical competency for medical micropigmentation shall be offered at selected Technology Center test sites and shall be offered two (2) times per year or as deemed necessary by the Department. The clinical certification examination shall consist of three (3) components.

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~~(2) Candidates shall provide all equipment and supplies for the clinical competency examination. Competency shall be verified by documentation of the clinical competency examination. A candidate must attain a score of 100% to pass the clinical certification examination. A candidate shall be permitted to retest one (1) clinical component up to two (2) times. Retesting a clinical component shall be available at the next clinical certification examination test date. Candidates who are unable to pass all three components within these guidelines shall be required to re-enroll in a medical micropigmentation program.~~

**(f) Application for certification.**

~~(1) Upon satisfactory completion of the medical micropigmentation training and certification testing process, the applicant is eligible to apply for a Medical Micropigmentation Certificate. In order to apply for a Certification, the candidate must submit the following to OSDH:~~

- ~~(A) Completed application for certification, and~~
- ~~(B) Completed Training and Testing Verification Form.~~

~~(2) The State Commissioner of Health shall award a certificate to eligible applicants as set forth in Section 5 of the Act within thirty days of receipt of the completed application and required documents.~~

## SUBCHAPTER 7. REQUIREMENTS FOR PREMISES

### 310:234-7-1. Physical facilities

Medical micropigmentation shall only be performed in a physician's office. The applicant or licensed medical micropigmentation person shall provide information to the Department in their application or renewal form stating who the supervising physician is with the dentist or physician('s) signature, address of the dentist or physician's office where the dentist or physician is supervising, and ~~where~~ the Certified Medical Micropigmentologist being supervised is performing medical micropigmentation.

## SUBCHAPTER 9. STANDARDS FOR MEDICAL MICROPIGMENTATION

### 310:234-9-1.1. Medical Micropigmentation Records

An Oklahoma Certified Micropigmentologist shall provide the Oklahoma State Department of Health, ~~Consumer Protection Division~~ with the name, address, phone number, and licensure number of each of their supervising physicians; specifically identifying the Oklahoma State Board of Medical Licensure & Supervision, the Oklahoma State Board of Osteopathic Examiners and/or the Oklahoma State Board of Dentistry as the supervising physician's licensing authority.

The Oklahoma Certified Micropigmentologist shall inform the Department of any and all changes thereto.

[OAR Docket #22-593; filed 7-12-22]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 250. FEE SCHEDULE FOR CONSUMER HEALTH SERVICE

[OAR Docket #22-594]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. License Classifications and Associated Fees for Consumer Health Services  
310:250-3-1. Food establishments' fees [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; Title 63 O.S. § 1-1118

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

October 18, 2020

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

December 15, 2021

**ADOPTION:**

January 20, 2022

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

January 20, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

This rule change adds a multi-seasonal license for snow-cone establishments that would also like to sell hot beverages. The previous rule limited seasonal licenses to 180 days, and this multi-seasonal license would be valid for 365 days.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 3. LICENSE CLASSIFICATIONS AND ASSOCIATED FEES FOR CONSUMER HEALTH SERVICES

**310:250-3-1. Food establishments' fees**

(a) The following are license classifications and associated fees for food establishments, manufacturers, or wholesalers regulated by Title 63 O.S. § 1-915, Title 63 O.S. § 1-1118, Title 63 O.S. § 1-1119, or Title 63 O.S. § 1-1120 et seq., and the rules promulgated thereunder.

- (1) Food service, manufacturing, or wholesale.
  - (A) Initial - \$425.00
  - (B) Renewal - \$335.00
  - (C) Late Renewal - \$375.00
- (2) State Operated, Non-Profit or Health Facilities not meeting exempt status.
  - (A) Initial - \$175.00
  - (B) Renewal - \$125.00
  - (C) Late Renewal - \$150.00

(3) ~~Seasonal includes any is limited to an establishment that meets the definition of "Seasonal food establishment" outlined in OAC 310:257-1-2 where the license is valid for only one hundred eighty (180) consecutive days per year. The license may be reinstated no sooner than one hundred eighty 180 days after the expiration of the previous license.~~

- ~~(A) Initial Fee - \$250.00~~
- ~~(B) Reinstatement - \$250.00~~

(4) Multi-Seasonal is limited to an establishment that meets the definition of "Multi-Seasonal food establishment" outlined in OAC 310:257-1-2 where the license is valid for three hundred and sixty-five (365) consecutive days.

- (A) Initial - \$425.00
- (B) Renewal - \$335.00
- (C) Late Renewal - \$375.00

(5) The fee for a temporary food establishment, as defined in OAC 310:257-1-2, shall be \$50.00 for the initial day of the temporary event plus \$25.00 for each additional consecutive day. The total fee for a single temporary event license shall not exceed \$250. No temporary event license shall be issued for more than fourteen (14) consecutive days.

- (A) The total fee for a single temporary event license shall not exceed \$250.
- (B) No temporary event license shall be issued for more than fourteen (14) consecutive days.

~~(56)~~ The fee for a temporary food establishment, as defined in OAC 310:257-1-2, at a county fair as defined in Title 2 O.S. §§ 15-51 et seq., shall be \$50.00 for a maximum of three (3) days.

~~(67)~~ The fee for a temporary food establishment, as defined in OAC 310:257-1-2, at a ~~farmers-~~farmer's market as defined in OAC 310:257-1-2 shall be \$50.00 for a maximum of three (3) days.

(b) An establishment qualifies for a fee exempt license if it is a "food establishment - fee exempt" as that term is defined in OAC 310:257-1-2.

(c) Late renewal fees apply to any renewal application post-marked and/or received thirty (30) days after the expiration date of the license.

(d) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal. Thereafter, the establishment shall be required to pay an initial fee. The establishment that has not had a valid license for one (1) year is considered a new establishment.

*[OAR Docket #22-594; filed 7-12-22]*

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

*[OAR Docket #22-595]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Purpose and Definitions
- 310:257-1-2. Definitions [AMENDED]
- 310:257-1-4. Exemptions [AMENDED]
- Subchapter 3. Management and Personnel
- 310:257-3-3. Person in charge [AMENDED]
- Subchapter 5. Food
- 310:257-5-2. Compliance with food law [AMENDED]
- 310:257-5-68. Other forms of information [AMENDED]
- 310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; Title 63 O.S. § 1-1118

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

October 18, 2020

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

December 15, 2021

**ADOPTION:**

January 20, 2022

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

January 20, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These rules added the provisions of HB 1772, which added a multi-seasonal license and HB 1032, the Homemade Food Freedom Act. 310:257-1-2. Definitions [AMENDED] References to the Home Bakery Act were removed. Food Establishment definition modified to allow for homemade food items. Multi-seasonal license defined. 310:257-1-4. Exemptions [AMENDED] Updated homemade foods to reflect HB 1032. 310:257-3-3. Person in charge [AMENDED] Added language to have food made under HB1032 provisions be considered an approved source. 310:257-5-2. Compliance with food law [AMENDED] Removed prohibition about homemade food. Added alcohol law compliance. 310:257-5-68. Other forms of information [AMENDED] Added a placard requirement listed in law and added an advisory for the menu of a restaurant that uses homemade food items. 310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED] Modified language to allow for HB1032 homemade items.

# Permanent Final Adoptions

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## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. PURPOSE AND DEFINITIONS

### 310:257-1-2. Definitions

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

**"Accredited program"** means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals. The American National Standards Institute - Conference for Food Protection (ANSI-CFP) Accreditation programs include but are not limited to: National Restaurant Association Solutions; LLC (ServeSafe); Prometric, Inc.; 360training.com; and National Registry of Food Safety Professionals.

(A) Accredited program refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline, and grievance procedures; and test development and administration.

(B) Accredited program does not refer to training functions or educational programs.

**"Additive"** as used in this Chapter shall have the same meaning for the following terms:

(A) **"Color additive"** has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(t) and 21 CFR, Part 70.

(B) **"Food additive"** has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(s) and 21 CFR, Part 170.

**"Adulterated"** means the definition in 63 O.S. Section 1-1109.

**"Approved"** means acceptable to the Department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

**"Asymptomatic"** means without obvious symptoms; not showing or producing indications of a disease or other medical conditions, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

**" $a_w$ "** means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol  $a_w$ .

**"Balut"** means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific state of development after which it is removed from incubation before hatching.

**"Beverage"** means a liquid for drinking, including water.

**"Bottled drinking water"** means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

**"Casing"** means a tubular container for sausage products made of either natural or artificial (synthetic) material.

**"Certified applicator"** means any individual who is certified under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq. and/or by the Oklahoma State Department of Agriculture Food and Forestry as authorized to use or supervise the use of any pesticide that is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with the product labeling only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides.

**"Certification number"** means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

**"CFR"** means Code of Federal Regulations. Citations in this Chapter to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.

**"CIP"** means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. It does not include the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

**"Code of Federal Regulations"** means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which is published annually by the U.S. Government Printing Office; and contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

**"Commingle"** means to combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or to combine shucked shellfish from containers with different container codes or different shucking dates.

**"Comminuted"** means reduced in size by methods including chopping, flaking, grinding, or mincing and includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, sausage; and a mixture of 2 or more types of meat that have



been reduced in size and combined, such as sausages made from 2 or more meats.

**"Commissary"** means a facility used to maintain safe and sanitary operations for the cleaning and servicing of pushcarts, mobile retail units, or mobile food establishments; and for the storage of food and single service articles used in those units.

**"Common dining area"** means a central location in a group residence where people gather to eat at mealtime but does not apply to a kitchenette or dining area located within private living quarters.

**"Conditional employee"** means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

**"Confirmed disease outbreak"** means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

**"Consumer"** means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

**"Cook/Chill"** means the process of placing food, heated to a temperature as required in OAC 310:257-5-46 or OAC 310:257-5-48, and held at a temperature of 135°F or hotter, into an impermeable bag, then cooling the food to a temperature of 41°F or less as required under OAC 310:257-5-57.

**"Co-Op"** means an establishment meeting the requirements in the Cooperative Corporations Chapter at 18 O.S. §§ 421 et seq. and selling food products produced as described in the Home Bakery Act of 2013 at 2 O.S. §§ 5-4.1 et seq.

**"Core item"** means a provision of this Chapter that is not designated as a priority item or priority foundation item and includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design or general maintenance.

**"Corrosion-resistant material"** means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

**"Counter-mounted equipment"** means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

**"Critical control point (CCP)"** means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

**"Critical limit"** means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

**"Customer self-service"** means customer selection and packaging of a bulk food product from a product module.

**"Cut leafy greens"** means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

**"Dealer"** means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

**"Department"** means the Oklahoma State Department of Health and a health department designated in writing by the State Commissioner of Health to perform official duties or other acts authorized under 63 O.S. § 101 et seq. and this Chapter, or an authorized agent thereof.

**"Disclosure"** means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

**"Display area"** means a location or locations, including physical facilities and equipment, where bulk food is offered for customer self-service.

**"Drinking water"** means water that meets criteria as specified in 40 CFR, Part 141 National Primary Drinking Water Regulations. It is traditionally known as "potable water." Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

**"Dry storage area"** means a room or area designated for the storage of packaged or containerized bulk food that are not Time Temperature Control for Safety Foods and dry goods such as single-service items.

**"Easily cleanable"** means a characteristic of a surface that allows effective removal of soil by normal cleaning methods; is dependent on the material, design, construction, and installation of the surface; and varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use. Easily cleanable includes a tiered application of the criteria that qualify the surface as easily cleanable to different situations in which varying degrees of cleanability are required such as the appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or the need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

**"Easily movable"** means portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and has no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow

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the equipment to be moved for cleaning of the equipment and adjacent area.

**"Egg"** means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey. Egg does not include a balut and it does not include reptile species such as alligator or an egg product.

**"Egg product"** means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen or liquid eggs. Egg product does not include food which contains eggs only in a relatively small proportion such as cake mixes.

**"Employee"** means the license holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

**"EPA"** means the U.S. Environmental Protection Agency.

**"Equipment"** means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. It does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

**"Event or celebration"** means an occasional scheduled social gathering, with a designated event organizer in charge, which is open to the general public, and that has been organized for a special occasion or purpose, having a limited time or serving a specific function.

**"Exclude"** means to prevent a person from working as a food employee or entering a food establishment as an employee.

**"Farmers Hub"** means a designated area as described under 2 O.S. Section 5-3A.1 et seq.

**"Farmers Market"** means a designated area in which farmers, growers, or producers from a defined region gather on a regularly scheduled basis to sell at retail Non-Time/Temperature Control for Safety farm food products and whole shell eggs to the public as described under 2 O.S. Section 5-3A.1 et seq.

**"FDA"** means the U.S. Food and Drug Administration.

**"Fish"** means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

**"Food"** means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

**"Foodborne disease outbreak"** means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

**"Food-contact surface"** means a surface of equipment or a utensil with which food normally comes into contact; or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

**"Food employee"** means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

**"Food establishment"** means an operation that stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite, commissary, or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) Food establishment includes: An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the Department; or an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises.

(B) Food establishment does not include:

(i) Food processing plant; including those that are located on the premises of a food establishment;

(ii) A kitchen in a private home ~~if only food that is not Time/Temperature Control for Safety is prepared for sale or service at a function such as a religious or charitable organization's bake sale and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the Department;~~

~~(iii) An area where food that is prepared as specified in paragraph (B)(ii) of this definition is sold or offered for human consumption that meets exemptions listed at OAC 310:257-1-4;~~

~~(iii+)~~ A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed the number allowed by 63 O.S. §§ 1201 et seq., and breakfast is the only meal offered;

~~(iv+)~~ A private home that receives catered or home-delivered food;

~~(v+)~~ Incidental sales; or

(viii) A produce stand that offers only whole, uncut and unprocessed fresh fruits, melons, vegetables and legumes and/or whole uncracked and unprocessed tree nuts.

**"Food establishment - fee exempt"** means a food establishment that utilizes non-paid persons by a nonprofit, civic, charitable, or religious organization primarily for benevolent purposes.

(A) Fee exempt licensees shall comply with the applicable sections of these rules depending upon the type of operation involved; e.g., food service, retail food, combination, temporary, or mobile.

(B) Fee exempt licenses, except temporary licenses, shall not expire but shall remain in full force and effect until revoked, suspended, annulled, or withdrawn by the Commissioner in accordance with applicable law.

(C) A license is not required for a non-profit civic, charitable or religious organization, using non-paid persons to prepare or serve food on its behalf, for occasional fund-raising events sponsored and conducted by the organization.

**"Food processing plant"** means a commercial operation that manufactures, packages, labels, or stores food for human consumption and provides food for sale or distribution to other business entities such as food processing plants or food establishments.

**"Game animal"** means an animal, the products of which are food, that is not included in the definitions of 2 O.S. Section 6-183 et seq. (cattle, bison, sheep, swine and goats). Equines are not included due to the provisions of Title 2 O.S. Section 6-192 (prohibits the use of equine for food), 2 O.S. Section 6-251 et seq. (poultry, including any domestic bird whether live or dead), 2 O.S. Section 6-280.1 et seq. (domesticated rabbits whether live or dead), 2 O.S. Section 6-290.3 et seq. (exotic livestock including commercially raised livestock and including but not limited to animals of the families bovidae, cervidae, antilocapridae or in the definitions of fish in this Section).

**"General use pesticide"** means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175 Pesticides classified for restricted use.

**"Grade A standards"** means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

**"HACCP"** means Hazard Analysis Critical Control Point.

**"HACCP plan"** means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

**"Handwashing sink"** means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for washing of the hands. Handwashing sink includes an automatic handwashing facility.

**"Hazard"** means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

**"Health practitioner"** means a physician licensed to practice medicine, a nurse practitioner, physician assistant, or similar medical professional.

**"Hermetically sealed container"** means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

**"Highly susceptible population"** means persons who are more likely than other people in the general population to experience foodborne disease because they are:

(A) Immunocompromised; preschool age children or older adults; and

(B) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

**"Imminent health hazard"** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

**"Impermeable"** means incapable of allowing liquids to pass through the covering.

**"Incidental sale"** means the sale of food on the premises where food is not a primary reason to frequent the establishment, but where prepackaged, non-Time/Temperature Control for Safety Food from an approved source is offered for purchase as a convenience to the customer, and no product is kept in back stock.

**"Injected"** means manipulating meat in which a solution has been introduced into its interior by processes which are referred to as "injecting," "pump marinating," or "stitch pumping."

**"Intact Meat"** means a cut of whole muscle(s) meat that has not undergone comminution, injection, mechanical tenderization or reconstruction.

**"Juice"** means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée. Juice does not include, for purposes of HACCP, liquids, purees, or concentrates that are not used as beverages or ingredients of beverages.

**"Kitchenware"** means food preparation and storage utensils.

**"Law"** means applicable local, state, and federal statutes, regulations, and ordinances.

**"License"** means the document issued by the Department that authorizes a person to operate a food establishment.

**"License holder"** means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and possesses a valid license to operate a food establishment.

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**"Linens"** means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

**"Major food allergen"** means milk, egg, fish (such as bass, flounder, cod, and including crustacean, such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from a food specified above.

(A) Major food allergen does not include: Any highly refined oil derived from a food specified in Major Food Allergen definition and any ingredient derived from such highly refined oil; or

(B) Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

**"Meat"** means the flesh of animals used as food including the dressed flesh of cattle, bison, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals.

**"Mechanically tenderized"** means meat manipulated with deep penetration by processes which may be referred to as: "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles, or any mechanical device. Mechanically tenderized does not include processes by which solutions are injected into meat. See the definition for injected.

**"mg/L"** means milligrams per liter, which is the metric equivalent of parts per million (ppm).

**"Misbranding"** means the definition contained in 63 O.S. Section 1-1110.

**"Mobile food establishment"** means a facility that prepares food and is vehicle mounted (is Department of Transportation road approved, including wheels and axles), is readily moveable and remains at one physical address for no more than twelve (12) hours at one time.

**"Mobile pushcart"** means a non-self propelled food unit that can be manually moved by one (1) average adult person.

**"Mobile retail food establishment"** means a unit which sells packaged foods from a stationary display at a location that is away from the unit but still at the same physical address, such as a table at a fair or farmer's market, for no more than twelve (12) hours, provided the licensed unit is on premise and readily available for inspection and the food has been prepared in a facility that is regulated by the Good Manufacturing Practices in Title 21 of the CFR or regulated as a license holder pursuant to OAC 310:260, Good Manufacturing Practice Regulations, Oklahoma Department of Agriculture, Food and Forestry, the United States Department of Agriculture, or this Chapter. Mobile food establishments selling only prepackaged foods and engaging in no preparation are not required to pay a plan review fee.

**"Molluscan shellfish"** means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

**"Multi-seasonal food establishment"** means a facility that is under one ownership, is open year-round, and that shall serve snow cones and hot beverages with use of liquid milk.

**"Non-continuous cooking"** means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service. Non-continuous cooking does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

**"OAC"** means Oklahoma Administrative Code.

**"Occasional"** means not habitual; random, irregularly or infrequent and used for special, occasional social gatherings for an event or celebration acting in a specified capacity from time to time, that does not exceed more than four (4) times per year, unless approved by the Department.

**"O.S."** means Oklahoma Statute.

**"Packaged"** means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food establishment or a food processing plant. Packaged does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer by a food employee upon consumer request.

**"Person"** means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

**"Person in charge"** means the individual present at a food establishment who is responsible for the operation at the time of the inspection.

**"Personal care items"** means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. It may include items such as medicines; first aid supplies; other items such as cosmetics; and toiletries such as toothpaste and mouthwash.

**"pH"** means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

**"Physical facilities"** means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

**"Plumbing fixture"** means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

**"Plumbing system"** means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

**"Poisonous or toxic materials"** means substances that are not intended for ingestion and are included in 4 categories:

(A) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(C) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

**"Poultry"** means any domesticated bird (chickens, turkeys, ducks, geese, ratites, guineas or squabs), whether live or dead, as defined in 9 CFR, Part 381 and any migratory waterfowl, game bird, such as pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 CFR, Part 362.

**"Premises"** means:

(A) The physical facility, its contents, and the contiguous land or property under the control of the license holder; or

(B) The physical facility, its contents, and the land or property not under the control of the license holder, unless its facilities and contents are under the control of the license holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

**"Primal cut"** means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

**"Priority item"** means a provision in this Chapter the application of which contributes directly to the elimination, prevention, or reduction to an acceptable level of hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazards. Priority item includes an item with a quantifiable measure to show control of hazards such as cooking, reheating, cooling or handwashing.

**"Priority foundation item"** means a provision in this Chapter whose application supports, facilitates, or enables one or more priority items. "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure, or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

**"Ratite"** means a flightless bird such as an emu, ostrich, or rhea.

**"Ready-to-eat food"** means

(A) food that is in a form that is edible without additional preparation to achieve food safety, as specified under OAC 310:257-5-46(a)-(c) or OAC 310:257-5-47 or OAC 310:257-5-49, or is a raw or partially cooked animal food and the consumer is advised as specified under OAC 310:257-5-46(d)(1) and (3); or is prepared in accordance with a variance that is granted as specified under OAC 310:257-5-46(d)(4);

and may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes and

(B) includes raw animal food that is cooked as specified under OAC 310:257-5-46 or OAC 310:257-5-47, or frozen as specified under OAC 310:257-5-49; raw fruits and vegetables that are washed as specified under OAC 310:257-5-27; fruits and vegetables that are cooked for hot holding, as specified under OAC 310:257-5-48; All Time/Temperature Control for Safety Food that is cooked to the temperature and time required for the specific food under OAC 310:257-5-46 through 310:257-5-48.1 and cooled as specified under OAC 310:257-5-57; Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed; substances derived from plants such as spices, seasonings, and sugar; a bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety; The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; dried meat and poultry products, such as jerky or beef sticks; and foods manufactured according to 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

**"Reduced oxygen packaging"** means:

(A) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21%) at sea level;

(B) A process as specified in paragraph (A) of this definition that involves a food for which hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form;

(C) Reduced oxygen packaging includes vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;

(D) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes: reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

(E) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is

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different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material

(F) Cook chill packaging, as described in OAC 310:257-5-64(d)(E); and

(G) Sous vide packaging, as described in OAC 310:257-5-64(d)(D).

**"Refuse"** means solid waste not carried by water through the sewage system.

**"Regulatory authority"** means a representative, such as an onsite inspector, of the Department.

**"Reminder"** means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

**"Re-Service"** means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

**"Restrict"** means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food, and the food employee does not work with exposed food, clean equipment, utensils, linens; and unwrapped single-service or single-use articles.

**"Restricted egg"** means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR, Part 590.

**"Restricted use pesticide"** means a pesticide product that contains the active ingredients specified in 40 CFR 152.175. Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

**"Risk"** means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

**"Safe material"** means:

(A) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

(B) An additive that is used as specified in Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(C) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

**"Sanitization"** means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

**"Sealed"** means free of cracks or other openings that allow the entry or passage of moisture.

**"Seasonal food establishment"** means a facility that is open no more than 180 consecutive days per physical address per year. The seasonal food establishment is limited to serving coffee and snow cones with use of liquid milk, individually packaged ice cream products, uncut raw fruits, uncut raw vegetables, nuts in the shell, and commercially bottled syrup, sorghum, honey, sweet cider, and other non-Time/Temperature

Control for Safety Foods. Seasonal food establishments selling only prepackaged foods and engaging in no preparation are not required to pay a plan review fee.

**"Service animal"** means an animal such as a guide dog, signal dog, or other animal as allowed by the ADA, individually trained to provide assistance to an individual with a disability. Service animals are working animals, not pets. The work or task an animal has been trained to provide must be directly related to the person's disability. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

**"Servicing area"** means an operating base location to which a mobile food establishment or transportation vehicle returns regularly, for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

**"Sewage"** means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

**"Shellfish control authority"** means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

**"Shellstock"** means raw, in-shell molluscan shellfish.

**"Shiga toxin-producing *Escherichia coli* (STEC)"** means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild non-bloody diarrhea, to hemorrhagic colitis (i.e., bloody diarrhea) to hemolytic uremic syndrome (HUS—a type of kidney failure). Examples of serotypes of STEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; and *E. coli* O111:NM. STEC are sometimes referred to as VTEC (verocytotoxigenic *E. coli*) or as EHEC (Enterohemorrhagic *E. coli*). EHEC are a subset of STEC which can cause hemorrhagic colitis or HUS.

**"Shucked shellfish"** means molluscan shellfish that have one or both shells removed.

**"Single-service articles"** means tableware, carry-out utensils, and other items such as: bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

**"Single-use articles"** means utensils and bulk food containers designed and constructed to be used once and discarded. "Single-use articles" includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under OAC 310:257-7-1, OAC 310:257-7-13 and OAC 310:257-7-15 for multiuse utensils.

**"Slacking"** means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23°C (-10°F) to -4°C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

"**Smooth**" means a food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel; A non-food-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"**Sous Vide**" means a method of cooking in which raw or partially cooked food is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

"**Tableware**" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

"**Temperature measuring device**" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"**Tempered**" means a mixture of hot and cold water between 100°F and 120°F.

"**Temporary food establishment**" means a food establishment where food is offered for sale or sold at retail from a fixed, temporary facility in conjunction with a single event or celebration not to exceed fourteen (14) consecutive days.

"**Time/Temperature Control for Safety Food**" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

(A) Time/Temperature Control for Safety Food includes:

(i) An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(ii) Except as specified (B)(iv) of this definition, a food that because of the interaction of its  $a_w$  and pH values is designated in the Product Assessment Required (PA) in Tables 1 or 2 of Appendix A of this Chapter:

(B) Time/Temperature Control for Safety Food does not include:

(i) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable *Salmonellae*;

(ii) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(iii) A food that because of its  $a_w$  or pH value, or interaction of  $a_w$  and pH value, is designated as a

non-TCS food as listed in Table 1 or 2 of Appendix A of this Chapter;

(iv) A food that is designated as Product Assessment Required (PA) in Table 1 or 2 of Appendix A of this Chapter and has undergone a Product Assessment showing that the growth or toxin information of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(I) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants or nutrients;

(II) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf-life and use, or temperature range of storage and use; or

(III) A combination of intrinsic and extrinsic factors; or

(v) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with (B)(i) - (B)(iv) of this definition above, even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

"**USDA**" means the U.S. Department of Agriculture.

"**Utensil**" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

"**Variance**" means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of this Chapter, if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

"**Vending machine**" means a self-service device that, upon insertion of a coin, paper currency, token, card, key, or by electronic transaction, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"**Vending machine location**" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

"**Warewashing**" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

"**Whole-muscle, intact beef**" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

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## 310:257-1-4. Exemptions

(a) The food establishment definition does not include a food processing plant; a facility that sells only commercially pre-packaged, non-Time/Temperature Control for Safety Foods, from an approved source, which are incidental to the business, and does not have food in storage; a kitchen in a private home that is in compliance with 2 O.S. 5-4.1 et seq if only Non Time/Temperature Control for Safety food is prepared for sale or service at a function such as a religious or charitable organization's bake sale; a kitchen in a private home, such as a bed-and-breakfast operation that prepares and offers food to guests if the number of available guest bedrooms does not exceed the number allowed by 63 O.S. §§ 1201 et seq. and breakfast is the only meal offered; a lodging facility that is serving food according to OAC 310:285-3-14, Lodging Establishments; a private home that receives catered or home-delivered food; ~~or~~ individual farmers' market vendors that are in compliance with the definition of a farmers' market and hold a food processors license from the Oklahoma Department of Health, small egg packer license, licensed by the Oklahoma Department of Agriculture, Food and Forestry ~~and/or~~; a produce stand that offers only whole, uncut and unprocessed fresh fruits, melons, vegetables and legumes and/or whole uncracked and unprocessed tree nuts; or other locations specifically exempted in law.

(b) Persons engaged solely in the sale of food products at a County Free fair as defined by Title 2 O.S. §§ 15-67 are not subject to the provisions of this Chapter.

(1) These persons are not exempted from Title 63 O.S. § 1-1118(B)(3) in regards to licensure.

(2) The consumer shall be informed by a clearly visible placard, at least eight (8) inches by eleven (11) inches, at the sales or service location, which states "This food is prepared in a kitchen that is not inspected by the Oklahoma Department of Health".

## SUBCHAPTER 3. MANAGEMENT AND PERSONNEL

### 310:257-3-3. Person in charge

The person in charge shall ensure that:

(1) Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters;

(2) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;

(3) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this Chapter;

(4) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;

(5) Employees are visibly observing foods as they are received to determine that they are from approved or lawful sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

(6) Employees are verifying that foods delivered to the food establishment during non-operating hours are from approved or lawful sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unadulterated, and accurately presented;

(7) Employees are properly cooking Time/Temperature Control for Safety Food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated;

(8) Employees are using proper methods to rapidly cool Time/Temperature Control for Safety Foods that are not held hot or are not for consumption within four (4) hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

(9) Employees are properly maintaining the temperatures of Time/Temperature Control for Safety Foods during hot and cold holding through daily oversight of the employees' routine monitoring of food temperatures;

(10) Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed that the food is not cooked sufficiently to ensure its safety;

(11) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;

(12) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets;

(13) Except when otherwise approved, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;

(14) Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties;

(15) Food employees and conditional employees are informed, in a verifiable manner, of their responsibility to report, in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under OAC 310:257-3-4(a); and



(16) Written procedures and plans, where specified by this Chapter and as developed by the food establishment, are maintained and implemented as required.

**SUBCHAPTER 5. FOOD**

**310:257-5-2. Compliance with food law**

(a) Food shall be obtained from sources that comply with this Chapter.

~~(b) Food prepared in a private home shall not be used or offered for human consumption in a food establishment.~~

~~(c)~~ (e) Packaged food shall be labeled as specified in 21 CFR, Part 101 Food Labeling, 9 CFR, Part 317 Labeling, Marking Devices, and Containers, and 9 CFR, Part 381 Subpart N Labeling and Containers, and as specified in this chapter.

~~(d)~~ (e) Fish, other than those specified under OAC 310:257-5-49(b), that are intended for consumption in their raw or undercooked form and allowed as specified under OAC 310:257-5-46(d)(1), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under OAC 310:257-5-49; or frozen on the premises as specified under OAC 310:257-5-49 and records are retained as specified under OAC 310:257-5-50.

~~(e)~~ (d) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified under OAC 310:257-5-46(c) shall be:

(1) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef, or

(2) Deemed acceptable by the Department based on other evidence, such as written buyer specifications or invoices that indicates that the steaks explicitly meet the definition of whole-muscle, intact beef, and

(3) If individually cut in a food establishment:  
 (A) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in OAC 310:257-5-2 (e)(1) and (e)(2),  
 (B) Prepared so they remain intact, and  
 (C) If packaged for undercooking in a food establishment, labeled as specified in (e)(1) of this Section or identified as specified in (e)(2) of this Section.

~~(f)~~ (e) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR, Section 317.2(l) and 9 CFR, Section 381.125(b).

~~(g)~~ (f) Eggs that have not been specifically treated to destroy all viable *Salmonellae* shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h).

~~(h)~~ (g) Alcohol sales and service may only be conducted as allowed by law.

**310:257-5-68. Other forms of information**

(a) If required by law, consumer warnings shall be provided.

(b) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

(c) For homemade food products produced under 2 O.S. 5-4.1 et seq. that are to be sold in a food establishment, a disclosure that states: "This product was produced in a private residence that is exempt from government licensing and inspection. This product may contain allergens." shall be:

- (1) Posted at the point of sale; or
- (2) If used to produce another food product, cited on the menu.

**310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food**

(a) A food that is unsafe, adulterated, or not honestly presented as specified under OAC 310:257-5-1 shall be discarded or reconditioned according to an approved procedure.

~~(b) Food that is not from an approved source as specified under OAC 310:257-5-2 through 310:257-5-8~~ (b) Food that is not from an approved source as specified under OAC 310:257-5-2 through 310:257-5-8 shall be discarded.

(c) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 310:257-3-5 shall be discarded.

(d) Food that is contaminated by food employees, consumers or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

(e) Food may be examined or sampled by the Department as often as necessary for enforcement of these rules and regulations. The Department may place an embargo on food in accordance with the provisions of Title 63 O.S. Section 1-1105.

[OAR Docket #22-595; filed 7-12-22]

**TITLE 310. OKLAHOMA STATE  
 DEPARTMENT OF HEALTH  
 CHAPTER 258. UNATTENDED FOOD  
 ESTABLISHMENTS**

[OAR Docket #22-596]

**RULEMAKING ACTION:**  
 PERMANENT final adoption

- RULES:**
- Subchapter 1. Purpose and Definitions
  - 310:258-1-2. Definitions [AMENDED]
  - Subchapter 3. Operations
  - 310:258-3-4. Storing maintenance tools [AMENDED]
  - Subchapter 7. Food
  - 310:258-7-6. Compliance with food law [AMENDED]
  - 310:258-7-9. Milk products [AMENDED]
  - Subchapter 9. Equipment Construction
  - 310:258-9-14. Microwave ovens [REVOKED]
  - Subchapter 13. Administration
  - 310:258-13-1. Preventing health hazards, provision for conditions not addressed [AMENDED]
  - 310:258-13-5. Preoperational inspections [AMENDED]
  - 310:258-13-7. Unattended food establishment license fee [AMENDED]
  - 310:258-13-8. Form of submission [AMENDED]
  - 310:258-13-10. Contents of the application [AMENDED]
  - 310:258-13-13. Denial of application for license, notice [AMENDED]
  - 310:258-13-14. Responsibilities of the license holder [AMENDED]

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- 310:258-13-18. Allowed at reasonable times after due notice [AMENDED]
- 310:258-13-19. Refusal, notification of right to access, and final request for access [AMENDED]
- 310:258-13-20. Refusal, reporting [AMENDED]
- 310:258-13-22. Documenting information and observations [AMENDED]
- 310:258-13-23. Issuing report and obtaining acknowledgment of receipt [AMENDED]
- 310:258-13-24. Refusal to sign acknowledgment [AMENDED]
- 310:258-13-26. Ceasing operations and reporting [AMENDED]
- 310:258-13-27. Resumption of operations [AMENDED]
- 310:258-13-28. Timely correction [NEW]
- 310:258-13-29. Documentation of correction [AMENDED]

## **AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

October 18, 2021

## **COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

## **PUBLIC HEARING:**

December 15, 2021

## **ADOPTION:**

January 20, 2022

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

January 20, 2022

## **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 11, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

n/a

## **INCORPORATIONS BY REFERENCE:**

n/a

## **GIST/ANALYSIS:**

310:258-1-2. The current rule gives definitions used in this Chapter. The proposed rule includes grammatical corrections and removed definitions not applicable to a food venue that does not prepare food items.

310:258-3-4. The current rule describes how to store cleaning tools. The proposed rule includes grammatical corrections.

310:258-7-6. The current rule describes approved sources of food items. The proposed rule includes grammatical corrections and removal of language preventing home made food items.

310:258-7-9. The current rule set standards for milk and dairy products. The proposed rule includes grammatical corrections.

310:258-9-14. The current rule describes standards for microwave ovens. The proposed rule removes this section as cooking and reheating not allowed in this venue.

310:258-13-1. Preventing health hazards, provision for conditions not addressed [AMENDED] Clarifying language.

310:258-13-5. Preoperational inspections [AMENDED] Clarifying language.

310:258-13-7. The current rule sets licensure and renewal fees. The proposed rule includes grammatical corrections

310:258-13-8. Form of submission [AMENDED] Clarifying language.

310:258-13-10. Contents of the application [AMENDED] Clarifying language.

310:258-13-13. Denial of application for license, notice [AMENDED] Clarifying language.

310:258-13-14. Responsibilities of the license holder [AMENDED] Clarifying language.

310:258-13-18. Allowed at reasonable times after due notice [AMENDED] Clarifying language.

310:258-13-19. Refusal, notification of right to access, and final request for access [AMENDED] Clarifying language.

310:258-13-20. Refusal, reporting [AMENDED] Clarifying language.

310:258-13-22. Documenting information and observations [AMENDED] Clarifying language.

310:258-13-23. Issuing report and obtaining acknowledgment of receipt [AMENDED] Clarifying language.

310:258-13-24. Refusal to sign acknowledgment [AMENDED] Clarifying language.

310:258-13-26. Ceasing operations and reporting [AMENDED] Clarifying language.

310:258-13-27. Resumption of operations [AMENDED] Clarifying language.

310:258-13-28. There is no current rule. The proposed rule sets a standard correction timeframe for violations as ten (10) calendar days.

310:258-13-29. Documentation of correction [AMENDED] Clarifying language.

## **CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## **SUBCHAPTER 1. PURPOSE AND DEFINITIONS**

### **310:258-1-2. Definitions**

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

"**Additive**" means as used in this Chapter for the following terms:

(A) "**Color additive**" means as stated in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(t) and 21 CFR, Part 70.

(B) "**Food additive**" means as stated in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(s) and 21 CFR, Part 170.

"**Adulterated**" means the definition in 63 O.S. Section 1-1109.

"**Approved**" means acceptable to the Department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"**Beverage**" means a liquid for drinking, including water.

"**Bottled drinking water**" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"**Certified applicator**" means any individual who is certified under the Federal Herbicide, Fungicide, and Rodenticide Act, U.S.C., Section 136(e)(1) and/or by the Oklahoma State Department of Agriculture Food and Forestry as authorized to use or supervise the use of any pesticide that is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with the product labeling only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides.

"**CFR**" means Code of Federal Regulations. Citations in this Chapter to the CFR refer sequentially to the Title, Part, and

Section numbers, such as 21 CFR, 178.1010 refers to Title 21, Part 178, Section 1010.

**"Code of Federal Regulations"** means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which is published annually by the U.S. Government Printing Office; and contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

**"Community water system"** means any public water supply system, which serves at least 15 service connections, used year round or regularly serves 25 customers per day.

**"Consumer"** means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of an unattended food establishment or food processing plant, and does not offer the food for resale.

**"Controlled entry"** means selective restriction or limitation of access to a place or location.

~~**"Critical control point"** means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.~~

**"Customer self-service"** means customer selection of a prepackaged food product from a product module.

**"Cut leafy greens"** means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leafy lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

**"Department"** means the Oklahoma State Department of Health and a health department designated in writing by the State Commissioner of Health to perform official duties or other acts authorized under 63 O.S. § 101 et seq. ~~the Oklahoma Public Health Code and this Chapter, or an authorized agent thereof.~~

~~**"Disclosure"** means a written statement that clearly identifies the animal derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.~~

**"Dispensed beverage"** means a beverage or ice that is dispensed in its un packaged form from a machine.

**"Easily movable"** means portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and has no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

**"EPA"** means the U.S. Environmental Protection Agency.

**"Equipment"** means an article that is used in the operation of an unattended food establishment such as a freezer, reach-in refrigerator, ~~microwave oven,~~ or temperature measuring device for ambient air. It does not include items used for handling or storing large quantities of packaged foods that are

received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

**"FDA"** means the U.S. Food and Drug Administration.

**"Fish"** means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

**"Food"** means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

**"Food processing plant"** means a commercial operation that manufactures, packages, labels, or stores food for human consumption and provides food for sale or distribution to other business entities such as food processing plants, food establishment, or unattended food establishments.

**"Grade A standards"** means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

~~**"HACCP"** means Hazard Analysis Critical Control Point.~~

~~**"HACCP plan"** means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.~~

**"Hazard"** means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

**"Hermetically sealed container"** means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

**"Imminent health hazard"** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

**"Impermeable"** means incapable of allowing liquids to pass through the covering.

**"Juice"** means, when used in the context of food safety, the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée. Juice does not include, for purposes of HACCP, liquids, purees, or concentrates that are not used as beverages or ingredients of beverages.

**"License"** means the document issued by the Department that authorizes a person to operate an unattended food establishment.

**"License holder"** means the entity that is legally responsible for the operation of the unattended food establishment

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such as the owner, the owner's agent, or other person; and possesses a valid license to operate an unattended food establishment.

**"Major food allergen"** means milk, egg, fish (such as bass, flounder, cod, and including crustacean such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from a food specified above.

(A) Major food allergen does not include: Any highly refined oil derived from a food specified in Major Food Allergen definition and any ingredient derived from such highly refined oil; or

(B) Any ingredient that is exempt under the petition or notification process specified in the Federal Food, Drugs, and Cosmetics Act, 21 U.S.C. Section 343.

**"Non-community water system"** means any public water supply system, which serves an average of at least 25 individuals at least 60 days per year and is not a community water system.

**"OAC"** means Oklahoma Administrative Code.

**"O.S."** means Oklahoma Statute.

**"Packaged"** means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food processing plant.

**"Person"** means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

**"Physical facilities"** means the structure and interior surfaces of an unattended food establishment including accessories such as light fixtures and heating or air conditioning system vents.

**"Plumbing fixture"** means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

**"Plumbing system"** means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

**"Poisonous or toxic materials"** means substances that are not intended for ingestion and are included in 4 categories:

(A) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(C) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

**"Premises"** means the physical facility, its contents, and the contiguous land or property under the control of the license holder or the contracted establishment.

**"Refuse"** means solid waste not carried by water through the sewage system.

**"Regulatory authority"** means a representative, such as an onsite inspector, of the Department.

**"Restricted use pesticide"** means a pesticide product that contains the active ingredients specified in 40 CFR, Section 152.175. Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

**"Risk"** means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

**"Sealed"** means free of cracks or other openings that allow the entry or passage of moisture.

**"Service animal"** means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

**"Sewage"** means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

**"Single-use articles"** means utensils and food containers designed and constructed to be used once and discarded.

**"Temperature measuring device"** means a thermometer, thermocouple, thermistor, or other device that indicates the ambient air temperature within a cold holding unit.

**"Time/Temperature Control for Safety Food"** means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation. Time/Temperature Control for Safety Food includes: An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth or toxin formation.

**"Unattended food establishment"** means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public.

**"USDA"** means the U.S. Department of Agriculture.

**"Vending machine"** means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

**"Vending machine location"** means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

### SUBCHAPTER 3. OPERATIONS

**310:258-3-4. Storing maintenance tools**

Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be: ~~Stored~~ stored so they do not contaminate food, equipment, utensils, and single-service articles.

**SUBCHAPTER 7. FOOD**

**310:258-7-6. Compliance with food law**

(a) Food shall be obtained from sources that comply with this Chapter and applicable laws.

~~(b) An establishment may eat sell packaged foods prepared by a facility that is in compliance with OAC 310:260 (relating to good manufacturing practices), United States Department of Agriculture, or the Oklahoma Department of Agriculture Food and Forestry.~~

~~(b) Food prepared in a private home shall not be used or offered for human consumption in an unattended food establishment.~~

**310:258-7-9. Milk products**

~~(a) Food products listed below shall meet standards as specified in 2 O.S. Section 7-401 et seq., food products listed below shall in the case of:~~

- ~~(1) Milk products shall be obtained pasteurized and comply with Grade A Standards;~~
- ~~(2) Frozen milk products, such as ice cream; and~~
- ~~(3) Cheese.~~

~~(b) Milk products shall be obtained pasteurized and in compliance with Grade A Standards.~~

**SUBCHAPTER 9. EQUIPMENT CONSTRUCTION**

**310:258-9-14. Microwave ovens [REVOKED]**

~~(a) Microwave ovens shall meet the safety standards specified in 21 CFR, Section 1030.10 Microwave ovens.~~

~~(b) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.~~

**SUBCHAPTER 13. ADMINISTRATION**

**310:258-13-1. Preventing health hazards, provision for conditions not addressed**

(a) If necessary to protect against public health hazards or nuisances, the Department may impose specific requirements in addition to the requirements contained in this Chapter that are authorized by law.

(b) The Department regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The

documentation shall be provided to the license applicant or license holder and a copy shall be maintained in the Department file for the unattended food establishment.

**310:258-13-5. Preoperational inspections**

The ~~Department~~ regulatory authority shall conduct one or more preoperational inspections to verify that the unattended food establishment is constructed and equipped in accordance with the approved plans and is in compliance with law and this Chapter.

**310:258-13-7. Unattended food establishment license fee**

(a) The following are associated fees for unattended food establishments.

- (1) Initial - \$150.00
- (2) Renewal - \$100.00
- (3) Late Renewal - \$125.00

(b) Late renewal fees apply to any renewal application post-marked and/or received thirty (30) days after the expiration date of the license.

(c) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal fee. Thereafter, the establishment shall be required to pay the initial fee. The establishment that has not had a valid license for one (1) year is considered a new establishment and a new Plan Review and the initial license fee shall be required.

**310:258-13-8. Form of submission**

A person desiring to operate an unattended food establishment shall submit to the ~~Department~~ regulatory authority a written application for a license on a form provided by the Department.

**310:258-13-10. Contents of the application**

The application shall include:

- (1) The name, mailing address, telephone number, signature of the person applying for the license, and the name, mailing address, and location of the unattended food establishment;
- (2) Information specifying whether the unattended food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) The Department shall issue a license to the applicant after:
  - (A) A properly completed application is received;
  - (B) The required fees are received;
  - (C) The plans, specifications, and information, if applicable, are reviewed; and
  - (D) A pre-licensing inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Chapter and meets the Department's criteria for a license; or any
  - (E) Other information required by the ~~Department~~ regulatory authority.

# Permanent Final Adoptions

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## 310:258-13-13. Denial of application for license, notice

If an application for a license to operate is denied, the ~~Department~~Department regulatory authority shall provide the applicant with a notice that includes:

- (1) The specific reasons and Chapter citations for the license denial;
- (2) The actions, if any, that the applicant must take to qualify for a license; and
- (3) Advisement of the applicant's right of appeal.

## 310:258-13-14. Responsibilities of the license holder

Upon acceptance of the license issued by the Commissioner of Health, the license holder in order to retain the license shall:

- (1) Post the license in a prominent public location inside the unattended food establishment;
- (2) Comply with the provisions of this Chapter;
- (3) Immediately discontinue operations and notify the ~~Department~~Department regulatory authority if an imminent health hazard may exist as specified under OAC 310:285-13-26;
- (4) Allow representatives of the Department access to the unattended food establishment;
- (5) Comply with directives of the ~~Department~~Department regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the Department in regard to the license holder's unattended food establishment or in response to community emergencies;
- (6) Accept notices issued and served by the Department according to law;
- (7) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Chapter or a directive of the Department, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and
- (8) If applicable, submit the annual renewal application and pay all renewal license and late fees.

## 310:258-13-18. Allowed at reasonable times after due notice

After the ~~Department~~Department regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the ~~Department~~Department regulatory authority to determine if the unattended food establishment is in compliance with this Chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this Chapter and to which the ~~Department~~Department regulatory authority is entitled according to law.

## 310:258-13-19. Refusal, notification of right to access, and final request for access

If a person denies access to the ~~Department~~Department regulatory authority, the ~~Department~~Department regulatory authority shall:

- (1) Inform the person that:

(A) The license holder is required to allow access to the ~~Department~~Department regulatory authority as specified under OAC 310:285-13-18 of this Chapter,

(B) The ~~Department's~~Department regulatory authority's ~~Access~~access is a condition of the acceptance and retention of an unattended food establishment license to operate as specified under OAC 310:285-11-14(4), and

(C) If access is denied, an order issued allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and

- (2) Make a final request for access.

## 310:258-13-20. Refusal, reporting

If after the ~~Department~~Department regulatory authority presents credentials and provides notice as specified under OAC 310:285-13-18, explains the authority upon which access is requested, and makes a final request for access as specified in OAC 310:285-13-19, the person in charge continues to refuse access, the ~~Department~~Department regulatory authority shall provide details of the denial of access on an inspection report form.

## 310:258-13-22. Documenting information and observations

The ~~Department~~Department regulatory authority shall document on an inspection report form:

- (1) Administrative information about the unattended food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified, inspection date, and other information that may be required; and
- (2) Specific factual observations of violative conditions or other deviations from this Chapter that require correction by the license holder.

## 310:258-13-23. Issuing report and obtaining acknowledgment of receipt

At the conclusion of the inspection, the ~~Department~~Department regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the license holder or to the person in charge, and request a signed acknowledgment of receipt.

## 310:258-13-24. Refusal to sign acknowledgment

The ~~Department~~Department regulatory authority shall:

(1) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified under OAC 310:285-13-23:

(A) An acknowledgment of receipt is not an agreement with findings,

(B) Refusal to sign an acknowledgment of receipt will not affect the license holder's obligation to correct the violations noted in the inspection report within the timeframes specified, and

(C) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the

Department's historical record for the unattended food establishment; and

- (2) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

310:258-13-26. Ceasing operations and reporting

A license holder shall immediately discontinue operations and notify the Department regulatory authority if an imminent health hazard exists because of an emergency such as a fire, flood, sewage backup, insufficient refrigerated food storage facilities available, substantial evidence or presence of a large number of insects or evidence of rodents contaminating food, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, interruption of electrical service for more than 4 hours, severe structural damage in the facility, gross unsanitary occurrence or condition, or other circumstance as determined by the Commissioner of Health, or his designee, that shall endanger public health.

310:258-13-27. Resumption of operations

If operations are discontinued as specified under OAC 310:285-13-26 or otherwise according to law, the license holder shall notify the Department regulatory authority before resuming operations.

310:285-13-28. Timely correction

- (a) The license holder shall at the time of inspection correct any violation of this Chapter.
(b) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the license holder to correct a violation.
(c) If corrections are not made according to (a) or (b) of this section, then the facility is subject to enforcement action.

310:258-13-29. Documentation of correction

- (a) After observing at the time of inspection a correction of a violation, the Department regulatory authority shall enter the violation and information about the corrective action on the inspection report.
(b) After receiving notification that the license holder has corrected a violation, or at the end of the specified period of time, the Department shall document the information and enter the report in the Department's records.
(c) In determining if a re-inspection is required, the Department shall count a violation number only once regardless of how many separate violations under the violation number are listed on the inspection sheet.

[OAR Docket #22-596; filed 7-12-22]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 315. PUBLIC BATHING PLACE FACILITY STANDARDS

[OAR Docket #22-597]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
310:315-1-1 [AMENDED]
310:315-1-2 [AMENDED]
Subchapter 3. Plan Documents
310:315-3-1 [AMENDED]
Subchapter 5. Water and Sewer Facilities
310:315-5-1 [AMENDED]
310:315-5-2 [AMENDED]
Subchapter 7. Construction and Operation
310:315-7-1 [AMENDED]
310:315-7-2 [AMENDED]
310:315-7-3 [AMENDED]
310:315-7-4 [AMENDED]
310:315-7-6 [AMENDED]
310:315-7-7 [AMENDED]
310:315-7-9 [AMENDED]
310:315-7-10 [REVOKED]
310:315-7-11 [AMENDED]
310:315-7-12 [AMENDED]
310:315-7-13 [AMENDED]
310:315-7-14 [AMENDED]
310:315-7-15 [AMENDED]
310:315-7-16 [AMENDED]
310:315-7-18 [AMENDED]
Appendix A. Diving Area [NEW]
Appendix B. Minimum Dimensions [NEW]
Appendix C. Pool Design [NEW]
Appendix D. Computing Capacity Requirements for Indoor Public Swimming Pools and Outdoor Swimming Pools [NEW]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 13, 2021

COMMENT PERIOD:

January 18, 2022 through February 18, 2022

PUBLIC HEARING:

February 18, 2022

ADOPTION:

March 4, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 4, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These proposed rules are primarily a reduction in rule language related to the Governor's executive order to do so. Reductions remove unnecessary language, provide clarity, or relocate information to better serve the industry or general public. Items added provide clarity of existing operations or provide allowances to reduce burden on industry.

# Permanent Final Adoptions

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## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 310:315-1-1. Purpose

This chapter known as the Public Bathing Place Facility Standards (~~ODH Engineering Bulletin No. 0536~~), is to be used by engineers and other interested persons in the design and submission of plans to a public bathing place. ~~The design criteria given are minimum design criteria and will be used as such by the State Department of Health. Nothing in these standard should be construed as preventing the consulting engineer from recommending, or the reviewing authority from approving, more effective treatment where local conditions dictate such action.~~

### 310:315-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

**"Abrasion hazard"** means a sharp or rough surface that would scrape the skin upon chance or by normal use modes.

**"Adjustable inlet"** means a fitting mounted in the pool wall and connected to the return piping from the recirculation system that is directionally adjustable or a fitting mounted in the pool floor and connected to the return piping from the recirculation system that has a means of flow adjustment.

**"Air bump assist backwash"** ~~means the compressing of a volume of air in the filter effluent chamber (by means of an air compressor or by the water pressure from the recirculating pump) which, when released, rapidly decompresses and forces water in the filter chamber through the elements in reverse, dislodging the filter aid and accumulated dirt, carrying it to waste.~~

**"Air induction system"** means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).

**"Attendant"** means any person capable of providing rescue who is responsible to the management.

**"Backwash"** means the process of thoroughly cleansing the filter media and/or elements by reverse flow.

**"Backwash cycle"** means the time required to thoroughly backwash the filter media and/or elements and the contents of the filter vessel.

**"Backwash rate"** means the rate of application of water through a filter during the cleaning cycle normally expressed in U. S. gallons per minute per square foot of effective filter area.

**"Bathing load"** means the maximum number of persons allowed in the pool enclosure at one time.

~~**"Booster pump system"** means a system whereby one or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.~~

**"Cartridge filter"** means a filter that utilizes a porous cartridge as its filter medium.

**"Collector tank"** means a tank receiving the gravity flow from the perimeter overflow gutter and main drain(s) from which the recirculation pump takes suction. It may be referred to as a balance tank.

**"Cover/Grate"** means a fitting, device or assembly that separates the bather from the suction sump or piping that has been design and specified by the manufacturer to control flow through the open area.

**"Department"** means the Oklahoma State Department of Health and authorized representatives.

**"Diatomaceous earth filter"** means a filter that utilizes a thin layer of filter aid as its filter medium that periodically must be replaced.

~~**"Engineering nomenclature"** means the technical terms used through this chapter are understood to represent the currently accepted professional engineering definitions.~~

**"Filter"** means a device that separates solid particles from water by recirculating it through a porous substance (a filter medium or element).

~~**"Filter agitation"** means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.~~

**"Filter aid"** means a type of finely divided medium used to coat a septum type filter, usually diatomaceous earth, processed perlite, or similar material.

**"Filter cycle"** means the operating time between cleaning and/or backwash cycles.

**"Filter element"** means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support.

~~**"Filter freeboard"** means the clear vertical distance between the top of the filter medium and the lowest outlet of the upper distribution system in a permanent media filter.~~

~~**"Filter media, permanent"** means a finely graded material (such as sand, anthracite, etc.) which removes filterable particles from the water.~~

**"Filter septum"** means that part of the filter element consisting of cloth, wire screen, or other porous material on which the filter medium or aid is deposited.

**"Filtration flow"** means the rate of flow, in volume per time (GPM, GPH), through the filter system installed per manufacturer's instructions with new clean media.

**"Filtration rate"** means the rate of filtration of water through a filter during the filter cycle expressed in U.S. gallons per minute per square foot of effective filter area.



**"Filter freeboard"** means the clear vertical distance between the top of the filter medium and the lowest outlet of the upper distribution system in a permanent media filter.

**"Hydrojets"** means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

**"Hydrotherapy, whirlpool, or spa pool"** means a public pool used exclusively in conjunction with high velocity air and/or high velocity water recirculation systems, utilizing hot, cold, or ambient temperature water. These pools will be referred to as spas.

**"Individual therapy units"** means tanks which are designed for the therapeutic treatment of one individual at one time and are drained and cleaned after each individual use. Individual therapy units are not considered public bathing places.

**"Ladders"** means a series of vertically separated treads or rungs either connected by vertical rail members or independently fastened to an adjacent vertical spa/pool wall.

**"Lower distribution system (underdrain)"** means those devices used in the bottom of a permanent media filter to collect the water uniformly during the filtering and to distribute the backwash uniformly during the backwashing.

**"Not open to the general public"** means access is limited to people who are living or staying on the property associated with the public bathing place or their guests.

**"Open to the general public"** means not restricted to tenants or guests.

**"Overflow system"** means the term overflow system encompasses perimeter type overflows, surface skimmers, and surface water collection systems of various design and manufacture. The water line shall be established by the height of the overflow rim.

**"Perimeter overflow gutter"** means a trough or gutter around the inside perimeter of the pool walls with the overflow lip effecting a skimming action to clean the pool water surface.

**"Permanent media filter"** means a filter that utilizes a medium that can be regenerated and will not have to be replaced.

**"Plunge pool"** means the receiving body of water located at the terminus of a recreation water slide.

**"Pool deck"** means the unobstructed area around the outside of the pool curb, diving boards, diving towers, and/or pool slides.

**"Pool floor"** means the interior bottom pool/spa surface and consists of that surface from a horizontal plane up to a maximum of a 45° slope.

**"Pool turnover"** means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

**"Portable pool"** means a shallow pool, with depth not exceeding 4.5 feet, intended only for swimming instruction, which can be quickly erected, used for an instruction period then dismantled and moved to another location. Conditions governing authorization and operation are shown in the Public Bathing Place Operations.

**"Precoat pot"** means a hopper with a valved connection to the suction side of the recirculation pump of pressure diatomaceous earth type filter systems that is used for coating

the filter with filter medium prior to filtering water through the system.

**"Private pool"** means a pool maintained by an individual for the use of his family and friends, with no other formal admission requirement.

**"Public swimming poolbathing place or public pool"** means a structure of concrete, masonry, or other approved materials, located either indoors or outdoors, used for bathing or swimming, or for instructional purposes in swimming, diving, or other aquatic activities by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa type pool, wading pool, special purpose pool, or water recreation attraction to which admission may be gained with or without payment of a fee and includes but is not limited to pools operated by or serving camps, churches, cities, clubs, counties, health spas, institutions, parks, state agencies, schools, subdivisions, or other cooperative living type projects such as apartments, boarding houses, condominiums, hotels, mobile home parks, motels, recreational vehicle parks, and mobile home parks *all entirely artificially constructed wading pools, swimming pools, bathhouses used collectively by a number of persons for wading, swimming, recreative, or therapeutic bathing, together with all sanitary facilities, bathing suits, buildings, equipment, and appurtenances pertaining to such bathing places; provided, that such term shall not apply to those public or semipublic baths where the main object is the external cleansing of the body, to bathing places maintained by an individual for the use of family and friends, or to bathing places owned or managed by a group or association of the owners of thirty or fewer homes, the use of which is limited to the homeowner group and their nonpaying guests. The term "public bathing place" does not include spray pads or spray grounds. As used in this section, "spray pads or spray grounds" mean interactive recreation areas intended for use by children in which the water is supplied by a system of sprays and is not allowed to accumulate above ground [63 O.S. § 1-1013].*

**"Recessed steps"** means a riser/tread or series of risers/treads extending down from the deck with the bottom riser/tread terminating at the spa/pool wall, thus creating a "stairwell."

**"Recessed treads"** means a series of vertically spaced cavities in the spa/pool wall to be used as steps for the ladder.

**"Recirculation system"** means the system traversed by the recirculated water from the pool until it is returned to the pool.

**"Scope of work"** means a document outlining proposed changes to a public bathing place, including but not limited to the existing configuration and work to bring the facility into compliance with the provisions of this chapter.

**"Skimmersystem"** means a device installed in the pool wall whose purpose is to remove floating debris and surface water to the filter. the water line shall fall in the midpoint of the operating range of the skimmers.

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**"Special purpose pool"** means a public bathing place used exclusively for a particular purpose, including but not limited to springboard or platform diving training, scuba diving instruction, and aquatic programs for handicapped individuals and kindergarten children.

~~"Spray pool" means a recreation area intended for use by children, in which water is supplied by a system of sprays but is not allowed to accumulate.~~

**"Steps"** means a riser/tread or series of risers/treads extending down from the deck into the spa/pool area.

**"Submerged suction outlet"** means a fitting assembly, cover/grate, and related components below the water level that provides a localized low pressure area for the transfer of water from a swimming pool, wading pool, spa or hot tub.

**"Toxic"** means the adverse physiological effect on man.

**"Tread contact surface"** means the foot contact surfaces of ladder, step, stair, or ramp.

**"Turnover rate"** means the period of time (usually in hours) required to circulate a volume of water equal to the pool capacity.

**"Upper distribution system"** means those devices designed to distribute the water entering a permanent media filter in a manner such as to prevent movement or migration of the filter medium. This system shall also properly collect water during filter backwashing unless other means are provided.

~~"Unblockable drainsuction outlet"~~ means a suction outlet constructed, designed, or fitted with an approved cover, of a minimum size such that an 18 inches by 23 inches body blocking element will not cause a differential pressure that could cause body entrapment.

**"Vacuum (or suction) filter"** means a filter which operates under a reduced pressure from the suction of a pump.

**"Wading pool"** means a pool intended for recreational use by children and having a maximum depth not exceeding 18 inches.

~~"Water line" means the water line shall be defined in one of the following ways: the line along the pool that was designed for maximum efficiency and sanitation. For skimmers it is about mid-tile and for gutters they should be overflowing~~

**"Water recreation attraction"** means a public bathing or swimming facility with design and operational features that provide patrons recreational activity which is different from that associated with a conventional swimming pool and purposefully involves total or partial immersion in the water. Water recreation attractions include but are not limited to water slides, water amusement lagoons, and wave pools.

## SUBCHAPTER 3. PLAN DOCUMENTS

### 310:315-3-1. Plans and specifications

(a) **Plans and specifications required.** Plans and specifications on new or major remodeling of existing public bathing places shall be prepared by and bear the seal of a professional engineer licensed in the State of Oklahoma and submitted to the State Department of Health for approval and an approval permit issued prior to construction.

(1) Permits for construction of public bathing place facilities are not transferable.

(2) No permit to construct a public bathing place facility will be granted unless sufficient information has been presented to the Department to indicate a finding that such facility will be constructed and can be operated in accordance with this chapter and in accordance with good practices of public health and safety.

~~(3) The purpose of this section is to point out the essential items and in general, the type of information that should be shown on the plans or included in the specifications or the engineer's report. The inclusion of complete information will expedite the review and approval of plans and specifications by the Water Facilities Engineering Service and will avoid the necessity of returning unapproved plans and specifications to the owner for additional information or clarification.~~

~~(4) Plans submitted to the Department for approval for all future public bathing places, or for any major changes in existing public bathing places, must bear the seal of a registered professional engineer licensed to practice under the Oklahoma statutes. Plans shall be of sufficient size and legibility for microfilming.~~

~~(5) It is unlawful for any person or persons to begin construction, alteration, or modification of any public pool without first having received written approval from the Department.~~

~~(6) The modification of an existing public bathing place to comply with requirements of OAC 310:315-7-14(h) (relating to outlets) shall not require a permit. The changes shall be considered minor modifications as outlined under OAC 310:315-3-1(b) (relating to minor changes) and shall require the submission of a scope of work in writing to the Department outlining the proposed modification to the public bathing place, prior to performing the work. The scope of work shall include, at a minimum, the make and model number of the equipment that will be installed. An inspection by the Department is required upon completion of the work and prior to re-filling the pool with water.~~

(7) Any changes or additions to the recirculation system, treatment equipment, physical structure, or appurtenances that, in the opinion of the Department, are not equivalent in operating characteristics to those installed in accordance with the plans and related documents approved by the Department will be considered as an alteration or modification of an existing pool.

(8) Upon completion of all new construction, approved alterations or modification of an existing pool, the owner shall provide written notification to the Department that the construction and/or equipment installation is ready for final inspection ~~by the Department.~~

(9) If construction of a pool (installation of the pool shell) has not commenced within one (1) year from the date of plan approval by the Department, the approval ~~shall will~~ expire. However, upon ~~written~~ request by the owner, the project approval may be extended for a period of six (6) months provided significant changes have not

been made in the project plans or have not occurred in local conditions affecting the pool or site, and the plans comply with the standards.

~~(107) Number of sets of plans.~~ Five (5) or more complete sets of plans and specifications, together with an application for permit on forms provided by the ~~State Department of Health~~, signed by the owner, shall be submitted to the Department for review. If approved, all plans and specifications will be stamped, indicating the approval of the Department. One (1) set will be retained in the files of the Department; one (1) set forwarded to the local health department; one (1) set will be sent to the consult engineer; and two (2) sets returned to the owner, (one (1) for the owner's file and the other to be provided the successful bidder for the pool construction) ~~and one set will be sent to the consulting engineer.~~

~~(118)~~ If not approved, one (1) complete set will be retained for record and the remainder will be returned to the applicant with recommendations for necessary changes or modifications ~~that will be in for compliance with lawful requirements.~~

~~(129) Plans Submitted for Review.~~ Plans should be submitted for review at least thirty (30) days prior to advertising for bids or letting a contract for construction of the pool. ~~From this it is not necessarily to be inferred that approval or recommendations by the Department will always be forthcoming within this time.~~

(b) **Minor changes.** ~~Proposed~~ An owner must submit a scope of work to the Department for proposed changes or additions to existing public bathing places of a minor nature, and that are not of a sufficient magnitude or scope to involve engineering and the preparation and submission of plans. The scope of work shall will be reviewed informally by the Department in order that the owners may be assured to verify that the proposed changes or additions are in compliance with lawful requirements applicable statutes and rules, and do not necessitate a formal plan review.

(c) **Structural design not reviewed by ~~State~~ the Department of Health.** The review of plans and specifications by the ~~Water Facilities Engineering Service Department~~ does not include structural design or structural stability of any section or part of a public bathing place. Certification of adequacy is the responsibility of the design engineer.

(d) **Information needed.** The engineer's report, specifications, or plans shall include all of the minimum design requirements outlined in this chapter; the pool capacity in gallons; estimated bathing load (male and female); capacity of all mechanical equipment; information of water supplies, pressure, etc., together with such other information as is requested throughout this chapter. When mechanical equipment, devices, plumbing fixtures, etc., are specified by use or trade name, catalog numbers, etc., then individual leaflets, catalogs, or other descriptive material shall be furnished. A plot plan is required showing the location of the pool and adjacent buildings, parking areas, sewers, water lines, fences, and contours. The finding location (legal description or street address) shall be shown on the plot plan.

(e) **New equipment and methods.** The policy of the Department with reference to new types of equipment, new design features, etc., will not be ~~such as~~ to discourage or obstruct progress in design. However, any newly developed equipment, materials, etc., proposed for use in connection with a public bathing place shall have been qualified by trial elsewhere to the satisfaction of the ~~State Department of Health~~ before plans and specifications will be approved or a permit issued. This requirement would not necessarily prohibit any occasional experimental or test installation with adequate impartial supervision, wherein a satisfactory written agreement with reference to replacement of equipment, materials, or changes in design is incorporated in the specifications in the event of failure. In the event public funds are involved, then any such agreement shall be backed by a satisfactory guarantee bond, sufficient in amount to provide for the replacement of unsatisfactory materials or equipment plus any and all additional costs occasioned by changes in design or construction, etc., arising from such replacement.

(f) **Special conditions.** Should special conditions exist, or circumstances be such that in the opinion of the engineer certain items listed as minimum design requirements would not be applicable, then such items shall be submitted in writing to the ~~State Department of Health~~ and approved prior to preparation of the final plans and specifications, and shall be explained in detail in the engineer's report.

(g) **Deviations.** Deviations from this chapter may be allowed by the Department upon a finding by the Department that the operation, maintenance, safety, and sanitation of the pool will not be adversely affected by the deviation. No deviation will be allowed unless it is noted on the construction permit. No deviation from approved plans and specifications is permissible unless and until an amended permit has been granted.

## SUBCHAPTER 5. WATER AND SEWER FACILITIES

### 310:315-5-1. Water supply

(a) **Potable water supply.** The water supply serving the bathhouse and all plumbing fixtures, including drinking fountains, lavatories, and showers, shall be ~~treated in accordance with the requirements of the State Department of Health for drinking water~~ approved by the appropriate regulatory authority.

(b) **Pool water supply.** The water supply for artificially constructed bathing places shall meet the requirements as set forth ~~in 310:315-5-1, "Pool water quality," in this Section.~~

(c) **Backflow preventers.** All portions of a public water distribution system serving the pool and ancillary facilities shall be protected against backflow. Water introduced into the pool either directly or through the recirculation system shall be introduced into the pool through an air gap providing two pipe diameters or six (6) inches vertical distance between the maximum flood level of the pool and the lowest point of the inlet pipe. The coping or deck constitutes the flood level, not a drain. ~~In the case of other connections to a public~~

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~~distribution system, the~~ The supply shall be protected by an air gap whenever possible. When such connections are not ~~possible~~ installed, the supply shall be protected by a suitable backflow preventer installed on the discharge side of the last control valve to the fixture, device, or appurtenance. All hose bibs in the bathing facility area shall be so equipped. ~~For a pool autofill system without an air gap, a RPZ backflow preventer is required.~~ The requirements of the American National Standards Institute (ANSI) A40.6-1943; the American Society of Sanitary Engineering (ASSE) 1001-1970; ASSE 1011-1970, ASSE 1012-1972, ASSE 1013-1971, ASSE 1015-1972; or the American Water Works Association (AWWA) C506-69, or latest revisions thereof, will be used in determining substantial compliance with this requirement.

(d) **Pool water quality.** Unless pool water is to be supplied from an approved and properly operated public water supply system ~~routinely analyzed by the State Department of Health,~~ an analysis of the proposed pool water supply shall be submitted with the plans and specifications or as part of a preliminary engineering report. The analysis shall include, as a minimum, the following parameters: pH, total alkalinity, dissolved solids, hardness both carbonate and non-carbonate, copper, iron, manganese and turbidity. Should any of the above parameters exceed the maximum limit set forth in ~~the Public Bathing Place Regulations~~ OAC 310: Chapter 320, design and specifications of necessary treatment units required to reduce the contaminant to an acceptable level must be made a part of the swimming pool plans.

(e) **Drinking fountains.** Approved type angle-jet fountains with approved water supply under adequate and regulated pressure must be provided in locations available to pool patrons. In the case of non-municipal pools, this requirement will be considered met by compliance with 310:315-7-7, "Bathing places not open to the general public."

### 310:315-5-2. Sewer

(a) **Adequate sanitary and storm sewer system required.** The sewer systems shall be adequate to serve the facility, include bathhouse, locker room, and related accommodations, and to provide for liquid waste disposal and surface drainage.

(b) **Pool wastewater.** Pool wastewater shall be discharged through an air gap to a sanitary sewer, used for pool makeup water after sedimentation and filtration, or ~~the water may be~~ used for irrigation after sedimentation. Proposals for a point discharge of the wastewater to a storm drain or receiving stream will be evaluated on a case-by-case basis and will require obtaining a National Pollutant Discharge Elimination System (NPDES) permit and compliance with all permit conditions. Disposal of wastewater from diatomaceous earth type filters shall be accomplished through adequately sized separation tanks acceptable to the Department, equipped with air bleed valves, bottom drain lines, and isolation valves, or through systems of a settling tank or tanks with final disposal being acceptable to local authorities. Waste lines shall be sized to handle the expected flow. There shall be an indirect connection between any drain from a pool or recirculation system and a sewer line.

(c) **Disposal of sanitary wastewater.** The sanitary sewer serving the bathhouse and ancillary facilities shall connect to the public sewer wherever possible. Where no such sewer is available, the sewer shall connect to a suitable treatment plant designed, constructed, and operated in accordance with the minimum requirements of the ~~State Department of Health~~ Oklahoma Department of Environmental Quality.

(d) **Stream pollution prevention.** ~~The wastewater that results from the construction and operation of a swimming pool shall, prior to discharge, meet the water quality criteria that have been established for the area. In this regard, it will be necessary for the design engineer to refer to the Oklahoma Water Quality Standards, 1979, or the latest revision thereof, published by the Oklahoma Water Resources Board, for the stream standards to be met in the area in which the pool will be located. In addition, it will be necessary to supply information to the Department showing the measures to be provided to meet the standards.~~

## SUBCHAPTER 7. CONSTRUCTION AND OPERATION

### 310:315-7-1. Pool construction, materials, and finish

#### (a) ~~Materials and finish.~~

(1) Pools shall be constructed of concrete or other materials which are smooth, non-absorbent, durable, non-toxic to humans and which can withstand the design stresses. All side walls and bottom surfaces shall have a smooth, easily cleanable, and slip-resistant finish. Floors and walls shall be white or light (pastel) in color and shall have the characteristic of reflecting rather than absorbing any natural or artificial light ~~that may be incident upon the floor and wall surfaces.~~

(2) Fiberglass panels or other approved panels shall not be installed so that a ledge is created at the junction with other materials except as permitted under 10:315-7-4, "Safety ledges."

(3) Wooden pools, spas, or hot tubs are prohibited.

(4) Plastic liners are prohibited.

(5) Sand or earth bottoms are not permitted in artificially constructed public bathing places.

#### (b) **Portable pools.**

(1) **Materials.** ~~Because of its special use and supervised operation, the materials of construction of a portable pool shall be subject to individual appraisal and approval by the Department. It shall meet the objectives of conventional pools in matters of safety, sanitation, durability, water tightness, and ease of cleaning. It shall be easily erected and dismantled.~~

(2) **Equipment.** ~~The equipment of a portable pool shall be subject to individual appraisal and approval by the State Department of Health. It shall include equipment for recirculation, filtration and disinfection, capable of meeting the water quality standards listed in the Public Bathing Place Regulations OAC 310: Chapter 320. Recirculation equipment shall provide a turnover rate not greater than four (4) hours, with a rate of three (3) hours~~

~~recommended. Sanitary facilities required by this chapter shall be conveniently available to the pool. The needs for barriers, walkways, lighting, and other requirements of this chapter shall be met or shown to be non applicable under the provisions of 310:315-3-1. The pool shall be equipped with a sturdy cover that can be locked in place. See Chapter 320 of this title for conditions governing the application and operation of portable pools.~~

**310:315-7-2. Pool layout**

(a) **Location.** In selecting the site for a proposed public bathing place, the water supply, sanitary sewer, and other drainage facilities shall be given due consideration. Outside pools ~~should not~~cannot be located near unpaved highways where road dust and dirt would be carried into the pool by prevailing winds. The site of outdoor pools shall be elevated or otherwise protected by drainage ditches, curbs or retaining walls so that surface water will not flow into and contaminate the pool water.

(b) **Trees, shrubbery.** Trees and shrubbery overhanging or adjacent to the pool or walkway, or in the immediate vicinity on the windward side, are objectionable in that they are the source of dirt, leaves, and other contaminants which may fall into the water.

(c) **Exclusion of unauthorized persons.**

(1) ~~Provision must be made to exclude unauthorized persons from the bathing facilities area. All bathing facilities must be surrounded by an effective barrier for this purpose that meets the descriptions below:-~~

(A) Outdoor pools open to general public such as municipal pools and pools used by organizations (YWCA, YMCA, etc.), shall be enclosed by a suitable barrier equal to a six (6) foot high woven wire fence. ~~Within this pool area may then be established a semi barrier which shall serve to separate the swimmers from the spectators. Enforcement of this section shall then be based on the observance of rules which shall be adopted so as to prevent the mingling of swimmers and spectators on the pool walk area.~~

(B) Indoor pools must either be located in a room with doors that can be locked at all times when the pool is not in use (regardless of whether a fee is charged) or have a barrier that is in compliance with 7-2(c)(1)(C).

(C) Outdoor pools not open to the general public shall be enclosed with a suitable effective barrier to prevent unattended small children from entering the pool. The barrier may be any fence, wall or structure which prevents entry except through self-closing, self-latching gates and does not prevent visual observation of the pool and is not less than four (4) feet in height. Decorative type barriers shall not have open spaces greater than four (4) inches. ~~See also 310:315-7-7.~~ Where existing construction prohibits compliance with this rule, the owner shall file with the county or state health department, an operation procedure which will serve to ensure the exclusion of

animals and unattended small children from the pool area.

(2) A suitable effective barrier shall be accomplished in one of the following manners:

(A) **Wood.**

(i) Wood posts shall be at least four (4) inches in diameter or four (4) inches x four (4) inches, ~~shall be of pressure-treated wood and shall be, spaced not more than ten (10) feet apart. Posts shall be, and~~ embedded at least eighteen (18) inches into the ground.

(ii) Wood railings, when used, shall be at least two (2) inches x four (4) inches in nominal dimension. There shall be at least two (2) railings. Railings shall provide no horizontal projections or recessions unless at four (4) feet. Railings shall not be used in such a way as to form a ladder.

(B) **Wire.**

(i) Wire posts shall be galvanized pipe at least two (2) inches in diameter and shall be spaced not more than ten (10) feet apart. Such posts shall be embedded to a depth of twelve (12) inches in a concrete jacket at least eighteen (18) inches deep and six (6) inches in diameter.

(ii) Chain link shall be at least eleven (11) gauge galvanized metal.

(iii) Wire supports shall be galvanized metal at least one and one-quarter (1-1/4) inches thick and shall provide no footholds.

(C) **Wrought iron.**

(i) ~~Wrough~~Wrought iron posts shall consist of at least one-half (1/2) inch thick steel bars spaced not more than four (4) inches apart.

(ii) Wrought iron fence sections shall consist of at least one-half (1/2) inch thick steel bars spaced not more than four (4) inches apart.

(iii) Wrought iron horizontal rails shall not form a ladder.

(D) **Masonry.** Walls of brick, concrete or stone shall be constructed so as to provide no projections or recessions within four (4) feet of the ground's surface. Such walls shall meet the visual observation requirement of 310:315-7-2. Construction shall not be such as to form a ladder. There shall not be more than four (4) inches of space between the bottom of the enclosure and the ground's surface or the pool deck. Indoor bathing facilities not open to general public shall be enclosed so that access is only through self-closing, self-latching gates or doors, to control access by unattended small children. Enclosures shall have maximum openings of four (4) inches, and the enclosure design shall not form a ladder.

(E) **Alternate enclosure materials.** The Department may approve alternative enclosure materials and methods where the Department finds such materials and methods equivalent to those described.

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(d) **Sand or grass plots.** The area within the pool enclosure of outdoor municipal and other pools open to the general public, and school pools, shall be free of all sand or grass plots used for sun-bathing or play areas. Sand and grass areas provided for sun-tanning or sun-bathing purposes in connection with swimming pools open to the general public shall be separated from the pool and walk area by a fence or other barrier. The exits from the sand or grass sun-bathing area to the pool area shall be provided with continuous or automatic showers, with volume and pressure of water sufficient to remove gross particles of sand, grass, etc., from the bathers. In lieu of the above shower arrangement, sun-bathers may be routed from the sand or grass sun-bathing areas through the regular shower rooms.

(e) **Layout of filter plant and chemical storage facilities.**

(1) The filter plant and chemical storage areas shall ~~either be enclosed or shall otherwise~~ limit access by the general public through other means.

(2) The filter area shall be large enough to provide easy access to all equipment and appurtenances with sufficient room for adequate pipe run for the flow meter and for system maintenance.

(3) There must be at least eighteen (18) inches clearance about freestanding equipment.

(f) **Hose connections.** Ample hose connections shall be provided and suitably arranged in interior shower rooms, toilet rooms, and exterior walks, so that all floors, walks and drains may be flushed with water, using a fifty (50) foot section of flexible hose. Approved vacuum breakers shall be included at all hose bib connections (including any in equipment rooms).

(g) **Wall, floor, and ceiling material.** Walls, floors, and ceilings of new pool rooms and new filter rooms shall be of non-sorbent, smooth, cleanable material.

### 310:315-7-3. Pool size and bathing load

(a) **Pool size.** Generally, the size of the swimming pool shall be such as to accommodate the anticipated maximum swimming load that will frequently use the pool during the swimming season.

(b) **Diving and swimming areas.** Those portions of the pool from the breakpoint to the shallow end shall be designated as "swimming" area and the portion of the pool from the breakpoint to the deep end shall be designated as "diving" area.

(c) **Computing capacity requirements.** The formula for computing capacity requirements is in Appendix D. (See also OAC 310:320 Public Bathing Place Regulations.)

~~(1) Indoor public swimming pools and outdoor swimming pools with a minimum walk area (See 310:315 7-6) and no sun-bathing area:~~

~~[REVOKED]~~

$$\text{Number of person} = \frac{\text{Swimming Area}}{20} + \frac{\text{Diving Area}}{30}$$

~~(2) Other pools with average walk area, sun-bathing area, etc.:~~

~~[REVOKED]~~

$$\text{Number of persons} = \frac{\text{Swimming Area}}{15} + \frac{\text{Diving Area}}{24}$$

~~(3) Deduct three hundred (300) square feet for each installed diving board from the diving area.~~

~~(4) The entire surface area shall be considered "Swimming Area" for non-diving pools having a uniform bottom slope (maximum slope: one (1) foot vertical to twelve (12) feet horizontal) from the shallow end to the deepest part of the pool.~~

(d) **Allowance for deck area.** The Department may make additional allowance in cases of pools with extensive deck areas used by patrons for lounging or sun-bathing. ~~These allowances shall be based on studies of actual pool use.~~

### 310:315-7-4. Pool features

(a) **Structural.**

(1) All pools shall be designed and constructed to withstand all anticipated structural loading, under both filled and empty conditions. A hydrostatic relief valve is required on all new below-grade pools.

(2) Facilities for the Handicapped. All pools open to the general public constructed after May 1, 1981 shall provide for the use of the entire facility by the handicapped as follows:

(A) Raised or cut out depth markings ~~shall be~~ used in the pool and on the deck.

(B) A ramp or lift ~~shall be~~ provided into the pool proper.

(C) Bathhouse construction ~~shall be~~ such that all facilities are readily available to wheelchair and ambulatory handicapped.

(b) **Pool shape.** The shape of any pool shall be such that the circulation of pool water and control of swimmers' safety are not impaired. For all free form, non-diving pools containing any swimming area where the pool perimeter is curved at a radius of less than six (6) feet and the sidewall depth is five (5) feet or less, the design engineer shall separately certify the design of the pool as to its safety.

(c) **Shallow depth.**

~~(1) The pools sixty (60) feet or more in length, such as school pools, municipal pools, institutional pools, and other pools where competitive use is a consideration, the minimum depth of three and one-half (3-1/2) feet at the shallow end.~~

~~(2) In the case of motel and hotel pools, and similar bathing places where recreative bathing is a primary function, minimum depths of three (3) feet are recommended. For pools designed for multiple functions, consideration may be given to the L, Z, or T shaped pools where sufficient depth can be provided for competitive use in one section and shallower water provided in other areas for instruction use or recreational swimming.~~

(d) **Therapeutic pools.** In the case of special pools for water therapy where a design depth less than three (3) feet or other special features are used, the engineer must include in his report a description of the intended use.

(e) **Slope of bottom.**

(1) The slope of the bottom of any portion of the pool having a water depth of less than five (5) feet shall not be more than one (1) foot in twelve (12) feet and said slope

shall be uniform. An exception to this requirement will be made permitting a breakpoint to occur at a minimum water depth of four and one-half (4-1/2) feet for pools less than sixty (60) feet in length or special indoor pools used for instructional or therapeutic purposes.

(2) For pools without uniform bottom slope, without diving facilities, and with maximum depths of five (5) feet or more, the slope in the shallower section shall not exceed one (1) in twelve (12) and there shall be a life line at the change in slope. The slope of the transition section shall not exceed one (1) in three (3). ~~See Public Bathing Place Regulations.~~

(f) **Side walls.**

(1) Walls of a pool shall be vertical for a water depth of at least five (5) feet below the water level, below which the wall ~~may~~ shall be curved to the bottom with a radius equal to the difference between the depth and five (5) feet, except that for water depths under four (4) feet, a radius of one (1) foot shall be permitted; for water depths between four (4) and five (5) feet, a radius of two (2) feet may be used. ~~See also 310:315-7-4.~~

(2) Walls of pools without diving areas shall be vertical (constructed not more than eleven (11) degrees from plumb) for a water depth of at least three (3) feet in all areas where the side wall depth is five (5) feet or greater. The walls shall be vertical for a depth of at least two and one-half (2-1/2) feet in areas with less than five (5) feet side wall depth. The wall ~~may~~ shall then be curved to the bottom with a radius equal to or less than the difference between the minimum vertical wall depth and the side wall depth. Side wall depth shall be defined as the distance between the water surface and the point at which the side wall curvature intersects the constant slope of the bottom.

(g) **Diving area requirements.** Wherever diving facilities are provided in connection with public bathing places, the design shall be such as to provide adequate, clear head room and diving depths to assure the safety of the bathers. It is recommended that pools with diving facilities be designed in accordance with standards promulgated by FINA, NCAA, or U.S. Diving, Inc. The following are minimum requirements.

(1) There shall be a completely unobstructed clear vertical distance of sixteen (16) feet above any spring board measured from a point at the center of the end of the board over the water, and the clear area ~~shall also extend~~ extends horizontally at least eight (8) feet behind, eight (8) feet to each side, and sixteen (16) feet ahead of that point.

(2) A schedule of depths and their locations is given in ~~Figure 1~~ Appendix A and B. These depths are to be interpreted as minimum requirements compatible with safety of design, and greater clearances are recommended.

(3) The area of deep water provided shall ~~in all cases~~ comply with the provisions of Figure I or the following requirements: For pools utilizing deck level boards which will be not more than eighteen (18) inches above the normal operating level of the pool, and other small pools used for diving, the diving area shall have a minimum depth of eight (8) feet. The area where this minimum depth shall

prevail shall be described as follows: at a point on the center line of the axis of the diving board eight (8) feet from the deep end wall, a circle shall be circumscribed with a six (6) foot radius: from a point eleven (11) feet from the deep end wall or three (3) feet in front of the first center, also on the diving board center line axis, a second circle shall be circumscribed with a five (5) foot radius extending from where the arc of the second circle intersects the arc of the first circle on one side to the point of intersection on the other side; all of that area within these two (2) circles shall have a normal operating depth of not less than eight (8) feet; all of this combined area shall be sloped to a point or points where main drains are located and where the depth is not less than eight (8) feet six (6) inches.

(4) In free form pool design (such as kidney-shaped), a deck level diving board may be accommodated in ~~Figure H~~ Appendix C design, using a pool width of sixteen (16) feet at the tip of the diving board. The deck shall not encroach on the pool water surface inside a triangle whose base is sixteen (16) feet long and is centered at the tip of and is perpendicular to the center line of the diving board and whose apex is three (3) to four (4) feet back from the tip of the diving board. (This places the apex at the wall below the diving board.)

(A) **Slides, swings, and recreational equipment.**

It is recommended that where slides, swings, climbing walls, and similar recreational equipment are installed at pools, a lifeguard be on duty at the pool when it is in use.

(B) **Diving boards or platforms.**

(i) Because of the hazards involved, diving boards or platforms exceeding three (3) meters in height ~~should~~ must not be available to the general public and will be approved only for instructional or competitive pools, supervised by capable instructors or coaches. Water depths below such platforms shall conform to NCAA, AAU, or FINA Standards. Preliminary plans for the pool construction shall be submitted for appraisal and concurrence prior to the submission of final construction plans. Preliminary plans shall provide sufficient information on the operation of the pool to allow determination as to whether or not the high diving platforms can be used without hazard.

(ii) ~~The~~ These design requirements are ~~minimum to meet the needs~~ for recreational swimming and diving. Where it is anticipated that pools with diving boards, ~~for example one (1) meter and three (3) meter boards~~, will be used for competitive diving events or training for such events, greater water depths will be required. In such instances the water depths given in the listed standards shall be used in order to avoid safety hazards for this type of activity.

(h) **Safety ledges.**

(1) Safety ledges are acceptable for instructional pools where full-time lifeguards are on duty, provided the ledges are located not less than four (4) feet nor more than five

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(5) feet below the water surface. The corners shall be rounded.

(2) Ledges shall be painted or constructed with a material of contrasting color to be easily visible. Ledge surfaces shall have slip-resistant textures.

(3) Off-sets or protrusions from the pool wall resulting from design or construction variations shall fall within the area defined by an eleven (11) degree line from plumb and a plumb line starting at the junction of the pool wall and water surface.

(i) **Depth markings.**

(1) The depth of water shall be plainly marked at or above the water surface on the vertical wall of the swimming pool and on the edge of the deck or walk next to the swimming pool, at maximum and minimum points; at the points of break between the deep and shallow portions; and at intermediate one (1) foot increments of depth in the shallow end up to the breakpoint; and at two (2) foot increments of depth from the breakpoint to the deep end wall, spaced at not more than twenty-five (25) feet intervals measured peripherally; and at two (2) foot increments of depth (with at least three (3) markers per pool) throughout the length of non-diving pools with uniform bottom slope.

(2) Depth markers shall be in numerals of four (4) inches minimum height and a color contrasting with the background. Where depth markers cannot be placed on the vertical walls above the water level, other means shall be used, ~~said markings to~~ and be plainly visible to persons in the pool area.

(3) It is strongly recommended that a six (6) inch black stripe be painted on the bottom of the pool at the breakpoint between the swimming and non-swimming areas, and that lengthwise stripes be painted on the pool bottom for better delineation of the bottom contour.

(j) **Coping.** Bullnosed or rounded coping is recommended. Other coping will be approved on a case-by-case basis. None shall extend more than three (3) inches inside the pool wall nor have sharp corners, and the top surface shall not be more than nine (9) inches above the normal water level.

(k) **Isolation panels.** Where movable panels are used to separate pools, such as in a water channel connecting an indoor and outdoor pool, the design shall include a system of counterweights or springs, or other device, to prevent "guillotine" action. ~~It is recommended that transparent panels include permanent striping in a contrasting color.~~ Also, a minimum of one (1) additional inlet shall be positioned on each side of the panel to assure disinfectant distribution in the connecting water channel.

### 310:315-7-6. Walkways or decks

(a) **Width.** A walkway shall entirely surround the pool. It shall not be less than four (4) feet wide at indoor pools. The walk area about outdoor pools and within the fence shall be equivalent to that provided by a walk at least eight (8) feet wide around the pool. In no case shall the minimum width of the walk be less than four (4) feet at outdoor pools. Where an outdoor pool is covered for cold weather use, the walkway requirements for indoor pools shall govern the size of cover.

(b) **Slope.** All walks, decks and terraces shall have a minimum slope of one-fourth (1/4) inch per foot to drains or points at which the water will have a free, unobstructed flow to points of disposal at all times. Drainage connections to the recirculation system, scum gutter or suitable waste are acceptable. Drainage into the pool is prohibited.

(c) **Finish.**

(1) It is recommended that decks adjoining the pool at public bathing places be constructed of concrete or other impervious material, have a slip-resistant finish, be easily cleanable, not allow standing water, and not cause discomfort to bare feet. ~~Epoxyed~~ Epoxied gravel should not be used as deck material unless the interstices are filled with a stable, inert material.

(2) Wooden decks or walkways are prohibited adjoining the pool at public bathing places open to the general public but may be approved at public bathing places not open to the general public, indoors where such decks are sealed by a resin or other waterproof material, and outdoors where the design provides for adequate cleaning, sanitation, safety, and exposure to the drying action of the sun and wind.

(3) Indoor/outdoor carpets, absorbent or adsorbent coverings or similar deck materials are not recommended for use on the deck or walkways around outdoor public bathing places and prohibited at all indoor public bathing places. If carpeting or other porous materials are used as deck covering at outdoor pools, the substrate supporting the covering, and all ancillary features, shall comply with the recommendations of paragraph one of this chapter and with 310:315-7-6 ~~(and see Public Bathing Place Regulations for disinfection).~~

~~(d) **Hose connections.** Ample hose connections shall be provided and suitable arranged about decks, walkways, and drains so that they may be flushed with water using a fifty (50) foot section of flexible hose. Approved vacuum breakers shall be included at all hose connections.~~

### 310:315-7-7. Bathhouse

(a) **General bathhouse design requirements for all pools.**

(1) **Separate facilities.** Bathhouses to be used simultaneously by both sexes shall be divided into two parts, each appropriately designated for men and women and separated by a tight partition. The entrances and exits shall be screened to break the line of sight. If pools are to be used by one sex only, then all of the required plumbing facilities shall be provided for that sex.

(2) **Wash water temperature.** An adequate supply of warm water within the temperature range of 95 to 100 degrees Fahrenheit is required for all showers and lavatories. On all new construction or the remodeling of present public bathing places, all shower heads shall be provided with fully automatic control valves to prevent scalding of persons under the shower. Control of shower water temperature by hand-operated mixing valves will not be considered as being in compliance with this safety requirement.

(3) **Bathhouse construction details.**



(A) **Walls and ceilings.** All interior walls and partitions shall be smooth, impervious, and of non-corrosive material, free of open cracks, kept in good repair, and painted a light color, with painted surfaces refinished when necessary. Walls and ceilings of showers shall be constructed of materials which are not adversely affected by water or heat.

(B) **Floors.** All floors of showers, toilets, and dressing rooms of public bathing shall be constructed with a proper slope of one-fourth (1/4) inch per foot so that they can be readily flushed with a hose. Floors shall be of a smooth, non-slip finish, impervious to moisture, and without open cracks or joints. Walkways shall be so constructed that they will readily drain. Junctions between walls and floors shall be of coved, or equivalent sanitary construction.

(C) **Shower stalls.** The floor drains in shower rooms or stalls shall be so arranged, and of sufficient number, and with floors constructed and graded, so that wastewater from individual shower heads will not flow over the floor of another shower stall. Floors of the shower stalls shall be slightly depressed below surrounding floor areas. Raised curbs between shower stalls and walks are, however, not acceptable.

(D) **Baskets, lockers, furniture.** Baskets, lockers, and all furniture used in the bathhouse and the pool area shall be constructed of non-absorbent, easily cleanable material. Lockers shall be set either on solid masonry bases at least four (4) inches high or on legs with bottom of locker at least ten (10) inches above the floor. Lockers shall be properly ventilated.

(E) **Soap.** Liquid soap with suitable dispensers shall be provided and be easily available to all persons using the showers and lavatories. Glass-type dispensers are not allowed.

(F) **Emergency fire exit.** An emergency fire exit, other than the entrance, shall be provided in the bathhouse and in the fencing or structure enclosing the pool area, and such exit shall be plainly marked. No fire traps shall be established in the meaning of adequate exits as provided for in the current edition of the National Fire Prevention Association, National Fire Codes, Vol. 9, Section 101, Life Safety Code for Assembly Occupancies. Exits shall be plainly marked.

(G) **Fire extinguishers.** A fire extinguisher of a type suited to the structures, wiring, and equipment to be protected shall be provided and located where readily available. Carbon tetrachloride extinguishers are not acceptable.

(b) **Bathhouse requirements for facilities open to the general public.**

(1) **Facilities and fixtures.** All public bathing places open to the general public shall be provided with adequate toilet facilities, hot water showers, lavatories, drinking fountains, and other required appurtenances. Since the number of each type of plumbing fixture required is based on the maximum number of persons likely to be in the pool area at one time, based on the formulas in 310:315-7-3,

or otherwise approved, the engineer, in designing new public pools intended for swimming, should determine the number of such fixtures based on design load.

(2) **Facilities and fixtures accessibility.** Shower controls, toilet facilities, and lavatories shall be provided at all bathing places open to the general public such that they can be easily reached by small children and the handicapped. As a basis for determining the number of plumbing fixtures required on new and existing public bathing places open to the general public, and for the purpose of reviewing plans and specifications submitted to the Department for approval, the maximum probable number of persons likely to be in the pool at one time may be estimated by the formula shown in 310:315-7-3.

(b) **Separate facilities.** Bathhouses to be used simultaneously by both sexes shall be divided into two parts, each appropriately designated for men and women and separated by a tight partition. The entrances and exits shall be screened to break the line of sight. If pools are to be used by one sex only, then all of the required plumbing facilities shall be provided for that sex.

(e) **Spectators excluded from bather facilities.** Spectators and non-bathers shall be excluded from the toilet rooms provided for the persons using the pool facilities. Should the management desire to accommodate spectators and non-bathers, then separate toilet facilities shall be provided. The requirements of this section shall not be mandatory for bathing places not open to the general public.

(3d) **Minimum toilet facilities.**

(A4) **Men.** A minimum of one (1) water-flush toilet and two (2) water-flush urinals shall be provided in the men's division of all bathing places open to the general public. This minimum number of toilet fixtures is considered sufficient for the first one hundred (100) males. In addition to the above, one (1) water closet and one (1) urinal shall be provided for each additional one hundred (100) males or major fraction thereof. A number less than twenty-five (25) will necessitate only one (1) additional urinal. For pools of less than sixteen hundred (1600) square feet surface area in size, used simultaneously by both sexes, this requirement may be reduced by one (1) urinal.

(B2) **Women.** A minimum of three (3) water-flush toilets shall be provided in the women's division of all bathing places open to the general public. This minimum number of toilet fixtures is considered sufficient for the first one hundred (100) females. In addition to the above, one (1) water closet shall be provided for each additional fifty (50) females or major fraction thereof. For pools of less than sixteen hundred (1600) square feet surface area in size, used simultaneously by both sexes, this requirement may be reduced by one (1) flush closet.

(4e) **Showers and lavatories.** The minimum number of shower and lavatory fixtures shall be as follows:

(A) **Men.**

(i) One (1) lavatory for each one hundred (100) men

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- (ii) One (1) shower head for each forty (40) men

(B) **Women.**

- (i) One (1) lavatory for each one hundred (100) men
- (ii) One (1) shower head for each forty (40) women.

(25) At least three (3) shower heads for men and two (2) shower heads for women shall be provided. It is recommended that all shower stalls and dressing booths in the women's shower room be arranged so that privacy may be obtained while dressing and undressing and while under the shower, a minimum design recommendation being that one (1) such shower stall and dressing booth be provided.

(fc) ~~Estimate of toilet facilities~~**Bathhouse requirements for institutional pools.** The number of toilet facilities necessary for indoor pools at schools, colleges, and similar institutions where it is intended that the swimmers be in groups or classes at regular intervals ~~and where pools are not open to the general public~~ shall be based on institutional needs, and methods of operation, ~~the number of persons permitted in each swimming class, and time allowed for bather's preparation, and similar factors shall be used to determine facilities needed.~~ As a general guide, it is recommended that one (1) water closet be provided for each ten (10) females and one (1) toilet and two (2) urinals for each twenty-five (25) males.

(gd) ~~Bathing~~**Bathhouse requirements for places facilities not open to the general public.**

(1) ~~For Motels, motels, hotels, apartment complexes constructed after November 1, 2022 where all units are less than 300 ft away from the pool or spa, and similar establishments, Pool, pool side bath or sanitary facilities are not required, providing the following conditions are met:~~

- (A) All lodging units include bath and toilet facilities.
- (B) Use of bathing facilities is restricted to tenants and their guests.
- (C) Nothing in this section shall be construed to allow openings directly into the pool enclosure without a suitable effective barrier as per 310:315-7-2.

(2) ~~Bathing places to serve other installations not open to the general public. Bathing places to serve special installations not open to the general public, such as Home Owner Associations and apartments, constructed after November 1, 2022 where units are more than 300 ft away from the pool or spa, shall have a bathhouse located adjacent to the pool walkway with the following items separately provided for each sex: one (1) water-flush toilet, one (1) lavatory, and one (1) shower, and At least one (1) drinking fountain separately provided for both men and for women. One (1) drinking fountain located so that it is available to both sexes, shall be provided is acceptable. The sanitation and safety requirements of 310:315-7-7 shall be complied with.~~

(h) **Wash water temperature.**

(1) An adequate supply of warm water within the temperature range of 95 to 100 degrees Fahrenheit is required

for all showers and lavatories. On all new construction or the remodeling of present public bathing places, all shower heads shall be provided with fully automatic control valves to prevent scalding of persons under the shower. Either individual thermostatically controlled mixing valves for each shower head or a master water blender for a gang of shower heads will be acceptable. In order to conserve hot water, each shower head shall be provided with a valve to control the quantity of blended water and to cut off the water when the shower is not being used. This valve shall be located within easy reach of all persons who use the pool facilities. The thermostatic mixing valves or water blending device shall be set to deliver water to the shower heads at a temperature of 95 to 100 degrees Fahrenheit.

(2) The temperature of water for the shower heads shall be regulated by thermostatically controlled water blenders or mixing valves, provided that should the engineer prefer, a storage tank of ample capacity for storage of low temperature water (95 degrees to 100 degrees Fahrenheit temperature thermostatically controlled) may be substituted for the combination of high temperature water storage and thermostatically controlled shower blending devices. Control of shower water temperature by hand operated mixing valves will not be considered as being in compliance with this safety requirement.

(i) **Bathhouse construction details.**

(1) **Walls and ceilings.** All interior walls and partitions shall be smooth, impervious, and of non-corrosive material, free of open cracks, kept in good repair, and painted a light color, with painted surfaces refinished when necessary. Walls and ceilings of showers shall be constructed of materials which are not adversely affected by water or heat. Partitions between dressing rooms shall terminate at least ten (10) inches above the floor or shall be placed on a continuous raised masonry or concrete base at least four (4) inches high. Lockers shall be set either on solid masonry bases at least four (4) inches high or on legs with bottom of locker at least ten (10) inches above the floor. Lockers shall be properly ventilated.

(2) **Floors.** All floors of showers, toilets, and dressing rooms of public bathing places constructed after passage of the Public Bathing Place Act shall be constructed with a proper slope of one fourth (1/4) inch per foot so that they can be readily flushed with a hose. Floors shall be of a smooth, non-slip finish, impervious to moisture, and without open cracks or joints. Walkways shall be so constructed that they will readily drain. Junctions between walls and floors shall be of coved, or equivalent sanitary construction.

(3) **Shower stalls.** The floor drains in shower rooms or stalls shall be so arranged, and of sufficient number, and with floors constructed and graded, so that wastewater from individual shower heads will not flow over the floor of another shower stall. Floors of the shower stalls shall be slightly depressed below surrounding floor areas. Raised curbs between shower stalls and walks are, however, not acceptable.

(4) **Baskets, lockers, furniture.** Baskets, lockers, and all furniture used in the bathhouse and the pool area shall be constructed of non absorbent, easily cleanable material. The number of baskets or lockers in use at any time shall not exceed the design bathing load.

(5) **Soap.** Liquid soap with suitable dispensers shall be provided and be easily available to all persons using the showers and lavatories. Glass type dispensers shall not be approved.

(6) **Foot bath (not recommended).** Should the engineer or owner desire to include a foot bath on plans of future public bathing places, it is recommended that the foot bath be the flow through type, with dimensions such as to discourage attempted jumping of the receptacle and to permit thorough wetting of both feet. Should the foot bath be designed for use with a disinfecting solution, it is recommended that a bypass be provided for those who wish to avoid its use.

(7) **Emergency fire exit.** An emergency fire exit, other than the entrance, shall be provided in the bathhouse and in the fencing or structure enclosing the pool area, and such exit shall be plainly marked. No fire traps shall be established in the meaning of adequate exits as provided for in the current edition of the National Fire Prevention Association, National Fire Codes, Vol. 9, Section 101, Life Safety Code for Assembly Occupancies. Exits shall be plainly marked.

(8) **Fire extinguishers.** A fire extinguisher of a type suited to the structures, wiring, and equipment to be protected shall be provided and located where readily available. Carbon tetrachloride extinguishers are not acceptable.

**310:315-7-9. Wading pools**

(a) **Wading pools used by children.** Since wading pools will be used by children, who are more susceptible to disease than adults, the standards of sanitation shall be equal, or superior, to those for swimming pools. The maximum depth of all wading pools shall be cannot exceed eighteen (18) inches. A reasonably non-slip surface shall be provided. Bottom slopes shall not exceed one (1) foot in twelve (12) feet. Bathing water shall meet all of the water quality requirements as specified for all artificially constructed bathing places.

(b) **Recirculation.** Wading pools shall have a minimum of one (1) turnover every four (4) hours (two (2) hours is strongly recommended). Unless a separate recirculation system is provided for the wading pool, the main pool recirculation system shall be designed for the additional flow. All recirculation piping to and from the wading pool shall be valved utilizing valves designed for proportioning flows. Rate of flow indicators shall be installed to indicate the flow rate to the wading pool. The piping, fittings, and hydraulic requirements shall be in accordance with OAC 310:315-7-14(~~relating to recirculation systems~~).

(1) **Inlets, outlets.** Adjustable inlets shall be provided for wading pools based on a minimum of one (1) inlet for each twenty (20) feet, or fraction thereof, of pool perimeter except that wading pools with twenty (20) feet or less

of perimeter shall have a minimum of two (2) equally spaced adjustable inlets. Submerged suction outlets shall meet the requirements of OAC 310:315-7-14(h)(~~relating to outlets~~).

(2) **Surface skimmers.** One (1) surface skimmer shall be provided for each four hundred (400) square feet of surface area or fraction thereof. Multiple skimmers shall be equally spaced and shall meet all the requirements of OAC 310:315-7-14(~~relating to recirculation systems~~).

(3) **Emergency drainage.** All wading pools shall have drainage to waste (with indirect connection) through a quick opening valve to facilitate emptying the wading pools should accidental bowel or other discharge occur.

(b) **Wading pool integral with a swimming pool.** Where a wading pool is built integral with a swimming pool, ~~provision~~ the pool design must be made to prevent children from falling into the deeper water. The two pools shall be separated by a wall extending to the surface of the water, topped by a barrier complying with OAC 310:315-7-2(~~relating to pool layout~~).

(c) **Wading pool rules sign.** At all wading pools, a sign shall be displayed prominently using the following or equivalent language:

- (1) Wading Pool
- (2) Supervisor Required for Use Children are required to be supervised
- (3) Children over 12 Years of Age Prohibited.

**310:315-7-10. Spray pools [REVOKED]**

All spray pools with recirculation systems shall comply with the water quality standards cited in Public Bathing Place Regulations. Water supply and waste disposal shall comply with OAC 310:315 5 1(~~relating to water supply~~) and OAC 310:315 5 2 (~~relating to sewer~~). Bottom slopes shall not exceed one (1) foot in twelve (12) feet. Spray orifices shall discharge at least six (6) inches above the overflow, and shall be designed and installed so as not to present an impalement or tripping hazard. Water shall be removed continuously through drains with a maximum water velocity of one and one half (1 1/2) feet/second. Submerged suction outlets shall ~~meet requirements outlined in OAC 310:315 7 14 (relating to outlets)~~.

**310:315-7-11. Public spas**

(a) **Spas.** Spas shall be made of concrete or other impervious materials with a finish adapted to the needs of the facility. Spas shall be of such shape and size as to be operated and maintained in a safe and sanitary manner. In addition to the requirements of this section, compliance is required with all other applicable sections of this chapter.

(b) **Water depths and floor slopes.** ~~Spas shall have a~~ The maximum water depth of a spa is four (4) feet. The spa floor shall slope uniformly to a main drain and the slope shall not cannot exceed one (1) foot in twelve (12) feet (1:12) and the slope shall be uniform.

(c) **Steps.** Steps shall be provided ~~and shall be located to provide for~~ adequate entrance to and exit from the spa. The

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number of sets of steps required shall be on the basis of equals one (1) for each fifty (50) feet, or major fraction thereof, of spa perimeter. They shall be constructed of an easily cleaned impervious materials having a slip resistant finish. Step sets for spas with more than two hundred (200) square feet of spa water surface area shall comply with OAC 310:315-7-5(a)(relating to steps, ladders and stairs). Step sets for spas with two hundred (200) square feet or less of spa water surface area shall comply with the following:

- (1) Step treads shall have a minimum continuous tread length of twelve (12) inches and a minimum tread width of ten (10) inches.
  - (2) Step riser heights shall do not exceed twelve (12) inches, except that when the bottom step is used for a bench or seat, the bottom riser may be a maximum of fourteen (14) inches.
  - (3) Intermediate treads and risers between the top and bottom treads and risers shall be uniform in width and height, respectively.
- (d) **Handrails.** Handrails that are anchored in the bottom and extend over the coping and anchor in the deck shall be provided for all sets of steps and shall be anchored in the bottom and shall extend over the coping and anchor in the deck. Where "figure 4" handrails are used, they shall be anchored in the deck and shall extend laterally to a point vertically above the bottom step.
- (e) **Decks.** Spa decks A spa deck shall comply with all of the following requirements in addition to the applicable parts of OAC 310:315-7-6 (relating to walkways or decks):
- (1) Decks shall slope Slope a minimum of one-fourth (1/4) inch per foot away from the spa to drainage or to deck drains.
  - (2) Decks shall have Have a minimum four (4) foot unobstructed width around the entire spa perimeter except that small indoor spas of less than one hundred twenty (120) square feet of spa water surface area shall have a minimum four (4) foot unobstructed deck around a minimum of fifty (50) percent of the spa perimeter.
  - (3) Decks shall provide Provide adequate access for cleaning and maintenance of the spa, and for assisting persons in distress.
  - (4) Decks shall not cannot be more than ten (10) inches below the top of the curb.
- (f) **Surface skimmers.** Surface skimmers or overflow gutters shall be provided. The minimum number of surface skimmers required shall be based is on one (1) skimmer for each fifty (50) square feet or fraction thereof of spa water surface area. Multiple surface skimmers shall be equally spaced. All surface skimmers shall meet the requirements of OAC 310:315-7-14 (relating to recirculation systems) and the The system shall be designed for thirty (30) gallons per minute per skimmer. Overflow gutters shall meet the requirements of OAC 310:315-7-14 (relating to recirculation systems).
- (g) **Air or water jet systems.** Therapy or jet systems shall be independent of the recirculation-filtration and heating systems. In particular, therapy suction outlets shall be separated from filter system outlets sufficiently to ensure no interference with required filter system flow.

(h) **Suction openings.** All suction openings in spas shall have covers or grates with sufficient open area to prevent the flow velocity through the open area from exceeding one and one half (1 1/2) feet per second. This same velocity restriction shall apply to suction intakes for water jets.

(i) **Chemical feeders.** Feeders for chlorine or bromine shall be specified, shall meet the requirements for the specific spa, and shall be in accordance with OAC 310:315-7-16 (relating to disinfection and pH control). (Note: chlorine is not recommended for disinfection in hot water facilities.)

(j) **Filtration system inlets.** Adjustable filtration system inlets shall be provided for spas based on a minimum of one (1) for each twenty (20) feet or fraction thereof of spa perimeter. Additional inlets shall be installed if needed to meet flow requirements. Spas with less than twenty (20) feet of perimeter shall have a minimum of two (2) equally spaced adjustable inlets.

(k) **Filtration recirculation.** Spas shall have a minimum of one (1) turnover every thirty (30) minutes. Note that minimum flow may be determined by the requirements of OAC 310:315-7-11 (relating to public spas). The piping, fittings, and hydraulic requirements shall be in accordance with OAC 310:315-7-14 (relating to recirculation systems) and OAC 310:315-7-15 (relating to filters). All recirculation lines to and from the spa shall be valved in order to control the recirculation flow. A main drain connected to the recirculation pump meeting the requirements of OAC 310:315-7-11 (relating to public spas) shall be required. Strainers shall be sized at least twice the area required in OAC 310:315-7-14 (relating to recirculation systems). Spa water shall not be allowed to overflow or be piped into another bathing facility unless it is first disinfected and filtered.

(l) **Vacuuuming.** Spas shall have provision for vacuuming.

(m) **Temperature.** The maximum water temperature for spas shall be cannot exceed 105oF (40.6oC) and this maximum temperature shall be posted at pool side. A thermostatic control for the water shall be provided.

(n) **Rental spas.** Facilities renting spas designed to provide privacy for users shall have louvered, non locking doors in each spa enclosure, a help call system using low voltage call switches to activate central station visual and sound signals, and a fire exit for the facility. An attendant certified in CPR shall be present at all times when any rental spa is in use.

(o) **Capacity.** The maximum capacity for public spas shall be is one (1) person per three (3) feet of spa perimeter, or one (1) person per two hundred (200) gallons of water, whichever is less. For spas four hundred fifty (450) gallons or smaller, the maximum capacity shall be is one (1) person per one hundred fifty (150) gallons. The design capacity shall be posted prominently in the area adjacent to the spa.

(p) **Spa contiguous with pool.** Where a spa and a swimming pool share a wall in common, a barrier shall be mounted atop the common wall to discourage patrons from walking on the wall and falling into the spa, with its shallow seats. The barrier shall not form a ladder nor a diving platform and shall not nor include any impalement hazard.

**310:315-7-12. Water recreation attractions**

(a) **General.** Water recreation attraction projects require special consultation with the Department in order that consideration can be given to concepts of design variations and to areas where potential problems may exist. In addition to the requirements of this section, compliance is required with all other applicable sections of this chapter. Plans for supervision, attendants, and lifeguards will be an important feature to be considered for water recreation attractions, and shall be presented in the engineering report accompanying plans and specifications.

(b) **Water slides.**

(1) **Recreational water slide.** A recreational water slide facility shall consist of one (1) or more flumes, plunge pool, a pump reservoir, filtration, disinfection, and chemical treatment facilities.

(2) **Water slide plunge pool.** Plunge pools are located at the base of slide flumes. They shall be constructed of concrete or other impervious materials with a smooth slip-resistant finish. The plunge pool design shall be as follows: built according to the slide manufacturer's requirements/recommendations and the design engineer of the project or in compliance with the following standards:

(A) The minimum plunge pool operating water depth at the slide flume terminus shall be ~~is~~ three (3) feet. This depth shall be maintained for a minimum distance of ten (10) feet in front of the slide terminus from which point the plunge pool floor may have constant upward slope to allow a minimum water depth of two (2) feet at the base of the steps. The floor slope shall ~~cannot not~~ exceed one (1) foot in ten (10) feet. The plunge pool water depth shall be commensurate with safety and the ease of exit from the plunge pool.

(B) The plunge pool dimension between any slide flume exit or terminus and the opposite side of the plunge pool shall be ~~is~~ a minimum of twenty (20) feet excluding steps.

(C) The slide flume terminus shall be at a minimum depth of six (6) inches below the plunge pool operating water surface level or it may be at the water surface level or up to a maximum of two (2) inches above the water surface level provided the terminal portion of the slide flume is parallel to the water surface for a minimum distance of ten (10) feet. The minimum distance between any plunge pool side wall and the outer edge of any slide flume terminus shall be ~~is~~ four (4) feet. A minimum length of ten (10) feet of slide flume shall be perpendicular to the plunge pool wall at the exit end of the flume(s).

(D) ~~The plunge pool shall have a main drain, complying with OAC 310:315-7-14(h) (relating to outlets), with separate piping and valve to the filtration system. The velocity through the openings of the main drain grate shall not exceed one and one half (1 1/2) feet per second at the design flow rate of the recirculation pump. The main drain piping shall be sized to handle one hundred (100) percent of the~~

design flow rate of the filtration system in accordance with 310:315-7-14.

(E) The plunge pool floor shall slope to the main drain(s) and the slopes shall ~~cannot not~~ exceed one (1) foot in ten (10) feet.

(F) Plunge pool decks shall meet the following requirements as follows:

(i) ~~The have a~~ minimum 10 foot width of ~~plunge pool decks~~ along the exit side ~~shall be ten (10) feet.~~

(ii) ~~All plunge pool decks shall~~ have a minimum six (6) inch high curb; ~~and~~

(iii) ~~All plunge pool decks shall~~ slope (drain) away from the plunge pool unless the curb is located at the outside perimeter of the deck. If the curb is located at the outside perimeter of the deck, the plunge pool deck shall slope to the plunge pool and/or pump reservoir or to deck drains which discharge to the same. All slopes shall be a minimum of three (3) inches in ten (10) feet.

(3) **Bathroom facilities.** ~~Bathroom facilities shall be provided in accordance with OAC 310:315-7-7 (relating to bathroom). For very large water recreation attractions, the number of bathroom fixtures may be based on usage experience data.~~

(4) **Pump reservoirs.** Pump reservoirs shall be made of concrete or other impervious material with a smooth slip-resistant finish and shall be connected to the plunge pool by a weir. Pump reservoirs shall be for the slide pump intakes. ~~Pump reservoir designs shall be as follows:~~

(A) The minimum reservoir volume shall be equal to two (2) minutes of the combined flow rate in gpm of all filter and slide pumps.

(B) Pump reservoirs shall be isolated by a locking cover or enclosure and shall ~~be~~ accessible only to authorized individuals.

(C) Access decks shall be provided for the reservoir such that all areas are accessible for vacuuming, skimming, and maintenance. The decks shall have a minimum width of three (3) feet and shall ~~have~~ a minimum slope of three (3) inches in ten (10) feet away from the reservoir. A minimum six (6) inch high curb shall protect the reservoir.

(D) Pump reservoir slide pump intake(s) shall be located in the pump reservoir and shall ~~be~~ designed to allow cleaning without danger of operator entrapment.

(E) The pump reservoir shall have a main drain, complying with OAC 310:315-7-14 ~~(relating to recirculation systems), with separate piping and valve to the filtration system and the velocity through the openings of the main drain grate(s) shall not exceed one and one half (1 1/2) feet per second at the design flow rate of the filtration system in accordance with OAC 310:315-7-14 (relating to recirculation systems).~~

(54) **Slide pump check valves.** Slide pumps shall have check valves on all discharge lines.

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(65) **Perimeter overflow gutters or skimmers.** Plunge pools and pump reservoirs shall have perimeter overflow gutter systems and/or skimmers which shall be an integral part of the filtration system.

(A) Perimeter overflow gutter systems shall meet the requirements of OAC 310:315-7-14 (~~relating to recirculation systems~~) except the gutters are not required directly under slide flumes or along the weirs which separate plunge pools and pump reservoirs.

(B) Surface skimmers may be used in lieu of perimeter overflow gutters and shall be appropriately spaced and located according to the structural design. Unless an overflow gutter system is used, a minimum of two (2) surface skimmers each shall be provided in the plunge pool. Skimmers shall meet the requirements of OAC 310:315-7-14 (relating to recirculation systems).

(76) **Water slide recirculation-filtration equipment.**

(A) The recirculation-filtration system of water slides shall recirculate and filter a water volume equal to the total water volume of the facility in a period of one (1) hour or less.

(B) Minimum filter area requirements shall be twice the filter areas specified for the recirculation rate stipulated in OAC 310:315-7-15 (relating to filters).

(C) Any filtration system pump which takes suction directly from the plunge pool and reservoir shall have a minimum eight (8) inch diameter hair and lint strainer, meeting the requirements of OAC 310:315-7-14 (~~relating to recirculation systems~~) on the suction side of the pump.

~~(D) Submerged suction outlets must meet the requirements of OAC 310:315-7-14 (related to recirculation systems).~~

(87) **Water slide chemical feed equipment.**

~~(A) Gas chlorination is recommended for disinfection for all water recreation facilities. Chlorinators must meet all the requirements of OAC 310:315-7-16 (relating to disinfection and pH control).~~

~~(B) Feeders for pH adjustment complying with OAC 310:315-7-16 and capable of meeting the feed rate for the specific installation shall be provided; shall meet the requirements of OAC 310:315-7-16 (relating to disinfection and pH control), and shall be capable of meeting the feed rate necessary for the specific installation.~~

~~(C) When diatomaceous earth type filters are used, an acceptable diatomaceous earth type feeder meeting the minimum feeding requirements of OAC 310:315-7-15 (relating to filters) shall be provided regardless of the design filtration rate.~~

(c) **Water amusement lagoons, amusements, wave pools, and tube rides.**

(1) **Submission of engineering plans.** The design engineer shall consult with the Department prior to preparation and submission of engineering plans and specifications for water amusement lagoons.

~~(2) **Water amusement lagoons.** Water amusement lagoons shall be constructed of concrete or other impervious materials with a smooth slip resistant finish. These lagoons shall be of such shape and design as to be operated and maintained in a safe and sanitary manner.~~

~~(3) **Recirculation-filtration system.** The recirculation-filtration system of water amusement lagoons shall be capable of a minimum of one (1) turnover every thirty (30) minutes.~~

~~(4) **Wave pools and tube rides.**~~

~~(1) **Submission of engineering plans.** The design engineer shall consult with the Department prior to preparation and submission of engineering plans and specifications for wave pools.~~

~~(2) **Wave pool construction.** Wave pools shall be constructed of concrete or other impervious materials with a smooth slip resistant finish. These pools shall be of such shape and design as to be operated and maintained in a safe and sanitary manner.~~

~~(3) **Recirculation-filtration system.** The recirculation-filtration system of water amusements, wave pools, and tube rides shall be capable of a minimum of one (1) turnover every ~~four (4)~~ six (6) hours.~~

**310:315-7-13. Chemicals and chemical storage**

(a) **Chemical storage and equipment.** For chemicals necessary in water treatment, for disinfection, and pH control, provision shall be made for dry storage of at least a two (2) weeks supply of chemicals. Equipment shall be provided for batch preparation of chemicals sufficient for twenty-four (24) hours feeding.

(b) **Storage room marking.** All rooms or areas used for storage of pool chemicals shall be plainly marked on the outside door. This may be done as follows:

(1) A sign stating "POOL CHEMICALS".

(2) A sign approved by the local fire officials which indicates that the contents are potentially dangerous. See Public Bathing Place Regulations.

**310:315-7-14. Recirculation system**

(a) **General considerations.**

(1) A circulation system shall be provided which will include pumps, hair-catcher, and filters, together with all necessary piping connections to the inlets and outlets of the pool. ~~The, including features, such as the water heater, chlorinator, and suction cleaner, etc. are also usually connected with the recirculation system and shall be considered as integral parts thereof.~~ The entire system and all component parts of swimming pools shall be designed to provide a minimum of three (3) replacements of the bathing water volume every twenty-four (24) hours (four (4) turnovers are recommended), with maximum frictional resistance. ~~The required turnover rate at spas and other facilities appears in the appropriate section; note that at~~ At pools and spas with skimmers, the required skimmer flow, rather than turnover, may determine the minimum flow. Design is ~~to be based on provisions for main drain flow at~~

thirty (30) percent of the total recirculation, and thirty (30) gpm through each skimmer. This is represented as  $0.3Q + 30n = Q$  = total recirculation flow rate and  $n$  = number of skimmers. (Main drain flow is  $0.3Q$ .) These criteria, plus the maximum allowable filter flux (15 gpm/ft<sup>2</sup> for rapid sand filters) and the maximum total dynamic head loss calculated assuming a "dirty" filter ready for backwash, comprise the basic design requirements for ~~the most commonly designed~~ pools and spas.

(2) ~~Filtration and disinfection are discussed in subsequent subchapters.~~ A collector tank or other means for accommodating surge capacity shall be provided for all pools using overflow gutters connected to the recirculation system.

(b) **Pumps.**

(1) ~~Centrifugal pumps are preferable for swimming pool circulation. Electric drive is also preferable. When pipe lines from suction cleaner lead to pump suction, a pump which will develop good vacuum must be used. The pump and piping at swimming pools shall be of such capacity as to provide for a turnover of pool water in at least eight (8) hours. Refer to the appropriate section for requirements at spas, water slides, and other facilities.~~ When pressure filters are used, pumps must be designed to pass the required volume under the maximum head which may develop in the filters.

(2) The pump shall have adequate capacity to provide the design recirculation flow rate at maximum calculated head loss, and 15 gpm/ft<sup>2</sup> of sand filter area during backwash; the pump should be located below the water level of the pool when feasible, to avoid air-lock. Should it be necessary to locate the pump above the water level of the pool, a check valve shall be provided on the suction side of the pump unless a self-priming pump is furnished.

(3) If the filter is located above the water level of the pool, then valves shall be provided in the inlet and discharge lines which can be closed when the filter is not in use.

(4) A filtration pump equipped with a device that disables the pump operation shall be equipped with both an audible and visual alarm to alert the operator to the condition.

(c) **Strainers.** The recirculation system shall include a strainer to prevent hair, lint, and other solids from reaching the pump and filters. Strainers shall be corrosion-resistant with openings not more than one-eighth (1/8) inch in size and shall be readily accessible for frequent cleaning. Larger openings for strainers will be considered only on a trial basis. At least two (2) baskets, or screens, must be provided. The area of strainer openings shall be at least four (4) times the cross-sectional area of the connecting pipe. A compound pressure gauge shall be installed to measure the pressure between the pump and the hair and lint strainer. Where filter systems are located above the pool water level, a standard vacuum gauge is acceptable.

(d) **Vacuum cleaner.** Vacuum cleaner facilities, either portable or installed integrally in the pool piping system for the operation of a vacuum cleaner, shall be provided. Piping and

hose shall be required to produce not more than fifteen (15) feet total head loss at the pump, while moving four (4) gallons per minute per linear inch of cleaner head. All pools shall be designed with pipes for vacuum cleaning facilities integrally with the pool piping or portable facilities will be provided. ~~Vacuum cleaner heads with brushes are recommended.~~ The mixture of water and sediment from a suction cleaner may, in the case of outdoor pools subjected to heavy dust loads, be discharged to an approved waste treatment system. The discharge from suction cleaners used in cleaning indoor pools, which are not subjected to heavy dust loads or in which sedimentation is slight, may be returned to the pool through the filter system. Any point source discharge must comply with the requirements of OAC 310:315-5-2(~~relating to sewer~~).

(e) **Water heater.** Indoor pools operated during the colder months shall be provided with ~~some method of heating~~ a heater for the pool water. Introduction of steam directly into the pool or the use of heating coils placed directly in the pool is prohibited. ~~A heater designed to heat all or a part of the circulation water is preferable.~~ Such a heater may be designed for use with steam or hot water and ample surface for heat interchange must be provided. Automatic thermal control is desirable. ~~Provision should be made for easy removal of the heater parts for cleaning. The heater parts must be easily removable for cleaning.~~ A check valve shall be installed between the filter and the inlet side of the heater. On all heated pools, a fixed thermometer shall be placed on the recirculation line immediately downstream from the heater after blending and another on the return line from the pool. Thermometers shall be accessible and have a Fahrenheit scale.

(f) **Piping system.** The determination of sizes of pipe, fittings, and valves on the complete main pump suction line from the swimming pool shall be based upon a rate of friction losses for piping of not more than six (6) feet per one hundred (100) feet of pipe based upon the Hazen-Williams formula for fifteen (15) year old piping. All piping on the discharge side of the pump for filtration and to the point for discharge of backwash water from the filter plant shall have pipe sizes determined on a basis of friction losses which shall be not more than twelve (12) feet per one hundred (100) feet and the velocity in any pipe shall not exceed ten (10) feet per second. Pipe selection shall be made based upon the Hazen-Williams formula for fifteen (15) year old pipe. In the determination of pipe sizes required, the criterion which would call for the largest pipe size shall govern. All pool piping shall be supported by piers or other substantial means to preclude possible settlement which will either provide dirt traps or air pockets and a condition which might result in rupture of the lines. ~~The use of plastic pipe on suction lines and lines beneath the pool and bathhouse structure is not recommended.~~ All plastic pipe used shall bear the approval seal of the National Sanitation Foundation. All piping shall be labeled or color coded and all valves shall be labeled.

(g) **Rate-of-flow indicator.** Every public swimming pool distribution system including those for wading pools shall be provided with an accurate and durable rate-of-flow indicator, installed in accordance with the manufacturer's recommendations and with the required uniform distance upstream and

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downstream for accurate response. In pressure sand filter installations, a rate indicator shall be provided and located on the filter inlet line so as to record both filtration and backwashing rates. It shall be calibrated for and provided with an easily readable scale reading in gallons per minute, and shall have a range at least ten (10) percent below the required filtration rate and ten (10) percent above the required backwash rate. It shall be accurate within ten (10) percent of true flow. In a diatomite type filter installation, a rate-of-flow indicator can be located wherever convenient to visibly indicate the flow rate, preferably in the filter effluent line.

### (h) **Outlets.**

(1) All pools must be provided with an outlet at the deepest point to permit the pool to be completely and easily drained. Each public bathing place subject to licensure by the Department permitted after September 1, 2009 that does not utilize indirect suction shall be provided with an unblockable suction outlet as defined in American National Standards Institute (ANSI) A112.19.8-2007, or have multiple outlets, placed a minimum of 3 feet apart measured from center point of the drain cover/grate. Outlet openings of the grating in the floor of the pool shall be at least four (4) times the area of the discharge pipe. Each submerged suction outlet shall be fitted with a cover/grate that conforms to the entrapment protection standards of the ANSI A112.19.8-2007 performance standard. Submerged suction outlet cover/grate shall be installed according to the manufacturer's installation instructions. Field fabricated sumps shall be constructed according to ANSI A112.19.8-2007. Openings in the drain cover(s) shall be designed for a maximum velocity of one and one-half (1-1/2) feet per second. The outlet shall be marked by a dark colored stripe outlining the main drain, disk, or circle unless the plate or grating is of a contrasting color. Multiple outlets to meet this requirement shall be provided where the width of the pool is more than thirty (30) feet. In such cases, outlets shall be spaced not more than twenty (20) feet apart and not more than fifteen (15) feet from the side walls. A line shall run from the main drain(s) to a manifold connected to the inlet of the hair and lint strainer. A separate line shall run from each skimmer to the manifold. A valve that will permit adjustment of flow shall be installed in each line carrying water from the pool. Where provided, the vacuum line shall connect to the manifold through a suitable valve. Vacuum lines shall have a cover in place when not in use.

(2) After September 1, 2009 any existing pool licensed by the Department that plans modifications relative to the replacement or modification of submerged suction outlet cover/grates, or the addition of systems or devices intended to minimize the risk of physical or suction entrapment, shall submit a scope of work as specified under ~~OAC 310:315-3-1 (relating to plans and specifications)~~. Although a permit is not required, the Department will inspect the replacement or modification before the pool is refilled with water. At a minimum the scope of work proposal shall include the make and model of all equipment to be installed. Documentation shall be

provided that all cover/grates conform to the entrapment protection standards of the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) A112.19.8-2007. Additionally, the modification shall incorporate at least one of the following devices or systems relative to prevention of suction entrapment:

(~~A~~4) A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) A112.19.17 or American Society for Testing Materials (ASTM) standard F2387;

(~~B~~2) A suction-limiting vent system with a tamper-resistant atmospheric opening;

(~~C~~3) A gravity drainage system that utilizes a collector tank;

(~~D~~4) An automatic pump shut-off system;

(~~E~~5) A device or system that disables the drain; or

(~~F~~6) An unblockable suction outlet as defined in American National Standards Institute (ANSI) A112.19.8-2007, multiple outlets placed a minimum of 3 feet apart measured from center point of the drain cover/grate, or any other system determined by the department to be equally effective as, or better than, the systems described in (1) through (5), at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(i) **Inlets.** Multiple inlets shall be provided and shall be so spaced that each inlet will serve a linear distance of not more than fifteen (15) feet, provided that the distance from side wall or corner to adjacent inlet in an end wall shall not exceed five (5) feet. At least four (4) inlets are required at pools of any size, and more may be required at recessed features (stairs, seats, etc.) or in pools with irregular shapes, to achieve satisfactory disinfectant distribution. On pools less than sixteen hundred (1600) square feet in area, only directional (eye-ball type) inlets are permitted. In pools with surface area greater than sixteen hundred (1600) square feet or length in excess of sixty (60) feet, inlets shall be placed at fifteen (15) feet intervals around the entire perimeter. In any case, an adequate number of inlets shall be provided, properly spaced, and located to accomplish complete and uniform recirculation and maintenance of uniform disinfectant residual at all times. Inlets shall be a minimum of eighteen (18) inches below the water surface. Each inlet shall be designed as an orifice subject to adjustment or at least must be provided with an individual gate valve to permit adjustment of water volume and/or velocity to obtain a balanced circulation. In the event recessed stairs are used, an inlet at the stairs must be provided to assure adequate circulation.

(j) **Overflow gutters.** Overflow gutters ~~shall be~~ required on all pools having a surface area or more than twenty-four hundred (2400) square feet. Pools having a surface area of



twenty-four hundred (2400) square feet or less shall be provided either with overflow gutters or skimmers. Overflow gutters shall extend completely around the pool except at steps or recessed ladders, and shall be designed to assure that water does not wash back into the pool from the gutter. Guttered pools shall be designed for at least some water to be overflowing into the gutters or into surge weirs at all times, not just when the pool is at full bather capacity, for continuous removal of surface oils and debris. The gutter, drains, and piping shall be designed to rapidly remove overflow water caused by recirculation displacement, wave action, or other causes produced from the maximum pool bathing load. The opening into the gutter beneath the coping shall be not less than four (4) inches, and the interior of the gutter shall be not less than four (4) inches wide with a depth of at least three (3) inches. Where large gutters are used, they shall be designed to prevent entrance or entrapment of bathers' arms or legs. The overflow edge shall be rounded and shall not be thicker than two and one-half (2-1/2) inches for the top two (2) inches. Prefabricated gutter and return systems will be evaluated on a case-by-case basis.

(k) **Gutter outlets.** Drainage outlets shall be provided at least every fifteen (15) feet and the gutter bottom may be level, or preferably pitched slightly, to these outlets. Outlet pipes shall have a minimum inside diameter of two (2) inches. Outlets shall be covered by gratings. Angle gutter drains, which are not as subject to stoppage, are recommended. Drainage from overflow gutters may be discharged to sewers (without direct connection), or connected to the recirculation system through a properly designed surge tank or through other acceptably designed provision for handling approved surge capacity designs, such as deep gutter channels. The gutter, drains, and return piping to the surge tank shall be designed to rapidly remove overflowing water caused by recirculation displacement, wave action, or other causes produced from the maximum pool bathing load. The outlet fittings shall have a clear opening in the grating at least equal to one and one-half (1-1/2) times the cross-sectional area of the outlet pipe. Open, roll-over, semi-recessed, or overflow gutters recessed in the side wall of the pool may be used, provided the design is such as to minimize accidents and to enable the gutter to be easily cleaned.

(l) **Skimmers.** Skimming devices are permitted in lieu of gutters on swimming pools with not more than twenty-four hundred (2400) square feet of surface area, providing approved handholds are installed ~~and sufficient motion to the pool water is induced by the pressure return inlets~~. At least one (1) skimming device shall be provided for each six hundred (600) square feet or fraction thereof. The required surface skimmers shall be located at least thirty (30) feet apart, measured horizontally. ~~One (1) skimmer shall be located on the leeward side.~~ Where used, skimming devices shall be built into the pool wall, shall develop sufficient velocity on the pool water surface to induce floating oils and wastes into the skimmers from the entire pool area, and shall meet the following general specifications:

(1) The piping and other pertinent components of the skimmers shall be designed for a total capacity of at

least fifty (50) percent of the required filter flow of the recirculation system, and no skimmer shall be designed for a flow-through rate of less than thirty (30) gallons per minute.

(2) The skimmer weir shall be automatically adjustable and shall operate freely with continuous reaction action to variations in water level over a range of at least four (4) inches. The weir shall operate at all flow variations as described in the above paragraphs. The weir shall be of such buoyancy and design as to develop an effective velocity.

(3) An easily removable and cleanable basket or screen through which all overflow water must pass shall be provided to trap large solids.

(4) The skimmer shall be provided with a device to prevent air-lock in the suction line. If an equalizer pipe is used, it shall provide an adequate amount of water for pump suction should ~~be the~~ water of the pool drop below the weir level. If any other device or arrangement is used, a sufficient amount of water for pump suction shall be assured. When the equalizer pipe is used, it shall be sized to meet the capacity requirements of the filter and pump and shall in no case be less than two (2) inches in diameter. This pipe shall be located at least one (1) foot below the lowest overflow level of the skimmer. It shall be provided with a valve or equivalent device that will remain tightly shut under normal operating conditions but will automatically open when the skimmer becomes starved. Equalizer openings shall comply with the drain cover provisions of OAC 310:315-7-14(h) ~~(related to outlets)~~.

(5) The skimmer shall be of sturdy corrosion-resistant materials.

~~(6) Where multiple skimmers are installed, valves shall be provided to isolate each skimmer and/or regulate the flow through each skimmer. See OAC 310:315-7-14 (relating to recirculation systems) for additional details.~~

~~(7)~~ In addition to the above requirements, the skimmers must be ~~approved and~~ listed as currently approved by the National Sanitation Foundation (NSF) Standard 50 - Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs.

**310:315-7-15. Filters**

(a) **General.** The filter plant shall be provided with influent and effluent pressure gauges for each tank, backwash sight glass, air relief valves, and rate-of-flow indicator, as provided in this chapter. All filters must be approved and listed by the National Sanitation Foundation. In vacuum filter installations where the circulating pump has a rating of two (2) horsepower or higher, an adjustable high vacuum automatic shutoff shall be provided to prevent damage to the pump by cavitation. A compound gauge shall be installed in the pump suction line, between the pump and hair catcher (see 310:315-7-14 for exception). The sight glass may be omitted if the backwash discharge can be clearly viewed from the backwash control valves. The filter plant shall be provided with fixed piping and valving to permit the functions of filtering to pool or backwashing to approved waste disposal with the battery as a whole or any unit operated singly. The filter plant shall be provided with

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means for draining all filter units and piping, so that all parts of the system may be completely drained to prevent damage from freezing. Pressure tanks should be supported by jack legs or other supports to give a free movement of air under each tank and to permit access for painting. Where dissimilar metals are used in the filters which may set up galvanic electric currents, ~~provision shall be made to the filter plant design must~~ resist electrolytic corrosion. The filters shall be designed in such a manner that they may be easily disassembled with allowances made for adequate working space above and around the filter to allow the removal and replacement of any part and for other maintenance.

(b) **Filters, sand, conventional low-rate.** This chapter shall apply where applicable to either gravity or pressure sand filters, designed for a filtration rate not to exceed three (3) gallons per square foot per minute. Filter tanks shall be designed with a factor of safety of four (4) in relation of working pressure to ultimate strength. The filter bed shall consist of suitable grades of filter sand and supporting bed of graded gravel or other porous material which shall serve to support the filter bed and distribute both filtered and backwash water uniformly. The supporting bed shall consist of graded gravel or other material and shall support not less than twenty (20) inches of filter media. The filter media shall consist of silica sand or other durable, inert material. The filter media shall be free of clay and limestone, with effective size between 0.35 and 0.65 millimeter and uniformity coefficient not exceeding 1.75. The minimum freeboard to the draw-off point of backwash water shall be not less than twelve (12) inches above the normal level the top of the filter bed. The minimum backwash rate shall be not less than twelve (12) gallons per square foot of filter bed per minute. Where anthracite coal or other filter media are employed, the freeboard shall be adequate to prevent the media being carried off to waste when the filter bed is backwashed at a rate adequate to carry off foreign material filtered from the water. The freeboard and the rate of backwash shall be the subject of individual design, based upon specific gravity of the media. The under-drain system shall be constructed of material which is corrosion resistant and enduring and the design of the system shall be such that uniform collection of the filtered water and distribution of the backwash water is effected over the entire filter bed area. Unless other effective means are provided of distributing the water entering the unit above the filtering media, the filter shall be equipped with a baffle plate for this purpose. Each conventional sand and gravel filter unit shall be provided with an access opening of not less than a standard eleven (11) x fifteen (15) inch manhole and cover.

(c) **Filters, sand, pressure high-rate.** High rate pressure sand filters are acceptable provided the filter-pump combination is designed and sized to limit the filtration rate to a maximum of fifteen (15) gallons per square foot per minute. ~~High rate sand filters must be approved and listed by the National Sanitation Foundation.~~ The filter media shall consist of silica sand or other durable, inert material, free from clay and limestone and with an effective size between 0.40 and 0.55 millimeters and ~~an~~ uniformity coefficient not exceeding 1.75. The minimum depth for filter sand shall be twenty (20) inches for rapid rate filters and twelve (12) inches for high-rate filters.

(d) **Filters, diatomite.** These may be of either pressure or vacuum type. The design filter rate shall not exceed two and one-half (2-1/2) gallons per minute per square foot of effective filter area. If an approved body feed is not used, the rate shall be reduced to two (2) gallons per minute per square foot of effective filter area. For pools with surface area of sixteen hundred (1600) square feet or more, an approved body feed is required. The determination of the filter area shall be made on the basis of a true and effective supported septum surface. In the case of fabric septums, the area computation will be made on the basis of measurements of the septum support in a reasonably constant plane. Area allowances shall not be granted for folds in the septum fabric or deviations in the septum surface which would easily bridge. The filter cycle of the diatomite filter shall not be less than seventy-two (72) hours of continuous operation before cleaning. This shall not apply to the initial operation of a pool, but only the operation where the pool water at least meets the conditions of water quality given in the ~~Public Bathing Place Regulations OAC 310: Chapter 320.~~ Provision shall be made to introduce a precoat of filter aid ~~to that~~ that evenly ~~cover~~ covers the filter elements must be used upon before placing the equipment into initial operation and after each cleaning. The amount of filter aid shall be selected to provide at least the same protection to the filter septum as that given by 0.1 pound of diatomaceous earth filter aid per square foot of filter area where body feed is employed, or 0.15 pound per square foot where no body feed is used. The equipment shall be so arranged that during the precoating the effluent shall be refiltered or discharged to an approved waste facility without passing into the pool until the effluent is clear of suspended matter. Slurry feeders shall include an agitator and positive feed pump. Where provided, the body feeding equipment designed for feed of filter aid to the filter influent shall have a rate capacity to feed at a reasonably constant rate within a calibrated range. The equipment will have capacity to operate at the maximum feed rate of ten (10) parts per million at the design filter rate for a period of twenty-four (24) hours without refilling. The tank containing the filter elements shall be constructed of steel, plastic, or other suitable material which will satisfactorily provide resistance to corrosion, with or without coating. Pressure filters shall be designed for a working pressure equal to the shutoff head of the pump, with a factor of safety of four (4). Vacuum filters shall be designed to withstand the pressure developed by the weight of the water contained therein and closed vacuum filters shall, in addition, be designed to withstand the crushing pressure developed under a vacuum of twenty-five (25) inches of mercury, both with a safety factor of three and one-half (3-1/2). The septa or elements which support the filter aid shall be of corrosion resistant material and shall be provided with openings the minimum dimensions of which shall not be greater than 0.005 inches, or as specified in the National Sanitation Foundation Standards for Diatomite Filters. ~~All diatomite filters shall be approved and listed by the National Sanitation Foundation.~~ The septa shall be constructed to be adequately resistant to rupture with the maximum differential pressure between influent and effluent of not less than the maximum pressure which can be developed

by the circulating pump and of adequate strength to resist any additional stresses developed by the cleaning operation.

(e) **Surface skimmer filters.** Skimmer filters are acceptable on pools less than sixteen hundred (1600) square feet surface area, and on wading pools. The unit shall be designed to filter at a rate of two (2) gallons per minute per square foot and shall be equal to the design capacity of the skimmer. All requirements in 310:315-7-15, ~~Filters, Diatomite, shall be~~ are applicable to skimmer filters.

(f) **Cartridge filters.** Cartridge filters are acceptable if they conform to the following criteria:

~~(1) The filter is listed as approved by the National Sanitation Foundation.~~

(2) The maximum flow through the filter is not greater than 0.375 gpm/square foot.

(3) A sump or other means of collecting water and wastes drained from the filter, or from the filter elements during cleaning, is provided, and discharges into an approved wastewater collection system.

(g) **Filter operating instructions.** At the time of final inspection of the swimming pool construction, there shall be provided to the operator two (2) sets of filter operation instructions, for the operator and owner, which ~~shall refer~~ refers to valve operation by number. Each valve shall be equipped with a numbered metal, plastic, or other durable tag permanently attached by a chain or otherwise permanently secured.

**310:315-7-16. Disinfection and pH control**

(a) **Chlorinator or other disinfection feeder.** The pool shall be equipped with a chlorinator or other residual disinfectant feeder which meets the following requirements:

(1) **Feeders.** All chemicals and chemical solutions shall be added to the pool water recirculation flow using a feeder that is acceptable to the Department.

(2) **Construction and materials.** It shall be of sturdy construction and materials which will withstand wear, corrosion, or attack by disinfectant solutions or vapors and which are not adversely affected by repeated regular adjustments or other conditions anticipated in the use of the device. Feeders requiring field maintenance or cleaning ~~shall be~~ required to be capable of being easily disassembled. The design and construction shall be such as to preclude stoppage from chemicals used or foreign material. The feeder shall incorporate failure-proof features so that the disinfectant cannot feed directly into the pool, the pool piping or pool enclosure following any type of failure of the equipment or its maintenance. Super-chlorination shall be accomplished by the addition of calcium hypochlorite, sodium hypochlorite, or other approved chlorine compounds. Solution chemical feeders and flow through chemical feeders ~~shall be~~ need to be listed as meeting the appropriate National Sanitation Foundation Standard and bear the NSF seal of approval.

(3) **Sizing of disinfection equipment.** Solution and gas feeders shall be capable of supplying the equivalent of 1.5 pounds of available chlorine in eight (8) hours, for each ten thousand (10,000) gallons of pool capacity. Feeders used with organic chlorine compounds or other stabilized

chlorine shall be capable of supplying the equivalent of 0.5 pounds of available chlorine in eight (8) hours, for each ten thousand (10,000) gallons of pool capacity and the cyanurate concentration in the pool shall be at least thirty (30) mg/l and ~~shall~~ does not exceed one hundred (100) mg/l.

(4) **Erosion type feeders.** Erosion type chlorinators using stabilized chlorine compounds shall have a flow meter, calibrated valve, or other device acceptable to the ~~reviewing~~ regulatory authority to determine the rate of flow of water through the chlorinator. The device ~~shall be~~ can be either calibrated in pounds chlorine feed per unit of time or calibrated in gallons of flow per unit of time with an attached chart to convert the water flow rate to pounds of chlorine feed. The feeder shall be capable of continuous delivery within ten (10) percent of the dosage setting.

(5) **Solution type feed pumps.** The pump shall have a calibrated rate control and be adjustable from zero (0) to full range. The feeder shall have the capability of feeding the required dosage using a two and one-half (2-1/2) percent solution. ~~(A diagram of a calcium hypochlorite system is shown in Figure III.)~~

~~(5) Existing disinfection equipment. Existing pools with disinfection equipment installed not meeting the requirements of 310:315 7 16 shall be upgraded to this chapter at such time that failure to meet the required water quality can be attributed to inadequate chemical feed equipment.~~

(6) **Chlorination for normal operation.** ~~Chlorination for normal operation is recommended to be introduced before all sand filters.~~ Chlorinators shall be installed per the manufacturer's recommendation. Where super-chlorination is accomplished by chemical feeders, the solution shall be introduced before the sand filter. When the disinfectant is introduced at the suction side of the pump, a device or method shall be provided to prevent air-locking of the pump or recirculation system.

(7) **Chlorination to prevent backflow.** The chlorinators shall be designed to prevent the backflow of water into the chlorine container.

(8) **Compressed chlorine gas.** When compressed chlorine gas is used, the following additional features ~~shall be provided~~ are required:

(A) The chlorine and chlorinating equipment ~~shall be~~ are located either out-of-doors or in a separate well-ventilated room. Such rooms should preferably be above ground and ~~shall be~~ provided with vents near the floor which terminate outdoors. The door of the room shall have a viewport, ~~and shall~~ not open to the pool enclosure, and ~~shall~~ open outward. When located out-of-doors, the cylinders shall be securely anchored to prevent them from falling over and ~~shall be~~ surrounded by a six (6) foot high, woven wire fence, or equivalent, and a locked gate.

(B) Where gaseous chlorine equipment is provided below grade in a filter room, or in any part of a

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building which provides housing, the mechanical proportioning device and cylinders of chlorine shall be housed in a reasonably gas-tight, corrosion-resistant, and mechanically vented enclosure. Air-tight duct work from the bottom of the enclosure to atmosphere in an unrestricted area and a motor-driven exhaust fan capable of producing at least one (1) air change per minute ~~shall be provided~~ is required. Automatic louvers of good design near the top of the enclosure for admitting fresh air are required. An opening at least eighteen (18) inches square, glazed with clear glass, and artificial illumination shall be provided in an amount such that the essential performance of the equipment may be observed at all times without opening the enclosure. The floor area of the enclosure shall be of adequate size to house the chlorinator, fan, scales, and one (1) extra chlorine cylinder.

(C) Electrical switches for the control of artificial lighting and ventilation shall be on the outside of the enclosure adjacent to the door.

(D) The chlorine equipment shall be of rugged design capable of withstanding wear without developing leaks.

(E) Chlorine cylinders shall be on platform scales and anchored to prevent their falling over ~~and shall be provided with platform scales having a capacity of at least one (1) cylinder of chlorine~~. An approved and accessible chlorine cylinder valve stem wrench ~~shall be provided~~ is required.

(F) The chlorine feeding device shall be designed so that during accidents or interruptions of the water or electric power supply, the chlorine feed will shut off automatically and leaking chlorine gas will be vented outdoors. The device shall be capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere.

(G) A gas mask and fresh replacement canister designed for use in a chlorine atmosphere and of a type approved by the U.S. Bureau of Mines ~~shall be provided~~ is required. ~~A fresh replacement canister shall also be furnished.~~

(H) The gas mask and canister shall be kept in a closed cabinet accessible without a key and located well away from the gas chlorinator or the room where the gas chlorinator is installed, such that it may easily and safely be reached and be put on out of range of possible gas fumes.

(I) Canister-type gas masks are suitable only with low concentrations of chlorine gas. In the event of a serious leak, the fire department shall be called.

(b) **Brominators or other disinfectant devices.** Where brominators or other disinfectant devices are proposed, the design with respect to equipment, maintenance, and safety shall be in accordance with the applicable provisions of 310:315-7-16.

(c) **Prohibitions and exceptions.**

~~(1)~~ Hand feeding. Hand feeding of disinfectants to maintain normal disinfectant residuals is not acceptable;

however, the addition of chlorine solution by hand may be used periodically to super-chlorinate for algal control. Super-chlorination shall be accomplished at times when the pool is closed and a safe range of chlorine disinfection shall be attained before patrons are permitted to return to the pool.

~~(2) Local ordinances. Where local ordinances exceed the requirements of this chapter, the local ordinances shall prevail.~~

(d) **Electrolytic chlorine generators.** The electrolytic chlorine generator shall be of sturdy construction and of materials which will withstand continual usage typical of public pools and the feed rate shall be adjustable from zero (0) to full range. The generator shall be capable of feeding a chlorine dosage of one and one-half (1-1/2) pounds of available chlorine in eight (8) hours for each ten thousand (10,000) gallons of pool capacity. The generator unit shall be UL approved or NSF listed, and a failure-proof electrical interlock with the recirculation pump shall be incorporated into the system such that the generator operates only during recirculation pump operation. The generator units shall be installed according to the manufacturer's instructions and the saline content of the pool water shall be maintained in the required range specified by the manufacturer. Ventilation and housing shall meet the requirements of 310:315-7-16 for compressed chlorine gas.

(e) **Feeders for pH adjustment.** Feeders for pH adjustment shall be provided on all pools using gaseous chlorine for disinfection. They shall be adjustable from zero (0) to full range, and shall meet the requirements of 310:315-7-16. When soda ash is used for pH adjustment, the maximum concentration of soda ash solution to be fed shall not exceed one-half (1/2) pound soda ash per gallon of water. Feeders for soda ash shall be capable of feeding a minimum of three (3) gallons of the above soda ash solution per pound of gas chlorination capacity. The minimum size of the solution reservoir(s) shall not be less than fifty (50) percent of the maximum daily capacity of the feeder. The solution reservoir(s) shall be marked to indicate contents.

### 310:315-7-18. Lighting

(a) **Artificial lighting.** A complete system of artificial lighting shall be provided for all pools, rest rooms, toilet rooms, shower rooms, store rooms, and other areas of public bathing places.

(b) **Arrangement.** The arrangement and design of the lighting shall be such that attendants may clearly observe every part of the pool, spring boards, towers, floats, or other appurtenances. The lighting system of outdoor pools shall be designed with sources of illumination located so as to prevent insects attracted by the lights from falling into the water.

(c) **Underwater lights.** Where underwater lighting is used, it is recommended that the minimum illumination be eight (8) foot-candles at any point in the pool. Such lights shall be spaced to provide illumination so that all portions of the pool and pool bottom may be seen without glare. ~~See 310:315-7-19, "Electrical requirements."~~

(d) **Area lighting.** Area lighting shall provide a minimum of ten (10) foot-candles at all points on the deck.

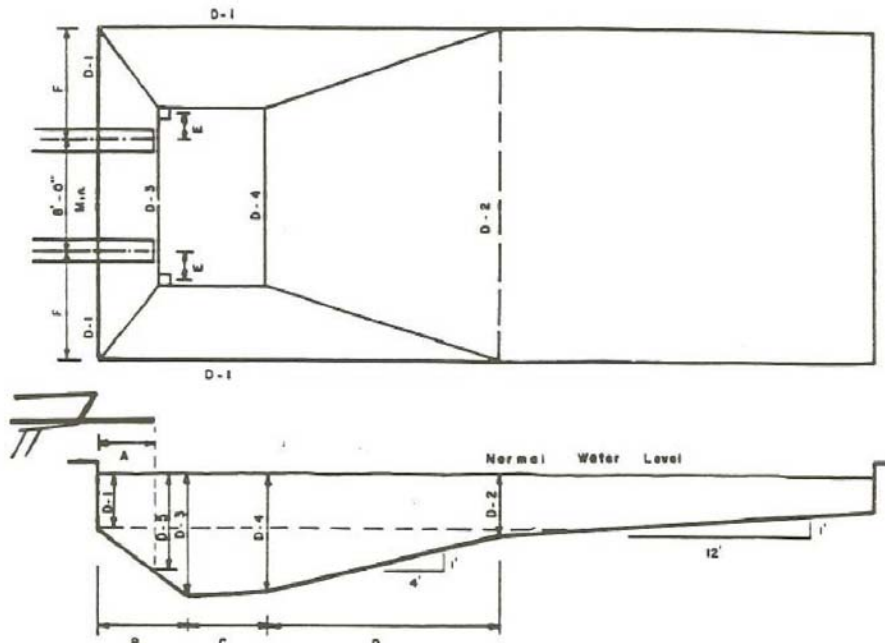
(e) **Interior rooms.** All rooms shall be provided with sufficient light so that all sections may be observed and are easily visible for cleaning purposes. A minimum of ten (10) foot-candles shall be provided in all interior rooms.

(f) **Emergency lighting.** Emergency lighting shall be provided at all indoor bathing facilities, in accordance with

the requirements of the current edition of the NFPA 101 Life Safety Code, unless assurance can be provided that the facility will always be locked and not used at night.

APPENDIX A. DIVING AREA [NEW]

Diving Area - Schedule Of Depths And Their Locations



D-1 Side Wall Depth (See Section 10.6)

STANDS AND BOARDS	Depth - Minimum-Maximum					LENGTH OF SECTION						
	D-1	D-2	D-3	D-4	D-5	A	B	C	D	E	F	
3-Meter Board	Min.	5'0"	4'6"	11'0"	10'9"	8'6"	5'0"	5'0"	9'0"	(c)	1'0"	12'0"
	Max.		5'6"				6'0"	10'0"	(a)			
1-Meter Board	Min.	5'0"	4'6"	8'6"	8'3"	8'0"	5'0"	6'0"	9'0"	(c)	1'0"	9'0"
	Max.		5'6"				6'0"	10'0"	(a)			
Deck Level Board	Min.	5'0"	4'6"	8'0"	7'6"	(d)	3'0"	6'0"	6'0"	(c)	1'0"	8'0"
	Max.		5'6"				4'0"	10'0"	(b)			

Note: Distance between boards will not be less than 8'0" center to center.  
 (a) B & C may vary to attain 15'0" min.  
 (b) B & C may vary to attain 12'0" min.  
 (c) As D-2 varies between min. & max. "D" may vary, but slope of "D" may not exceed 1'0" vertical to 4'0" horizontal.  
 (d) See also Fig. II and II-A.

Figure I

APPENDIX B. MINIMUM DIMENSIONS [NEW]

Minimum Dimensions For Small Pools  
Having A Deck Level Diving Board

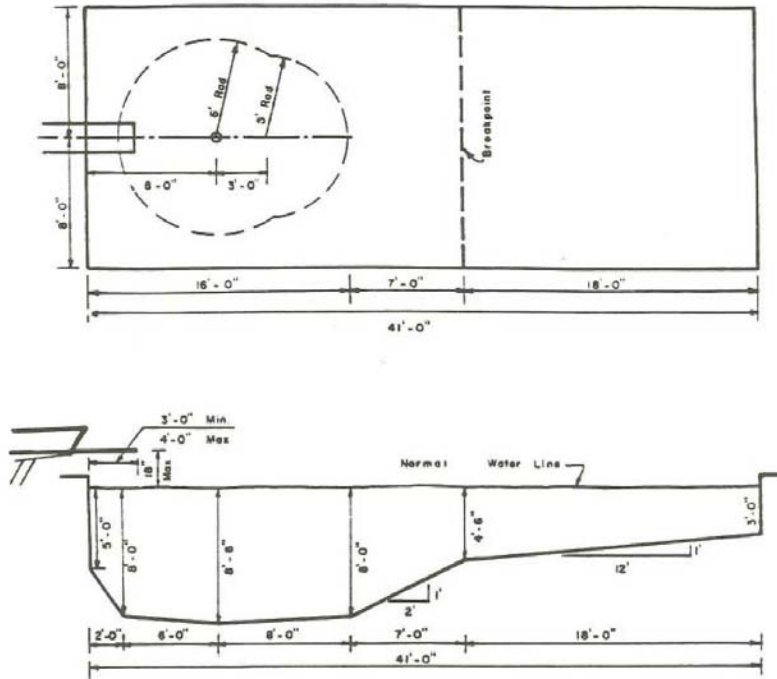
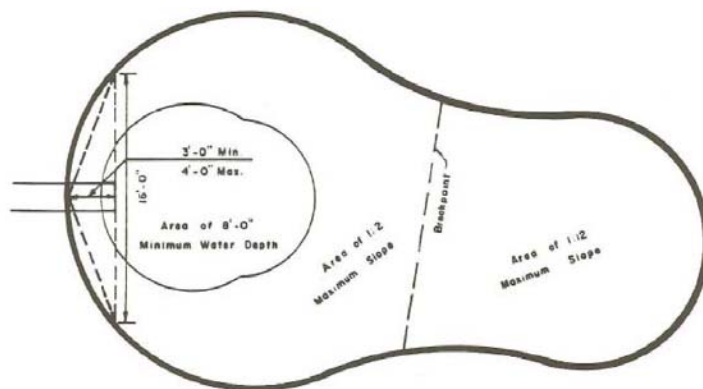


Figure II

APPENDIX C. POOL DESIGN [NEW]

TYPICAL FREE FORM POOL DESIGN  
Indicating Minimum Dimensions From Tip Of Diving Board To Pool Wall



POOL WALL SHALL REMAIN OUTSIDE OF TRIANGLE

Figure II-A



**APPENDIX D. COMPUTING CAPACITY REQUIREMENTS FOR INDOOR PUBLIC SWIMMING POOLS AND OUTDOOR SWIMMING POOLS [NEW]**

(1) Indoor public swimming pools and outdoor swimming pools with average required walk area, sun-bathing area, etc.:

$$\text{Number of persons} = \frac{\text{Swimming Area}}{15} + \frac{\text{Diving Area}}{24}$$

(2) Deduct three hundred (300) square feet for each installed diving board from the diving area.

(3) The entire surface area shall be considered "Swimming Area" for non-diving pools having a uniform bottom slope (maximum slope: one (1) foot vertical to twelve (12) feet horizontal) from the Shallow end to the deepest part of the pool.

*[OAR Docket #22-597; filed 7-12-22]*

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# Permanent Final Adoptions

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 320. PUBLIC BATHING PLACE OPERATIONS

[OAR Docket #22-598]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:320-1-2. [AMENDED]

310:320-1-3. [AMENDED]

Subchapter 3. Operational Provisions

310:320-3-1. [AMENDED]

310:320-3-2. [AMENDED]

310:320-3-3. [AMENDED]

310:320-3-4. [AMENDED]

310:320-3-5. [AMENDED]

310:320-3-6. [AMENDED]

310:320-3-7. [AMENDED]

310:320-3-9. [AMENDED]

310:320-3-10. [AMENDED]

310:320-3-11. [AMENDED]

310:320-3-13. [AMENDED]

Subchapter 5. Forms and Tables

310:320-5-1. [AMENDED]

310:320-5-2. [AMENDED]

310:320-5-3. [REVOKED]

310:320-5-4. [REVOKED]

310:320-5-5. [REVOKED]

310:320-5-5.1 [NEW]

310:320-5-6. [REVOKED]

310:320-5-6.1 [NEW]

310:320-5-7. [REVOKED]

Appendix A. Pool Water Sampling and Testing [NEW]

Appendix B. Variable Temperature Water Balance Chart [NEW]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

December 13, 2021

### COMMENT PERIOD:

January 18, 2022 through February 18, 2022

### PUBLIC HEARING:

February 18, 2022

### ADOPTION:

March 4, 2022

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

March 4, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 3. Operational Provisions

310:320-3-2 [AMENDED]

#### Gubernatorial approval:

June 28, 2021

#### Register publication:

38 Ok Reg 771

#### Docket number:

21-666

#### INCORPORATIONS BY REFERENCE:

n/a

#### GIST/ANALYSIS:

The proposed amendments make the emergency rules that allow 15-year-old individuals to be certified as lifeguards permanent. Illustrations

were removed, as well as duplicative language. Reductions remove unnecessary language, provide clarity, or relocate information to better serve the industry or general public. Items added provide clarity of existing operations or provide allowances to reduce burden on industry.

#### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 310:320-1-2. Definitions

~~"Abrasion hazard" means a sharp or rough surface that would scrape the skin upon chance or by normal use modes.~~

~~"Adjustable inlet" means a fitting mounted in the pool wall and connected to the return piping from the recirculation system that is directionally adjustable or a fitting mounted in the pool floor and connected to the return piping from the recirculation system that has a means of flow adjustment.~~

~~"Air pump assist backwash" means the compressing of a volume of air in the filter effluent chamber (by means of an air compressor or by the water pressure from the recirculating pump) which, when released, rapidly decompresses and forces water in the filter chamber through the elements in reverse, dislodging the filter aid and accumulated dirt, carrying it to waste.~~

~~"Air induction system" means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).~~

~~"Attendant" means any person capable of providing rescue who is responsible to the management.~~

~~"Backwash" means the process of thoroughly cleansing the filter media and/or elements by reverse flow.~~

~~"Backwash cycle" means the time required to thoroughly backwash the filter media and/or elements and the contents of the filter vessel.~~

~~"Backwash rate" means the rate of application of water through a filter during the cleaning cycle normally expressed in U. S. gallons per minute per square foot of effective filter area.~~

~~"Bathing load" means the maximum number of persons allowed in the pool enclosure at one time.~~

~~"Booster pump system" means a system whereby one or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.~~

~~"Cartridge filter" means a filter that utilizes a porous cartridge as its filter medium.~~

~~"Collector tank" means a tank receiving the gravity flow from the perimeter overflow gutter and main drain(s) from~~

which the recirculation pump takes suction. It may be referred to as a balance tank.

"**Department**" means the Oklahoma State Department of Health and authorized representatives.

"**Diatomaceous earth (DE) filter**" means a filter that utilizes a thin layer of filter aid as its filter medium that periodically must be replaced.

"**Engineering nomenclature**" means the technical terms used through these standards are understood to represent the currently accepted professional engineering definitions.

"**Filter**" means a device that separates solid particles from water by recirculating it through a porous substance (a filter medium or element).

"**Filter agitation**" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

"**Filter aid**" means a type of finely divided medium used to coat a septum type filter, usually DE diatomaceous earth, processed perlite, or similar material.

"**Filter cycle**" means the operating time between cleaning and/or backwash cycles.

"**Filter element**" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support.

"**Filter freeboard**" means the clear vertical distance between the top of the filter medium and the lowest outlet of the upper distribution system in a permanent media filter.

"**Filter media, permanent**" means a finely graded material (such as sand, anthracite, etc.) which removes filterable particles from the water.

"**Filter septum**" means that part of the filter element consisting of cloth, wire screen, or other porous material on which the filter medium or aid is deposited.

"**Filtration flow**" means the rate of flow, in volume per time (GPM, GPH), through the filter system installed per manufacturer's instructions with new clean media.

"**Filtration rate**" means the rate of filtration of water through a filter during the filter cycle expressed in U.S. gallons per minute per square foot of effective filter area.

"**Hydrojets**" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

"**Hydrotherapy, whirlpool, or spa pool**" means a public pool used exclusively in conjunction with high velocity air and/or high velocity water recirculation systems, utilizing hot, cold, or ambient temperature water. These pools will be referred to as spas.

"**Individual therapy units**" means tanks which are designed for the therapeutic treatment of one individual at one time and are drained and cleaned after each individual use. Individual therapy units are not considered public bathing places.

"**Ladders**" means a series of vertically separated treads or rungs either connected by vertical rail members or independently fastened to an adjacent vertical spa/pool wall.

"**Lower distribution system (underdrain)**" means those devices used in the bottom of a permanent media filter to collect the water uniformly during the filtering and to distribute the backwash uniformly during the backwashing.

"**Open to the general public**" means not restricted to tenants or guests.

"**Overflow system**" means the term overflow system encompasses perimeter type overflows, surface skimmers, and surface water collection systems of various design and manufacture. The water line shall be established by the height of the overflow rim or the midpoint of the skimmer channel.

"**Perimeter overflow gutter**" means a trough or gutter around the inside perimeter of the pool walls with the overflow lip effecting a skimming action to clean the pool water surface.

"**Permanent media filter**" means a filter that utilizes a medium that can be regenerated and will not have to be replaced.

"**Plung pool**" means the receiving body of water located at the terminus of a recreation water slide.

"**Pool deck**" means the unobstructed area around the outside of the pool curb, diving boards, diving towers, and/or pool slides.

"**Pool floor**" means the interior bottom pool/spa surface and consists of that surface from a horizontal plan up to a maximum of a 45° slope.

"**Pool turnover**" means the circulation of a quantity of water equal to the pool volume through the filtration system filter and treatment facilities.

"**Portable pool**" means a shallow pool, with depth not exceeding 4.5 feet, intended only for swimming instruction, which can be quickly erected, used for an instruction period then dismantled and moved to another location. Conditions governing authorization and operation are shown in the Public Bathing Place Regulations and Public Bathing Place Facility Standards.

"**Precoat pot**"—A hopper with a valved connection to the suction side of the recirculation pump of pressure diatomaceous earth type filter systems that is used for coating the filter with filter medium prior to filtering water through the system.

"**Private pool**"—A means a pool maintained by an individual for the use of their his family and friends, with no other formal admission requirement.

"**Public bathing place**" swimming pool or "**public pool**" means a structure of concrete, masonry, or other approved materials, located either indoors or outdoors, used for bathing or swimming, or for instructional purposes in swimming, diving, or other aquatic activities by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa type pool, wading pool, special purpose pool, or water recreation attraction to which admission may be gained with or without payment of a fee and includes but is not limited to pools operated by or serving camps, churches, cities, clubs, counties, health spas, institutions, parks, state agencies, schools, subdivisions, or other cooperative living type projects such as apartments, boarding houses, condominiums, hotels, mobile home parks, motels, recreational vehicle parks, and mobile home parks. all entirely artificially constructed wading pools, swimming pools, bathhouses used collectively by a number of persons for wading, swimming, recreative, or therapeutic bathing.

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*together with all sanitary facilities, bathing suits, buildings, equipment, and appurtenances pertaining to such bathing places; provided, that such term shall not apply to those public or semipublic baths where the main object is the external cleansing of the body, to bathing places maintained by an individual for the use of family and friends, or to bathing places owned or managed by a group or association of the owners of thirty or fewer homes, the use of which is limited to the homeowner group and their nonpaying guests. The term "public bathing place" does not include spray pads or spray grounds. As used in this section, "spray pads or spray grounds" mean interactive recreation areas intended for use by children in which the water is supplied by a system of sprays and is not allowed to accumulate above ground [63 O.S. § 1-1013].*

**"Recessed"** means open areas that may or may not include steps, benches, or fountains that extend down from the deck and terminating at the pool wall

**"Recessed steps"** means a riser/tread or series of risers/treads extending down from the deck with the bottom riser/tread terminating at the spa/pool wall, thus creating a "stairwell."

**"Recessed treads"** means a series of vertically spaced cavities in the spa/pool wall created treat areas for stepholes.

**"Recirculation system"** means the system traversed by the recirculated water from the pool until it is returned to the pool (from the outlets, through the pump, filter, chemical treatment, and heater, to the return inlets from the through collector tank, recirculation pump, filter, chemical treatment heater, if provided, and returned to the pool).

**"Skimmer system"** means the water line shall fall in the midpoint of the operating range of the skimmers.

**"Special purpose pool"** means a public pool used exclusively for a particular purpose, including but not limited to springboard or platform diving training, scuba diving instruction, and aquatic programs for handicapped individuals and kindergarten children.

**"Spray pool"** means a recreative area intended for use by children, in which water is supplied by a system of sprays but is not allowed to accumulate

**"Steps"** means a riser/tread or series of risers/treads extending down from the deck into the spa/pool area.

**"Toxic"** means the adverse physiological effect on man.

**"Tread contact surface"** means the foot contact surfaces of ladder, step, stair, or ramp.

**"Turnover rate"** means the period of time (usually in hours) required to circulate a volume of water equal to the pool capacity.

**"Upper distribution system"** means those devices designed to distribute the water entering a permanent media filter in a manner such as to prevent movement or migration of the filter medium. This system shall also properly collect water during filter backwashing unless other means are provided.

**"Vacuum (or suction) filter"** means a filter which operates under a reduced pressure from the suction of a pump.

**"Wading pool"** means a pool intended for recreative use by children and having a maximum depth not exceeding 18 inches.

**"Water line"** means the water line shall be defined in one of the following ways: the line along the pool that was designed for maximum efficiency and sanitation. For skimmers it is about mid-tile and for gutters they should be overflowing:

**"Water recreation attraction-attraction"** means a public bathing or swimming facility with design and operational features that provide patrons recreational activity which is different from that associated with a conventional swimming pool and purposefully involves total or partial immersion in the water. Water recreation attractions include but are not limited to water slides, water amusement lagoons, and wave pools.

### 310:320-1-3. Operational license

(a) No person, municipality, or entity shall operate a public bathing place without obtaining a license from the Commissioner of Health pursuant to 63 O.S. Supp. 2004, § 1-1013.1.

(b) A license to operate a public bathing place is not required for those public or semipublic baths where the main object is the external cleansing of the body, ~~to "Private Pools," bathing places maintained by an individual for the use of family and friends, or to bathing places owned or managed by a group or association of the owners of thirty or fewer homes, the use of which is limited to the homeowner group and their nonpaying guests.~~

(c) A public bathing place that ~~must be licensed~~ may be inspected by representatives of the Department at any reasonable time ~~in order~~ to determine if the public bathing place complies with applicable statutes and rules administered by the Department [63 O.S. § 1-1018].

## SUBCHAPTER 3. OPERATIONAL PROVISIONS

### 310:320-3-1. Life saving equipment

(a) **Adequate life saving equipment.** Adequate life saving equipment shall be provided at all public bathing places where the water is sufficiently deep for swimming and diving, to minimize the danger of drowning and of injuries to bathers from falls or collisions.

(b) **Lifeguard chairs.** Each public bathing place open to the general public shall have at least one (1) elevated lifeguard chair. This shall be presumed to be adequate for two thousand (2000) square feet of pool surface area with an additional lifeguard chair being provided for each additional area of two thousand (2000) square feet or fraction thereof. Lifeguard chairs shall be located so that a lifeguard is not required to protect a segment in excess of one hundred-eighty (180) degrees. Where a pool is provided with more than one (1) lifeguard chair and the pool width is forty (40) feet or more, chairs shall be located on each side of the pool. See ~~Standards Section~~ OAC 310:315-7-3 and ~~Regulations Section~~ OAC 310:320-3-2.

(c) **Small pools.** Every ~~swimming public~~ pool having a horizontal dimension ~~of that is~~ thirty (30) feet or less or a surface area ~~of less than~~ sixteen hundred (1600) square feet ~~or less~~ shall provide:

(1) One (1) or more poles each at least sixteen (16) feet in length. These shall end in a shepherd's crook with

an opening of at least eighteen (18) inches and shall be constructed of light sturdy material such as aluminum or bamboo and used according to the manufacturer's instructions.

(2) Two (2) or more ring-buoys fifteen (15) to eighteen (18) inches in diameter, constructed of light material, ~~such as kapok,~~ with at least one-quarter (1/4) inch rope attached to reach the length of the pool, not to exceed forty (40) feet.

(d) **Large pools.** ~~For pools~~ Every public pool having a ~~minimum~~ horizontal dimension ~~of that is~~ more than thirty (30) feet or ~~more a~~ surface area more than sixteen hundred (1600) square feet of surface area, the unit requirements listed under ~~Standards Section 310:315-7-2(c)~~ of this section shall be doubled, and a backboard provided. The maximum length of pole required will be sixteen (16) feet. For large pools requiring more than two (2) lifeguard chairs, the requirements of ~~Regulations Section OAC 310:320-3-1(c)~~ shall be provided for each additional two (2) chair-chairs.

(e) **Life line.** A life line shall be ~~provided~~ at or near the break in grade between the shallow and deep portions of a public bathing place, with its position marked with colored floats spread on five (5) foot centers. Life lines shall be three-quarters (3/4) of an inch minimum diameter. Terminals shall be securely anchored to a receptacle of corrosion-resistant material and ~~of a type which will be~~ recessed into the pool wall. ~~See Standards Section 310:315-7-4.~~

(f) **Location of life saving equipment.** Life saving equipment shall be mounted in conspicuous places, distributed around the pool edge at lifeguard chairs, or elsewhere, readily accessible ~~ready of access, with its function plainly marked.~~

(g) **First aid kit.** A ~~completely~~ stocked first aid kit shall be conveniently available at each bathing place. Contents shall be suitable for the type facility ~~as recommended by the American Red Cross.~~

(h) **Telephone.** ~~A~~ An accessible telephone to reach emergency assistance without the use of coinage shall be accessible to the pool during all hours of operation.

**310:320-3-2. Personnel**

(a) **Transfer of ownership.** Each license holder of a ~~permit to construct~~ a public bathing facility shall notify the Department ~~in writing~~ upon sale, lease, or other transfer of responsibility for the premises and shall supply the Department with the name and address of the new operator and/or owner.

(b) **Operation and management.** The bathing place shall be maintained under the supervision and direction of a properly trained operator with duties and responsibilities outlined in (d) below. ~~who shall be responsible for promoting good sanitation and safety, the proper maintenance of the bathing place, and all physical and mechanical equipment and records.~~ Proper training can ~~generally~~ be obtained through attendance at short courses for swimming pool operators sponsored by the state, county, and municipal health departments; state colleges and universities, and organizations such as the YMCA, YWCA, and Red Cross. ~~It is recommended that pool operators attend these training courses.~~

(c) **Lifeguard.**

(1) One (1) or more lifeguards shall be on duty at the pool side of all bathing places open to the general public, and all pools with diving boards or platforms higher than one (1) meter at all times when the pool is open and in use. These individuals ~~shall be in full charge and shall~~ have authority to enforce all rules and regulations pertaining to sanitation and safety.

(2) Lifeguards of public bathing places in Oklahoma shall have satisfactorily completed an advanced course of instruction in life saving and water safety equivalent to that offered by the American Red Cross or YMCA. ~~Lifeguards shall be carefully selected and~~ Except for situations that satisfy (6) of this subsection, lifeguards shall be not less than sixteen (16) years of age at the time they are employed as a lifeguard for duty at any public bathing place in Oklahoma. Lifeguards shall have a current life saving certificate, be capable swimmers, shall be competent in life saving methods, and be able to perform artificial respiration, and shall be in good physical condition, ~~and shall be able to command respect.~~ At least one (1) person lifeguard holding a current certificate in cardiopulmonary resuscitation (CPR) and trained in multi-media or equivalent first aid shall be on duty at all times the pool is in use. ~~A~~ The CPR and current advanced life saving certificate for each lifeguard employed shall be prominently displayed or posted at the checking stand or other convenient point so as to be easily read by the patrons. ~~The CPR certificate(s) shall be similarly posted.~~ Bathing places open to the general public with water depths of four (4) feet or less may substitute persons passing an American Red Cross Basic Water Safety Course or its equivalent, rather than the Advanced Life Saving Course. ~~It is recommended that, in addition, such persons also receive instruction in the shallow water "carries and assists" portion of the Red Cross Advanced Life Saving Course or its equivalent.~~

(3) Lifeguards assigned to the pool side shall not be subject to duties that would distract their attention from proper observation and supervision of persons in the pool area, or that would prevent immediate assistance for persons in distress in the water.

(4) The number of lifeguards on duty shall be such as to provide reasonable general supervision of the activities of all persons in the pool area, with detailed supervision and close observation of those persons in the pool water. The number shall also be sufficient to enable periodic relief or rest periods so that they will be alert while on duty. As a general approximation, it is recommended that the pool management provide at least one (1) lifeguard at the pool side for each seventy-five (75) persons in the swimming pool, with the determining factors being the type of pool, size of pool, ratio of surface area of deep water to the area of pool, temperature of the water, and quality of the water. Lifeguards shall wear distinguishing suits or emblems so that they may be easily identified by persons using the swimming facilities.

(5) In the case of pools not open to the general public, that limit the use of the pool to their tenants or guests, it is

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recommended that a lifeguard or attendant who is responsible to the pool management be in attendance when the bathing place is in use. ~~No person shall be employed for this duty who has a known communicable disease.~~ Pools not open to the general public which do not have lifeguards or attendants present during all hours of operation must post a sign at the entrance to the pool area stating "NO LIFEGUARD OR ATTENDANT ON DUTY."

(6) If there is a shortage of certified lifeguards (age 16 or older) due to an uncontrollable event, including but not limited to a public health emergency, war, severe acts of nature, or a labor shortage, adversely impacting a licensed public bathing place (establishment), the Department may approve an establishment's request to lower the age restriction stated in (2) of this subsection to individuals who have reached the age of 15. Each exemption is limited to the establishment making the request and to only one physical location operated by the establishment. An approved exemption is valid for one year from the date of approval and may be rescinded by the Commissioner of Health at any time. A letter submitted to the Department and requesting this exemption, must be signed by an individual with authority to bind the establishment, notarized, and include the following statements:

(A) the establishment states the nature of the uncontrollable event prompting the request;

(B) the establishment states how the uncontrollable event adversely impact ability to hire certified lifeguards;

(C) the establishment attests that the 15-year-old is in compliance with all other lifeguard regulations;

(D) the establishment attests that the responsibilities for 15-year-old lifeguards will be in compliance with 29 CFR 570.34(l); and

(E) an estimate of the percentage of 15-year-old lifeguard staff.

(d) Duties and responsibilities of pool personnel. The Oklahoma Public Bathing Place Act provides that all All owners, managers, operators, and other attendants in charge of any public bathing place shall be responsible for the safety and sanitation of public bathing places. ~~In addition to compliance with the other parts of these standards, the pool~~ Pool personnel ~~must~~ bear responsible for the following:

(1) Duties and responsibilities pertaining to bathers and general pool operation.

(A) See that all rules and regulations affecting the ~~users of the bathing place~~ patrons are properly enforced.

(B) Report all drownings and accidents requiring hospitalization immediately to the local health authorities by telephone and in writing within seven (7) days. If there is no local health department, contact ~~Environmental~~ Consumer Health Services at the State Health Department, ~~Oklahoma City, Oklahoma.~~

(C) Report to the operator or management any condition of the bathing place or equipment which may be detrimental to its safe operation.

(D) See that showers are used and are operating properly.

(E) See that all persons known to be infected with a communicable disease are excluded from the pool.

(F) See that all persons who are under the influence of an intoxicating liquor or drugs, are excluded from the shower rooms and the pool area.

(G) See that all doors and gates to the bathing place are locked when the bathing place is not in use or when the facility is closed for health or safety reasons. Signs stating "POOL CLOSED" shall be placed at all entrances to the pool when not open for use.

~~Conduct two (2) unannounced emergency drills each year are recommended, including at least one (1) with a water rescue, at all pools open to the general public.~~

~~(H) Submit required records of the pool operations to the county health department. Department upon request. In counties without a county health department, mail the operation record to the State Health Department.~~

(I) See that animals are not allowed inside the pool enclosure.

~~(K) See that safety equipment is not tampered with or played with by bathers or used for anything other than its intended use.~~

(2) Duties and responsibilities pertaining to the bathhouse and appurtenances.

(A) See that walk areas, overflow gutters, counters, lockers, equipment, furniture, interior partitions, and walls are in good repair and are clean. Where porous deck coverings are used, they shall be disinfected with a one hundred (100) ppm solution of chlorine at least once each day the facility is in use.

(B) See that floors of dressing rooms, shower stalls, and other interior rooms are scrubbed, using hot water with a suitable detergent, rinsed thoroughly, and disinfected daily or more often as needed. ~~More frequent attention to floors is recommended during periods of heavy use. It is important that the floors be thoroughly clean prior to disinfection with chlorine compounds.~~ The floors should be scrubbed with soap or a suitable detergent, using hot water, then disinfected with a ~~0.3 percent~~ 3000 ppm to ~~0.6 percent~~ 6000 ppm solution of available chlorine, or a suitable commercial cleaner and disinfecting agent ~~may be used.~~

(C) See that toilet rooms and fixtures are kept clean, sanitary, and in good repair.

(D) See that liquid soap dispensers, paper towel dispensers, and toilet paper holders are kept adequately supplied.

(E) See that no food, drinks, debris, or foreign substances are thrown or carried into the pool. No glass containers of any type may be used in or near the pool. Beverages should be dispensed in disposable or shatterproof containers ~~paper cups to avoid the hazard of broken glass.~~ Waste containers shall be conveniently located for disposal of used cups and

food wrappers shall be located at convenient points within the walk areas.

(F) Exclude unauthorized persons from the bathing place area.

~~(G) Exclude spectators and non bathers from the toilet rooms provided for the persons using public pool facilities.~~

(3) Duties and responsibilities pertaining to mechanical equipment.

~~(A) See that the pool is free from sediment and accumulations of lint and hair. See that the walls and bottom of the pool are~~ pool finish is free from dirt and discoloration, and that the overflow gutters and skimmers are clean and flushing properly. See that the ~~bottom and sides of the bathing place are~~ pool finish is brushed or suction cleaned as often as is necessary to keep the pool free of sediment, hair, debris of solids that may settle, algae, and slime.

(B) See that the level of the water is maintained at such a height as to ensure a constant slight overflow into the overflow gutter when no bathers are in the pool.

(C) Operate the pool equipment so as to maintain a clear and safe water, and be responsible for maintaining the ~~disinfection residuals and other~~ chemical parameters as outlined given under Regulations Sections OAC 310:320-3-7 and 310:320-3-8.

(D) Keep on hand at all times at least a two (2) weeks supply of chemicals for disinfection and pH control of bathing water.

(E) Keep on hand diatomite filter aid sufficient for two (2) weeks operation for filtration with diatomite filters, including diatomite skimming filters.

~~(F) When adjusting flow from inlets, give consideration to the fact that children, who are more susceptible to infectious diseases than older persons, will be more or less restricted to the shallow sections; the greatest pool loads with subsequent contamination are likely to come in this section of the pool. Inlets should be adjusted to~~ Adjustable inlets should provide approximately ten (10) PSI pressure on the effluent gauge when the filter is clean. Approximately seventy (70) percent of the water should return to the pool through the inlets in shallow portion of the pool.

(G) Provide for filtration plant operation.

(i) All bathing place operators shall know how to properly operate the filtration system and its appurtenances. These include hair catchers, filters, pumps, chemicals, and vacuum cleaners.

(ii) Where surface skimmers are provided as a means of control of ~~floatage~~ floatage, bathing place personnel shall regularly insure ensure that the flow of makeup water is adequate to assure proper skimming operation. Baskets or screens provided to trap large solids shall be cleaned regularly.

(iii) An adequate supply of septa and diatomite filter aid shall be available at all times where skimmer filters are provided. When two (2) or more

skimmer filters are in operation, they shall be inspected periodically to ensure balanced operation.

(iv) Pool volume and turnover rate shall be posted in the equipment area of all existing and all new pools.

(H) Post a sign indicating the presence of chemicals on the door to any room used for pool chemical storage.

(4) Duties and responsibilities pertaining to water chemistry.

(A) Be responsible for taking all tests as per Regulations Section OAC 310:320-3-8.

(B) No pool shall be allowed to remain open for use if the free active chlorine, pH, or turbidity are not within the limits required by these regulations as per Regulations Section OAC 310: 320-3-7. It is the responsibility of the pool personnel to close the pool if any one (1) of these three (3) are not within the required parameter limits.

(C) Store all chemicals in a safe manner and in an area not accessible to unauthorized persons. No chemical shall be stored in a container that does not have a complete label on it for that product.

(D) See that the proper chemicals are on hand for the type disinfection feeder in use. Hand feeding of chlorine is permitted only for super-chlorination or cleaning the pool. Only chemicals recommended by the manufacturer of solution or flow-through feeders should shall be used.

(E) Chlorine and pH readings from an electrode type automatic controller may be substituted, with approval of the Department for three (3) of the four (4) required daily readings in Regulations Section OAC 310:320-3-8.

**310:320-3-3. Rules and precautions for patrons**

(a) **Rules for pools.** Rules governing the use of pools, spas, and other public bathing places shall be displayed on signs large enough for easy reading which are posted at the entrance to the pool, dressing rooms, or other appropriate places. Sign shall provide, in similar language, that:

(1) A cleansing shower bath, using warm water and soap, must be taken before entering the pool.

(2) Persons with open wounds, bandages, or any symptom of communicable disease shall be prevented from entering the pool.

(3) Swimming alone is prohibited.

(4) At pools which do not have attendants or lifeguards on duty, children under twelve (12) years of age must be accompanied by an adult responsible for that individual child at the pool side.

(5) Running and rough play are prohibited in and around the pool.

(6) "Cut-offs" should be hemmed.

(7) Excess body lotions should be removed prior to entering the water.

(8) Bathing load limits shall be posted and enforced. See Standards Section 310:315-7-3.

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(9) "NO LIFEGUARD OR ATTENDANT ON DUTY" where appropriate. See ~~Regulations Section~~OAC 310:320-3-2.

(b) **Precautions for spas.** Precautions for spa patrons shall be posted on a sign which provides, in similar language, that "Persons who are pregnant, taking medication, or have any history of cardiovascular disease should consult a physician before entering hot water. Drugs and alcohol are prohibited."

### 310:320-3-4. Safety provisions

(a) **First aid kit.** ~~A completely stocked first aid kit meeting the requirements of the American Red Cross shall be on hand at each bathing place.~~

(b) **Emergency telephone numbers.** Every bathing place shall provide, immediately adjacent to its telephone, a ~~selected list of current telephone numbers for available doctors, ambulance services, hospitals, and police or fire department rescue squads notice to dial 911 in the event of an emergency.~~

(c) **Life saving equipment.** ~~All public bathing places shall provide and maintain in good condition adequate life saving equipment. See Regulations Section 310:320-3-1 for required equipment.~~

(d) **Bathing load.** The bathing load must be observed and the limit enforced by ~~pool personnel and the owner and management at all pools. Bathing load shall not exceed design standards as per Standards Section~~OAC 310:315-7-3. The bathing load limit shall be posted in plain sight at all pools.

### 310:320-3-5. Swimming suits and towels furnished by management

(a) **Suits and towels.** All swimming suits and towels used by and maintained for public use shall be thoroughly washed ~~and sterilized after each use.~~

(b) ~~**Laundering of suits and towels.** Swimming suits furnished by the management of the bathing place must be washed with hot water and soap or detergent, rinsed, and thoroughly dried and sterilized by heat each time they are used, or an equivalent approved process shall be used.~~

(c) **Clean suits and towels.** Clean swimming suits and towels ~~shall not be permitted to~~cannot come in contact with unwashed suits and towels or be stored on shelves or in baskets which have been used for storing dirty swimming suits and towels. The issuing of clean suits and towels at the same counters where dirty towels and suits are turned in shall be prevented.

### 310:320-3-6. Wading and spray-pool operation

(a) **Operation.** All artificially constructed bathing places, including wading pools ~~and spray pools~~ using recirculation systems, shall be free of turbidity, algae, and slime or floating matter, and the water quality shall comply with the same standards as all other artificially constructed bathing places.

(b) **Supervision.** A supervisor shall be present at all times when a wading pool is in use. The supervisor's main duties consist of maintaining proper conduct and guarding against accidents. Children over twelve (12) years of age should be permitted to enter the enclosure but not the pool. Children

with open sores or cuts, bruises, etc., or any contagious disease should not be admitted to the pool. The pool should be operated on definite hours on prescribed days ~~to secure proper discipline and parents' cooperation.~~ This supervisor replaces lifeguards and other safety requirements.

(c) **Drains.** Wading pool ~~and spray pool~~ drains shall have grates or covers complying with ~~Standards Section~~OAC 310:315-7-14. This stipulation shall apply to all existing wading pools ~~and spray pools~~ with recirculation systems, as well as those to be constructed.

### 310:320-3-7. Quality of Bathing Water

The pool water of all artificially constructed public bathing places shall undergo treatment necessary to comply with the following standards set forth in OAC 310:320-3-8. :

### 310:320-3-9. Sampling and testing procedures

(a) **Bathing place operators.** ~~As required by Regulations Section 310:320-3-2, all~~All bathing place operators shall know how to perform the following:

(1) Collect a sample for bacterial analysis.

(2) Collect at proper places, a representative sample for determination of applicable chemical and operational parameters required by ~~Regulations Section~~ OAC 310:320-3-9.

(3) Be able to perform all applicable chemical analyses and operational determinations required by ~~Regulations Section~~OAC 310:330320-3-9. The D.P.D. method should be used for free and combined chlorine determination. Orthotolidine (OTO) is not an acceptable method for determination of free chlorine.

(4) Observe the proper procedure of turbidity determination. Close pool any time the main drain cannot be seen from the sidewalk. Determine cause and reduce turbidity to acceptable level before reopening pool.

(5) Observe the water temperature in hot water pools and spas.

(6) Balance the pool water in relation to pH, total alkalinity, and calcium hardness as per ~~Regulations Section~~OAC 310:320-3-7 (see ~~Regulations Section~~OAC 310:320-5-2 for Tables).

(b) **Sampling and testing required.** All bathing place operators shall comply with the testing and sampling procedures set forth in Appendix A.

(1) ~~Tests shall be made of the pool water as follows:~~

Free chlorine	Four (4) times per day
Bromine (if applicable)	Four (4) times per day
pH	Four (4) times per day
Turbidity	Four (4) times per day
Combined chlorine	Daily
Turnover	Daily
Total alkalinity	Weekly



- |                  |        |
|------------------|--------|
| Calcium hardness | Weekly |
| Cyanuric acid    | Weekly |
- (2) Hot water facilities (above 90°F). In addition to the above tests, the following shall be determined:
- |                        |                        |
|------------------------|------------------------|
| Temperature            | Four (4) times per day |
| Copper                 | Weekly                 |
| Iron                   | Weekly                 |
| Total dissolved solids | Weekly                 |
- (3) Bacteriological samples. Hot water facilities and pools open to the general public may be required to submit a sample weekly to the local or the state health department.

**310:320-3-10. Satisfactory compliance of records**

- (a) The Operation Record Form provided for these reports is designed to serve all types of bathing places but not all of the lines of items will be applicable to each bathing place. Therefore, the management of a facility will be responsible for maintaining records only on those line items of the report that apply to their bathing place. All bathing places must maintain information on turbidity, pH value, and chlorine residual; and for pools using stabilized chlorine compounds, cyanuric acid testing is also required.
- (b) The law with reference to records shall be satisfied when records are submitted to the county health department, or for those counties without a county health department, to the appropriate sanitarian upon request.
- (c) **Records forms.** Public bathing place operation record forms may be obtained from either the county or the state health department. The information requested or indicated thereon must be filled in completely for each day the public bathing place is open to the public. Forms tailored to suit the needs of the management may be substituted for Department forms provided that all information required by these standards is included and the forms are submitted to the Department for approval prior to use.
- (d) **Posting of inspection sheet.** The inspection sheet filled out by an authorized representative of the Department, which indicates the sanitary condition of the public bathing place, must be posted and maintained in a conspicuous place easily visible to all who use the facilities.
- (e) **Laboratory reports.** The laboratory reports covering any chemical or bacteriological examination of the water in a public bathing place must be kept on the premises and made accessible to authorized representatives of the Department.
- (f) **Report to the county health department.** A copy of the cumulative daily operation record must be forwarded to the appropriate health department.
- (g) **Operation report form.** The public bathing place operation record forms are designed to cover one (1) full week of operation. As a general rule, an original and one (1) copy will be required. The original is for the permanent files of

the operator. The copy shall be forwarded to the appropriate health department as indicated above upon request.

(h) **Frequency of reporting to the county health department.** The management of public bathing places operated on a year round basis must, unless instructed otherwise, forward copies of the accumulated weekly reports to the appropriate health department once each month. The accumulated copies must be mailed immediately following the closing of the pool on the first Saturday of each month.

(i) **Seasonally operated bathing places.** The management of public bathing places operated on a seasonal basis, for example, outdoor bathing places operated only during the warmer months, must, unless specifically instructed otherwise, forward copies of the operating records to the appropriate health department at the close of each week's activity. Weekly reports will enable the personnel of the county health departments to give more prompt assistance to those operators who obviously are having continuous operation difficulties than would be possible with monthly reports.

**310:320-3-11. Winterizing and securing outdoor pools**

- When the pool is closed, all gates shall be locked. All outdoor pools shall be secured in one of the following approved methods:
- (1a) **Draining.** Drained and kept drained until put back into service; or
- (2b) **Pools not drained or covered.** Turbidity shall be controlled so that the main drain is visible from the pool deck. Maintaining disinfectant concentrations will suppress algae growth, and maintaining water balance will protect concrete and metal surfaces.
- (3e) **Covering.** Provide a pool cover of a type that is securely anchored to the deck area with bolts or similar hardware and capable of supporting a minimum of one thousand (1000) pounds. Water must not be allowed to accumulate on the top. Swimming in the pool with a partial cover is prohibited. If water is left in the pool, it should be drained below the tile and skimmers (eighteen (18) to twenty-four (24) inches) and kept chlorinated. The air should be blown out of the skimmer and fill lines. Lights should be stored on the deck or in the bottom of the pool and with switches taped in the off position.

**310:320-3-13. Subsequent examination, investigation, and inspection**

- (a) Subsequent to examination, investigation, and inspection by the State Commissioner of Health or his representative, any public bathing place found to be in non-compliance with the requirements of this chapter and therefore constituting a public nuisance, shall be reinspected within a reasonable time to determine if the public bathing place has been brought into compliance with the requirements of this chapter. Before each reinspection shall occur, the owner/operator shall pay a reinspection fee to the Department.
- (b) **Reinspection Fee.** The reinspection fee shall be in the amount of two hundred fifty dollars and no cents (\$250.00) payable to the Oklahoma State Department of Health.

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\$125.00 reinspection fee may apply in cases when the applicant fails an initial licensure inspection due to items not found to be on site or operational as reported by the applicant during the pre-inspection assessment.

## SUBCHAPTER 5. FORMS AND TABLES

### 310:320-5-1. Portable pools

(a) **Conditions governing operation.** The following conditions govern operation of portable pools:

- (1) To be used for instructional purposes.
- (2) For installation only at public buildings where adequate toilet and other sanitary facilities are conveniently available ~~and at other agencies historically engaged in swimming instruction; i.e., Red Cross, YMCA, etc.~~
- (3) The pool(s) to have continuous supervision by instructors or supervisors certified as lifeguards per OAC 310:320-3-2 meeting requirements of these standards for life guards.
- (4) Instruction classes to be sized on the basis of one (1) pupil for each four hundred (400) gallons of pool volume.
- (5) Use of the pool(s) to be limited to daylight hours unless the lighting requirements of these standards are met.
- (6) The pool(s) to be covered and locked whenever unattended or out of use.
- (7) The pool(s) installation at each location to be authorized by a permit issued by the Department for a scheduled period, preferably about two (2) weeks, extendable at the option of the ~~county health department~~ Department, upon receipt of a written request giving justification for the time extension.
- (8) The operations of the pool(s) to be coordinated with the county health department for the purposes of inspections and supervision.
- (9) Pool(s) to be located on paved surface with paved area and walkway from shower and toilet facilities to the pool.

(b) **Application data required.** Application data required for portable pools is as follows:

- (1) Location(s) to be used.
- (2) List of sanitary facilities available and the distance from the pool at each location. The number of showers, toilets, and lavatories for boys and girls.
- (3) Square feet of paved ground available for each installation.
- (4) The name of the owner of the installation; ~~i.e., City of Oklahoma City.~~
- (5) The name and mailing address of the responsible individual and phone number; ~~i.e., John Doe, Director of Recreation, City Park Department.~~
- (6) The duration of the term of instruction for which classes are to be scheduled for each location.
- (7) Each installation will require an application for permit with the above information.

### 310:320-5-2. Water balance and water balance tables

(a) Water balance is accomplished by adjusting the pH, total alkalinity, and calcium hardness in relation to each other. Tests are run on the pool water to determine the values for pH, total alkalinity, and calcium hardness. The accompanying table is used to determine scaling or corrosive potential of the water and to indicate corrective measures needed. Pools and spas that do not have balanced water are not only subject to considerable damage to the facility from scaling or corrosion but do not make effective use of free chlorine and indeed often have difficulty maintaining the required chlorine and pH levels. For more information, please contact your local health officials. ~~Recommended~~ recommended values are:

- (1) pH 7.2 to 7.8
- (2) Total alkalinity 80-120 ppm (pools) 100-150 ppm (spas)
- (3) Calcium hardness 100-150 ppm (pools) 150-300 ppm (spas)
- (4) Temperature: 75-90 °F for pools and 90-105° F for spas. See Appendix B.

(b) ~~Directions to determine water balance point are as follows:~~

- (1) ~~Test the pool or spa water to determine the level of pH, total alkalinity, and calcium hardness.~~
- (2) ~~On the "Variable Temperature Water Balance Chart," locate the test values for total alkalinity and calcium hardness.~~
- (3) ~~Connect a line between values for Total Alkalinity and Calcium Hardness. Mark the intersection with the pivot line. This becomes the pivot point. Draw a horizontal line through the pivot point and the pH scales. Read the pH from the appropriate pH Temperature Scale at the intersection with the horizontal line. This is the pH at which the water is balanced and is neither corrosive nor scaling.~~
- (4) ~~If the pool water pH value shown on the chart is no more than 0.5 pH above or below the actual observed pH in #1, above then the water is in balance.~~

(A) ~~If the actual pool water pH is 0.5 units higher than the pH value indicated in the chart, then the water is considered scaling and will deposit calcium in lines, filters, and in the pool.~~

(B) ~~If the actual pool water pH is 0.5 units lower than the pH value indicated in the chart, then the water is corrosive and will corrode the metal pipes, pump impellers, ladders, and other fixtures and will etch the pool plaster making it "sandy."~~

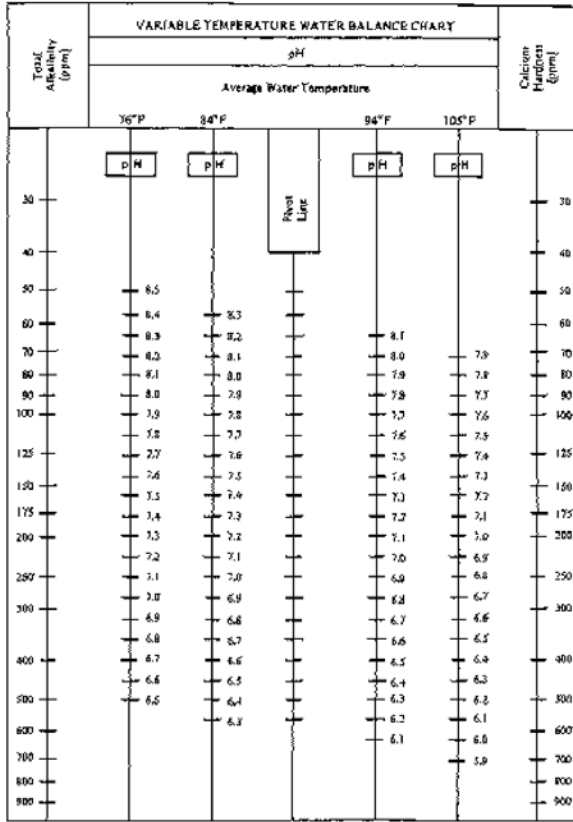
(5) ~~Calcium hardness is the hardest of the three to balance. Therefore, using the actual calcium hardness value as a pivot point, move the line between 7.2 and 7.8 to see at what level the total alkalinity can be adjusted to balance the water. The pH should be adjusted first to between 7.2 and 7.8 (ideal is 7.6) and then the total alkalinity adjusted last. It is perfectly permissible to operate a pool at a slightly higher or lower pH than ideal (but within the 7.2 to 7.8 range) in order to balance the water.~~

(6) ~~Cyanuric Acid vs. Total Alkalinity. Cyanuric Acid will titrate as total alkalinity using the current field tests.~~

The following is a conversion chart that may be used to determine the corrected value to Total Alkalinity:

pH	Cyanuric Acid Factor	
6.0	.04	
6.5	.10	1. Test total alkalinity, pH, and Cyanuric Acid.
7.0	.21	2. Multiply ppm Cyanuric Acid by Cyanuric Acid Factor.
7.5	.30	3. Subtract the product from the measured total alkalinity.
8.0	.36	4. The result equals actual total alkalinity.
8.0	.38	
9.0	.38	For Example: With a pH of 7.5, Cyanuric Acid of 50 ppm, and Total Alkalinity of 150 ppm:
		$150 - (50 \times .30) = \text{Actual Total Alkalinity}$
		$150 - 15 = 135 \text{ ppm Actual Total Alkalinity}$

[REVOKED]

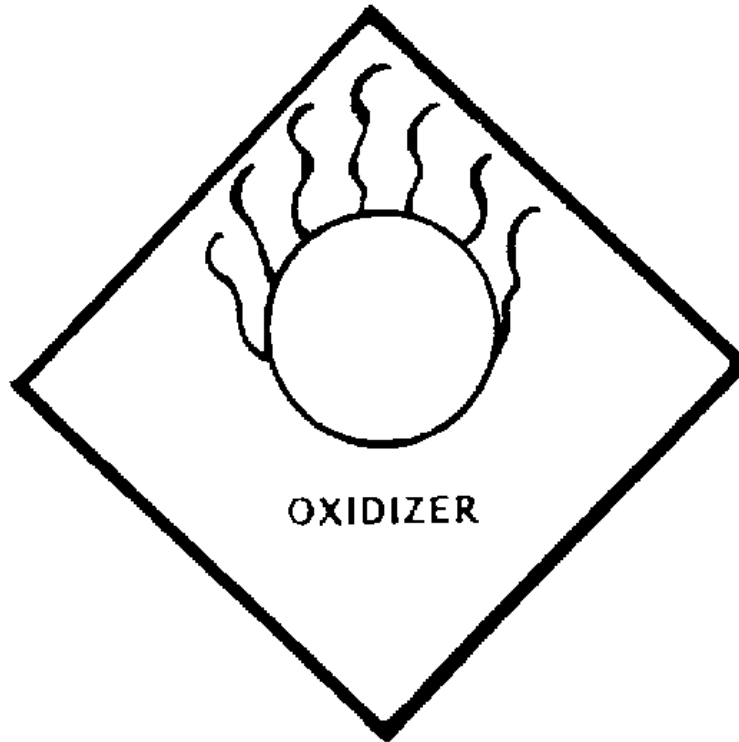


313:320-5-3. Signs for storage of pool chemicals

[REVOKED]

Suggested signs to be used to indicate presence of pool chemicals

- (1) U.S. Department of Transportation sign—4' square

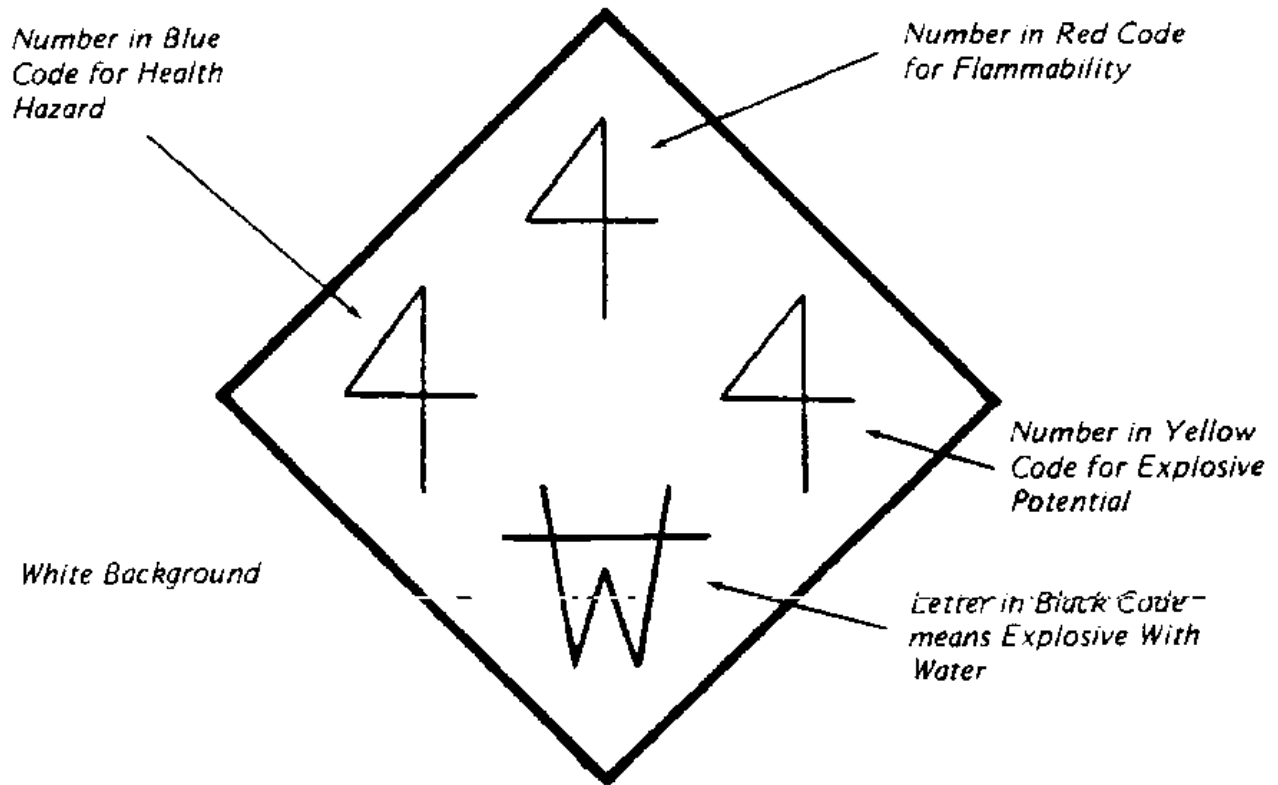


*yellow background*

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(2) National Firefighters Prevention Assn (NFPA) #704 1975, Standard System for the Identification of the Fire Hazards of Materials, adopted as follows for Pool Water Treatment Chemicals. 12" square



4 is the highest number on this scale (0-4 scale)

310:320-5-4. Operation record form and instructions  
[REVOKED]

OKLAHOMA STATE DEPARTMENT OF HEALTH

BATHING PLACE OPERATION RECORD

Week of \_\_\_\_\_ to \_\_\_\_\_ 19 \_\_\_\_

1. POOL NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_
2. SUPERCHLORINATED \_\_\_\_\_ DATE \_\_\_\_\_ TYPE CHLORINE USED \_\_\_\_\_ POUNDS \_\_\_\_\_ CONC. \_\_\_\_\_
3. POOL: CAPACITY (gal.) \_\_\_\_\_ SURFACE AREA \_\_\_\_\_ MAXIMUM BATHING LOAD \_\_\_\_\_

		MON	TUES	WED	THU	FRI	SAT	SUN																
FILTERS	TYPE																							
	4. Safety Equip Checked																							
	5. Pool Cleaned/Vacuumed (time)																							
	6. Floors/Decks disinfected (time)																							
	7. Number of Patrons																							
	8. Number of Accidents (see back)																							
	9. Number of Guards/Attendants																							
	10. Pool Hours (open/closed)	/	/	/	/	/	/	/																
	11. Backwashed (time)																							
	12. Gauge Readings I/O	/	/	/	/	/	/	/																
13. Gal. Makeup Water																								
14. Strainer Gauge	/	/	/	/	/	/	/																	
15. Flowmeter Readings (gpm)	/	/	/	/	/	/	/																	
CHEMICALS ADDED TO POOL	16. Combined chlorine (ppm)																							
	17. Chlorine (lbs.)																							
	18. Soda Ash (lbs.)																							
	19. Muriatic Acid (gal.)																							
	20. Stabilizer (lbs.)																							
	21. Sodium Bicarb. (lbs.)																							
	22. DE Powder (lbs.)																							
23. Other																								
FREE CHLORINE	pp	MON		TUES			WED			THU			FRI			SAT			SUN					
		Tm	Cl	pH	Tm	Cl	pH	Tm	Cl	pH	Tm	Cl	pH	Tm	Cl	pH	Tm	Cl	pH	Tm	Cl	pH		
		24. (1)																						
		25. (2)																						
		26. (3)																						
27. (4)																								
TURBIDITY	TEMPERATURE	Tm	Tur	T	Tm	Tur	T	Tm	Tur	T	Tm	Tur	T	Tm	Tur	T	Tm	Tur	T	Tm	Tur	T		
		28. (1)																						
		29. (2)																						
		30. (3)																						
TO BE TESTED WEEKLY MINIMUM	32. Total Alkalinity (ppm)	Date:			Cyanuric Stabilizer (ppm)			Date:																
	33. Calcium Hardness (ppm)	Date:			Total Dissol. Solids (ppm)			Date:																
	34. Water Balance pH	Date:			Iron (ppm)			Date:																
	35. Copper (ppm)	Date:																						
36. Remarks:																								
37.																								
38. Pool Operator																Operator No.								
39. Pool Manager																Operator No.								

Signatures \_\_\_\_\_

ODH FORM NO. 528 Rev. June 1981

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## INSTRUCTIONS

- LINE 1. Enter pool name, street address, and city. If more than one pool is located at an address, such as an apartment complex, identify each pool.
- LINE 2. Enter the date the pool was super-chlorinated, type chlorine used, pounds added, and final concentration in ppm.
- LINE 3. Enter the pool capacity in gallons, the surface area in square feet and the maximum approved bathing load based on pool area or bathhouse facilities which ever is the limiting factor.
- LINE 4. Enter time that safety equipment is checked. This should be done each day before opening the pool.
- LINE 5. Enter time that the pool is cleaned or vacuumed.
- LINE 6. Enter time the bathhouse floor and deck are cleaned and disinfected.
- LINE 7. Enter the operator's estimate of the maximum number of persons admitted to the premises each day.
- LINE 8. Indicate the number of accidents, if any, that occurred during the day. Any accident requiring hospitalization must be reported immediately by telephone and followed by a written report within seven (7) days.
- LINE 9. Indicate the total number of qualified lifeguards/attendants on duty during the time of maximum load.
- LINE 10. Indicate the time the pool is opened and closed for public use. Example: 10 a.m./8 p.m.
- LINE 11. Enter the time the filter is backwashed.
- LINE 12. Enter the inlet and outlet gauge reading psi just prior to backwashing. Example: 18/9
- LINE 13. Enter total number of gallons of make-up water added each day.
- LINE 14. Enter the reading of the gauge located between hair and lint strainer and pump intake before and after cleaning or replacing the basket. Example: 15/2
- LINE 15. Enter the flow meter reading and time read daily. On days that the filter is backwashed, enter the reading before and after backwashing. Example: 200/10 a.m. or 200/225
- LINE 16. Enter the combined chlorine reading. This reading should be taken at the close of each day and if the reading is 0.2 ppm or greater, the pool must be super-chlorinated before reopening to the public.
- LINE 17 thru 23. Enter the number of pounds or gallons (or other appropriate units) of the chemical fed to your pool, if any.
- LINE 24 thru 27. A series consists of at least four (4) samples taken from different areas of the pool. Enter the time taken in the Tm block, the average free chlorine from the samples in the Cl block and the average pH in the pH block.
- LINE 28 thru 31. Enter in the Tm block the time the turbidity and temperature observations are made. Temperature measurement is required only on hot water facilities. (Those operated at temperatures above 90°F). Turbidity should be reported as follows: (S) for no turbidity or a clean pool. (M) for a pool with cloudy water but still able to see the bottom in the deepest water. (U) whenever the main drain cannot be



seen. The pool is to be closed when this occurs.

LINE 32 Enter the value for indicated parameters and the date the analyses are thru 35. made. Note all parameters are not required on all pools.

LINE 36 Remarks. Enter any comments regarding accidents at the pool or its thru 37. operation that may be of benefit to you in the future or to serve as a record in the event of litigation.

LINE 38. Enter the name of the person responsible for the operation of the pool.

LINE 39. The pool manager may be the owner of a private facility, apartment complex manager, or a person employed by a municipality to manage their pool(s).

The form must be signed by the pool operator or manager.

Keep original copy in your files. Mail one (1) copy to the County Health Department. In counties without a health department, mail one (1) copy to Water Facilities Engineering Service, Oklahoma State Department of Health, P. O. Box 53551, Oklahoma City, Oklahoma 73152.

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### 310:320-5-5. Application for license [REVOKED]

(a) ~~The applicant shall file an application for a license to operate a public bathing place on the forms provided by the Department, as set forth in this Chapter as Appendix A and Appendix B, with the filing fee payable to the Oklahoma State Department of Health, prior to operating a public bathing place. The filing fee is established by rule in Chapter 310:250 of the~~

~~Oklahoma Administrative Code, Fee Schedule For Consumer Health Services.~~

(b) ~~The application for a license to operate a public bathing place must include a copy of the permit to construct the public bathing place for which the applicant seeks a license, or reference the construction permit in the application, in order to be eligible for a license to operate a public bathing place.~~

OKLAHOMA STATE DEPARTMENT OF HEALTH

APPLICATION FOR PERMIT TO CONSTRUCT  
PUBLIC BATHING PLACE, WATER POLLUTION CONTROL AND  
PUBLIC WATER SUPPLY FACILITIES AND/OR SUPPLY POTABLE WATER

AS APPROVED BY THE STATE BOARD OF HEALTH

This application is to be submitted to obtain a permit for construction of; Sanitary Sewer, Sewage Treatment Facility, Public Water Supply Facility or Waterworks, Public Bathing Place, and Additions, Modifications, or Extensions Thereof and/or to provide a potable water supply.

TO THE COMMISSIONER OF HEALTH Date \_\_\_\_\_

OKLAHOMA STATE DEPARTMENT OF HEALTH  
1000 NORTHEAST 10th STREET  
P.O. BOX 53551  
OKLAHOMA CITY, OKLAHOMA 73152

ATTENTION: WATER FACILITIES ENGINEERING SERVICE

A. The applicant, \_\_\_\_\_  
hereby makes application for a permit to provide a supply of potable water to \_\_\_\_\_

(NO FEE REQUIRED, EXECUTE APPLICANT SIGNATURE SECTION ONLY, DO NOT COMPLETE SECTIONS B thru E)

B. The applicant, \_\_\_\_\_  
proposes the construction of the facilities checked on "Fee Schedule" to serve \_\_\_\_\_

located at \_\_\_\_\_  
(finding location or legal description) and, as required by the Oklahoma State Health Code at 63 Oklahoma Statutes 1971, Sections 1-906, 1-907, 1-908 and 1-1017, hereby makes application for approval of the accompanying plans and specifications and for a permit to construct the facilities in accordance with the same plans and specifications.

C. In making this application the applicant certifies and states the following:

1. The applicant has been supplied with copies of all rules and standards promulgated by the Oklahoma State Board of Health for the construction and operation of the facility in question.
2. To the best of the knowledge and belief of the applicant, the plans, specifications, and engineering report comply with the requirements of the aforementioned rules and standards.
3. The applicant agrees to be responsible for the construction and operation of the facility in accordance with the aforementioned rules and standards, and in accordance with state law agrees that the Oklahoma State Department of Health shall have access to the facility at any time during and after construction for the purpose of inspection for compliance with the provisions of the State Health Code, 63 O.S. 1971, Sections 1-101 and following.
4. The applicant intends to own and operate the facility after construction is completed. ( ) Yes ( ) No If "No", provide information on responsibility for operation.

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5. The applicant is holder of or will obtain a deed or easement to the land upon which construction is planned. ( ) Yes ( ) No If "No", explain.
6. The land upon which construction is planned is within the corporate limits of a municipality. ( ) Yes ( ) No If "Yes", application should be executed by authorized agent of the municipality. If "Yes" and applicant is other than municipality, PRIVATE APPLICANT WITHIN MUNICIPALITY section must be completed. (DOES NOT APPLY TO PRIVATELY OWNED PUBLIC BATHING PLACES.)
7. The entity receiving, transporting or treating the wastewater generated by the area served is the applicant. ( ) Yes ( ) No If "No" the RECEIPT, TRANSPORT OR TREATMENT section must be completed.
8. Upon transfer of ownership of the facility, the applicant agrees to immediately notify the Commissioner in writing at the above address.
9. The applicant agrees to supply the Department and its agents and employees with any information requested by them concerning the design, construction, and operation of the facility in accordance with the State Health Code.
10. All local zoning and other ordinances of public entities having jurisdiction concerning the construction of the proposed improvements have been satisfied. Yes ( ) No ( ). If "No", explain.

D. Following is a list of the documents supplied for review:

\_\_\_\_\_

E. Enclosed is a check or money order (no cash) in the amount of \$\_\_\_\_\_.00, which is the total of the checked items. (Make checks and money orders payable to the Oklahoma State Department of Health. Maximum fee - \$500 for individual or \$1000 for combination water and sewer)

## APPLICANT SIGNATURE

**Note: Application must be signed by the authorized chief elective or executive officer of the applicant, or by the applicant himself if a sole proprietorship. Information must be legible.**

\_\_\_\_\_  
Signature Name of Organization (Print or Type)

\_\_\_\_\_  
Name of Authorized Signature (Print or Type) Street Address

\_\_\_\_\_  
Title City/State/Zip Code

Subscribed and sworn to before me this \_\_\_\_\_, day of \_\_\_\_\_, 19 \_\_\_\_.

Seal

\_\_\_\_\_  
Notary Public/Corp. Secretary/City Clerk

My Commission expires \_\_\_\_\_

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PRIVATE APPLICANT WITHIN MUNICIPALITY

Note: To be completed if proposed construction lies within the boundaries of a municipality or other responsible public entity and is to be owned, operated, and maintained by a private entity.

\_\_\_\_\_, hereby indicates awareness and approval of the proposed construction within its jurisdictional boundaries of the facilities addressed by this application. The concept, plans and specifications have been reviewed and are approved in accordance with this entity's rules, regulations, laws and ordinances.

Signature \_\_\_\_\_ Name of Organization (Print or Type) \_\_\_\_\_

Name of Authorized Signature (Print or Type) \_\_\_\_\_ Street Address \_\_\_\_\_

Title \_\_\_\_\_ City/State/Zip Code \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_, day of \_\_\_\_\_, 19 \_\_\_\_.

Seal

\_\_\_\_\_  
Notary Public/Corp. Secretary/City Clerk

My Commission expires \_\_\_\_\_

RECEIPT, TRANSPORT OR TREATMENT

Note: To be completed if proposed construction involves the receipt, transport or treatment of wastewater by an entity other than the applicant.

\_\_\_\_\_, hereby agrees to receive, transport and treat the wastewater generated from the area served by the proposed construction of this application. It is further stated that this entity's facilities have sufficient capacity to provide this service and are permitted under the rules and regulations of the State Health Department.

Signature \_\_\_\_\_ Name of Organization (Print or Type) \_\_\_\_\_

Name of Authorized Signature (Print or Type) \_\_\_\_\_ Street Address \_\_\_\_\_

Title \_\_\_\_\_ City/State/Zip Code \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_, day of \_\_\_\_\_, 19 \_\_\_\_.

Seal

\_\_\_\_\_  
Notary Public/Corp. Secretary/City Clerk

My Commission expires \_\_\_\_\_

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## "FEE SCHEDULE"

**Note:** Place a check mark in the box(s) by each type of facility(s) proposed. One project may contain several items. Maximum fee for individual wastewater or water project is \$500. Maximum fee for wastewater and water combination project is \$1000.

### WATER

New Treatment Facilities		
<input type="checkbox"/> Non-Community		\$250
<input type="checkbox"/> Community*		\$500
<input type="checkbox"/> Package Plant (design previously approved)		\$250
Modification to Existing Treatment		
<input type="checkbox"/> Chlorination or fluoridation		\$150
<input type="checkbox"/> Minor Renovation		\$300
<input type="checkbox"/> Major renovation		\$500
Supply Facilities		
<input type="checkbox"/> Wells (maximum \$500)		\$125 each
<input type="checkbox"/> Storage Tanks (maximum \$450)		\$150 each
<input type="checkbox"/> Raw water transmission lines		\$150
Distribution Facilities		
<input type="checkbox"/> Line extensions (rounded to the nearest 100 feet)		\$5/100 ft. (\$50 minimum)
<input type="checkbox"/> Booster station(s) (maximum \$500)		\$100 each

### WASTEWATER

Treatment Facilities (New or Modifications)		
<input type="checkbox"/> Nine or less connections and/or 5000 gpd or less flow		\$250
<input type="checkbox"/> All others		\$500
Collection Facilities		
<input type="checkbox"/> Line extensions (rounded to the nearest 100 feet)		\$5/100 ft. (\$50 minimum)
<input type="checkbox"/> Lift Station(s) (rounded to nearest MGD peak capacity)		\$100/MGD (\$100 minimum)

### PUBLIC BATHING PLACES

<input type="checkbox"/> New pools		\$500 each
<input type="checkbox"/> New spas		\$250 each
<input type="checkbox"/> Modification to existing facilities		\$150

\*Any public water supply system which serves residents on at least 10 service connections, or regularly serves 25 residents at least 60 days out of the year.

"FEE SCHEDULE"  
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AFFIDAVIT OF RESPONSIBILITY

THIS AFFIRMS THAT \_\_\_\_\_ will
NAME OF ORGANIZATION, PRINTED
be responsible for operating, maintaining, and controlling the use
of the bathing facility located at \_\_\_\_\_,
ENTITY SERVED, PRINTED
\_\_\_\_\_ in
STREET ADDRESS, PRINTED CITY OR TOWN
accordance with the Oklahoma Public Bathing Place Interpretive
Code.

Signature of Authorizing Official

Name of Authorizing Official, Printed

Title of Authorizing Official

Address

City and Zip Code

(NOTARY SEAL)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,
19\_\_\_\_.

Notary Public/Corp. Sec./City Clerk

My Commission Expires: \_\_\_\_\_

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## 310:320-5-5.1. Application for license

(a) The applicant shall file an application for a license to operate a public bathing place on the forms provided by the Department, as set forth in this Chapter with the filing fee payable to the Oklahoma State Department of Health, prior to operating a public bathing place. The filing fee is established by rule in Chapter 310:250 of the Oklahoma Administrative Code, Fee Schedule For Consumer Health Services.

(b) The application for a license to operate a public bathing place must include a copy of the permit to construct the public bathing place for which the applicant seeks a license, or reference the construction permit in the application, in order to be eligible for a license to operate a public bathing place.

## 310:320-5-6. Application guidelines for permits to construct and licenses to operate public bathing places [REVOKED]

(a) ~~An applicant shall be an owner/operator of the public bathing place, as defined in 63 O.S. Section 1-1013 et. Seq. complying with the requirements of this chapter, agree to permit access to the public bathing places, provide required information, and pay the applicable license fee and submit application on a form provided by the Department.~~

(b) ~~The application shall include:~~

(1) ~~The name, mailing address, telephone number, approximate number of employees, and signature of the person applying for the license and the name, mailing address and location of the public bathing places;~~

(2) ~~Information about the legal entity for the public bathing places; and~~

(3) ~~Information about the type of public bathing places.~~

(c) ~~The license holder shall comply with all provisions of OAC 310:320-3-2.~~

(d) ~~Fee. The fee (see Fee Schedule, Regulations Section 310:320-5-5) shall be made payable to the Oklahoma State Department of Health.~~

(e) ~~**Facility definition.**~~

(1) ~~A public bathing facility, for permitting purposes, will be:~~

(A) ~~A single swimming pool, spa, water slide, or other bathing unit, or~~

(B) ~~A complex of two (2) or more such units with deck areas in common, "deck" being used in the same context as in the Public Bathing Place Standards, or,~~

(C) ~~A complex of such units with water in common such as indoor and outdoor pools connected by a channel.~~

(2) ~~For the purpose of allocating permit fees, a single fee and permit will apply in each of the above cases 1 through 3. A new permit and fee will apply for a new bathing unit added later to an existing facility, and for a major modification of an existing unit.~~

(f) ~~**Applicant identification.**~~

(1) ~~Title 63 Oklahoma Statutes, (Public Health Code), Section 1-1017 states, in part "...plans and specifications~~

~~shall be accompanied by an application for permit, and both the plans and specifications and the application shall bear the signature of the person for whom the work is to be done." (Emphasis added.)~~

(2) ~~The Department of Health interprets this to mean the owner or an authorized agent of the owner. The application may take these forms:~~

(A) ~~Applicant is the owner and signs as such.~~

(B) ~~Applicant is an authorizing officer of the organization which is the owner; the full name of the organization and the signer's title must be supplied.~~

(C) ~~Application includes a letter from the owner (or from an officer as in #2, or from an authorized agent of the owner) authorizing the applicant to act on his behalf for the purpose of obtaining the permit.~~

(D) ~~Application is signed "XXX, agent for YYY, owner." If there is any question whether "expediency" may have resulted in misrepresentation, the Department may require an authorizing letter as in #3 above.~~

(3) ~~If the application does not show whether the owner and/or agent is an individual, a partnership, or a corporation, processing of the permit will be delayed until this information is supplied.~~

(4) ~~The application form also requires that, if Item C-4 on the application is checked "No," information is to be provided on who will be responsible for the facility following completion of construction. In the case of joint ownership, such as a condominium or housing development, the applicant may state on the application that, for example, a homeowners association will own and operate the bathing facility. In such cases, a provision in the permit will assign this future responsibility accordingly, if no Affidavit of Responsibility is supplied with the application. In other cases (C-4 check "No"), there must be submitted with the application, a notarized Affidavit of Responsibility signed appropriately. The purpose of this is to remove any doubt that the responsible party is aware of its responsibility.~~

(g) ~~**Non-applicable items.** Items A, C-6, C-7, and all of page 3, may be ignored in the case of public bathing place permits, unless the facility is to be municipally owned.~~



**Note: Compliance with the Public Bathing Place Facility Standards and the Public Bathing Place Regulations Criteria is required respecting all features not included here.**

**Public Bathing Place  
Summary Engineering Report**

Complete separately for each unit (pool, spa, other).

**A. General**

1. Physical location of facility (not P.O. Box or Rural Route): \_\_\_\_\_
2. Type (pool, spa, wading pool, water slide, raft ride, etc): \_\_\_\_\_
3. Water area, ft<sup>2</sup> \_\_\_\_\_
4. Perimeter, ft \_\_\_\_\_
5. Volume, gal \_\_\_\_\_
6. Shallow water area ("above" lifeline), ft<sup>2</sup> \_\_\_\_\_
7. Deep water area ("below" lifeline), ft<sup>2</sup>  
Capacity, persons \_\_\_\_\_
8. Diving boards, number and height \_\_\_\_\_
9. Bottom slopes: shallow area \_\_\_\_\_ transition \_\_\_\_\_

**B. Water Supply and Wastewater**

1. Water source \_\_\_\_\_. Two diameters or six (6) inches air gap at fill spout \_\_\_\_ (Y/N)
2. Backwash discharges to \_\_\_\_\_ with indirect connection \_\_\_\_ (Y/N)
3. Walkways drain to \_\_\_\_\_ at slope = \_\_\_\_\_ (1/4 inch per foot minimum)

**C. Recirculation and Filter System**

1. Minimum turnover rate required by Standards, gpm \_\_\_\_\_
2. Number of skimmers \_\_\_\_\_ @ 30 gpm = \_\_\_\_\_ gpm
3. Design flow rate, gpm \_\_\_\_\_

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4. Main drain flow (at least 30 percent of total flow) gpm \_\_\_\_\_
  5. Filter type (sand, DE, or cartridge) \_\_\_\_\_
  6. Minimum filter area required, ft<sup>2</sup> \_\_\_\_\_
  7. Design filter area, ft<sup>2</sup> \_\_\_\_\_
  8. Maximum filter flux density, gpm/ft<sup>2</sup> \_\_\_\_\_
  9. Head loss in suction piping is no greater than 6 ft/1000 ft. \_\_\_\_\_ (Y/N)
  10. Head loss in discharge (pressure) piping is no greater than 12 ft/100 ft. \_\_\_\_\_ (Y/N)
  11. Maximum TDH, dirty filter, ft \_\_\_\_\_
  12. Pump capacity at maximum TDH, gpm \_\_\_\_\_
  13. Number of inlets: \_\_\_\_\_ a depth \_\_\_\_\_ (inches)
  14. Antivortex cover or complying suction openings specified \_\_\_\_\_ (Y/N)
  15. Flow meter specified \_\_\_\_\_ (Y/N)
  16. Filter influent and effluent pressure gauges specified, and compound or vacuum gauge specified between pump and hair and lint strainer \_\_\_\_\_ (Y/N)
  17. Extra hair/lint basket specified \_\_\_\_\_ (Y/N)
  18. Piping schematic included in plans \_\_\_\_\_ (Y/N)
  19. Each skimmer and main drain valved separately \_\_\_\_\_ (Y/N)
- D. Miscellaneous**
1. Two-inch diameter equalizer line specified at skimmers \_\_\_\_\_ (Y/N)
  2. Skimmers listed as approved by NSF \_\_\_\_\_ (Y/N)
  3. Filters listed as approved by NSF \_\_\_\_\_ (Y/N)

4. Chlorinator or brominator listed as approved by NSF \_\_\_\_\_ (Y/N)
5. Two thermometers specified, if heater used \_\_\_\_\_ (Y/N)
6. All parts of facility served by 50 foot (maximum) hoses, from hose bibs with backflow preventers \_\_\_\_\_ (Y/N)
7. Valves and piping tagged or color coded \_\_\_\_\_ (Y/N)
8. Depth markers specified, both pool wall and deck \_\_\_\_\_ (Y/N)
9. Life line specified at change in bottom slope \_\_\_\_\_ (Y/N)
10. If spa, "jet" or "therapy" system is independent from filter/recirculation system, other than at spa plenum \_\_\_\_\_ (Y/N)
11. Local ordinances permit proposed backwash discharge \_\_\_\_\_ (Y/N)
12. Operating instructions specified \_\_\_\_\_ (Y/N)
13. Enclosure complies with Standards Section 310:315-7-2 \_\_\_\_\_ (Y/N)
14. Entry to pool is through self-closing, self-latching gates or doors, only \_\_\_\_\_ (Y/N)
15. Lighting and electrical wiring are specified in accordance with Standards Sections 310:315-7-18 and 310:315-7-19 \_\_\_\_\_ (Y/N)
16. Safety equipment and provisions are specified in accordance with Regulations Sections 310:320-3-1 and 310:320-3-4 \_\_\_\_\_ (Y/N)
17. Provisions for handicapped are specified (If pool is Open to the General Public) \_\_\_\_\_ (Y/N)
18. Bathhouse complies with Standards Sections 310:315-7-7 and 310:315-7-8 (if pool is Open to the General Public) \_\_\_\_\_ (Y/N)

Any items answered "No" require explanation. Add pages as necessary.

\_\_\_\_\_  
Engineer's Signature

\_\_\_\_\_  
Date

**January 29, 1985**

### **Public Bathing Places**

#### **Procedure and Design Check List**

This procedure and design check list is limited to significant features of the Public Bathing Place Facility Standards, the Public Bathing Place Regulations, and some features which generate questions frequently. Purposes are to help simplify and organize design work, review work, and inspection work. Not every regulatory feature is covered--some are left to the Standards and Regulations, and the Standards and Regulations leave some to specifications of others such as the NSF, ANSI, ASSE, NEC, FINA, and others. Further, "good practice" is a universal criterion. The design engineer is responsible for alerting the applicant and contractors to these requirements sufficiently through the plans he prepares and through direct communication. It is expected that installation will conform to approved plans in respect to all significant details, including any change orders approved by the design engineer and by the OSDH. Further, compliance with the Standards and Regulations is required respecting all features not included in the approved plans.

**REFER TO THE PUBLIC BATHING PLACE FACILITY STANDARDS  
AND THE PUBLIC BATHING PLACE REGULATIONS**

**Procedures**

- \_\_\_\_\_ 1. Application completed in accordance with "Guidelines for applicants for Public Bathing Place Permits."
- \_\_\_\_\_ 2. Five (5) sets of plans submitted, each signed by applicant and sealed by a professional engineer licensed in Oklahoma.
- \_\_\_\_\_ 3. Fee submitted.

**Design**

- \_\_\_\_\_ 1. Engineering report (may be a summary on drawings) presenting significant design features, and added narrative solutions to unusual problems when needed for clarity.
- \_\_\_\_\_ 2. Water supply: source; backflow prevention (including all hose bibs); drinking fountains; fill spout ( 2 diameters or 6 inch air gap).
- \_\_\_\_\_ 3. Wastewater: approved sewer (permit exists) of sufficient capacity; NPDES permit if applicable; diatomaceous earth separation; sanitary and backwash wastes plan; backflow prevention (air gap); local ordinances provisions on backwash discharge.
- \_\_\_\_\_ 4. Pool material and finish: impervious; white or pastel color (no variegated finish).
- \_\_\_\_\_ 5. Enclosure: excludes unattended small children; permits visual observation; maximum gap four (4) inches; four (4) feet height (six (6) feet if open to general public); construction does not form ladder; all entry through self-closing, self-latching gates only; no safety hazards at grade separations.
- \_\_\_\_\_ 6. Equipment and chemical storage areas; sufficient access for operation and maintenance (eighteen (18) inch clearances); access by public limited; venting; hose bib with backflow preventer; chemical storage signs. See Standards Sections 310:315-7-2 and 310:315-7-13.
- \_\_\_\_\_ 7. Bathing load computed per Standards Section

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310:315-7-3.

- \_\_\_\_\_ 8. Pool features: handicapped provisions if open to general public; three (3) feet minimum depth (three and one-half (3-1/2) feet recommended), competition pools; bottom slopes; lifeline at break; side walls; depths; ledges inside line eleven (11) degrees from plumb; diving board height, projection over pool, headroom; depth markings (deck and pool wall); outlets (144 in<sup>2</sup> or antivortex covers); adjustable inlets, required minimum plus added inlets at stairs, recessions, flow-through channels; gutters comply with Standards Section 310:315-7-14; skimmers thirty (30) gpm each, valved separately, NSF-listed.
- \_\_\_\_\_ 9. Ladders, stairs, seats, fountains: two (2) ladders or one (1) ladder and one (1) set of stairs; stairs recessed or "go clear across"; colored stripes; uniform height; barriers around recessed seats, and added inlets; fountain supply filtered and chlorinated if discharging to pool; no structures in fountain to invite diving.
- \_\_\_\_\_ 10. Decks: four (4) foot minimum width; impervious; non-slip; slope and drainage; no wood decks indoors, and sealed, drained, and unshaded if outdoors; access by fifty (50) foot (maximum) hose from hose bib with backflow preventer; no carpeting; no epoxyed gravel unless interstices are grouted.
- \_\_\_\_\_ 11. Bathhouse: see Standards for (extensive) details; must be sanitizable; required only at (1) pools open to the general public, (2) where access to pool is problematic as at a housing development, and (3) other special installations; no fire traps; fire extinguisher (not CCL<sub>4</sub>).
- \_\_\_\_\_ 12. Ventilation: all indoor spaces effectively ventilated.
- \_\_\_\_\_ 13. Wading pools: four (4) hour turnover; flow measurement and control; eighteen (18) inches maximum depth; one (1) skimmer per four hundred (400) ft<sup>2</sup> pool area; emergency drainage with quick-opening valve; barrier if contiguous with swimming pool.
- \_\_\_\_\_ 14. Spas: impervious (no wood); no depth markers required; four (4) foot minimum deck width about fifty (50) percent of perimeter if less than 120 ft<sup>2</sup> spa area;

decks drained; handrail complying with Standards Section 310:315-7-11; thirty (30) gpm per skimmer (NSF-listed) plus adequate main drain flow to prevent settling in lines; no connection, other than at spa plenum, between filter and therapy circulation systems; antivortex or equiv-alent suction openings; disinfection device NSF-listed (bromine recommended); two (2) filter return inlets, minimum; temperature control at 105°F maximum; inlet and return temperature gauges. (See also #16 below.)

- \_\_\_\_\_ 15. Water recreation attractions; preconsultation with OSDH required; see Standards Section 310:315-7-12.
- \_\_\_\_\_ 16. Recirculation system: system TDH calculated for dirty filter; pump sized at maximum TDH; hair and int strainer with extra basket and compound pressure gauge where required; vacuum cleaning provisions; inlet and return temperatures measured if heater provided; piping sized per Standards Section 310:315-7-14; piping color coded and valves tagged; flow meter with minimum and maximum flows marked; piping schematic provided. See Standards Section 310:315-7-14 for further details.
- \_\_\_\_\_ 17. Filters: influent and effluent pressure gauges; sign glass; filter tanks and piping drainable; filter medium composition and particle size specified; filter NSF-listed; head loss when dirty at maximum allowable flux (gpm/ft<sup>2</sup>) computed correctly; operating instructions provided, including maximum and minimum flow rates. See Standards Section 310:315-7-15 for further details.
- \_\_\_\_\_ 18. Disinfection and pH control: chlorinator/brominator NSF-listed and meets delivery requirements of Standards Section 310:315-7-16; chlorine gas installation per Standards Section 310:315-7-16; gas mark; pH control feeder if pool open to general public or larger than fifty thousand (50,000) gallons.
- \_\_\_\_\_ 19. Testing equipment: see Standards Section 310:315-7-17.
- \_\_\_\_\_ 20. Lighting and electrical requirements: artificial lighting required, ten (10) foot-candles, deck area; underwater lights (if used) recommended @

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eight (8) foot-candles and with low water cutoff protection; ten (10) foot-candles, interior rooms; all wiring meets NEC

Code; ground fault interrupter circuit breakers for outlets; all piping and metal fencing grounded per NEC Code.

\_\_\_\_\_ 21. Life saving provisions and equipment: lifeguard or attendant needs weighed carefully where slides or swings are used; safety/pool rules signs specified, including "No Lifeguard or Attendant on Duty" where required; see Regulations Section 310:320-3-1 for details.

\_\_\_\_\_ 22. First aid: kit specified; telephone (non-coin operated) accessible; emergency phone numbers posted.



**310:320-5-6.1. Application guidelines for licenses to operate public bathing places**

(a) **Applicant requirements.** An applicant shall be an owner/operator of the public bathing place, as defined in 63 O.S. Section 1-1013 et. Seq. complying with the requirements of this chapter, agree to permit access to the public bathing places, provide required information, and pay the applicable license fee and submit application on a form provided by the Department.

(b) **Application contents.** The application shall include:

(1) The name, mailing address, telephone number, approximate number of employees, and signature of the person applying for the license and the name, mailing address and location of the public bathing places;

(2) Information about the legal entity for the public bathing places; and

(3) Information about the type of public bathing places.

(c) **Fee.** The fee shall be made payable to the Oklahoma State Department of Health.

(d) **Facility definition.**

(1) A public bathing facility, for permitting purposes, will be a single swimming pool, spa, water slide, or other bathing unit.

(2) A new permit and fee will apply for a new bathing unit added later to an existing facility, and for a major modification of an existing unit.

(e) **Applicant identification.**

(1) The application may take these forms:

(A) Applicant is the owner and signs as such.

(B) Applicant is an authorizing officer of the organization which is the owner; the full name of the organization and the signer's title must be supplied.

(C) Application includes a letter from the owner (or from an officer as in part (B), or from an authorized agent of the owner) authorizing the applicant to act on his behalf for the purpose of obtaining the permit.

(D) Application is signed "XXX, agent for YYY, owner." If there is any question whether "expediency" may have resulted in misrepresentation, the Department may require an authorizing letter as in part (C) above.

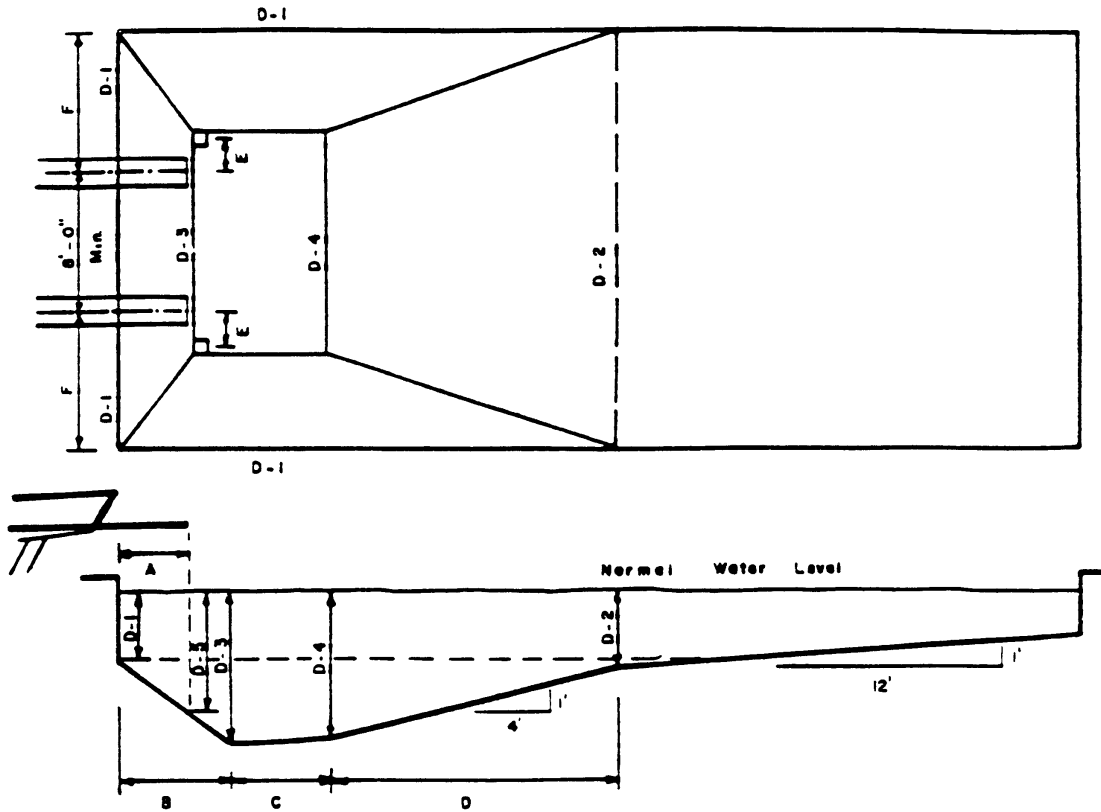
(2) If the application does not show whether the owner and/or agent is an individual, a partnership, or a corporation, processing of the permit will be delayed until this information is supplied.

(3) The application form also requires that information is to be provided on who will be responsible for the facility following completion of construction. In the case of joint ownership, such as a condominium or housing development, the applicant may state on the application that, for example, a homeowners association will own and operate the bathing facility. In such cases, a provision in the permit will assign this future responsibility accordingly, if no Affidavit of Responsibility is supplied with the application. In other cases there must be submitted with the application, a notarized Affidavit of Responsibility signed appropriately. The purpose of this is to remove any doubt that the responsible party is aware of its responsibility.

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310:320-5-7. Figures [REVOKED]

Diving Area - Schedule Of Depths And Their Locations



D-1 Side Well Depth (See Section 10.6)

STANDS AND BOARDS	Depth - Minimum-Maximum					LENGTH OF SECTION						
	D-1	D-2	D-3	D-4	D-5	A	B	C	D	E	F	
3-Meter Board	Min.	5'0"	4'6"	11'0"	10'9"	8'6"	5'0"	5'0"	9'0"	(c)	1'0"	12'0"
	Max.		5'6"				6'0"	10'0"	(a)			
1-Meter Board	Min.	5'0"	4'6"	8'6"	8'3"	8'0"	5'0"	6'0"	9'0"	(c)	1'0"	9'0"
	Max.		5'6"				6'0"	10'0"	(a)			
Deck Level Board	Min.	5'0"	4'6"	8'0"	7'6"	(d)	3'0"	6'0"	6'0"	(c)	1'0"	8'0"
	Max.		5'6"				4'0"	10'0"	(b)			

Note: Distance between boards will not be less than 8'0" center to center.  
 (a) B & C may vary to attain 15'0" min.  
 (b) B & C may vary to attain 12'0" min.  
 (c) As D-2 varies between min. & max. "D" may vary, but slope of "D" may not exceed 1'0" vertical to 4'0" horizontal.  
 (d) See also Fig. II and II-A.

Figure I

Minimum Dimensions For Small Pools  
Having A Deck Level Diving Board

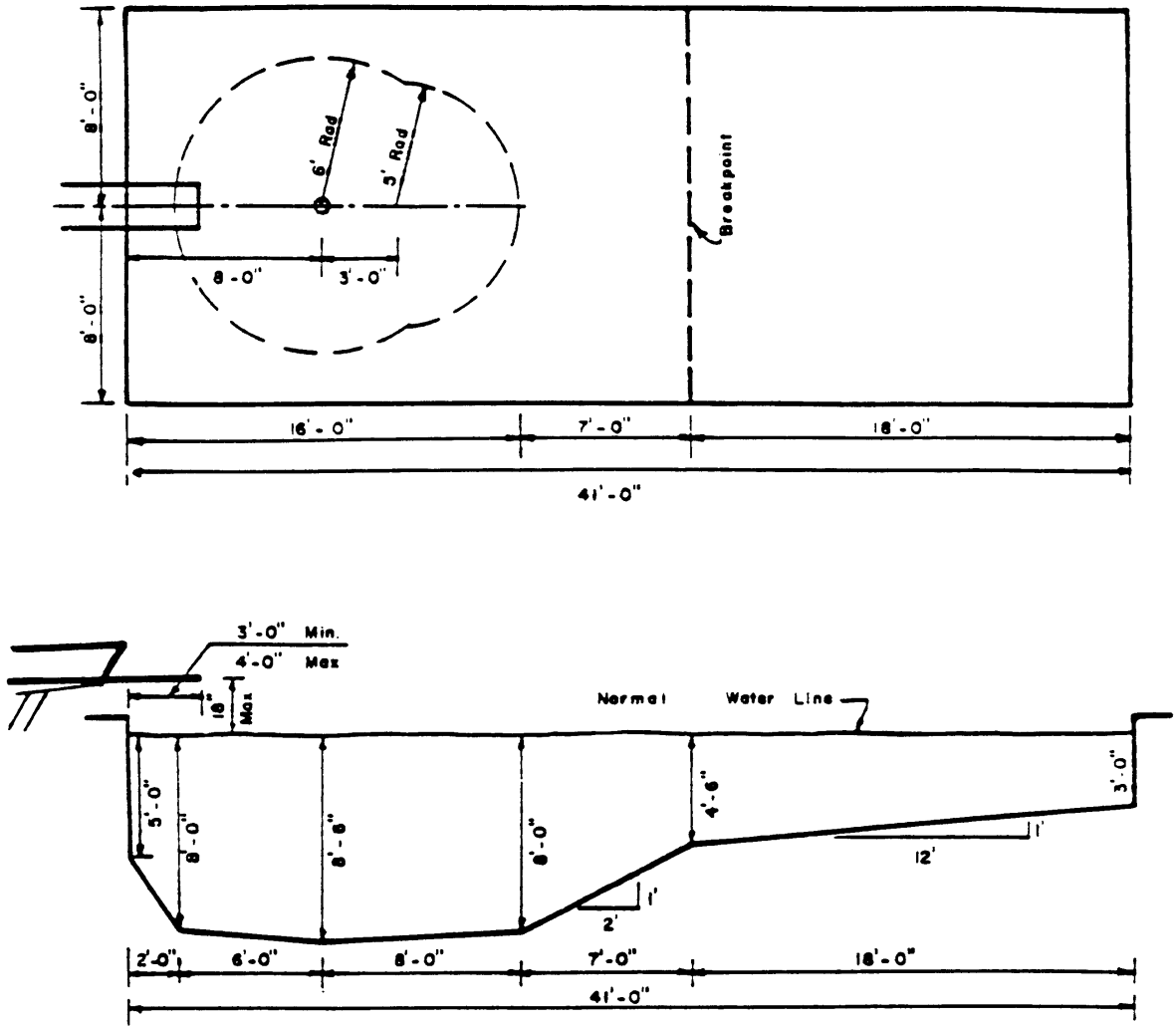
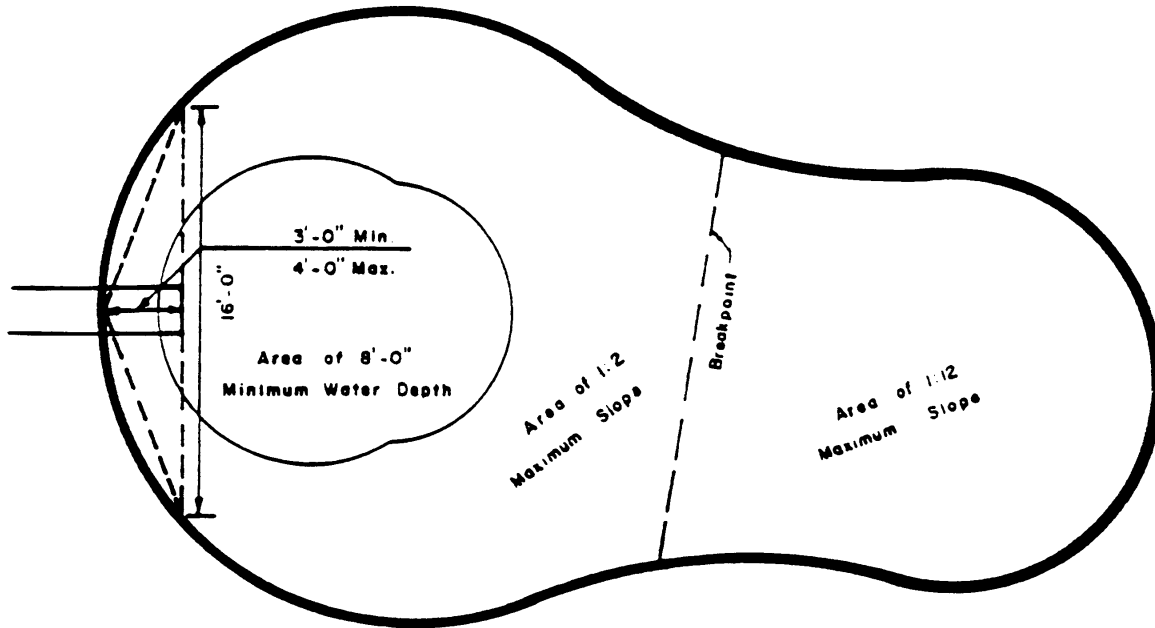


Figure II

# Permanent Final Adoptions

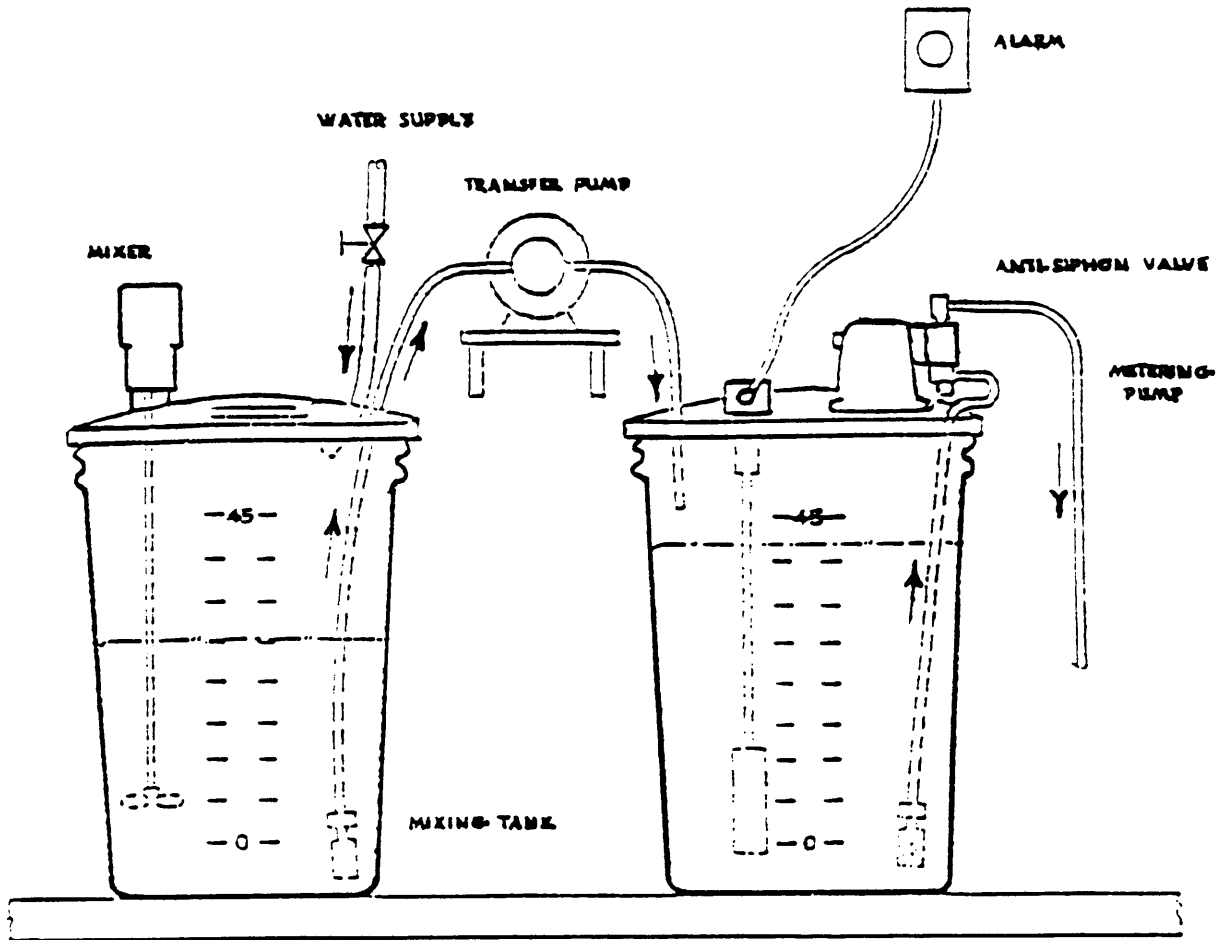
## TYPICAL FREE FORM POOL DESIGN

Indicating Minimum Dimensions From Tip Of Diving Board To Pool Wall



POOL WALL SHALL REMAIN OUTSIDE OF TRIANGLE

Figure II - A



CALCIUM HYPOCHLORINATOR

FIGURE III

## APPENDIX A. POOL WATER SAMPLING AND TESTING [NEW]

(1) Tests shall be made of the pool water as follows:

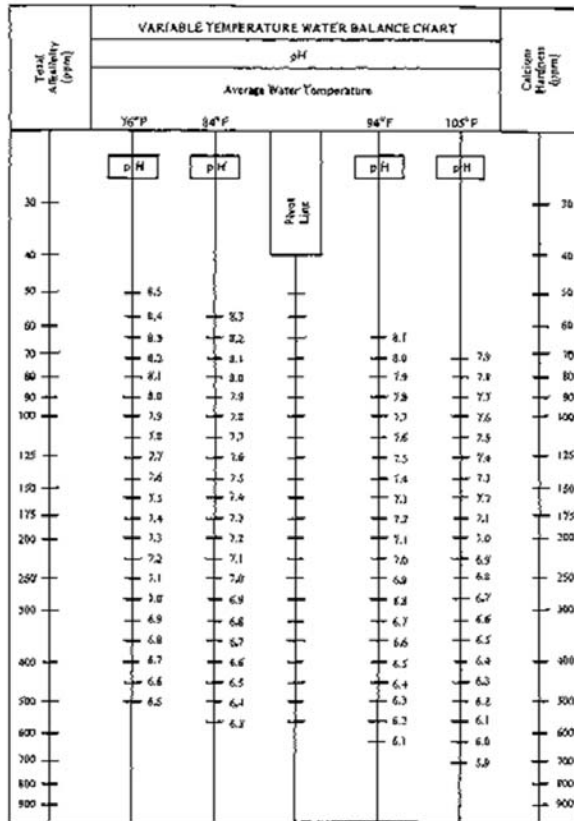
Free chlorine	Four (4) times per day
Bromine (if applicable)	Four (4) times per day
pH	Four (4) times per day
Turbidity	Four (4) times per day
Combined chlorine	Daily
Turnover	Daily
Total alkalinity	Weekly
Calcium hardness	Weekly
Cyanuric acid	Weekly

(2) Hot water facilities (above 90°F). In addition to the above tests, the following shall be determined:

Temperature	Four (4) times per day
Copper	Weekly
Iron	Weekly
Total dissolved solids	Weekly

(3) Bacteriological samples. Hot water facilities and pools open to the general public may be required to submit a sample weekly to the local or the state health department.

APPENDIX B. VARIABLE TEMPERATURE WATER BALANCE CHART [NEW]



[OAR Docket #22-598; filed 7-12-22]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 355. SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES

[OAR Docket #22-599]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
310:355-1-1 [AMENDED]  
310:355-1-6 [AMENDED]  
Subchapter 3. Smoking Prohibitions and Exemptions  
310:355-3-1 [REVOKED]  
310:355-3-2 [REVOKED]  
310:355-3-3 [REVOKED]  
310:355-3-4 [REVOKED]  
Subchapter 5. Situations in Which Smoking May Be Permitted  
310:355-5-1 [AMENDED]  
310:355-5-4 [AMENDED]  
Subchapter 7. Plans Review and Inspections  
310:355-7-2 [AMENDED]  
Subchapter 9. Smoking Room Enclosure  
310:355-9-1 [AMENDED]  
310:355-9-2 [AMENDED]  
Subchapter 11. Smoking Room Negative Air Pressure ~~and~~ Smoke  
Containment  
310:355-11-1 [AMENDED]  
310:355-11-3 [AMENDED]  
310:355-11-4 [AMENDED]  
Subchapter 15. Presence of Smoke and Negative Air Pressure  
310:355-15-1 [AMENDED]  
310:355-15-3 [REVOKED]  
Subchapter 17. Signage  
310:355-17-1 [AMENDED]  
310:355-17-2 [AMENDED]  
310:355-17-4 [AMENDED]  
Subchapter 19. Duties of Owner or Operator  
310:355-19-1 [REVOKED]  
Subchapter 21. Compliance  
310:355-21-3 [AMENDED]  
310:355-21-4 [AMENDED]  
310:355-21-5 [AMENDED]  
Subchapter 23. Rebate Program for the Clean Air in Restaurants Act  
310:355-23-1 [REVOKED]  
310:355-23-2 [REVOKED]  
310:355-23-3 [REVOKED]  
310:355-23-4 [REVOKED]  
310:355-23-5 [REVOKED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; Smoking in Public Places and Indoor Workplaces, 63 O.S. §§ 1-1521, et seq.; Smoking in Certain Public Places Prohibited - Punishment, 21 O.S. § 1247; and the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.8(L).

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

October 18, 2021

**COMMENT PERIOD:**

November 15, 2021 through December 15, 2021

**PUBLIC HEARING:**

December 15, 2021

**ADOPTION:**

January 20, 2022

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

January 20, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules include implementation of 63 O.S. § 427.8(L) that states medical marijuana is subject to the Smoking in Public Places and Indoor Workplaces Act. The rules have removed outdated language, incorrect statutory references, and updated terminology based on statute.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 1. GENERAL PROVISIONS

**310:355-1-1. Purpose and scope**

This Chapter implements:

(1) the Smoking in Public Places and Indoor Workplaces Act ~~and the Clean Air in Restaurants Act (CARA). This Chapter specifies how compliance with the Act and CARA will be accomplished. All definitions and other provisions in the Act and CARA apply to this Chapter.~~ Title 63 O.S. §§ 1-1521, et seq.;

(2) Smoking in Certain Public Places Prohibited - Punishment, Title 21 O.S. § 1247; and

(3) Statutory provisions of the Oklahoma Medical Marijuana and Patient Protection Act: *All smokable, vaporized, vapable and e-cigarette medical marijuana product inhaled through vaporization or smoked by a medical marijuana licensee are subject to the same restrictions for tobacco under Section 1-1521 of Title 63 of the Oklahoma Statutes, commonly referred to as the "Smoking in Public Places and Indoor Workplaces Act".* [Title 63 O.S. § 427.8(L)]

**310:355-1-6. Definitions**

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

"**Act**" means the Oklahoma Smoking in Public Places and Indoor Workplaces Act [63:1-1521 et seq].

"**Building**" means an entire free standing structure enclosed or predominantly enclosed by exterior walls.

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

"**Eating establishment**" means an establishment licensed by the Department under Chapter 256 or any Chapter adopted to replace Chapter 256 that is primarily engaged in preparing and selling food, exclusive of low-point beer and alcoholic



beverages, for immediate consumption on or off the premises, based upon gross receipts of the establishment.

**"Indoor workplace"** means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed. [21 O.S. § 1247(A)]

**"Nonsmoking area" or "nonsmoking space"** means a ~~smokefree~~smoke-free area or space.

**"Public transportation"** means transportation services, facilities and equipment with multiple passenger capabilities, available to the public on a scheduled or demand basis including intercity, regional and city bus, minibus, van pool, car pool and taxicab services, and commuter rail services. [69:4005]

**"Recirculate"** means movement of air or smoke from one area to another either mechanically by way of the heating, air conditioning and ventilation system or by other means of circulation, drifting, transfer or migration.

**"Restaurant"** means any eating establishment regardless of seating capacity. [63:1-1522.7]

**"Secondhand smoke"** means the aerosol produced from vapor devices or combustion of marijuana or tobacco products---consisting of a combination of many different gases, types of particulate matter, and semi-volatile organic compounds, visible and invisible, odorless and with odors---including smoke or vapor exhaled by smokers, smoke from the burning tip of a cigarette or other marijuana or tobacco product, and materials escaping through cigarette paper.

**"Smoke-free location"** means a location where the use of tobacco, nicotine, marijuana or other lawful products consumed in a smoke or vaporized manner are prohibited. [21 O.S. § 1247]

**"Smoke"** means smoke from combustion of marijuana or tobacco products, including secondhand smoke.

**"SmokefreeSmoke-free area" or "smokefree**~~smoke-free~~ **space"** means an area or space within or outside a building where smoking is prohibited. Within a building that is not entirely exempt from the Act[63:1-1521 et seq], if smoking is permitted anywhere in the building, the air in the ~~smokefree~~smoke-free areas inside the building is protected from secondhand tobacco smoke from the smoking spaces by a combination of direct exhaust from the smoking spaces to the outside, full enclosure surrounding the smoking spaces, and sufficient negative air pressure in the smoking spaces relative to the ~~smokefree~~smoke-free areas to prevent the escape of

smoke from the smoking spaces to any ~~smokefree~~smoke-free areas.

### SUBCHAPTER 3. SMOKING PROHIBITIONS AND EXEMPTIONS [REVOKED]

#### 310:355-3-1. Indoor prohibition and exemptions [REVOKED]

To protect the health of nonsmokers, no smoking shall be permitted inside public places or indoor workplaces except under certain limited situations specifically provided in 63:1-1523.

#### 310:355-3-2. Public transportation prohibition [REVOKED]

No smoking shall be permitted in any vehicle used to provide public transportation.

#### 310:355-3-3. Outdoor prohibitions at restaurants [REVOKED]

No smoking shall be permitted outside, including on a deck or patio, within 15 feet of an exterior public doorway to a restaurant or any air intake to a restaurant.

#### 310:355-3-4. Outdoor prohibitions at educational facilities [REVOKED]

No smoking shall be permitted outside on the premises of a public or private educational facility offering any programs for students from early childhood education or kindergarten through grade 12, except as allowed in 63:1-1523.B.

### SUBCHAPTER 5. SITUATIONS IN WHICH SMOKING MAY BE PERMITTED

#### 310:355-5-1. Smoking spaces

Smoking spaces are those spaces where smoking is permitted as provided in 63:1-1523.63 O.S. § 1-1523 including (1) smoking rooms within restaurants, (2) smoking rooms in other public places and indoor workplaces, and (3) exempted places as listed in 63:1-1523(G) that elect to permit smoking, provided such exempted places either occupy an entire building or meet the requirements for a smoking room under subchapters 7, 9, 11, 13 and 15 of this Chapter with respect to any nonsmoking spaces within the same building.

#### 310:355-5-4. Exempted spaces occupying an entire building

Exempted places as listed in 63:1-1523(G)63 O.S. § 1-1523(H) that occupy an entire building so that smoke cannot escape to adjacent indoor nonsmoking spaces are exempt from the rules in this Chapter.

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## SUBCHAPTER 7. PLANS REVIEW AND INSPECTIONS

### 310:355-7-2. Inspections

Personnel of the Department, including employees and others designated by the Commissioner of Health, shall have access to the premises for inspections, announced or unannounced, including examination and testing for compliance and including access to ~~smokefree~~smoke-free areas and smoking spaces.

## SUBCHAPTER 9. SMOKING ROOM ENCLOSURE

### 310:355-9-1. Fully enclosed

The enclosure for a smoking room shall be continuous including floor, ceiling and all sides so that smoke is contained within the smoking room and away from ~~smokefree~~smoke-free areas.

### 310:355-9-2. Door opening and closure

Any tendency for air to escape from the smoking room because of doors opening or closing shall be counterbalanced by increased exhaust ventilation or other means to assure that air containing ~~tobacco~~ smoke is kept within the smoking room and prevented from recirculating to nonsmoking areas.

## SUBCHAPTER 11. SMOKING ROOM NEGATIVE AIR PRESSURE AND SMOKE CONTAINMENT

### 310:355-11-1. Negative pressure and full enclosure relationship

Negative air pressure shall be provided continuously while a smoking room is in use and until it has been cleared as specified in section 3 of this subchapter, to assure that the flow of air is from ~~smokefree~~smoke-free spaces into the smoking room. The more that normal leakage occurs, such as through cracks and under doors, the greater will be the direct exhaust required to provide adequate negative air pressure to meet the conditions in OAC 310:355-13-1.

### 310:355-11-3. Negative air pressure after smoking ends

After smoking ends, negative air pressure must be maintained at levels required to satisfy the requirements of OAC 310:355-13-1 until ~~tobacco~~ smoke components are cleared from the air.

### 310:355-11-4. Successive smoking and nonsmoking uses of a smoking space

If a space used at one time as a smoking room or other smoking space is to be used as a ~~smokefree~~smoke-free area at

a subsequent time, the space must first be cleared of ~~tobacco~~ smoke components.

## SUBCHAPTER 15. PRESENCE OF SMOKE AND NEGATIVE AIR PRESSURE

### 310:355-15-1. Visual indications and odors

Observations of ~~tobacco~~ smoke or odors of ~~tobacco~~ smoke in nonsmoking areas may be an indicator of smoke in these areas and a basis for air quality testing pursuant to 310:355-15-2 ~~or 310:355-15-3~~.

### 310:355-15-3. Detecting smoke by instrument [REVOKED]

~~For purposes of measuring presence or absence of second-hand smoke by instrument, if necessary, an indicator of tobacco smoke widely accepted by the scientific community such as fine respirable suspended particles or nicotine measurements will be used.~~

## SUBCHAPTER 17. SIGNAGE

### 310:355-17-1. Entrances to buildings where smoking is prohibited

All buildings that are public places and where smoking is prohibited inside the entrance pursuant to the Act shall have posted at each such entrance a conspicuous sign or decal at least 4" x 2" in size clearly stating that smoking ~~or tobacco use~~ is prohibited or that a ~~smokefree~~smoke-free environment is provided. Signs provided by the Department for this purpose shall meet this requirement.

### 310:355-17-2. Entrances to smoking rooms

~~(a)~~ The owner or operator of a place with a smoking room shall post outside each entrance to a smoking room a sign at least two inches by four inches identifying the space inside as a smoking room.

~~(b) Signs shall be in place within 30 days of the effective date of these rules.~~

### 310:355-17-4. Entrances to other smoking spaces within shared buildings

(a) The owner or operator of a place exempted from the Act, which shares a building with nonsmoking spaces and which elects to permit smoking within its exempted space, shall post outside each interior entrance from a nonsmoking space to its smoking space a sign at least two inches by four inches identifying the space inside as a space in which smoking is permitted.

~~(b) Signs shall be in place within 30 days of the effective date of these rules.~~

(e) Commencing 30 days after these rules become effective, as exempted places establish new smoking spaces inside buildings shared with nonsmoking spaces, this signage shall be in place prior to occupancy.

**SUBCHAPTER 19. DUTIES OF OWNER OR OPERATOR**

**310:355-19-1. Signage [REVOKED]**

~~For any indoor public place, the owner or operator shall see that signage is posted as required in Subchapter 17 of this Chapter.~~

**SUBCHAPTER 21. COMPLIANCE**

**310:355-21-3. Enforcement proceedings**

The Department may initiate enforcement proceedings against any responsible party whom the Department has reason to believe is presently in violation of this Chapter, the Act, 21 O.S. § 1247, or 63 O.S. § 427.8(L) by imposing administrative penalties including fines, seeking injunctive relief in the district court, and/or by referring the complaint to the district attorney for criminal prosecution.

**310:355-21-4. Administrative hearings and appeals, and fines**

(a) Any hearing and appeal requested under this Chapter shall be conducted in accord with the Oklahoma Administrative Procedures Act ("Oklahoma APA") and Chapter 2 of this title. ~~The Department must prove by a preponderance of the evidence that the responsible person has violated a provision of this Chapter or the Act in order to assess an administrative penalty against the responsible person.~~

(b) ~~Any final order of the Department may be appealed to the district court by an aggrieved party within thirty (30) days as provided in Article II of the Oklahoma APA [75 O.S., §§ 308a et seq].~~ Administrative fines for violations will be in accordance with 63 O.S. § 1-1526.1.

**310:355-21-5. Nursing homes and employees of nursing facilities [REVOKED]**

~~In instances of violations of the Act by a nursing home or employee of a nursing home, following notice and hearings as provided in this Subchapter, the Department may assess an administrative penalty against the facility and/or individual in the amount of \$50.00 for the first offense within a one year period, \$100.00 for the second offense within a one year period, and \$200.00 for a third or subsequent offense within a one year period.~~

**SUBCHAPTER 23. REBATE PROGRAM FOR THE CLEAN AIR IN RESTAURANTS ACT [REVOKED]**

**310:355-23-1. Definitions [REVOKED]**

~~In addition to the definitions contained at OAC 310:355-1-6, the following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~"CARA" means the Clean Air in Restaurants Act, [63 O.S. § 1-1515].~~

~~"Construction" means the physical modification of an existing space, the physical modification of an expansion of an existing space, or the physical modification of a space in a new structure to meet the requirements of a smoking room, excluding decorations.~~

~~"Depreciation" means a capitalized expenditure reported as an expense on a federal tax return.~~

~~"Expenditure" means the actual payment of cash or cash equivalent for the construction of a smoking room, as evidenced by a receipt, invoice, voucher or other similar document and reported on a federal tax return, whether capitalized or not.~~

~~"Legal entity" means a partnership, limited liability corporation or other corporation, lawfully doing business in the State of Oklahoma that has filed all the necessary documentation and is in good standing with the Oklahoma Secretary of State.~~

~~"OAC" means Oklahoma Administrative Code.~~

~~"O.S." means Oklahoma Statute.~~

~~"Owner" means a person or other legal entity that owns a restaurant.~~

~~"Smokefree" means free from smoke.~~

~~"Smoking room" means a room in a restaurant constructed pursuant to the requirements of 21 O.S. § 1247 (J) and the requirements of OAC 310:355.~~

**310:355-23-2. Eligibility [REVOKED]**

The owner of a restaurant may be eligible for a rebate for the construction of a smoking room, if the owner can demonstrate to the satisfaction of the Department:

- (1) That the smoking room was constructed after June 6, 2003 and before November 1, 2010;
- (2) That the smoking room was not found by the Department to be in violation of the requirements located at 21 O.S. § 1247 (J) and contained in OAC 310:355; and
- (3) That the restaurant is smokefree prior to the time of receiving the rebate, but no later than January 1, 2013.

**310:355-23-3. Application [REVOKED]**

The owner of a restaurant, who requests a rebate for expenditures in the construction of a smoking room, pursuant to the Clean Air in Restaurants Act, shall file an application with the Department on forms prescribed by the Department. All applications must be received by the Department no later than January 1, 2014 for eligibility to receive the rebate. The application shall include:

- (1) The name and address of the owner of the restaurant;
- (2) The name and address of the restaurant;
- (3) When the smoking room was constructed;

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- (4) The plans detailing the construction of the smoking room;
- (5) Documentation of the capitalization of the construction, depreciation taken for federal tax purpose and agreement that the Department can have access to review the actual tax returns for the relevant years depreciation of the smoking room was taken;
- (6) Documentation that the construction of the smoking room met the requirements of 21 O.S. § 1247 (J) and OAC 310:355; and
- (7) An agreement that the restaurant will remain completely smokefree under the current or any future owners.

## 310:355-23-4. Rebate [REVOKED]

- (a) Upon a determination by the Department that an application, filed in compliance with the requirements of OAC 310:355-23-3, meets the requirements contained in OAC 310:355-23-2 and confirmation by the Department that the restaurant is completely smokefree, the owner of a restaurant shall receive a rebate from the Tobacco Prevention and Cessation Revolving Fund for fifty percent (50%) of the capitalized expenditures for construction of the smoking room, minus any depreciation taken from said expenditures.
- (b) If the Tobacco Prevention and Cessation Revolving Fund does not have sufficient monies to pay the rebate in the fiscal year the application was received, in accordance with the requirements of OAC 310:355-23, payment of the rebate may be made in the subsequent fiscal year.

## 310:355-23-5. Waiver [REVOKED]

- (a) Any requirement established for the Rebate Program for the Clean Air in Restaurants Act contained at OAC 310:355-23 may be waived by the Commissioner of Health or designee, if the Commissioner or designee determines that the requirements, as applied to the Owner, conflicts or is inconsistent with CARA.
- (b) A request for waiver of any requirement established for the Rebate Program for the Clean Air in Restaurants Act contained at OAC 310:355-23 shall be made by the Owner, in writing, and submitted to the Department. The request shall specify the need for the waiver.
- (c) The approval or denial of a waiver is at the discretion of the Commissioner of Health or designee. Any approval or denial of the waiver shall be made, in writing, and mailed, by certified mail, to the Owner.

[OAR Docket #22-599; filed 7-12-22]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 515. COMMUNICABLE DISEASE AND INJURY REPORTING

[OAR Docket #22-600]

RULEMAKING ACTION:  
PERMANENT final adoption

### RULES:

Subchapter 1. Disease and Injury Reporting  
310:515-1-1 [AMENDED]  
310:515-1-2 [AMENDED]  
310:515-1-3 [AMENDED]  
310:515-1-4 [AMENDED]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

October 18, 2021

### COMMENT PERIOD:

November 15, 2021 through December 15, 2021

### PUBLIC HEARING:

December 15, 2021

### ADOPTION:

January 20, 2022

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

January 20, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. Disease and Injury Reporting  
310:515-1-1 [AMENDED]  
310:515-1-2 [AMENDED]  
310:515-1-3 [AMENDED]  
310:515-1-4 [AMENDED]  
310:515-1-8 [AMENDED]  
310:515-1-10 [NEW]

#### Gubernatorial approval:

August 12, 2021

#### Register publication:

39 Ok Reg 6

#### Docket number:

21-715

#### INCORPORATIONS BY REFERENCE:

n/a

#### GIST/ANALYSIS:

OAC 515-1-1 states the statutory authority for the rules. OAC 515-1-2, OAC 515-1-3 and OAC 515-1-4 update the basis for reporting communicable diseases and require that every practicing physician and clinical laboratory submit reports to the State Department of Health in the manner, format and frequency prescribed by the Commissioner of Health. The Rules require the submission of electronic records. OAC 310:515-1-2, OAC 310:515-1-3 and OAC 310:515-1-4 clarify the requirements for submitting reports electronically. OAC 515-1-4 requires reporting of positive HIV test results, including HIV nucleotide sequences. All negative HIV test results, negative HCV RNA test results, and HIV nucleotide sequences are only reportable by laboratories. Reporting requirements for LGV were clarified to state that LGV is reported as chlamydia and designated as LGV.

#### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. DISEASE AND INJURY REPORTING

**310:515-1-1. Purpose**

The rules in this Chapter implement the Communicable Diseases Reporting Regulations, 63 O.S. ~~1981~~, §§1-104, 1-106, 1-502, and 1-503.

**310:515-1-2. Diseases to be reported**

The diseases listed in this Chapter must be reported, along with patient identifiers, demographics, and contact information, to the Department upon discovery as dictated in sections OAC 310:515-1-3 and OAC 310:515-1-4. Laboratories ~~having greater than 400 positive tests performed on site per year for reportable~~ reporting diseases described in 310:515-1-3, 310:515-1-4(1) and 310:515-1-4(2), or as may be otherwise required to be reported by OSDH, shall ~~begin electronic laboratory reporting~~ be reported electronically using meaningful use standards the manner and format prescribed by the State Commissioner of Health.

**310:515-1-3. Diseases and conditions to be reported immediately**

The following diseases/conditions associated with humans must be reported by any health practitioner or laboratory personnel to the OSDH electronically via secure electronic data transmission and by telephone (405 426-8710) ~~via the secure, web-based PHIDDO system or by telephone (405 271 4060 or 800 234 5963)~~ immediately upon suspicion, diagnosis, or testing.

- (1) Anthrax (*Bacillus anthracis*).
- (2) Bioterrorism - suspected disease.
- (3) Botulism (*Clostridium botulinum*).
- (4) Diphtheria (*Corynebacterium diphtheriae*).
- (5) Free-living amebae infections causing primary amebic meningoencephalitis (*Naegleria fowleri*).
- (6) Hepatitis B during pregnancy (HBsAg+).
- (7) Measles (Rubeola).
- (8) Meningococcal invasive disease (*Neisseria meningitidis*).
- (9) Novel coronavirus.
- (10) Novel influenza A.
- (11) Outbreaks of apparent infectious disease.
- (12) Plague (*Yersinia pestis*).
- (13) Poliomyelitis.
- (14) Rabies.
- (15) Smallpox.
- (16) Typhoid fever (*Salmonella Typhi*).
- (17) Viral hemorrhagic fever.

**310:515-1-4. Additional diseases, conditions, and injuries to be reported**

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

- (1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically ~~via the PHIDDO system, telephoned or submitted~~ via secure electronic data transmission to the

OSDH within one (1) working day (Monday through Friday, state holidays excepted) of diagnosis or positive test.

- (A) Acid Fast Bacillus (AFB) positive smear. Report only if no additional testing is performed or subsequent testing is indicative of *Mycobacterium tuberculosis* Complex.
- (B) AIDS.
- (C) *Anaplasma phagocytophilum* infection.
- (D) Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus, chikungunya virus, Zika virus).
- (E) Brucellosis (*Brucella* spp.).
- (F) Campylobacteriosis (*Campylobacter* spp.).
- (G) Congenital rubella syndrome.
- (H) Cryptosporidiosis (*Cryptosporidium* spp.).
- (I) Cyclosporiasis (*Cyclospora cayetanensis*).
- (J) Dengue Fever.
- (K) *E. coli* O157, O157:H7, or a Shiga toxin producing *E. coli*. (STEC)
- (L) Ehrlichiosis (*Ehrlichia* spp.).
- (M) *Haemophilus influenzae* invasive disease.
- (N) Hantavirus infection, without pulmonary syndrome.
- (O) Hantavirus pulmonary syndrome.
- (P) Hemolytic uremic syndrome, postdiarrheal.
- (Q) Hepatitis A infection (Anti-HAV-IgM+).
- (R) Hepatitis B infection. If any of the following are positive, then all test results on the hepatitis panel must be reported: HBsAg+, anti-HBc-IgM+, HBeAg+, or HBV DNA+.
- (S) Hepatitis C infection in persons having jaundice or ALT > or = 200 with laboratory confirmation. If hepatitis C EIA is confirmed by NAT for HCV RNA, or s/co ratio or index is predictive of a true positive then report results of the entire hepatitis panel. Positive HCV RNA are reportable by both laboratories and providers. Negative test results for HCV RNA tests are reportable by laboratories only.
- (T) HIV.
  - (i) All tests indicative of HIV infection are reportable by laboratories and providers. If any HIV test is positive, then all HIV test results on the panel must be reported by laboratories. For infants < or = 18 months, all HIV tests ordered, regardless of test result must be reported by laboratories.
  - (ii) All HIV nucleotide sequences and negative HIV test results are only reportable by laboratories.
- (U) Influenza-associated hospitalization or death.
- (V) Legionellosis (*Legionella* spp.).
- (W) Leptospirosis (*Leptospira interrogans*).
- (X) Listeriosis (*Listeria monocytogenes*).
- (Y) Lyme disease (*Borrelia burgdorferi*).
- (Z) Malaria (*Plasmodium* spp.).
- (AA) Mumps.
- (BB) Pertussis (*Bordetella pertussis*).

- (CC) Psittacosis (*Chlamydophila psittaci*).
  - (DD) Q fever (*Coxiella burnetii*).
  - (EE) Rubella.
  - (FF) Salmonellosis (*Salmonella* spp.).
  - (GG) Shigellosis (*Shigella* spp.).
  - (HH) Spotted Fever Rickettsiosis (*Rickettsia* spp.) hospitalization or death.
  - (II) Streptococcal disease, invasive, Group A (GAS) (*Streptococcus pyogenes*).
  - (JJ) *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.
  - (KK) Syphilis (*Treponema pallidum*). Nontreponemal and treponemal tests are reportable. If any syphilis test is positive, then all syphilis test results on the panel must be reported. For infants < or = 18 months, all syphilis tests ordered, regardless of test result, must be reported.
  - (LL) Tetanus (*Clostridium tetani*).
  - (MM) Trichinellosis (*Trichinella spiralis*).
  - (NN) Tuberculosis (*Mycobacterium tuberculosis*).
  - (OO) Tularemia (*Francisella tularensis*).
  - (PP) Unusual disease or syndrome.
  - (QQ) Vibriosis (*Vibrionaceae* family: *Vibrio* spp. (including cholera), *Grimontia* spp., *Photobacterium* spp., and other genera in the family).
  - (RR) Yellow Fever.
- (2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH via secure electronic data submission within one (1) month of diagnosis or test result.
- (A) CD4 cell count with corresponding CD4 cell count percentage of total (by laboratories only).
  - (B) Chlamydia (*Chlamydia trachomatis*).
  - (C) Creutzfeldt-Jakob disease.
  - (D) Gonorrhea (*Neisseria gonorrhoeae*).
  - (E) HIV viral load (by laboratories only).
  - (F) LGV. Lymphogranuloma Venereum is reportable as Chlamydia and designated as LGV.
- (3) **Occupational or environmental diseases.** Laboratories and healthcare providers must report blood lead level results pursuant to the requirements established in Title 310, Chapter 512, childhood Lead Poisoning Prevention Rules.
- (4) **Injuries.**
- (A) Burns.
  - (B) Drownings and near drownings.
  - (C) Traumatic brain injuries.
  - (D) Traumatic spinal cord injuries.
  - (E) Poisonings, including toxic and adverse effects.

[OAR Docket #22-600; filed 7-12-22]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 517. NOVEL CORONAVIRUS REGULATIONS

[OAR Docket #22-601]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions [NEW]

310:517-1-1 [NEW]

Subchapter 2. Novel Coronavirus Reports [NEW]

310:517-2-1 [NEW]

310:517-2-2 [NEW]

Subchapter 3. Hospital Licensed Bed Capacity [NEW]

310:517-3-1 [NEW]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

October 18, 2021

### COMMENT PERIOD:

November 15, 2021 through December 15, 2021

### PUBLIC HEARING:

December 15, 2021

### ADOPTION:

January 20, 2022

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

January 20, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The rules OAC 310:517-1-1, OAC 310:517-2-1 and OAC 310:517-2-2 update the basis for reporting novel coronavirus cases and require that every practicing physician and clinical laboratory using an FDA-approved test for the novel coronavirus submit reports to the State Department of Health in the manner, format and frequency prescribed by the Commissioner of Health. The Rules require the submission of electronic records. The Rules also require that hospitals and physician clinics in Oklahoma submit to the State Department of Health in the manner, format and frequency prescribed by the Commissioner of Health, the number of patients in the hospital receiving treatment for novel coronavirus, the number of patients receiving treatment for novel coronavirus who are currently admitted to the ICU and the vaccination status of patients receiving treatment for the novel coronavirus. The rule OAC 310:517-2-1 requires hospitals and laboratories to send, at a minimum, 10% of their weekly positive novel coronavirus specimens to the OSDH Public Health Laboratory for variant testing. The collection, packaging, and shipping of the positive novel coronavirus specimen must be in accordance with OSDH Public Health Laboratory guidelines. OAC 310:517-3-1 will allow hospitals licensed by the Commissioner of Health to expand or modify bed capacity if certain conditions are met. It also requires hospitals participating in the CMS Hospital Without Walls program to attest to certain requirements being met.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

**SUBCHAPTER 1. GENERAL PROVISIONS**

**310:517-1-1. Purpose**

The purpose of this chapter is to collect data determined to be critical to assess the likelihood of, and to prevent, a future public health emergency related to novel coronavirus and to establish the specific data reporting requirements and the procedures for submission of the data to the Oklahoma State Department of Health. The rules in this Chapter implement in part, the communicable disease reporting laws in Title 63 O.S. §§ 1-104 and 1-106, Commissioner of Health, Title 63 O.S. § 1-502, Prevention and Control of Disease and Title 63 O.S. § 1-503, Reports of Disease. The rules set forth the conditions under which hospitals are allowed to expand or modify bed capacity.

**SUBCHAPTER 2. NOVEL CORONAVIRUS REPORTS**

**310:517-2-1. Specimens to be sent to the Public Health Laboratory**

Hospitals and laboratories must send, at a minimum, 10% of their weekly positive novel coronavirus specimens to the OSDH Public Health Laboratory for variant testing. The collection, packaging, and shipping of the positive novel coronavirus specimen must be in accordance with OSDH Public Health Laboratory guidelines.

**310:517-2-2. Emergency reporting requirements**

(a) Every practicing physician and clinical laboratory that is utilizing, or has utilized, an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of novel coronavirus, shall submit reports to OSDH in a manner, format, and frequency prescribed by the State Commissioner of Health of all test results, both positive and negative.

(b) Hospitals and Physician Clinics operating in the State of Oklahoma shall submit the following critical data to OSDH in a manner, format, and frequency prescribed by the State Commissioner of Health:

- (1) The number of patients in the hospital receiving treatment for novel coronavirus;
- (2) The number of patients receiving treatment for novel coronavirus who are currently admitted to the ICU; and
- (3) The novel coronavirus vaccination status of patients in the hospital receiving treatment for novel coronavirus.

(c) All reports required by this section 310:5-1-10 must be submitted electronically to OSDH in digital form that is created, distributed and retrievable by a computer system. Electronic records generated according to these requirements shall be in the manner and format prescribed by the State Commissioner of Health.

(d) This rule shall be active and remain in effect when there is a federal or state declaration of emergency related to novel coronavirus or until the State Commissioner of Health determines the reporting is no longer needed.

**SUBCHAPTER 3. HOSPITAL LICENSED BED CAPACITY**

**310:517-3-1. Procedures to expand or modify licensed bed capacity**

(a) A hospital's licensed bed capacity can be expanded and/or modified, if it submits a letter to the Department that is signed by an authorized hospital authority, notarized and includes the following statements:

(1) the hospital attests that its emergency preparedness plan includes the expanded and/ or modified bed plan and is approved by its governing body;

(2) the hospital attests the location of the modified and/or expanded beds. The location must include:

(A) the building name and floor number if the modified and/or expanded beds are on the hospital's campus; or

(B) the physical address if the modified and/or expanded beds are not on the hospital's campus.

(3) if the hospital is also participating in Centers for Medicare & Medicaid Services' (CMS) Hospital Without Walls program (program), then the hospital attests:

(A) that its governing body has approved of its participation in the program;

(B) that it is participating in accordance with CMS requirements; and

(C) that the portions of the program that it is participating in is not in conflict with state statute.

(b) Licensed capacity refers to the total number and type of beds a hospital stated in the Hospital Designation of Licensed Beds Form (Form 929) filed with the Department.

(c) This rule is limited to hospitals licensed by the Commissioner of Health.

(d) This rule does not affect a hospital's obligation to comply with requirements of other regulatory bodies.

(e) This rule is effective until the Commissioner of Health determines that the need for hospitals to exceed and/or modify their licensed bed capacity is no longer needed.

[OAR Docket #22-601; filed 7-12-22]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 521. CONTROL AND TREATMENT OF COMMUNICABLE DISEASE

[OAR Docket #22-602]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 9. Harm Reduction Services [NEW]

310:521-9-1 [NEW]

310:521-9-2 [NEW]

310:521-9-3 [NEW]

310:521-9-4 [NEW]

310:521-9-5 [NEW]

310:521-9-6 [NEW]

310:521-9-7 [NEW]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

October 18, 2021

### COMMENT PERIOD:

November 15, 2021 through December 15, 2021

### PUBLIC HEARING:

December 15, 2021

### ADOPTION:

January 20, 2022

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

January 20, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed Subchapter 9 rules implement the requirements for harm-reduction services established under Title 63 O.S. §§ 2-101(48) and 2-1101. Until July 1, 2026, this statute permits government entities, religious institutions; nonprofit organizations; for-profit companies; nongovernmental entities partnering with a government agency; and tribal governments to engage in harm reduction services. Any entity offering such services is required to register with the Oklahoma State Department of Health. The measure also requires providers of harm-reduction services to report required information regarding their services and clients served to the State Department of Health at least quarterly. These rules establish the registration and reporting requirements for providers of harm-reduction services.

### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 9. HARM-REDUCTION SERVICES

### 310:521-9-1. Purpose and specific authority

The purpose of this subchapter is to establish the rules for harm-reduction services. The State Commissioner of Health is authorized pursuant to Title 63 O.S. § 2-1101 to promulgate rules for the implementation of harm-reduction services established under Title 63 O.S. §§ 2-101(48) and 2-1101, the Uniform Controlled Dangerous Substances Act, Article 10, Harm-Reduction Services.

### 310:521-9-2. Definitions

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

"Administrator" means the director or similarly titled person responsible for the entity providing harm-reduction services through a program registered with the Department.

"Applicant" means the entity in whose name the harm-reduction services program shall be registered.

"AIDS" means Acquired Immunodeficiency Syndrome and is the most severe manifestation of infection with the Human Immunodeficiency Virus (HIV). The Centers for Disease Control and Prevention (CDC) lists numerous opportunistic infections and neoplasms (cancers) that, in the presence of HIV infection, constitute an AIDS diagnosis.

"Client" means a person who receives assistance through a harm-reduction services program.

"Harm-Reduction Services" means programs established to: *reduce the spread of infectious diseases related to injection drug use, reduce drug dependency, overdose deaths and associated complications, and increase safe recovery and disposal of used syringes and sharp waste.* Title 63 O.S. § 2-101(48)

"Hepatitis B (HBV)" means a vaccine-preventable liver infection caused by the hepatitis B virus (HBV). Hepatitis B is spread when blood, semen, or other body fluids from a person infected with the virus enters the body of someone who is not infected.

"Hepatitis C (HCV)" means a liver infection caused by the hepatitis C virus (HCV). Hepatitis C is spread through contact with blood from an infected person.

"Human Immunodeficiency Virus (HIV)" means HIV (human immunodeficiency virus) is a virus that attacks the body's immune system. If HIV is not treated, it can lead to AIDS (acquired immunodeficiency syndrome).

"HIV positive" means a person has tested positive for HIV antibodies, the virus known to cause AIDS.

"Policies and Procedures Manual" means a written manual detailing the policies and procedures for the safe and lawful operation of a harm-reduction services program.

"Program" means harm-reduction services provided by an entity registered to provide such services with the Department.

"Program Site" means the location where harm-reduction services are provided.



"Sharps Waste" means used needles, syringes, or lancets.  
"Staff" means any employee, independent contractor, or volunteer adequately educated and trained to provide harm-reduction services on behalf of a program.

**310:521-9-3. Eligible providers**

Harm-reduction services are limited to persons in the following categories:

- (1) Government entities, as provided in Title 63 O.S. § 2-1101;
- (2) Religious institutions or churches;
- (3) Nonprofit organizations;
- (4) For-profit companies;
- (5) Nongovernmental entities partnering with a governmental agency; and
- (6) Tribal governments. Title 63 O.S. § 2-1101(A)

**310:521-9-4. Registration requirements.**

No entity may engage in harm-reduction services without first registering with the Department in the form and manner prescribed by the Department.

**310:521-9-5. Scope of services**

- (a) Registered programs may engage in harm-reduction services as outlined in 63 O.S. § 2-1101(B) and shall offer such services free of charge.
- (b) Registered programs shall operate and furnish services in compliance with all applicable federal, state, and local laws and regulations.

**310:521-9-6. Application for registration**

(a) All entities providing harm-reduction services must complete an application for registration with the Sexual Health and Harm Reduction Service Program at the Department. All applicants must provide the following information:

- (1) The legal name and form of organization registered with the Oklahoma Secretary of State as well as the name under which it will be doing business in the State of Oklahoma.
- (2) The name, address, telephone number, and email address for the administrator of the program and a secondary entity contact, together with:
  - (A) A signed, notarized statement attesting that the applicant accepts full responsibility for ensuring that the program operates in compliance with the provisions of all federal and state laws and regulations;
  - (B) The address and telephone number for each program site, including both fixed locations with permanent structures and venues at which services may be provided by a mobile unit;
  - (C) The scheduled hours of operations for each program site; and
  - (D) A copy of the program's most current version of harm-reduction service policies and procedures, including but not limited to, clear and concise procedures for the safe and secure disposal of sharps waste

and any biomedical waste generated by services provided by the program.

(b) Registration applications will be reviewed within sixty (60) days of receipt thereof by the Department. A written correspondence of approval or denial will be sent to the applicant. If an application is denied, a letter of corrective actions may be supplied to the applicant.

(c) Registration shall be valid for one (1) year and shall be renewed by submission of an application for renewal at least thirty (30) days prior to expiration of current registration in the form and manner prescribed by the Department.

**310:521-9-7. Quarterly reporting to the Department**

(a) Programs shall submit to the Department electronic reports, in the manner designated by the Department, on the last business day of each calendar quarter, which report the following information for the most recent calendar quarter:

- (1) The number of clients served including basic demographic information;
- (2) Number and type of referrals provided;
- (3) Number of syringes, test kits and antagonists distributed;
- (4) Number of used syringes collected; and
- (5) Number of rapid HIV and viral hepatitis tests performed including the number of reactive test results. Title 63 O.S. § 2-1101(C).

(b) Failure to report data described in Section 310:521-9-7 constitutes grounds for non-renewal of the service provider's registration.

*[OAR Docket #22-602; filed 7-12-22]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 605. ADULT DAY CARE CENTERS**

*[OAR Docket #22-603]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 5. Licensure Requirements
- 310:605-5-1 [AMENDED]
- 310:605-5-2 [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

December 13, 2022

**COMMENT PERIOD:**

January 18, 2022 through February 18, 2022

**PUBLIC HEARING:**

February 18, 2022

**ADOPTION:**

March 4, 2022

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

March 4, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

# Permanent Final Adoptions

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed rule would change the licensure renewal from annual to every three years. The change aligns the rule with the requirements of SB 654, which became effective November 1, 2021. The legislation changed the licensure renewal from annual to every three years. This changes the fee for licensure to \$225.00 every three years, which is the sum of the previous \$75 per year.

## CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 5. LICENSURE REQUIREMENTS

### 310:605-5-1. License required

(a) It shall be unlawful to operate an adult day care center without possessing a current, valid license issued pursuant to the Adult Day Care Act. It shall be unlawful for any holder of a license issued pursuant to the Adult Day Care Act to advertise or hold out to the public that it holds a license for a center other than that for which it actually holds a license.

(b) *Centers to be licensed shall include all adult day care centers. Sheltered workshops and senior recreational centers which do not receive participant fees for services are not required to be licensed. It shall be unlawful to operate a center without first obtaining a license for such operation as required by the Adult Day Care Act, regardless of other licenses held by the operator. Organizations operating more than one center shall obtain a license for each site. [63:1-873.B]*

(c) *The license for operation of a center shall be issued by the State Department of Health. The license shall:*

- (1) *Not be transferable or assignable;*
- (2) *Be posted in a conspicuous place on the licensed premises;*
- (3) *Be issued only for the premises named in the application; and*
- (4) *Expire on July 31 of each year, provided an initial license shall expire one hundred eighty (180) days after the date of issuance. [63:1-873.C] Expire thirty-six (36) months from the date of issuance, provided an initial license shall expire one hundred eighty (180) days after the date of issuance. Licenses may be issued for a period of more than twelve (12) months, but not more than thirty-six*

*(36) months, for the licensing period immediately following November 1, 2021, in order to permit an equitable distribution of license expiration dates to all months of the year. [63:1-873.C(4)]*

(d) *The issuance or renewal of a license after notice of a violation has been sent shall not constitute a waiver by the State Department of Health of its power to subsequently revoke the license or take other enforcement action for any violations of the Adult Day Care Act committed prior to issuance or renewal of the license. [63:1-873.F]*

### 310:605-5-2. Application for license or renewal

(a) An applicant for a license to operate an adult day care center must file an application on a form provided by the State Department of Health and pay an initial license fee of seventy-five dollars (\$75.00).

(b) Application for license renewal must be filed at least forty-five (45) days before the expiration date of the current license on a form approved by the Department and a license fee of seventy-five dollars (\$75.00) per year of licensure must be paid.

~~(c) The fee for renewal of a license that expires before July 31 shall be prorated based on the number of days from the expiration date of the license until the next July 31.~~

[OAR Docket #22-603; filed 7-12-22]

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

[OAR Docket #22-604]

## RULEMAKING ACTION:

PERMANENT final adoption

## RULES:

Subchapter 1. General EMS Programs

Part 1. General Provisions

310:641-1-7 [AMENDED]

310:641-1-8 [NEW]

Part 3. Special Provisions [REVOKED]

310:641-1-10 [REVOKED]

Subchapter 2. Emergency Medical Service Agency Applications [NEW]

Part 1. Special Provisions [NEW]

310:641-2-1 [NEW]

310:641-2-2 [NEW]

310:641-2-3 [NEW]

Subchapter 3. Ground Ambulance Service

Part 3. Ground Ambulance Services

310:641-3-10 [REVOKED]

310:641-3-15 [AMENDED]

Part 5. Ground Transport Vehicles

310:641-3-23 [AMENDED]

310:641-3-25 [AMENDED]

Part 11. Medical Control

310:641-3-59 [AMENDED]

Part 13. Sanitation

310:641-3-63 [AMENDED]

Subchapter 5. Personnel Licenses and Certification

Part 3. Emergency Medical Personnel Licenses

310:641-5-11 [AMENDED]

310:641-5-18 [REVOKED]

- 310:641-5-19 [AMENDED]
- Subchapter 7. Training Programs
- Part 1. General Provisions
- 310:641-7-1 [AMENDED]
- Part 3. Training Programs
- 310:641-7-10 [AMENDED]
- 310:641-7-11 [AMENDED]
- 310:641-7-12 [AMENDED]
- 310:641-7-13 [AMENDED]
- 310:641-7-14 [AMENDED]
- 310:641-7-14.1 [NEW]
- 310:641-7-15 [AMENDED]
- 310:641-7-16 [AMENDED]
- Part 5. Instructor Qualifications
- 310:641-7-20 [AMENDED]
- 310:641-7-21 [AMENDED]
- 310:641-7-24 [AMENDED]
- Part 13. Semi-Automated External Defibrillator Training
- 310:641-7-60 [REVOKED]
- 310:641-7-61 [AMENDED]
- Subchapter 11. Specialty Care Ambulance Service
- 310:641-11-2 [REVOKED]
- 310:641-11-11 [AMENDED]
- 310:641-11-12 [AMENDED]
- 310:641-11-14 [AMENDED]
- 310:641-11-20 [AMENDED]
- 310:641-11-22 [AMENDED]
- Subchapter 13. Air Ambulance Service
- 310:641-13-2 [REVOKED]
- 310:641-13-10 [AMENDED]
- 310:641-13-19 [REVOKED]
- 310:641-13-21 [AMENDED]
- Subchapter 15. Emergency Medical Response Agency
- 310:641-15-2 [REVOKED]
- 310:641-15-3 [REVOKED]
- 310:641-15-5 [AMENDED]
- 310:641-15-10 [AMENDED]
- 310:641-15-11 [AMENDED]
- 310:641-15-13 [AMENDED]
- 310:641-15-15 [AMENDED]
- 310:641-15-22 [AMENDED]
- Subchapter 17. Stretcher Van Service
- 310:641-17-2 [REVOKED]
- 310:641-17-18 [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; Title 63 O.S. § 1-104; Title 63 O.S. § 1-701 et seq.

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

December 13, 2021

**COMMENT PERIOD:**

January 18, 2022 through February 18, 2022

**PUBLIC HEARING:**

February 18, 2022

**ADOPTION:**

March 4, 2022

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

March 4, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The Oklahoma Trauma and Emergency Response Advisory Council asked the EMS Division to form a subcommittee to review potential changes for the EMS Regulations. The Subcommittee worked in 2019 and 2020 to complete these changes. Additionally, the Governors EO (2020-003) has mandated

the need to review existing rules in an effort to remove duplicative, outdated, and unnecessary regulations. The proposed rules include both rule reduction language, clarifying language, deletions, revocations, amendments, and new rules. This has resulted in:

One new subchapter - while revoking 6 application sections;

Two new rules - One provides options for staffing ambulances, and the other establishes new criteria for training programs renewing their certification;

The section for renewing EMR certifications was included in the Section for renewing licensed emergency medical personnel;

Revoking a section of Air Ambulance Regulations that is not enforceable due to Federal preemption;

Revoking a minimum driver standard for Emergency Medical Response Agencies;

Removes a requirement for submitting a minimum equipment list for Emergency Medical Response Agencies;

Deleting a requirement for EMRA personnel to obtain signatures for transferring care to EMS transport agencies;

Deleting a requirement for tracking the origination of an ambulance for Stretcher Van Agencies; and

A total of 51 proposed revocations, deletions, and amendments will better define, clarify, delete, or improve aspects of a specific regulation for the agencies, personnel and the communities that served by the certified and licensed personnel and agencies.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL EMS PROGRAMS**

**PART 1. GENERAL PROVISIONS**

**310:641-1-7. Definitions**

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

"**ACLS**" means Advanced Cardiac Life Support.

"**Act**" means the "Oklahoma Emergency Response Systems Development Act".

"**Advanced Emergency Medical Technician**" means an AEMT as licensed pursuant to the Act or this chapter.

"**Advanced Life Support (ALS) Emergency Medical Services Training Program**" means an organization approved by the Department to conduct the following ALS training: Emergency Medical Responder, Emergency Medical Responder Refresher, Emergency Medical Technician, Emergency Medical Technician Refresher, Advanced Emergency Medical Technician Refresher, Intermediate Refresher, Paramedic, Paramedic Refresher, Continuing Education at the Intermediate and Paramedic Levels, and such other courses of instruction that may be designated by the Department.

"**Agency**" means a Ground Ambulance Service, Specialty Care Ambulance Service, Stretcher Van Service, Air Ambulance Service, or Emergency Medical Response Agency.

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"**AHA**" means the American Heart Association.

"**Ambulance**" means any ground, air or water vehicle which is or should be approved by the Commissioner of Health, designed and equipped to transport a patient or patients and to provide appropriate on-scene and en route patient stabilization and care as required. Vehicles used as ambulances shall meet such standards as may be required by the State Board of Health for approval, and shall display evidence of such approval at all times. [Title 63 O.S. Section 1-2503].

~~"**AMLS**" means Advanced Medical Life Support.~~

~~"**ATLS**" means Advanced Trauma Life Support.~~

~~"**Base Station**" means the primary location from which ambulances and crews respond to emergency calls on a twenty-four (24) hour basis. The Base Station may include the principal business office, living quarters for personnel, training institution, and/or communications center a location from which an ambulance responds. The Base Station may include the principal business office, living quarters for personnel training, and communication center.~~

"**Basic Life Support (BLS) Emergency Medical Services Training Program**" means an organization approved by the Department to conduct the following BLS training: Emergency Medical Responder, Emergency Medical Responder Refresher, Emergency Medical Technician Basic, Emergency Medical Technician Basic Refresher, Continuing Education at the Emergency Medical Technician Basic level, and such other courses of instruction that may be designated by the Department.

"**BLS**" means Basic Life Support, and includes cardiopulmonary resuscitation (CPR) and utilization of Semi-Automated Advisory Defibrillator (SAAD).

~~"**BTLS**" means Basic Trauma Life Support.~~

"**Board**" means the State Board of Health.

"**Call Log**" or "**request for service log**" means a summary of all requests for service that an agency receives, regardless of disposition.

"**Call Received**" means that a call has been received by an agency when enough information has been received to begin responding to a request for service.

"**Certificate**" means any certification or certificate issued by the Department, pursuant to the Act or this Chapter.

"**Clinical Coordinator**" means the individual designated in writing by a training program as responsible for coordination and supervision of clinical experiences.

"**Clinical Experience**" means all supervised learning experiences required and included as part of a training course in which the student provides or observes direct patient care. This includes vehicular experiences with a licensed ambulance service.

"**Council**" means the Oklahoma Trauma and Emergency Response Advisory Council.

"**Critical Care Paramedic**" means an Oklahoma licensed Paramedic that has received additional training to provide specialized care to patients during interfacility transfers and has provided his or her registration information to the Department.

"**Department**" means the State Department of Health.

"**Distance Learning**" is instruction of didactic portions of curriculum which requires participation of the instructor and students but does not require the students to be physically present in the same location as the instructor.

"**Distributive Education**" means educational activity, in which the learner, the instructor, and the educational materials are not all present in the same place at the same time, e.g., continuing education activities that are offered on the Internet, via CD ROM or video, or through journal articles or audio tapes.

"**Documents, Records, or Copies**" means an electronic or paper copy maintained at the agency, on units, or provided to receiving facilities.

"**DOT**" means the United States Department of Transportation.

"**Division**" means the Emergency Medical Services Division.

"**Emergency**" means the patient being treated or transported is in an immediate risk of dying or losing a limb.

"**Emergency Medical Dispatcher (EMD)**" means a person trained using a Department-approved curriculum for the management of calls for emergency medical care.

"**Emergency Medical Personnel**" means all certified and licensed personnel which provide emergency medical care for an ambulance service.

"**Emergency Medical Responder**" means a person who has successfully completed a state-approved course using the national standard Emergency Medical Responder curriculum and passed a competency-based examination from a state approved testing agency such as the National Registry of EMTs.

"**Emergency Medical Response Agency**" or "**EMRA**" means a person, company, or governmental entity that will utilize certified or licensed emergency medical personnel to provide emergency care but does not transport or transfer patients to a facility. The Department will provide two types of certification.

(A) Pre-hospital EMRAs will operate as part of an Emergency Medical System, responding to requests for service within a response area, supporting and being supported by a licensed ambulance service.

(B) Event Stand-by EMRAs will operate or contract for on-site medical care at locations that are open to the public or that will respond to the public. These types of EMRAs are certified to standby at a location or site and provide medical care to the public.

"**EMS**" means Emergency Medical Services.

"**Emergency Medical System**" means a network of hospitals, different ambulance services, and other healthcare providers that exist in the state.

"**Emergency Medical Technician (EMT)**" means an individual licensed by the Department as an Emergency Medical Technician, formerly known as an EMT-B or Basic.

"**Emergency transfer**" means the movement of an acutely ill or injured patient from the scene to a health care facility (pre-hospital), or the movement of an acutely ill or injured patient from one health care facility to another health care facility (interfacility).

"**Emergency Vehicle Operators Course**" means a course that is meant to improve existing driving skills and

familiarize an emergency vehicle operator or driver with the unique characteristics of driving emergency vehicles.

**"En route Time"** means the elapsed time from the time the emergency call is received by the EMS agency until the ambulance and complete crew is en route to the scene of the emergency.

**"FDA Class One Device"** means a device that is not life-supporting or life-sustaining and does not present a reasonable source of injury through normal usage. In the regulatory context, this applies to the stretcher/gurney and its locking system within the unit or vehicle.

**"First Aid"** means help given to the sick or injured person until full medical treatment arrives or is available. It is the initial response to an injury or illness, which can be given by a non-professional as soon as a medical problem arises.

**"Ground ambulance service"** means an ambulance service licensed at the basic, intermediate, advanced or paramedic life support level as provided in Subchapter 3. It does not mean a specialty care service licensed pursuant to Subchapter 11 or a stretcher van service licensed pursuant to Subchapter 17.

**"Initial Certification or Initial Licensure"** means the first certification or license that an applicant receives after an initial course, or the license or certification an applicant receives after the previous license or certification expired.

**"Intermediate"** means an Emergency Medical Technician-Intermediate as licensed pursuant to the Act or this chapter.

**"Instructor"** means a Department approved instructor that provides is certified to provide instruction at one of three levels:

(A) for initial courses, Level 1 Instructors teach Emergency Medical Responder courses, but may also teach refresher and continuing education courses.

(B) Level 2 Instructors can teach all courses allowed for Level 1 Instructors, plus initial certification and licensure courses.

(C) Level 3 instructors can teach all courses allowed for Level 1 and Level 2 instructors, plus initial instructor courses, refresher courses, and instructor continuing education.

**"Lapse in Medical Direction"** means the Medical Director for an agency has not been accessible to the agency for a period of time as detailed with the agency's policies and agreement.

**"Lead Instructor"** means the lead instructor based on accreditation requirements.

**"License"** means any license issued by the Department, pursuant to the Act or this Chapter.

**"Licensed Service Area"** means the contiguous geographical area identified in an initial ambulance service application or in an amendment to an existing license. The geographic area is identified by the application and supported with documents provided by the local governmental jurisdictions. For ground ambulance services, this is the geographic area the ambulance service has a duty to act within.

**"Medical Control Physician"** or **"Medical Director"** means the licensed physician (M.D. or D.O.) that authorizes

certified or licensed emergency medical personnel to perform procedures and interventions detailed in the agency's approved protocols.

**"NHTSA"** means National Highway Traffic Safety Administration.

**"National Registry"** means the National Registry of Emergency Medical Technicians (NREMT), Columbus, Ohio.

**"Non-emergency"** means the patient being treated or transported is not in an immediate risk of dying or a limb.

**"Non-emergency transfer"** means the movement of any patient in an ambulance other than an emergency transfer.

**"OKEMSIS"** means Oklahoma Emergency Medical Services Information System.

**"PALS"** means Pediatric Advanced Life Support.

**"Patient"** means the person who requests assistance or the person for whom assistance is being requested from an agency.

**"Paramedic"** means an individual licensed by the Department as a Paramedic, formerly known as an EMT-P.

~~**"PEPP"** means Pediatric Education for the Prehospital Professional.~~

~~**"PHTLS"** means Prehospital Trauma Life Support.~~

**"PIC"** means Pilot in Command.

~~**"PPC"** means Prehospital Pediatric Care.~~

**"Post"** means a location where an ambulance may be positioned for an unspecified period of time while awaiting dispatch.

**"Preceptor"** means an individual with education, experience, and expertise in healthcare and approved by a training program to supervise and provide instruction to EMS students during clinical experiences.

**"Program Administrator"** means the individual designated in writing by a training program as responsible for all aspects of EMS training.

**"Program Coordinator"** means the individual designated in writing by a training program as responsible for all aspects of a specified course(s) or EMS program. This individual shall have at least two (2) years experience of full-time equivalent employment as a healthcare practitioner.

**"Protocols"** means the medical treatment and transport guidelines or standing orders that an agency uses when responding to requests for service. An agency's protocols will be approved by the Department.

**"Response time"** means the time from which a call is received by the EMS agency until the time the ambulance and complete crew arrives at the scene, unless the call is scheduled in advance.

**"State Interoperability Governing Body"** or **"SIGB"** means the formal group of public safety officials from across the State working with the Oklahoma Office of Homeland Security to improve communication interoperability.

**"Semi-Automated Advisory Defibrillator"** or **"SAAD"** means a defibrillator that is part of the Basic Life Support curriculum and is also known as Automated External Defibrillator (AED) and Semi-Automated External Defibrillator (SAED).

**"Specialty Care Transports"** or ~~**"SCT"**~~ means interfacility transfers of critically ill or injured patients by an agency with the provision of medically necessary supplies and equipment, above the level of care of the Paramedic. SCT is

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necessary when a patient's condition requires ongoing care that must be provided by one or more healthcare providers in an appropriate specialty area. Examples include emergency or critical care nursing, emergency medicine, respiratory care, cardiovascular care, or a Paramedic with additional training in IV infusions including vasopressors, vasoactive compounds, antiarrhythmics, fibrinolytics, tocolytics, and/or any other parenteral pharmaceutical unique to the patient's special health care needs or special monitors or procedures such as mechanical ventilation, multiple monitors, cardiac balloon pump, external cardiac support (ventricular assist devices, etc.), or any other specialized device or procedure outside the Paramedic scope of practice certified by the referring physician as unique to the patient's health care needs.

**"Statewide Ambulance coverage area"** means a map of all ambulance response areas, maintained by the Department.

**"State Designated Resource Status Reporting and Communication Tool"** means the electronic system utilized to communicate in near real time status of the emergency medical system.

**"Stretcher van"** means any ground vehicle *which is or should be approved by the State Commissioner of Health, which is designed and equipped to transport individuals on a stretcher or gurney type apparatus* [Title 63 O.S. Section 1-2503 (25)].

**"Stretcher van passenger"** means any person who is or will be transported in a reclining position on a stretcher or gurney, who is medically stable, nonemergent and does not require any medical monitoring equipment or assistance during transport [Title 63 O.S. Section 1-2503 (26)].

**"Substation"** means a permanent structure where an ambulance(s) is/are stationed and available for calls on a twenty-four (24) hour basis.

**"Tax Hold"** means an individual with an Oklahoma certification or license who is not in compliance with Title 68 O.S. Section 238.1 and the Oklahoma Administrative Code 710:95-9 as it pertains to professional licensing compliance.

**"Title 47"** means the Oklahoma Motor Vehicle statutes.

**"Training"** means that education which is received through training programs as authorized by emergency medical services rule for training programs (Subchapter 7 of this Chapter).

**"Training Manager"** means an instructor or manager that provides or oversees the training that occurs at an agency, such as continuing education or refresher courses.

**"Transfer"** means the movement of a patient in an ambulance.

**"Trauma transfer and referral center"** means an organization certified by the Department and staffed and equipped for the purpose of directing trauma patient transfers within a region that consists of a county with a population of three hundred thousand (300,000) or more and its contiguous communities, and facilitating the transfer of trauma patients into and out of the region for definitive trauma care at medical facilities that have the capacity and capability to appropriately care for the emergent medical needs of the patient.

## **310:641-1-8. Severance**

If any part or section of this Chapter is found to be invalid and/or declared un-enforceable, then the remaining parts or sections shall remain in effect.

## **PART 3. SPECIAL PROVISIONS [REVOKED]**

### **310:641-1-10. Severance [REVOKED]**

If any part or section of this Chapter is found to be invalid and/or declared un-enforceable, then the remaining parts or sections shall remain in effect.

## **SUBCHAPTER 2. EMERGENCY MEDICAL SERVICE AGENCY APPLICATIONS**

### **PART 1. SPECIAL PROVISIONS**

#### **310:641-2-1. Purpose**

The rules of this Subchapter are promulgated to:

- (1) incorporate the authorization and the minimum requirements for completing an application for all certified and licensed emergency medical service agencies, and
- (2) Provide standards for the enforcement of the "Oklahoma Emergency Response Systems Development Act" and this Chapter.

#### **310:641-2-2. Compliance required**

All applications submitted pursuant to the Act shall comply with all appropriate Federal, State, and local laws, providing such local law does not conflict with Federal or State law.

#### **310:641-2-3. Certification or License required**

(a) No person, company, governmental entity or trust authority shall operate, advertise, or hold themselves out as providing any type of emergency medical service agency without first obtaining a certification or license to operate from the Department. The Department shall have sole discretion to approve or deny an application based on the ability of the applicant to meet the requirements of the Act or this chapter of rules.  
(b) Persons, companies and governmental entities that respond to requests for service off private or governmental property or premises are required to be certified or licensed by the Department. Entities that limit the interventions and activities of their staff members to first aid, CPR, and the use of an AED are not required to be a certified Emergency Medical Response Agency.

- (1) Governmental entities not certified or licensed by the Department may be part of mutual aid and disaster plans.
- (2) Governmental entities may transport patients of governmental entities off governmental property to appropriate facilities.
- (3) Contractors for governmental entities that provide transport services shall be licensed by the Department.

(c) Persons, companies, and governmental entities which operate on their own premises, are exempt from certification and licensing requirement.

(d) An application for a certification or license shall be submitted on forms prescribed and provided by the Department. Ground ambulance, air ambulance, an emergency medical response agency, stretcher van and specialty care services shall each be considered a separate license.

(1) Specialty care licenses are statutorily limited to patient care and interventions above the Paramedic scope of practice.

(2) Specialty Care applicants will declare in the application the type or types of specialty care and patients that will be transported by the agency. The types of specialty care and patients may include, but not be limited to:

(A) adult, pediatric, infant, neonatal, or a combination of age types,

(B) cardiac care, respiratory, neurological, septicemia, or other single or multi-system complications or illnesses requiring specialized treatment during the transport of the patient.

(3) Ground ambulance services are required to meet the duty to act requirements as described in 63 O.S. § 1-2504.1.

(e) The application shall be signed under oath by the party or parties seeking to secure the license.

(f) The party or parties who sign the application shall be considered the owner or agent (licensee), and responsible for compliance to the Act and this chapter.

(g) All applications shall contain, but not be limited to the following:

(1) a statement of ownership which shall include the name, address, telephone number, occupation and/or other business activities of all owners or agents who shall be responsible for the service;

(A) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included.

(B) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation, the name of each board member, or the chief administrative officer and/or chief operation officer shall be included.

(C) A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year.

(D) For purposes of unannounced inspections, the days and times the business office is open.

(2) Agencies that use emergency vehicles as defined in Title 47 O.S. Section 103 shall show proof of vehicle liability insurance, at least in the amount of one million dollars (\$1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at

all times while the service is licensed. Air ambulances are to maintain aircraft liability insurance as required within Federal regulation.

(3) Proof of professional liability insurance, at least in the amount of one million dollars (\$1,000,000) or to the amount provided for in "The Governmental Tort Claims Act," Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;

(4) Proof of participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed;

(h) Ground Ambulance Services, Air Ambulances, Emergency Medical Response Agencies, and Specialty Care agencies shall have medical control as prescribed by the Act and these rules and submit with the application:

(1) a letter of agreement from the physician to provide medical direction and establish the protocols and the scope of practice provided at the service;

(2) the physicians primary practice address or home address if the physician does not have a practice and email address;

(3) For agencies providing care within the Intermediate, Advanced EMT, and Paramedic scope of practice, submit an Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) registrant certification or number;

(4) a current Oklahoma medical license; and

(5) a curriculum vitae,

(i) a copy of any contract(s) for vehicles, medical equipment, and/or personnel, if such exist;

(j) Ground Ambulance Services, Air Ambulances, Emergency Medical Response Agencies, and Specialty Care agencies shall submit a copy of patient care protocols and quality assurance plan or policy as required by the medical director and as prescribed by the Act and this chapter;

(1) The Department may require quality assurance documentation for review and shall protect the confidentiality of that information.

(2) The quality assurance documentation shall be maintained by the agency for three (3) years.

(3) The quality assurance policy shall include, but not be limited to:

(A) refusals,

(B) air ambulance utilization,

(C) airway management,

(D) cardiac arrest interventions,

(E) time sensitive medical and trauma cases,

(F) other selected patient care reports not specifically included , and

(G) how to provide internal and external feedback of findings determined through reviews. Documentation of the feedback will be maintained as part of the quality assurance documentation

(H) treatment protocols that expand beyond the published state protocols;

(k) Ground ambulance service and Pre-hospital emergency medical response agency applications are required to submit

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documentation that supports agency licensure from the governmental authority (ies) having jurisdiction over the proposed emergency response area. If the emergency response area encompasses multiple jurisdictions, a written endorsement shall be presented from each. The ground ambulance and prehospital emergency medical response agency application shall contain from each endorsement the following:

- (1) a map and written description of the endorsed or approved response area.
  - (2) name(s) and title(s) of the person(s) providing approval.
  - (3) any expiration date.
  - (4) name of the service receiving the endorsement.
  - (5) Ground ambulance service supporting documentation will be consistent with the County EMS plan as required in 19 O.S. Section 1-1203.
- (l) Pre-hospital emergency medical response agency applications shall include a letter of support or agreement from a licensed ambulance service within the proposed emergency medical response service area that includes:
- (1) support of the application.
  - (2) support of the medical control physician choice, and
  - (3) plans or policies for supporting or participating in quality assurance activities.
  - (4) If an applicant is unable to provide a letter of support from a licensed ambulance service within their proposed response area, the applicant can request an exemption. The Department has the discretion to approve or deny the exemption request.
- (m) Event standby emergency response agency applications will include the following restrictions and requirements:
- (1) if the applicant is providing care to the public on public property, then letters of governmental support and documents verifying coordination with local ambulance services are required for that agency to have the authority to provide care at that setting.
  - (2) if the agency is providing care to the public in a business or establishment open to the public on private property, then letters of governmental support are not required.
  - (3) At all times, the standby event emergency medical response agency shall coordinate with other licensed and certified EMS agencies responsible for the event location when the event is within a licensed ambulance service area or approved area for prehospital emergency medical response agencies.
- (n) All emergency medical response agencies are prohibited from transporting patients
- (o) Stretcher Van service applications will include the following restrictions and requirements:
- (1) Stretcher Vans are prohibited from carrying medications other than oxygen and those other medications which are passenger supplied and administered. The passenger must have a current physician prescription and/or order for the administration of oxygen. A copy of the order shall be maintained in agency files.

(2) Stretcher van applications will include a quality assurance process or policy that includes:

- (A) The Department may require quality assurance documentation for review and shall protect the confidentiality of that information.
  - (B) The quality assurance documentation shall be maintained by the agency for three (3) years.
  - (C) Any passenger condition where the passenger entered the 911 system.
  - (D) If oxygen is continued, the physician order must be maintained with the trip report or passenger report;
  - (E) a review other selected passenger reports not specifically included, and
  - (F) process to provide internal and external feedback of findings determined through reviews. Documentation of the feedback will be maintained as part of the quality assurance documentation.
- (p) Stretcher Van Services are to submit the following with their application:
- (1) A map or narrative description which identifies the proposed service area;
  - (2) evidence that the proposed service area is an emergency medical service region, ambulance district, or county with a population in excess of five hundred thousand (500,000) people;
- (q) Ground ambulance services will include a description of the proposed level of service in the proposed licensed service area, including:
- (1) a map defining the whole licensed service area including location(s) of base station, substations, and posts;
  - (2) a description of the level of care to be provided;
- (r) Ground Services, Air Ambulances, and prehospital emergency medical response agencies shall submit a communication policy addressing:
- (1) receiving and dispatching emergency and non-emergency calls;
  - (2) ensuring compliance with State and local EMS communication plans.
- (s) Specialty Care Services and Stretcher Van services shall submit communication policy addressing the screening process that ensures a request for service will meet the agency's capability, capacity, and licensure requirements. Documentation of the screening will be retained as part of the patient care report or call log.
- (t) a response plan that includes:
- (1) providing and receiving mutual aid with all surrounding, contiguous, or overlapping, licensed service areas,
  - (2) providing for and receiving disaster assistance in accordance with local and regional plans and command structures such as an incident command structure using national incident management support models.
- (u) confidentiality policy ensuring confidentiality of all documents and communications regarding protected patient health information.



(v) For an initial or new ground ambulance service, air ambulance service, specialty care, and stretcher van service license application, shall be accompanied by a non-refundable fee of six hundred (\$600.00) dollars plus twenty (\$20.00) dollars for each vehicle, in excess of two (2) vehicles utilized for patient transport. An additional fee of one hundred fifty (\$150.00) dollars shall be included for each ambulance substation in addition to the base station. An Emergency Medical Response Agency Application shall be accompanied by a non-refundable fee of fifty (\$50.00) dollars.

(w) All applicants except air ambulance services are required to show documentation of compliance with any "Sole Source" Ordinance or Resolution. If an area of Oklahoma is being served by a licensed ambulance service, or services, and the area has adopted "sole source" resolutions or ordinances or an Emergency Services District as established pursuant to Article 10, Section 9 (c) of the Oklahoma Constitution, the Department shall require the approval of the community (ies) and/or the emergency medical services authority of that service area, before an additional ambulance service shall be licensed for that same service area.

(x) For all license applications, a business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year is required to be submitted with the application.

SUBCHAPTER 3. GROUND AMBULANCE SERVICE

PART 3. GROUND AMBULANCE SERVICES

310:641-3-10. License required [REVOKED]

(a) No person, company, governmental entity or trust authority shall operate, advertise, or hold themselves out as providing any type of ambulance service without first obtaining a license to operate an ambulance service from the Department. The Department shall have sole discretion to approve or deny an application for ambulance service license based on the ability of the applicant to meet the requirements of this rule.

(b) Governmental entities that respond to requests for service off governmental property are required to become licensed by the Department.

(1) Governmental entities not licensed by the Department may be part of mutual aid and disaster plans.

(2) Governmental entities may transport patients of governmental entities off governmental property to appropriate facilities.

(3) Contractors for governmental entities that provide transport services shall be licensed by the Department.

(c) Persons, companies, and governmental entities which operate on their own premises, are exempt from this licensing requirement, unless an ambulance patient is transported on the public streets and highways of Oklahoma, or outside of their own premises.

(d) An application for a license to operate an ambulance service shall be submitted on forms prescribed and provided by

the Department. Ground, air, stretcher aid van and specialty care services shall each be considered a separate license.

(e) The application shall be signed under oath by the party or parties seeking to secure the license.

(f) The party or parties who sign the application shall be considered the owner or agent (licensee), and responsible for compliance to the Act and rules.

(g) The application shall contain, but not be limited to the following:

(1) a statement of ownership which shall include the name, address, telephone number, occupation and/or other business activities of all owners or agents who shall be responsible for the service;

(A) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included.

(B) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation, the name of each board member, or the chief administrative officer and/or chief operation officer shall be included.

(C) A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year.

(2) proof of vehicle and liability insurance, at least in the amount of one million dollars (\$1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;

(3) proof of professional liability insurance, at least in the amount of one million dollars (\$1,000,000) or to the amount provided for in "The Governmental Tort Claims Act," Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;

(4) Proof of participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed;

(5) each licensee shall have medical control as prescribed by the Act and these rules;

(6) a copy of any contract(s) for vehicles, medical equipment, and/or personnel, if such exist;

(7) a copy of patient care protocols and quality assurance plan or policy as required by the medical director and as prescribed by the Act and this chapter;

(A) The Department may require quality assurance documentation for review and shall protect the confidentiality of that information.

(B) The quality assurance documentation shall be maintained by the agency for three (3) years.

(C) The quality assurance policy shall include, but not be limited to:

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- (i) policy to review refusals,
  - (ii) policy to review air ambulance utilization,
  - (iii) policy to review airway management,
  - (iv) policy to review cardiac arrest interventions,
  - (v) policy to review time sensitive medical and trauma cases,
  - (vi) policy to review other selected patient care reports not specifically included, and
  - (vii) policy to provide internal and external feedback of findings determined through reviews. Documentation of the feedback will be maintained as part of the quality assurance documentation;
- (8) Documents that support agency licensure from the governmental authority(ies) having jurisdiction over the proposed emergency response area. If the emergency response area encompasses multiple jurisdictions, a written endorsement shall be presented from each and will be consistent with the County EMS plan as required in 19 O.S. Section 1-1203. Each endorsement shall contain the following:
- (A) a map and written description of the endorsed or approved response area,
  - (B) name(s) and title(s) of the person(s) providing approval,
  - (C) any expiration date,
  - (D) name of the service receiving the endorsement.
- (9) a description of the proposed level of service in the proposed licensed service area, including:
- (A) a map defining the licensed service area including location(s) of base station, substations, and posts;
  - (B) a description of the level of care to be provided, describing variations in care within the proposed service area, and;
  - (C) en route response time standards consistent with the requirements in this Chapter.
- (10) written policy addressing:
- (A) receiving and dispatching emergency and non-emergency calls;
  - (B) ensuring compliance with State and local EMS communication plans.
- (11) a response plan that includes:
- (A) providing and receiving mutual aid with all surrounding, contiguous, or overlapping, licensed service areas,
  - (B) providing for and receiving disaster assistance in accordance with local and regional plans and command structures such as an incident command structure using national incident management support models.
- (12) confidentiality policy ensuring confidentiality of all documents and communications regarding protected patient health information.
- (13) An application for an initial, or new license, shall be accompanied by a non refundable fee of six hundred (\$600.00) dollars plus twenty (\$20.00) dollars for each vehicle, in excess of two (2) vehicles utilized for patient transport. An additional fee of one hundred fifty (\$150.00)

dollars shall be included for each ambulance substation in addition to the base station.

(14) If an area of Oklahoma is being served by a licensed ambulance service, or services, and the area has adopted "sole source" resolutions or ordinances or an Emergency Services District as established pursuant to Article 10, Section 9 (c) of the Oklahoma Constitution, the Department shall require the approval of the community(ies) and/or the emergency medical services authority of that service area, before an additional ambulance service shall be licensed for that same service area.

## 310:641-3-15. Ground ambulance service - personnel staffing

(a) Each licensed ground ambulance service shall be staffed and available to respond to any request for service within the primary service area twenty-four (24) hours per day.

(b) Each ground ambulance service shall have on staff an adequate number of emergency medical personnel and a sufficient number of ambulances available in order to be en route to 90% of all emergency calls within five (5) minutes of the time the call is received in dispatch at the highest level of care for which the service is licensed.

(1) The request for emergency medical services shall be considered "received in dispatch" as soon as the licensed agency receives sufficient information to allow an appropriate response, i.e., location of the emergency and nature of the call.

(2) Staff licensed below the level of the ambulance service may be utilized provided one or more of the following conditions have been met:

(A) The request for service has been screened by a Department approved emergency medical dispatch system, or

(B) The patient is to be transported from a higher to a lower level of care, or

(C) The transport is approved in writing by the transferring physician at a specified lower level of care and scheduled in advance.

(D) An agency that screens emergency calls through an emergency medical prioritization program shall establish en route times for the priority levels established by the agency. The en route times established by the agency shall be included in the agency's policy and/or procedure manual.

(c) Under no circumstance during the transport of an ambulance patient shall the attendant be less than a licensed emergency medical technician.

(d) In addition to the requirement of licensed emergency medical technicians, each ground ambulance service shall have drivers who, at a minimum, are certified as an Emergency Medical Responder. All drivers of a ground ambulance service shall successfully complete an emergency vehicle operator course approved by the Department within 120 days of employment. Emergency vehicle operators shall successfully complete a refresher course approved by the Department every two (2) years.

(e) In a unique and unexpected circumstance, including a disaster, the minimum driver requirement may be altered to facilitate a transport of an ambulance patient. The attendant, who is in charge of the vehicle while a patient is on board, may request a law enforcement officer or a firefighter, familiar with the operation of an authorized emergency vehicle, to drive the vehicle. If this option is utilized, a written report of the circumstances, reason, and any other pertinent information regarding the call shall be forwarded to the Division within ten (10) working days. Abuse and/or re-occurring incidents of this nature shall require a reassessment of the service's staff and staffing patterns. The service may be required to obtain additional personnel or other action by the Department may result.

(f) Only emergency personnel authorized by this Act, except for a physician, shall be utilized by an ambulance service for pre-hospital, or on-scene, patient care and transport. In some cases, involving inter-hospital transfer of an ambulance patient(s), a physician, physician assistant (PA), nurse practitioner, respiratory care practitioner, registered nurse, or licensed practical nurse may be required to assist the emergency medical technician because the medical care required exceeds the level of the ambulance service personnel. If this option is utilized, written orders by a physician and/or documentation of orders given via radio or telephone contact with a physician, shall become a part of the ambulance patient run report.

(g) Each agency will maintain training records demonstrating competency in medical skills and interventions, patient handling, and emergency vehicle operations for all personnel utilized by the agency.

(h) An agency that is unable to fulfill the twenty-four (24) hours staffing requirement may contract with another ground ambulance service to provide personnel to meet the staffing requirement. Contracts will contain but not be limited to the following information:

- (1) how and from what location personnel will respond;
- (2) procedure for notifying the contractor that personnel are needed;
- (3) communication policy to ensure coverage is in place for the licensed service area;
- (4) contingency plan for system overload;
- (5) copies of contracts will be provided to the Department as part of application requirements in 310:641-3-10;
- (6) scope of practice and protocol requirements for the contractual response; and
- (7) emergency plan in the event a contracted service is unable to respond within the contracted requirements, and how the request for service will be answered.

(i) An agency may enter into a contract or other memorandum of agreement with a non-transport agency or entity that is not a certified emergency medical response agency. The purpose of this contract or agreement is to improve emergency medical system responses. The agreement is to allow for interested individuals, who are certified and/or licensed by the Department, at the non-transport agency to respond with ground ambulance services using non-transport agency equipment. The result will be for these individuals to

serve as an extension of the ambulance service through the contract or agreement.

(1) The Contract or Memorandum of Agreement will address the following topics:

(A) Name of the non-certified Emergency Medical Response Agency;

(B) The specific vehicles and equipment to be used by the personnel for ambulance service responses;

(C) the parties that supply or maintain the supplies and equipment;

(D) communication arrangements.

(2) The personnel will be authorized to perform procedures under the ambulance services medical director. The ambulance service medical director will establish the scope of practice for the non-transport agency personnel.

(3) The ambulance service will be responsible for all quality assurance activities.

## **PART 5. GROUND TRANSPORT VEHICLES**

### **310:641-3-23. Equipment for ground ambulance vehicles**

(a) The tampering, modification, or removal of the manufacturer's expiration date is prohibited.

(b) Licensed ambulance services shall ensure that all recalled, outdated, misbranded, adulterated, deteriorated fluids, supplies, and medications are removed from ambulances immediately.

(c) The medical control physician will authorize all equipment and medications placed on the units for patient care.

(1) The authorized equipment and medications will be detailed on a unit checklist and will match the equipment and supplies with defined minimums needed to treat patients in the manner detailed in the agency approved protocols. The checklist will also meet the requirements described in the ambulance file section of this subchapter.

(2) The medications authorized by the medical director will be detailed on the unit checklist ~~described in the ambulance files section of this subchapter,~~ to will include the number, weight, and volume of the medication containers.

(3) An electronic or paper copy of patient care protocols will be on each in-service ambulance.

(d) Each ground ambulance service vehicle shall carry:

(1) airway and breathing equipment and supplies, to include:

(A) a pulse oximetry device with pediatric and adult capability.

(B) a functioning portable suction apparatus with wide-bore tubing (1/4"), and rigid and soft suction catheters for adults, children, and infants, as detailed by agency protocols in addition to the vehicle mounted suction unit.

(C) One (1) bulb syringe, with saline drops, sterile, in addition to any bulb syringes in obstetric kits.

(D) a minimum of two (2) each, single use adult, pediatric, and infant bag-valve mask resuscitators with an adult, child, and infant clear masks.

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- (E) oropharyngeal airways set or a minimum of two (2) of each size for adult, child, and infant individually wrapped for sanitation purposes. Nasopharyngeal airways are optional.
  - (F) a portable ventilator as directed by the agency medical director and approved protocols.
  - (G) wall mounted oxygen set with variable flow regulators and adequate tubing.
  - (H) portable oxygen cylinder and regulator with a spare oxygen cylinder appropriately secured.
  - (I) a minimum of two (2) each adult, child, and infant sized oxygen masks.
  - (J) a minimum of two (2) adult nasal cannulas.
  - (K) a nebulizer; adult and pediatric, sizes per local protocols.
- (2) Bandaging materials to include:
- (A) two (2) burn sheets; clean, wrapped, and marked in a plastic bag.
  - (B) fifty (50) sterile 4" x4" dressings.
  - (C) six (6) sterile 6" x8" or 8" x10" dressings.
  - (D) ten (10) roller bandages, 2" or larger, such as kerlix, kling, or equivalent.
  - (E) four (4) rolls of tape (minimum of one (1) inch width).
  - (F) four (4) sterile occlusive dressings, 3" x 8" or larger.
  - (G) four (4) triangular bandages.
  - (H) one (1) pair of bandage scissors must be on the ambulance or on the on-duty personnel.
- (3) Fracture immobilization devices, to include:
- (A) one (1) adult and one (1) pediatric traction splint or equivalent device capable of adult and pediatric application.
  - (B) two (2) upper and two (2) lower extremity splints in adult and pediatric sizes.
  - (C) short spine board or vest type immobilizer, including straps and accessories as described within agency protocols.
  - (D) two (2) adult and one (1) pediatric size long spine board including straps and head immobilization devices(s), as described within the agency protocols.
  - (E) two (2) rigid or adjustable extrication collars in large, medium, small adult sizes, and pediatric sizes for children ages 2 years or older, and one (1) infant collar, as described within the agency protocols. Collars shall not be foam or fiber filled.
- (4) Miscellaneous medical equipment, to include:
- (A) one (1) infant, one (1) child, two (2) adult, and one (1) extra-large blood pressure cuffs.
  - (B) stethoscope, one (1) adult and one (1) pediatric size.
  - (C) obstetrical kit, with towels, 4" x4" dressing, umbilical tape, bulb syringe, cord cutting device, clamps, sterile gloves, aluminum foil, and blanket.
  - (D) universal communicable disease precaution equipment including gloves, mask, goggles, gown, and other universal precautions.
  - (E) blood-glucose measurement equipment per medical direction.
  - (F) CPAP per medical direction.
  - (G) Semi-automatic advisory defibrillator (SAAD) with adult and pediatric capability.
- (5) Other mandatory equipment, to include:
- (A) Two (2) appropriately labeled or designated waste receptacles for:
    - (i) waste that is contaminated by bodily fluids or potentially hazardous or infectious waste, and,
    - (ii) waste that does not present a biological hazard, such as plastic and paper products that are not contaminated.
  - (B) one (1) flexible, portable, soft stretcher for confined space and extrication as approved by medical direction.
  - (C) two way radio communication equipment as detailed in this Chapter and through the Statewide Interoperability Governing Body utilizing VHF frequency 155.3400.
  - (D) one (1) sturdy, lightweight, all-level cot for the primary patient and mounting cot fastener and/or anchorage assembly that is compliant with the vehicle manufacturing standards in place at the time of purchase.
  - (E) at least three (3) strap type restraining devices (chest, hip, and knee), and compliant shoulder harness shall be provided per stretcher, cot, and litter (not less than two (2") inches wide, nylon, easily removable for cleaning, two (2) piece assembly with quick release buckles).
  - (F) electronic or paper patient care reports.
  - (G) two (2) fire extinguishers one (1) in the cab of the unit, and one (1) in the patient compartment of the vehicle. Each mounted in a manner that allows for quick release and is compliant with the ambulance manufactures standards. Each extinguisher is to be dry powder, ABC, and a minimum of five (5#) pounds.
  - (H) two (2) operable flashlights.
  - (I) all ambulance equipment and supplies shall be maintained in accordance with the sanitation requirements in this subchapter. Additionally, sterility shall be maintained on all sterile packaged items.
  - (J) digital or strip type thermometer and single use probes.
  - (K) six (6) instant cold packs.
  - (L) one (1) length/weight based drug dose chart or tape.
  - (M) a minimum of two (2) DOT approved reflective vests.
  - (N) one (1) pair of binoculars.
  - (O) a current copy of the emergency response guide, electronic or paper format.
  - (P) As approved by local medical direction, a child restraint system or equipment for transporting pediatric patients.

(e) Intermediate equipment, in addition to the basic equipment, intermediate licensed service ambulance vehicles shall carry:

- (1) intravenous administration equipment in a sufficient quantity to treat multiple patients requiring this level of care, including intravenous catheters 14 to 24 gauge, six (6) each.
- (2) interosseous needles, two (2) each for adult and pediatric patients, and associated administration equipment if approved by local medical control.
- (3) appropriate quantities of sterile fluid as approved by local medical control.
- (4) adequate advanced airway equipment per medical control;
  - (A) endotracheal tubes, two (2) sets of cuffed 2.5 to 8.0, as permitted and approved by local medical control. Uncuffed endotracheal tubes are optional, based on medical director approval.
  - (B) supraglottic airway devices to be used as a primary or secondary airway intervention, as approved by medical control.
  - (C) Laryngoscope handle with extra batteries and bulbs with blade sizes and styles as approved by local medical control.
- (5) blood sampling equipment if approved by medical control.
- (6) one (1) Occupational Safety and Health Administration (OSHA) approved sharps container.
- (7) magill forceps one (1) pediatric and one (1) adult size, individually wrapped.
- (8) continuous waveform capnography required for use in endotracheal intubation and specific supraglottic airway devices.

(f) Advanced Emergency Medical Technician equipment, in addition to the required equipment for the EMT and the Intermediate, will carry:

- (1) medication that is permitted within the AEMT scope of practice and as approved by the medical control physician;
- (2) equipment and supplies that are permitted within the AEMT scope of practice and approved by the medical control physician.

(g) Paramedic equipment, in addition to the required EMT, Intermediate, and AEMT equipment, the Paramedic level ambulance will carry:

- (1) cardiac monitor/defibrillator with printout, and appropriate pads, paddles, leads and/or electrodes (adult and pediatric). Telemetry capability is optional.
- (2) medication with quantities to be carried on each ambulance as detailed in the formulary of agency approved protocols.
- (3) nasogastric tubes; two (2) each 8 french to 16 french, in accordance with medical control authorization.

(h) All ambulance vehicles, regardless of licensure level or level of care provided, shall carry:

- (1) three (3) reflectors (triangular) or battery powered warning lights;

- (2) two (2) OSHA approved hard hats, with goggles or face shield;
- (3) two (2) pair of heavy work gloves; and
- (4) one (1) spring-loaded window punch or other tool that may be used to access a patient through a window.

(i) All ambulance services shall have sufficient and appropriate rescue equipment to gain access to patients either on board the ambulance or provided through an extrication agreement with a rescue department or team.

(j) All assessment and medical equipment utilized for patient care will be maintained in accordance with the manufacturer's guidelines. Documentation will be maintained at the agency showing that periodic tests, maintenance, and calibration are being conducted in accordance with the manufacturer's requirements. These types of equipment include, but are not limited to, gurneys or stretchers, suction devices, pulse oximetry, glucometers, capnography monitors, end-tidal co2 monitors, CPAP/BiPAP devices, ventilators, and blood pressure monitors.

**310:641-3-25. Sanitation requirements**

(a) The following shall apply regarding sanitation standards for all ambulance services facilities, vehicles, and personnel:

- (1) the interior of the vehicle and the equipment within the vehicle shall be sanitary, secured and maintained in good working order, at all times;
- (2) the exterior of the vehicle shall be clean and maintained in good working order to ensure the vehicle can operate safely and in accordance with applicable sections of Title 47 of the Oklahoma Statutes;
- (3) linen shall be changed after each patient is transported and bagged and stored in an outside or separate compartment;
- (4) clean linen, blankets, washcloths, and hand-towels shall be stored in a closed interior cabinet free of dirt and debris;
- (5) freshly laundered linen or disposable linen shall be used on the cots and pillows and changed between patients;
- (6) pillows and mattresses shall be kept clean and in good repair, and any repairs made to pillows, mattresses, and padded seats shall be permanent;
- (7) soiled linen shall be placed in a container that deters accidental exposure. Any linen which is suspected of being contaminated with bodily fluids or other potentially hazardous infectious waste shall be placed in an appropriately marked closed container for disposal;
- (8) contaminated disposable supplies shall be placed in appropriately marked or designated containers, in a manner that deters accidental exposure;
- (9) exterior and interior surfaces of vehicles shall be cleaned routinely;
- (10) blankets and hand towels used in any vehicle shall be clean;
- (11) implements inserted into the patient's nose or mouth shall be single-service wrapped and properly stored and handled. When multi-use items are utilized, the local

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health care facilities should be consulted for instructions in sanitation and handling of such items.

- (b) When a vehicle has been utilized to transport a patient(s) known to the operator to have a communicable disease the vehicle shall be cleansed and all contact surfaces shall be washed with soap and water and appropriate disinfectant. The vehicle should be placed "out of service" until a thorough cleansing is conducted.
- (c) All storage spaces used for storage of linens, equipment, medical supplies, and other supplies at the base station shall be kept clean.
- (d) personnel shall be clean, especially hands and fingernails, and well groomed. Clothing worn by personnel shall be clean. The licensee shall provide in each vehicle a means of hand washing for the attendants.
- (e) All oxygen humidifiers shall be single use;
- (f) All medications, supplies, and sterile equipment with expiration dates shall be current.
  - (1) Expired medications, supplies, and sterile equipment shall be discarded appropriately.
  - (2) Tampering, removing, or altering expiration dates on medications, supplies, and equipment is prohibited.
- (g) The station facility, ambulance bays, living quarters, and office areas shall be clean, orderly, free of safety and health hazards.
- (h) Ambulance vehicles and ambulance service facilities shall be free of any evidence of use of lighted or smokeless tobacco products except in designated smoking areas, consistent with the provisions of 310:641-1-4.

## PART 11. MEDICAL CONTROL

### 310:641-3-59. Operational protocols

(a) Authorized emergency vehicles of licensed ambulance services shall adhere to the requirements of Title 47 O.S. Section 1-101 et seq. (the "Motor Vehicle Code") for all vehicle operations. ~~the following for physically displaying and/or orally transmitting via voice communications, to the following modes of operation:~~

~~(1) "Code 1" shall mean a non-emergency mode, or status, for the purpose of operation of an ambulance service vehicle. Neither red lights nor siren shall be utilized, and the vehicle shall not be considered or afforded the exemption of an "authorized emergency vehicle" pursuant to Title 47 ("Motor Vehicle Code");~~

~~(2) "Code 3" shall mean an emergency mode, or status, for the purpose of operation of an ambulance service vehicle. Both red lights and siren shall be utilized, and the vehicle shall be considered and afforded the exemption of an "authorized emergency vehicle" pursuant to Title 47 ("Motor Vehicle Code").~~

(b) There is a required duty to act within the licensed service area upon acceptance of an ambulance service license. All licensed ambulance services shall respond appropriately; consistent with the level of licensure when called for emergency

service, regardless of the patient's ability to pay. Non-emergency interfacility transfers are exempt from the statutory duty to act.

(c) If the ambulance service can not physically respond within the limits of "The Ambulance Services District" Act, then the ambulance service called has a duty to immediately call for mutual aid from a neighboring licensed ambulance service.

(d) If an ambulance service receives a call for an emergency which is in the licensed service area of another licensed ambulance service, the ambulance service called has a responsibility to immediately contact the licensed ambulance service with that licensed service area.

(1) If the emergency is in an area that is not within a licensed service area, the service that received the call will contact the closest ambulance to the call.

(2) Any licensed service that receives a call in an area that is outside of a licensed service area shall report the event to Emergency Systems within the Department.

(3) The Department will report the event to the county commissioners of the county where the call occurred.

(e) Mutual aid plans between licensed ambulance services and surrounding licensed or certified emergency medical services providers shall be developed and placed in the service files for inspection. Plans will be periodically reviewed to ensure accuracy and completeness. Licensed ambulance services shall provide mutual aid, if the capability exists without jeopardizing the primary service area.

(f) An ambulance service requesting an air ambulance shall:

- (1) call the closest air ambulance to the location of the scene, or
- (2) call the air ambulance service the patient or the patient family chooses to utilize.

## PART 13. SANITATION

### 310:641-3-63. Ambulance service files

(a) All required records for licensure will be maintained for a minimum of three years.

(b) Each licensed ambulance service shall maintain electronic or paper records about the operation, maintenance, and such other required documents, at the business office. These files shall be available for review by the Department, during normal work hours. Files which shall be maintained include the following:

(1) Patient care records:

(A) At the time a patient is transported to a receiving facility, the following information will be, at a minimum, provided to the facility staff members at the time the patient(s) are accepted:

- (i) personal information such as name, date of birth, and address;
- (ii) patient assessment with medical history;
- (iii) medical interventions and patient responses to interventions;
- (iv) any known allergies;

- (v) other information from the medical history that would impact the patient outcomes if not immediately provided.
- (B) A signature of the receiving facility health care staff member will be obtained to show the above information and the patient was received.
- (2) A complete copy of the patient care report shall be sent to the receiving facility within twenty-four (24) hours of the hospital receiving the patient.
- (3) Completed patient care reports shall contain demographic, administrative, legal, medical, community health and public information required by the Department through the OKEMESIS Data Dictionary;
- (4) all run reports and patient care information shall be considered confidential.
- (5) all licensed agencies shall maintain records on the maintenance, and regular inspections of each vehicle.
  - (A) Each vehicle must be inspected and a detailed equipment checklist completed after each call, or on a daily basis, whichever is less frequent; and
  - (B) documentation that shows routine vehicle maintenance for each vehicle as required by vehicle manufacture recommendations.
- (6) all licensed agencies shall maintain a credential or licensure file for licensed and certified emergency medical personnel employed by or associated with the service that includes:
  - (A) Oklahoma license and certification;
  - (B) Basic Life Support certification or documentation of BLS cognitive objectives and psychomotor skills that meets or exceeds American Heart Association standards, and approved by the medical director;
  - (C) Advanced Cardiac Life Support certification or documentation of BLS cognitive objectives and psychomotor skills that meets or exceeds American Heart Association Standards as applicable for advanced licensure level(s) and approved by the medical director;
  - (D) Incident Command System or National Incident Management Systems training at the 100, 200, and 700 levels or their equivalent;
  - (E) verification of an Emergency Vehicle Operations Course or other agency approved defensive driving course;
  - (F) contain a list or other credentialing document that defines or describes the medical director authorized procedures, equipment and medications for each certified or licensed member employed or associated with the agency; and
  - (G) a copy of the medical director credentials will be maintained at the agency.
- (7) The electronic or paper copies of the licenses and credentials described in this section shall be kept separate from other personnel records to ensure confidentiality of records that do not pertain to the documents relating to patient care.
- (8) Copies of staffing patterns, schedules, or staffing reports which indicate the ambulance service is maintaining twenty four (24) hour coverage, at the highest level of license;
- (9) Copies of in-service training and continuing education records;
- (10) Copies of the ambulance service:
  - (A) operational policies, guidelines, or employee handbook;
  - (B) medical protocols;
  - (C) a list of the patient care equipment that is carried on any "Class E" unit(s) will be part of the standard operating procedure or guideline manual and;
  - (D) OSHA and/or Department of Labor exposure plan, policies, or guidelines.
- (c) A log of each request for service received and/or initiated, to include the:
  - (1) Disposition of the request and the reason for declining the request, if applicable;
  - (2) the patient care report number;
  - (3) date of request;
  - (4) patient care report times as required by the OKEMESIS data dictionary;
  - (5) location of the incident;
  - ~~(6) where the ambulance originated; and~~
  - ~~(7) nature of the call;~~
  - ~~(8) Such other documents which may be determined necessary by the Department.~~
- (d) Documentation that verifies an ongoing, physician involved quality assurance program.
- (e) Such other documents which may be determined necessary by the Department. Such documents can only be required after a thorough, reasonable, and appropriate notification by the Department to the services and agencies.
- (f) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed ambulance service. Reports of the EMS data standard shall be forwarded to the Department by the last business day of the following month. Exceptions to the monthly reporting requirements shall be granted only by the Department, in writing.
- (g) Review and the disclosure of information contained in the ambulance service files shall be confidential, except for information which pertains to the requirements for license, certification, or investigation issued by the Department.
- (h) Department representatives shall have prompt access to files, records and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment or property may result in summary suspension of licensure by the Commissioner of Health.
- (i) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.

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## SUBCHAPTER 5. PERSONNEL LICENSES AND CERTIFICATION

### PART 3. EMERGENCY MEDICAL PERSONNEL LICENSES

#### 310:641-5-11. License and certification qualifications

(a) Emergency medical personnel while on duty will have a copy of their certification or license.

(b) Persons applying for initial certification or license shall meet the requirements for qualification, application, and procedure as follows:

(1) Emergency Medical Responder certification:

(A) Applicant shall be at least eighteen (18) years of age.

(B) Applicant shall submit the following:

(i) An appropriate State application form specifying the level of certification, true, correct, and complete information as to eligibility and character,

(ii) A signed "Affidavit of Lawful Presence" form,

(C) Completion of a Department approved Emergency Medical Responder course,

(D) successful completion of a National Registry practical skills examination administered by the approved training program or agency,

(E) successful completion of a written examination from either:

(i) National Registry of Emergency Medical Technicians (NREMT), or

(ii) Oklahoma Department of Career and Technology Education.

(F) First responders or Emergency Medical Responders trained in a Department approved course prior to January 1, 2000 will be required to obtain a current Emergency Medical Responder certification by September 30, 2017 by providing to the Department the following:

(i) verification of refresher/transition course completion every two years since March 31, 2012,

(ii) signed "Affidavit of Lawful Presence",

(iii) verification of a practical exam of EMR skill administered during a refresher or transition course after March 31, 2012.

(G) A fee of ten (\$10.00) dollars for the line of duty death benefit as detailed in the Act.

(H) The Department shall maintain a registry of all qualified Emergency Medical Responders.

(2) Emergency Medical Technician, or EMT:

(A) Applicant shall be at least eighteen (18) years of age,

(B) Applicant shall submit the following:

(i) an appropriate State application form specifying the level of licensure, true, correct, and complete information as to eligibility and character, and

(ii) a signed "Affidavit of Lawful Presence",

(iii) successful completion of an NREMT EMT psycho-motor exam,

(iv) successful completion of an NREMT EMT cognitive exam,

(v) submission to the Department a copy of the applicants NREMT EMT certification,

(vi) a license fee of Seventy-five (\$75.00) dollars for licensure and an additional ten (\$10.00) dollars for the line of duty death benefit as detailed in the Act. Fees are non-refundable except if the application is rejected.

(3) Advanced EMT and Paramedic:

(A) Applicant shall be at least eighteen (18) years of age,

(B) the applicant shall submit the following:

(i) an appropriate State application form specifying true, correct, and complete information as to eligibility and character,

(ii) a signed "Affidavit of Lawful Presence",

(iii) submission of the applicant's NREMT certification after completion of the NREMT cognitive and psychomotor examinations.

(I) The Department shall conduct or oversee the NREMT psycho-motor examination for the Advanced EMT and Paramedic using Department approved evaluators.

(II) AEMT candidates are required to complete and pass the endotracheal intubation exam prior to licensure.

(iv) ~~The fee for the initial psycho-motor examination examination(s) is included within the applicant's initial license fee determined by the Department, testing site, or the testing vendor for the Department.~~

(v) ~~The initial license fee for Advanced EMT applicants and is one hundred fifty (\$150.00) dollars. The initial license fee for Paramedic applicants is two hundred (\$200.00) seventy-five (\$75.00) dollars. The fees shall be submitted with the application. Fees shall be in an acceptable form and made payable to the Oklahoma State Department of Health. An additional ten (\$10.00) fee is required for the line of duty death benefit detailed in the Act. Fees are non-refundable except if the application is rejected.~~

~~(I) Subsequent examination fees are one hundred dollars (\$100.00) for a full psychomotor retest and fifty (\$50.00) for a partial psychomotor retest.~~

~~(II) A psychomotor retest application and appropriate fee must be submitted to the Department for this purpose.~~

(c) Initial licensure and certification will be from the date of issue through the second June 30 after the initial date. Subsequent licensure and certification periods will be for two years, expiring on June 30.



(d) The Department shall ensure oversight of the AEMT and Paramedic practical skills examinations conducted within the State.

(e) Any certification or license application submitted to the Department under this subchapter may be denied on the basis of a felony conviction, adjudication, or plea of guilty or nolo contendere for any of the following offenses:

- (1) assault, battery, or assault and battery with a dangerous weapon; aggravated assault and battery;
- (2) murder or attempted murder; manslaughter, except involuntary manslaughter;
- (3) rape, incest, or sodomy; indecent exposure and indecent exhibition; pandering;
- (4) child abuse; abuse, neglect, or financial exploitation of any person entrusted to his care or possession;
- (5) burglary in the first or second degree; robbery in the first or second degree; robbery or attempted robbery with a dangerous weapon, or imitation firearm;
- (6) arson, substance abuse, or any such other conviction, adjudication, or plea of guilty or nolo contendere, or circumstances which in the opinion of the Department would render the applicant unfit to provide emergency medical care to the public;
- (7) Each decision shall be determined on a case-by-case basis.

(f) A license application may be denied on the basis of any falsification. Application for initial licensure pursuant to the Act shall constitute authorization for an investigation by the Department.

(g) Candidates for initial Oklahoma licensure shall successfully complete the NREMT certification examinations. Practical and written examinations shall adhere to current policies of NREMT and the Department. Candidates shall demonstrate competency in all required skills. The Department reserves the right to review and require additional practical examination of any candidate.

(h) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act.

**310:641-5-18. Renewal requirements of the Emergency Medical Responder [REVOKED]**

~~A completed Emergency Medical Responder certification renewal application shall be completed and submitted to the Department with:~~

- ~~(1) the fee for the line of duty death benefit detailed in the Act;~~
- ~~(2) a current NREMT emergency medical responder certification; or~~
- ~~(3) a course completion certificate or final roster showing satisfactory completion of a Department approved refresher course;~~
- ~~(4) current copy of a provider level CPR card that meets or exceeds American Heart Association standards;~~

~~(5) completed criminal conviction and character statement. If a candidate for renewal has been convicted, adjudicated, or pled guilty or nolo contendere to a crime, documentation of the disposition and outcome of the case will be sent to the Department for a case by case review. The Department may at its discretion deny a renewed certificate to anyone convicted of a crime.~~

~~(6) applications for renewal must be postmarked no later than June 30 of the expiration year.~~

~~(7) subsequent recertification shall be for a two year period beginning July 1, to June 30.~~

**310:641-5-19. Renewal requirements for certified and licensed emergency medical personnel**

(a) For certified and licensed emergency medical personnel compliant with OAC 310:641-5-15 and without a current NREMT certification, the following will be submitted to the Department:

- (1) a completed EMR, EMT, Intermediate, Advanced EMT, or Paramedic renewal application;
- (2) line of duty death benefit fee as defined in 63 O.S. § 1-2505.1, 2, and 3;
- (3) renewal fee of:

(A) twenty (\$20.00) dollars plus the renewal death benefit fee as detailed in the Act is required for an EMT renewal;

(B) twenty-five (\$25.00) dollars plus the renewal death benefit fee as detailed in the Act is required for an Intermediate or Advanced EMT renewal;

(C) thirty (\$30.00) dollars plus the renewal death benefit fee as detailed in the Act is required for a Paramedic renewal; and

~~(34) a refresher course completion certificate or final roster showing satisfactory completion for the appropriate licensure level documentation showing the completion of specific continuing education courses or classes that meet or exceed the National Registry National Continued Competency Program guidelines.~~

(A) EMR applications shall submit 16 hours of continuing;

(B) EMT applicants shall submit 40 hours of continuing education;

(C) Intermediates and Advanced EMT applicants shall submit 50 hours of continuing education;

(D) Paramedic applicants shall submit 60 hours of continuing education.

(b) ~~The renewing EMT shall also submit:~~ All renewing certified and licensed emergency medical personnel shall submit a current CPR certification or verification of competency that meets or exceeds American Heart Association standards.

~~(1) verification of 48 hours of continuing education on topics within the EMT DOT instruction guidelines. No more than twelve (12) hours is permitted in any one topic area.~~

~~(2) current copy of a provider level of BLS CPR that meets or exceeds AHA standards.~~

(c) The renewing Intermediate, Advanced EMT, and Paramedic shall also submit:

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- ~~(1) verification that 36 hours of continuing education on topics within the EMT DOT instruction guidelines. No more than twelve (12) hours is permitted in any one topic area.~~
- ~~(2) current copy of a provider level of BLS CPR that meets or exceeds AHA standards.~~
- ~~(3) Complete and documentation of appropriate skills review and maintenance verification completed and signed by medical control, and ensure the medical director completes the skills verification portion of the renewal application.~~
- (d) The renewing Paramedic shall also submit:—a current ACLS certification or verification of ACLS Competency that meets or exceeds American Heart Association standards.
  - ~~(1) verification that 24 hours of continuing education on topics within the EMT DOT instruction guidelines. No more than twelve (12) hours is permitted in any one topic area.~~
  - ~~(2) current copy of a provider level of BLS CPR that meets or exceeds AHA standards, and~~
  - ~~(3) Complete biennial certification requirements for Advanced Cardiac Life Support (ACLS), in accordance with the American Heart Association. If a structured ACLS course is not available, the medical control may affirm, in writing, that ACLS skills and knowledge has been demonstrated;~~
- (e) Certified and Licensed emergency medical personnel with a current NREMT certification may renew by submitting:
  - (1) a completed EMR, EMT, ~~Intermediate~~, Advanced EMT, or Paramedic renewal application,
  - (2) submitting a renewal—the required line of duty death benefit fee as defined in 63 O.S. §§ 1-2505.1, 2, and 3, and
  - (3) a renewal fee of:
    - (A) ~~twenty (\$20.00) dollars plus the renewal death benefit fee as detailed in the Act is required for an EMT renewal, for the Emergency Medical Technician,~~
    - (B) ~~twenty-five (\$25.00) dollars plus the renewal death benefit fee as detailed in the Act is required for an Advanced EMT renewal, for the Intermediate and Advanced EMS renewal fee,~~
    - (C) Paramedic renewal fee is thirty (\$30.00) dollars plus the renewal death benefit fee as detailed in the Act is required for a Paramedic renewal, and
- (f) No more than twelve (12) hours in any one topic is permitted. Continuing education topics include, but are not limited to:
  - (1) Airway, respirations, and ventilation;
  - (2) Cardiovascular;
  - (3) Trauma;
  - (4) Medical; and
  - (5) Operations
- (g) Individuals renewing with an inactive NREMT certification will be able to receive an Inactive Oklahoma Certification or License.
  - (1) The certification or license will be designated as inactive.

- (2) The individuals with an inactive certification or license are not authorized to provide patient care until the license is converted to a standard certification or license.
- (3) The conversion to a standard certification or license requires the applicant to provide the Department documentation that verifies the applicant possesses an active NREMT certification.
- (h) Individuals renewing their Oklahoma Intermediate or Paramedic Oklahoma License without any NREMT certification and without the Oklahoma ALS skills review and verification may receive an inactive license.
  - (1) The certification or license will be designated as inactive.
  - (2) The individuals with an inactive certification or license are not authorized to provide patient care until the license is converted to a standard license.
  - (3) The conversion process to a standard license requires the applicant to provide to the Department documentation that an agency medical director has verified the applicants ALS skills.
- (i) Certified and licensed emergency medical personnel participating in training and education courses shall be allowed to perform skills determined to be appropriate for the training level of the student with supervision, as described in 63 O.S. 1-2504 (C) and (D).

## SUBCHAPTER 7. TRAINING PROGRAMS

### PART 1. GENERAL PROVISIONS

#### 310:641-7-1. Purpose

The purpose of this Subchapter is to:

- ~~(1) establish minimum standards for emergency medical services training programs, emergency medical technician training courses, emergency medical services instructors, and emergency medical services training, and;~~
- ~~(2) provide standards for the evaluation, quality assurance, and enforcement of the "Oklahoma Emergency Response Systems Development Act".~~The purpose of this subchapter is to establish minimum requirements for emergency medical services that includes:
  - (1) initial and ongoing education and training programs;
  - (2) instructor and educator qualifications;
  - (3) evaluation, quality assurance and quality improvement.

### PART 3. TRAINING PROGRAMS

#### 310:641-7-10. Training and education programs

- (a) All training programs shall be in compliance with the requirements of this Subchapter.
- (b) Each training program shall submit to the Department an application for approval to conduct emergency medical services training. The application shall be on forms provided

by the Department. ~~Training programs~~ Programs must be currently certified to teach EMS related in Oklahoma before beginning courses.

~~(c) Training programs must be certified by the Department prior to teaching any courses required for the initial licensure of emergency medical personnel in Oklahoma.~~

~~(d) Training program applicants may apply to become certified for the following levels:~~

~~(1) Emergency Medical Responder Technician, which includes the ability to provide Emergency Medical Responder training;~~

~~(2) Advanced Emergency Medical Technician Emergency Medical Technician,~~

~~(3) Advanced Emergency Medical Technician, and~~

~~(34) Paramedic.~~

~~(ed) A separate certificate will be issued for each training level.~~

~~(f) Only paramedic training programs accredited or receiving a Letter of Review (LOR) by CoAEMSP may enroll new paramedic students [63:1-2511(7)].~~

~~(ge) Approved training programs shall use a quality assurance process that is approved by the Department.~~

**310:641-7-11. Training program applications**

(a) The application process shall be completed by the applicant through the established process. The information submitted to the Department shall include but is not be limited to, the following:

(1) name of the training program, address, telephone number, email and fax number;

(2) levels of training that the program anticipates being able to provide;

(3) the name of the Program ~~Administrator~~ Director and a curriculum vitae;

(4) the name of the ~~Program~~ Course Coordinator and ~~Curriculum Vitae or Resume~~ curriculum vitae or resume that includes address, telephone number, fax number and an electronic mail address;

(5) the name of the Medical Director, a ~~Curriculum Vitae or Resume~~ curriculum vitae or resume which includes address, telephone number, fax number, and an electronic-mail address, a current copy of their Oklahoma State medical license, and a current copy of their Oklahoma Bureau of Narcotics and Dangerous Drugs registration ~~expiration date~~;

(6) a copy of the student ~~grievance/appeal~~ grievance and appeal policy;

(7) list of all instructors and individual resume for each with copies of required documentation of instructor qualifications;

(8) ~~copies~~ of all current agreements for clinical experience locations required to conduct courses;

(9) ~~copies~~ of inventories of equipment and supplies;

(10) ~~copies of~~ course plans (syllabi) and curriculum objectives for the course; and

(11) site applications for additional sites of instruction with required attachments.

(b) Department personnel may make site visits, inspections or observations, to determine the training program's ability to conduct emergency medical services training in accordance with the Act and rules.

(c) Certified training programs will have a plan or policy in place to address a sudden lapse of medical direction, ~~such as a back up medical director~~, to ensure coverage when a ~~physician~~ medical director is not available.

(1) The Department shall be notified the next business day of any lapse or change of medical direction by the respective program. If the agency has made arrangements for a back-up medical director or an immediate replacement, then a lapse has not occurred.

(2) In the event of a lapse in medical direction, in that a medical director is not available, the training program will cease instruction of students until the program is able to implement their policy for a substitute or find a replacement for their medical director.

(d) minimum attendance policy, and

(e) for EMR and EMT programs, the name of the National Registry Coordinator.

**310:641-7-12. Training program renewal**

~~(a) Training programs continuing to conduct emergency medical services training shall submit an application for renewal, at least sixty (60) days prior to the expiration of their certificate on forms provided by the Department.~~

~~(b) The program shall renew using forms and processes established by the Department.~~

~~(c) In addition to the renewal application, the following documentation will be submitted to the Department with the renewal application:~~

~~(1) changes in information pertaining to the program administrator~~ director, course coordinator, and/or medical director;

~~(2) copies of current clinical agreements;~~

~~(3) current equipment and supply inventory;~~

~~(4) changes to emergency medical services instructors affiliated with the training program;~~

~~(5) current training site locations; and~~

~~(6) previous three years of benchmark data to include:~~  
~~(A) NREMT cumulative pass rates in three attempts, and~~

~~(B) student retention based on the program policies; and~~

~~(67) any other pertinent information requested by the Department.~~

**310:641-7-13. Training program responsibilities**

(a) Each training program sponsoring emergency medical services training shall be responsible for:

(1) course completion based on Oklahoma instructional guidelines, and

(2) respond to and resolve student complaints and grievances.

(b) Each training program shall issue a course completion certificate and/or course transcript to each student successfully

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completing an approved course. The completion documentation will include:

- (1) ~~instructor program representative name,~~
  - (2) course authorization number,
  - (3) type of course, and
  - (4) completion dates.
- (c) The minimum course attendance will be based on the training programs policy.
- (d) The student ratio for lab activities will be one (1) instructor to ten (10) students.
- (e) Records for each course offered shall be maintained by the training program for at least three (3) years. Records shall include at a minimum:
- (1) attendance records,
  - (2) clinical experience summaries,
  - (3) student evaluations and grades,
  - (4) a record of lab assistants and their documentation of qualifications, and
  - (5) ~~skill sheets~~all lab documentation for the course and National Registry practical examinations.
  - (6) National Registry practical examination skill sheets are required for Emergency Medical Responder and Emergency Medical Technician courses only.
- (f) Each training program shall ensure that all Department required equipment is in good, safe, and operational condition.
- (1) The equipment and supplies for courses must be dedicated for training purposes,
  - (2) Equipment and supplies used on live participants must meet manufacturer guidelines and recommendations;
  - (3) Equipment shall be available for inspection by Department representatives at any time during a regularly scheduled class, and
  - (34) Sufficient equipment quantities shall be made available for each course conducted.
- (g) Each training program shall ensure that a qualified preceptor supervises each student during scheduled clinical experiences.
- (h) Each training program shall administer a final written and practical examination for each course and provide National Registry's practical examinations for both Emergency Medical Responder and Emergency Medical Technician courses after course completion.
- (i) ~~The training program shall require instructors to follow the Department approved course syllabus, use lesson plans, and provide instruction for all course objectives. Following successful completion of all components of the course each EMR and EMT training program must provide a National Registry psychomotor examination.~~
- (j) ~~For all courses which require a practical examination, the training program shall follow the National Registry Practical Examination Standards. The program shall require instructors to follow the Department approved course syllabus, use lesson plans, and provide instruction for all course objectives.~~
- (k) For all courses which require a practical examination, the training program shall follow the National Registry Practical Examination Standards established within the educational guidelines as published by the Department.

## **310:641-7-14. Training and education program initial and ongoing approval**

- (a) Any application for approval submitted by an applicant pursuant to the Act shall constitute authorization for any inspection or investigation by the Department.
- (b) A training program in compliance with all requirements shall be issued a training program certificate by the Department expiring the second June 30 after the certification date. Subsequent certifications will be valid for two (2) years.
- (c) The Department may conduct quality management visits to any training program. Visits may include, but not be limited to class visits, instructor evaluations, student surveys, review or required records, and visits to clinical sites.

### **310:641-7-14.1. Denial of a training program renewal**

A training program renewal application may be denied for programs that fail to maintain a minimum pass rate on the cognitive exam that is within:

- (1) 20% of National Registry three (3) year average, or
- (2) a minimum of 50% course retention as defined by the training program.

## **310:641-7-15. Course approval**

- (a) Each training program shall submit a written course application to the Department on forms provided by the Department. The Department may approve course requests that do not fully meet course application requirements if non-approval would be detrimental to the public.
- (b) The course application shall be submitted at least thirty (30) days prior to the course start date with exceptions at the Department discretion and shall include, but not be limited to:
  - (1) Course information including type of course, location, start and end date, class session days and times, course coordinator, instructors, and final practical examination date, and time and location as required;
  - (2) Course outline including date and time, topic, curriculum division and section number, instructor and location if different than those listed on the application for each class session, and
  - (3) A list of locations and site coordinator for each location, if multiple locations via distance learning technology are used;
- (c) Each training program conducting emergency medical services training and education shall use the Department approved course guidelines.
- (d) Each training program shall ensure that course participants have access to a CPR, PALS, PEPP, and/or ACLS instructors that meet or exceed AHA standards ~~as appropriate.~~
- (e) For each course conducted by a training program, rosters reflecting the students participating in a given course shall be submitted to the Department under the following guidelines:
  - (1) An initial student roster within twenty-one (21) ~~calendar~~ days of the course start date. Amendments to the initial student roster may be made after the twenty-one (21) day requirement only with Department approval. In no case will a student be accepted on a final student roster

that does not appear on an initial student roster for that course.

(2) A final student roster within twenty-one (21) calendar days of the course end date. This roster shall identify students who have successfully completed all course requirements, withdrawn from the course, failed the course, or whose class work was incomplete;

(3) Amendments to the final student roster for incomplete course objectives may be made after the twenty-one (21) day requirement only with Department approval. ~~In no case will an~~ amended final student roster will be accepted after ninety (90) calendar days of the course ending date with Department approval. A request for Department approval shall include a description of the circumstances requiring additional time.

(f) The Department may invalidate all or any portion of a course conducted where a violation of the Act or rules has been substantiated.

**310:641-7-16. Curriculum**

The Department shall provide curricula and instructional guidelines based on the National Highway Traffic Safety Administration National Emergency Medical Services Education Standards of ~~2009~~2020 for Emergency Medical Responder, Emergency Medical Technician, Intermediate, Advanced Emergency Medical Technicians, and Paramedics initial, refresher, and transitional courses.

**PART 5. INSTRUCTOR QUALIFICATIONS**

**310:641-7-20. Instructor requirements**

(a) ~~State Certified Emergency Medical Service Instructor~~

(1) A registry of approved emergency medical services instructors shall be maintained by the Department. Each instructor candidate shall submit to the Department an application for initial instructor certification. The application shall be on forms provided by the Department and accompanied by current documentation of qualification. This application shall constitute authorization for any inspection or investigation by the Department. The initial period for instructor certification will be concurrent with current Oklahoma Emergency Medical Personnel certification or licensure. The initial renewal requirement will be pro-rated based on the remaining time to the expiration date.

(2) Qualifications for a Level 1 and Level II instructor certification include:

(A) A resume or letter documenting two (2) years of direct field experience in emergency medical services within the previous five (5) years which meets or exceeds the level of training being taught;

(B) ~~Current approval as a Basic Life Support Healthcare Provider Instructor (CPR) in accordance with American Heart Association (AHA) Instructor, American Red Cross Professional Rescuer Instructor, or National Safety Council CPR for the Health Care~~

~~Provider Instructor standards. At the paramedic level, the instructor shall be a current American Heart Association, Advanced Cardiac Life Support (ACLS) provider and a Pediatric Advanced Life Support (PALS), Pediatric Emergency Medicine (APLS), Pediatric Prehospital Care (PPC) or Pediatric Education for the Prehospital Professional (PEPP) provider. Copies of all required documentation will be forwarded to the Department with application;~~

(C) Successful completion of a Department approved EMS Instructor Training Course or Fire Service Instructor I and/or II, with the EMS Instructor Training Bridge (ITC) Course or equivalent within the previous two (2) years. Applicants with credentials greater than two year old will need to provide documentation of classroom or instructor experience totaling eight (8) hours annually from the date their initial credential(s) was issued, or complete a sixteen (16 hour instructor refresher to update their credential(s); and

(D) Current state certification or licensure; and  
(D) within three (3) years of the effective date of this regulation, the instructor identified as the lead instructor on a course authorization form of an initial paramedic course at an accredited program must possess a minimum of an associate's degree.

(3) To teach, a qualified instructor must have a letter from the director and medical director of a certified first response agency or ambulance service or the coordinator of an approved training institution, documenting affiliation. Level 1 instructors can teach at training institutions, but will be required to renew as Level 2 instructors.

(b) Emergency Medical Service Lab Assistant Instructor.

(1) ~~A~~An individual file for each of qualified Lab Assistant Instructors shall be maintained by each ~~certified training program, licensed ambulance service, or certified first response agency~~ emergency medical response agency including documentation of qualification.

(2) Qualifications for lab assistants include:

(A) ~~Affiliation with an approved training program, licensed ambulance service or certified first response agency;~~

(B) Two (2) years of current experience in medical services which meets or exceeds the level of training being assisted or evaluated; and

(C) Any certification required for the skill being assisted or evaluated.

(c) Emergency Medical Service Level 3 Instructor Educator certification.

(1) Instructor Training Courses (ITC) and Instructor Refresher Courses (IRC) shall be taught by a state certified Level 3 Instructor Educator.

(2) An application for a Level 3 Instructor Educator shall be submitted on forms provided by the Department and accompanied by current documentation of qualification.

(3) Qualifications for a Level 3 Instructor educator include:

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- (A) Affiliation with an approved training program
  - (B) Current Oklahoma licensure as a ~~Basic~~ Basic EMT or higher.
  - (C) Five (5) years experience as an ~~an~~ an EMS field provider.
  - (D) Current approval as an Oklahoma EMS Instructor
  - (E) Completion of the NHTSA/DOT EMS Instructor Training Course;
  - (F) ~~Successful completion of instruction of at least 3 major (initial) EMT courses at the Basic level or higher; Complete a minimum of 500 hours of didactic training as the lead or primary instructor in initial EMT, AEMT, or Paramedic courses; and~~
  - (G) Attendance at all mandatory meetings with the Department and other Instructor Educators.
- (4) ~~EMS~~ Level 3 instructor educators must maintain EMS instructor certification(s). A registry of approved emergency medical services instructor educators shall be maintained by the Department.

### 310:641-7-21. Instructor and instructor educator renewal

- (a) Instructors and instructor educators shall submit an application for renewal every two (2) years.
- (b) Each renewal will include ~~sixteen (16)~~ sixteen (16) verification hours of instructor continuing education or refresher course.
  - (1) Level 1 instructors are required to submit eight (8) hours of continuing education or refresher course hours.
  - (2) Level 2 and 3 instructors are required to submit sixteen (16) hours of continuing education or refresher course hours.
- (c) Instructor continuing education may consist of, but not be limited to:
  - (1) technology and software utilized in instruction and tracking student activities,
  - (2) psycho-motor exam evaluator,
  - (3) objective and evaluation writing,
  - (4) curriculum review and utilization,
  - (5) classroom management,
  - (6) instructional theory and application,
  - (7) teaching initial, refresher, and continuing education classes and courses for emergency medical professionals,
  - (8) courses, classes, and workshops approved by the Department,
- (d) ~~Unless otherwise approved by the Department, an instructor applying for renewal~~ Instructors are is limited to a maximum of four (4) hours of actual didactic, psycho-motor, or affective domain classes in any one area or topic.
- (e) ~~Instructor educators~~ Level 3 instructors providing the continuing education hours as a refresher course shall submit a course authorization request for approval ~~the assignment of a course authorization number.~~
- (f) The Department may deny, refuse to renew, revoke, suspend, or place on probation any instructor or instructor educator for reasons which include, but are not limited to:

- (1) Failure to attend Department required workshops or mandatory Department meetings for EMS instructor educators;
- (2) Failure to follow Department rules;
- (3) Failure to maintain professional license or certification qualifications;
- (4) Falsification of any training document;
- (5) Failure to maintain professional conduct at all times when providing EMS instruction;
- (6) Failure to obtain sixteen (16) hours of instructor continuing education during the two (2) year certification period for EMS instructors or to complete a Department approved EMS Instructor Refresher.
- (g) This application shall constitute authorization for any inspection or investigation by the Department.
- (h) An instructor's certification expiration date is concurrent with their Oklahoma Emergency Medical Personnel Certification or License expiration date. For the initial renewal of an instructor certification, any continuing education renewal requirements will be pro-rata based on the next expiration date.

### 310:641-7-24. Training manager authorization

- (a) Licensed ambulance services and certified emergency medical response agencies shall be authorized to conduct training based upon the need for training and continuing education activities. This agency supplied training is limited to refresher courses, emergency medical responder courses, continuing education, and other training courses as designated by the Department.
- (b) Ambulance services and emergency medical response agencies ~~shall~~ must use Level 1, 2, or 3 approved instructors to either provide and/or oversee the training. A guest presenter may be used provided an approved instructor is present and responsible for the training session.
- (c) An attendance policy or statement shall be sent with course authorization requests for approval by the Department.
  - (1) Attendance shall be maintained at the agency for three years.
  - (2) Attendance records will be provided when requested to the Department or to agencies to verify activities.
- (d) The Department may attend any training or educational activity to ensure compliance.
- (e) The Department may invalidate all or any portion of training conducted if a violation of the Act or rules has been substantiated.

## PART 13. SEMI-AUTOMATED EXTERNAL DEFIBRILLATOR TRAINING

### 310:641-7-60. Approved program providers [REVOKED]

~~Semi automated external defibrillator (SAED) training providers approved by the American Red Cross, American Heart Association, National Safety Council or other Department approved training programs shall be deemed acceptable to the Department as approved training programs for persons~~

administering SAED in accordance with 76 O.S. Supp. 1999 '5A. Training programs offered by approved providers shall be at least four (4) hours in length, cover the use of the semi automated external defibrillator and cardiopulmonary resuscitation in accordance with American Heart Association Standards.

**310:641-7-61. Approved instructors course directors and trainers**

~~Instructors approved by the American Red Cross, American Heart Association, National Safety Council, or other Department approved training program to provide semi automated external defibrillation and cardiopulmonary resuscitation training shall be deemed acceptable to the Department as approved instructors of training programs for persons administering emergency defibrillation in accordance with 76 O.S. Supp. 1999 '5A. To be subject to 76 O.S. § 5A, the Department requires course directors and trainers to complete cardiopulmonary resuscitation training from the American Red Cross, American Heart Association, National Safety Council, or any other similar course that is approved by the Department.~~

**SUBCHAPTER 11. SPECIALTY CARE  
AMBULANCE SERVICE**

**310:641-11-2. License required [REVOKED]**

- (a) No person, company, governmental entity or trust authority shall operate, advertise, or hold themselves out as being a specialty care ambulance service without first obtaining a license to operate a specialty care ambulance service from the Department. The Department shall have sole discretion to approve or deny an application for a specialty care ambulance service license based on the ability of the applicant to meet the requirements of this rule.
- (b) State and Federal agencies that respond to specialty care transports off State and Federal property are required to become licensed by the Department.
- (c) Persons, companies, and governmental entities which operate on their own premises are exempt from this licensing requirement, unless the specialty care patient(s) is/are transported on the public streets or highways of Oklahoma or outside of their own premises.
- (d) An application to operate a specialty care ambulance service shall be submitted on forms prescribed and provided by the Department. Ground, air, stretcher aid van, and specialty care services shall each be considered a separate license.
- (e) The application shall be signed under oath by the party or parties seeking to secure the license.
- (f) The party or parties who sign the application shall be considered the owner or agent (licensee), and responsible for compliance to the Act and rules.
- (g) The application shall contain, but not be limited to the following:
  - (1) a statement of ownership which shall include the name, address, telephone number, occupation and/or other

business activities of all owners or agents who shall be responsible for the service.

- (A) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included.
- (B) If the owner is an entity of government, governmental trust, trust authority, or non profit corporation, the name of each board member, or the chief administrative officer and/or chief operation officer shall be included.
- (2) Proof of vehicle insurance at least in the amount of one million dollars (\$1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;
- (3) proof of professional liability insurance at least in the amount of one million dollars (\$1,000,000) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;
- (4) participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed;
- (5) each licensee shall have a medical control physician or medical director as prescribed by the Act and this Chapter;
- (6) copy of any contract(s) for vehicles, medical equipment, and/or personnel, if such exist;
- (7) a copy of patient care protocols and quality assurance plan detailing the care, interventions, and scope of practice beyond the Paramedic, as required by medical control physician and as prescribed by the Act and this Chapter.
  - (A) The Department may require quality assurance documentation for review and shall protect the confidentiality of that information.
  - (B) The quality assurance documentation shall be maintained by the agency for three (3) years.
  - (C) The quality assurance policy shall include, but not be limited to:
    - (i) policy to review refusals;
    - (ii) policy to review air ambulance utilization;
    - (iii) policy to review airway management;
    - (iv) policy to review cardiac arrest interventions;
    - (v) policy to review time sensitive medical and trauma cases;
    - (vi) policy to review other selected patient care reports not specifically included;
    - (vii) policy to provide internal and external feedback of findings determined through reviews, and

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- (viii) ~~documentation of the feedback will be maintained as part of the quality assurance documentation.~~
- (8) ~~A written communication policy addressing:~~
- ~~(A) the receiving and dispatching of emergency and non-emergency calls;~~
  - ~~(B) ensuring compliance with State and local EMS Communication Plans; and~~
  - ~~(C) applicants for this license will provide documentation that a screening process is in place to ensure a request for transport of a specialty care patient will meet the agency's capability, capacity, and license requirements. Documentation of the screening will be retained as part of the patient care report or call log.~~
- (9) ~~Provide a response plan that includes:~~
- ~~(A) providing and receiving mutual aid with all surrounding, contiguous, or overlapping licensed service areas; and~~
  - ~~(B) providing for and receiving disaster assistance in accordance with local and regional plans and command structures.~~
- (10) ~~A confidentiality policy ensuring confidentiality of all documents and communications regarding protected patient health information.~~
- (11) ~~An application for an initial or new license shall be accompanied by a non-refundable fee of six hundred (\$600.00) dollars plus twenty (\$20.00) dollars for each vehicle, in excess of two (2) vehicles utilized for patient transport. An additional fee of one hundred fifty (\$150.00) dollars shall be included for each ambulance substation in addition to the base station.~~
- (h) ~~Specialty care license applicants will provide documentation that reflects compliance with existing sole source ordinances.~~
- (i) ~~Applicants will declare in the application the type or types of specialty care and patients that will be transported by the agency. The types of specialty care and patients may include, but not be limited to:~~
- ~~(1) adult, pediatric, infant, neonatal, or a combination of age types;~~
  - ~~(2) cardiac care, respiratory, neurological, septicemia, or other single or multi-system complications or illnesses requiring specialized treatment during the transport of the patient.~~
- (j) ~~Specialty care ambulance services are exempt from the duty to act requirements and continuous staffing coverage.~~
- (k) ~~A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year is required to be submitted with the application.~~
- (c) The interior of the patient compartment of their aircraft shall have the capability of being climate controlled to avoid adverse effects on patients and medical personnel on board by a means other than flight operations and flying to an altitude.
- (d) The aircraft design and configuration shall not compromise patient stability in loading, unloading, or in-flight operation to include:
- (1) the aircraft shall have an entry that allows loading and unloading without excessive maneuvering (no more than 45 degrees about the lateral axis and 30 degrees about the longitudinal axis) of the patient and does not compromise functioning of monitoring systems, intravenous lines, and manual or mechanical ventilation;
  - (2) a minimum of one stretcher shall be provided that can be carried to the patient;
  - (3) aircraft stretchers and the means of securing it in-flight must be consistent with applicable Supplemental Type Certificates (STCs).
  - (4) the type and model of stretcher indicates the maximum gross weight allowed (inclusive of patient and equipment) as labeled on the stretcher;
  - (5) the stretcher shall be large enough to carry an American adult male .
  - (6) the stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available;
  - (7) the head of the stretcher is capable of being elevated at least 30 degrees for patient care and comfort;
  - (8) if the ambulance stretcher is floor supported by its own wheels, there is a mechanism to secure it in position under all conditions. These restraints permit quick attachment and detachment for patient transfer.
- (e) Patients transported by air will be restrained with a minimum of three straps, including shoulder straps, which must comply with FAA regulations. The following additional requirements shall apply to achieve patient stability:
- (1) patients less than 60 pounds (27kg) shall be provided with an appropriately sized restraining device (for patient's height and weight) which is further secured by a locking device. All patients less than 40 pounds must be secured in a five-point safety strap device that allows good access to the patient from all sides and permits the patient's head to be raised at least 30 degrees. Velcro straps are not encouraged for use on pediatric devices;
  - (2) if a car seat is used, it shall have an FAA approved sticker;
  - (3) there shall be some type of restraining device within the isolette to protect the infant in the event of air turbulence.
- (f) A supplemental lighting system shall be installed in the aircraft/ambulance in which standard lighting is insufficient for patient care, and a self-contained lighting system powered by a battery pack or portable light with a battery source must be available.
- (g) An electric power outlet shall be provided with an inverter or appropriate power source of sufficient output to meet the requirements of the complete specialized equipment

### 310:641-11-11. Specialty care air ambulance aircraft

- (a) An air ambulance aircraft may be fixed wing, single or multi-engine; or rotary wing, single or multi-engine.
- (b) Operations of the aircraft shall be under the appropriate provisions of the Federal Aviation Regulations (FARs).



packages without compromising the operation of any other system or equipment. A back-up power source to enable use of equipment may be provided by an extra battery of appropriate voltage and capacity.

(h) There shall be access and necessary space to ensure any onboard patient's airway is maintained and to provide adequate ventilatory support from the secured, seat-belted position of medical transport personnel.

~~(ik)~~ Medical transport personnel shall be able to determine if medical oxygen is on in the patient care area.

(1) Each gas outlet shall be clearly marked for identification.

(2) Oxygen flow shall be capable of being started and stopped at or near the oxygen source from inside the aircraft.

(3) The following indicators shall be accessible to medical transport personnel while en route:

- (A) quantity of oxygen remaining; and
- (B) measurement of liter flow.

~~(j)~~ A variety of medical oxygen delivery devices consistent with the service's medical protocols shall be available.

~~(km)~~ An appropriately secured portable medical oxygen tank with a delivery device shall be carried on the aircraft. Portable medical oxygen tank may not be secured between patient's legs while the aircraft is in motion.

~~(ln)~~ There shall be a back-up source of medical oxygen sufficient to allow completion of the transport in the event the main system fails. For air transports, this back-up source can be the required portable tank as long as the portable tank is accessible in the patient care area during flight.

~~(m)~~ Storage of oxygen shall comply with applicable standards.

~~(np)~~ Oxygen flow meters and outlets shall be located to prevent injury to medical transport personnel to the extent possible.

~~(oq)~~ The licensee shall notify the Department prior to placing a substitute aircraft into operation. Any vehicle initially placed in service after a purchase, lease, contract and/or refurbish shall be inspected, approved, and permitted by the Department. In the event the licensee will be utilizing a substitute aircraft not previously permitted by the Department for a period of more than five (5) days, the licensee shall notify the Department to have the aircraft inspected and permitted by the Department.

(1) Licensees with a substitute aircraft utilized for periods of five (5) days or less, the licensee shall complete an agency specific equipment log documenting the transfer of all required equipment onto the substitute aircraft at the time of transfer.

(2) The agency will maintain documentation of the transfer in accordance with OAC 310:641-13-21 Air ambulance service records and files.

(p) Any vehicle initially placed in service after a purchase, lease, contract and/or refurbish shall be inspected, approved, and permitted by the Department as detailed within this section of OAC 310:641 Subchapter 11.

**310:641-11-12. Equipment for specialty care transport vehicles (air and ground)**

(a) The tampering, modification, or removal of the manufacturer's expiration date is prohibited.

(b) Licensed specialty care ambulance services shall ensure that all recalled, outdated, misbranded, adulterated, or deteriorated fluids, supplies, and medications are removed from ambulances immediately.

(c) The medical control physician will authorize all equipment and medications placed on the units for patient care.

(1) The authorized equipment and medications will be detailed on a unit checklist and will match the equipment and supplies with detailed defined minimums needed to treat patients in the manner in the agency approved protocols. The checklist will also meet the requirements described in the ambulance file section of this subchapter.

(2) The medications authorized by the medical director will be detailed on the unit checklist ~~described in the ambulance files section of this subchapter~~, to include the number, weight, and volume of the medication containers.

(d) At a minimum, the following equipment and supplies will be present on each specialty care unit when transported specialty care patients:

(1) age and size appropriate oropharyngeal and nasopharyngeal airways, single wrapped for sanitation purposes;

(2) functioning portable suction device with age and size appropriate tubing and tips;

(3) age and size appropriate bag-valve-mask resuscitators;

(4) portable (secured in each vehicle) and wall mounted oxygen sets, with age and size appropriate tubing cannulas and masks;

(5) spare portable oxygen cylinder, secured to manufacturing specifications;

(6) Bandaging materials to include:

(A) two (2) burn sheets clean wrapped and marked in plastic bag that need not be sterile.

(B) fifty (50) sterile 4"x4" dressings.

(C) six (6) sterile 6"x8" or 8"x10" dressings.

(D) ten (10) roller bandages, 2" or larger.

(E) four (4) rolls of tape (minimum of one (1") inch width).

(F) four (4) sterile occlusive dressings, 3" x 8" or larger.

(G) four (4) triangular bandages.

(H) one (1) pair of bandage scissors.

(7) Fracture immobilization devices to include:

(A) one (1) adult and one (1) pediatric traction splint or equivalent device capable of adult and pediatric application.

(B) two (2) upper and two (2) lower extremity splints in adult and pediatric sizes.

(C) short spine board or vest type immobilizer, including straps and accessories as described within the agency protocols.

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- (D) two (2) adult and one (1) pediatric size long spine board including straps and head immobilization devices.
  - (E) two (2) rigid or adjustable extrication collars in large, medium, small adult sizes, and pediatric sizes for children ages 2 years or older and one (1) infant collar. Collars shall not be foam or fiber filled.
- (8) Miscellaneous medical equipment to include:
- (A) one (1) infant, one (1) child, two (2) adult, and one (1) extra-large blood pressure cuffs;
  - (B) stethoscope, one (1) adult and one (1) pediatric sizes.
  - (C) obstetrical kit with towels, 4"x4" dressing, umbilical tape, bulb syringe, cord cutting device, clamps, sterile gloves, aluminum foil, and blanket.
  - (D) universal communicable disease precaution equipment including gloves, mask, goggles, gown, and other universal precautions.
  - (E) blood-glucose measurement equipment per medical direction and Department approval.
  - (F) CPAP per medical direction and Department approval.
- (9) Other mandatory equipment to include:
- (A) Two (2) appropriately labeled or designated waste receptacles for:
    - (i) waste that is contaminated by bodily fluids or potentially hazardous infectious waste, and
    - (ii) waste that does not present a biological hazard, such as plastic or paper products that are not contaminated.
  - (B) two way radio communication equipment utilizing VHF frequency 155.3400 as detailed in this Chapter and through the Statewide Interoperability Governing Body.
  - (C) one (1) sturdy, lightweight, all-level cot for the primary patient that is compliant with the vehicle manufacturing standards in place at the time of purchase.
  - (D) at least three (3) strap type restraining devices (chest, hip, and knee), and compliant shoulder harness shall be provided per stretcher, cot, and litter (not less than two (2") inches wide, nylon, easily removable for cleaning, two (2) piece assembly with quick release buckles).
  - (E) electronic or paper patient care run reports.
  - (F) two (2) fire extinguishers; one (1) in the cab of the unit, and one in the patient compartment of the vehicle each mounted in a manner that allows for quick release and is compliant with the ambulance manufactures building standards. Each extinguisher is to be dry powder, ABC, and a minimum of five (5) pounds.
  - (G) two (2) operable flashlights;
  - (H) all ambulance equipment and supplies shall be maintained in accordance with sanitation requirements in this Chapter. Additionally, sterility shall be maintained on all sterile packaged items.
  - (I) digital or strip type thermometer and single use probes.
  - (J) six (6) instant cold packs.
  - (K) one (1) length/weight based drug dose chart or tape.
  - (L) a minimum of two (2) DOT approved reflective vests.
  - (M) As approved by local medical direction, a child restraint system or equipment for pediatric patients, as provided under the limits of the agency license.
- (e) All assessment and medical equipment utilized for patient care will be maintained in accordance with the manufactures guidelines. Documentation will be maintained at the agency showing that periodic tests, maintenance, and calibration are being conducted in accordance with the manufactures requirements. These types of equipment include, but are not limited to, gurneys or stretchers, suction devices, pulse oximetry, glucometers, capnography monitors, end-tidal co2 monitors, CPAP/BiPAP devices, ventilators, and blood pressure monitors.

### **310:641-11-14. Specialty care agency sanitation requirements**

- (a) The following shall apply regarding sanitation standards for all specialty care ambulance services facilities, vehicles, and personnel:
- (1) the interior of the vehicle and the equipment within the vehicle shall be sanitary, secured and maintained in good working order at all times;
  - (2) the exterior of the vehicle shall be clean and maintained in good working order to ensure the vehicle can operate safely and in accordance with applicable sections of Title 47 of the Oklahoma Statutes;
  - (3) linen shall be changed after each patient is transported; and bagged and stored in an outside or separate compartment;
  - (4) clean linen, blankets, washcloths, and hand-towels shall be stored in a closed interior cabinet free of dirt and debris;
  - (5) freshly laundered linen or disposable linen shall be used on the cots and pillows and changed between patients;
  - (6) pillows and mattresses shall be kept clean and in good repair and any repairs made to pillows, mattresses, and padded seats shall be permanent;
  - (7) soiled linen shall be placed in a closed container that deters accidental exposure. Any linen which is suspected of being contaminated with bodily fluids or other potentially hazardous infectious waste shall be placed in appropriately marked or designated closed container for disposal;
  - (8) contaminated disposable supplies shall be placed in appropriately marked or designated containers in a manner that deters accidental exposure.
  - (9) exterior and interior surfaces of vehicles shall be cleaned routinely;
  - (10) blankets and hand towels used in any vehicle shall be clean;

- (11) implements inserted into the patient's nose or mouth shall be single-service wrapped and properly stored and handled. When multi-use items are utilized, the local health care facilities should be consulted for instructions in sanitation and handling of such items;
- (12) when a vehicle has been utilized to transport a patient(s) known to the operator to have a communicable disease the vehicle shall be cleansed and all contact surfaces shall be washed with soap and water and appropriate disinfectant. The vehicle should be placed "out of service" until a thorough cleansing is conducted;
- (13) all storage spaces used for storage of linens, equipment, medical supplies, and other supplies at the base station shall be kept clean;
- (14) personnel shall be clean, especially hands and fingernails, and well groomed. Clothing worn by personnel shall be clean. The licensee shall provide in each vehicle a means of hand washing for the attendants;
- (15) the oxygen humidifier(s) shall be single use;
- (16) All medications, supplies, and sterile equipment with expiration dates shall be current;
- (17) Expired medications, supplies, and sterile equipment shall be discarded appropriately. Tampering, removing, or altering expiration dates on medications, supplies, and equipment is prohibited;
- (18) The station facility, ambulance bays, living quarters, and office areas shall be clean, orderly, and free of safety and health hazards;
- (19) Specialty care ambulance vehicles and service facilities shall be free of any evidence of use of lighted or smokeless tobacco products except in designated smoking areas consistent with the provisions of 310:641-1-4.

**310:641-11-20. Operational protocols**

- (a) Authorized emergency vehicles of licensed ambulance services shall adhere to the requirements of Title 47 O.S. Section 1-101 et seq. ("Motor Vehicle Code") for all vehicle operations. following for physically displaying and/or orally transmitting via voice communications, to the following modes of operation:
  - (1) ~~"Code 1" shall mean a non emergency mode for the purpose of operation of an ambulance service vehicle. Neither red lights nor siren shall be utilized, and the vehicle shall not be considered or afforded the exemption of an "authorized emergency vehicle" pursuant to Title 47 ("Motor Vehicle Code");~~
  - (2) ~~"Code 3" shall mean an emergency mode for the purpose of operation of an ambulance service vehicle. Both red lights and siren shall be utilized, and the vehicle shall be considered and afforded the exemption of an "authorized emergency vehicle" pursuant to Title 47 ("Motor Vehicle Code").~~
- (b) When a facility requests a specialty care transport, the specialty care agency will provide an accurate estimated time of arrival and ensure the patient needs will be able to be met for the service being requested.
- (c) Mutual aid plan(s), regarding interfacility transports only, with licensed services shall be developed and placed

in the agency files for inspection. Plans will be periodically reviewed to ensure accuracy and completeness. Licensed specialty care agencies shall provide mutual aid, if the agency has the capability and if the requested activity is within the licensure requirements.

**310:641-11-22. Specialty care ambulance service records and files**

- (a) All required records for licensure will be maintained for a minimum of three (3) years.
- (b) Each licensed specialty care ambulance service shall maintain electronic or paper records about the operation, maintenance, and such other required documents at the business office. These files shall be available for review by the Department during normal work hours. Files which shall be maintained include the following:
  - (1) Patient care records:
    - (A) at the time a patient is transported to a receiving facility, the following information will be, at a minimum provided to the facility staff members at the time the patient is accepted:
      - (i) personal information such as name, date of birth, and address;
      - (ii) patient assessment with medical history;
      - (iii) medical interventions and patient responses to interventions;
      - (iv) any known allergies; and
      - (v) other information from the medical history that would impact the patient outcomes if not immediately provided.
    - (B) A signature of the receiving facility health care staff member will be obtained to show the above information and the patient were received.
  - (2) A complete copy of the patient care report shall be sent to the receiving facility within twenty-four (24) hours of the hospital receiving the patient.
  - (3) Completed patient care reports shall contain demographic, administrative, legal, medical, community health, and patient care information required by the Department through the OKEMISIS Data Dictionary.
  - (4) All run reports and patient care information shall be considered confidential.
- (c) All licensed agencies shall maintain electronic or paper records on the maintenance, and regular inspections of each vehicle.
  - (1) Each vehicle must be inspected and a detailed equipment checklist completed after each call, or on a daily basis, whichever is less frequent-, and
  - (2) documentation that shows routine vehicle maintenance for each vehicle as required by vehicle manufacture recommendations.
- (d) All licensed agencies shall maintain a licensure or credential file for licensed and certified emergency medical personnel employed by or associated with the service to include:
  - (1) Oklahoma license and certification,
  - (2) Basic Life Support certification, or documentation of BLS cognitive objectives and psychomotor skills that

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meets or exceeds American Heart Association standards, and approved by the medical director:

- (3) Advanced Cardiac Life Support certification or documentation of BLS cognitive objectives and psychomotor skills that meets or exceeds American Heart Association Standards, as approved by the medical director if applicable for the license level,
  - (4) Incident Command System or National Incident Management Systems training at the 100, 200, and 700 levels or their equivalent,
  - (5) verification of an Emergency Vehicle Operations Course or other agency approved defensive driving course,
  - (6) contain a list or other credentialing document that defines or describes the medical director authorized procedures, equipment, and medications for each certified or licensed member employed or associated with the agency, and
  - (7) a copy of the medical director credentials will be maintained at the agency.
- (e) The electronic or paper copies of the licenses and credentials described in this section shall be kept separate from other personnel records to ensure confidentiality of records that do not pertain to the documents relating to patient care.
- (f) Copies of staffing patterns, schedules, or staffing reports which indicate the ambulance service is maintaining twenty four (24) hour coverage at the highest level of license;
- (g) Copies of in-service training and continuing education records.
- (h) Copies of the ambulance service:
- (1) operational policies, guidelines, or employee handbook;
  - (2) a list of the patient care equipment that is carried on any "Class E" unit(s) will be part of the standard operating procedure or guideline manual,
  - (3) medical protocols; and
  - (4) OSHA and/or Department of Labor exposure plan, policies, or guidelines.
- (i) A log of each request for service received and/or initiated, to include the:
- (1) disposition of the request and the reason for declining the request if applicable,
  - (2) patient care report number,
  - (3) date of request,
  - (4) patient care report times as required in the OKEM-SIS Data Dictionary,
  - (5) location of the incident, and
  - (6) ~~where the ambulance originated, and~~
  - (7) nature of the call.
- (j) Documentation that verifies an ongoing, physician involved quality assurance program.
- (k) Such other documents which may be determined necessary by the Department. Such documents can only be required after a thorough, reasonable, and appropriate notification by the Department to the services and agencies.
- (l) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed ambulance service. Reports of the EMS data standard shall be forwarded to the Department

by the last business day of the following month. Exceptions to the monthly reporting requirements shall be granted only by the Department, in writing.

(m) Review and the disclosure of information contained in the ambulance service files shall be confidential, except for information which pertains to the requirements for license, certification, or investigation issued by the Department.

(n) Department representatives shall have prompt access to files, records, and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment, or property may result in summary suspension of licensure by the Commissioner of Health.

(o) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.

(p) A representative of the agency will be present during the record review.

### SUBCHAPTER 13. AIR AMBULANCE SERVICE

#### 310:641-13-2. License required [REVOKED]

~~(a) No person, company, governmental entity or trust authority shall operate, advertise, or hold themselves out as providing any air ambulance service without first obtaining a license to operate an air ambulance service from the Department. The Department shall have sole discretion to approve or deny any application for air ambulance service license based on the ability of the applicant to meet the requirements of this rule.~~

~~(1) State and Federal agencies are exempt from this licensing requirement unless the State and Federal agency air ambulance service routinely responds to emergency requests for service off State and/or Federal property.~~

~~(2) An application for a license to operate as an air ambulance service shall be submitted on forms prescribed and approved by the Department.~~

~~(3) The application shall be signed by the party or parties seeking to secure the license.~~

~~(4) The party or parties who sign the application shall be considered the owner or agency (licensee) and responsible for compliance to the Act and this Chapter.~~

~~(5) The application shall contain, but not be limited to the following:~~

~~(A) a statement of ownership shall include the name, address, telephone number(s), occupation, and other business activities of all owners or agents who shall be responsible for the service;~~

~~(B) if the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included;~~

~~(C) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation,~~

the name of each board member, or the chief administrative officer, and/or chief operation officer shall be included;

(D) Proof of aircraft insurance as required within Federal regulations;

(E) Proof of professional liability insurance at least in the amount of one million dollars (\$1,000,000) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Sections 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;

(F) participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed;

(G) each licensee shall have a medical control physician or medical director as prescribed by the Act and this Chapter;

(H) copy of any contract(s) medical equipment, and/or personnel;

(I) a copy of patient care protocols and quality assurance plan detailing the care and interventions as required by medical control physician and as prescribed by the Act and this Chapter;

(J) the Department may require quality assurance documentation for review and shall protect the confidentiality of that information;

(K) the quality assurance documentation shall be maintained by the agency for three (3) years;

(L) the quality assurance policy shall include, but not be limited to:

- (i) policy to review refusals;
- (ii) policy to review air ambulance utilization;
- (iii) policy to review airway management;
- (iv) policy to review cardiac arrest interventions;
- (v) policy to review time sensitive medical and trauma cases;
- (vi) policy to review other selected patient care reports not specifically included;
- (vii) policy to provide internal and external feedback of findings determined through reviews;
- (viii) documentation of the feedback will be maintained as part of the quality assurance documentation.

(M) a written communication policy addressing:

- (i) the receiving and dispatching of emergency and non-emergency calls; and
- (ii) ensuring compliance with State and local EMS Communication Plans.

(N) air ambulance specialty care license applicants will provide documentation that a screening process is in place to ensure a request for transport of a specialty care patient will meet the agency's capability, capacity, and licensure requirements. Documentation of the screening will be retained as part of the patient care report or call log.

(6) Provide a response plan that includes:

(A) providing and receiving mutual aid with all surrounding, contiguous, or overlapping air ambulance licensed service areas that provides for support when an agency is not able to meet a request for medical assistance;

(B) providing for and receiving disaster assistance in accordance with local and regional plans and command structures.

(7) Confidentiality policy ensuring confidentiality of all documents and communications regarding protected patient health information.

(b) An application for an initial or new license shall be accompanied by a non refundable fee of six hundred (\$600.00) dollars plus twenty (\$20.00) dollars for each vehicle in excess of two (2) vehicles utilized for patient transport. An additional fee of one hundred fifty (\$150.00) dollars shall be included for each ambulance substation in addition to the base station.

(c) Air ambulance services are exempt from a duty to act requirements and continuous staffing coverage.

(d) A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year.

**310:641-13-10. Air ambulance equipment**

(a) Medical control shall determine the patient's needs and level of care required when deciding what equipment shall be aboard each flight and the type of aircraft required for transport. Equipment kits, cases and/or packs which are carried on any given flight shall be available for the following categories: trauma, cardiac, burn, toxicologic, pediatric, neonatal, and obstetrics.

(b) controlled substances shall be in a locked system and kept in a manner consistent with Federal and States requirements and applicable sections of this Chapter.

(c) storage of medications shall allow for protection from extreme temperature changes if environment deems it necessary.

(d) The following medical equipment shall be required to be on board every aircraft certified by the Department for air medical services:

- (1) readily available IV supplies and fluids, readily available;
- (2) hangers or hooks to secure IV solutions in place and equipment to provide high flow fluids if needed. Glass IV containers shall not be used unless required by specific medications and properly secured;
- (3) a minimum of three (3) IV infusion pumps immediately available for critical care transports;
- (4) accessible medications, consistent with the service's medical protocols;
- (5) a cardiac monitor, defibrillator and external pacemaker shall be secured and positioned so that displays are visible. Two (2) extra batteries or a power source shall be available for cardiac monitor / defibrillator or external pacemaker (adult and pediatric);
- (6) laryngoscope and tracheal intubation supplies, to include laryngoscope blades, bag-valve-mask, and oxygen

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supplies, including PEEP valves; appropriate for ages and potential needs of patient transported;

- (7) a mechanical ventilator appropriate for critical care transports;
- (8) two (2) suction units, one of which is portable and both of which are capable of delivering adequate suction to clear the airway with wide bore (1/4") tubing and rigid and soft suction catheters for adults, children, and infants;
- (9) pulse oximetry with adult and pediatric capability;
- (10) continuous waveform capnography monitoring capabilities and equipment;
- (11) automatic blood pressure device;
- (12) devices for decompressing a pneumothorax and performing an emergency cricothyroidotomy;
- (13) doppler stethoscope;
- (14) continuous/bi level positive airway pressure device as allowed by protocol; and
- (15) arterial line blood pressure monitoring as allowed by protocol.

(e) All medical equipment (including specialized equipment) and supplies shall be secured according to FAR's.

(f) All assessment and medical equipment utilized for patient care will be maintained in accordance with the manufacturer's guidelines. Documentation will be maintained by the agency, and made available to the Department upon request, showing the periodic tests, maintenance, and calibration are being conducted in accordance with manufacturer's requirements. Equipment shall include, but not be limited to, stretcher or gurney, suction devices, pulse oximetry, glucometers, end-tidal CO<sub>2</sub>, and capnography monitors, CPAP/BiPAP devices, ventilators, and blood pressure monitors.

### 310:641-13-19. Emergency medical services regions [REVOKED]

~~(a) Regions established pursuant to Section 1-2503 (21) and (22) of the Act shall not be recognized without Department approval for this purpose. Pursuant to Title 74, O.S., Section 1006, of the "Interlocal Cooperation Act" (relating to Approval of Agreements), the Department shall exercise authority granted to approve or disapprove all matters within its jurisdiction, in addition to and in substitution for the requirement of submission to and approval by the Attorney General.~~

~~(b) The Department shall recognize regions which comply with the law and this Chapter.~~

~~(c) Any regional emergency medical services system shall provide the name of the regional medical director, copies of regional standards, rules, and transport protocols established for the regional emergency medical services system to the Department.~~

### 310:641-13-21. Air ambulance service records and files

(a) All required records for licensure will be maintained for a minimum of three years.

(b) Each licensed air ambulance service shall maintain electronic or paper records about the operation, maintenance, and such other required documents at the business office. These files shall be available for review by the Department during

normal work hours. Files which shall be maintained include the following:

(1) At the time a patient is transported to a receiving facility, the following patient care records will be, at a minimum, provided to the facility staff members at the time the patient(s) are accepted:

- (A) personal information such as name, date of birth, and address,
- (B) patient assessment with medical history,
- (C) medical interventions and patient responses to interventions,
- (D) any known allergies,
- (E) other information from the medical history that would impact the patient outcomes if not immediately provided.

(2) A signature of the receiving facility health care staff member will be obtained to show the above information and the patient were received.

(3) A complete copy of the patient care report shall be sent to the receiving facility within twenty-four (24) hours of the hospital receiving the patient.

(4) Completed patient care reports shall contain demographic, administrative, legal, medical, community health, and patient care information required by the Department through the OKEMSIS Data Dictionary.

(5) All run reports and patient care information shall be considered confidential.

(c) All licensed air ambulance agencies shall maintain electronic or paper records on the maintenance and regular inspections of each vehicle. Each vehicle must be inspected and a checklist completed after each call or on a daily basis, whichever is less frequent.

(d) All licensed air ambulance agencies shall maintain a licensure or credential file for licensed and certified emergency medical personnel employed by or associated with the service to include:

- (1) Oklahoma license and certification,
- (2) Basic Life Support certification, or documentation of BLS cognitive objectives and psychomotor skills that meets or exceeds American Heart Association standards and approved by the medical director,
- (3) Advanced Cardiac Life Support certification, or documentation of BLS cognitive objectives and psychomotor skills that meets or exceeds American Heart Association Standards and approved by the medical director, as applicable for advanced licensure levels,
- (4) Incident Command System or National Incident Management Systems training at the 100, 200, and 700 levels or their equivalent,
- (5) contain a list or other credentialing document that defines or describes the medical director authorized procedures, equipment, and medications for each certified or licensed member employed or associated with the agency,
- (6) a copy of the medical director credentials will be maintained at the agency.

(e) The electronic or paper copies of the licenses and credentials described in this section shall be kept separate from other

personnel records to ensure confidentiality of records that do not pertain to the documents relating to patient care.

- (f) All licensed air ambulance agencies shall maintain:
  - (1) copies of staffing patterns, schedules, or staffing reports which indicate the ambulance service is maintaining twenty four (24) hour coverage, at the highest level of license;
  - (2) copies of in-service training and continuing education records;
  - (3) copies of the air ambulance services:
    - (A) operational policies, guidelines, or employee handbook. The standard operating procedure or guideline manual will include list of the patient care equipment that is carried on any "Class E" unit(s);
    - (B) medical protocols; and
    - (C) OSHA and/or Department of Labor exposure plan, policies, or guidelines.
  - (4) A log of each request for service received and/or initiated, to include the following:
    - (A) disposition of the request and the reason for declining the request, if applicable,
    - (B) the patient care report number,
    - (C) date of request,
    - (D) patient care report times as defined in the OKEMISIS Data Dictionary,
    - (E) location of the incident,
    - (F) ~~where the ambulance originated, and~~
    - (G) nature of the call;
  - (5) Documentation that verifies an ongoing, physician-involved quality assurance program.
  - (6) Such other documents which may be determined necessary by the Department. Such documents can only be required after a thorough, reasonable, and appropriate notification by the Department to the services and agencies.
- (g) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed ambulance service. Reports of the EMS data standard shall be forwarded to the Department by the last business day of the following month. Exceptions to the monthly reporting requirements shall be granted only by the Department in writing.
- (h) Review and the disclosure of information contained in the ambulance service files shall be confidential except for information which pertains to the requirements for license, certification, or investigation issued by the Department.
- (i) Department representatives shall have prompt access to files, records, and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment, or property may result in summary suspension of licensure by the Commissioner of Health.
- (j) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.
- (k) A representative of the agency will be present during the record review.

**SUBCHAPTER 15. EMERGENCY MEDICAL RESPONSE AGENCY**

**310:641-15-2. Certified pre-hospital emergency medical response agency [REVOKED]**

- ~~(a) The Department may issue a certification to prehospital emergency medical response agency applicants.~~
- ~~(b) No person, company, governmental entity or trust authority shall operate, advertise, or hold themselves out as providing any type of care or response above the Emergency Medical Responder level without first obtaining a certificate from the Department. The Department shall have sole discretion to approve or deny an application for an emergency medical response agency certification based on the ability of the applicant to meet the requirements of this rule.~~
- ~~(c) State and Federal agencies that respond off State and Federal property are required to become certified by the Department.~~
- ~~(d) Persons, companies, and governmental entities which operate on their own premises and do not provide services to the public are exempt. Entities that limit the interventions and activities of their staff members to first aid, CPR, and the use of an AED are not required to become a certified Emergency Medical Response Agency.~~
- ~~(e) An application for the certification shall be submitted on forms prescribed and provided by the Department~~
- ~~(f) The application shall be signed under oath by the party or parties seeking to secure the license.~~
- ~~(g) The party or parties who sign the application shall be considered the owner or agent (certificate holder) and responsible for compliance of the Act and rules.~~
- ~~(h) The application shall contain, but not be limited to the following:
 
  - ~~(1) a statement of ownership which shall include the name, address, telephone number, occupation and/or other business activities of all owners or agents who shall be responsible for the service;
 
    - ~~(A) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included.~~
    - ~~(B) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation, the name of each board member, or the chief administrative officer and/or chief operation officer shall be included.~~~~
  - ~~(2) if the agency operates vehicles through ownership or contract, then proof of vehicle insurance at least in the amount of one million dollars (\$1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed,~~
  - ~~(3) proof of professional liability insurance at least in the amount of one million dollars (\$1,000,000) or to the~~~~

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amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Sections 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;

(4) participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed.

(5) Each certified agency shall have a medical control physician or medical director as prescribed by the Act and this Chapter and submit with the application:

(A) a letter of agreement from the physician to provide medical direction and establish the protocols and the scope of practice provided at the service;

(B) the physicians primary practice address or home address if the physician does not have a practice and email address;

(C) an Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) registrant number;

(D) a current Oklahoma medical license;

(E) a curriculum vitae;

(6) Copy(ies) of any contract(s) for vehicles, medical equipment, and/or personnel, if such exist;

(7) a copy of patient care protocols and quality assurance plan detailing the care, interventions, and scope of practice as authorized by the medical director and as prescribed by the Act and this Chapter;

(A) the Department may require quality assurance documentation for review, and shall protect the confidentiality of that information.

(B) the quality assurance documentation shall be maintained by the agency for three (3) years.

(C) The quality assurance policy shall include, but not be limited to:

(i) policy to review refusals

(ii) policy to review air ambulance utilization;

(iii) policy to review airway management;

(iv) policy to review cardiac arrest interventions;

(v) policy to review time sensitive medical and trauma cases;

(vi) policy to review other selected patient care reports not specifically included;

(vii) policy to provide internal and external feedback of findings determined through reviews;

(viii) documentation of the feedback will be maintained as part of the quality assurance documentation.

(8) A written communication policy addressing:

(A) the receiving and dispatching of emergency and non emergency calls; and

(B) ensuring compliance with State and local EMS Communication Plans.

(9) Provide a response plan that includes:

(A) providing and receiving mutual aid with all surrounding, contiguous, or overlapping licensed service area

(B) providing for and receiving disaster assistance in accordance with local and regional plans and command structures;

(10) Confidentiality policy ensuring confidentiality of all documents and communications regarding protected patient health information.

(11) An application for an initial or new certification shall be accompanied by a non refundable fee of fifty (\$50.00) dollars.

(i) Applications shall include a letter of support or agreement from a licensed ambulance service within the proposed emergency medical response service area that includes:

(1) support of the application;

(2) support of the medical control physician choice; and

(3) plans or policies for supporting or participating in quality assurance activities.

(j) a letter documenting support and need from the governmental authority(ies) that have jurisdiction over the proposed emergency response area. If the emergency response area encompasses multiple jurisdictions, a written endorsement shall be presented from each jurisdiction.

(k) A description of the proposed level of service in the response area including:

(1) a map defining the primary emergency response area including base station, substations, posts, and consistent with local or regional emergency communication plans (e.g. 911 center);

(2) a description of the level of care to be provided and describing any variations in care within the area; and

(3) Emergency Medical Response Agency applicants will provide documentation that reflects compliance with existing sole source ordinances.

(l) Pre-hospital emergency medical response agencies are prohibited from transporting patients

### 310:641-15-3. Event standby emergency medical response agency application [REVOKED]

(a) The Department may issue an event standby emergency medical response agency certification to applicants.

(b) No person, company, governmental entity or trust authority shall operate, advertise, or hold themselves out as providing any type of care or response at or above the Emergency Medical Responder level without first obtaining a certificate from the Department. The Department shall have sole discretion to approve or deny an application for an Event Standby Emergency Medical Response agency certificate based on the ability of the applicant to meet the requirements of this rule.

(c) Federal agencies that routinely respond off Federal property are required to become certified by the Department unless their responses are specifically part of a Federal mission.

(d) State agencies that routinely respond off state property are required to become certified. An exception are those state entities that are part of Oklahoma Office of Homeland Security, Oklahoma State Department of Health, or Medical Reserve Corps providing support to established systems of care.



(e) Persons, companies, and governmental entities which operate on their own premises, and do not provide services to the public are exempt.

(f) Persons, companies, and governmental entities that limit the activities and interventions of their staff members to that of first aid, CPR, and the use of an AED are not required to become a certified emergency medical response agency.

(g) An application for the event stand-by emergency medical response agency certification shall be submitted on forms prescribed and provided by the Department.

(h) The application shall be signed under oath by the party or parties seeking to secure the license.

(i) The party or parties who sign the application shall be considered the owner or agent (licensee) and responsible for compliance to the Act and rules.

(j) The application shall contain, but not be limited to, the following:

(1) A statement of ownership shall include the name, address, telephone number, occupation, and/or other business activities of all owners or agents who shall be responsible for the service;

(2) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal) and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included;

(3) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation, the name of each board member, chief administrative officer, and/or chief operation officer shall be included;

(4) If the agency operates vehicles through ownership or contract, then proof of vehicle insurance at least in the amount of one million dollars (\$1,000,000.00), or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Sections 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;

(5) Proof of professional liability insurance at least in the amount of one million dollars (\$1,000,000), or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Sections 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;

(6) proof of participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed;

(7) each certified agency shall have a medical control physician or medical director as prescribed by the Act and this Chapter and submit with the Application:

(A) letter of agreement from the physician to provide medical direction and establish the protocols and the scope of practice provided at the service;

(B) physicians primary practice address or home address if the physician does not have a practice and email address;

(C) an Oklahoma Bureau of Narcotics and Dangerous Drugs (OBND) registrant number;

(D) current Oklahoma medical license;

(E) a curriculum vitae;

(8) copy of any contract(s) for vehicles, medical equipment, and/or personnel;

(9) a copy of patient care protocols and quality assurance plan detailing the care, interventions and scope of practice at the agency as required by medical control physician and as prescribed by the Act and this Chapter;

(A) The Department may require quality assurance documentation for review and shall protect the confidentiality of that information.

(B) The quality assurance documentation shall be maintained by the agency for three (3) years.

(C) The quality assurance policy shall include, but not be limited to:

(i) policy to review refusals

(ii) policy to review air ambulance utilization;

(iii) policy to review airway management;

(iv) Policy to review cardiac arrest interventions;

(v) policy to review time sensitive medical and trauma cases;

(vi) policy to review other selected patient care reports not specifically included;

(vii) policy to provide internal and external feedback of findings determined through reviews;

(viii) documentation of the feedback will be maintained as part of the quality assurance documentation.

(10) A written communication policy addressing:

(A) the receiving and dispatching of emergency and non-emergency calls; and

(B) compliance with State and local EMS communication plans.

(11) Provide a response plan that includes:

(A) if and how the applicant enters into an Incident Command System as part of a disaster. If this type of agency is part of a community or disaster plan, then documents from governmental entities and local ambulance services showing support for their activities will be provided.

(B) providing for and receiving disaster assistance in accordance with local and regional plans and command structures;

(12) Confidentiality policy ensuring confidentiality of all documents and communications regarding protected patient health information.

(13) An application for an initial or new certification shall be accompanied by a non-refundable fee of fifty (\$50.00) dollars.

(k) For an event standby emergency response agency applicant:

(1) if the applicant is providing care to the public on public property, then letters of governmental support and documents verifying coordination with local ambulance

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~~services are required for that agency to have the authority to provide care at that setting.~~

~~(2) if the agency is providing care to the public in a business or establishment open to the public on private property, then letters of governmental support are not required.~~

~~(l) At all times, the standby event emergency medical response agency shall coordinate with other licensed and certified EMS agencies responsible for the event location when the event is within a licensed ambulance service area or approved area for prehospital emergency medical response agencies.~~

~~(m) Ambulance Services licensed under Subchapter 3 of this chapter are exempt from the requirements of this subchapter.~~

### 310:641-15-5. Issuance of an event standby emergency medical response agency certification

(a) The Department shall issue an event standby emergency medical response agency certification to applicants that meet certification requirements:

(b) The certificate shall be issued for the name only.

(c) The certificate is not transferable or assignable.

(d) The initial certification period shall expire the second June 30 following the date of issue. Subsequent renewal periods shall be twenty-four (24) months, or two (2) years.

(e) The original or a copy of the original certification shall be posted in a conspicuous place in the principal business office. If an office or other public place is not available then the certificate or a copy shall be available to anyone requesting to see the certification during regular business hours.

### 310:641-15-10. Emergency medical response agency personnel

(a) Emergency medical response agencies shall have at least one person of the responding personnel providing patient care certified or licensed by the Department.

(b) All drivers that operate emergency vehicles for an agency shall complete an emergency vehicle operator's course prior to emergency vehicle operations. Emergency vehicle operators shall complete an emergency vehicle operator's renewal course every two (2) years.

~~(c) In a unique and unexpected circumstance, the minimum driver requirement may be altered to facilitate a response of an agency. An incident report shall be sent to the Department within ten (10) days of the occurrence of such an event.~~

~~(d)~~ Only emergency personnel authorized by this Act, except for a physician, shall be utilized by any emergency medical response agency.

~~(ed)~~ Agencies will maintain training records demonstrating competency in medical skills, patient handling, and emergency vehicle operations for all personnel employed or associated with the agency and utilized for patient care.

### 310:641-15-11. Prehospital emergency medical response agency equipment

(a) The tampering, modification, or removal of the manufacturer's expiration date is prohibited.

(b) Certified agencies shall ensure that all, recalled, outdated, misbranded, adulterated, or deteriorated fluids, supplies, and medications are removed from the response vehicles immediately.

(c) The unit checklist will establish the equipment, supplies, and medications for each unit. A list of the equipment, supplies, and medication will be included in the application. For medications this is to include the number, weight, and volume of the containers.

(d) At a minimum, the following equipment and supplies will be present on for each emergency medical response:

(1) one (1) each adult, pediatric, and infant size bag-valve-mask resuscitators;

(2) one (1) complete set of oropharyngeal airways, single wrapped for sanitation purposes;

(3) portable oxygen system with two (2) each oxygen masks in adult, pediatric, and infant sizes;

(4) two (2) adult nasal cannulas;

(5) portable suction device with age and size appropriate tubing and tips;

(6) one (1) bulb syringe with saline drops, sterile, in addition to any bulb syringes in an obstetric kit;

(7) instant cold packs;

(8) sterile dressing and bandages, to include:

(A) sterile burn sheets,

(B) sterile 4"x4" dressings,

(C) sterile 6"x8" or 8"x10" dressings,

(D) roller bandages, 2" or larger,

(E) rolls of tape (minimum of one (1) inch width),

(F) sterile occlusive dressings, 3" x 8" or larger,

(G) triangular bandages, and

(H) scissors;

(9) blood pressure cuff kit in adult, pediatric, and infant sizes;

(10) obstetrics kit;

(11) blankets;

(12) universal precaution kit for each person attending a patient;

(13) blood-glucose measurement equipment per medical direction and Department approval;

(14) AED with adult and pediatric capability;

(15) adult and pediatric upper and lower extremity splints;

(16) spinal immobilization equipment per medical control authorization;

(17) adult traction splint per medical control authorization and;

(18) patient care reports.

~~(e) A list of equipment in addition to the minimum equipment will be sent to the Department with the application.~~

~~(f)~~ The agency will have the equipment to support the procedures and interventions detailed within the protocols as authorized by the medical director.

~~(gf)~~ An electronic or paper copy of patient care protocols will be available to responding agency members.

~~(hg)~~ All assessment and medical equipment utilized for patient care will be maintained in accordance with the manufacturer's guidelines. Documentation will be maintained at the

agency showing the periodic tests, maintenance, and calibration are being conducted in accordance with manufacturer's requirements. Equipment shall include, but not be limited to suction devices, pulse oximetry, glucometers, end-tidal Co2 and capnography monitors, CPAP/BiPAP devices, ventilators, and blood pressure monitors.

**310:641-15-13. Emergency medical response agency medical control requirement**

(a) Each certified emergency medical response agency certified in Oklahoma shall have a physician medical director who is a fully licensed, non-restricted Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.) by the State of Oklahoma.

(b) Certified emergency medical response agencies will have a plan or policy that describes how the agency will address a sudden lapse of medical direction, such as a back-up medical director, that is used to ensure coverage when the medical director is not available.

(1) The Department shall be notified the next business day of any lapse or change of medical direction by the respective agency. If the agency has made arrangements for a back-up medical director or an immediate replacement, then a lapse has not occurred.

(2) In the event of a lapse in medical direction, in that, there is no a medical director providing the authority for medical interventions for an agency's certified and licensed personnel, the agency will, pursuant to 63 O.S. Section 1-2506 relating to the medical authority to perform medical procedures:

(A) ~~cease all operations involving patient care, may respond to a request for service to provide first aid, CPR, and the use of an AED, and~~

(B) implement mutual aid plans to ensure requests for service receive responses until the agency is able to implement their plan or policy for substitution or back-up medical direction.

(c) The medical director shall:

(1) be accessible, knowledgeable, and actively involved in quality assurance and the educational activities of the agency's personnel, and supervise a quality assurance (QA) program by either direct involvement or appropriate designation and surveillance of the responsible designee(s). The appointment of a designee does not absolve the medical director of their responsibility of providing oversight.

(2) Provide a written statement to the Department which includes:

(A) an agreement to provide medical direction and establish treatment protocols and the agency specific scope of practice for all certified and licensed agency personnel;

(B) the physician's primary practice address or home address if the physician does not have a practice and email address(es);

(C) ~~an OBNDD registrant number or appropriate state equivalent as appropriate; An agency that only provides care within the Basic Life Support scope of practice, the medical director shall:~~

(i) hold a valid, non-restricted medical license.

(ii) not be restricted from obtaining or maintaining OBNDD and DEA registrations for controlled dangerous substances.

(iii) demonstrate appropriate training and experience in adult and pediatric emergency care. Demonstrated training and experience may include appropriate board training, basic life support, or pre-hospital trauma life support courses.

~~(D) current Oklahoma medical license; An agency that provides Intermediate, Advanced, or Paramedic level interventions by State approved protocols, the medical director shall:~~

(i) hold a valid, non-restricted medical license.

(ii) maintain current OBNDD and DEA registrations for controlled dangerous substances.

(iii) demonstrate appropriate training and competence in adult and pediatric emergency medical services, to include pediatric and adult trauma. Demonstrated training and experience may include completed residency training as well as relevant work experience with current clinical competency.

(E) demonstrate appropriate training and experience in the types of patients the service will be treating. Demonstrated training may include board training and appropriate certifications or supplemental training;

(F) development of on-line or off-line protocols with medication formulary for patient care techniques. Protocols shall include medication to be used, treatment modalities for patient care procedures, and appropriate security procedures for controlled dangerous substances;

(3) Attend or demonstrate participation in medical director training provided by the Department subject to the availability of funding. Verification of attendance or participation will be maintained at the agency.

(4) Attend or demonstrate participation in one hour of continuing education specific to providing medical oversight to EMS providers and agencies each year, provided by the Department subject to the availability of funding.

**310:641-15-15. Emergency medical response agency sanitation requirements**

(a) The following shall apply regarding sanitation standards for each emergency medical response agency's equipment, facilities, vehicles, and personnel:

(1) the interior of the vehicle and the equipment within the vehicle shall be sanitary and maintained in good working order ~~at all times when in service~~;

(2) the exterior of the vehicle shall be clean and maintained in good working order to ensure the vehicle can operate safely and in accordance with applicable sections of Title 47 of the Oklahoma Statutes;

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- (3) clean linen, blankets, washcloths, and hand-towels shall be stored in a ~~closed cabinet manner that is~~ free of dirt and debris,
- (4) medical supplies and equipment shall be stored in a safe and secure manner.
- (b) soiled linen shall be placed in a closed container which may include plastic bags with ties. Any linen which is suspected of being contaminated with blood borne pathogens or other infectious disease shall be placed in a properly marked closed container for cleaning or disposal;
- (c) contaminated disposable supplies shall be placed in properly marked appropriately marked or designated containers in a manner that deters accidental exposure.
- (d) Implements inserted into the patient's nose or mouth shall be single-service wrapped and properly stored and handled. When multi-use items are utilized, the local health care facilities should be consulted for instructions in sanitation and handling of such items.
- (e) Personnel shall be clean, especially hands and fingernails, and well groomed. Clothing worn by personnel shall be clean. The licensee shall provide in each vehicle a means of hand ~~washing~~ decontamination for the attendants.
- (f) Oxygen humidifier(s) shall be single use;
- (g) All medications, supplies and sterile equipment with expiration dates shall be current.
- (h) Expired medications, supplies, and sterile equipment shall be discarded appropriately.
- (i) Tampering, removing, or altering expiration dates on medications, supplies, and equipment is prohibited.
- (j) The station facility, ambulance bays, living quarters, and office areas shall be clean, orderly, and free of safety and health hazards;
- (k) All storage spaces used for storage of linens, equipment, medical supplies, and other supplies at the base station shall be kept clean;
- (l) Agency vehicles and facilities shall be free of any evidence of use of lighted or smokeless tobacco products except in designated smoking areas consistent with the provisions of 310:641-1-4.

### **310:641-15-22. Emergency medical response agency records and files**

- (a) All required records for certification will be maintained for a minimum of three (3) years.
- (b) Each certified emergency medical response agency shall maintain electronic or paper records about the operation, maintenance, and such other required documents at the business office. These files shall be available for review by the Department during normal work hours. Files which shall be maintained include the following:
  - (1) Patient care records:
    - ~~(A)~~ At the time a patient care is transferred to an ambulance service, the following information will be, at a minimum, provided to the ambulance staff members at the time the patient(s) are accepted:
      - ~~(A)~~ personal information such as name, date of birth, and address, if known;
      - ~~(B)~~ patient assessment with history;

- ~~(C)~~ medical interventions and patient responses to interventions,
- ~~(D)~~ any known allergies; and
- ~~(E)~~ other information from the medical history that would impact the patient outcome if not immediately provided.
- ~~(B)~~ A signature from the staff member will be obtained to show the above information and the patient was received.

- (2) Certified emergency medical response agency patient care reports shall contain demographic, legal, medical, community health, and patient care information as detailed in the OKEMSIS data dictionary.
- (3) All run reports and patient care information shall be considered confidential.
- (c) All certified emergency medical response agencies shall:
  - (1) maintain electronic or paper records on the maintenance and regular inspections of each vehicle.
    - (A) Each vehicle must be inspected and a detailed equipment checklist completed after each call or on a daily basis, whichever is less frequent.
    - (B) documentation that shows routine vehicle maintenance for each vehicle as required by vehicle manufacture recommendations.
    - (C) Event standby agencies will complete a checklist of equipment prior to scheduled events or duties.
  - (2) maintain a licensure or credential file for licensed and certified emergency medical personnel employed by or associated with the service to include:
    - (3) Oklahoma license and certification,
    - (4) Basic Life Support certification, or documentation of BLS cognitive objectives and psycho-motor skills that meets or exceeds American Heart Association standards, and approved by the medical director;
    - (5) Advanced Cardiac Life Support certification, or documentation of BLS cognitive objectives and psycho motor skills that meets or exceeds American Heart Association Standards if applicable for licensure, and approved by the medical director;
    - (6) Incident Command System or National Incident Management Systems training at the 100, 200, and 700 levels or their equivalent,
    - (7) verification of an emergency vehicle operations course or other agency approved defensive driving course,
    - (8) contain a list or other credentialing document that defines or describes the medical director authorized procedures, equipment, and medications for each certified or licensed member employed or associated with the agency,
    - (9) a copy of the medical director credentials will be maintained at the agency.
  - (d) The electronic or paper copies of the licenses and credentials described in this section shall be kept separate from other personnel records to ensure confidentiality of records that do not pertain to the documents relating to patient care.
  - (e) Copies of in-service training and continuing education records.
  - (f) Copies of the emergency medical response agency's:

- (1) operational policies, guidelines, or employee hand-book;
- (2) medical protocols;
- (3) OSHA and/or Department of Labor exposure plan, policies, or guidelines.
- (g) A log of each request for service received and/or initiated to include the:
  - (1) disposition of the request and the reason for declining the request, if applicable,
  - (2) the patient care report number,
  - (3) date of request,
  - (4) patient care report times,
  - (5) location of the incident,
  - (6) ~~where the ambulance originated, and~~transporting ambulance agency name, and
  - (7) nature of the call;
- (h) Documentation that verifies an ongoing, physician involved quality assurance program.
- (i) Such other documents which may be determined necessary by the Department. Such documents can only be required after a thorough, reasonable, and appropriate notification by the Department to the services and agencies.
- (j) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each emergency medical response agency. Reports shall be forwarded to the Department by the last business day of the following month. Exceptions to the monthly reporting requirements shall be granted only by the Department in writing.
- (k) Review and the disclosure of information contained in the certified agency files shall be confidential except for information which pertains to the requirements for license, certification, or investigation issued by the Department.
- (l) Department representatives shall have prompt access to files, records, and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment, or property may result in summary suspension of licensure by the Commissioner of Health.
- (m) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.
- (n) A representative of the agency will be present during the record review.

**SUBCHAPTER 17. STRETCHER VAN SERVICE**

**310:641-17-2. Stretcher van service license required [REVOKED]**

~~(a) No person, company, governmental entity or trust authority shall operate, advertise, or hold themselves out as providing any type of stretcher van service without first obtaining a license to operate a stretcher van service from the Department. The Department shall have sole discretion to approve or deny an application for a stretcher van service license based on the ability of the applicant to meet the requirements of this rule.~~

- ~~(b) State and Federal agencies that respond to stretcher van transports off State and Federal property are required to become licensed by the Department.~~
- ~~(c) Persons, companies, and governmental entities which operate on their own premises are exempt from this licensing requirement, unless the stretcher van passenger(s) is/are transported on the public streets or highways of Oklahoma or outside of their own premises.~~
- ~~(d) An application to operate a stretcher van service shall be submitted on forms prescribed and provided by the Department.~~
- ~~(e) The application shall be signed under oath by the party or parties seeking to secure the license.~~
- ~~(f) The party or parties who sign the application shall be considered the owner or agent (licensee) and responsible for compliance to the Act and this Chapter.~~
- ~~(g) The application shall contain, but not be limited to the following:
 
  - ~~(1) a statement of ownership which shall include the name, address, telephone number, occupation and/or other business activities of all owners or agents who shall be responsible for the service.
 
    - ~~(A) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included.~~
    - ~~(B) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation, the name of each board member, or the chief administrative officer and/or chief operation officer shall be included.~~~~
  - ~~(2) proof of vehicle insurance, at least in the amount of one million dollars (\$1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;~~
  - ~~(3) proof of professional liability insurance, at least in the amount of one million dollars (\$1,000,000) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Sections 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;~~
  - ~~(4) participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed;~~
  - ~~(5) copy of any contract(s) for vehicles, medical equipment, and/or personnel if such exist;~~
  - ~~(6) a written communication policy addressing:
 
    - ~~(A) the receiving and dispatching of calls;~~
    - ~~(B) ensuring compliance with State and local EMS Communication Plans; and~~
    - ~~(C) applicants for this license will provide documentation that a screening process is in place to ensure a request for the transport of a stretcher van~~~~~~

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passenger will meet the agency's capability, capacity, and licensure requirements. Documentation of the screening will be retained as part of the passenger care report or call log.

- (7) Provide a response plan that includes:
- (A) providing for and receiving mutual aid with all surrounding, contiguous, or overlapping service areas; and
  - (B) providing for and receiving disaster assistance in accordance with local and regional plans and command structures.
- (8) confidentiality policy ensuring confidentiality of all documents and communications regarding protected passenger health information;
- (9) an application for an initial or new license shall be accompanied by a non refundable fee of six hundred (\$600.00) dollars plus twenty (\$20.00) dollars for each vehicle in excess of two (2) vehicles utilized for passenger transport. An additional fee of one hundred fifty (\$150.00) dollars shall be included for each stretcher van substation in addition to the base station.
- (10) A map or narrative description which identifies the proposed service area;
- (11) evidence that the proposed service area is an emergency medical service region, ambulance district, or county with a population in excess of five hundred thousand (500,000) people;
- (12) the defined hours of operation for the service; and
- (13) Stretcher Vans are prohibited from carrying medications other than oxygen and those other medications which are passenger supplied and administered. The passenger must have a current physician prescription and/or order for the administration of oxygen. A copy of the order shall be maintained in agency files.
- (14) A quality assurance plan or policy that includes:
- (A) The Department may require quality assurance documentation for review and shall protect the confidentiality of that information.
  - (B) The quality assurance documentation shall be maintained by the agency for three (3) years.
  - (C) The quality assurance policy shall include, but not be limited to:
    - (i) Any passenger condition where the passenger entered the 911 system;
    - (ii) If oxygen is continued, the physician order must be maintained with the trip report or passenger report;
    - (iii) policy to review other selected passenger reports not specifically included; and
    - (iv) policy to provide internal and external feedback of findings determined through reviews. Documentation of the feedback will be maintained as part of the quality assurance documentation.
- (h) Stretcher van license applicants will provide documentation that reflects compliance with existing sole source ordinances.
- (i) Stretcher van services are exempt from a duty to act requirements and continuous staffing coverage.

(j) A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year.

### 310:641-17-18. Stretcher van service records and files

- (a) All required records for licensure will be maintained for a minimum of three years.
- (b) Each licensed stretcher van service shall maintain electronic or paper records about the operation, maintenance, and such other required documents at the business office. These files shall be available for review by the Department during normal work hours. Files which shall be maintained include the following:
- (1) a record of each passenger transport to include, but not be limited to:
    - (A) personal information such as name, date of birth and address;
    - (B) contact information;
    - (C) originating location;
    - (D) destination;
    - (E) reason for the transport; and
    - (F) if oxygen was continued.
  - (2) Records shall be submitted to the Department as required.
- (c) All passenger transport reports and information shall be considered as confidential.
- (d) All stretcher van agencies shall maintain electronic or paper records on the maintenance and regular inspections of each vehicle.
- (1) Each vehicle must be inspected and a detailed equipment checklist completed after each call or on a daily basis, whichever is less frequent.
  - (2) Documentation that shows routine vehicle maintenance for each vehicle as required by vehicle manufacture recommendations.
- (e) All stretcher van agencies shall maintain a licensure or credential file for licensed and certified emergency medical personnel employed by or associated with the service to include:
- (1) Oklahoma license and certification,
  - (2) Basic Life Support certification that meets or exceeds American Heart Association standards,
  - (3) Incident Command System or National Incident Management Systems training at the 100, 200, and 700 levels or their equivalent,
  - (4) verification of an Emergency Vehicle Operations Course or other agency approved defensive driving course,
- (f) The electronic or paper copies of the licenses and credentials described in this section shall be kept separate from other personnel records to ensure confidentiality of records that do not pertain to the documents relating to the passenger.
- (g) Copies of staffing patterns, schedules, or staffing reports.
- (h) Copies of in-service training and continuing education records.
- (i) Copies of the stretcher van service's:
- (1) operational policies, guidelines, or employee handbook;

- (2) OSHA and/or Department of Labor exposure plan, policies, or guidelines.
- (j) A log of each request for service call received and/or initiated, to include the:
  - (1) disposition of the request and the reason for declining the request, if applicable;
  - (2) passenger care report number;
  - (3) date of request;
  - (4) location of the incident;
  - (5) ~~where the ambulance originated;~~
  - (6) nature of the call;
  - (7) time requested;
  - (8) time arrived;
  - (9) time departed;
  - (10) time at destination;
  - (11) time transport complete;
  - (12) unit number;
  - (13) staff member on transport; and
  - (14) medical screening documentation.
- (k) Documentation that verifies an ongoing quality assurance program.
  - (l) Such other documents which may be determined necessary by the Department. Such documents can only be required after a thorough, reasonable, and appropriate notification by the Department to the services and agencies.
  - (m) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed service as defined in the Act. Reports of the data standard shall be forwarded to the Department by the last business day of the following month. Exceptions to the monthly reporting requirements shall be granted only by the Department, in writing.
  - (n) Review and the disclosure of information contained in the stretcher van service files shall be confidential, except for information which pertains to the requirements for license, certification, or investigation issued by the Department.
  - (o) Department representatives shall have prompt access to files, records, and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment, or property may result in summary suspension of licensure by the Commissioner of Health.
  - (p) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.
  - (q) A representative of the agency will be present during the record review.

[OAR Docket #22-604; filed 7-12-22]

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 661. HOSPICE**

[OAR Docket #22-605]

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- Subchapter 2. Licenses
    - 310:661-2-1 [AMENDED]
    - 310:661-2-2 [AMENDED]
    - 310:661-2-3 [AMENDED]
    - 310:661-2-4 [AMENDED]
    - 310:661-2-5 [AMENDED]
    - 310:661-2-6 [AMENDED]
    - 310:661-2-7 [AMENDED]
  - Subchapter 3. Administration
    - 310:661-3-2 [AMENDED]
    - 310:661-3-3 [AMENDED]
    - 310:661-3-3.1 [AMENDED]
    - 310:661-3-4 [AMENDED]
    - 310:661-3-5.1 [AMENDED]
    - 310:661-3-5.2 [AMENDED]
    - 310:661-3-5.3 [AMENDED]
  - Subchapter 5. Minimum Standards
    - 310:661-5-1 [AMENDED]
    - 310:661-5-1.1 [AMENDED]
    - 310:661-5-1.2 [AMENDED]
    - 310:661-5-1.3 [AMENDED]
    - 310:661-5-2 [AMENDED]
    - 310:661-5-2.1 [AMENDED]
    - 310:661-5-2.2 [AMENDED]
    - 310:661-5-2.3 [AMENDED]
    - 310:661-5-2.4 [AMENDED]
    - 310:661-5-3 [AMENDED]
    - 310:661-5-3.1 [AMENDED]
    - 310:661-5-4 [AMENDED]
    - 310:661-5-4.1 [AMENDED]
    - 310:661-5-5 [AMENDED]
    - 310:661-5-6 [AMENDED]
    - 310:661-5-7 [AMENDED]
    - 310:661-5-8 [AMENDED]
    - 310:661-5-9 [AMENDED]
  - Subchapter 6. Hospice Inpatient Service Requirements
    - 310:661-6-1 [AMENDED]
    - 310:661-6-2 [AMENDED]
    - 310:661-6-3 [AMENDED]
    - 310:661-6-4 [AMENDED]
    - 310:661-6-5 [AMENDED]
    - 310:661-6-6 [AMENDED]
    - 310:661-6-7 [AMENDED]
  - Subchapter 7. Infractions
    - 310:661-7-1 [AMENDED]
    - 310:661-7-2 [AMENDED]
    - 310:661-7-4 [AMENDED]

**AUTHORITY:**  
Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 13, 2022

**COMMENT PERIOD:**  
January 18, 2022 through February 18, 2022

**PUBLIC HEARING:**  
February 18, 2022

**ADOPTION:**  
March 4, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 4, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

# Permanent Final Adoptions

## GIST/ANALYSIS:

The changes to Chapter 661 were editorial to achieve clarity in the rules to facilitate understanding of the requirements and consequently, to facilitate compliance with the rules. Governor Kevin Stitt issued an executive order designed to reduce state regulations by 25%. The order requires that state agencies review their administrative rules and list any that are expensive, ineffective, redundant, or outdated and for all new restrictive rules proposed after February 15, 2020, eliminate at least two existing regulatory restrictions until agencies reduce regulations. This proposal is in compliance with the governor's order for regulation reduction. As such, an effort has been made to remove all unnecessary words and requirements as well as ambiguous wording from regulation.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 2. LICENSES

### 310:661-2-1. Licensure

- (a) **Applicant.** Any public or private agency or person desiring to establish a hospice in Oklahoma ~~shall~~ must apply for and obtain a license from the Department.
- (b) **Application.** An application for a hospice license ~~shall~~ must be filed on a form prescribed by the Department and ~~shall be accompanied by the~~ include information required by the Act.
- (c) **Plan of delivery.** The initial application ~~shall~~ must be accompanied by a plan of delivery of home and inpatient hospice services to patients and their families. ~~The plan shall and include,~~ but not be limited to, those items listed in the Act.
- (d) **Expiration/renewal.**
- (1) **First-year license.**
- (A) The first-year license ~~shall~~ will expire one (1) year from the date of issuance unless suspended or revoked. A hospice holding a first-year license ~~is required to~~ must successfully complete an initial inspection by representatives of the Department prior to the provision of services and ~~shall~~ be subject to a follow-up inspection after providing hospice services for at least six (6) months. The Department may require any hospice to renew the first-year license for one additional year. A hospice ~~shall not~~ cannot hold a first-year license for more than twenty-four (24) months.
- (B) A follow-up survey that demonstrates compliance with the Act and these rules ~~shall~~ may be required prior to a hospice program being issued a permanent license.
- (2) **Permanent license.** The permanent license ~~shall~~ will expire one (1) year from the date of issuance, unless suspended or revoked. An application for renewal

~~shall~~ must be submitted according to the Act. Only hospice programs in compliance with the Act and these rules ~~shall~~ will be issued a permanent license.

- (e) **Base of operation.** Every hospice providing hospice services ~~shall~~ must operate from a place of business which is accessible to the public and physically located in Oklahoma. Staff providing services from the hospice ~~shall~~ must be supervised by personnel at that location.
- (f) **Eligibility for license.**
- (1) A hospice making appropriate application ~~that has been and~~ determined to be compliant with this Chapter and the Act is eligible for a license.
- (2) A hospice may operate alternate administrative offices under one (1) license as long as the following requirements are met:
- (A) The offices ~~shall be~~ are located within a geographical area with a radius of no more than fifty (50) miles from the main hospice.
- (B) The mileage limit used for approval of each administrative office ~~shall be~~ is the mileage between town centers of the parent location town and the proposed administrative office location town as reported by the Oklahoma Department of Transportation as approximately the shortest route between town centers utilizing both State Highways System (free) and State Turnpike System (toll) roads.
- (C) The offices ~~shall be~~ are operated under the same administration and governing body as an extension site for services of the main hospice. These offices ~~shall~~ must operate under the same name(s) as the licensee.
- (D) An application for license, or renewal thereof, to establish or operate each hospice alternate administrative office of an agency licensed in the State of Oklahoma ~~shall be accompanied by~~ includes a nonrefundable licensing fee of five hundred dollars (\$500.00) and application is filed at least thirty (30) days before beginning operations.
- (g) **Compliance with Federal, State and local laws and regulations.** The hospice and its staff ~~shall~~ must operate and furnish services that comply with all applicable Federal, State, and local laws and rules. ~~The hospice shall and~~ ensure that staff comply with applicable State practice acts and rules in the provision of hospice services.
- (h) **Hospice inpatient facility.**
- (1) Each licensed hospice program may operate one (1) hospice inpatient facility with twelve (12) or fewer inpatient beds as long as the facility complies with ~~hospice inpatient facility service requirements at OAC 310:661-6 and hospice inpatient facility physical plant requirements at OAC 310:661-8~~ Subchapters 6 and 8 of this Chapter.
- (2) A hospice inpatient facility may not be independently licensed as a hospice unless the hospice provides a full continuum of hospice program services to patients in their homes and temporary places of residence including the inpatient hospice facility.



**310:661-2-2. Deadlines for applications**

The license application ~~shall~~must be filed in accordance with the following deadlines:

- (1) ~~The application for~~ A first-year hospice license ~~shall be~~is filed at least thirty (30) days before beginning operations.
- (2) ~~The application for a license,~~License application following a transfer of ownership or operation, ~~shall be~~is filed at least thirty (30) days prior to the transfer. If the Department finds that an emergency exists which threatens the welfare of patients, the thirty (30) day advance filing notice may be waived.
- (3) ~~The application for renewal~~Renewal of an existing licensed hospice ~~shall be~~is filed at least sixty (60) days prior to the expiration date of the license.
- (4) ~~If a hospice is considering relocation is considered,~~ the hospice ~~shall~~must file an amended application with the address change at least thirty (30) days prior to the intended relocation. ~~There shall be no~~No fee for processing the license address change ~~will be required.~~
- (5) Incomplete first-year license applications received by the Department ~~shall~~will be summarily dismissed after thirty (30) days of applicant notification of an incomplete application. Thereafter, ~~the applicant shall be required to resubmit~~ a new application and initial fee will be required.

**310:661-2-3. Where to file**

The application and the license fee ~~shall~~must be submitted to the Department. The effective date ~~shall~~will be the date a complete application and fee are received. All fees ~~shall be~~are non-refundable.

**310:661-2-4. Transfer of ownership of a licensed hospice**

- (a) The license of a hospice shall not be subject to sale, assignment, or other transfer, voluntary or involuntary.
- (b) If an entity is considering ~~acquisition~~ acquiring a licensed hospice, ~~then it must submit to the Department 30 days before the effective date of the acquisition:~~
  - (1) ~~an application for first year license with an initial application fee of five hundred dollars (\$500.00) and a first year license fee of one thousand five hundred dollars (\$1500.00) and five hundred dollars (\$500.00) [See OAC 310:661-2-5];~~
  - (2) a non-refundable two thousand dollars (\$2,000) fee [See OAC 310:661-2-6];
  - (3) a copy of the executed sales agreement; and
  - (4) an additional five hundred dollars (\$500) for each alternate administrative office operated by the agency, if applicable~~shall be submitted to the Department at least thirty (30) days prior to the effective date of the change. A copy of the executed sales agreement shall be provided to the Department.~~
- (c) The following actions ~~shall~~will not be considered a transfer of ownership or change in control requiring this subsection to apply:

- (1) Change of a corporate or limited liability company licensee's name through amendments of the articles of incorporation or membership agreement.
- (2) Sale of stock of a corporation.
- (3) Sale or merger of a corporation that owns the hospice operating entity.
- (4) Sale of membership interest of a limited liability company.

**310:661-2-5. License application form**

The applicant for a license ~~shall~~must file the following application form: Application for License to Operate a Hospice (ODH Form 924). This form requests: amount of fee submitted; name of hospice; location and mailing address of hospice; name and title of chief executive officer; fiscal year ending date; operating entity name and address; type of operating entity; board of directors; complete disclosure of ownership including name, finding and mailing address, and percentage of ownership for every stockholder having at least five percent (5%) ownership in the hospice; name, signature, and title of position of persons making the application; and an affidavit attesting to the information provided.

**310:661-2-6. Licensure fees**

- (a) ~~An~~There is a non-refundable \$500 fee for an application for a first-year license to establish or operate a hospice shall be accompanied by a non refundable application fee of five hundred dollars (\$500.00) and a non-refundable \$1,500 fee for a first-year licensure fee of one thousand five hundred dollars (\$1500.00).
- (b) ~~An application for a permanent license to continue operation of a hospice after the first year license period is complete shall be accompanied by a non refundable permanent license fee of two thousand (\$2000.00).~~
- (c) ~~A~~There is a non-refundable \$2,000 fee for a renewal application for an existing permanent hospice license shall be accompanied by a non refundable license fee of two thousand dollars (\$2000.00).
- (d) ~~A late renewal fee of fifty dollars (\$50.00)~~\$50 ~~shall~~will be charged for any hospice submitting an application for renewal within ~~thirty (30)~~30 days after the expiration date of the license.

**310:661-2-7. Plan review fees**

- (a) Each hospice inpatient facility construction project ~~shall~~will be charged a review fee based on the cost of the design and construction of the building project. ~~Review fees are as follows:~~
  - (1) Project cost less than \$10,000.00: \$250.00 Fee
  - (2) Project cost \$10,000.00 to \$50,000.00: \$500.00 Fee
  - (3) Project cost \$50,000.00 to \$250,000.00: \$1000.00 Fee
  - (4) Project cost \$250,000.00 to \$1,000,000.00: \$1500.00 Fee
  - (5) Project Cost greater than \$1,000,000.00: \$2000.00 Fee

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(b) The review fee ~~shall~~must be paid when stage one project plans are submitted to the Department for review. The fee ~~shall~~will cover the cost of review for up to two (2) stage one and two (2) stage two submittals. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee based on the cost of the project ~~shall~~will be required for the third submittal. Fast-track projects ~~shall~~will be allowed two (2) reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project ~~shall~~will be required with the third submittal of the package.

## SUBCHAPTER 3. ADMINISTRATION

### 310:661-3-2. Organization

(a) **Organization and administration of services.** The hospice ~~shall~~must organize, manage, and administer its resources to provide the hospice care and services to patients, caregivers and families necessary for the palliation and management of the terminal illness and related conditions.

(b) **Serving the hospice patient and family.** The hospice ~~shall~~must provide hospice care that:

- (1) Optimizes comfort and dignity; and
- (2) Is consistent with patient and family needs and goals, with patient needs and goals as priority.

(c) **Continuation of care.** A hospice ~~shall not~~cannot discontinue or reduce care provided because of the inability to pay for that care.

(d) **Professional management responsibility.** A hospice that has a written agreement with another agency, individual, or organization to furnish any services under arrangement ~~shall~~must retain administrative and financial management, and oversight of staff and services for all arranged services, to ensure the provision of quality care. Arranged services ~~shall~~must be supported by written agreements that require that all services be:

- (1) Authorized by the hospice;
- (2) Furnished in a safe and effective manner by qualified personnel; and
- (3) Delivered in accordance with the patient's plan of care.

(e) **Narrative program.** Each Hospice ~~shall~~must provide a narrative program with its application which describes the functions, staffing, services available to the patient and other basic information relating to the fulfillment of the facility's objectives.

(f) **Governing body.** A hospice ~~shall~~must have a governing body that assumes full legal responsibility for determining, implementing and monitoring policies governing the total operations of the hospice. The governing body ~~shall~~will designate an individual who is responsible for the day-to-day management of the hospice program. The governing body ~~shall~~must also ensure that all services provided are consistent with accepted standards of practice.

(g) **Hospice team.** A hospice team ~~shall~~must be developed and function according to the Act. The hospice team is responsible for all of the following:

- (1) Participation in the establishment of the plan of care.
- (2) Provision or supervision of hospice care and services.
- (3) Periodic review and updating of the plan of care for each individual receiving hospice care.
- (4) Implementation of policies governing the day-to-day provisions of hospice care and services.

(h) **Medical advisor.** The medical advisor ~~shall~~must be a medical doctor or osteopathic physician and ~~shall assume overall responsibility~~is responsible for the medical component of the patient care program for the hospice. The physician ~~shall~~must also serve as medical advisor to the hospice ~~and shall possess a license free of sanctions. The medical advisor shall, and~~ be a doctor of medicine or osteopathy who is an employee, or ~~be~~ under contract with the hospice. When the medical advisor is not available, a physician designated by the hospice assumes the same responsibilities and obligations as the medical advisor.

(1) **Medical advisor contract.** When contracting for medical advisor services, the contract ~~shall~~must specify the physician who assumes the medical advisor responsibilities and obligations. A hospice may contract with either of the following:

- (A) A self-employed physician; or
- (B) A physician employed by a professional entity or ~~physician~~physician's group.

(2) **Initial certification of terminal illness.** The medical advisor or physician designee reviews the clinical information for each hospice patient and provides written certification that it is anticipated that the patient's life expectancy is one (1) year or less if the illness runs its normal course. The physician ~~shall~~must consider the following when making this determination:

- (A) The primary terminal condition;
- (B) Related diagnosis(es), if any;
- (C) Current subjective and objective medical findings;
- (D) Current medication and treatment orders; and
- (E) Information about the medical management of any of the patient's conditions unrelated to the terminal illness.

(3) **Medical advisor responsibility.** The medical advisor or physician designee has responsibility for the medical component of the hospice's patient care program.

(i) **Patient care coordinator.** A registered nurse ~~shall~~must be appointed and approved by the hospice governing body and employed by the hospice as patient care coordinator to supervise and coordinate the palliative and supportive care for patients and families provided by a hospice team.

(j) **Medical social services.** Medical social services ~~shall~~must be provided by a social worker employed by the hospice.

(k) **Support services.** Support services ~~shall~~must be available to both the individual and the family. These services include bereavement support provided before the patient's death, spiritual support and any other support or service needed by the patient or family. These services may be provided by

members of the interdisciplinary group as well as other qualified professionals as determined by the hospice.

(l) **Training.** A hospice must:

- (1) ~~A hospice shall~~ provide orientation about the hospice philosophy to all employees and contracted staff who have patient and family contact;
- (2) ~~A hospice shall~~ provide an initial orientation for each employee that addresses the employee's specific job duties.
- (3) ~~A hospice shall~~ assess the skills and competence of all individuals furnishing care, including volunteers furnishing services, and, as necessary, provide in-service training and education programs where required. The hospice shall have written policies and procedures describing its method(s) of assessment of competency and maintain a written description of the in-service training provided during the previous twelve (12) months.

(m) **Volunteers.** Volunteers shall must be used in defined roles and under the supervision of a designated hospice employee. The hospice shall must provide appropriate orientation and training.

- (1) **Training.** The hospice shall will maintain, document, and provide volunteer orientation and training.
- (2) **Role.** Volunteers shall will be used in day-to-day administrative and/or direct patient care roles.
- (3) **Recruiting and retaining.** The hospice shall will document and demonstrate viable and ongoing efforts to recruit and retain volunteers.
- (4) **Utilization.** The hospice shall must document
  - (A) The identification of each position that is occupied by a volunteer.
  - (B) The work time spent by volunteers occupying those positions.

(n) **Criminal background checks.**

- (1) The hospice shall must obtain a criminal background check on all hospice employees who have direct patient contact or access to patient records. Hospice contracts shall must require that all contracted entities obtain criminal background checks on contracted employees who have direct patient contact or access to patient records.
- (2) Each such criminal background check shall must meet the criteria established for certified nurse aides as provided for in ~~O.S. Title 63 O.S. Section 1-1950.1. [The Nursing Home Care Act]~~ shall and be obtained in accordance with State requirements.

**310:661-3-3. Medical records**

- (a) The hospice shall must establish and maintain a medical record for each individual receiving care and services. The record shall must be complete, timely and accurately documented, and readily accessible.
- (b) The medical record shall must contain sufficient information to justify the diagnosis and warrant the treatment and services provided. Entries are made and signed by the person providing the services. The record shall must include all care and services whether furnished directly or under arrangements by the hospice. Each record shall must contain at least, ~~but not be limited to,~~ the following:

- (1) Identification data;
- (2) Initial and subsequent assessments;
- (3) Plan of care;
- (4) Consent, authorization and election forms;
- (5) Medical history; and
- (6) Complete documentation of all care, services and events including evaluations, treatments, progress notes, laboratory and x-ray reports, and discharge summary.
- (c) The hospice shall must safeguard the medical record against loss, destruction, and unauthorized use.
- (d) Current records shall must be completed promptly. A plan of care shall must be completed within forty-eight (48) hours following admission. Records of discharged patients shall must be completed within thirty (30) days following discharge.
- (e) Medical records shall must be retained at least five (5) years beyond the date the patient was last seen or at least three (3) years beyond the date of the patient's death.
- (f) A hospice may microfilm medical records in order to conserve space. Records reconstituted from microfilm shall will be considered the same as the original and retention of the microfilmed record constitutes compliance with preservation laws.
- (g) The hospice shall must advise the Department in writing at the time of cessation of operation as to where hospice records shall will be archived and how these records shall can be accessed.

**310:661-3-3.1. Clinical records**

- (a) **General.** A clinical record containing past and current findings is maintained for each hospice patient. The clinical record ~~shall contain~~ contains accurate clinical information that is available to the patient's attending physician and hospice staff. The clinical record may be maintained electronically.
- (b) **Content.** Each patient's record shall must include ~~at least~~ the following:
  - (1) The initial plan of care, updated plans of care, initial assessment, comprehensive assessment, updated comprehensive assessments, and clinical notes;
  - (2) Signed copies of the notice of patient rights;
  - (3) Responses to medications, symptom management, treatments, and services;
  - (4) Outcome measure data elements, as described in 310:661-5-3.1;
  - (5) Physician certification of terminal illness;
  - (6) Any advance directives; and
  - (7) Physician orders.
- (c) **Authentication.** All entries shall must be legible, clear, complete, and appropriately authenticated and dated in accordance with hospice policy.
- (d) **Protection of information.** The clinical record, its contents and the information contained therein shall must be safeguarded against loss or unauthorized use. ~~The~~ Additionally, the hospice shall be in compliance with subject to all Federal and State privacy laws.
- (e) **Discharge or transfer of care.**

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(1) If the care of a patient is transferred to another licensed hospice, the hospice ~~shall~~will forward to the receiving hospice within twenty-four (24) hours, a copy of:

- (A) The hospice discharge summary; and
- (B) The patient's clinical record, as requested.

(2) If a patient revokes the election of hospice care, or is discharged from hospice, the hospice ~~shall~~will forward to the patient's attending physician within twenty-four (24) hours, a copy of:

- (A) The hospice discharge summary; and
- (B) The patient's clinical record, if requested.

(3) The hospice discharge summary as required above ~~shall~~must include:

- (A) A summary of the patient's stay including treatments, symptoms and pain management;
- (B) The patient's current plan of care;
- (C) The patient's current physician orders; and
- (D) Any other documentation that will assist in post-discharge continuity of care or that is requested by the attending physician or receiving hospice.

(f) **Retrieval of clinical records.** The clinical record, whether hard copy or in electronic form, ~~shall~~must be made readily available on request.

### 310:661-3-4. Confidentiality

(a) Medical records ~~shall~~must be kept confidential. Only authorized personnel ~~shall~~ have access to the record. Written consent of the patient, patient representative, the court appointed guardian or a court order ~~shall~~will be ~~presented~~accepted as authority for release of medical information.

(b) An individual who is, or has been, a patient of a physician, hospital, or other medical facility, except psychiatric, ~~shall be~~is entitled to access information contained in the individual's own medical records upon request. A request for minors may be made by parents or legal guardian. The hospice ~~shall~~must furnish a copy of the medical record upon payment for the charge of such copy.

### 310:661-3-5.1. Number of continuing education hours required

(a) All hospice administrators operating a hospice program in this state ~~shall be~~are required to complete eight (8) hours of continuing education each calendar year.

(b) Hours of continuing education may be completed in person or online.

(c) Membership in a statewide organization relating to hospice care ~~shall~~will be considered as completion of one (1) hour of ethics credit each year.

### 310:661-3-5.2. Acceptable continuing education

(a) Continuing education curriculum content is acceptable when it includes at least one of the following components:

- (1) Administrative skills, duties, and responsibilities;
- (2) Administrative procedures and strategic planning;
- (3) Community relations and public information;
- (4) Fiscal and information data management;

(5) Human relations;

(6) Ethics; or

(7) State and federal statutes and rules applicable to Hospice service delivery.

(b) Continuing education hours may be offered through a graduate or undergraduate course, seminar, workshop, conference, or professional association meeting for the purpose of enhancing professional competency. This excludes independent reading and informal meetings that are informational in nature and are offered as a public service and not for the offering of continuing education.

(c) An acceptable instructor or entity offering continuing education courses ~~shall~~must have:

- (1) Experience in hospice administration; or
- (2) Expertise in teaching and instructional methods suitable to the subject presented; or
- (3) Academic qualifications and experience for the subject.

### 310:661-3-5.3. Documentation of attendance

(a) A hospice administrator ~~shall~~must maintain in their personal records verification of course attendance, completion, or membership documents. Acceptable documents include the following:

- (1) A continuing education validation form furnished by the presenter;
- (2) A certificate or letter of attendance or completion with an agenda or content outline; or
- (3) An official college transcript showing courses completed with credit issued or audit credit.

(b) The presenting organization must be identified in the verification documents through documentation identifying the sponsoring entity, the name of the program, location, dates, subject taught, total number of hours, participant's name and presenter's name and credentials.

(c) Presentation of fraudulent continuing education documentation ~~shall be~~is a violation of this Chapter and applicable to the hospice license.

## SUBCHAPTER 5. MINIMUM STANDARDS

### 310:661-5-1. Admission

(a) Admission to a hospice ~~shall~~will be in accord with the Act.

(b) Hospice services ~~shall~~will be available twenty-four (24) hours a day, seven (7) days a week.

(c) A hospice program ~~shall~~will not impose the dictates of any value or belief system on its patients and their families.

(d) A hospice ~~shall~~will coordinate its service with those of the patient's primary or attending physician, all hospice caregivers, and nursing facility staff if a patient resides in a nursing facility.

(e) The hospice team ~~shall~~will be responsible for coordination and continuity between inpatient and home care aspects of care.

**310:661-5-1.1. Admission to hospice care**

- (a) The hospice admits a patient only on the recommendation of the medical advisor in consultation with, or with input from, the patient's attending physician (if any).
- (b) In reaching a decision to certify that the patient is terminally ill, the hospice medical advisor ~~shall~~must consider at least the following information:
  - (1) Diagnosis of the terminal condition of the patient;
  - (2) Other health conditions, whether related or unrelated to the terminal condition; and
  - (3) Current clinically relevant information supporting all diagnoses.

**310:661-5-1.2. Discharge from hospice care**

- (a) **Reasons for discharge.** A hospice may discharge a patient if:
  - (1) The patient moves out of the hospice's service area or transfers to another hospice;
  - (2) The hospice determines that the patient is no longer terminally ill; or
  - (3) The hospice determines, under a policy set by the hospice for the purpose of addressing discharge for cause that meets the requirements of paragraphs (a)(3)(A) through (a)(3) (D) of this section, that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired. The hospice ~~shall~~will do the following before it seeks to discharge a patient for cause:
    - (A) Advise the patient that a discharge for cause is being considered;
    - (B) Document efforts to resolve the problem(s) presented by the patient's behavior or situation;
    - (C) Ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; and
    - (D) Document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into its medical records.
- (b) **Discharge order.** Prior to discharging a patient for any reason listed in paragraph (a) of this section, the hospice must obtain a written physician's discharge order from the hospice medical advisor. ~~If a patient has an~~Any attending physician involved in ~~his or her~~the patient's care, ~~this physician shall~~must be consulted before discharge and his or her review and decision included in the discharge note.
- (c) **Discharge planning.**
  - (1) The hospice ~~shall~~must have ~~in place~~ a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill.
  - (2) The discharge planning process ~~shall~~will include planning for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

**310:661-5-1.3. Initial and comprehensive assessment of the patient**

- (a) **General.** The hospice ~~shall~~must conduct and document in writing a patient-specific comprehensive assessment that identifies the patient's need for hospice care and services, and the patient's need for physical, psychosocial, emotional, and spiritual care. This assessment includes all areas of hospice care related to the palliation and management of the terminal illness and related conditions.
- (b) **Initial assessment.** The hospice registered nurse ~~shall~~must complete an initial assessment within forty-eight (48) hours after the physician's order for hospice care is received (unless the physician, patient, or representative requests that the initial assessment be completed in less than 48 hours.)
- (c) **Timeframe for completion of the comprehensive assessment.** The hospice interdisciplinary group, in consultation with the individual's attending physician (if any), ~~shall~~must complete the comprehensive assessment no later than five (5) calendar days after the election of hospice care .
- (d) **Content of the comprehensive assessment.** The comprehensive assessment ~~shall~~must identify the physical, psychosocial, emotional, and spiritual needs related to the terminal illness that ~~shall~~will be addressed in order to promote the hospice patient's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment ~~shall~~must take into consideration the following ~~factors~~:
  - (1) The nature and condition causing admission (including the presence or lack of objective data and subjective complaints);
  - (2) Complications and risk factors that affect care planning;
  - (3) Functional status, including the patient's ability to understand and participate in his or her own care;
  - (4) Imminence of death;
  - (5) Severity of symptoms;
  - (6) A review of all of the patient's prescription and over-the-counter drugs, herbal remedies and other alternative treatments that could affect drug therapy. This includes, but is not limited to, identification of the following:
    - (A) Effectiveness of drug therapy;
    - (B) Drug side effects;
    - (C) Actual or potential drug interactions;
    - (D) Duplicate drug therapy; and
    - (E) Drug therapy currently associated with laboratory monitoring.
  - (7) An initial bereavement assessment of the needs of the patient's family and other individuals focusing on the social, spiritual, and cultural factors that may impact their ability to cope with the patient's death. Information gathered from the initial bereavement assessment ~~shall~~beis incorporated into the plan of care and considered in the bereavement plan of care; and
  - (8) The need for referrals and further evaluation by appropriate health professionals.
- (e) **Update of the comprehensive assessment.** The update of the comprehensive assessment ~~shall~~must:

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(1) be accomplished by the hospice interdisciplinary group (in collaboration with the individual's attending physician, if any); ~~and shall~~

(2) consider changes that have taken place since the initial assessment; ~~it shall~~

(3) include information on the patient's progress toward desired outcomes, as well as a reassessment of the patient's response to care; ~~The assessment update shall be and~~

(4) be accomplished as frequently as the condition of the patient requires, but no less frequently than every fifteen (15) days.

(f) **Patient outcome measures.**

(1) The comprehensive assessment ~~shall~~must include data elements that allow for measurement of outcomes. The hospice ~~shall~~must measure and document data in the same way for all patients. The data elements ~~shall~~must take into consideration aspects of care related to hospice and palliation.

(2) The data elements ~~shall~~must be:

(A) an integral part of the comprehensive assessment; ~~and shall be~~

(B) documented in a systematic and retrievable way for each patient; ~~The data elements for each patient shall be~~

(C) used in individual patient care planning and in the coordination of services; ~~and shall be~~

(D) used in the aggregate for the hospice's quality assessment and performance improvement program.

**310:661-5-2. Plan of care**

(a) A written plan of care ~~shall~~must be established and maintained for each patient admitted to a hospice program and the care provided to an individual ~~shall be~~is in accordance with the plan.

(b) The plan ~~shall~~must be established by the attending physician, the medical advisor, and the interdisciplinary group.

(c) The plan of care ~~shall~~must be reviewed and updated by the hospice team at intervals specified in the plan. ~~These reviews shall be and~~ documented by the team members.

(d) The content of the plan ~~shall~~must include an assessment of the patient's needs and identify the services provided. The plan ~~shall~~must state in detail the scope and frequency of services needed to meet the patient's and family's needs.

(e) Continuous care ~~shall~~must be provided under a plan of care that ~~shall be~~is developed specifically to resolve the patient's medical crisis. These plans ~~shall~~must include:

- (1) Caregiver education;
- (2) Anticipated duration of the continuous care;
- (3) Necessity of continuous care;
- (4) Interventions required;
- (5) Identification of interdisciplinary team members developing the plan; and,
- (6) Physician orders for continuous care.

**310:661-5-2.1. Interdisciplinary group, care planning, and coordination of services**

(a) **General.** The hospice ~~shall~~must designate an interdisciplinary group or groups which, in consultation with the patient's attending physician, ~~shall~~will prepare a written plan of care for each patient. The plan of care ~~shall~~will specify the hospice care and services necessary to meet the patient and family-specific needs identified in the comprehensive assessment as such needs relate to the terminal illness and related conditions.

(b) **Approach to service delivery.**

(1) The hospice ~~shall~~must designate in writing an interdisciplinary group or groups composed of individuals who work together to meet the physical, medical, psychosocial, emotional, and spiritual needs of the hospice patients and families facing terminal illness and bereavement. Interdisciplinary group members ~~shall~~must provide the care and services offered by the hospice, and the group, in its entirety, ~~shall~~must supervise the care and services. The hospice ~~shall~~will designate a registered nurse that is a member of the interdisciplinary group to provide coordination of care and to ensure continuous assessment of each patient's and family's needs and implementation of the interdisciplinary plan of care. The interdisciplinary group ~~shall~~must include, ~~but is not limited to~~; individuals who are qualified and competent to practice in the following professional roles:

- (A) A doctor of medicine or osteopathy (who is an employee or under contract with the hospice);
- (B) A registered nurse;
- (C) A social worker; and
- (D) A pastoral or other counselor.

(2) If the hospice has more than one interdisciplinary group, it ~~shall~~must identify a specifically designated interdisciplinary group to establish policies governing the day-to-day provision of hospice care and services.

(c) **Plan of care.** All hospice care and services furnished to patients and their families ~~shall~~must follow an individualized written plan of care established by the hospice interdisciplinary group in collaboration with the attending physician (if any), the patient or representative, and the primary caregiver in accordance with the patient's needs. The hospice ~~shall~~will ensure that each patient and the primary care giver(s) receive education and training provided by the hospice as appropriate to their responsibilities for the care and services identified in the plan of care.

(d) **Content of the plan of care.** The hospice ~~shall~~must develop an individualized written plan of care for each patient. The plan of care ~~shall~~will reflect patient and family goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments. The plan of care ~~shall~~must include all services necessary for the palliation and management of the terminal illness and related conditions, including at least the following:

- (1) Interventions to manage pain and symptoms;
- (2) A detailed statement of the scope and frequency of services necessary to meet the specific patient and family needs;

- (3) Measurable outcomes anticipated from implementing and coordinating the plan of care;
- (4) Drugs and treatment necessary to meet the needs of the patient;
- (5) Medical supplies and appliances necessary to meet the needs of the patient; and
- (6) The interdisciplinary group's documentation of the patient's or representative's level of understanding, involvement, and agreement with the plan of care, in accordance with the hospice's own policies, in the clinical record.

(e) **Review of the plan of care.** The hospice interdisciplinary group (in collaboration with the individual's attending physician, if any) shall must review, revise and document the individualized plan as frequently as the patient's condition requires, but no less frequently than every fifteen (15) calendar days. A revised plan of care shall must include information from the patient's updated comprehensive assessment and shall note the patient's progress toward outcomes and goals specified in the plan of care.

(f) **Coordination of services.** The hospice shall must develop and maintain a system of communication and integration, in accordance with the hospice's own policies and procedures, to:

- (1) Ensure that the interdisciplinary group maintains responsibility for directing, coordinating, and supervising the care and services provided;
- (2) Ensure that the care and services are provided in accordance with the plan of care;
- (3) Ensure that the care and services provided are based on all assessments of the patient and family needs;
- (4) Provide for and ensure the ongoing sharing of information between all disciplines providing care and services in all settings, whether the care and services are provided directly or under arrangement; and
- (5) Provide for an ongoing sharing of information with other non-hospice healthcare providers furnishing services unrelated to the terminal illness and related conditions.

**310:661-5-2.2. Core Services**

(a) **General.** A hospice shall must provide substantially all core services directly by hospice trained and oriented employees. These services include nursing services, medical social services, and bereavement and spiritual counseling. The hospice may contract for physician services.

(b) **Physician services.** The hospice medical advisor, physician employees, and contracted physician(s) of the hospice, in conjunction with the patient's attending physician, are responsible for the palliation and management of the terminal illness and conditions related to the terminal illness.

- (1) All physician employees and those under contract, shall must function under the supervision of the hospice medical advisor.
- (2) All physician employees and those under contract shall must meet this requirement by either providing the services directly or through coordinating patient care with the attending physician.

(3) If the attending physician is unavailable, the medical advisor, contracted physician, and/or hospice physician employee is responsible for meeting the medical needs of the patient.

(c) **Nursing services.**

(1) The hospice shall must provide nursing care by licensed nurses under the supervision of a registered nurse. Nursing services shall must ensure that the nursing needs of the patient are met as identified in the patient's initial assessment, comprehensive assessment, and updated assessments.

(2) If State law permits registered nurses to see, treat, and write orders for patients, then registered nurses may provide services to patients receiving hospice care.

(3) Highly specialized nursing services that are provided so infrequently that the provision of such services by direct hospice employees would be impracticable and prohibitively expensive, may be provided under contract.

(d) **Medical social services.** Medical social services shall must be provided by a qualified social worker, under the direction of a physician. Social work services shall must be based on the patient's psychosocial assessment and the patient's and family's needs and acceptance of these services.

(e) **Counseling services.** Counseling services shall must be available to the patient and family to assist the patient and family in minimizing the stress and problems that arise from the terminal illness, related conditions, and the dying process. Counseling services shall will include, but are not limited to, the following:

- (1) **Bereavement counseling.** The hospice shall must:
  - (A) Have an organized program for the provision of bereavement services furnished under the supervision of a qualified professional with experience or education in grief or loss counseling;
  - (B) Make bereavement services available to the family and other individuals in the bereavement plan of care up to one (1) year following the death of the patient. Bereavement counseling also extends to residents of a care facility when appropriate and identified in the bereavement plan of care;
  - (C) Ensure that bereavement services reflect the needs of the bereaved; and
  - (D) Develop a bereavement plan of care that notes the kind of bereavement services to be offered and the frequency of service delivery.

(2) **Dietary counseling.** Dietary counseling, when identified in the plan of care, shall must be performed by a qualified individual, which include dietitians as well as nurses and other individuals who are able to address and assure that the dietary needs of the patient are met.

- (3) **Spiritual counseling.** The hospice shall must:
  - (A) Provide an assessment of the patient's and family's spiritual needs;
  - (B) Provide spiritual counseling to meet these needs in accordance with the patient's and family's acceptance of this service, and in a manner consistent with patient and family beliefs and desires;

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- (C) Make all reasonable efforts to facilitate visits by local clergy, pastoral counselors, or other individuals who can support the patient's spiritual needs to the best of its ability; and
- (D) Advise the patient and family of this service.

### 310:661-5-2.3. Physical therapy, occupational therapy, speech-language pathology

Physical therapy services, occupational therapy services, and speech-language pathology services ~~shall~~must be available.

### 310:661-5-2.4. Licensed Professional Services

- (a) Licensed professional services provided directly or under arrangement ~~shall~~must be authorized, delivered, and supervised only by health care professionals who meet the appropriate qualifications specified by the State and who practice under the hospice's policies and procedures.
- (b) Licensed professionals ~~shall~~must actively participate in the coordination of all aspects of the patient's hospice care, in accordance with current professional standards and practice, including participating in ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care, and contributing to patient and family counseling and education.
- (c) Licensed professionals ~~shall~~must participate in the hospice's quality assessment and performance improvement program and hospice sponsored in-service training.

### 310:661-5-3. Quality assurance

- (a) The hospice ~~shall~~must develop, maintain, and conduct a comprehensive quality assurance program that includes an evaluation of services, quarterly clinical record audits, and organizational review.
- (b) The hospice ~~shall~~must ensure that appropriate and quality care is provided to include inpatient care, home care, and care provided under arrangements.
- (c) The quality assurance program ~~shall~~must be reviewed at least ~~one (1) time each once~~ a year. Policies and procedures ~~shall~~will be revised as needed, reviewed, and approved annually. Goals ~~shall~~will be established and problems identified with documented results.

### 310:661-5-3.1. Quality Assessment/Performance Improvement

- (a) The hospice ~~shall~~must develop, implement, and maintain an effective, ongoing, hospice-wide data-driven quality assessment and performance improvement program. The hospice's governing body ~~shall~~must ensure that the program: Reflects the complexity of its organization and services; involves all hospice services (including those services furnished under contract or arrangement); focuses on indicators related to improved palliative outcomes; and takes actions to demonstrate improvement in hospice performance. The hospice ~~shall~~must maintain documentary evidence of its quality assessment and

performance improvement program and be able to demonstrate its operation to the Department of Health.

#### (b) Program scope.

- (1) The program ~~shall~~must at least be capable of showing measurable improvement in indicators related to improved palliative outcomes and hospice services.
- (2) The hospice ~~shall~~must measure, analyze, and track quality indicators, including adverse patient events, and other aspects of performance that enable the hospice to assess processes of care, hospice services, and operations.

#### (c) Program data.

- (1) The program ~~shall~~must use quality indicator data, including patient care, and other relevant data, in the design of its program.
- (2) The hospice ~~shall~~must use the data collected to do the following:
  - (A) Monitor the effectiveness and safety of services and quality of care; and
  - (B) Identify opportunities and priorities for improvement.
- (3) The frequency and detail of the data collection ~~shall~~must be approved by the hospice's governing body.

#### (d) Program activities.

- (1) The hospice's performance improvement activities ~~shall~~must:
  - (A) Focus on high risk, high volume, or problem-prone areas;
  - (B) Consider incidence, prevalence, and severity of problems in those areas; and
  - (C) Affect palliative outcomes, patient safety, and quality of care.
- (2) Performance improvement activities ~~shall~~must track adverse patient events, analyze their causes, and implement preventive actions and mechanisms that include feedback and learning throughout the hospice.
- (3) The hospice ~~shall~~must take actions aimed at performance improvement and, after implementing those actions, the hospice shall measure its success and track performance to ensure that improvements are sustained.

#### (e) Performance improvement projects. Hospices ~~shall~~must develop, implement, and evaluate performance improvement projects.

- (1) The number and scope of distinct performance improvement projects conducted annually, based on the needs of the hospice's population and internal organizational needs, ~~shall~~must reflect the scope, complexity, and past performance of the hospice's services and operations.
- (2) The hospice ~~shall~~must document what performance improvement projects are being conducted, the reasons for conducting these projects, and the measurable progress achieved on these projects.

#### (f) Executive responsibilities. The hospice's governing body is responsible for ensuring the following:

- (1) ~~That an~~An ongoing program for quality improvement and patient safety is defined, implemented, and maintained, and is evaluated annually;
- (2) ~~That the~~The hospice-wide quality assessment and performance improvement efforts address priorities for



improved quality of care and patient safety, and that all improvement actions are evaluated for effectiveness; and  
(3) ~~That one~~One or more individual(s) who are responsible for operating the quality assessment and performance improvement program are designated.

**310:661-5-4. Rights and responsibilities**

(a) Every hospice ~~shall~~must provide, before or at the time of admission, a written statement of rights and responsibilities to each patient, or patient representative, or available family member. The hospice shall ensure that all staff members are familiar with and observe the rights and responsibilities enumerated in the statement.

(b) The statement ~~shall~~must include but not be limited to the following patient rights. ~~The~~ inform the patient ~~shall have that he/she has~~ a right to:

- (1) A listing of available services, charges, billing process, and services that may be covered by private payment, private insurance, or state or federal medical care payment programs, including Medicaid or Medicare;
- (2) Advance notice of any change in fees or billing as soon as possible but no later than thirty (30) calendar days before the effective date of the change;
- (3) Receive information explaining the Medicare, Medicaid and insurance benefits which are no longer available to the patient while the patient receives hospice care, any applicable benefit periods, length of time of each benefit period, and the process of revoking and transferring from one hospice to another if the patient desires;
- (4) Be informed of the right to participate in the planning of care, the right to be advised in advance of any changes in the plan of care, the disciplines that shall furnish care, the proposed frequency of care, the title of the person supervising the patient's care and the manner in which that person may be contacted;
- (5) Revoke the hospice benefit, without coercion from the hospice;
- (6) Expect that the hospice shall enter no further into family life and affairs than is required to meet the goals of the hospice care plan;
- (7) A grievance procedure that includes the right to register a grievance with the hospice regarding treatment or care received or lack of treatment or care without reprisal or discrimination from the hospice; and
- (8) File a complaint with the Oklahoma State Department of Health at its current mailing address.

(c) The statement ~~shall~~must include but not be limited to the following hospice responsibilities. ~~The hospice shall be responsible for:~~

- (1) Accepting patients for service only if they meet hospice admission criteria and have been determined to be terminally ill by a licensed medical doctor or osteopathic physician;
- (2) Providing services regardless of payment;
- (3) Providing services if the patient is a nursing facility resident and indicating that care ~~shall~~will be provided according to the hospice plan of care and that the nursing

facility ~~shall~~will be provided with the plan of care and all subsequent changes to ensure care is coordinated;

- (4) Informing the patient representative or family of the patient's condition and what future changes may occur in the patient's condition and encouraging the patient or patient representative to express feelings and emotions without fear of reprisal;
- (5) Providing caregivers who are non-judgmental and conduct themselves in a professional manner;
- (6) Making and accepting referrals solely in the best interest of the patient;
- (7) Ensuring that hospice owners, employees, and contractors ~~shall~~do not knowingly initiate contact with a patient currently treated by another hospice for the purpose of attempting to persuade the patient to change hospice providers, and ensuring that a hospice which has knowledge of contacts initiated by its employees, owners or contractors ~~shall~~will take reasonable and necessary steps to cease such contacts;
- (8) Respecting and being sensitive to the ethnic, cultural, socioeconomic, religious and lifestyle diversity of the patients and their families;
- (9) Ascertaining and honoring the wishes, concerns, priorities and values of the patient and the patient's family including refusal of routine care and treatment consistent with the organization's values as stated by hospice policy;
- (10) Complying with the patient's advance directive, informing the patient of the right to revoke the advance directive at any time, and discussing the procedures required to revoke;
- (11) Providing qualified personnel to meet the patient's needs;
- (12) Supporting, affirming, and empowering families as caregivers while acknowledging and responding with sensitivity to the interruption of privacy that is necessitated by hospice care in the patient's residence; and
- (13) Ensuring that contracted providers and volunteers are qualified and properly trained and provide care consistent with the values and philosophy of hospice.
- (14) Ensuring hospice care is established to meet the patient's needs and not to supplement facility staffing if the patient resides in an inpatient facility.

**310:661-5-4.1. Additional rights of the patient**

(a) **General.** The patient has the right to be informed of his or her rights, and the hospice ~~shall~~must protect and promote the exercise of these rights.

(b) **Notice of rights and responsibilities.**

- (1) During the initial assessment visit in advance of furnishing care the hospice ~~shall~~must provide the patient or representative with verbal (~~meaning spoken~~) and written notice of the patient's rights and responsibilities in a language and manner that the patient understands.
- (2) The hospice ~~shall~~must inform and distribute written information to the patient concerning its policies on advance directives, including a description of applicable State law.

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- (3) The hospice ~~shall~~must obtain the patient's or representative's signature confirming that he or she has received a copy of the notice of rights and responsibilities.
- (c) **Exercise of rights and respect for property and person.**
- (1) The patient has the right:
- (A) To exercise his or her rights as a patient of the hospice;
- (B) To have his or her property and person treated with respect;
- (C) To voice grievances regarding treatment or care that is (or fails to be) furnished and the lack of respect for property by anyone who is furnishing services on behalf of the hospice; and
- (D) To not be subjected to discrimination or reprisal for exercising his or her rights.
- (2) If a patient has been adjudged incompetent under state law by a court of proper jurisdiction, the rights of the patient are exercised by the person appointed pursuant to state law to act on the patient's behalf.
- (3) If a state court has not adjudged a patient incompetent, any legal representative designated by the patient in accordance with state law may exercise the patient's rights to the extent allowed by state law.
- (4) The hospice ~~shall~~must:
- (A) Ensure that all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone furnishing services on behalf of the hospice, are reported immediately by hospice employees and contracted staff to the hospice administrator;
- (B) Immediately investigate all alleged violations involving anyone furnishing services on behalf of the hospice and immediately take action to prevent further potential violations while the alleged violation is being verified. Investigations and/or documentation of all alleged violations shall be conducted in accordance with established procedures;
- (C) Take appropriate corrective action in accordance with state law if the alleged violation is verified by the hospice administration or an outside body having jurisdiction, such as the State survey agency or local law enforcement agency; and
- (D) Ensure that verified violations are reported to State and local bodies having jurisdiction (including to the State survey and certification agency) within 5 working days of becoming aware of the violation.
- (d) **Rights of the patient.** The patient has a right to the following:
- (1) Receive effective pain management and symptom control from the hospice for conditions related to the terminal illness;
- (2) Be involved in developing his or her hospice plan of care;
- (3) Refuse care or treatment;
- (4) Choose his or her attending physician;

- (5) Have a confidential clinical record. Access to or release of patient information and clinical records is permitted in accordance with State and Federal law.
- (6) Be free from mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property;
- (7) Receive information about the services covered under the hospice benefit; and
- (8) Receive information about the scope of services that the hospice will provide and specific limitations on those services.

### 310:661-5-5. Continuous care

Every hospice ~~shall~~must provide continuous care as necessary to meet the medical crisis needs of the hospice patient and family. The provision of continuous care ~~shall~~must meet the following requirements:

- (1) A skilled nurse ~~shall provide~~provides at least 51% of the care in a 24-hour period, and a qualified home health aide must provide the balance of care.
- (2) A registered nurse ~~shall reassess~~reassesses the patient at least every 24-hours to determine the effectiveness of interventions and the need for continued care.
- (3) Continuous care ~~shall be~~is ordered by a physician upon initiation of the care and every 24-hour period thereafter of the uncontrolled medical crisis.

### 310:661-5-6. Infection Control

- (a) **General.** The hospice ~~shall~~must maintain and document an effective infection control program that protects patients, families, visitors, and hospice personnel by preventing and controlling infections and communicable diseases.
- (b) **Prevention.** The hospice ~~shall~~must follow accepted standards of practice to prevent the transmission of infections and communicable diseases, including the use of standard precautions.
- (c) **Control.** The hospice ~~shall~~must maintain a coordinated agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases that:
- (1) Is an integral part of the hospice's quality assessment and performance improvement program; and
- (2) Includes the following:
- (A) A method of identifying infectious and communicable disease problems; and
- (B) A plan for implementing the appropriate actions that are expected to result in improvement and disease prevention.
- (d) **Education.** The hospice ~~shall~~must provide infection control education to employees, contracted providers, patients, and family members and other caregivers.

### 310:661-5-7. Supervision of hospice aides

- (a) A registered nurse ~~shall~~must make an on-site visit to the patient's home:

- (1) No less frequently than every fourteen (14) calendar days to assess the quality of care and services provided by the hospice aide and to ensure that services ordered by the hospice interdisciplinary group meet the patient's needs. The hospice aide does not have to be present during this visit.
- (2) If an area of concern is noted by the supervising nurse, then the hospice ~~shall~~must make an on-site visit to the location where the patient is receiving care in order to observe and assess the aide while he or she is performing care.
- (3) If an area of concern is verified by the hospice during the on-site visit, then the hospice ~~shall~~must conduct, and the hospice aide ~~shall~~must complete a competency evaluation.
- (b) A registered nurse ~~shall~~must make an annual on-site visit to the location where a patient is receiving care in order to observe and assess each aide while he or she is performing care.
- (c) The supervising nurse ~~shall~~must assess an aide's ability to demonstrate initial and continued satisfactory performance in meeting outcome criteria that include, but is not limited to:
  - (1) Following the patient's plan of care for completion of tasks assigned to the hospice aide by the registered nurse;
  - (2) Creating successful interpersonal relationships with the patient and family;
  - (3) Demonstrating competency with assigned tasks;
  - (4) Complying with infection control policies and procedures; and
  - (5) Reporting changes in the patient's condition.

**310:661-5-8. Drugs and Biologicals, Medical Supplies, Durable Medical Equipment**

- (a) **General.** Medical supplies and appliances; durable medical equipment; and drugs and biologicals related to the palliation and management of the terminal illness and related conditions, as identified in the hospice plan of care, ~~shall~~must be provided by the hospice while the patient is under hospice care.
- (b) **Managing drugs and biologicals.**
  - (1) The hospice ~~shall~~must ensure that the interdisciplinary group confers with an individual with education and training in drug management as defined in hospice policies and procedures and State law, who is an employee of or under contract with the hospice to ensure that drugs and biologicals meet each patient's needs.
  - (2) A hospice that provides inpatient care directly in its own facility ~~shall~~must provide pharmacy services under the direction of a qualified licensed pharmacist who is an employee of or under contract with the hospice. The provided pharmacist services ~~shall~~must include evaluation of a patient's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.
- (c) **Ordering of drugs.**

- (1) Only a ~~icensed~~licensed independent practitioner with prescriptive authority, in accordance with the plan of care and State law, may order drugs for the patient.
- (2) If the drug order is verbal or given by or through electronic transmission:
  - (A) It ~~shall~~must be given only to a licensed health care practitioners within their scope of practice under state law and authorized by hospice policy to receive verbal orders; and
  - (B) The individual receiving the order ~~shall~~must record and sign it immediately and have the prescribing person sign it in accordance with State and Federal regulations.
- (d) **Dispensing of drugs and biologicals.** The hospice ~~shall~~must obtain drugs and biologicals from community or institutional pharmacists or stock drugs and biologicals itself.
- (e) **Administration of drugs and biologicals.** The interdisciplinary group, as part of the review of the plan of care, ~~shall~~must determine the ability of the patient and/or family to safely self-administer drugs and biologicals to the patient in his or her home.
- (f) **Labeling, disposing, and storing of drugs and biologicals.**
  - (1) **Labeling.** Drugs and biologicals ~~shall~~must be labeled in accordance with currently accepted professional practice and ~~shall~~ include appropriate usage and cautionary instructions, as well as an expiration date (if applicable).
  - (2) **Disposing.** The hospice ~~shall~~must have written policies and procedures for the management and disposal of controlled drugs in the patient's home. At the time when controlled drugs are first ordered the hospice ~~shall~~must:
    - (A) Provide a copy of the hospice written policies and procedures on the management and disposal of controlled drugs to the patient or patient representative and family;
    - (B) Discuss the hospice policies and procedures for managing the safe use and disposal of controlled drugs with the patient or representative and the family in a language and manner that they understand to ensure that these parties are educated regarding the safe use and disposal of controlled drugs; and
    - (C) Document in the patient's clinical record that the written policies and procedures for managing controlled drugs was provided and discussed.
- (g) **Use and maintenance of equipment and supplies.**
  - (1) The hospice ~~shall~~must ensure that manufacturer recommendations for performing routine and preventive maintenance on durable medical equipment are followed. The equipment ~~shall~~must be safe and work as intended for use in the patient's environment. Where a manufacturer recommendation for a piece of equipment does not exist, the hospice ~~shall~~must ensure that repair and routine maintenance policies are developed. The hospice may use persons under contract to ensure the maintenance and repair of durable medical equipment.
  - (2) The hospice ~~shall~~must ensure that the patient, where appropriate, as well as the family and/or other

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caregiver(s), receive instruction in the safe use of durable medical equipment and supplies. The hospice may use persons under contract to ensure patient and family instruction. The patient, family, and/or caregiver ~~shall~~must be able to demonstrate the appropriate use of durable medical equipment to the satisfaction of the hospice staff.

### 310:661-5-9. Short-term inpatient care

- (a) Inpatient care ~~shall~~must be available for pain control, symptom management, and respite purposes.
- (b) If the hospice has an arrangement with another facility to provide for short-term inpatient care, the arrangement is described in a written agreement, coordinated by the hospice, and at a minimum specifies that:
- (1) ~~That~~ the hospice supplies the inpatient provider a copy of the patient's plan of care and specifies the inpatient services to be furnished;
  - (2) ~~That~~ the inpatient provider has established patient care policies consistent with those of the hospice and agrees to abide by the palliative care protocols and plan of care established by the hospice for its patients;
  - (3) ~~That~~ the hospice patient's inpatient clinical record includes a record of all inpatient services furnished and events regarding care that occurred at the facility; that a copy of the discharge summary be provided to the hospice at the time of discharge; and that a copy of the inpatient clinical record is available to the hospice at the time of discharge;
  - (4) ~~That~~ the inpatient facility has identified an individual within the facility who is responsible for the implementation of the provisions of the agreement; and
  - (5) ~~That~~ the hospice retains responsibility for ensuring that the training of personnel who will be providing the patient's care in the inpatient facility has been provided and that a description of the training and the names of those giving the training are documented.

## SUBCHAPTER 6. HOSPICE INPATIENT SERVICE REQUIREMENTS

### 310:661-6-1. General

- (a) Each hospice program that operates a hospice inpatient facility ~~shall~~must comply with service requirements specified in this subchapter.
- (b) Patients ~~shall be permitted~~are allowed to receive visitors at any hour, including small children and house pets.
- (c) Smoking or possessing a lighted tobacco product is prohibited in a hospice inpatient facility and within fifteen (15) feet of each entrance to a facility and of any air intakes; provided however, the facility may provide a smoking room for use by patients and their visitors. The walkway to the main entrance ~~shall~~must also be smoke free. ~~No ashtray shall be~~Ashtrays cannot be located closer than fifteen (15) feet to an entrance, except in an indoor smoking room. An indoor smoking room may be provided if:
- (1) It is completely enclosed;

- (2) It is exhausted directly to the outside and maintained under negative pressure sufficient to prevent any tobacco smoke from entering non-smoking areas of the building;
- (3) It allows for visual observation of the patients from outside of the smoking room; and
- (4) The plans are reviewed and approved by the Department.

### 310:661-6-2. Compliance with health and safety requirements

- (a) Each hospice inpatient facility ~~shall~~must comply with all Federal, State, and local laws, regulations, codes and ordinances as required.
- (b) The facility ~~shall~~must have written policies and procedures relating to advance directives with respect to all patients receiving care. These policies and procedures ~~shall~~will comply with existing Federal and State laws.

### 310:661-6-3. Nursing services

- (a) The facility ~~shall~~must provide twenty-four (24) hour nursing services sufficient to meet the needs of the hospice inpatients.
- (b) Each patient ~~shall~~must receive treatments, medications, and diet as prescribed, and ~~shall be~~ kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.
- (c) Each shift ~~shall~~must include at least one (1) registered nurse to supervise the facility and provide direct patient care.
- (d) There ~~shall~~must be adequate numbers of other licensed nurses and support staff to provide services established in the patient's plan of care while the patient is in the facility.

### 310:661-6-4. Dietary services

- (a) The facility ~~shall~~must provide dietary service adequate to meet the dietary needs of the patients. Services may be provided on a contract basis as long as dietary needs of patients are met.
- (b) Each facility ~~shall~~must serve at least three (3) meals or their equivalent each day at regular times, with not more than fourteen (14) hours between a substantial evening meal and breakfast.
- (c) Menus ~~shall~~must be planned and followed to balance patient choice with nutritional needs of patients, in accordance with physicians' orders and to the extent medically possible, in accordance with the Dietary Reference Intakes (DRIs) of the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences.
- (d) The facility ~~shall~~must procure, store, prepare, distribute, and serve all food under sanitary conditions in compliance with Chapter 257 of this Title.
- (e) Nourishments ~~shall be~~are available for all patients at any time in accordance with approved diet orders.
- (f) There ~~shall~~must be adequate trained staff available to manage and provide dietary services. A licensed/registered

dietitian ~~shall~~must be available to provide consultation on patients' dietary needs, supervise services, and ensure medically prescribed special diets are provided as ordered.

(g) The system to be used for dishwashing ~~shall~~must be approved by the Department and operated in accordance with approved procedures and requirements of Chapter 257 of this Title.

(h) Garbage and refuse ~~shall~~must be kept in durable, easily cleanable, insect-proof and rodent-proof containers that do not leak and do not absorb liquids. Adequate carriers and containers ~~shall~~will be provided for the collection and transportation, in a sanitary manner, of garbage and refuse from food service areas of the hospice to the place of disposal in accordance with the requirements of Chapter 257 of this Title.

**310:661-6-5. Pharmaceutical services**

(a) The hospice inpatient facility ~~shall~~must provide appropriate methods and procedures for dispensing and administering drugs and biologicals. Whether drugs and biologicals are obtained from community or institutional pharmacies or maintained and stocked by the facility, the facility ~~shall be~~is responsible for the pharmaceutical services and ensure services are provided in accordance with accepted professional standards of practice in compliance with Federal, State, and local laws.

(b) Each facility ~~shall~~must employ or contract with a licensed pharmacist to supervise services and ensure drugs and biologicals are obtained, stored, administered and disposed of as required by Federal and State law.

(c) A physician or licensed independent practitioner ~~shall~~must order all medications for each patient. If the physician or practitioner's order is verbal, the physician or practitioner ~~shall~~must give the order to a licensed nurse or other individual authorized by State law to receive the order. The individual receiving the order ~~shall~~must record and sign the order immediately and have the prescribing physician or practitioner sign as soon as possible in a manner consistent with good medical practice. Another covering or attending physician or practitioner may sign another physician or practitioner's verbal order if the facility allows this practice and specific procedures are approved by the governing body to permit the practice. If a covering or attending physician or practitioner authenticates the ordering physician or practitioner's verbal order, such an authentication indicates that the covering or attending physician or practitioner assumes responsibility for his or her colleague's order and verifies the order is complete, accurate, appropriate, and final.

(d) Drugs and biologicals ~~shall~~must be administered only by a physician, licensed nurse, an individual authorized by State law to administer, or the patient if his or her attending physician has approved.

(e) The pharmaceutical service ~~shall~~must have procedures for control and accountability of all drugs and biologicals in the facility. Drugs are dispensed in compliance with Federal and State law. Records of receipt and disposition of all controlled drugs are maintained in sufficient detail to enable an accurate reconciliation. The pharmacist ~~shall~~must ensure the drug

records are in order and that an account of all controlled drugs is maintained and reconciled.

(f) The labeling of drugs and biologicals is based on currently accepted professional principles in compliance with State law, and includes the appropriate accessory and cautionary instructions, as well as the expiration date and lot number when applicable.

(g) All drugs and biologicals ~~shall~~must be stored in locked compartments under proper temperature controls. Only authorized personnel ~~shall~~must have access. Separately locked compartments ~~shall~~must be provided for storage of Schedule II controlled drugs. All stores of Schedule II drugs not individually dispensed to a patient ~~shall~~must be accounted for at regular intervals to ensure the drugs are not diverted.

(h) If the facility only maintains drugs and biologicals by individual patient prescription, an emergency medication kit approved by the Medical advisor ~~shall~~must also be maintained.

(i) Controlled drugs no longer needed by the patient ~~shall~~must be disposed of in compliance with Federal and State requirements. The pharmacist and a facility registered nurse or two (2) facility registered nurses ~~shall~~must document disposal and maintain a record.

**310:661-6-6. Disaster preparedness**

The hospice inpatient facility ~~shall~~must have an acceptable written plan, periodically rehearsed with staff, with procedures to be followed in the event of an internal or external disaster and for the care of casualties arising from such disasters.

**310:661-6-7. Infection control**

Each hospice inpatient facility ~~shall~~must establish an infection control program to provide a sanitary environment and avoid sources and transmission of infections. The program ~~shall~~must include written policies and procedures for identifying, reporting, evaluating and maintaining records of infections among patients and personnel, for ongoing review and evaluation of all aseptic, isolation and sanitation techniques employed in the facility, and development and coordination of training programs in infection control for all facility personnel.

**SUBCHAPTER 7. INFRACTIONS**

**310:661-7-1. Inspections**

Any duly authorized representative of the Department ~~shall have~~has the right to conduct such inspections as necessary in order to determine compliance with the provisions of the Act and this Chapter. The right of inspection ~~shall~~ also ~~extend~~extends to any hospice the Department has a reason to believe is advertising or operating a hospice service without a license.

**310:661-7-2. Complaints and investigations**

(a) A complaint may be registered by any person who believes a hospice is operating contrary to the Act or is posing a serious threat to the health and welfare of a patient in its care.

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The complaint may be registered verbally or in writing to the Department. An investigation ~~shall~~will be conducted by the Department to determine the validity of the complaint and to instigate necessary action thereto. The Department ~~shall~~must notify the complainant in writing of the findings, if a name and address is furnished.

(b) If the Department determines there are reasonable grounds to believe that a hospice is operating in violation of the Act or the rules, the Department ~~shall~~must follow the notice and hearing procedure established by the Act and the Procedures of the Department, Chapter 2 of this Title.

## 310:661-7-4. Appeals

Final orders of the Department ~~maybe~~may be appealed ~~under~~to the Supreme Court, ~~according to the Act by any party directly affected or aggrieved by the order.~~Appeals must be in accordance with 63 O.S. § 1-860.11.

[OAR Docket #22-605; filed 7-12-22]

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

[OAR Docket #22-606]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Services and Care

310:663-3-5 [AMENDED]

Subchapter 21. Applying for a License

310:663-21-2 [AMENDED]

310:663-21-4 [AMENDED]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

December 13, 2021

### COMMENT PERIOD:

January 18, 2022 through February 18, 2022

### PUBLIC HEARING:

February 18, 2022

### ADOPTION:

March 4, 2022

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

March 4, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule amendments will change the licensure renewal from annual to every three years. The rule change aligns rule requirements with SB 654, which became effective November 1, 2021. This legislation changed the licensure renewal from annual to every three years. This changes the fee

for licensure to (number of beds) x (\$10.00) x (3 years), which will vary from facility to facility.

### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 3. SERVICES AND CARE

### 310:663-3-5. Involuntary termination of residency

(a) **Termination of residency when inappropriately placed.** If an assisted living center finds pursuant to 310:663-3-4 (relating to appropriate placement) that a resident is inappropriately placed, the assisted living center shall inform the resident and/or the resident's representative if any. If voluntary termination of residency is not arranged, the assisted living center shall provide written notice to the resident and to the resident's representative, giving the resident thirty (30) days notice of the assisted living center's intent to terminate the residency agreement and move the resident to an appropriate care provider. The thirty (30) day requirement shall not apply:

- (1) when emergency termination of the residency agreement is mandated by the resident's immediate health needs; or
- (2) when termination of the residency agreement is necessary for the physical safety of the resident or other residents.

(b) **Written notice of involuntary termination of residency for reasons of inappropriate placement.** The written notice of involuntary termination of residency for reasons of inappropriate placement shall include:

- (1) A full explanation of the reasons for the termination of residency;
- (2) The date of the notice;
- (3) The date notice was given to the resident and the resident's representative; and,
- (4) The date by which the resident must leave the assisted living center.

(c) **Involuntary termination of residency for reasons other than inappropriate placement.** Procedures for involuntary termination of residency for reasons other than inappropriate placement, by an assisted living center, are as follows:

- (1) Written notice shall be provided to the resident, the resident's representative, the person responsible for payment of charges for the resident's care, if different from any of the foregoing, and the Department, at least thirty (30) days in advance of the termination of residency date.
- (2) The written notice shall include:

- (A) A full explanation of the reasons for the termination of residency;
  - (B) The date of the notice;
  - (C) The date notice was given to the resident and the resident's representative;
  - (D) The date by which the resident must leave the assisted living center;
  - (E) Notice that the resident, the resident's representative or person responsible for payment of the resident's care may request a hearing with the Department;
  - (F) Notice that the request for hearing with the Department must be filed within ten (10) Department business days of receipt of the facility notice; and
  - (G) Notice that a written or verbal request for a hearing with the Department should be directed to the Hearing Clerk, Oklahoma State Department of Health, ~~1000 NE Tenth Street~~ 123 Robert S. Kerr Ave., Oklahoma City, OK 73117 73102, telephone (405) 271-1269.
- (3) An assisted living center shall not involuntarily terminate a residency agreement for reasons other than inappropriate placement without following the procedures in this section.
- (4) If a written or verbal request for a hearing is timely filed by an eligible aggrieved party, the Department shall convene a hearing within ten (10) Department business days of receipt of the request. The request may be in the form of a written or verbal request for hearing from the resident or the resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Department shall reduce the verbal request to writing and send a copy to the resident. The request shall state the reason for the termination of residency and attach a copy of the letter from the assisted living center.
- (5) While waiting for the hearing, the assisted living center shall not terminate the residency agreement unless the termination is an emergency situation. If the resident relocates from the assisted living center but wants to be readmitted, the Department may proceed with the hearing and the assisted living center shall be required to readmit the resident if the discharge is found not to meet the requirements of OAC 310:663.
- (6) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the assisted living center, may be represented by counsel or may represent themselves. Assisted living centers operating as a corporation or limited liability company shall be represented by counsel.
- (7) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the assisted living center or at another place. If the hearing is conducted at another location the parties are responsible for providing the hearing room. The Department shall maintain a record on the case in accordance with the Administrative Procedures Act.
- (8) The hearing shall be conducted in accordance with the Administrative Procedures Act. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the termination of the residency was according to law.
- (9) If the Administrative Law Judge finds that the termination of residency was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.
- (10) If the termination of residency is according to law, the order shall give the assisted living center the right to terminate the residency agreement.
- (11) The scope of the hearing may include:
- (A) Inadequate notice;
  - (B) Discharge based on reason not stated in the law;
  - (C) Sufficiency of the evidence to support the termination of residency; or
  - (D) The finding of emergency.
- (12) The Administrative Law Judge shall render a written decision within ten (10) Department business days of the close of the record.
- (13) If the Administrative Law Judge sustains the decision of the assisted living center, the assisted living center may proceed with the termination of residency. If the Administrative Law Judge finds in favor of the resident, the assisted living center shall withdraw its notice of intent to terminate the residency agreement. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed in accordance with the provisions of the Administrative Procedures Act.

**SUBCHAPTER 21. APPLYING FOR A LICENSE**

**310:663-21-2. Deadlines for filing and period of license validity**

- (a) The application for establishment of a continuum of care facility or assisted living center shall be filed at or before the time when the application for an initial license is filed. Provided, however, that an application for establishment is not required in conjunction with the transfer of ownership or operation of a facility or center that is currently licensed under the Act and OAC 310:663.
- (b) The license application shall be filed in accordance with the following deadlines.
  - (1) The application for an initial license of a new continuum of care facility or assisted living center shall be filed at least thirty (30) days before beginning operations.
  - (2) The application for an initial license, following a transfer of ownership or operation, shall be filed at least thirty (30) days before the final transfer. In the case of the appointment of a receiver as operator, this thirty (30) day advance filing requirement may be waived if the Department finds that an emergency exists which threatens the welfare of the residents. If an emergency is found to exist, the receiver shall file the license application before beginning operation of the assisted living center or continuum of care facility.

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(3) The application for renewal of the license of an existing continuum of care facility or assisted living center, with no transfer of ownership or operation, shall be filed by the renewal date specified on the existing license. ~~Each initial license shall be effective for one hundred eighty (180) days from the issue date. The renewal license shall be issued for a period of twelve (12) months from the date of issue. Provided that licenses may be issued for a period of more than twelve (12) months, but not more than twenty four (24) months, for the license period immediately following the effective date of this provision in order to permit an equitable distribution of license expiration dates to all months of the year.~~

(c) The renewal license shall expire three (3) years from the date of issuance. An initial license shall expire one hundred eighty (180) days after the date of issuance. Renewal licenses may be issued for a period of more than twelve (12) months, but not more than thirty-six (36) months, for the license period immediately following November 1, 2021, in order to permit an equitable distribution of license expiration dates. [63 O.S. § 1-890.4 (D)].

## 310:663-21-4. Filing fees

(a) Each application to establish a continuum of care facility or assisted living center shall be accompanied by a non-refundable application fee of Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility or center. The maximum application fee for each facility or center shall be One Thousand Dollars (\$1000.00). ~~The application fee for establishment of a facility or center shall be in addition to the license fee required under the Act and OAC 310:663-21-4(b).~~

(b) ~~Each application for an initial license or for an annual renewal license to operate an assisted living center or a continuum of care facility shall be accompanied by a non-refundable license fee. The license fee shall be in the amount set in the Act. Each application for an initial license, or renewal of the license, to operate a continuum of care facility or assisted living center shall be accompanied by a license fee. The initial license fee shall be Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility or center and the renewal license fee shall be Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility or center, per year of licensure, except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from these fees. [63 O.S. § 1-890.4 (B)].~~

(c) ~~The application and license fees shall be paid by check to the Oklahoma State Department of Health. If an application for an initial or renewal license includes an adult day care component, then an application for an adult day care license (OAC 310:605), must also be filed.~~

(d) The fee for a license renewal following an initial license, or for a license amendment to reflect a change in bed capacity, shall be prorated based on the number of days remaining until

the current license expires, and, in the case of a change in bed capacity, the number of beds being added.

[OAR Docket #22-606; filed 7-12-22]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 667. HOSPITAL STANDARDS

[OAR Docket #22-607]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
310:667-1-1 [AMENDED]  
310:667-1-2 [AMENDED]  
Subchapter 59. Classification of Hospital Emergency Services  
310:667-59-1 [AMENDED]  
310:667-59-3 [AMENDED]  
310:667-59-5 [AMENDED]  
310:667-59-7 [AMENDED]  
310:667-59-9 [AMENDED]  
310:667-59-11 [AMENDED]  
310:667-59-13 [AMENDED]  
310:667-59-15 [AMENDED]  
310:667-59-17 [AMENDED]  
310:667-59-19 [AMENDED]  
310:667-59-20 [AMENDED]  
310:667-59-21 [AMENDED]  
310:667-59-23 [AMENDED]  
310:667-59-25 [AMENDED]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health, 63 O.S. § 1-104; and Rules and Standards, 63 O.S. § 1-705.

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

December 13, 2021

### COMMENT PERIOD:

January 18, 2022 through February 18, 2022

### PUBLIC HEARING:

February 18, 2022

### ADOPTION:

March 4, 2022

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

March 4, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### AVAILABILITY:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-271-4200

### GIST/ANALYSIS:

The legal citations and terminology used in 310:667-1-2. Definitions, have been revised to align with statute. In an effort to improve conciseness and readability, the proposed revisions to Subchapter 59. Classification of Hospital Emergency Services eliminate duplication within each Section and consolidate identical requirements by using references to requirements stated in lower classification levels, e.g. "A Level I hospital is subject to the same emergency services requirement as a Level II hospital as set forth in (c)(1)(A) of this Section." We have also applied the same concept for requirements that include a long list of items, e.g. "All of the quality improvement indicators



listed for Level III classification set forth in (a)(5) of this Section" and then state the one or two new items, rather than repeating the entire list in each classification level.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA STATE DEPARTMENT OF HEALTH, 123 ROBERT S. KERR AVENUE, OKLAHOMA CITY, OKLAHOMA 73102 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**310:667-1-1. Purpose.**

Removed supplement date to update 63 O.S. § 1-705 legal citation.

**310:667-1-2. Definitions.**

Updated definitions to be consistent with 63 O.S. § 1-701.

**SUBCHAPTER 59. CLASSIFICATION OF HOSPITAL EMERGENCY SERVICES**

**310:667-59-1. General.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording.

**310:667-59-3. Inspections and deemed status.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording. These revisions also include adding a tagline to each subsection for organizational purposes.

**310:667-59-5. Notification.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording.

**310:667-59-7. Clinical categories of emergency medical services.**

Added stroke services as a category. Stroke services is already a category, but was not mentioned in this section.

**310:667-59-9. Classification of trauma and emergency operative services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

**310:667-59-11. Classification of emergency cardiology services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

**310:667-59-13. Classification of emergency pediatric medicine and trauma services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

**310:667-59-15. Classification of emergency dental services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense

blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

**310:667-59-17. Classification of emergency obstetric and gynecologic services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

**310:667-59-19. Classification of emergency ophthalmology services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

**310:667-59-20. Classification of emergency stroke services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section.

**310:667-59-21. Classification of emergency neurology services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

**310:667-59-23. Classification of emergency psychiatric services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

**310:667-59-25. Classification of emergency general medicine services.**

The revisions are intended to improve the clarity and readability of the section by editing duplicative and unnecessary wording and restructuring dense blocks of text into enumerated items. Within this section, when an extended list of items is used for various levels of classification or a classification level is subject to the exact same requirement as a lower classification level, rather than copying over that information to each level, a reference is now made to where it was first used within the section. References to other areas of the chapter that do not create a requirement for a particular level have also been removed, e.g. (a)(2)(A) through (D) is stricken.

[OAR Docket #22-607; filed 7-12-22]

# Permanent Final Adoptions

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

[OAR Docket #22-608]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 11. Intermediate Care Facilities of 16 Beds and Less for  
Individuals with Intellectual Disabilities (ICF-IID-16)

310:675-11-2 [AMENDED]

310:675-11-4 [AMENDED]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. §  
1-104

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

December 13, 2021

### COMMENT PERIOD:

January 18, 2022 through February 18, 2022

### PUBLIC HEARING:

February 18, 2022

### ADOPTION:

March 4, 2022

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

March 4, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

In both sections, the term "mental retardation" is removed. In accordance  
with Title 25 O.S. § 40, all statutes and rules should avoid such language.

### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of  
Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563.  
AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 11. INTERMEDIATE CARE FACILITIES OF 16 BEDS AND LESS FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES (ICF/IID-16)

#### 310:675-11-2. Active Treatment

In institutions for individuals with intellectual disabilities,  
active treatment requires the following:

- (1) The individual's regular participation, in accordance with an individual plan of care, in professionally developed and supervised activities, experience or therapies.

(2) An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experience or therapies necessary for the individual to reach those goals or objectives. The overall purpose of the plan is to help the individual function at the greatest physical, intellectual, social or vocational level he can presently or potentially achieve.

(3) An interdisciplinary professional evaluation that consists of complete medical, social and psychological diagnosis and evaluations and an evaluation of the individual's need for institutional care; and is made by a physician, a social worker and other professionals, at least one of whom is a qualified ~~mental-retardation~~ intellectual disability professional.

(4) Reevaluation medically, socially and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individual plan of care, assessment of the resident's continuing need for institutional care, and consideration of alternate methods of care.

(5) An individual postinstitutionalization plan, as part of the individual plan of care, developed before discharge by a qualified ~~mental-retardation~~ intellectual disability professional and other appropriate professionals. This must include provision for appropriate services, protective supervision, and other follow-up services in the resident's new environment.

(6) Individuals assigned for specific purpose of direct personal care to residents, including those conducting a training program to develop the resident's self-help and socialization skills. Does not include professionals performing duties related to their profession.

#### 310:675-11-4. Occupancy

Residents selected for ICF/IID-16 occupancy shall receive active treatment, and be capable of direction and emergency evacuation from the facility, as determined by a physician or nurse or qualified ~~mental-retardation~~ intellectual disability professional.

[OAR Docket #22-608; filed 7-12-22]

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

[OAR Docket #22-609]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Licensure Requirements

310:680-3-2 [AMENDED]

310:680-3-3 [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; Title 63 O.S. § 1-822

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

December 13, 2021

**COMMENT PERIOD:**

January 18, 2022 through February 18, 2022

**PUBLIC HEARING:**

February 18, 2022

**ADOPTION:**

March 4, 2022

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

March 4, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule amendments will change the licensure from annual to licensure renewal every three years. The purpose of the rule change is to align rule requirements with SB 654, which became effective November 1, 2021. This legislation changed the licensure from annual to renewal every three years. This changes the fee for licensure to \$75.00 every three years, which is the sum of the previous \$50.00 every two years.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. LICENSURE REQUIREMENTS**

**310:680-3-2. Licensures**

(a) **Regular license.** ~~The A regular license shall be issued for a twenty-four (24) month period expiring two years is valid for 36 months~~ from date of issue. A license may be issued upon receipt of completed application, payment of license fee, and verification by the Department that the home ~~complies with the Residential Care Standards and Regulation for Licensure, and the Residential Care Act~~ is in compliance with this Chapter and the Act. A nonrefundable \$75 fee must be included with a regular license application. [63 O.S. § 1-822(A)]

(b) **Probationary license.** ~~If the applicant has not been previously licensed, or if the home is not in operation at the time application is made, the Department shall issue a probationary license. A probationary license shall be valid for one hundred twenty (120) days unless sooner suspended or revoked by the Department.~~ **Renewal license.** Renewal licenses may be issued for a period of more than twenty-four (24) months, but not more than thirty-six (36) months, for the license period immediately

following November 1, 2021, in order to permit an equitable distribution of license expiration dates. [63 O.S. § 1-822(A)] Thereafter, all renewal licenses will be for 36 months. A non-refundable fee of \$25 per year for the renewal license must be included with the renewal application. [63 O.S. § 1-822(A)].

(c) **Probationary license.** Before an applicant is eligible to apply for a regular license, it must first apply and receive a probationary license. A probationary license shall be valid for one hundred twenty (120) days unless sooner suspended or revoked by the Department. A nonrefundable \$50 fee must be included with a probationary license application. [63 O.S. § 1-822(A)]. Prior to issuance of a probationary license, the Department shall:

- (1) Ascertain whether or not the applicant is qualified to be licensed.
- (2) Inspect the home and inform the applicant of any condition which requires correction prior to issuance of a license. If the home is a new home, the Department shall also inform the applicant of any conditions which require correction prior to acceptance of residents into the home.
- (3) If the home is an existing home whose ownership is being transferred, the probationary license issued to the transferee, in addition to any corrections required as a result of the inspection, shall be subject to any plan of correction submitted by the previous owner and approved by the Department.

(d) **Conditional license.**

(1) ~~The Department may issue a conditional license to any residential care home in which it finds that a violation exists. The issuance of a conditional license shall revoke any license held by the residential care home. If the Department finds that a residential care home is in violation of the Residential Care Act or this Chapter, then it may revoke the residential care home's regular license and issue it a conditional license. There is no fee associated with this change in license status.~~

(2) Prior to the issuance of a conditional license, the Department shall review and approve a written plan of correction. The Department shall specify the violations which prevent full licensure and shall establish a time schedule for correction of the violation. Written notice of the decision to issue a conditional license shall be sent to the residential care home, together with the proposed plan of correction. The notice shall inform the home of the right to an informal conference prior to issuance of the conditional license, and its right to a full hearing.

(3) A conditional license shall be issued for a period specified by the Department, but in no event for more than one (1) year.

(4) The Department shall periodically, but not less than semiannually, inspect any home operating under a conditional license. If the Department finds substantial failure by the residential care home to follow the plan of correction, the conditional license may be revoked.

(5) If the Department determines that a conditional license shall expire without renewal or replacement of the conditional license by a regular license, the Department

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shall notify the licensee at least thirty (30) days prior to expiration of the license. The licensee is entitled to a hearing if requested prior to expiration of the conditional license.

## 310:680-3-3. Applications

(a) An applicant for probationary license, regular license or renewal thereof to operate a residential care home shall submit to the Department a completed application along with the ~~fifty dollar (\$50.00) license appropriate fee~~, and documents required by the Commissioner to determine that the applicant is of reputable and responsible character and otherwise demonstrates the skill and fitness to provide the necessary services. In addition, the applicant shall have appropriate business or professional experience in dealing with the type of residents in the home. ~~The license fee of fifty dollars (\$50.00) is not refundable.~~

(b) A license fee of twenty dollars (\$20.00) shall accompany any application for modification of a license.

(c) An application for license, or renewal, shall include a copy of all agreements with the professional consultants utilized by the home.

(d) An application for an initial license to operate a residential care home shall include documentation that the State Fire Marshal or the State Fire Marshal's representative has inspected and approved the home. Each application for renewal of a license for a residential care home with more than six beds shall include documentation of annual inspection and approval by the State Fire Marshal or the State Fire Marshal's representative.

(e) The following items must be renewed annually:

(1) An agreement with a physician, physician assistant or advanced practice registered nurse to provide clinical consultation.

(2) Agreements with registered nurse, registered dietitian, and registered pharmacist, as required based on the needs of the residents.

(3) Licensed plumber or building inspector's report.

(4) Licensed electrician or municipal inspector's report.

(f) *Each initial application shall be accompanied by a statement from the unit of local government having zoning jurisdiction over the location of the home stating that the location is not in violation of a zoning ordinance.* [63:1-822(C)]

(g) Each application shall be accompanied by an attested statement from the applicant assuring that the applicant complies with 63 O.S. Section 1-822(D). If the applicant is a firm, partnership or corporation, the application shall include an attested statement from each member of the firm or partnership and from each officer and major stockholder of the corporation.

[OAR Docket #22-609; filed 7-12-22]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 681. MEDICAL MARIJUANA REGULATIONS

[OAR Docket #22-610]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:681-1-2 [AMENDED]

310:681-1-4 [AMENDED]

310:681-1-6 [AMENDED]

310:681-1-7 [AMENDED]

310:681-1-9.1 [AMENDED]

Subchapter 2. Medical Marijuana Licenses

310:681-2-1 [AMENDED]

310:681-2-3 [AMENDED]

310:681-2-5 [AMENDED]

310:681-2-8 [AMENDED]

Subchapter 3. Transporter License

310:681-3-1 [AMENDED]

310:681-3-2 [AMENDED]

310:681-3-3 [AMENDED]

310:681-3-4 [AMENDED]

310:681-3-6 [AMENDED]

Subchapter 4. Research Facilities and Education Facilities

310:681-4-2 [AMENDED]

310:681-4-3 [AMENDED]

310:681-4-4 [AMENDED]

310:681-4-5 [AMENDED]

Subchapter 5. Medical Marijuana Businesses

310:681-5-1.1 [AMENDED]

310:681-5-2 [AMENDED]

310:681-5-2.1 [NEW]

310:681-5-3 [AMENDED]

310:681-5-3.1 [AMENDED]

310:681-5-3.2 [AMENDED]

310:681-5-4 [AMENDED]

310:681-5-4.1 [NEW]

310:681-5-6 [AMENDED]

310:681-5-6.1 [AMENDED]

310:681-5-8 [AMENDED]

310:681-5-8.1 [AMENDED]

310:681-5-11 [NEW]

310:681-5-12 [AMENDED]

310:681-5-14 [NEW]

310:681-5-17 [AMENDED]

310:681-5-18 [AMENDED]

Subchapter 7. Packaging, Labeling, and Advertising

310:681-7-1 [AMENDED]

Subchapter 8. Laboratory Testing

310:681-8-1 [AMENDED]

310:681-8-2 [AMENDED]

310:681-8-3 [AMENDED]

310:681-8-4 [AMENDED]

Subchapter 9. Waste Disposal Facilities

310:681-9-1 [AMENDED]

310:681-9-2 [AMENDED]

310:681-9-3 [AMENDED]

310:681-9-4 [AMENDED]

310:681-9-6 [AMENDED]

310:681-9-7 [AMENDED]

Appendix C. Schedule of Fines [REVOKED]

Appendix C. Schedule of Fines [NEW]

Appendix D. Sample Collection for Final Medical Marijuana Products [NEW]

Appendix E. Sample Collection for Pre-Rolls [NEW]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; Title 63 O.S. § 1-104; Title 63 O.S. §§ 420 et seq., Title 63 O.S. §§ 427.1 et seq., 63 O.S. §§ 427a et seq.

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

September 27, 2021

**COMMENT PERIOD:**

November 1, 2021 through December 1, 2021

**PUBLIC HEARING:**

December 1, 2021

**ADOPTION:**

January 20, 2022

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

January 20, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- 310:681-1-2 [AMENDED]
- 310:681-1-4 [AMENDED]
- 310:681:1-6 [AMENDED]
- 310:681-1-7 [AMENDED]
- 310:681-1-9.1 [AMENDED]
- Subchapter 2. Medical Marijuana Licenses
- 310:681-2-3 [AMENDED]
- 310:681-2-5 [AMENDED]
- 310:681-2-8 [AMENDED]
- Subchapter 3. Transporter License
- 310:681-3-1 [AMENDED]
- 310:681-3-2 [AMENDED]
- 310:681-3-3 [AMENDED]
- 310:681-3-4 [AMENDED]
- 310:681-3-6 [AMENDED]
- Subchapter 4. Research Facilities and Education Facilities
- 310:681-4-2 [AMENDED]
- 310:681-4-3 [AMENDED]
- 310:681-4-4 [AMENDED]
- 310:681-4-5 [AMENDED]
- Subchapter 5. Medical Marijuana Businesses
- 310:681-5-1.1 [AMENDED]
- 310:681-5-2 [AMENDED]
- 310:681-5-2.1 [NEW]
- 310:681-5-3 [AMENDED]
- 310:681-5-3.1 [AMENDED]
- 310:681-5-3.2 [AMENDED]
- 310:681-5-4 [AMENDED]
- 310:681-5-4.1 [NEW]
- 310:681-5-6 [AMENDED]
- 310:681-5-6.1 [AMENDED]
- 310:681-5-8 [AMENDED]
- 310:681-5-8.1 [AMENDED]
- 310:681-5-11 [AMENDED]
- 310:681-5-12 [AMENDED]
- 310:681-5-14 [NEW]
- 310:681-5-18 [AMENDED]
- Subchapter 7. Packaging, Labeling, and Advertising
- 310:681-7-1 [AMENDED]
- Subchapter 8. Laboratory Testing
- 310:681-8-1 [AMENDED]
- 310:681-8-2 [AMENDED]
- 310:681-8-3 [AMENDED]
- Subchapter 9. Waste Disposal Facilities
- 310:681-9-1 [AMENDED]
- 310:681-9-2 [AMENDED]
- 310:681-9-3 [AMENDED]
- 310:681-9-4 [AMENDED]
- 310:681-9-6 [AMENDED]
- 310:681-9-7 [AMENDED]
- Appendix C [REVOKED]
- Appendix C [NEW]
- Appendix D [NEW]
- Appendix E [NEW]

**Gubernatorial approval:**

November 23, 2021

**Register publication:**

39 Ok Reg 271

**Docket number:**

21-858

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

7 CFR Section 205.2; 7 CFR Section 205.102; 16 CFR Section 1700.15; 16 CFR Section 1700.20; 21 CFR Part 101; 21 CFR Section 101.1; 21 CFR Section 101.2; 21 CFR Section 101.9; 21 CFR Part 120; 29 CFR Section 1910.1200; 29 CFR Section 1910.1450; 45 CFR Section 46

**Incorporating rules:**

- 310:681-1-4
- 310:681-4-3
- 310:681-5-8.1
- 310:681-8-2

**Availability:**

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-271-4200

**GIST/ANALYSIS:**

The rules amend the Definitions section to add new terms and corresponding definitions for terms in the new and amended sections of Chapter 681. The rules add and define hazardous and nonhazardous processor license as authorized by HB 2646. Specifically, a processor utilizing any chemical in the extraction process that is defined as hazardous under 29 CFR 1910.1200 is required to obtain a hazardous processor license. Preschools are removed from the definitions of public and private schools, as provided for in HB 2646. The amendments reflect the statutory requirements for the distance between a school and medical marijuana dispensaries and/or waste facilities that became effective on November 1, 2021 per HB 2646. Most records are now required to be maintained for seven (7) years as provided in HB 2646. The rules add the following fees as authorized by HB 2646: a \$20 license reprint fee for patient licenses and transporter agent licenses; a \$500 fee for a material change that would affect qualifications for licensure; a \$500 late renewal fee if licensees wish to renew a license that has been expired for no longer than ninety (90) days; and other fines penalties specifically provided for under HB 2646. Possession limits and transaction limits are updated to be consistent with HB 2646. Laboratories, research facilities, and education facilities are now also given a complimentary transportation license, and this language is added throughout the rules reflecting the ability of these commercial licensees to transport medical marijuana and medical marijuana product. The rules provide regulatory requirements for the State inventory tracking system. The rules also require that commercial licensees track inventory, cultivation, manufacturing and transactions for the purpose of reporting the information to the Department. The rules add language that a rejected application shall be corrected within thirty (30) days and that if the application is resubmitted with errors not clerical or typographical in nature the application shall be denied unless the Department determines otherwise, pursuant to HB 2646. The thirty (30) day grace period for licensees to liquidate marijuana after their license expires, is revoked, suspended or surrendered has been removed per HB 2646. The rules allow for the Department to perform inspections to ensure qualifications for licensure, and they remove the requirement to provide twenty-four (24) hours' notice consistent with HB 2646. The rules allow the Department to issue an Order for Disciplinary Action that will become final within 30 days if a hearing is not requested. Language is added providing for emergency cease and desist authority per HB 2646. The rules allow dispensaries to display samples of medical marijuana in a sample container for patients to smell and handle, and provide requirements on how dispensaries may display and properly label the samples. The amendments also include the addition of the ability for growers and dispensaries to make and package noninfused pre-rolls that do not exceed one (1) gram. In doing so, the rules include: new definitions for "grower", "dispensary", "infused" and "noninfused pre-rolls"; new testing requirements for pre-rolls and kief; new sampling requirements for pre-rolls and final medical marijuana products; changes in batch sizes to be in line with new statutory changes; and changes in the definitions of "final medical marijuana product" and "nonliquid medical marijuana product" to clearly reflect the batch size permissible for all medical marijuana and medical marijuana products. The rules include implementation for embargooing and recalling medical marijuana or medical marijuana products that may be harmful or unsafe for human consumption or tested above allowable thresholds.

# Permanent Final Adoptions

## CONTACT PERSON:

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**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA STATE DEPARTMENT OF HEALTH, 123 ROBERT S. KERR AVENUE, OKLAHOMA CITY, OKLAHOMA 73102 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

## OAC 310:681-1-4. Definitions

Adds definition of "actively operating" or "actively conducting business operations." Adds definition of "alcoholic beverage." Adds definition of "COA." Revises definition of "dispense" to be consistent with the definition in 63 O.S. § 427.2. Revises definition of "dispensary" or "commercial dispensary" to reflect changes made to the statutory definition in 63 O.S. § 427.2. Revises definition of "dispose" or "disposal." Adds definition of "error in measurement." Adds definition of "error in measurement allowance." Adds definition of "exit package." Adds definition of "final product" or "final medical marijuana product." Revises definition of "flower" to reflect changes made to the statutory definition in 63 O.S. § 427.2. Revises definition of "grower" or "commercial grower" to reflect changes made in 63 O.S. § 422. Revises definition of "harvest batch." Adds definition of "hazardous medical marijuana processor license." Adds definition of "infused pre-roll." Revises definition of "inventory tracking system" to reflect the changes made in 63 O.S. § 427.2. Adds definition of "kief." Revises definition of "marijuana" to reflect changes made in 63 O.S. § 427.2. Adds definition of "material change." Revises definition of "medical marijuana waste." Adds definition of "nonhazardous medical marijuana processor license." Adds definition of "noninfused pre-roll." Adds definition of "nonliquid medical marijuana product." Adds definition of "nonoperational." Adds definition of "openly in existence." Revises definition of "private school" to reflect changes made in 63 O.S. § 427.2. Revises definition of "processor" or "commercial processor" to reflect changes made in 63 O.S. § 423. Adds definition of "publicly traded company." Revises definition of "public school" to reflect changes made in 63 O.S. § 427.2. Revises definition of "registered to conduct business" to reflect changes made in 63 O.S. § 427.2. Revises definition of "remediation" to be consistent with the definition in 63 O.S. § 427.2. Adds definition of "RFID." Adds definition of "seed-to-sale tracking system." Revises definition of "strain" to be consistent with the definition in 63 O.S. § 427.2. Revises definition of "THC." Revises definition of "transporter" or "commercial transporter" to reflect changes made in 63 O.S. §§ 427.2 and 427.16. Revises definition of "transporter agent" to reflect changes made in 63 O.S. §§ 427.2 and 427.16. Revises "transporter license" to reflect changes made in 63 O.S. §§ 427.2 and 427.16. Adds definition of "wholesale package." Adds definition of "working towards operational status."

## OAC 310:681-1-6. Proof of residency

Subsection (a)(3): Removes "an Oklahoma voter identification card" as an acceptable form of proof to show Oklahoma residency for a patient license to be consistent with the acceptable residency documents for commercial licensees set forth in 63 O.S. § 427.14(E)(11) and OAC 310:681-5-3.1.

## OAC 310:681-1-7. Proof of identity

Subsection (a)(1): Adds language clarifying a non-commercial license applicant may establish their identity through submission of a Real ID. Subsection (b)(1): Removes language requiring commercial license applicants submit the back of a driver's license for proof of identity documentation. Adds language clarifying a commercial license applicant may establish identity through submission of a Real ID. Subsection (b)(2): Removes language requiring commercial license applicants submit the back of an identification card for proof of identity documentation. Adds language clarifying a commercial license applicant may establish identity through submission of a Real ID.

## OAC 310:681-1-9.1. Recommending physician standards

Subsection (a): Replaces "their licensure board" with "the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners" to be consistent with 63 O.S. § 420(M).

## OAC 310:681-2-1. Application for patient license

Subsection (e): Clarifies that documentation establishing the disability status of a veteran need not be signed within six months of submission of the application if the applicant's status as a permanent

one-hundred-percent-disabled veteran is demonstrated in the submitted documentation.

## OAC 310:681-2-3. Application for caregiver's license

Subsection (d)(1): Removes language referring to a physician as Board Certified. Subsection (e)(2): Adds language prohibiting caregivers from charging the patient licensee amounts in excess of the actual costs incurred in cultivating medical marijuana pursuant to 63 O.S. § 420(K).

## OAC 310:681-2-5. Term and renewal of medical marijuana patient and caregiver licenses

Subsection (i)(1): Adds new language making a patient license "immediately null and void without the right to an individual proceeding" when the recommendation is terminated by the recommending physician pursuant to 63 O.S. § 427.10(E). Subsection (i)(4): Removes language requiring notice and a right to a hearing for patients that have had their recommendation terminated by the recommending physician to be in accordance with 63 O.S. § 427.10(E). Subsection (k): Creates new requirement that a patient will be charged a fee of \$20.00 for a license reprint pursuant to 63 O.S. § 420(D).

## OAC 310:681-2-8. Possession Limits

Subsection (a)(3): Clarifies that a patient license holder may legally possess "six marijuana plants and the harvested marijuana therefrom" in accordance with 63 O.S. § 420(A). Subsection (a)(8): Adds new language allowing a patient license holder to legally possess "seventy-two (72) ounces of topical marijuana" in accordance with 63 O.S. § 420(A).

## OAC 310:681-3-1. License for transportation of medical marijuana

Subsection (a): Adds language providing that transporter licenses will also be issued to laboratory, research facility, or education facility licensees. Subsection (d): Adds new language requiring a commercial transporter's warehouse location to be inspected and approved by the Department prior to its use pursuant to 63 O.S. § 426.16(I). Subsection (d) and (e): Renumbered subsection (d) and (e) to be (e) and (f), respectively.

## OAC 310:681-3-2. Requirements for transportation of marijuana

Subsection (a): Adds language excepting lawful transfers between medical marijuana businesses located at the same physical address from the transportation requirements outlined in OAC 310:681-3-2(a)(1)-(2) pursuant to 63 O.S. § 427.16(J). Subsection (c): Adds language requiring commercial transporters, growers, processors, dispensaries, laboratories, research facilities and education facilities to retain records and information for seven (7) years pursuant to 63 O.S. § 427.16(U). Subsection (d): Adds language requiring transportation agents of laboratories, research facilities, and education facilities to carry a copy of the business licensee's transportation license when transporting medical marijuana.

## OAC 310:681-3-3. Transporter agent license

Subsection (a): Adds language to include agents, employees, officers, or owners of a laboratory, research facility, or education facility as persons qualified to be issued a transport agent license. Subsection (d)(2): Removes requirement that a transporter agent applicant meet the same residency requirement as a business license applicant. Subsection (d)(4): Adds language to include laboratories, research facilities, or education facilities as an employer that may submit an employment verification form for a transporter agent application. Subsection (e): Adds language to include that a transporter agent license shall not last beyond the expiration, surrender, or revocation of a laboratory, research facility, or education facility license. Subsection (g): Creates new requirement that a transporter agent will be charged a fee of \$20.00 for a license reprint pursuant to 63 O.S. § 427.16(M).

## OAC 310:681-3-4. Employer deactivation of transporter agent license

Subsection (a): Adds language requiring a laboratory, research facility, or education facility to notify the Department within fourteen (14) days when a transporter agent ceases to work as a transporter. Subsection (b): Adds language directing that a laboratory, research facility, or education facility is responsible for destroying or returning a deactivated transporter agent license.

## OAC 310:681-3-6. Inventory manifests

Subsection (a): Replaces "an electronic inventory management system" with "the State inventory tracking system in accordance with OAC 310:681-5-6(d)." Replaces "inventory" with "shipping." Adds language that requires dispensaries, laboratories, research facilities, and education facilities to create and maintain shipping manifests. Subsection (b)(1)(B) and (F): Adds language requiring a laboratory, research facility, or education facility to be on an inventory manifest left with the originating licensee or notate an inventory manifest left with the originating licensee if the laboratory, research facility, or education facility is transporting or authorized the transport. Subsection (b)(2)(C): Adds language requiring a laboratory, research facility, or education facility to be on an inventory manifest left with the receiving licensee if the laboratory, research facility, or education facility transporting the medical marijuana is not the originating licensee. Subsection (d): Adds language

requiring dispensaries, laboratories, research facilities, and education facilities to maintain copies of inventory manifests. Subsection (f): Replaces "three (3)" years with "seven (7)" years for the amount of time originating and receiving licensees shall maintain inventory manifests pursuant to 63 O.S. § 427.16(U). Subsection (g)(1)-(2): Adds language specifying when an inventory manifest may be altered after departing the originating licensee. Subsection (i): Removes language regarding documentation requirements when medical marijuana is refused by a receiving licensee as this language was added in subsection (g).

**OAC 310:681-4-2. Licenses**

Subsection (c)(2): Adds that no new certificate of compliance is necessary during submission of a renewal application unless there is a change in use or occupancy, or a change that would require additional inspection, licensure, or permitting pursuant to 63 O.S. § 426.1(E). Subsection (c)(6) Adds new language allowing a commercial licensee to renew an expired license that is less than ninety (90) days expired for a fee of \$500.00 pursuant to 63 O.S. § 427.14(N). Subsection (e)(2): Clarifies that a licensee shall obtain Department approval prior to making a "material change" and adds language creating a fee of \$500.00 for a material change request pursuant to 63 O.S. § 427.3(D). Subsection (f)(1): Removes language prohibiting research and education facilities from transferring licenses.

**OAC 310:681-4-3. Applications**

Subsection (h): Adds language that a rejected application shall be corrected within thirty (30) days and that if the application is resubmitted with errors not clerical or typographical in nature the application shall be denied pursuant to 63 O.S. § 427.14(G).

**OAC 310:681-4-4. Inspections**

Subsection (b): Adds language permitting the Department to perform on-site inspections to ensure qualifications for licensure pursuant to 63 O.S. § 427.6(B). Subsection (d): Adds language permitting the Department to share confidential information about non-patient licensees with other agencies pursuant to 63 O.S. § 427.22(G).

**OAC 310:681-4-5. Inventory tracking, records, reports, and audits**

Subsection (a)(6): Adds language clarifying that data submitted to the Department through the State's inventory tracking system will satisfy monthly reporting requirements. Subsection (c)(2): Adds language requiring transportation, sampling, and sample field log documentation to be retained by research and education facilities for seven (7) years. Subsection (d)(1)-(3): Adds language and requirements for reporting of required data and information into the State's inventory tracking system pursuant to 63 O.S. § 427.3(D)(8) and § 427.13(B). Subsection (e): Adds language requiring commercial licensees use a seed to sale tracking system or integrate their seed to sale tracking system with the State's inventory tracking system. Clarifies that if the commercial licensee's seed to sale system does not integrate or share all required information with the State's inventory tracking system, the commercial license is required to ensure all required information is reported directly to the State's inventory tracking system. Subsection (f)(1)-(8): Adds new language for reporting of required data and information into the State's inventory tracking system, including requirements related to the purchase and use of RFID tags in order to track medical marijuana and medical marijuana product through all stages of the life span of the plant and product. Adds requirement relating to the use of RFID tags in the context of wholesale packages. Subsection (g)(1)-(8): Adds new language and requirements for commercial licensees' inventory tracking system administrators and employee users to access the State's inventory tracking system. Subsection (h): Creates a new provision governing reporting requirements in the context of loss of access to the State's inventory tracking system both due to circumstances beyond and within commercial licensees' control. Subsection (i): Clarifies audits conducted by the Department ensure the accuracy of information and data reported to the Department.

**OAC 310:681-5-1.1. Responsibilities of the license holder**

Subsection (9): Clarifies that commercial licensees are financially responsible for the costs of compliance and inventory tracking and that the Department will not contribute to, fund or subsidize compliance or tracking expenses incurred by commercial licensees. Subsection (10): Clarifies that the responsibility is incumbent upon co-locating commercial licensees to ensure inventory is kept separate and tracked separate so that the Department may readily distinguish between inventory of each licensee.

**OAC 310:681-5-2. Licenses**

Subsection (c)(2): Clarifies that no new certificate of compliance is necessary during submission of a renewal application unless there is a change in use or occupancy, or a change that would require additional inspection, licensure, or permitting pursuant to 63 O.S. § 426.1(E). Subsection (c)(5): Adds new language allowing a commercial licensee to renew an expired

license that is less than ninety (90) days expired for a fee of \$500.00 pursuant to 63 O.S. § 427.14(N). Subsection (d): removes the 30 day liquidation period and clarifies that a business licensee that did not liquidate shall dispose of medical marijuana and medical marijuana products in accordance with OAC 310:681-5-10. Subsection (e)(2): Clarifies that a licensee shall obtain Department approval prior to making a "material change" and adds language creating a fee of \$500 for a material change request pursuant to 63 O.S. § 427.3(D). Subsection (e)(2)(D)(i)-(iii): Creates new provision allowing a medical marijuana grower, processor, and commercial transporter to submit a request and required documentation to the Department to add a publicly traded company as an owner of up to forty percent (40%) of the equity interest of an existing medical marijuana grower, processor, or commercial transporter that has been licensed for at least eighteen (18) months and is operating in good standing pursuant to 63 O.S. § 427.15a. Subsection (f): Removes language prohibiting business licensees from transferring licenses.

**OAC 310:681-5-2.1 Objection by municipality.**

Subsection (a)(1)-(2): Creates new provisions allowing municipal governments to object prior to an initial renewal or transfer of ownership of a medical marijuana dispensary that the municipality determines is operating contrary to the required setback distance from a school pursuant to 63 O.S. § 426.1(E)(2)-(5).

**OAC 310:681-5-3. Applications**

Subsection (e)(6): Adds new language reflecting the change in measurement of the distance between a medical marijuana dispensary and a school pursuant to 63 O.S. § 425(G). Subsection (e)(8): Clarifies that a certificate of compliance may not be necessary for certain applications pursuant to 426.1(E). Subsection (e)(10): Adds reference to additional documents required under OAC 310:681-5-2(e)(2)(c) for a medical marijuana grower, processor or transporter to add a publicly traded company as an owner. Subsection (e)(11)-(12): Adds new language that a list of chemicals and safety data sheets for each chemical used by a processor may be required during the application process. Subsection (f): Adds language that a resubmitted application with errors not clerical or typographical in nature shall be denied pursuant to 63 O.S. § 427.14(G).

**OAC 310:681-5-3.1. Proof of residency for commercial licenses**

Subsection (b)(1): Adds language allowing a commercial license applicant to submit a Real ID for residency purposes. Subsection (b)(3): Removes language that allowed commercial license applicants to submit an identification card for proof of residency documentation.

**OAC 310:681-5-3.2. Persons prohibited from holding a commercial license**

Subsection (a)(7)(A)-(H): Adds new language prohibiting a commercial license from being issued to or held by a person involved in a separate commercial license that was revoked, not-renewed, or surrendered after disciplinary proceedings for certain violations pursuant to 63 O.S. § 427.14(H)(8).

**OAC 310:681-5-4. Inspections**

Subsection (b): Adds language permitting the Department to perform on-site inspections to ensure qualifications for licensure pursuant to 63 O.S. § 427.6(B). Subsection (c): Adds language permitting the Department to conduct up to two laboratory site visits per year after licensure. Subsection (d): Adds new language requiring the Department to conduct one on-site inspection of each warehouse before granting a transporter license. Subsection (e): Removes language only permitting the Department to conduct unannounced inspections to prevent destruction of evidence. Subsection (g): Adds language permitting the Department to share confidential information about non-patient licensees with other agencies pursuant to 63 O.S. § 427.22(G). Subsection (h): Removes language requiring twenty-four hour notice before the Department prior to interviews in accordance with 63 O.S. § 427.6(B). Subsection (j): Adds language permitting the Department to suspend or revoke a license for failure to pay any fine or monetary penalty assessed by the Department pursuant to 63 O.S. § 427.6(G).

**OAC 310:681-5-4.1. Operational status visit**

Subsection (a)(1)-(3): Creates new provisions requiring the Department conduct on-site visits at licensed growers, processors and dispensaries to verify operational status and providing an 180 day grace period pursuant to 63 O.S. § 427.6(K). Subsection (b): Creates new provisions requiring the Department to conduct follow up on-site visits at licensed growers, processors and dispensaries to verify operational status if the licensee was not operational at the initial visit pursuant to 63 O.S. § 427.6(K). Adds language allowing discretionary second grace period and requiring the Department move for revocation if licensee is non-operational and second grace period is not granted.

# Permanent Final Adoptions

## **OAC 310:681-5-6. Inventory tracking, records, reports, and audits**

Subsection (a)(4): Adds language clarifying that submission of information and data to the State's inventory tracking system is required and will satisfy the monthly reporting requirements upon implementation. Subsection (b)(2): Adds language requiring COAs and processor safety data sheets and chemical inventory lists to be retained by a processor for seven (7) years. Subsection (b)(6): Adds new language requiring commercial licensees to keep documentation about specifications of the licensed premises, what is inside the licensed premises, information about employees, employment manuals, and standard operating procedures readily available on the licensed premises and maintain such documentation for seven (7) years pursuant to 63 O.S. § 427.3(D). Subsection (c): Removes language permitting a commercial licensee to only retain private patient information for sixty (60) days and adds new language requiring the retention of private patient information to comply with relevant state and federal laws. Subsection (d)(1)-(3): Adds language and requirements for reporting required data and information into the State's inventory tracking system pursuant to 63 O.S. § 427.3(D)(8) and § 427.13(B). Subsection (e): Adds language requiring commercial licensees use a seed to sale tracking system or integrate their seed to sale tracking system with the State's inventory tracking system. Clarifies that if the commercial licensee's seed to sale system does not integrate or share all required information with the State's inventory tracking system, the commercial license is required to ensure all required information is reported directly to the State's inventory tracking system. Subsection(f)(1)-(8): Adds new language and requirements for reporting required data and information into the State's inventory tracking system, including requirements related to the purchase and use of RFID tags in order to track medical marijuana and medical marijuana products through all stages of the life span of the plant and product. Adds requirement relating to the use of RFID tags in the context of wholesale packages. Subsection (g)(1)-(8): Adds new language and requirements for commercial licensees' inventory tracking system administrators and employee users to access the State's inventory tracking system. Subsection (h): Creates a new provision governing reporting requirements in the context of loss of access to the State's inventory tracking system both due to circumstances beyond and within commercial licensees' control. Subsection (i): Clarifies audits conducted by the Department ensure the accuracy of information and data reported to the Department.

### **OAC 310:681-5-6.1. Penalties**

Subsection (g)(1)-(2): Adds new language permitting the Department to serve a written order imposing disciplinary action on a licensee after thirty (30) days written notice of such violation and that the order becomes final if a hearing is not requested by the licensee within thirty (30) days of the licensee being served with the order pursuant to 63 O.S. § 427.6(K). Subsection (h): Adds new language permitting the Department to issue an order requiring a licensee to take a specific action without notice of a hearing in order to protect the health or welfare of the public in an emergency situation. Adds new language that the Department may order a commercial licensee in an emergency situation to cease and desist operation and that the Department may assess a penalty not to exceed ten thousand dollars (\$10,000.00) per day for noncompliance. Adds new language that a hearing shall be offered within ten (10) days of issuance of the order if requested.

### **OAC 310:681-5-8. Composition of medical marijuana advisory council**

Subsection (a): Removes "Food Safety Standards Board" and replaces it with the "Medical Marijuana Advisory Council." Adds new language permitting the Department to appoint up to eight additional members to the Council. Subsection (b): Adds new language clarifying that the "Board" refers to the Medical Marijuana Advisory Council.

### **OAC 310:681-5-8.1. Food safety standards for processors**

Subsection (d): Removes "Food Safety Standards Board" and replaces it with the "Medical Marijuana Advisory Council." Adds new language permitting the Medical Marijuana Advisory Council to recommend rules relating to the safe cultivation and manufacturing of medical marijuana products.

### **OAC 310:681-5-11. Attestation confirming or denying foreign financial interests.**

Subsection (a)-(c): Creates new requirements for medical marijuana businesses to submit an attestation to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control disclosing the existence of any foreign financial interests pursuant to 63 O.S. § 427.15.

### **OAC 310:681-5-12. Marijuana transaction limitations**

Subsection (a): Clarifies that three (3) ounces means eighty-four and nine-tenths (84.9) grams, one (1) ounce means twenty-eight and three-tenths (28.3) grams, and seventy-two (72) ounces means two thousand thirty-seven and six-tenths (2,037.6) grams.

## **OAC 310:681-5-14. Handling of medical marijuana by dispensary.**

Subsection (a)-(b): Adds new language requiring marijuana displayed for smelling and handling by patients and caregivers to be contained in separate containers containing no more than three (3) grams per sample container. Adds new language that the sample containers be kept separate from the marijuana to be sold to patients and caregivers and that the sample containers are labeled to include the strain and batch number of the sample in the jar, the license number of the grower of the marijuana in the jar, and a statement indicating the marijuana in the jar is a sample not for sale.

### **OAC 310:681-5-17. Entry to licensed premises**

Subsection (a): Adds new language prohibiting a minor from entering a licensed premises unless under supervision of a parent or legal guardian at all times.

### **OAC 310:681-5-18. Prohibited acts**

Subsection (m): Adds prohibition on the transfer, purchase, sale of medical marijuana or medical marijuana products not properly inputted or tracked in the State's inventory tracking system after implementation. Subsection (n): Adds new language prohibiting growers and dispensaries from making or packaging infused pre-rolls. Subsection (o): Adds new language prohibiting growers and dispensaries from making or packaging pre-rolls exceeding one (1) gram in net weight. Subsection (p): Adds new language prohibiting a licensee from allowing a person or entity that is not an owner, employee, or contractor of the licensee from using the licensee's license number. Subsection (q): Adds new language prohibiting a licensee from selling, transferring, or offering to sell a marijuana infused alcoholic beverage. Subsection (r): Clarifies that growers shall not purchase, make, sell, transfer, or obtain medical marijuana products, except that growers may package and sell noninfused pre-rolls and kief. Subsection (s) (1)-(4): Clarifies that dispensaries shall not package or alter packaging or labeling except for marijuana pre-rolled by the dispensary; loose marijuana that is being packaged and sold to a patient; to apply barcodes, track and trace labels, or other tracking labels that do not obscure required label and packaging information; and the placement of medical marijuana or medical marijuana products into a child-resistant exit package.

### **OAC 310:681-7-1. Labeling and packaging**

Subsection (d)(13): Adds language requiring cannabinoid and/or total THC claimed to be present on the package or label to be within fifteen percent (15%) of the percentage listed on the COA. Subsection (e)(1)(A): Adds a "dispensary" as a commercial licensee that may be required to be listed on a label as a transferring licensee. Subsection (e)(1)(G): Clarifies that the THC potency listed on the label should be the THC potency that is listed on the COA for the batch the marijuana or marijuana product is from. Subsection (e)(1)(H): Clarifies that the total terpenoid content in the manner prescribed by the Department should be on the label. Subsection (e)(3): Creates new requirement that RFID tags not obscure required label and packaging requirements.

### **OAC 310:681-8-1. Testing standards and thresholds**

Subsection (a): Changes required testing of terpenoid "potency" to terpenoid "type and concentration." Subsection (b)(1): Changes harvest batch size from "ten (10)" to "fifteen (15)" pounds and adds new language creating an exception allowing for a "fifty (50)" pound harvest batch if the plant material will be produced into a concentrate. Adds new language that a production batch of liquid marijuana concentrate is "four (4)" liters and a production batch of nonliquid marijuana products is "nine (9)" pounds, as well as 1000 mg of THC for final medical marijuana products, in accordance with 63 O.S. § 427.17. Subsection (b)(2)(A)-(D): Adds new language permitting Research and Development testing. Adds language concerning documentation of test results in the State's inventory tracking system including notations on all COAs and in licensee records that the tests are for R&D purposes only. Subsection (d)(1): Clarifies that growers may transfer a harvest batch that has failed testing to a processor for decontamination or remediation and once remediated or decontaminated, the marijuana may only be returned to the originating grower. Subsection (d)(3): Adds new language prohibiting a dispensary from transferring medical marijuana or medical marijuana products that have not passed all tests. Subsection (e): Clarifies the demand of the Department for a commercial business to submit a sample to a laboratory should occur when the Department has reason to believe the marijuana is unsafe for consumption, unsafe for inhalation, or has not been tested according to law. Removes language making the licensee responsible for the cost of testing. Adds language permitting the Department to require submission of samples for quality assurance purposes up to twice per year. Subsection (g)(1)(A)-(F): Adds new embargo language requiring cooperation and tracking by any licensee(s) in possession of or that has had possession of marijuana or a marijuana product that exceeds allowable



testing thresholds, is poisonous or deleterious to health, or the marijuana or marijuana product is in violation of laws and regulations. Adds language requiring recall of transferred medical marijuana or medical marijuana that was embargoed. Subsection (g)(2)(A)-(D): Adds new language requiring medical marijuana or medical marijuana products that are subject to embargo, or a derivative of such, or that otherwise fail to meet testing standards to be recalled. Adds new language prohibiting the sale or transfer of medical marijuana and medical marijuana products. Adds new language requiring commercial licensees in possession of or that have had possession of the recalled marijuana or marijuana product to participate in the recall and provide steps of what assistance is required. Adds language requiring the licensee where the harvest or production batch originated and that bears responsibility for the recall to cover the cost of waste disposal. Adds language that provides for disciplinary action for failure to comply with a recall. Subsection (h)(5): Removes requirement that commercial licensees retain copies of COAs for "two (2)" years and replaces it with a retention requirement of "seven (7)" years. Subsection (h)(8): Adds new language making submission of a COA into the State's inventory tracking system sufficient compliance with the requirement of reporting and maintaining records. Subsection (i)(4)(C): Adds requirement that pre-rolls must undergo additional testing for metals. Subsection (i)(6): Removes requirement that growers and processors test batch samples for terpenoid "potency" and replaces with the requirement to test for terpenoid "type and concentration." Subsection (l)(2): Adds language permitting a grower to transfer a harvest batch that has failed microbial testing to a processor for decontamination. Subsection (r)(3): Adds new language allowing a harvest batch that has failed microbial and water activity and/or moisture content testing to be transferred to a processor for remediation without being further dried and cured in accordance with OAC 310:681-8-1(1). Subsection (s)(1)(A): Adds new language requiring medical marijuana from multiple harvest batches to be used for noninfused pre-rolls to be homogenized into a new batch and tested as a harvest batch under OAC 310:681-8-1(j). Subsection (s)(1)(B): Adds new language requiring noninfused pre-rolls created from flower, shake, or trim from a single harvest batch that has passed full compliance testing to be additionally tested for heavy metals, filth and contaminants, and potency. Subsection (s)(2): Adds new language allowing grower and processors to collect kief and requires kief collected from multiple harvest batches to be homogenized as a new batch not exceeding fifteen (15) pounds and tested under OAC 310:681-8-1(i).

**OAC 310:681-8-2. General operating requirements and procedures**

Subsection (a): Removes language requiring a laboratory license applicant to be accredited by "ANSI/ASQ National Accreditation Board, American Association for Laboratory Accreditation (A2LA), Perry Johnson Laboratory Accreditation (PJLA), or any other accrediting entity using the ISO/IEC Standard 17025" and replaces it with the requirement that a laboratory license applicant be accredited "by any accrediting entity approved by the Department and subscribing to the International Laboratory Accreditation Cooperation ("ILAC")" and that the accreditation must be in "both chemistry and biology, or cannabis." Adds new language making renewal of a license contingent upon maintaining accreditation. Subsection (c)(1)-(2) and (6): Removes language referring to "proficiency testing" and replaces it with "external quality control." Subsection (c)(3): Adds new language requiring a laboratory to evaluate an unsatisfactory result from a quality control test and determine appropriate corrective measure(s). Subsection (c)(4): Clarifies that a laboratory license may be revoked or suspended for unsuccessful participation in two sequential quality control testing events or two out of three quality control testing events. Subsection (c)(5): Adds new language that failing to participate in any external quality control testing is deemed unsuccessful participation. Subsection (d): Removes language prohibiting a person who is an "indirect beneficial owner" of a dispensary, grower, or processor from owning a licensed laboratory. Adds language prohibiting a laboratory from testing samples of a business when an owner, employee, or agent of the laboratory has any form of ownership or financial interest in the business requesting the test. Subsection (f)(4): Adds language requiring a laboratory to notify the Department within ten (10) business days after a change of laboratory director. Subsection (g)(1): Adds language clarifying that laboratory equipment shall have a Limit of Detection at or below 50% of the thresholds listed in OAC 310:681-8-1(h) and Appendix A. Subsection (h)(1): Removes the "two (2)" year requirement that a laboratory retain raw data, documentation, protocols, and final reports from all analysis for and replaces it with "seven (7)" years. Subsection (k): Adds new language requiring a laboratory to submit within thirty days the assessment, results of proficiency tests, audit, and any corrective action recommended by an accrediting entity of the laboratory. Subsection (l)(1)-(6): Adds new language requiring a laboratory to be constructed and maintained in a way that ensures safety and sufficiency for all phases of testing.

**OAC 310:681-8-3. Sampling requirements and procedures**

Subsection (a)(1)-(11): Adds language to include a dispensary as a location samples may be collected from and transported from for testing purposes. Removes the "two (2)" year requirement that licensees retain documentation and replaces it with "seven (7)" years. Subsection (b)(3)-(4): Adds language clarifying how samples of a production batch and samples of noninfused pre-rolls are to be collected to ensure a representative sample is taken. Subsection (d)(3)-(4): Adds requirement that laboratories maintain and properly store reserve samples for at least thirty (30) days. Subsection (e)(5): Clarifies the cost to produce additional samples the Department requires a processor, grower, or dispensary to submit for additional testing is an expense of the licensee, but the licensee is not responsible for the cost of testing. Subsection (e)(6): Replaces "seed-to-sale tracing system" with "State's inventory tracking system."

**OAC 310:681-8-4. Laboratory quality assurance and quality control**

Subsection (a)(1)(J): Adds new language for a laboratory quality assurance program to address "accuracy, precision, cross-over, LOD, linearity, and measurement of uncertainty" as well as other necessities for method validation.

**OAC 310:681-9-1. License or permit required**

Subsection (b): Adds language reflecting that as of November 1, 2021 there will be no limit to the number of medical marijuana waste disposal licenses pursuant to 63 O.S. §430(A).

**OAC 310:681-9-2. Licenses and permits**

Subsection (e)(2): Clarifies that a licensee shall obtain Department approval for making a "material change" and adds language creating a fee of \$500 for a material change request. Subsection (f): Removes prohibition on transfer of waste disposal facility licenses and permits.

**OAC 310:681-9-3. License applications**

Subsection (e)(5): Changes distance measurement between waste disposal facility and school from "property line" to "front entrance" in the context of supporting documentation that must be submitted with applications for waste disposal facility licenses.

**OAC 310:681-9-4. Permit applications**

Subsection (c)(1): Changes distance measurement between waste disposal facility and school from "property line" to "front entrance" in the context of supporting documentation that must be submitted with applications for waste disposal facility permit.

**OAC 310:681-9-6. Security requirements**

Subsection (e): Changes the record retention period from "two (2)" years to "seven (7)" years.

**OAC 310:681-9-7. Audits and inventory**

Subsection (b)(1)-(3): Creates new requirements for reporting required data and information into the State's inventory tracking system pursuant to 63 O.S. § 427.3(D)(8) and § 427.13(B). Subsection(c): Adds language requiring commercial licensees use a seed to sale tracking system or integrate their seed to sale tracking system with the State's inventory tracking system. Clarifies that if the commercial licensee's seed to sale system does not integrate or share all required information with the State's inventory tracking system, the commercial license is required to ensure all required information is reported directly to the State's inventory tracking system. Subsection(d)(1)-(8): Adds new language and requirements for reporting required data and information into the State's inventory tracking system, including requirements related to the purchase and use of RFID tags in order to track medical marijuana and medical marijuana products through all stages of the life span of the plant and product. Adds requirement relating to the use of RFID tags in the context of wholesale packages. Subsection (e)(1)-(7): Adds new language and requirements for commercial licensees' inventory tracking system administrators and employee users to access the State's inventory tracking system. Subsection (f): Creates a new provision governing reporting requirements in the context of loss of access to the State's inventory tracking system both due to circumstances beyond and within commercial licensees' control.

**Appendix C:**

Changes the fine amounts for inaccurate reporting to be consistent with 63 O.S. § 427.6(G), and adds fine amounts for diversion to an unauthorized minor consistent with 63 O.S. § 427.6(I).

**Appendix D:**

Creates sample collection requirements for medical marijuana products.

**Appendix E:**

Creates sample collection requirements for pre-rolls.

*[OAR Docket #22-610; filed 7-12-22]*

# Permanent Final Adoptions

## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #22-407]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Organization and Administration

317:1-1-2 [AMENDED]

317:1-1-3 [REVOKED]

(Reference APA WF # 21-41A)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Oklahoma Executive Order 2020-03

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule changes will combine sections of policy to remove the overabundant number of sections that are currently in Title 317.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 1. ORGANIZATION AND ADMINISTRATION

### 317:1-1-2. Authority and amending of rules

(a) The authority for the rules in this Title is the Oklahoma Health Care Authority Act. The Act is in Sections 5003 through 5016 of Title 63 of the Oklahoma Statutes. The rules in this Chapter are promulgated by the Authority to establish the Authority's organization and its administration, policies and procedures.

(b) This title may be amended or repealed from time to time and new rules and regulations adopted by the Authority pursuant to the Administrative Procedures Act.

### 317:1-1-3. Amending of rules [REVOKED]

~~This title may be amended or repealed from time to time and new rules and regulations adopted by the Authority pursuant to the Administrative Procedures Act.~~

[OAR Docket #22-407; filed 6-23-22]

## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

[OAR Docket #22-408]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Administrative Appeals [NEW]

317:2-1-1 [AMENDED]

317:2-1-14 [AMENDED]

Subchapter 3. Member Grievances and Appeals, Provider Complaints, and State Fair Hearings in Managed Care [NEW]

317:2-3-1 [NEW]

317:2-3-2 [NEW]

317:2-3-3 [NEW]

317:2-3-4 [NEW]

317:2-3-5 [NEW]

317:2-3-6 [NEW]

317:2-3-7 [NEW]

317:2-3-8 [NEW]

317:2-3-9 [NEW]

317:2-3-10 [NEW]

317:2-3-11 [NEW]

317:2-3-12 [NEW]

317:2-3-13 [NEW]

317:2-3-14 [NEW]

(Reference APA WF # 21-13)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. Administrative Appeals [NEW]

317:2-1-1 [AMENDED]

317:2-1-14 [AMENDED]

Subchapter 3. Member Grievances and Appeals, Provider Complaints, and State Fair Hearings in Managed Care [NEW]

- 317:2-3-1 [NEW]
- 317:2-3-2 [NEW]
- 317:2-3-3 [NEW]
- 317:2-3-4 [NEW]
- 317:2-3-5 [NEW]
- 317:2-3-6 [NEW]
- 317:2-3-7 [NEW]
- 317:2-3-8 [NEW]
- 317:2-3-9 [NEW]
- 317:2-3-10 [NEW]
- 317:2-3-11 [NEW]
- 317:2-3-12 [NEW]
- 317:2-3-13 [NEW]
- 317:2-3-14 [NEW]

**Gubernatorial approval:**

December 21, 2021

**Register publication:**

39 Ok Reg 383

**Docket number:**

21-963

(Reference APA WF # 21-13)

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will revise existing appeals rules to clarify appeals related to the aged, blind, and disabled populations. The proposed rules will also establish appeals rules related to Agency-level appeals for providers and beneficiaries whose initial grievance and/or appeal occurs with an agency contractor. Additional revisions will clarify contract award protest process based on whether the OMES Director considers the appeal or assigns the appeal to an administrative law judge.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 1. ADMINISTRATIVE APPEALS**

**317:2-1-1. Purpose**

The purpose of this Chapter is to describe the different types of ~~grievances~~administrative appeals addressed by the Oklahoma Health Care Authority (OHCA), consistent with the State fair hearing requirements set out in 42 Code of Federal Regulations (C.F.R.) Part 431, Subpart E. The rules explain the ~~step-by-step~~step-by-step processes that must be followed by a party seeking redress from the OHCA. The majority of hearings on eligibility issues for members are conducted by the Oklahoma Department of Human Services, and are not contained in this Chapter. Hearings will not be granted when the sole issue to be determined is a Federal or State law requiring an automatic change adversely affecting some or all members.

**317:2-1-14. Contract award protest process**

~~Suppliers who respond to a solicitation issued and awarded by the Authority pursuant to 74 Oklahoma Statutes~~

~~(O.S.) ' 85.5 (N) may protest the award of a contract under such solicitation.~~

~~(1) A supplier shall submit written notice to the OHCA Legal Division of a protest of an award of a contract by OHCA within ten (10) business days of contract award. The protest shall state supplier facts and reasons for protest.~~

~~(2) The OHCA Legal Division shall review the supplier's protest and contract award documents. Written notice of the decision to sustain or deny the supplier's protest will be sent to the supplier within ten (10) business days of receipt of supplier's written notice.~~

~~(3) If the OHCA Legal Division denies the supplier's protest, the supplier may request a hearing to administratively resolve the matter within thirty (30) calendar days of receipt of the written denial by filing a form LD-3 with the Docket Clerk.~~

~~(4) The process afforded the supplier will be the process found at Oklahoma Administrative Code 317:2-1-2(c).~~

~~(5) The Administrative Law Judge's decision will constitute the final administrative decision of the Oklahoma Health Care Authority.~~

(a) **Protest process.** Suppliers who respond to a solicitation issued and awarded by the Authority pursuant to 74 Oklahoma Statutes (O.S.) § 85.5 (N) may protest the award of a contract under such solicitation to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.

(b) **State Purchasing Director review and determination.** The State Purchasing Director will review the supplier's protest and contract award documents.

(1) The State Purchasing Director may determine to respond to the protest or delegate the responsibility to OHCA by written notice to OHCA.

(2) The State Purchasing Director or OHCA, as applicable, will send to the supplier written notice of the decision to deny or sustain the protest within ten (10) business days of receipt of the protest.

(c) **Supplier appeal of decision to deny protest.** The supplier may appeal a denial of protest by the State Purchasing Director or OHCA to the Office of Management and Enterprise Services (OMES) Director.

(1) The supplier will file such appeal, if at all, within ten (10) business days of the date of the State Purchasing Director's or OHCA's notice of denial pursuant to 75 O.S. § 309 et seq.

(2) The OMES Director may enter an order staying contract performance upon such terms and conditions as the OMES Director determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business-day time period in which an appeal may be commenced to the OMES director. The OMES Director shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.

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- (3) The OMES Director may hear the appeal or assign the supplier's appeal to an administrative law judge (ALJ) retained by OHCA.
- (4) Administrative hearings conducted by OMES will be conducted in accordance with the Administrative Procedures Act at 75 O.S. §§ 309 et seq., and the OMES director shall have all powers granted by law, including any powers delegated to an ALJ by this Section.
- (5) Whenever the appeal is assigned to an ALJ retained by OHCA, the ALJ will review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the ALJ shall conduct an administrative hearing according to the hearing practices of OAC 317:2-1-5 and provide proposed findings of fact and conclusions of law to the OMES director.
- (6) The OMES director or the ALJ, as applicable, will send written notice to the parties of the final order sustaining or denying the supplier's appeal.
- (7) The cost of actions necessary to process a supplier's appeal, together with any other expenses incurred due to the appeal, will be paid by OHCA.
- (8) Whenever the appeal is assigned to the ALJ retained by OHCA, the ALJ will:
- (A) Establish a scheduling order;
  - (B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;
  - (C) Rule on all interlocutory motions;
  - (D) Require briefing of any or all issues;
  - (E) Conduct hearings in a forum and manner as determined by the ALJ;
  - (F) Rule on the admissibility of all evidence;
  - (G) Question witnesses;
  - (H) Impose appropriate sanctions against any person failing to obey an order of the ALJ or authorized under the rules in this Chapter which will include:
    - (i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
    - (ii) Excluding all testimony of an unresponsive or evasive witness; or
    - (iii) Expelling the person from further participation in the hearing;
  - (I) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;
  - (J) Administer oaths or affirmations;
  - (K) Determine the location of the hearing and manner in which it will be conducted;
  - (L) Allow either party to request that the hearing be recorded by a court reporter with costs to be borne by the requesting party. The original of such transcription, if ordered, will be given to the ALJ with a copy to be given to the requesting party;
  - (M) Recess and reconvene the hearing;
  - (N) Set and/or limit the time frame of the hearing;

(O) Make proposed findings of facts and conclusions of law to the OMES Director; and

(P) Recommend that the OMES Director deny the supplier's appeal or that the contract award be cancelled and rebid.

- (d) **Supplier appeal of OMES Director decision to deny appeal.** If the OMES Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S. §§ 309 et seq.

### **SUBCHAPTER 3. MEMBER GRIEVANCES AND APPEALS, PROVIDER COMPLAINTS, AND STATE FAIR HEARINGS IN MANAGED CARE**

#### **317:2-3-1. Definitions**

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

**"Adverse benefit determination"** means a determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service or payment for the service is therefore denied, reduced or terminated and in accordance with Title 36 of Oklahoma Statute (O.S.) § 6475.3.

**"Appeal"** means a review of an adverse benefit determination performed by a managed care entity or according to managed care law, regulations, and contracts.

**"Exigent circumstances"** means a situation in which a reasonable person applying the appropriate standard would consider a member's health condition to be urgent with identifiable harm that could reasonably be expected to occur if the requested health care service is not provided promptly. The appropriate standard requires the assessment of a member's health condition through application, at minimum, of established, accepted standards of medical practice. Evidence of the member's condition may be demonstrated by indications from the treating provider or from the member's medical record, including but not limited to such information as the member's diagnosis, symptoms, or test results.

**"Grievance"** means a member's expression of dissatisfaction about any managed care program matter other than an adverse benefit determination and may include, but is not limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a managed care entity employee or contracted provider, or failure to respect the member's rights regardless of whether remedial action is requested. A grievance includes a member's right to dispute an extension of time to make an authorization decision when proposed by the managed care entity.

**"Health plan"** means any person or entity that is licensed as a health maintenance organization (HMO) by the State of Oklahoma to provide or arrange for the delivery of basic health

care services to enrollees on a prepaid basis, except for co-payments or deductibles for which the enrollee is responsible, or both, that meets the definition of an HMO as delineated in the Oklahoma State Medicaid Plan and that contracts with the State to provide services to enrollees. "Health plan" is synonymous with "health carrier".

**"Managed care entity" or "MCE"** means any entity permitted under 42 C.F.R. Part 438 to contract with a state for services provided under a risk contract or a nonrisk contract within the state's Medicaid managed care program, including but not limited to managed care organization (MCO), primary care case management (PCCM), primary care case management entity (PCCM entity), prepaid ambulatory health plan (PAHP), and prepaid inpatient health plan (PIHP).

**"Managed care organization" or "MCO"** means the same in these rules as defined at 42 Code of Federal Regulations (C.F.R.) § 438.2.

**"Managed care program" or "managed care" or "MCP"** means a health care delivery system organized to manage cost, utilization, and quality that is operated by a state as authorized under sections 1915(a), 1915(b), 1932(a), or 1115(a) of the Social Security Act and relevant state law.

**"Member"** means an individual eligible for Medicaid in the State of Oklahoma, eligible for a managed care program, and enrolled in a managed care entity. "Member" is synonymous with "health plan enrollee".

**"Prepaid ambulatory health plan" or "PAHP"** means the same in these rules as defined at 42 C.F.R. § 438.2.

**"Prepaid inpatient health plan" or "PIHP"** means the same in these rules as defined at 42 C.F.R. § 438.2.

**"Primary care case management" or "PCCM"** means the same in these rules as defined at 42 C.F.R. § 438.2.

**"Primary care case management entity" or "PCCM entity"** means the same in these rules as defined at 42 C.F.R. § 438.2.

**"Prior authorization (PA)"** means a requirement that a member, through a provider, obtain the managed care entity's approval before a requested medical service is provided or before services by a non-participating provider are received. Prior authorization is not a guarantee of claims payment; however, failure to obtain prior authorization may result in denial of the claim or reduction in payment of the claim. For purposes of these rules, "prior authorization" is included as a determination of health care services within the term "adverse benefit determination".

**"Provider"** means a health care or dental provider licensed or certified in this state.

**317:2-3-2. Timeframes**

(a) For the purpose of calculating a timeframe in this Subchapter, the date on the written notice is not included. The last day of the timeframe is included, unless the last day is a legal holiday, as defined by 25 Oklahoma Statutes (O.S.) § 82.1, or any other day OHCA is closed or closes early, in which case, the timeframe runs until the close of the next full business day.

(b) A grievance or appeal a member sends via mail is deemed filed on the date the MCE receives request.

(c) A request for reconsideration or appeal a provider sends via mail is deemed filed on the date the MCE receives the request.

(d) A request for State fair hearing by a member or provider is deemed filed on the date the OHCA receives the request.

**317:2-3-3. Grievance and appeals system**

In accordance with state and federal law, including but not limited to 63 Oklahoma Statutes (O.S.) § 7310 and 42 Code of Federal Regulations (C.F.R.) §§ 438.210, 431.213-14, 438.402, 438.404, 438.408, and 438.410, each MCE will have an established grievance and appeals system by which to receive, process, and resolve grievances and appeals, including requests for extensions of relevant timeframes, and by which to afford parties proper notice.

**317:2-3-4. Member grievances**

(a) **Filing.**

(1) **Filing with managed care entity.** Except as described in this section, when the member is enrolled in a managed care program, the member initially files a grievance with the managed care entity in which the member is enrolled.

(2) **Exception: Filing with OHCA.** When the member is enrolled in a managed care program and the grievance deals with direct interaction with OHCA or its employees or officers, the member first files the grievance with OHCA as an administrative appeal pursuant to applicable rules set forth at Oklahoma Administrative Code (OAC) 317:2-1-2 et seq.

(b) **Timing.** A member may file a grievance, orally or in writing, at any time.

(c) **Provider's and authorized representative's right to file a grievance.** A provider or an authorized representative may file a grievance on behalf of a member, provided that the provider or authorized representative has obtained the member's written consent to do so. The authorized representative of a deceased member's estate may also be a party to the litigation of a grievance, as applicable.

(d) **Clinical expertise in a grievance decision.** When a grievance involves clinical issues or is related to a denial of an expedited resolution of an appeal, the decision maker(s) of such a grievance will have clinical expertise as discussed at OAC 317:2-3-6.

(e) **Consideration of information in an appeal decision.** The decision maker(s) for any appeal will take into account all comments, documents, records, and other information submitted without regard to whether such information was submitted or considered in the initial determination.

(f) **OHCA-established timeframes for grievance decisions.** A grievance related in any way to the member's health condition will be resolved, with notice provided, as expeditiously as the member's health condition requires.

(1) Per 42 Code of Federal Regulations (C.F.R.) § 438.408, the standard resolution of a grievance will occur within ninety (90) calendar days after the managed care entity receives the grievance.

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- (2) OHCA sets the standard resolution of a grievance to occur within sixty (60) calendar days, inclusive of any extensions, after the MCE receives the grievance.
- (3) The MCE may extend the timeframe in (f)(2) up to fourteen (14) days if:
- (A) The member requests the extension; or
  - (B) The MCE shows (to the OHCA's satisfaction upon OHCA's request) that there is need for additional information and how the delay is in the member's interest.
- (4) If the MCE extends the timeframes not at the request of the member, it must complete all of the following:
- (A) Make reasonable efforts to give the member prompt oral notice of the delay; and
  - (B) Within two (2) calendar days give the member written notice of the reason for the decision to extend the timeframe and inform the enrollee of the right to file a grievance if he or she disagrees with that decision; and
- (5) The MCE will adhere to all OHCA rules related to grievances, including but not limited to:
- (A) Observing the timeframe for standard resolution of a grievance;
  - (B) Sending acknowledgement of receiving the grievance in writing to the member or the member's authorized representative within ten (10) calendar days of receipt; and
  - (C) Sending written notice conforming with this subchapter to the affected parties within three (3) calendar days following resolution of the grievance.

### **317:2-3-5. Member appeals**

#### **(a) Filing.**

(1) **Filing with managed care entity.** Except as described in this Section, when the member is enrolled in a managed care program, the member initially files an appeal with the managed care entity in which the member is enrolled.

(2) **Exception: Filing with OHCA.** When the member is enrolled in a managed care program, the member initially files administrative appeals with OHCA and follows the appeals rules set forth at Oklahoma Administrative Code (OAC) 317:2-1-2 et seq. whenever the appeal concerns a decision the Oklahoma Health Care Authority (OHCA) made regarding:

- (A) Eligibility for Oklahoma Medicaid;
- (B) Eligibility for a managed care program;
- (C) Enrollment into Oklahoma Medicaid;
- (D) Enrollment, including use of an auto-assignment algorithm, into a managed care entity;
- (E) Disenrollment from a managed care entity; or
- (F) Any other matter, so long as OHCA made the decision in the matter.

(b) **Timing.** A member may file an appeal, orally or in writing, at any time. An administrative appeal or State fair hearing request made to OHCA shall conform with the requirements of OAC 317:2-1-2 et seq. in terms of the manner and timing of any such filing.

(c) **Levels of appeals.** The managed care entity will use only one level of appeals, in accordance with 42 Code of Federal Regulations (C.F.R.) § 438.402.

(d) **Provider's and authorized representative's right to file an appeal.** A provider or an authorized representative may file an appeal on behalf of a member, provided that the provider or authorized representative has obtained the member's written consent to do so. The authorized representative of a deceased member's estate may also be a party to the litigation of an appeal, as applicable.

(e) **Clinical expertise in an appeal decision.** When an appeal involves clinical issues or is related to a denial based on lack of medical necessity, the decision maker(s) of such an appeal will have clinical expertise as discussed at OAC 317:2-3-6.

(f) **Consideration of information in an appeal decision.** The decision maker(s) for any appeal will take into account all comments, documents, records, and other information submitted without regard to whether such information was submitted or considered in the initial determination.

(g) **OHCA-established timeframes for appeals decisions.** An appeal related in any way to the member's health condition will be resolved, with notice provided, as expeditiously as the member's health condition requires.

(1) Per 42 C.F.R. § 438.408, the standard resolution of an appeal will occur within thirty (30) calendar days after the managed care entity receives the appeal.

(2) OHCA establishes the following timeframes for appeals:

(A) Standard resolution of an appeal will occur within thirty (30) calendar days, excluding any extensions, after the managed care entity receives the appeal;

(B) Expedited resolution of an appeal will occur within seventy-two (72) clock-hours after the MCE receives the appeal;

(C) In exigent circumstances, resolution of a step therapy request appeal will occur within twenty-four (24) clock-hours after the MCE receives the appeal; and

(D) In all other circumstances, resolution of a step therapy request appeal will occur within seventy-two (72) clock-hours after the MCE receives the appeal.

(3) The MCE may extend the timeframes in (g)(2)(A) or (B) up to fourteen (14) days if:

(A) The member requests the extension; or

(B) The MCE shows (to the OHCA's satisfaction upon OHCA's request) that there is need for additional information and how the delay is in the member's interest.

(4) If the MCE extends the timeframes not at the request of the member, it must complete all of the following:

(A) Make reasonable efforts to give the member prompt oral notice of the delay;

(B) Within two (2) calendar days give the member written notice of the reason for the decision to extend the timeframe and inform the enrollee of the right to file a grievance if he or she disagrees with that decision; and

(C) Resolve the appeal as expeditiously as the member's health condition requires and no later than the date the extension expires.

(5) The MCE will adhere to all OHCA policies related to appeals, including but not limited to:

(A) Observing the timeframes for resolving appeals, including standard resolution, expedited resolution, and resolution of step therapy appeals (in both exigent and other circumstances);

(B) Sending acknowledgement of receiving the appeal in writing to the member or the member's authorized representative within five (5) calendar days of receipt;

(C) Sending written notice conforming with this subchapter to the affected parties within three (3) calendar days following resolution of the appeal; and

(D) Sending documentation, in conformance with OAC 317:2-3-12(d) and any established OHCA forms or processes, to OHCA within fifteen (15) calendar days after a request for State fair hearing.

**317:2-3-6. External medical review and clinical expertise**

(a) No external medical review. The Oklahoma Health Care Authority (OHCA) will not offer an external medical review for the purposes of grievances or appeals.

(b) Clinical expertise standards. Individuals making the decision for a grievance or appeal regarding an adverse benefit determination will be unbiased with appropriate clinical expertise in treating the member's condition or disease.

(1) Medical review staff of the MCE will be licensed or credentialed health care clinicians with relevant clinical training and/or experience.

(2) All MCEs will use medical review staff for such appeals and shall not use any automated claim review software or other automated functionality for such appeals.

(3) Bias is deemed to exist if an individual making a decision on a grievance or appeal was involved in, or a subordinate of any individual involved in, any previous level of review or decision regarding the subject matter of the grievance or appeal.

(4) Clinical expertise is deemed necessary for decisions makers whenever:

(A) The denial is based on a lack of medical necessity;

(B) The grievance is regarding a denial of an expedited resolution an appeal; and

(C) The grievance or appeal involves clinical issues.

**317:2-3-7. Obligation to pay costs of services**

(a) In accordance with 42 Code of Federal Regulations (C.F.R.) § 438.420(d), the MCE may recover from the member the costs of services provided to the member while an appeal or State fair hearing is pending:

(1) To the extent the services were continued solely due to the requirements set forth in 42 C.F.R. §§ 438.420 or 431.230(b); and

(2) The final resolution of the appeal or State fair hearing upholds the MCE's adverse benefit determination.

(b) If OHCA or the MCE reverses a decision to deny, limit, or delay services and these services were not furnished while the appeal or State fair hearing was pending, the MCE will authorize or provide the disputed services promptly and as expeditiously as the member's health condition requires.

(c) If OHCA or the MCE reverses a decision to deny, limit, or delay services and the member received the disputed services while the appeal or State fair hearing was pending, the MCE will pay for these services.

**317:2-3-8. Grievances and appeals notice**

(a) The MCE will provide timely written notices per OAC 317:2-3-4 and 317:2-3-5.

(b) Each notice will conform to the provisions of 42 Code of Federal Regulations (C.F.R.) § 438.10 related to information provided from an MCE to a member.

(c) At minimum, each notice will:

(1) Be written in a manner and format that may be easily understood and is readily accessible by members;

(2) Use OHCA-developed definitions for terms as those terms are defined in the Model Member Handbook related to the contract;

(3) Use a font size no smaller than twelve-point (12-point);

(4) Be made available in alternative formats and through the provision of auxiliary aids and services in an appropriate manner that takes into consideration the special needs of members with disabilities or limited English proficiency; and

(5) Include a large-print tagline, in minimum eighteen-point (18-point) font, and information on how to request auxiliary aids and services, including the provision of materials in alternative formats.

(d) Per the delegation choice of 42 C.F.R. § 438.228, OHCA does not delegate responsibility to the MCE for timely notices of action under 42 C.F.R. Part 431, Subpart E.

(1) OHCA retains all responsibility for timely notices of action under 42 C.F.R. Part 431, Subpart E, including:

(A) A termination, suspension of, or reduction in covered benefits or services, when termination, suspension, or reduction is determined by OHCA;

(B) A termination, suspension of, or reduction in Medicaid eligibility, when termination, suspension, or reduction is determined by OHCA; and

(C) An increase in beneficiary liability, including determination that a beneficiary will incur a greater amount of medical expenses in order to establish income eligibility or is subject to an increase in premiums or cost sharing charges, when such increase is determined by OHCA.

(2) The foregoing (d)(1) does not apply to:

(A) Any grievance notice required to be sent by the MCE by contract or 42 C.F.R. § 438.408;

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- (B) Any adverse benefit determination notice based on the termination, suspension, or reduction of authorized covered services, payment denial, or standard, expedited, or untimely service authorization denial or limitation as required to be sent by the MCE by contract or 42 C.F.R. 438.404;
- (C) Any appeal resolution notice required to be sent by the MCE by contract or 42 C.F.R. § 438.404 or 438.408; or
- (D) Any other notice required to be sent by the MCE by contract or any state or federal law or regulation.
- (3) OHCA's decision not to delegate the notices of action required by 42 C.F.R. Part 431 Subpart E applies to any managed care entity under any managed care contract for professional services unless and until this section is revoked.
- (4) The random review system required of a state by 42 C.F.R. § 438.228 does not apply to OHCA, because OHCA has not delegated responsibility for the relevant notices of action.
- (5) For any notices of action for which OHCA retains responsibility under this section, OHCA will ensure the notice conforms to federal regulations at 42 C.F.R. Part 431, Subpart E, and any applicable requirements under 42 C.F.R. § 438.228. OHCA will send such notices of action by electronic or postal means at least ten (10) days before the date of action, except as permitted when:
- (A) OHCA has factual information confirming the death of a beneficiary;
- (B) OHCA receives a clear written statement signed by a member that they no longer wish to receive services or that gives information that requires termination or reduction of services and indicates that the member understands that supplying the information will result in termination or reduction of services;
- (C) The member has been admitted to an institution where they are ineligible for further services;
- (D) The member's whereabouts are unknown and the post office returns, indicating no forwarding address, OHCA mail sent directly to the member; and
- (E) The MCE establishes the fact that the member has been accepted for Medicaid services by another local jurisdiction, state, territory, or commonwealth.
- (6) For any notices of action for which OHCA retains responsibility under this Section, OHCA will ensure the notice contains:
- (A) A statement of the action OHCA intends to take and the effective date of such action;
- (B) A clear statement of the specific reasons supporting the intended action, the specific regulations that support or require the action, and an explanation of the member's rights to request a hearing; and
- (C) An explanation of the circumstances under which benefits continue if a hearing is requested.
- (7) For any notices of action for which OHCA retains responsibility under this section, OHCA will allow the

member a reasonable time, not to exceed ninety (90) days from the date the notice is mailed, to request a State fair hearing.

### **317:2-3-9. Exhaustion of managed care entity appeals**

- (a) Deemed exhaustion of MCE appeals. If the MCE fails to adhere to any timing or notice requirements as detailed in 42 C.F.R. § 438.408, the member is deemed to have exhausted the MCE's appeal process, and the member or the member's authorized representative may request a State fair hearing.
- (b) Actual exhaustion of MCE appeals. Except as allowed in (a), a member or the member's authorized representative may request a State fair hearing only after receiving notice from the MCE upholding an adverse benefit determination and only within one hundred twenty (120) days after the date of the notice of appeal resolution.
- (c) Exhaustion of MCE appeals, determination. OHCA has sole authority to decide whether MCE appeals have been exhausted for any member. Documentation, as submitted to OHCA by the MCE within fifteen (15) calendar days of the request for State fair hearing, will serve as evidence to deemed exhaustion, actual exhaustion, or no exhaustion of the MCE appeals process.

### **317:2-3-10. Provider complaint system**

- (a) A participating provider or nonparticipating provider may file a complaint whenever:
- (1) The provider is not satisfied with the MCE's policies and procedures; or
- (2) The provider is not satisfied with a decision made by the MCE that does not impact the provision of services to members.
- (b) The MCE will establish and operate a provider complaint system. Such system will:
- (1) Use written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, reporting, and resolving provider complaints;
- (2) Track receipt and resolution of provider complaints, including requests for reconsideration or appeals;
- (3) Demonstrate sufficient ability to receive provider complaints by telephone, in writing, or in person;
- (4) Designate staff to receive, process, and resolve provider complaints;
- (5) Thoroughly investigate each provider complaint;
- (6) Ensure an escalation process for provider complaints;
- (7) Furnish the provider timely written notification of resolution or results; and
- (8) Maintain a tracking system capable of generating reports to OHCA on provider complaint volume and resolution.
- (c) The MCE will operate a reconsideration process whereby providers may request the MCE reconsider a decision the MCE has made or intends to make that is adverse to the provider, including, at minimum, reconsiderations of



provider audit findings, reconsiderations of provider agreement termination, and reconsiderations of denied claims.

(1) **Request for reconsideration, denied claims.** The MCE will ask that the provider submits a request for reconsideration of a denied claim within six (6) months after the provider receives notice of the denied claim.

(2) **Request for reconsideration, all other reasons.** The MCE will ask that the provider submits a request for reconsideration within fifteen (15) days after the date the provider receives notice of audit findings, termination of provider agreement, or other actions the MCE permits for reconsideration requests.

(3) **Desk review.** The MCE will conduct the reconsideration through a desk review of the request and all related and available documents.

(4) **Reconsideration resolution.** The MCE will resolve all requests for reconsideration within twenty (20) calendar days of the date the MCE receives the request for reconsideration. The MCE will send a reconsideration resolution notice to the provider within three (3) business days of the MCE finalizing the resolution.

(5) **Notice of Reconsideration Resolution.** The MCE will send a reconsideration resolution notice that contains, at a minimum:

- (A) The date of the notice;
- (B) The action the MCE has made or intends to make;
- (C) The reasons for the action;
- (D) The date the action was made or will be made;
- (E) The citation to statute, regulation, policy, or procedure, if any, upon which the action was based;
- (F) An explanation of the provider's ability to submit an appeal request to the MCE within thirty (30) calendar days of the date recorded on the notice;
- (G) The address and contact information for submitting an appeal;
- (H) The procedures by which the provider may request an appeal regarding the MCE's action;
- (I) The specific change in federal or state law, if any, that requires the action;
- (J) The provider's ability to submit a State fair hearing request following completion of the provider appeal process, or, in cases of an action based on a change in law, the circumstances under which a State fair hearing will be granted; and
- (K) Any other information required by state or federal statute or regulation, by contract, or by contract-related manual.

(d) The MCE will operate an appeals process whereby a provider may request an appeal of a reconsideration resolution when the underlying matter is based on the MCE's provider audit findings, for-cause or immediate termination of the provider agreement, or a denied claim.

(1) **Request for appeal.** The MCE will require the provider to submit a request for appeal in writing within thirty (30) calendar days after the provider receives notice reconsideration resolution.

(2) **Panel review.** The MCE will conduct the appeal through a panel review including a hearing and review of the request, all related and available documents, and all documents created for or used in connection with the request for reconsideration.

(A) The panel will consist of three (3) or five (5) reviewers, who are employees or officers of the MCE.

(B) Panel members will not have been directly involved with the reconsideration desk review and will not be a subordinate of someone involved directly with the reconsideration desk review.

(C) The panel review hearing will provide the provider or an authorized representative of the provider with a reasonable opportunity to be heard in person or by telecommunications.

(D) The review panel will accept and document any exhibit offered prior to the hearing or during the hearing, so long as the exhibit directly relates to the matter of the appeal.

(E) When the appeal is based on a claim denied on the basis of medical necessity, the following requirements apply:

- (i) Medical review staff of the MCE will be licensed or credentialed health care clinicians with relevant clinical training or experience; and
- (ii) All MCEs will use medical review staff for such appeals and will not use any automated claim review software or other automated functionality for such appeals.

(3) **Appeal resolution.** The MCE will resolve all appeals within forty-five (45) calendar days of the date the MCE receives the request for appeal. The MCE will send an appeal resolution notice to the provider within three (3) business days of the MCE finalizing the resolution.

(4) **Notice of Appeal Resolution.** The MCE will send an appeal resolution notice that contains, at a minimum:

- (A) The date of the notice;
- (B) The date of the appeal resolution; and
- (C) For decisions not wholly in the provider's favor:

- (i) An explanation of the provider's ability to request a State fair hearing within thirty (30) calendar days of the date recorded on the notice;
- (ii) How to request a State fair hearing, including the OHCA address and contact information for submitting a request;
- (iii) Details on the right to be represented by counsel at the State fair hearing; and
- (iv) Any other information required by state or federal statute or regulation, by contract, or by contract-related manual.

(5) **Documentation.** The MCE will furnish to OHCA documentation including all information specified at OAC 317:2-3-13(c)(2) within fifteen (15) calendar days of a provider's request for a State fair hearing.

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### **317:2-3-11. Recordkeeping**

In compliance with 42 C.F.R. § 438.3(h) and (u), the MCE will maintain records of each grievance and appeal for ten (10) years after the later of the final date of the contract period or the date of completion of any MCE audit by the State, the Centers for Medicare and Medicaid Services (CMS), the Office of the Inspector General, or the Comptroller General. Such records will be part of OHCA's ongoing monitoring and will be used to update and revise OHCA's managed care quality strategy. The record will conform with the content requirements at 42 C.F.R. § 438.416.

### **317:2-3-12. State fair hearing for members**

(a) **Right to State fair hearing.** With regard to grievances or appeals first filed with the MCE, a member may request a State fair hearing under 42 C.F.R. 431 Subpart E only after receiving notice from the MCE upholding an adverse benefit determination. The member will have one-hundred twenty (120) days from the date of the adverse benefit determination notice to request a State fair hearing. Refer to 42 C.F.R. §§ 438.402(c)(1)(i) and 438.408(f)(1).

(b) **MCE policies and procedures.** The MCE will implement established policies and procedures that allow a member described in (a) to initiate a State fair hearing process after having exhausted the MCE's appeals process or after the member is deemed to have exhausted the process due to the MCE's failure to adhere to notice and timing requirements.

(c) **Member's request for a State fair hearing.** The MCE will allow the member to request a State fair hearing either through an established MCE process or through an established OHCA process. Any MCE process will ensure that notice of the request for State fair hearing is communicated in writing to the OHCA contracting officer within twenty-four (24) clock-hours of receiving the request.

(d) **MCE documentation obligation.** The MCE will provide documentation to the member, the member's authorized representative, OHCA, and the Office of Administrative Hearings.

(1) **Timing.** The MCE will provide the documentation described in this subsection:

(A) Within twenty-four (24) clock-hours after receiving notification of the request for State fair hearing relating to a step therapy request; or

(B) Within fifteen (15) calendar days after notification of the request for State fair hearing in all other circumstances.

(2) **Information.** Documentation will include, at minimum, the following information:

(A) The name and address of the member and, if applicable, the member's authorized representative;

(B) A summary statement concerning why the member has filed a request for State fair hearing;

(C) A brief chronological summary of the MCE's action in relationship to the matter underlying the member's request for State fair hearing;

(D) The member's appeal request, along with any supporting documentation, if received by the MCE;

(E) Any applicable correspondence between the MCE and the member, including system notes entered by one or more MCE employees based on one or more telephone conversations with the member;

(F) All exhibits offered at any hearing held with the MCE;

(G) All documents the MCE used to reach its decision;

(H) A statement of the legal basis for the MCE's decision;

(I) A citation of the applicable policies and/or legal authorities relied upon by the MCE in making its decision;

(J) A copy of the notice which notified the member of the decision in question;

(K) The names and titles of any MCE employees who will serve as witnesses at the State fair hearing; and

(L) Any other information requested by the member, the member's authorized representative, OHCA, or the Office of Administrative Hearings when the information relates to the State fair hearing or any matter giving rise to the State fair hearing.

(e) **MCE staffing.** The MCE will maintain a sufficient level of staffing to competently perform the functions, requirements, roles, and duties involved in State fair hearing support, including but not limited to documentation, summarization of the arguments presented, and ensuring timely notice and delivery of documents to all parties.

(f) **Performance targets.** OHCA may set performance targets related to State fair hearing requests that are resolved upholding the MCE's original determination when and as OHCA deems necessary or appropriate.

(g) **Post-transition obligations.** After termination or expiration of the managed care contract, the MCE will remain responsible for State fair hearings related to dates of service prior to the contract termination or expiration, including but not limited to the provision of records and representation at State fair hearings.

(h) **Cost of services.** If the State fair hearing officer reverses the MCE's decision to deny authorization of services and the member received the disputed services while the State fair hearing was pending, the MCE will pay for those disputed services.

### **317:2-3-13. State fair hearing for providers**

(a) **Right to State fair hearing.** With regard to provider audit findings, for-cause and immediate termination of the provider's agreement, and claims denial, a provider may request a State fair hearing within thirty (30) calendar days of the MCE's notice of appeal resolution when that resolution does not favor the provider.

(b) **Information for providers.** As a part of the MCE's provider complaint system, the MCE will provide information to providers on how to request a State fair hearing via filing the appropriate form with the OHCA Docket Clerk.

(c) **MCE documentation obligation.** The MCE will provide documentation to the provider, OHCA, and the Office of Administrative Hearings.

(1) **Timing.** The MCE will provide the documentation described in this subsection within fifteen (15) calendar days after notification of the request for State fair hearing.

(2) **Information.** Documentation will include, at minimum, the following information:

(A) The name and address of the provider;

(B) A summary statement concerning why the provider has filed a request for State fair hearing;

(C) A brief chronological summary of the MCE's action in relationship to the matter underlying the provider's request for State fair hearing;

(D) The provider's appeal request, along with any supporting documentation, if received by the MCE;

(E) Any applicable correspondence between the MCE and the provider, including system notes entered by one or more MCE employees based on one or more telephone conversations with the provider;

(F) All exhibits offered at any hearing held with the MCE;

(G) All documents the MCE used to reach its decision;

(H) A statement of the legal basis for the MCE's decision;

(I) A citation of the applicable policies and/or legal authorities relied upon by the MCE in making its decision;

(J) A copy of the notice which notified the provider of the decision in question;

(K) The names and titles of any MCE employees who will serve as witnesses at the State fair hearing; and

(L) Any other information requested by the provider, OHCA, or the Office of Administrative Hearings when the information relates to the State fair hearing or any matter giving rise to the State fair hearing.

**317:2-3-14. Administrative Law Judge (ALJ) jurisdiction**

The ALJ has jurisdiction of the following matters:

(1) **Member State fair hearing.** The ALJ has jurisdiction to hear any State fair hearing arising from a member's MCE appeal of an adverse benefit determination.

(2) **Provider State fair hearing.** The ALJ has jurisdiction to hear any State fair hearing arising from a provider's appeal of audit findings, for-cause or immediate termination of the provider's contract with the MCE, or claims denial.

[OAR Docket #22-408; filed 6-23-22]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY  
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS**

[OAR Docket #22-409]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Administrative Appeals [NEW]

317:2-1-2 [AMENDED]

317:2-1-13 [AMENDED]

(Reference APA WF # 21-19)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; Section 5052(C) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Senate Bill 207

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 1. Administrative Appeals [NEW]

317:2-1-2 [AMENDED]

317:2-1-13 [AMENDED]

**Gubernatorial approval:**

December 21, 2021

**Register publication:**

39 Ok Reg 392

**Docket number:**

21-964

(Reference APA WF # 21-19)

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will comply with Oklahoma Senate Bill 207 (SB 207) by revising policies regarding appeals to the Agency's chief executive officer (CEO) pursuant to 63 O.S. §5052(C). The revisions will note that the CEO may only designate an administrative law judge (ALJ) at another state agency, that is established in the State Medicaid Plan, and approved by the Centers for Medicare and Medicaid Services (CMS) to hear and decide a CEO appeal. Further revisions will clarify that telephonic hearings are the preferred format for hearings and a request for an in-person hearing will need to be submitted on the updated LD-4 form. Finally, revisions will add language regarding new appeals that are available to members and providers.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

# Permanent Final Adoptions

## SUBCHAPTER 1. ADMINISTRATIVE APPEALS

### 317:2-1-2. Appeals

#### (a) Request for appeals.

(1) For the purpose of calculating the timeframe for requesting an administrative appeal of an agency action, the date on the written notice shall not be included. The last day of the timeframe shall be included, unless it is a legal holiday as defined by Title 25 of the Oklahoma Statutes (O.S.) Section (§) 82.1, or any other day the Oklahoma Health Care Authority (OHCA) is closed or closes early, in which case, the timeframe runs until the close of the next full business day.

(2) An appeals request that an aggrieved member or provider sends via mail is deemed filed on the date that the agency receives it.

#### (b) Member process overview.

(1) The appeals process allows a member to appeal a decision relating to program benefits. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to initiate an appeal, the member must file a LD-1 (Member Complaint/Grievance Form) within thirty (30) calendar days of the date the OHCA sends written notice of its action, in accordance with Oklahoma Administrative Code (OAC) 317:2-1-2(a), above, or, in matters in which a formal notice is not sent by the agency, within thirty (30) days of the date on which the member knew or should have known the facts or circumstances serving as the basis for appeal.

(3) If the LD-1 form is not received timely, the OHCA administrative law judge (ALJ) will cause to be issued a letter stating the appeal will not be heard. In the case of tax warrant intercept appeals, if the LD-1 form is not received by OHCA within the timeframe pursuant to 68 O.S. § 205.2, OHCA similarly will cause to be issued a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out or if necessary documentation is not included, then the appeal will not be heard.

(5) OHCA will advise members that if assistance is needed in reading or completing the grievance form, arrangements will be made to provide such assistance.

(6) Upon receipt of the member's appeal, a fair hearing before the OHCA ALJ will be scheduled. The member will be notified in writing of the date and time of the hearing. The member, and/or his/her designated authorized representative, must appear at the hearing, either in person or telephonically. ~~Requests for a telephone hearing must be received in writing on OHCA's LD-4 (Request for Telephonic Hearing) form no later than ten (10) calendar days prior to the scheduled hearing date. Telephonic hearing requests will only be granted by the OHCA's chief executive officer (CEO) or his/her designee, at his/her sole discretion, for good cause shown, including, for example, the member's physical condition, travel distances, or other limitations that either preclude an~~

~~in person appearance or would impose a substantial hardship on the member. The preferred method for a hearing is telephonically, requests for an in-person hearing must be received in writing on OHCA's Form LD-4 (Request for In-Person Hearing) no later than ten (10) calendar days prior to the scheduled hearing date.~~

(7) The hearing shall be conducted according to OAC 317:2-1-5. The OHCA ALJ's decision may in certain instances be appealed to the CEO of the OHCA, or his or her designated independent ALJ, which is a record review at which the parties do not appear (OAC 317:2-1-13).

(8) Member appeals are ordinarily decided within ninety (90) days from the date on which the member's timely request for a fair hearing is received, unless:

(A) The appellant was granted an expedited appeal pursuant to OAC 317:2-1-2.5;

(B) The OHCA cannot reach a decision because the appellant requests a delay or fails to take a required action, as reflected in the record;

(C) There is an administrative or other emergency beyond OHCA's control, as reflected in the record; or

(D) The appellant filed a request for an appeal of a denied step therapy exception request, pursuant to OAC 317:2-1-18.

(9) Tax warrant intercept appeals will be heard directly by the OHCA ALJ. A decision is normally rendered by the OHCA ALJ within twenty (20) days of the hearing ~~before the ALJ~~.

#### (c) Provider process overview.

(1) The proceedings as described in this subsection contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(d)(2).

(2) All provider appeals are initially heard by the OHCA ALJ under OAC 317:2-1-2(d)(2).

(A) In order to initiate an appeal, a provider must file the appropriate LD form within thirty (30) calendar days of the date the OHCA sends written notice of its action, in accordance with OAC 317:2-1-2(a), above. LD-2 forms should be used for Program Integrity audit appeals; LD-3 forms are to be used for all other provider appeals.

(B) Except for OHCA Program Integrity audit appeals, if the appropriate LD form is not received timely, the OHCA ALJ will cause a letter to be issued stating that the appeal will not be heard.

(C) A decision ordinarily will be issued by the OHCA ALJ within forty-five (45) days of the close of all evidence in the appeal.

(D) Unless otherwise limited by OAC 317:2-1-7 or 317:2-1-13, the OHCA ALJ's decision is appealable to OHCA's CEO, or his or her designated independent ALJ.

(d) OHCA ALJ jurisdiction. The OHCA ALJ has jurisdiction of the following matters:

#### (1) Member appeals.

(A) Discrimination complaints regarding the SoonerCare program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) Fee-for-service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the OHCA. Tax warrant intercept appeals will be heard directly by the OHCA ALJ. A decision will be rendered by the OHCA ALJ within twenty (20) days of the hearing;

(E) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the OHCA ALJ. A decision by the OHCA ALJ will ordinarily be rendered within twenty (20) days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(F) Appeals which relate to eligibility determinations made by OHCA;

(G) Appeals of insureds participating in Insure Oklahoma which are authorized by OAC 317:45-9-8; and

(H) Appeals which relate to a requested step therapy protocol exception as provided by 63 O.S. § 7310; and

(I) Requests for State fair hearing arising from a member's appeal of a managed care adverse benefit determination.

(2) **Provider appeals.**

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to disenroll member from provider's SoonerCare Choice panel;

(C) Appeals by long-term care facilities for administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5)(B) and (d)(8);

(D) Appeals of Professional Service Contract awards and other matters related to the Central Purchasing Act pursuant to Title 74 O.S. § 85.1 et seq.;

(E) Drug rebate appeals;

(F) Provider appeals of OHCA Program Integrity audit findings pursuant to OAC 317:2-1-7. This is the final and only appeals process for appeals of OHCA Program Integrity audit findings;

(G) Oklahoma Electronic Health Records Incentive program appeals related only to incentive payments, incentive payment amounts, provider eligibility determinations, and demonstration of adopting, implementing, upgrading, and meaningful use eligibility for incentives;

(H) Supplemental Hospital Offset Payment Program (SHOPP) annual assessment, supplemental payment, fees or penalties as specifically provided in OAC 317:2-1-15; and

(I) Appeals from any adjustment made to a long-term care facility's cost report pursuant to OAC 317:30-5-132, including any appeal following a request for reconsideration made pursuant to OAC 317:30-5-132.1.

(J) Request for a State fair hearing arising from provider's appeal of managed care audit findings, for-cause or immediate termination of the provider's managed care contract, or managed care claims denial.

**317:2-1-13. Appeal to the chief executive officer**

(a) The Oklahoma Health Care Authority offers approximately forty (40) different types of administrative appeals. Some of the appeals are appealable to the chief executive officer (CEO) and some are not. The following appeals are subject to further review upon timely submission of a request for CEO appeal and may be heard reviewed by the CEO, or his or her designated independent administrative law judge (ALJ), following the decision of an administrative law judge the OHCA ALJ:

(1) Appeals under Oklahoma Administrative Code (OAC) 317:2-1-2(d)(1)(A) to (d)(1)(H), with the exception of subsection (d)(1)(E); and

(2) Appeals under OAC 317:2-1-2(d)(2)(A) to (d)(2)(I), with the exceptions of subsections (d)(2)(D),(E),(F),(G), and (I).

(b) Appeals to the CEO must be filed with the OHCA within thirty (30) days of the date of the Order, or decision by OHCA.

(c) No new evidence may be presented to the CEO.

(d) Appeals to the CEO under (a) of this Section may be filed by the provider, member, or agency. The CEO will ordinarily render decisions within sixty (60) days of the receipt of the appeal.

(e) The CEO may only designate an independent ALJ at another state agency, as established in the Oklahoma State Medicaid Plan and approved by the Centers for Medicare and Medicaid Services, to review a CEO appeal.

[OAR Docket #22-409; filed 6-23-22]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY  
CHAPTER 10. PURCHASING**

[OAR Docket #22-410]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 317:10-1-1 [AMENDED]
- 317:10-1-2 [AMENDED]
- 317:10-1-12 [AMENDED]
- 317:10-1-16 [AMENDED]
- 317:10-1-21 [NEW]
- 317:10-1-22 [NEW]
- 317:10-1-23 [NEW]
- 317:10-1-24 [NEW]
- 317:10-1-25 [NEW]
- 317:10-1-25.1 [NEW]
- 317:10-1-26 [NEW]

# Permanent Final Adoptions

317:10-1-27 [NEW]  
317:10-1-28 [NEW]  
317:10-1-29 [NEW]  
317:10-1-30 [NEW]  
317:10-1-31 [NEW]  
317:10-1-32 [NEW]  
317:10-1-33 [NEW]

(Reference APA WF # 21-12)

## AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board

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

November 23, 2021

## COMMENT PERIOD:

December 15, 2021 through January 18, 2022

## PUBLIC HEARING:

January 18, 2022

## ADOPTION:

March 30, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 12, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

317:10-1-1 [AMENDED]  
317:10-1-2 [AMENDED]  
317:10-1-12 [AMENDED]  
317:10-1-16 [AMENDED]  
317:10-1-21 [NEW]  
317:10-1-22 [NEW]  
317:10-1-23 [NEW]  
317:10-1-24 [NEW]  
317:10-1-25 [NEW]  
317:10-1-25.1 [NEW]  
317:10-1-26 [NEW]  
317:10-1-27 [NEW]  
317:10-1-28 [NEW]  
317:10-1-29 [NEW]  
317:10-1-30 [NEW]  
317:10-1-31 [NEW]  
317:10-1-32 [NEW]  
317:10-1-33 [NEW]

## Gubernatorial approval:

September 7, 2021

## Register publication:

39 Ok Reg 21

## Docket number:

21-723

(Reference APA WF # 21-12)

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed revisions will re-establish agency-specific rules for purchasing and procurement. Revisions include provisions related to procurement definitions, procurement ethics and prohibited conduct, conflicts of interest, and procurement of goods and services and professional services.

## CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## 317:10-1-1. Purpose

(a) ~~The purpose of this Chapter is to describe the rules governing the contracting and purchasing requirements of the Oklahoma Health Care Authority (OHCA). The Contracts and Purchasing Divisions are internal divisions of the OHCA. These divisions provide the mechanism for the acquisition of goods, equipment, non-professional and professional services for the operation of the OHCA. These rules are superseded by the Office of Management and Enterprise Services (OMES) Purchasing rules (OAC 260:115) whenever OMES has final authority on an acquisition.~~

(b) ~~Different rules apply depending on which of the above three entities is making the acquisition and whether the purchase is for professional services or non-professional services and products. When an acquisition is made by OMES, the OMES Purchasing rules at OAC 260:115 apply. When an acquisition is made by OHCA, these rules must be read in conjunction with the OMES rules.~~

(a) The purpose of this Chapter is to describe the rules governing the contracting and purchasing requirements of the Oklahoma Health Care Authority (OHCA), as directed by 74 O.S. § 85.39. OHCA maintains two (2) internal units that are responsible for the acquisition of goods, equipment, non-professional services, and professional services for the operation of OHCA.

(b) The rules of this Chapter are superseded by the Office of Management and Enterprise Services (OMES) [Oklahoma Administrative Code (OAC) 260:115.] as amended from time to time, whenever OMES has final authority on an acquisition. When an acquisition is made by OMES, the OMES purchasing rules at OAC 260:115 apply. When an acquisition is made by OHCA, the rules of this Chapter should be read in conjunction with the OMES rules.

## 317:10-1-2. Definitions

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

**"Authority Board"** means the board designated by the Oklahoma Legislature to establish policies and adopt and promulgate rules for the OHCA.

**"Chief Executive Officer"** or **"CEO"** means the highest ranking administrator at the OHCA.

**"Acquisition"** means items, products, materials, supplies, services, and equipment that OHCA acquires by purchase, lease-purchase, lease with option to purchase, or rental.

**"Administrative review"** means the process by which OHCA ensures that a bid submission is complete and accurate; confirms that the bidder understood the solicitation specifications; and ascertains that all materials and any required signatures are submitted.

**"Award"** or **"contract award"** means the process by which OHCA formally notifies a bidder that OHCA has accepted the bidder's bid or offer.

**"Best and final offer"** or **"BAFO"** means a final offer submitted in writing by a bidder initially or after negotiations

are completed and containing the bidder's most favorable terms for price, service, and/or products to be delivered.

**"Best price"** means the lowest available price for the goods and/or services that are subject of a solicitation.

**"Best value"** means evaluation criteria which may include but is not limited to the acquisition's operational cost a state agency would incur; the quality of the acquisition, or its technical competency; the reliability of the bidder's delivery and implementation schedules; the acquisition's facilitation of data transfer and systems integration; the acquisition's warranties and guarantees and the bidder's return policy; the bidder's financial stability; the acquisition's adherence to the state agency's planning documents and announced strategic program; the bidder's industry and program experience and record of successful past performance with acquisitions of this complexity; the anticipated acceptance by user groups; and the acquisition's use of proven development methodology, and innovative use of current technologies.

**"Bid"** means any response to a solicitation, including any and all required forms; required documents and information; and supplemental documents and information.

**"Bidder"** means an individual, entity, or service vendor that submits a bid in response to a solicitation.

**"Bid evaluation"** means the process of conducting any evaluative activity that could reasonably be expected to result in determining the value, nature, character, or quality of a bid.

**"Bid evaluator"** means an employee or officer of the State of Oklahoma who is actively engaged in Oklahoma Health Care Authority's (OHCA) process to evaluate, score, or select a bid, regardless of whether a contract is awarded to the bid evaluated and/or scored by that employee or officer.

**"Bid specifications"** means the information OHCA will use for bid evaluation, when such information is exactly detailed within a solicitation and is based on the subject matter of the solicitation, the type of solicitation, and the needs to be met by the supplier(s) awarded a contract from the solicitation.

**"Central Purchasing Division"** means the Central Purchasing Division of the Office of Management and Enterprise Services (OMES).

**"Certification"** means the process of a bidder providing OHCA with an official document attesting to a status or level of achievement in response to a solicitation.

**"Certified Procurement Officer"** or **"CPO"** means a state agency procurement official certified as a procurement officer or analyst by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

**"C.F.R."** means the Code of Federal Regulations as may be amended from time to time.

**"Chief Executive Officer"** or **"CEO"** means the highest-ranking administrator at the OHCA.

**"Chief Information Officer"** means the chief administrative officer of the Information Services Division of the Office of Management and Enterprise Services.

**"Clarification"** means a bidder's explanation of all or part of a bid that does not change, alter, or supplement the bid.

**"CMS"** means the Centers for Medicare & Medicaid Services.

**"Closing date/time"** means the date and Central Time a solicitation specifies responses must be received by OHCA.

**"Competitive solicitation"** or **"solicitation"** means an invitation to bid for the provision of goods or services through specified documents submitted to the Central Purchasing Division or a state agency pursuant to terms, conditions, and other requirements of a solicitation. The competitive solicitation process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirements of applicable statutes and rules are met. When used in this chapter, "competitive solicitation" is synonymous with "invitation to bid," "request for proposal," "request for information," or "request for quotation."

**"Conflict plan"** means the written statement detailing the accommodations and/or remedies associated with a specific OHCA employee's or officer's conflict of interest in the procurement process or resulting contract.

**"Conflict of interest"** means a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity, a situation in which the concerns or aims of two (2) different parties are incompatible, a situation prohibited or constrained by law, or a situation that would appear inappropriate to a reasonable individual.

**"Contract"** means the written and binding agreement between OHCA and the bidder resulting from the competitive solicitation.

**"Contracting official"** or **"contracting officer"** means the OHCA CEO or the OHCA officer or employee to whom contracting authority has been delegated by the OHCA CEO, unless specified otherwise.

**"Contractor"** means any individual or entity contracted with OHCA for the provision of any goods or services. A bidder becomes a contractor upon contract award and execution.

**"Days"** means calendar days unless otherwise specified.

**"Debar"** or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the Supplier List, bidding, offering to bid, receiving an award of contract with the state of Oklahoma for acquisitions by state agencies, or a contract the OMES awards or administers. Debarment may also result in cancellation of existing contracts with the State of Oklahoma.

**"Employee"** or **"officer"** means a natural person that works for OHCA, unless otherwise specified, regardless of title or designation and regardless of manner of appointment, election, or hiring. "Employee or officer" does not mean a member of the Authority Board in the member's capacity as a board member.

**"Enrollment activities"** means activities performed or conducted by OHCA related to distributing, collecting, or processing enrollment materials, taking enrollments by technological device or in person, or enrolling or disenrolling, including by algorithm, Medicaid beneficiaries with respect to any health plan or managed care services contract.

**"Fiscal year"** means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

**"Former employee"** means a natural person whose work as an employee or officer for OHCA ended by any means at some point prior to the currently referenced moment.

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**"Health plan"** means any person or entity that is licensed as a health maintenance organization (HMO) by the state of Oklahoma to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for co-payments or deductibles for which the enrollee is responsible, or both, that meets the definition of an HMO as delineated in the Oklahoma Medicaid State Plan and that contracts with the State to provide services to enrollees.

**"Invoice"** means an accounting document issued by an individual or entity that details the goods and/or services provided and the amount of money owed for the goods and/or services when the document conforms to all invoicing provisions of the contract and that records the details of the transaction.

**"Managed care entity"** or **"MCE"** means any entity permitted under 42 C.F.R. Part 438 to contract with a state for services provided under a risk contract or a nonrisk contract within the state's Medicaid managed care program, including but not limited to managed care organization (MCO), primary care case management (PCCM), primary care case management entity (PCCM entity), prepaid ambulatory health plan (PAHP), and prepaid inpatient health plan (PIHP).

**"Managed care organization"** or **"MCO"** means the same in these rules as defined at 42 C.F.R. § 438.2.

**"Managed care program"** or **"managed care"** or **"MCP"** means a health care delivery system organized to manage cost, utilization, and quality that is operated by a state as authorized under sections 1915(a), 1915(b), 1932(a), or 1115(a) of the Social Security Act and relevant state law.

**"Mandatory specification"** means any specification of a solicitation when the terms "shall", "must", "will", or "is required" are used to describe, define, or announce the specification. This definition refers only to the use of such words in a solicitation and does not refer to the use of such words in this chapter.

**"Material deficiency"** or **"material deviation"** means a bidder's failure to provide information necessary to evaluate a competitive solicitation.

**"Medicaid"** means the medical assistance program jointly administered by the federal and state governments and authorized by 42 U.S.C. § 1396a to provide health care benefits for certain low-income persons.

**"Minor deficiency"** or **"minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a competitive solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery, or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

**"Multi-award"** means the process by which OHCA formally, by written determination, notifies two or more bidders that OHCA has accepted the bidders' bid to furnish an indefinite quantity or category of item, where more than one supplier is needed to meet the contract requirements for quantity, delivery, service, or product compatibility.

**"Non-collusion certification"** means a certification submitted by a bidder with any competitive bid or contract executed by the state for goods or services in accordance with 74 O.S. § 85.22.

**"Nonresponsive"** means a bid or proposal that has been determined not to conform to essential requirements of a solicitation.

**"OAC"** means the Oklahoma Administrative Code as may be amended from time to time.

**"Office of Management and Enterprise Services"** or **"Office"** or **"OMES"** means the Oklahoma Office of Management and Enterprise Services.

**"Oklahoma Central Purchasing Act"** means 74 O.S. §§ 85.1 et seq.

**"Oklahoma Health Care Authority"** or **"OHCA"** or **"Authority"** means the single state agency designated to administer the medical programs which make available appropriate medical services to eligible individuals through the Title XIX Medicaid Program and which has authority to procure, administer and monitor contracts, issue performance deficiency notices, and assess non-compliance damages.

**"OHCA Board"** means the board designated by the Oklahoma Legislature to establish policies and adopt and promulgate rules for the OHCA.

**"Oklahoma Information Technology (IT) Accessibility Standards"** or **"IT Accessibility Standards"** means the accessibility standards adopted by the Office of Management and Enterprise Services (Reference OAC 250:15) to address all technical standard categories of Section 508 of the Rehabilitation Act (Reference 29 U.S.C. § 794d), as amended by the Workforce Investment Act of 1998 (Reference P.L. 105-220, August 7, 1998) and adopted at 62 O.S. §§ 34.28, 34.29, 34.30, and 34.16, to be used by each state agency in procuring, maintaining, or using information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.

**"Oral presentation evaluation"** means the process, through the bidder's participation in an interactive dialogue or non-interactive presentation, by which OHCA assesses a bidder's capability, past performance, work plans or approaches, staffing resources, transition plans, sample tasks, or fit with the OHCA.

**"O.S." or "Okla. Stat."** means the Oklahoma Statutes as may be amended from time to time.

**"Permissible specification"** means any specification in a solicitation when the terms "can", "may", or "should" are used to describe, define, or announce the specification. This definition refers only to the use of such words in a solicitation and does not refer to the use of such words in this chapter.

**"Privatize"** means to enter into contract for the performance of a duty or function which is currently being performed by a state employee.

**"Procurement"** means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. The term also means all functions that pertain to the obtaining of any goods or services, including but not limited to the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.



**"Professional services"** means services which are predominantly advisory or intellectual in character, involve privatized functions, or involve support rather than supplying equipment, supplies, or other merchandise. Professional services include those services requiring special, usually advanced, education, or skill.

**"Prejudice"** means the effect on an affected bidder's substantial rights when a procurement decision related to a different bidder, if such decision is found to be in error, would yield a more favorable result for the affected bidder if the decision error were corrected.

**"Purchasing"** means the Purchasing Department of the Oklahoma Health Care Authority.

**"Purchasing manager"** means the Purchasing Manager of the Oklahoma Health Care Authority.

**"Registered supplier"** means a supplier that registers with the Central Purchasing Division pursuant to 74 O.S. § 85.33.

**"Remedy"** means to cure, alter, correct, or change.

**"Request for information"** or **"RFI"** means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.

**"Request for proposal"** or **"RFP"** means a type of solicitation OHCA or the State Purchasing Director issues to suppliers to request submission of proposals for acquisitions.

**"Request for quotation"** or **"RFQ"** means a simplified written or oral solicitation OHCA or the State Purchasing Director issues to suppliers to request submission of a quote for acquisitions.

**"Requisition number"** means an identifier OHCA or OMES assigns to a requisition.

**"Responsible supplier"** means a supplier who demonstrates capabilities, in all respects, to fully perform the requirements of a contract and which will ensure good faith performance, including but not limited to finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, and performance history.

**"Responsive"** means a bid or proposal that has been determined to conform to the essential requirements of a solicitation.

**"Risk contract"** means a contract between OHCA and a managed care organization (MCO), prepaid inpatient health plan (PIHP), or prepaid ambulatory health plan (PAHP), as those terms are defined at 42 C.F.R. § 438.2, under which the contractor assumes risk for the cost of the services covered under the contract and incurs loss if the cost of furnishing the services exceeds the payments under the contract.

**"Sole brand acquisition"** means an acquisition that by specification restricts the acquisition to one manufacturer or brand name.

**"Sole source acquisition"** means an acquisition that by specification restricts the acquisition to one supplier.

**"Split purchase"** means dividing a known quantity or failing to consolidate a known quantity of an acquisition for the purpose of evading a competitive bidding requirement.

**"State Purchasing Director"** means the director of the Central Purchasing Division of the Office of Management and

Enterprise Services appointed by the OMES Director and includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority. (Reference 74 O.S. § 85.2) Unless otherwise stated, the term includes employees of the Central Purchasing Division and state agency purchasing officials certified by the State Purchasing Director to which the State Purchasing Director has lawfully delegated authority to act on his or her behalf. In regard to the procurement of information technology or telecommunications, the term means the Chief Information Officer of the Office of Management and Enterprise Services.

**"Statement of work"** or **"scope of work"** means a detailed description of the work which OHCA requires a contractor or supplier to perform or accomplish.

**"Supplier"** or **"vendor"** means an individual or business entity that sells or desires to sell acquisitions, including goods and/or services to OHCA. (Reference 74 O.S. § 85.2)

**"Supplier list"** means a list of individuals or business entities that have registered with the Central Purchasing Division in order to receive notification of solicitations for commodities specified in their registration application.

**"Supplier performance evaluation"** means information a state agency or OMES Procurement provides to the State Purchasing Director, in a manner the OMES Director prescribes, that documents the quality of service or products provided by a supplier.

**"Supplier registration"** means a process a supplier uses to register with the Central Purchasing Division to automatically receive solicitations based on a commodity class for a specified period of time.

**"Technical proposal evaluation"** means the process, based on established criteria and reliant on evaluators' expertise in assessing the strengths and weaknesses of multiple bids, by which OHCA measures the extent to which a bid will meet OHCA's needs.

**"U.S.C."** means the United States Code as may be amended from time to time.

**"Value based"** or **"value-based purchasing"** means the intentional linking of cost to the OHCA's perception of the value of goods or services. In a health plan or managed care contract, these terms refer to provider payments made by the health plan or managed care entity based on improved performance by health care providers.

### 317:10-1-12. Protest of award

(a) Protests of awards made by ~~the Authority~~ OHCA under 74 Okla. Stat. §85.5T85.5N are addressed at OAC 317:2-1-1 et seq.

(b) Bidders who wish to protest any other award shall follow the process outlined in the ~~Office of Management and Enterprise Services~~ OMES rules at OAC 260:115-3-19.

### 317:10-1-16. Delegation of authority

The authority to procure needed products and services for ~~the Authority~~ OHCA has been delegated to the ~~Authority~~ OHCA from the Office of Management and Enterprise Services, Central Purchasing Division. The ~~Authority~~ OHCA

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Board delegates authority for expenditure of funds to the CEO and other ~~Authority~~OHCA officers and personnel according to the dollar limits and types of products stated in (1), (2) and (3) of this Section. Within this authority, the CEO may delegate in writing to other specific individuals the responsibility for the performance of the procurement duties.

(1) **Supply and non-professional services acquisitions.** Each division director or supervisor may initiate any supply or non-professional services acquisition which is within his or her authorized division budget and approved by the CEO or designee. ~~Any single acquisition of this kind over \$5,000 up to \$500,000 must be approved by the CEO, Executive Staff or designee.~~ Any single acquisition of this kind over ~~\$500,000~~\$1,000,000 must be approved by the ~~Authority~~OHCA Board. A contract amendment that would increase the total original contract acquisition cost to an amount that equals or exceeds ~~\$500,000~~\$1,000,000 for a supply or non-professional services contract must be prior approved by the ~~Authority~~OHCA Board. Any amendment to a contract that would result in a ~~40 percent~~ten percent (10%) or greater increase in the total acquisition cost originally approved by the OHCA Board must be submitted to the OHCA Board for prior approval.

(2) **Professional service contracts.** Acquisitions of professional services must be approved by the CEO or designee. All professional service contracts over ~~\$125,000~~\$1,000,000 must be approved by the ~~Authority~~OHCA Board. A contract amendment that would increase the total original contract acquisition cost to an amount that equals or exceeds ~~\$125,000~~\$1,000,000 for a professional service contract must be prior approved by the ~~Authority~~OHCA Board. Any amendment to a contract that would result in a ~~25 percent~~twenty-five percent (25%) or greater increase or a ~~\$250,000~~\$1,000,000 or greater increase in the total acquisition cost originally approved by the ~~Authority~~OHCA Board must be submitted to the ~~Authority~~OHCA Board for prior approval. Board approval is not required if the increase in total contract acquisition cost results from the exercise of a price increase methodology, option for additional work, or option to renew that was contained in the previously approved contract.

(3) **Interagency/intergovernmental agreements.** All agreements with another state agency or public agency must be approved by the CEO or designee; but are exempt from the ~~Authority~~OHCA Board approval.

### **317:10-1-21. Procurement ethics, prohibited conduct**

(a) **Standard of conduct.** The Oklahoma Central Purchasing Act, State Ethics Commission rules, and other state laws contain regulations, prohibitions, and penalties governing procurement ethics. Transactions relating to the public expenditure of funds require the highest degree of public trust and impeccable standards of conduct.

(b) **One (1) year prohibition on certain contracts.** For one (1) year after the employment termination date of any employee or officer, OHCA is prohibited from entering into a sole source contract, a professional service contract, or a contract

for the services of that employee or officer. Refer to 74 O.S. § 85.42(A). An agency may enter into a sole source contract or a contract for professional services at any time with a person who is a qualified interpreter for the deaf. Reference to 74 O.S. § 85.42(D).

(c) **Supplier gratuities.** Employees or officers of the Purchasing and Contracts Development unit, acting within the scope of delegated authority, or any member of their immediate family, under the Oklahoma Central Purchasing Act shall not accept any gift, donation, or gratuity for himself or any member of his immediate family from any supplier or prospective supplier of any acquisition covered by the Oklahoma Central Purchasing Act. This subsection shall not apply to exceptions to the definition of "anything of value" established in rules promulgated by the Oklahoma Ethics Commission.

(d) **State requirement for one (1) year prohibition on certain state officers' or employees' employment with a supplier.** For a period of one (1) year from the date that any contract to privatize is awarded by OHCA, any state officer or employee who exercised discretionary or decision-making authority in awarding a specific contract to privatize is prohibited from becoming an officer or employee of a business organization which is party to that specific contract to privatize. If, within the prohibited period and in violation of state law, any state officer or employee who exercised discretionary or decision-making authority in awarding a specific contract to privatize becomes an officer or employee of a business organization which is party to that specific contract to privatize, then the business organization is prohibited from contracting with OHCA for one (1) year from the date of the violation of state law. Refer to 74 O.S. § 590.

(e) **Agency contract or agreement open for legislative inspection.** Upon request, a contract or any other form of agreement made by OHCA will be open for inspection to any member of the Legislature. OHCA will not direct, put in a contract, or in any way disallow a vendor, client, employer or independent contractor, person, or any other entity from contacting or communicating with any member of the Legislature. Refer to 74 O.S. § 464.1.

(f) **Federal requirement for conflict-of-interest safeguards pertaining to any contract for health plan or managed care services.** Any contract awarded for health plan or managed care services and subject to 42 C.F.R. Part 438 necessitates state conflict-of-interest safeguards at least as effective as those specified at section 27 of the Office of Federal Procurement Policy Act. Refer to 42 C.F.R. § 438.58, citing 41 U.S.C. § 423. In addition to this subsection, OAC 317:10-1-22 describes processes pertaining to the conflict-of-interest safeguards in this section.

(1) The following person(s) shall not, except as provided by law, knowingly disclose a contractor bid or proposal information or source selection information before the award of an OHCA procurement contract to which the information relates:

(A) When such person is:

(i) A present or former employee or officer:

- (ii) Acting or has acted for or on behalf of OHCA with respect to a procurement; or
    - (iii) Advising or has advised OHCA with respect to a procurement; and
  - (B) By virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.
- (2) A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of an OHCA procurement contract to which the information relates.
- (3) If an employee or officer who is personally and substantially participating in a procurement under this Section, contacts or is contacted by a procurement bidder regarding possible non-OHCA employment, the employee or officer shall promptly report the contact in writing to the employee's or official's supervisor and to the designated OHCA ethics official (or designee) and either:
  - (A) Reject the possibility of non-OHCA employment; or
  - (B) Disqualify himself or herself from further personal and substantial participation in that procurement until such time as OHCA has authorized the employee or official to resume participation in such procurement on the grounds that:
    - (i) The bidder is no longer a participant in the procurement; or
    - (ii) All discussions with the bidder regarding possible non-OHCA employment have terminated without an agreement or arrangement for employment.
- (4) A former employee or officer shall not accept compensation from a contract-awarded bidder as an employee, officer, director, or consultant of that bidder within a period of one (1) year after such former employee or officer functioned within the scope of employment as:
  - (A) The procuring contracting officer, the source selection authority, a member of an evaluation committee, or the chief of a financial or technical evaluation team in a procurement in which that contract-awarded bidder was selected for award of a contract in excess of \$10,000,000;
  - (B) A program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contract-awarded bidder; or
  - (C) A primary decision maker who personally made one (1) or more of the following decisions on behalf of OHCA:
    - (i) To award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order for that contract-awarded bidder valued in excess of \$10,000,000;
    - (ii) To establish overhead or other rates applicable to a contract or contracts for that contract-awarded bidder valued in excess of \$10,000,000;

- (iii) To approve issuance of a contract payment or payments to that contract-awarded bidder valued in excess of \$10,000,000; or
    - (iv) to pay or settle a claim in excess of \$10,000,000 with that contract-awarded bidder.
  - (5) A former employee or officer who accepts compensation from any division or affiliate of a contract-awarded bidder that does not produce the same or similar products or services as the entity of the contract-awarded bidder that is responsible for the contract does not violate this section.
  - (6) With regard to any current or former employee or officer or any bidder who violates this subsection (f), OHCA may take any administrative action and pursue any penalty allowed by state or federal law.
  - (7) Any employee or officer or former employee or officer may request advice from the appropriate designated OHCA ethics official regarding whether the employee or officer or former employee or officer is or would be precluded by subsection (f)(4) of this section from accepting compensation from a particular contractor.

**317:10-1-22. Conflicts of interest**

- (a) Types of conflicts of interest. Three (3) types of conflict-of-interest forms may be used for OHCA to clear conflicts related to procurement.
  - (1) General conflicts of interest. OHCA requires all employees or officers to sign general conflict-of-interest forms annually.
  - (2) Contract-specific conflicts of interest. OHCA requires specific employees or officers, as described within this subsection, to sign a contract-specific conflict-of-interest form related to a specific contract when deemed appropriate to meet any applicable federal or state law or regulation and to avoid impropriety or the appearance of impropriety in connection with the procurement process or the administration of the specific contract. The contract-specific conflict-of-interest form will inform the employee or officer of rights and responsibilities related of role as related to a specific contract, including any potential restrictions on future employment or other business connections with the contractor or with OHCA, and will record any conflicts that pre-date the signing of the form or that arise at any point in time thereafter until the contract is terminated.
  - (3) Evaluator-specific conflicts of interest. OHCA requires employees or officers of any agency or department of the State to sign an evaluator-specific conflict-of-interest form, whenever the employee or officer is appointed, selected, or approved as a bid evaluator or performs any duty of a bid evaluator for a specific contract. The evaluator-specific conflict-of-interest form will inform the employee or officer of rights and responsibilities related to the role of bid evaluator, including any potential restrictions on future employment or other business connection with the contractor or with OHCA, and will record any conflicts that pre-date the signing of the form or that arise at any point in time thereafter until the evaluation is complete and closed. If a bid evaluator is

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removed from the bid evaluation for any reason, including potential conflict of interest, a substitute bid evaluator with similar expertise will be added to the bid evaluation after signing an evaluator-specific conflict-of-interest form.

(b) **Forms meet or exceed legal standards.** All conflict-of-interest forms shall meet or exceed the applicable legal standards controlling the type of contract and/or type of employee or officer involvement in procurement or administration of a contract, including but not limited to 74 O.S. § 85.42(A), 74 O.S. § 590, and 41 U.S.C. § 423.

(c) **Identification of conflicts of interest.** OHCA will identify conflicts of interest, plan any accommodation, and manage any employee disciplinary action.

(1) The OHCA contracting officer will identify all employee or officer positions required to sign a specific conflict-of-interest form or an evaluator-specific conflict of interest form. For any solicitation for health plan or managed care services, the contracting officer will identify, at minimum, all employees or officers engaged in enrollment activities, when those employees or officers are internally titled manager or above, and all employees and officers engaged as bid evaluators.

(2) OHCA's Human Resources (HR) Department will obtain conflict-of-interest forms:

(A) For general conflict-of-interest forms, from each employee or officer at the time of hiring and annually thereafter.

(B) For contract-specific conflict-of-interest forms, from each employee or officer in an identified position prior to the employee's or officer's participation in contract- or solicitation-specific activities.

(C) For evaluator-specific conflict-of-interest forms, from each employee or officer identified as an evaluator prior to the employee's or officer's participation in evaluation-specific activities.

(3) OHCA HR and OHCA's Legal Department will review the executed conflict-of-interest forms.

(4) If a potential conflict is identified, a conflict plan will be presented to the employee or officer. The conflict plan will include, at minimum, guidelines that the employee or officer must follow to avoid an actual conflict.

(5) The employee or officer will determine if the conflict plan can be accommodated and respond accordingly.

(6) If the accommodation does not resolve the issue, then the employee or officer will face disciplinary action up to and including termination of employment.

(d) **Employee/officer responsibilities.** Each employee or officer has a responsibility to notify OHCA HR within one (1) business day of becoming aware of a potential conflict, regardless of whether the employee or officer previously executed a conflict-of-interest form. Upon notification, OHCA HR will take appropriate action to identify the potential conflict in writing, either as part of the existing conflict-of-interest form or as a new conflict-of-interest form; develop a conflict plan; and present the conflict plan to the employee or officer.

### **317:10-1-23. Value-based purchasing**

(a) Unless otherwise prohibited by law, OHCA may engage in value-based purchasing with regard to any contract for goods, services, or professional services.

(b) Unless otherwise prohibited by law, OHCA may include in any contract for health plan or managed care services any concept of value-based purchasing as to the transaction between OHCA and the health plan or managed care entity.

(c) Unless otherwise prohibited by law, OHCA may include in any contract for health plan or managed care services any concept of value-based purchasing as to the transaction underlying the provision of health care services or items by providers contracted with any health plan or managed care entity.

### **317:10-1-24. Bidder obligations arising from bid submission**

(a) **One (1) bid.** Bidders may submit only one bid in response to any solicitation. Except as requested by OHCA, no bid may be changed after the response due date and time. If the bidder needs to change a submitted bid prior to the response due date and time, the bidder will withdraw the originally submitted bid and submit a new bid to OHCA by the response date and time. Bidders may withdraw and resubmit a bid at any time prior to the submission deadline. As part of the resubmission process, the bidder will acknowledge in writing that the resubmitted bid supersedes all previously submitted bids by including the following statement on the superseding bid cover page, "This bid supersedes the bid previously submitted". In the body of the submission transfer, whether by email or otherwise, the resubmitted bid should contain the solicitation number and solicitation response due date and time.

(b) **Bidder duties.** The bidder shall submit any bid:

(1) In strict conformance with the instructions provided to bidders along with a completed "Responding Bidder Information" form and any other forms required by the solicitation;

(2) Electronically;

(3) With a completed certification statement, as described in the solicitation, that uses the bidder's legal name and has been executed by an authorized person with full knowledge and acceptance of all certificate provisions;

(4) According to the "Technical Proposal Requirements" of the solicitation;

(5) With relevant information for a designated contact to receive notice, approvals, and requests that are allowed or required by the terms of the solicitation;

(6) As firm, including a guarantee that unit prices are correct, for a minimum of one hundred eighty (180) days after the solicitation closing date; and

(7) In accordance with 74 O.S. § 85.40, requiring the bidder to include in the total bid price all travel expenses, including but not limited to transportation, lodging, and meals, to be incurred by a bidder in performance of the awarded contract.

(c) **Bidder's acknowledgements.** By submitting a bid, the bidder promises, acknowledges, and agrees that:

(1) The bidder will adhere to any additional terms OHCA deems necessary to the performance of the contract, including but not limited to terms related to the contractor's need to access, process, or store Medicaid beneficiary data;

(2) All costs incurred by a bidder in participating in the procurement process is the sole responsibility of the bidder, and the bidder will not be reimbursed for or awarded damages for such costs;

(3) If a bidder fails to notify the contracting officer of an ambiguity, conflict, discrepancy, omission, or other error in the procurement process or in any of the documents provided by OHCA that is known to the bidder, or that reasonably should be known by the bidder, the bidder accepts the risk of submitting a bid and, if awarded the contract, will not be entitled to additional compensation, relief, or time by reason of the error or its later correction; and

(4) Bidder waives any error in the procurement process or documents which is known to the bidder or reasonably should have been known, and such error will not be the grounds of a bid protest.

(d) **Indemnification.** By submitting a bid, the bidder understands, accepts, acknowledges, and agrees to this paragraph in its entirety. OHCA will not indemnify a bidder, any subcontractor, or any other party to an awarded contract. Any contract between the selected bidder and OHCA will not contain any terms limiting the liability of the bidder or providing indemnification by OHCA in favor of the bidder or any third parties. The State of Oklahoma and its agencies do not hold an individual or a private entity harmless from liability or provide indemnity to a private entity or individual. Any attempt by the bidder to add indemnification or limitation of liability provisions in favor of the bidder or third parties to the definitive contract may render the bidder's bid nonresponsive and subject to rejection. Should OHCA accept a bid that attempts to add indemnification or limitation of liability provisions in favor of the bidder or third parties, such attempts are severable from the remainder of the bid and have no effect on any awarded contract. At no time and in no way will OHCA be deemed to have waived this paragraph through action or inaction.

(e) **Conflict of laws.** With regard to the procurement process to which a bid is submitted and any business relationship or contract resulting from such procurement process, by submitting a bid, the bidder understands, accepts, acknowledges, and agrees:

(1) That the undertaking and all matters arising out of or relating to the undertaking, including all protests, claims, causes of action, controversies, or matters in dispute between OHCA and the bidder-whether sounding in contract, tort, statute, regulation, or otherwise-shall be governed by, construed, interpreted, and enforced in accordance with the substantive and procedural laws of the State of Oklahoma, including its statutes of limitations, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the State of Oklahoma or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than the State of Oklahoma;

(2) To exclude application of the United Nations Convention on Contracts for the International Sale of Goods; and

(3) That a final judgment in any matter described in (e)(1) of this Section is conclusive and binding and may be enforced in any other jurisdiction.

**317:10-1-25. Property of the state**

Any bid, including all related and submitted documents and information, is part of the public record(s) and is subject to disclosure; unless otherwise specified in the Oklahoma Open Records Act, the Central Purchasing Act, or other applicable law. All material submitted by a bidder becomes the property of the State of Oklahoma upon submission and will be a matter of public record, subject to the procedures for treatment of proprietary information. OHCA has the right to use all concepts described in any bid, regardless of whether such bid is accepted. By any secured means, including electronic transmission via secure file transfer protocol, OHCA has the right to transmit all material submitted as part of or in connection with a bid, including proprietary information, to any professional services contractor then or afterward contracted with OHCA for provision of professional services related to the solicitation, award, or administration of the contract.

**317:10-1-25.1. Proprietary or confidentiality claims**

(a) Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information that a bidder submits as part of or in connection with a bid are public records and subject to disclosure after the contract has been awarded pursuant to OAC 260:115-3-9.

(1) No portion of a bid shall be considered confidential after award of the contract except, pursuant to 74 O.S. §85.10, information in the bid determined to be confidential by the State Purchasing Director or delegate.

(2) A properly submitted confidentiality claim of a potential awardee is reviewed and determined prior to award.

(3) A properly submitted confidentiality claim of a non-awarded bidder is reviewed and determined only when responding to an open records request concerning the bid.

(b) Among the parties to a solicitation, OHCA is the sole and final determiner of the proprietary or confidential nature of a bid in part or in whole.

(1) OHCA has no responsibility to independently review a bid, including any associated documentation or information, for a potential proprietary or confidentiality claim.

(2) OHCA will not consider a proprietary or confidentiality claim if a bid fails to comply with the requirements of this section, the solicitation, and applicable law, including OAC 260:115-3-9. Nonconforming bids will be subject to disclosure pursuant to State law.

(3) A bidder, who wishes to seek an exemption from disclosure under the Oklahoma Open Records Act or other

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statutory or regulatory requirements, is responsible for asserting any right of confidentiality that may exist. The OHCA will not assert a right of confidentiality on behalf of a bidder.

(c) To claim any portion of a bid as proprietary or confidential, the bidder will:

(1) Specifically identify what information is considered by the bidder to be confidential;

(2) Enumerate the specific grounds, based on applicable laws, which support treatment of the information as exempt from disclosure;

(3) Explain why disclosure is not in the best interest of the public if the information is incorporated into an awarded contract;

(4) Submit all information considered confidential under separate cover as described below; and

(5) Include, for efficient evaluation, the content considered confidential in applicable sections of the bid.

(d) Any bidder with bid information the bidder considers confidential must submit an additional electronic copy of the bid with the claimed information redacted (marked out to be illegible). The additional copy must be clearly labeled "Redacted Copy." If the bidder provides a copy of its bid with proprietary and confidential information redacted and OHCA appropriately supplies the redacted bid to another party under the Oklahoma Open Records Act or other statutory or regulatory requirements, the bidder agrees to indemnify OHCA and to defend the bidder's interest in protecting the referenced redacted material.

(e) OHCA does not consider as confidential a bid marked in total as proprietary and/or confidential (versus specific documents or portions of documents within a bid). Likewise, unless specifically referenced otherwise in a solicitation, resumes, pricing, marketing materials, business references, additional terms proposed by a bidder, and subcontractor information are not confidential and are not exempt from disclosure under the Oklahoma Open Records Act. The foregoing list is not exhaustive but is intended to address information often marked confidential that is not exempt from disclosure.

(f) Subject to the provisions of subsections (a)-(e) above, bids will be open for public inspection following contract award.

### **317:10-1-26. Withdrawal from solicitation**

(a) At any time prior to the submission deadline of any solicitation, a bidder may withdraw a bid and remove itself from consideration by providing written notification, in the form specified in OAC 260:115-3-13, to the OHCA sole point of contact as identified in the solicitation. OHCA does not permit a bidder to withdraw a bid after the response due date and time except as authorized by the OHCA CEO after the bidder provides sufficient proof that the bidder included a significant error in the bid.

(b) Unless properly withdrawn, the submitted bid is deemed to be a binding offer on the part of the bidder.

### **317:10-1-27. Binding bids**

OHCA considers all bids to be firm representations that the responding bidder has carefully investigated and will comply with all OHCA and State terms and conditions relating to the solicitation. A bidder whose bid is accepted for evaluation will be bound by the terms of the solicitation and the contents of the bid for the duration of the solicitation. The bidder will be bound by the terms in its solicitation response unless or until OHCA instructs the bidder to perform any function reflected in the solicitation response in a modified way to the extent it does not substantially alter the specifications or statement of work as defined in the solicitation. Bidders awarded a contract will be governed foremost by applicable law, then by the terms of the solicitation, including any associated model contract, then by any non-rule policy documents created by OHCA for the purposes of interpreting and implementing contract terms.

### **317:10-1-28. Contracting officer's actions**

(a) The contracting officer may reject a bid for any valid reason, including but not limited to those listed at OAC 260:115-7-32(8) and the bidder's:

(1) Failure to submit required information;

(2) Failure to submit the bid by the response date and time unless OHCA has authorized acceptance of bids due to a significant error or incident that occurred which affected the receipt of a bid, per OAC 260:115-3-11;

(3) Failure to comply with bidder instructions or solicitation requirements;

(4) Failure to meet any mandatory specification of the solicitation; however, failure to meet a permissible specification of the solicitation will not be a valid reason to reject a bid;

(5) Failure to submit the bid by the strict deadline as described by date and time within the solicitation; and

(6) Attempted or actual inclusion or imposition of terms or conditions that would modify the requirements of the solicitation, require OHCA to indemnify the bidder or a third party, or limit the bidder's liability.

(b) The contracting officer may take any reasonable action with regard to a solicitation, including but not limited to:

(1) Waiving minor irregularities in any bid if determined to be in the best interest of the State. If granted, a waiver will in no way modify the requirements of the solicitation or the obligations of bidders awarded contracts;

(2) Awarding a contract based on a solicitation and the bid of any selected bidder;

(3) Awarding the contract to more than one (1) bidder;

(4) Rejecting any or all bids received, if deemed to be in the best interest of the State;

(5) Requesting clarification or correction of any bid;

(6) Amending any solicitation or any segment of any solicitation;

(7) Canceling any solicitation, if determined to be in the best interest of the State; or

(8) Discontinuing the solicitation process at any time prior to contract award.

(c) The contracting officer may question the grade and quality of any acquisition delivered to the agency.

- (1) The contracting officer or delegate has sole discretion in determining whether the acquisition meets the grade and quality specified in the contract.
- (2) If the acquisition fails to meet the contract-specified grade and/or quality, OHCA may take remedial action with the appropriate supplier. Refer to 74 O.S. § 85.6.

**317:10-1-29. Deficiencies**

In accordance with the OAC 260:115-7-32(10), OHCA has the right but is not required to waive minor deficiencies or informalities if OHCA determines the deficiencies or informalities do not prejudice another bidder. OHCA may also permit bidders to cure certain non-substantive deficiencies if there is sufficient time prior to the award of the contract.

**317:10-1-30. Submission of questions**

- (a) A bidder may submit written questions by email only to the OHCA sole point of contact as designated in the solicitation and using the "Questions" form, in original format, included in the Bidder's Library.
- (b) OHCA will provide written answers to all technical bid and price questions received on or before the dates specified in the solicitation for questions and answers. Answers will be made publicly available in the form of one or more solicitation amendments posted to the Bidder's Library. Only posted answers will be considered official and valid. A bidder will not rely upon, take any action upon, or make any decision based upon any verbal communication with any State employee.

**317:10-1-31. Bidder's conference**

OHCA may hold a bidder's conference at OHCA offices or virtually on the date and time specified in the solicitation. Additional information about the bidder's conference, if any, will be provided in advance of the session.

**317:10-1-32. Bid evaluation**

A responsive bid that is not otherwise rejected will proceed to bid evaluation, which will be conducted in accordance with the solicitation. Within any solicitation, the bid specifications for evaluation will be provided and will be based on the subject matter of the solicitation, the type of solicitation, and the needs to be met by the supplier(s) awarded a contract from the solicitation.

- (1) The bid evaluation may consist of one (1) or more evaluative activities, including but not limited to:
  - (A) Best price review;
  - (B) Best value review;
  - (C) Certifications;
  - (D) Administrative review;
  - (E) Technical proposal evaluation;
  - (F) Oral presentation evaluation; and
  - (G) Any other activity that could reasonably be expected to result in determining the value, nature, character, or quality of the bid.
- (2) Bids responding to request for quotation will be evaluated solely on a "best price" basis.

- (3) Bids responding to request for proposal will be evaluated on a "best value" basis unless the request for proposal specifies otherwise.
- (4) A bidder's past performance may be considered when evaluating a bid.
- (5) No evaluator acting in their role as an evaluator will make any decision regarding procurement, including but not limited to which, if any, bidder(s) will or will not be awarded the contract, whether a bid will or will not be rejected, and whether a solicitation will be continued or canceled. Evaluators, individually or collectively, may provide bid evaluation information and recommendations to the contracting official. A record of evaluators' numeric scores of bids, made by evaluators individually or collectively, will be maintained as part of the acquisition file.
- (6) The contracting official will make all decisions regarding the procurement, including but not limited to which, if any, bidder(s) will or will not be awarded the contract, whether a bid will or will not be rejected, and whether a solicitation will be continued or canceled.

**317:10-1-33. Contract award**

- (a) **Time of award.** OHCA will not award a contract at the time of a bid opening but, if at all, only upon completion of the following:
  - (1) Bid evaluation;
  - (2) Documentation of evaluation on each bid;
  - (3) Determination of the lowest and best or best value bidder;
  - (4) Verification of Oklahoma and federal debarment status;
  - (5) Verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and maintains appropriate franchise tax payment status pursuant to 68 O.S. §§ 1203 and 1204; and
  - (6) Completion of any award-related administrative tasks.
- (b) **Award by item.** If the procurement documents do not specify an all or none bid, more than one (1) bidder may be awarded a contract by item or groups of items.
- (c) **No contract award.** OHCA may refrain from awarding a contract during any solicitation when:
  - (1) No bid meets the requirements of the solicitation;
  - (2) All bids exceed fair market value for the acquisition;
  - (3) The bid price exceeds available funds available to OHCA;
  - (4) OHCA no longer requires the acquisition in the form or manner specified; or
  - (5) Not awarding the contract is determined to be in the best interest of the state.
- (d) **Evaluation tie.** Whenever it is determined that two (2) or more bids are equal, the contracting officer will determine the successful bid by a coin toss.

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(e) Notification of successful bidder. OHCA will notify the successful bidder(s), if any, within a reasonable time after determination of the contract award.

[OAR Docket #22-410; filed 6-23-22]

## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 25. SOONERCARE CHOICE

[OAR Docket #22-412]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 7. Soonercare

Part 1. General Provisions

317:25-7-7 [AMENDED]

(Reference APA WF # 21-45)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revisions will update referrals for specialty services within the SoonerCare Choice program. The changes will outline how retrospective administrative referral requests are made and the information that must be provided for the OHCA to process the request. These changes are necessary to align policy with current business practices.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 7. SOONERCARE

### PART 1. GENERAL PROVISIONS

### 317:25-7-7. Referrals for specialty services

(a) PCPs Primary care physicians (PCPs) are required to assure the delivery of medically necessary preventive and primary care medical services, including securing referrals for specialty services. Some services, as defined in ~~OAC~~ Oklahoma Administrative Code (OAC) 317:25-7-2(c) and OAC 317:25-7-10(b), do not require a referral from the PCP. A PCP referral does not guarantee payment, as all services authorized by the PCP must be in the scope of coverage of the SoonerCare Choice program to be considered compensable.

(b) Pursuant to OAC 317:30-3-1(f), SoonerCare Choice referrals must always be made on the basis of medical necessity. Referrals from the PCP are required prior to receiving the referred service, except for retrospective referrals as deemed appropriate by the PCP.

(c) The PCP and specialty provider are responsible for maintaining appropriate documentation of each referral to support the claims for medically necessary services.

(d) As approved and deemed appropriate, the ~~OHCA~~ Oklahoma Health Care Authority (OHCA) may provide administrative referrals for specialty services. Administrative referrals are only provided by the OHCA under special and extenuating circumstances. Administrative referrals should not be requested as a standard business practice. The OHCA will not process retrospective administrative referrals, unless one (1) of the following exceptions applies:

(1) ~~the~~ The specialty services are referred from an IHS, tribal, or urban Indian clinic;

(2) ~~the~~ The specialty services are referred as the result of an emergency room visit or emergency room follow-up visit; or

~~(3) the specialty services are referred for pre-operative facility services prior to a dental procedure; or~~

~~(4) the retrospective administrative referral request for specialty services is requested from the OHCA within 30 calendar days of the specialty care date of service. If the retrospective administrative referral is requested within the 30 calendar days, the request must include appropriate documentation for the OHCA to approve the request. Appropriate documentation must include:~~

~~(A) proof that the specialist has attempted to collect a PCP referral from the member's assigned PCP; and~~

~~(B) medical documentation to substantiate that the specialty services are medically necessary pursuant to OAC 317:30-3-1(f).~~

(3) The retrospective administrative referral request for specialty services is requested from the OHCA within thirty (30) calendar days of the specialty care date of service.

(A) The referral is requested for urgent/emergent care, including but not limited to, outpatient surgeries, fracture care, and other procedures that require immediate attention.

(B) Annual, routine, and long-term follow up appointments will not be considered for retrospective services. These type of appointment referrals will



need to be secured prior to the scheduling of the appointment.

(C) If the retrospective administrative referral is requested within the thirty (30) calendar days, the request must include appropriate documentation for the OHCA to approve the request. Appropriate documentation must include:

(i) Proof that the specialist has attempted to collect a PCP referral from the member's assigned PCP. Documentation should note who the requesting provider communicated with or a copy of the fax verification that was sent to the PCP along with the denial reason; and

(ii) Medical documentation to substantiate that the specialty services are medically necessary pursuant to OAC 317:30-3-1(f).

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

[OAR Docket #22-412; filed 6-23-22]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY  
CHAPTER 25. SOONERCARE CHOICE**

[OAR Docket #22-411]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 7. SoonerCare  
Part 3. Enrollment Criteria  
317:25-7-12 [AMENDED]  
(Reference APA WF # 21-14)

**AUTHORITY:**  
The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 1115 Waiver; and 42 C.F.R. Section 435.119

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

November 23, 2021

**COMMENT PERIOD:**  
December 15, 2021 through January 18, 2022

**PUBLIC HEARING:**  
January 18, 2022

**ADOPTION:**  
March 30, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
**Superseded rules:**

Subchapter 7. SoonerCare  
Part 3. Enrollment Criteria  
317:25-7-12 [AMENDED]

**Gubernatorial approval:**  
September 7, 2021

**Register publication:**  
39 Ok Reg 31

**Docket number:**  
21-724  
(Reference APA WF # 21-14)

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed revisions will add the newly eligible adults, individuals who are nineteen (19) or older and under age sixty-five (65) who meet eligibility criteria set by 42 Code of Federal Regulations Section 435.119, as a covered group under the existing 1115 waiver in order to allow services to be provided by the patient centered medical home (PCMH) service delivery model.

**CONTACT PERSON:**  
Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 7. SOONERCARE**

**PART 3. ENROLLMENT CRITERIA**

**317:25-7-12. Enrollment/eligibility requirements**

(a) Eligible SoonerCare members mandatorily enrolled in SoonerCare Choice include persons categorically related to ~~AFDC, pregnancy related services and Aged, Blind or Disabled; pregnancy-related services; expansion adult; and aged, blind or disabled~~ who are not dually-eligible for SoonerCare and Medicare.

(b) Children in foster care may voluntarily enroll into SoonerCare Choice.

[OAR Docket #22-411; filed 6-23-22]

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

[OAR Docket #22-433]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. General Provisions  
317:30-1-1 [AMENDED]  
317:30-1-3 [REVOKED]  
Subchapter 5. Individual Providers and Specialties  
Part 3. Hospitals  
317:30-5-40.2 [REVOKED]  
Part 27. Independent Physical Therapists and Physical Therapist Assistants  
317:30-5-291 [AMENDED]  
317:30-5-291.1 [REVOKED]  
317:30-5-291.2 [REVOKED]  
Part 28. Occupational Therapists and Occupational Therapy Assistants  
317:30-5-296 [AMENDED]

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317:30-5-297 [REVOKED]  
317:30-5-298 [REVOKED]  
Part 73. Early Intervention Services  
317:30-5-640.1 [AMENDED]  
317:30-5-641.1 [REVOKED]  
Part 77. Speech-Language Pathologists, Speech-Language Pathology Assistants, Clinical Fellows and Audiologists  
317:30-5-676 [AMENDED]  
317:30-5-677 [REVOKED]  
317:30-5-678 [REVOKED]  
Part 103. Qualified Schools as Providers of Health-Related Services  
317:30-5-1023 [AMENDED]  
**(Reference APA WF # 21-41B)**

## **AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Oklahoma Executive Order 2020-03

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

December 30, 2021

## **COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

## **PUBLIC HEARING:**

March 8, 2022

## **ADOPTION:**

March 30, 2022

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

March 30, 2022

## **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 12, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

n/a

## **INCORPORATIONS BY REFERENCE:**

n/a

## **GIST/ANALYSIS:**

The proposed rule changes will amend language to remove obsolete references. Additional revisions will combine sections of policy to remove the overabundant number of sections that are currently in Title 317.

## **CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **317:30-1-1. Purpose; use of manuals**

~~The purpose of this Chapter is to detail rules applicable to providers of medical services purchased by the Oklahoma Health Care Authority. Subchapters one, three and seven are applicable to all medical providers, while Subchapter five consists of rules unique to a specific type of provider, services or specialty. As a convenience to providers, the Authority compiles applicable Subchapters and Sections into manuals which are available to providers at no cost.~~

(a) The purpose of this Chapter is to detail rules applicable to providers of medical services purchased by the Oklahoma Health Care Authority (OHCA).

(b) This Chapter contains basic information concerning the SoonerCare Program. It is intended for use by all providers of medical and health related services participating in the program. Subchapters one, three and seven are applicable to all medical providers, while Subchapter five consists of rules unique to a specific type of provider, services, or specialty.

(1) The Chapter contains Sections dealing with provider policies, coverage of medical and health services, and other general program policies and procedures applicable to all providers.

(2) Providers and their office staff are urged to familiarize themselves with the contents of this Chapter and to refer to it when questions arise. Use of the Chapter will reduce misunderstandings concerning the coverage and reimbursement of SoonerCare services and the Agency's expectations of providers. As users of the rules in this Chapter, OHCA also solicits suggestions and comments from providers.

(c) As a convenience to providers, the Authority compiles applicable Subchapters and Sections into policy documents which are available to providers at no cost.

### **317:30-1-3. Description of rules [REVOKED]**

~~How to use this Chapter. This Chapter contains basic information concerning the SoonerCare Program. It is intended for use by all providers of medical and health related services participating in the program. Subchapters one, three and seven are applicable to all medical providers, while Subchapter five consists of rules unique to a specific type of provider, services or specialty.~~

(1) ~~The Chapter contains Sections dealing with provider policies, coverage of medical and health services, and other general program policies and procedures applicable to all providers.~~

(2) ~~Providers and their office staff are urged to familiarize themselves with the contents of this Chapter and to refer to it when questions arise. Use of the Chapter will reduce misunderstandings concerning the coverage and reimbursement of SoonerCare services and the Agency's expectations of providers. As users of the rules in this Chapter, OHCA also solicits suggestions and comments from providers.~~

## **SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

### **PART 3. HOSPITALS**

### **317:30-5-40.2. Definitions [REVOKED]**

~~The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise.~~

~~"CMS" means the Center for Medicare and Medicaid Services~~

~~"Diagnosis Related Group" means a patient classification system that relates types of patients treated to the resources they consume.~~

**PART 27. INDEPENDENT PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS**

**317:30-5-291. Coverage by category; payment rates and procedure codes**

(a) Coverage. Payment is made for registered physical therapists as set forth in this Section.

(1) **Children.** Initial therapy evaluations do not require prior authorization and must be provided by a fully licensed physical therapist. All therapy services following the initial evaluation must be prior authorized for continuation of service. Prior to the initial evaluation, the therapist must have on file a signed and dated prescription or referral for the therapy services from the member's physician or other licensed practitioner of the healing arts. The prescribing or referring provider must be able to provide, if requested, clinical documentation from the member's medical record that supports the medical necessity for the evaluation and referral.

(2) **Adults.** There is no coverage for adults for services rendered by individually contracted providers. Coverage for adults is permitted in an outpatient hospital setting as described in Oklahoma Administrative Code (OAC) 317:30-5-42.1.

(3) **Individuals eligible for Part B of Medicare.** Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

(b) Payment rates. All physical therapy services are reimbursed per the methodology described in the Oklahoma Medicaid State Plan.

(c) Procedure codes. The appropriate procedure codes used for billing physical therapy services are found in the Physicians' Current Procedural Terminology (CPT) Coding Manual.

**317:30-5-291.1. Payment rates [REVOKED]**

~~All physical therapy services are reimbursed per the methodology described in the Oklahoma Medicaid State Plan.~~

**317:30-5-291.2. Procedure codes [REVOKED]**

~~The appropriate procedure codes used for billing physical therapy services are found in the Physicians' Current Procedural Terminology (CPT) Coding Manual.~~

**PART 28. OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS**

**317:30-5-296. Coverage by category; payment rates and procedure codes**

(a) Coverage. Payment is made for occupational therapy services as set forth in this Section.

(1) **Children.** Initial therapy evaluations do not require prior authorization and must be provided by a fully licensed occupational therapist. All therapy services following the initial evaluation must be prior authorized for continuation of service. Prior to the initial evaluation, the therapist must have on file a signed and dated prescription or referral for the therapy services from the member's physician or other licensed practitioner of the healing arts. The prescribing or referring provider must be able to provide, if requested, clinical documentation from the member's medical record that supports the medical necessity for the evaluation and referral.

(2) **Adults.** There is no coverage for adults for services rendered by individually contracted providers. Coverage for adults is permitted in an outpatient hospital setting as described in Oklahoma Administrative Code (OAC) 317:30-5-42.1.

(3) **Individuals eligible for Part B of Medicare.** Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

(b) Payment rates. All occupational therapy services are reimbursed per the methodology described in the Oklahoma Medicaid State Plan.

(c) Procedure codes. The appropriate procedure codes used for billing occupational therapy services are found in the Physicians' Current Procedural Terminology (CPT) Coding Manual.

**317:30-5-297. Payment rates [REVOKED]**

~~All occupational therapy services are reimbursed per the methodology described in the Oklahoma Medicaid State Plan.~~

**317:30-5-298. Procedure codes [REVOKED]**

~~The appropriate procedure codes used for billing occupational therapy services are found in the Physicians' Current Procedural Terminology (CPT) Coding Manual.~~

**PART 73. EARLY INTERVENTION SERVICES**

**317:30-5-640.1. Periodicity schedule**

(a) The Oklahoma Health Care Authority requires that all physicians providing reimbursable Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment (EPSDT) screens adopt and utilize the American Academy of Pediatrics and Bright Futures periodicity schedule.

(b) Medicaid-eligible children and adolescents enrolled in SoonerCare are referred to their SoonerCare provider for EPSDT screens. In cases where the SoonerCare provider authorizes the qualified provider of health related services to perform the screen or fails to schedule an appointment within three (3) weeks and a request has been made and documented by the staff of the Oklahoma State Department of Education

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and Oklahoma State Department of Health (OSDH), or the latter's contractors, the OSDH may then furnish the EPSDT child-health screening and bill it as a fee-for-service (FFS) activity. Results of the child-health screening are forwarded to the member's SoonerCare provider.

(c) For periodic and interperiodic screening examination, please refer to Oklahoma Administrative Code 317:30-3-65 through 317:30-3-65.12.

### **317:30-5-641.1. Periodic and interperiodic screening examination [REVOKED]**

~~Refer to Oklahoma Administrative Code 317:30-3-65 through 317:30-3-65.12.~~

## **PART 77. SPEECH-LANGUAGE PATHOLOGISTS, SPEECH-LANGUAGE PATHOLOGY ASSISTANTS, CLINICAL FELLOWS AND AUDIOLOGISTS**

### **317:30-5-676. Coverage by category; payment rates and procedure codes**

(a) **Coverage.** Payment is made for speech and hearing services as set forth in this Section.

(1) **Children.** Coverage for children is as follows:

(A) **Preauthorization required.** All therapy services, including the initial evaluation, must be prior authorized. Prior to the initial evaluation, the therapist must have on file a signed and dated prescription or referral for the therapy services from the member's physician or other licensed practitioner of the healing arts. The prescribing or referring provider must be able to provide, if requested, clinical documentation from the member's medical record that supports the medical necessity for the evaluation and referral.

(B) **Speech-language pathology services.**

(i) Speech-language pathology services may include speech-language evaluations, individual and group therapy services provided by a fully licensed and certified speech-language pathologist, a licensed speech-language pathology clinical fellow, and services within the scope of practice of a speech-language pathology assistant as directed by the supervising speech-language pathologist, as listed in Oklahoma Administrative Code (OAC) 317:30-5-675 (a) through (c).

(ii) Initial evaluations must be prior authorized and provided by a fully licensed speech-language pathologist.

(C) **Hearing aids.** Hearing and hearing aid evaluations include pure tone air, bone and speech audiometry by a state licensed audiologist. Payment is made for a hearing aid following a recommendation by a ~~Medical or Osteopathic~~ medical or osteopathic physician and a hearing aid evaluation by a state licensed audiologist.

(2) **Adults.** There is no coverage for adults for services rendered by individually contracted providers. Coverage

for adults is permitted in an outpatient hospital setting as described in OAC 317:30-5-42.1.

(3) **Individuals eligible for Part B of Medicare.** Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

(b) **Payment rates.** All speech-language pathology and hearing services are reimbursed per the methodology described in the Oklahoma Medicaid State Plan.

(c) **Procedure codes.** The appropriate procedure codes used for billing speech and hearing services are found in the Physicians' Current Procedural Terminology (CPT) Coding Manual.

### **317:30-5-677. Payment rates [REVOKED]**

~~All speech language pathology and hearing services are reimbursed per the methodology described in the Oklahoma Medicaid State Plan.~~

### **317:30-5-678. Procedure codes [REVOKED]**

~~The appropriate procedure codes used for billing speech and hearing services are found in the Physicians' Current Procedural Terminology (CPT) Coding Manual.~~

## **PART 103. QUALIFIED SCHOOLS AS PROVIDERS OF HEALTH-RELATED SERVICES**

### **317:30-5-1023. Coverage by category**

(a) **Adults.** There is no coverage for services rendered to adults twenty-one (21) years of age and older.

(b) **Children.** For non-Individualized Education Program (IEP) medical services that can be provided in a school setting, refer to Part 4, ~~Early and Periodic Screening, Diagnostic and Treatment program~~ Early And Periodic Screening, Diagnostic and Treatment (EPSDT) Program/Child-Health Services, of Oklahoma Administrative Code (OAC) at 317:30-3-65 through ~~317:30-3-63.12~~ 317:30-3-65.12. Payment is made for the following compensable services rendered by qualified school providers:

(1) **Diagnostic encounters.** Diagnostic encounters are defined as those services necessary to fully evaluate defects, physical or behavioral health illnesses, or conditions discovered by the screening. Approved diagnostic encounters may include the following:

(A) **Hearing and hearing aid evaluation.** Hearing evaluation includes pure tone air, bone, and speech audiometry. Hearing evaluations must be provided by a state-licensed audiologist as listed in OAC 317:30-5-675 (d) (1) and (2).

(B) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state-licensed audiologist as listed in OAC 317:30-5-675 (d) (1) and (2).

(C) **Ear impression (for earmold).** Ear impression (for earmold) includes taking an impression of

a member's ear and providing a finished earmold, to be used with the member's hearing aid as provided by a state-licensed audiologist as listed in OAC 317:30-5-675 (d) (1) and (2).

(D) **Vision screening.** Vision screening in schools includes application of tests and examinations to identify visual defects or vision disorders. The vision screening may be performed by a ~~Registered Nurse~~ registered nurse (RN) or ~~Licensed Practical Nurse~~ licensed practical nurse (LPN) under the supervision of an RN. The service can be billed when a SoonerCare member has an individualized documented concern that warrants a screening. A vision examination must be provided by a state-licensed ~~Doctor of Optometry~~ doctor of optometry (O.D.) or licensed physician specializing in ophthalmology (M.D. or D.O.). This vision examination, at a minimum, includes diagnosis and treatment for defects in vision.

(E) **Speech-language evaluation.** Speech-language evaluation is for the purpose of identification of children or adolescents with speech or language disorders and the diagnosis and appraisal of specific speech and language services. Speech-language evaluations must be provided by a fully licensed speech-language pathologist as listed in OAC 317:30-5-675 (a) (1) through (3).

(F) **Physical therapy evaluation.** Physical therapy evaluation includes evaluating the student's ability to move throughout the school and to participate in classroom activities and the identification of movement dysfunction and related functional problems. It must be provided by a fully licensed physical therapist as listed in OAC 317:30-5-290.1 (a) (1) and (2). Physical therapy evaluations must adhere to guidelines found at OAC 317:30-5-291.

(G) **Occupational therapy evaluation.** Occupational therapy evaluation services include determining what therapeutic services, assistive technology, and environmental modifications a student requires for participation in the special education program and must be provided by a fully licensed occupational therapist as listed in OAC 317:30-5-295 (a) (1) and (2). Occupational therapy evaluations must adhere to guidelines found at OAC 317:30-5-296.

(H) **Evaluation and testing.** Evaluation and testing by psychologists and certified school psychologists are for the purpose of assessing emotional, behavioral, cognitive, or developmental issues that are affecting academic performance and for determining recommended treatment protocol. Evaluation or testing for the sole purpose of academic placement (e.g., diagnosis of learning disorders) is not a compensable service. These evaluations and tests must be provided by a state-licensed, board-certified psychologist or a certified school psychologist certified by the State Department of Education (SDE).

(2) **Child-guidance treatment encounter.** A child-guidance treatment encounter may occur through the provision of individual, family, or group treatment services to children and adolescents who are identified as having specific disorders or delays in development, emotional or behavioral problems, or disorders of speech, language, or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan, or as a result of an IEP and may include the following:

(A) **Hearing and vision services.** Hearing and vision services may include provision of habilitation activities, such as: auditory training; aural and visual habilitation training including Braille, and communication management; orientation and mobility; and counseling for vision and hearing losses and disorders. Services must be provided by or under the direct guidance of one (1) of the following individuals practicing within the scope of his or her practice under state law:

- (i) State-licensed audiologist as listed in OAC 317:30-5-675 (d) (1) and (2).
- (ii) Fully licensed, speech-language pathologist as listed in OAC 317:30-5-675 (a) (1) through (3).
- (iii) Certified orientation and mobility specialists.

(B) **Speech-language therapy services.** Speech-language therapy services include provisions of speech and language services for the habilitation or prevention of communicative disorders. Speech-language therapy services must be provided by or under the direct guidance and supervision of a fully licensed speech-language pathologist within the scope of his or her practice under state law as listed in OAC 317:30-5-675 (a) (1) through (3).

(C) **Physical therapy services.** Physical therapy services are provided for the purpose of preventing or alleviating movement dysfunction and related functional problems that adversely affect the member's education. Physical therapy services must adhere to guidelines found at OAC 317:30-5-291 and must be provided by or under the direct guidance and supervision of a fully licensed physical therapist; services may also be provided by a licensed physical therapy assistant who has been authorized by the Board of Examiners working under the supervision of a fully licensed physical therapist.

(D) **Occupational therapy services.** Occupational therapy may include provision of services to improve, develop, or restore impaired ability to function independently. Occupational therapy services must be provided by or under the direct guidance and supervision of a fully licensed occupational therapist; services may also be provided by a licensed occupational therapy assistant who has been authorized by the Board of Examiners, working under the supervision of a licensed occupational therapist.

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(E) **Nursing services.** Nursing services may include provision of services to protect the health status of children and adolescents, correct health problems and assist in removing or modifying health-related barriers, and must be provided by a RN or LPN under supervision of a RN. Services include medically necessary procedures rendered at the school site, such as catheterization, suctioning, tube feeding, and administration and monitoring of medication.

(F) **Counseling services.** All services must be for the direct benefit of the member. Counseling services must be provided by a state-licensed social worker, a state-licensed professional counselor, a state-licensed psychologist or SDE-certified school psychologist, a state-licensed marriage and family therapist, or a state-licensed behavioral health practitioner, or under Board supervision to be licensed in one (1) of the above-stated areas.

(G) **Assistive technology.** Assistive technology is the provision of services that help to select a device and assist a student with disability(ies) to use an assistive technology device, including coordination with other therapies and training of member and caregiver. Services must be provided by a:

- (i) Fully licensed speech-language pathologist as listed in OAC 317:30-5-675 (a) (1) through (3);
- (ii) Fully licensed physical therapist as listed in OAC 317:30-5-290.1 (a) (1) and (2); or
- (iii) Fully licensed occupational therapist as listed in OAC 317:30-5-295 (a) (1) and (2).

(H) **Personal care.** Provision of personal care services (PCS) allow students with disabilities to safely attend school. Services include, but are not limited to: dressing, eating, bathing, assistance with transferring and toileting, positioning, and instrumental activities of daily living such as preparing meals and managing medications. PCS also includes assistance while riding a school bus to handle medical or physical emergencies. Services must be provided by registered paraprofessionals that have completed training approved or provided by SDE, or personal care assistants, including LPNs, who have completed on-the-job training specific to their duties. PCS does not include behavioral monitoring. Paraprofessionals are not allowed to administer medication, nor are they allowed to assist with or provide therapy services to SoonerCare members. Tube feeding of any type may only be reimbursed if provided by a RN or LPN. Catheter insertion and ~~Catheter/Ostomy~~catheter/ostomy care may only be reimbursed when done by a RN or LPN. All PCS must be prior authorized.

(I) **Therapeutic behavioral services (TBS).** Services are goal-directed activities for each client to restore, retain and improve the self-help, socialization, communication, and adaptive skills necessary to reside successfully in home and community-based

settings. It also includes problem identification and goal setting, medication support, restoring function, and providing support and redirection when needed. TBS activities are behavioral interventions to complement more intensive behavioral health services and may include the following components: basic living and self-help skills; social skills; communication skills; organization and time management; and transitional living skills. This service must be provided by a behavioral health school aide (BHSA) who has a high school diploma or equivalent and has successfully completed training approved by the SDE, and in collaboration with the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), along with corresponding continuing education. BHSA must be supervised by a bachelor's level individual with a special education certification. BHSA must have ~~CPR~~Cardiopulmonary resuscitation (CPR) and ~~First Aid~~first aid certification. Six (6) additional hours of related continuing education are required per year.

(c) **Members eligible for Part B of Medicare.** EPSDT school health-related services provided to Medicare eligible members are billed directly to the fiscal agent.

[OAR Docket #22-433; filed 6-23-22]

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

[OAR Docket #22-416]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 1. General Provisions  
317:30-1-4 [AMENDED]  
Subchapter 3. General Provider Policies  
Part 1. General Scope and Administration  
317:30-3-1 [AMENDED]  
Part 3. General Medical Program Information  
317:30-3-40 [AMENDED]  
317:30-3-57 [AMENDED]  
317:30-3-59 [AMENDED]  
Subchapter 5. Individual Providers and Specialties  
Part 3. Hospitals  
317:30-5-42.16 [AMENDED]  
317:30-5-42.17 [AMENDED]  
Part 17. Medical Suppliers  
317:30-5-210 [AMENDED]  
317:30-5-210.1 [AMENDED]  
317:30-5-210.2 [AMENDED]  
317:30-5-211.1 [AMENDED]  
317:30-5-211.2 [AMENDED]  
317:30-5-211.3 [AMENDED]  
317:30-5-211.5 [AMENDED]  
317:30-5-211.6 [AMENDED]  
317:30-5-211.9 [REVOKED]  
317:30-5-211.10 [AMENDED]  
317:30-5-211.12 [AMENDED]  
317:30-5-211.13 [AMENDED]  
317:30-5-211.14 [AMENDED]

317:30-5-211.15 [AMENDED]  
 317:30-5-211.16 [AMENDED]  
 317:30-5-211.17 [AMENDED]  
 317:30-5-211.20 [NEW]  
 317:30-5-211.21 [NEW]  
 317:30-5-211.22 [NEW]  
 317:30-5-211.23 [NEW]  
 317:30-5-211.24 [NEW]  
 317:30-5-211.25 [NEW]  
 317:30-5-211.26 [NEW]  
 317:30-5-211.27 [NEW]  
 317:30-5-211.28 [NEW]  
 317:30-5-216 [REVOKED]  
 317:30-5-218 [AMENDED]  
 Part 61. Home Health Agencies  
 317:30-5-545 [AMENDED]  
 317:30-5-546 [AMENDED]  
 317:30-5-547 [AMENDED]  
 317:30-5-548 [AMENDED]  
 317:30-5-549 [REVOKED]

**(Reference APA WF # 21-05A)**

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Section 435.119, Title 42 of the Code of Federal Regulations; Section 6407 of the Affordable Care Act; Section 504 of the Medicare Access and CHIP Reauthorization Act of 2015; CMS-2348-F Final Rule; Public Law 114-10; 42 Code of Federal Regulations (C.F.R.) Section 440.70; and 42 C.F.R. Section 440.120

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 1. General Provisions  
 317:30-1-4 [AMENDED]  
 Subchapter 3. General Provider Policies  
 Part 1. General Scope and Administration  
 317:30-3-1 [AMENDED]  
 Part 3. General Medical Program Information  
 317:30-3-40 [AMENDED]  
 317:30-3-57 [AMENDED]  
 317:30-3-59 [AMENDED]  
 Subchapter 5. Individual Providers and Specialties  
 Part 3. Hospitals  
 317:30-5-42.16 [AMENDED]  
 317:30-5-42.17 [AMENDED]  
 Part 9. Long-Term Care Facilities  
 317:30-5-133.1 [AMENDED]  
 317:30-5-133.2 [REVOKED]  
 Part 17. Medical Suppliers  
 317:30-5-210 [AMENDED]  
 317:30-5-210.1 [AMENDED]  
 317:30-5-210.2 [AMENDED]  
 317:30-5-211.1 [AMENDED]  
 317:30-5-211.2 [AMENDED]  
 317:30-5-211.3 [AMENDED]  
 317:30-5-211.5 [AMENDED]  
 317:30-5-211.6 [AMENDED]

317:30-5-211.9 [REVOKED]  
 317:30-5-211.10 [AMENDED]  
 317:30-5-211.12 [AMENDED]  
 317:30-5-211.13 [AMENDED]  
 317:30-5-211.14 [AMENDED]  
 317:30-5-211.15 [AMENDED]  
 317:30-5-211.16 [AMENDED]  
 317:30-5-211.17 [AMENDED]  
 317:30-5-211.20 [NEW]  
 317:30-5-211.21 [NEW]  
 317:30-5-211.22 [NEW]  
 317:30-5-211.23 [NEW]  
 317:30-5-211.24 [NEW]  
 317:30-5-211.25 [NEW]  
 317:30-5-211.26 [NEW]  
 317:30-5-211.27 [NEW]  
 317:30-5-211.28 [NEW]  
 317:30-5-216 [REVOKED]  
 317:30-5-218 [AMENDED]  
 Part 35. Rural Health Clinics  
 317:30-5-356 [AMENDED]  
 Part 61. Home Health Agencies  
 317:30-5-545 [AMENDED]  
 317:30-5-546 [AMENDED]  
 317:30-5-547 [AMENDED]  
 317:30-5-548 [AMENDED]  
 317:30-5-549 [REVOKED]  
 Part 75. Federally Qualified Health Centers  
 317:30-5-664.5 [AMENDED]

**Gubernatorial approval:**

December 21, 2021

**Register publication:**

39 Ok Reg 394

**Docket number:**

21-965

**(Reference APA WF # 21-05A)**

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule changes will expand Medicaid eligibility for individuals defined by 42 Code of Federal Regulations § 435.119 who are age nineteen (19) or older and under sixty-five (65), at or below 133 percent of the federal poverty level (FPL), and who are not categorically related to the aged, blind, or disabled. Additional revisions are needed to comply with the Home Health final rule in which the durable medical equipment and supplies benefit was revised from an optional benefit to a mandatory benefit and was made subject to the scope of the home health benefit. Prosthetics and orthotics are under a separate regulation and remain an optional benefit.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**317:30-1-4. Definitions**

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

"**Adult**" means an individual twenty-one (21) years of age or older, unless otherwise specified by statute, regulation,

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and/or policy adopted by the Oklahoma Health Care Authority (OHCA). For eligibility criteria policy for children and adults, please refer to Oklahoma Administrative Code (OAC) 317:35-5-2.

"Alien" means an individual who does not have United States citizenship and is not a United States national. It is synonymous with the word "noncitizen".

"CMS" means the Centers for Medicaid and Medicaid Services.

"Child" means an individual under twenty-one (21) years of age, unless otherwise specified by statute, regulation, and/or policy adopted by the OHCA. For eligibility criteria policy for children and adults, please refer to OAC 317:35-5-2.

"Diagnosis Related Group" means a patient classification system that relates types of patients treated to the resources they consume.

"Expansion Adult" means an individual defined by 42 Code of Federal Regulations § 435.119 who is age nineteen (19) or older and under sixty-five (65), at or below 133 percent of the federal poverty level (FPL), and who are not categorically related to the aged, blind, and disabled.

"Habilitation" means health care services that are aimed at helping people gain certain new skills, abilities, knowledge and functioning for daily living.

"Noncitizen" means an individual who does not have United States citizenship and is not a United States national. It is synonymous with the word "alien".

"OKDHS" means the Oklahoma Department of Human Services which is also referenced in rules as Department of Human Services (DHS) and Office of Human Services (OHS).

"Rehabilitation" means health care services that help a person to re-gain skills, abilities or knowledge that may have been lost or compromised as a result of acquiring a disability, or due to a change in one's disability or circumstances.

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 1. GENERAL SCOPE AND ADMINISTRATION

#### 317:30-3-1. Creation and implementation of rules; applicability

(a) Medical rules of the Oklahoma Health Care Authority (OHCA) are set by the ~~Oklahoma Health Care Authority~~ OHCA Board. The rules are based upon the recommendations of the Chief Executive Officer of the Authority, ~~the Deputy Administrator for Health Policy~~ the Deputy State Medicaid Director, ~~the Medicaid Operations~~ State Medicaid Director, OHCA Tribal partners and the ~~Advisory Committee on Medical Care for Public Assistance Recipients~~ OHCA Medical Advisory Committee. The ~~Medicaid Operations~~ State Medicaid Director is responsible for implementing medical policies and programs and directing the Fiscal Agent ~~with regard to~~ regarding proper payment of claims.

(b) Payment to practitioners under Medicaid is made for services clearly identifiable as personally rendered services performed on behalf of a specific ~~patient~~ member. There are no exceptions to personally rendered services unless specifically set out in coverage guidelines.

(c) Payment is made on behalf of Medicaid eligible individuals for services within the scope of the Authority medical programs. Services cannot be paid under Medicaid for ineligible individuals or for services not covered under the scope of medical programs or that do not meet documentation requirements. These claims will be denied, or in some instances upon post-payment review, payment will be recouped.

(d) Payment to practitioners on behalf of Medicaid eligible individuals is made only for services that are medically necessary and essential to the diagnosis and treatment of the patient's presenting problem. ~~Well-patient~~ Wellness examinations and diagnostic testing are not covered for adults unless specifically set out in coverage guidelines.

(e) The scope of the medical program for eligible children is the same as for adults except as further set out under ~~EPSDT~~ Early and Periodic Screening, Diagnostic and Treatment (EPSDT) service guidelines.

(f) Services, provided within the scope of the Oklahoma Medicaid ~~Program~~ program, shall meet medical necessity criteria. Requests by qualified providers for services in and of itself shall not constitute medical necessity. The ~~Oklahoma Health Care Authority~~ OHCA shall serve as the final authority pertaining to all determinations of medical necessity. ~~Some service limits listed within OAC 317:30 can be exceeded for expansion adults, upon meeting medical necessity as determined by OHCA and in alignment with the Oklahoma Medicaid State Plan. Physical therapy, occupational therapy and speech language pathology have hard limits, which are set at forty-five (45) visits for both habilitation and rehabilitation - a cumulative total of 90 visits [fifteen (15) visits of each therapy]. Members must meet medical necessity criteria, prior authorization, and all other documentation requirements.~~ Medical necessity is established through consideration of the following standards:

- (1) Services must be medical in nature and must be consistent with accepted health care practice standards and guidelines for the prevention, diagnosis or treatment of symptoms of illness, disease or disability;
- (2) Documentation submitted in order to request services or substantiate previously provided services must demonstrate through adequate objective medical records and other supporting records, evidence sufficient to justify the ~~client's~~ member's need for the service;
- (3) Treatment of the ~~client's~~ member's condition, disease or injury must be based on reasonable and predictable health outcomes;
- (4) Services must be necessary to alleviate a medical condition and must be required for reasons other than convenience for the member, family, or medical provider;
- (5) Services must be delivered in the most cost-effective manner and most appropriate setting; and
- (6) Services must be appropriate for the ~~client's~~ member's age and health status and developed



for the ~~client~~member to achieve, maintain, or promote functional capacity.

(g) Emergency medical condition means a medical condition including injury manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected, by a reasonable and prudent layperson, to result in placing the patient's health in serious jeopardy, serious impairment to bodily function, or serious dysfunction of any bodily organ or part.

(h) Verbal or written interpretations of policy and procedure in singular instances is made on a ~~case-by-case~~case-by-case basis and shall not be binding on this Agency or override its policy of general applicability.

(i) The rules and policies in this ~~part~~Part apply to all providers of service who participate in the program.

**PART 3. GENERAL MEDICAL PROGRAM INFORMATION**

**317:30-3-40. Home and ~~Community-Based Services Waivers (HCBS)~~community-based services (HCBS) waivers for persons with intellectual disabilities or certain persons with related conditions**

(a) **Introduction to HCBS waivers for persons with intellectual disabilities.** The Medicaid HCBS waiver programs are authorized per Section 1915(c) of the Social Security Act.

(1) The Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDS) operates HCBS waiver programs for persons with intellectual disabilities and certain persons with related conditions. The Oklahoma Health Care Authority (OHCA), ~~is~~the State's Medicaid agency, retains and exercises administrative authority over all HCBS waiver programs.

(2) Each waiver allows for the provision of specific SoonerCare-compensable services that assist members to reside in the community and avoid institutionalization.

(3) HCBS waiver services:

(A) ~~complement~~Complement and supplement services available to members through the Medicaid State Plan or other federal, state, or local public programs, as well as informal supports provided by families and communities;

(B) ~~are~~Are only provided to persons who are Medicaid eligible, outside of a nursing facility, hospital, or institution;

(C) ~~are~~Are not intended to replace other services and supports available to members; and

(D) ~~are~~Are authorized based solely on current need.

(4) HCBS waiver services must be:

(A) ~~appropriate~~Appropriate to the member's needs; and

(B) ~~included~~Included in the member's ~~Individual Plan~~individual plan (IP).

(i) The IP:

(I) ~~is~~Is developed annually by the member's ~~Personal Support Team~~personal support team, per Oklahoma Administrative Code (OAC) 340:100-5-52; and

(II) ~~contains~~Contains detailed descriptions of services provided, documentation of amount and frequency of services, and types of providers to provide services.

(ii) Services are authorized, per OAC 340:100-3-33 and 340:100-3-33.1.

(5) DDS furnishes case management, targeted case management, and services to members as a—Medicaid State Plan services, per Section 1915(g)(1) of the Social Security Act and per OAC 317:30-5-1010 through 317:30-5-1012.

(b) **Eligible providers.** All providers must have entered into contractual agreements with OHCA to provide HCBS for persons with an intellectual disability or related conditions.

(1) All providers, except pharmacy, ~~specialized medical supplies~~ and durable medical equipment (DME) providers must be reviewed by ~~DHS~~OKDHS DDS. The review process verifies that:

(A) ~~the~~The provider meets the licensure, certification or other standards specified in the approved HCBS waiver documents; and

(B) ~~organizations~~Organizations that do not require licensure wanting to provide HCBS services meet program standards, are financially stable and use sound business management practices.

(2) Providers who do not meet program standards in the review process are not approved for a provider agreement.

(3) Provider agreements with providers that fail to meet programmatic or financial requirements may not be renewed.

(c) **Coverage.** All services must be included in the member's IP and arranged by the member's case manager.

**317:30-3-57. General SoonerCare coverage - categorically needy**

The following are general ~~SoonerCare~~SoonerCare ~~coverage~~coverage guidelines for the categorically needy:

(1) ~~Inpatient hospital~~Inpatient hospital services ~~other than those provided in an institution for mental diseases.~~

(A) Adult coverage for ~~inpatient hospital~~inpatient hospital stays as described at OAC Oklahoma Administrative Code (OAC) 317:30-5-41.

(B) Coverage for members under twenty-one (21) years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.

(2) Emergency department services.

(3) Dialysis in an outpatient hospital or ~~free standing~~freestanding dialysis facility.

(4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.

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(5) Outpatient surgical services - facility payment for selected ~~outpatient surgical~~ outpatient surgical procedures to hospitals which have a contract with the Oklahoma Health Care Authority (OHCA).

(6) Outpatient mental health services for medical and remedial care including services provided on an outpatient basis by certified ~~hospital-based~~ hospital-based facilities that are also qualified mental health clinics.

(7) Rural health clinic services and other ambulatory services furnished by rural health clinic.

(8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.

(9) Maternity clinic services.

(10) Outpatient diagnostic x-rays and lab services. Other outpatient services provided to adults, not specifically addressed, are covered only when prior authorized by the ~~agency's~~ Agency's Medical Authorization Unit.

(11) Medically necessary screening mammography. Additional follow-up mammograms are covered when medically necessary.

(12) ~~Nursing~~ Long-term care facility services (other than services in an institution for tuberculosis or mental diseases).

(13) Early and Periodic Screening, ~~Diagnosis~~ Diagnostic and Treatment Services (EPSDT) are available for members under twenty-one (21) years of age to provide access to regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and require prior authorization. EPSDT/OHCA ~~Child Health~~ child-health services are outlined in OAC 317:30-3-65.2 through ~~317:30-3-65.4~~ 317:30-3-65.12.

(A) ~~Child health screening examinations~~ EPSDT screening examinations for eligible children by a medical or osteopathic physician, physician assistant, or advanced practice nurse practitioner.

(B) Diagnostic x-rays, lab, and/or injections when prescribed by a provider.

(C) Immunizations.

(D) Outpatient care.

(E) Dental services as outlined in OAC 317:30-3-65.8.

(F) Optometrists' services. The EPSDT periodicity schedule provides for at least one (1) visual screening and glasses each twelve (12) months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected. Payment is limited to two (2) glasses per year. Any glasses beyond

this limit must be prior authorized and determined to be medically necessary.

(G) Hearing services as outlined in OAC 317:30-3-65.9.

(H) Prescribed drugs.

(I) Outpatient psychological services as outlined in OAC 317:30-5-275 through 317:30-5-278.

(J) Inpatient psychiatric services as outlined in OAC ~~317:30-5-95~~ 317:30-5-94 through 317:30-5-97.

(K) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.

(L) Inpatient hospital services.

(M) Medical supplies, equipment, appliances ~~and prosthetic devices beyond the normal scope of~~ SoonerCare, orthotics and prosthetics.

(N) EPSDT services furnished in a qualified child health center.

(14) Family planning services and supplies for members of child-bearing age, including counseling, insertion of intrauterine device, implantation of subdermal contraceptive device, and sterilization for members twenty-one (21) years of age and older who are legally competent, not institutionalized and have signed the "Consent Form" at least thirty (30) days prior to procedure. Reversal of sterilization procedures for the purposes of conception is not covered. Reversal of sterilization procedures are covered when medically indicated and substantiating documentation is attached to the claim.

(15) Physicians' services whether furnished in the office, the member's home, a hospital, a ~~nursing long-term care facility, Intermediate Care Facilities for Individuals with Intellectual Disabilities,~~ intermediate care facilities for individuals with intellectual disabilities (ICF/IID), or elsewhere. For adults, payment is made for compensable hospital days described at OAC 317:30-5-41. Office visits for adults are limited to four (4) per month except when in connection with conditions as specified in OAC 317:30-5-9(b).

(16) Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. See applicable provider section for limitations to covered services for:

(A) Podiatrists' services;

(B) Optometrists' services;

(C) Psychologists' services;

(D) Certified ~~Registered~~ Nurse ~~Anesthetists~~ registered nurse anesthetists;

(E) Certified ~~Nurse Midwives~~ nurse midwives;

(F) Advanced ~~Practice Nurses~~ practice registered nurses; and

(G) Anesthesiologist ~~Assistants~~ assistants.

(17) ~~Free standing~~ Freestanding ambulatory surgery centers.

(18) Prescribed drugs not to exceed a total of six (6) prescriptions with a limit of two (2) brand name prescriptions per month. Exceptions to the six (6) prescription limit are:

(A) ~~unlimited~~Unlimited medically necessary monthly prescriptions for:

(i) ~~members~~Members under the age of twenty-one (21) years; and

(ii) ~~residents~~Residents of ~~nursing~~long-term care facilities or ICF/IID.

(B) ~~seven~~Seven (7) medically necessary generic prescriptions per month in addition to the six (6) covered under the State Plan (including three (3) brand name prescriptions) are allowed for adults receiving services under the 1915(c) ~~Home and Community Based Services Waivers (HCBS)~~home and community-based services (HCBS) waivers. These additional medically necessary prescriptions beyond the three (3) brand name or thirteen (13) total prescriptions are covered with prior authorization.

(19) Rental and/or purchase of ~~durable medical equipment~~medical supplies, equipment, and appliances.

(20) Adaptive equipment, when prior authorized, for members residing in private ICF/IID's.

(21) Dental services for members residing in private ICF/IID's in accordance with the scope of dental services for members under age twenty-one (21).

(22) For non-expansion adults, prosthetic devices are limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, external breast prostheses and support accessories, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure. There is no coverage for orthotic devices for adults.

(23) Orthotics and prosthetics are covered for expansion adult members, above the limitations within (22) of this Section, when prescribed by the treating provider (physician, physician assistant, or an advanced practice registered nurse) and medical necessity is documented in accordance with OAC 317:30-5-211.13.

~~(23)~~(24) Standard medical supplies.

~~(24)~~(25) Eyeglasses under EPSDT for members under age twenty-one (21). Payment is also made for glasses for children with congenital aphakia or following cataract removal. Payment is limited to two (2) glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

~~(25)~~(26) Blood and blood fractions for members when administered on an outpatient basis.

~~(26)~~(27) Inpatient services for members age sixty-five (65) or older in institutions for mental diseases, limited to those members whose Medicare, Part A benefits are exhausted for this particular service and/or those members who are not eligible for Medicare services.

~~(27)~~(28) ~~Long-term care~~Nursing facility services, limited to members preauthorized and approved by OHCA for such care.

~~(28)~~(29) Inpatient psychiatric facility admissions for members ~~under twenty-one (21)~~ are limited to an approved

length of stay ~~effective July 1, 1992~~, with provision for requests for extensions.

~~(29)~~(30) Transportation and subsistence (room and board) to and from providers of medical services to meet member's needs (ambulance or bus, etc.), to obtain medical treatment.

~~(30)~~(31) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for sixty (60) days after the pregnancy ends, beginning on the last date of pregnancy.

~~(31)~~(32) ~~Long-term care~~Nursing facility services for members under twenty-one (21) years of age.

~~(32)~~(33) Personal care in a member's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of a ~~Registered Nurse~~registered nurse (RN).

~~(33)~~(34) ~~Part A deductible and Part B Medicare Coinsurance and/or deductible Medicare Part A, Part B, and Part C deductibles, coinsurance, and copays.~~

~~(34)~~(35) HCBS for the intellectually disabled.

~~(35)~~(36) Home health services ~~limited to~~can be provided without a PA for the first thirty-six (36) visits per year and standard supplies for one (1) month in a twelve (12) month period. A PA will be required beyond the 36<sup>th</sup> visit. The visits are limited to any combination of ~~Registered Nurse~~RN and nurse aide visits, ~~not to exceed thirty six (36) per year.~~

~~(36)~~(37) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adults are covered services based upon the conditions listed in (A)-(D) of this paragraph:

~~(A) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.~~

~~(B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.~~

~~(C) To be compensable under the SoonerCare program, all transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.~~

~~(D) Finally, procedures considered experimental or investigational are not covered.~~

(A) All transplantation services, except kidney and cornea, must be prior authorized;

(B) All transplant procedures are reviewed and prior authorization is based upon appropriate medical criteria;

(C) All organ transplants must be performed at a Medicare approved transplantation center;

(D) Procedures considered experimental or investigational are not covered. For more information regarding experimental or investigational including clinical trials, see OAC 317:30-3-57.1; and

(E) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

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- (~~3738~~) HCBS for intellectually disabled members who were determined to be inappropriately placed in a ~~nursing long-term care~~ facility (Alternative Disposition Plan - ADP).
- (~~3839~~) Case management services for the chronically and/or ~~severely~~ seriously mentally ill.
- (~~3940~~) Emergency medical services, including emergency labor and delivery for ~~illegal~~ undocumented or ineligible aliens.
- (~~4041~~) Services delivered in Federally Qualified Health Centers (FQHCs). Payment is made on an encounter basis.
- (~~4142~~) Early intervention services for children ages zero (0) to three (3).
- (~~4243~~) Residential behavior management in therapeutic foster care setting.
- (~~43~~) ~~Birth center services.~~
- (44) Case management services through the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).
- (45) HCBS for aged or physically disabled members.
- (46) Outpatient ambulatory services for members infected with tuberculosis.
- (47) Smoking and tobacco use cessation counseling for children and adults.
- (48) Services delivered to American Indians/Alaskan Natives (AI/AN) in I/T/Us Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us). Payment is made on an encounter basis.
- (49) OHCA contracts with designated agents to provide disease state management for individuals diagnosed with certain chronic conditions. Disease state management treatments are based on protocols developed using evidence-based guidelines.
- (50) Residential substance use disorder (SUD) services.
- (51) Medication-assisted treatment (MAT) services.
- (52) Diabetes self-management education and support (DSMES).

### 317:30-3-59. General program exclusions - adults

The following are excluded from SoonerCare coverage for adults:

- (1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
- (2) Services or any expense incurred for cosmetic surgery.
- (3) Services of two (2) physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.
- (4) Refractions and visual aids.
- (5) Pre-operative care within ~~24~~ twenty-four (24) hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

- (6) Sterilization of members who are under ~~24~~ twenty-one (21) years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.
- (7) Non-therapeutic hysterectomies.
- (8) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (~~Refer to OAC 317:30-5-6 or 317:30-5-50.~~)
- (9) Medical services considered experimental or investigational. For more information regarding coverage of clinical trials, see Oklahoma Administrative Code (OAC) 317:30-3-57.1.
- (10) Services of a ~~Certified Surgical Assistant~~ certified surgical assistant.
- (11) Services of a ~~Chiropractor~~ chiropractor. Payment is made for ~~Chiropractor~~ chiropractor services on ~~Crossover~~ crossover claims for coinsurance and/or deductible only.
- (12) ~~Services of an independent licensed Physical and/or Occupational Therapist.~~ Services of an independent licensed physical therapist and/or licensed physical therapist assistant. Per OAC 317:30-5-291.
- (13) Services of an independent licensed occupational therapist and/or occupational therapist assistant. Per OAC 317:30-5-296.
- (~~14~~) ~~Services of a Psychologist.~~ psychologist.
- (~~15~~) ~~Services of an independent licensed Speech and Hearing Therapist.~~ speech-language pathologist, speech-language pathology assistant (SLPA), and/or speech-language clinical fellow. Per OAC 317:30-5-675.
- (~~16~~) Payment for more than four (4) outpatient visits per month (home or office) per member, except those visits in connection with family planning or related to emergency medical conditions.
- (~~17~~) Payment for more than ~~two nursing~~ two (2) long-term care facility visits per month.
- (~~18~~) More than one (1) inpatient visit per day per physician.
- (~~19~~) Payment for removal of benign skin lesions.
- (~~20~~) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.
- (~~21~~) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
- (~~22~~) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in ~~OHCA~~ the Oklahoma Health Care Authority (OHCA) rules.
- (~~23~~) Mileage.
- (~~24~~) A routine hospital visit on the date of discharge unless the member expired.

- (24~~25~~) Direct payment to perfusionist as this is considered part of the hospital reimbursement.
- (25) Inpatient chemical dependency treatment.
- (26) Fertility treatment.
- (27) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
- (28) Sleep studies.

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 3. HOSPITALS**

**317:30-5-42.16. Related services**

- (a) **Ambulance.** Ambulance services furnished by the facility are covered separately if otherwise compensable under the Authority's Medical Programs. SoonerCare program.
- (b) **Home health care.** ~~Hospital-based~~Hospital-based home health providers must be Medicare certified and have a current Home Health Agency contract with the ~~OHCA~~Oklahoma Health Care Authority (OHCA). For home health services, a qualified provider must conduct and document a face-to-face encounter with the member in accordance with provisions of ~~42 CFR §440.70~~42 Code of Federal Regulations (C.F.R.) § 440.70. Refer to Oklahoma Administrative Code (OAC) 317:30-5-546 and OAC 317:30-5-547 for additional policy related to coverage and reimbursement for home health care services.
  - (1) Payment is made for home health services provided in a member's residence to all categorically needy individuals.
  - (2) Payment is made for a maximum of 36 visits per year for eligible members 21 years of age or older. Payment for any combination of skilled and home health aide visits can not exceed 36 visits per year.
  - (3) Payment is made for standard medical supplies.
  - (4) Payment is made on a rental or purchase basis for equipment and appliances suitable for use in the home.
  - (5) Non-covered items include sales tax, enteral therapy and nutritional supplies, and electro spinal orthosis systems (ESO).
  - (6) Payment may be made to home health agencies for prosthetic devices.
    - (A) Coverage of oxygen includes rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators when prior authorized. Purchase of oxygen systems may be made where unusual circumstances exist and purchase is considered most appropriate.
    - (B) Payment is made for permanent indwelling catheters, drain bags, insert trays and irrigation trays. Male external catheters are also covered.
    - (C) Sterile tracheotomy trays are covered.
    - (D) Payment is made for colostomy and urostomy bags and accessories.

- (E) Payment is made for hyperalimentation, including supplements, supplies and equipment rental on behalf of persons having permanently inoperative internal body organ dysfunction. Information regarding the member's medical condition that necessitates the hyperalimentation and the expected length of treatment, should be attached when requesting prior authorization.
- (F) Payment is made for ventilator equipment and supplies when prior authorized.
- (G) Payment for medical supplies, oxygen, and equipment is made when using appropriate HCPCS codes which are included in the HCPCS Level II Coding Manual.

(e) **Hospice Services.** Hospice is defined as palliative and/or comfort care provided to the member family when a physician certifies that the member has a terminal illness and has a life expectancy of six months or less. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and death. Hospice services must be related to the palliation and management of the member's illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills.

- (1) Payment is made for home based hospice services for terminally ill individuals under the age of 21 with a life expectancy of six months or less when the member and/or family has elected hospice benefits. Hospice services are available to eligible members without forgoing any other service to which the member is entitled under SoonerCare for curative treatment of the terminal illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness in the home environment. Hospice providers are not responsible for curative treatments for members that elect such services while on hospice. Hospice care includes nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family.
- (2) Hospice care is available for two initial 90 day periods and an unlimited number of subsequent 60 day periods during the remainder of the member's lifetime. Beginning January 1, 2011, a hospice physician or nurse practitioner must have a face to face encounter with the member to determine if the member's terminal illness necessitates continuing hospice care services. The encounter must take place prior to the 180th day recertification and each subsequent recertification thereafter; and attests that such visit took place. The member and/or the family may voluntarily terminate hospice services.
- (3) Hospice services must be reasonable and necessary for the palliation or management of a terminal illness or related conditions. A certification that the member is terminally ill must be completed by the member's attending

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~~physician or the Medical Director of an Interdisciplinary Group. Nurse practitioners serving as the attending physician may not certify the terminal illness; however, effective January 1, 2011, nurse practitioners may re-certify the terminal illness.~~

~~(4) Services must be prior authorized. A written plan of care must be established before services are provided. The plan of care should be submitted with the prior authorization request.~~

## 317:30-5-42.17. Non-covered services

In addition to the general program exclusions [~~OAC Oklahoma Administrative Code (OAC) 317:30-5-2(a)(2)~~] the following are excluded from coverage:

- (1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
- (2) Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter ~~of rules.~~
- (3) Reversal of sterilization procedures for the purposes of conception are not covered.
- (4) Medical services considered experimental or investigational. For more information regarding coverage of clinical trials, see OAC 317:30-3-57.1.
- (5) Payment for removal of benign skin lesions for adults.
- (6) Visual aids.
- (7) Charges incurred while the member is in a skilled nursing or swing bed.
- ~~(8) Sleep studies for adults.~~

## PART 17. MEDICAL SUPPLIERS

### 317:30-5-210. Eligible providers

All eligible medical suppliers must have a current contract with the Oklahoma Health Care Authority (OHCA). The supplier must comply with all applicable ~~State and Federal~~ state and federal laws. ~~Effective January 1, 2011, all~~ All suppliers of ~~durable medical equipment, prosthetics, orthotics and supplies (DMEPOS)~~ medical supplies, equipment, and appliances must be accredited by a Medicare deemed accreditation organization for quality standards for ~~DMEPOS~~ durable medical equipment (DME) suppliers in order to bill the SoonerCare program. OHCA may make exceptions to this standard based on the exemptions provided by the Centers for Medicare and Medicaid Services (CMS) for Medicare accreditation, if the provider is a government-owned entity, or at a provider's request and at the discretion of OHCA based on access issues and/or agency needs for SoonerCare members. Additionally, unless an exception is granted from the OHCA, all ~~DMEPOS/DME~~ providers must meet the following criteria:

- (1) ~~DMEPOS/DME~~ providers are required to have a physical location in the State of Oklahoma, or within a designated range of the Oklahoma State border, as determined by the OHCA. The OHCA may make exceptions to this requirement if a ~~DMEPOS/DME~~ provider provides a specialty item, product, or service, which is not otherwise available to SoonerCare members within the State

of Oklahoma. Provider contracts for out-of-state ~~DME-POS/DME~~ providers will be reviewed on a case-by-case basis for specialty items only. The OHCA has discretion and the final authority to approve or deny any provider contract.

(2) ~~DMEPOS/DME~~ providers are required to comply with Medicare ~~DMEPOS/DME~~ Supplier Standards for ~~DMEPOS~~ medical supplies, equipment, and appliances provided to SoonerCare members, except the requirement to meet surety bond requirements, as specified in ~~42 C.F.R. Code of Federal Regulations (C.F.R.) § 424.57(c).~~

(3) ~~Complex Rehabilitation Technology~~ rehabilitation technology (CRT) suppliers are considered ~~DME-POS/DME~~ providers. Only CRT suppliers may bill CRT procedure codes. A CRT supplier means a company or entity that:

- (A) Is accredited by a recognized accrediting organization as a supplier of CRT;
- (B) Is an enrolled Medicare supplier and meets the supplier and quality standards established for DME suppliers, including those for CRT, under the Medicare program;
- (C) Employs as a W-2 employee at least one (1) qualified CRT professional, also known as assistive technology professional, for each location to:
  - (i) Analyze the needs and capacities of complex-needs patients in consultation with qualified health care professionals;
  - (ii) Participate in selecting appropriate CRT items for such needs and capacities; and
  - (iii) Provide the complex-needs patient technology related training in the proper use and maintenance of the CRT items.
- (D) Requires a qualified CRT professional be physically present for the evaluation and determination of the appropriate CRT;
- (E) Has the capability to provide service and repair by qualified technicians for all CRT items it sells; and
- (F) Provides written information to the complex-needs patient prior to ordering CRT as to how to access service and repair.

### 317:30-5-210.1. Coverage for adults

~~Coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) for adults is specified in OAC 317:30-5-211.1 through OAC 317:30-5-211.18. Coverage of medical supplies, equipment, and appliances for adults complies with 42 Code of Federal Regulations (C.F.R.) § 440.70 and is specified in Oklahoma Administrative Code (OAC) 317:30-5-211.1 through OAC 317:30-5-211.19.~~

### 317:30-5-210.2. Coverage for children

(a) **Coverage.** ~~Coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) for children includes the specified coverage for adults found in OAC 317:30-5-211.1 through OAC 317:30-5-211.18. In addition~~

~~the following are covered items for children only: Medical supplies, equipment, and appliances are covered for children.~~

- ~~(1) Orthotics and prosthetics.~~
- ~~(2) Enteral nutrition is considered medically necessary for certain conditions in which, without the products, the member's condition would deteriorate to the point of severe malnutrition.~~

~~(A) Enteral nutrition must be prior authorized. PA requests must include:~~

- ~~(i) the member's diagnosis;~~
- ~~(ii) the impairment that prevents adequate nutrition by conventional means;~~
- ~~(iii) the member's weight history before initiating enteral nutrition that demonstrates oral intake without enteral nutrition is inadequate;~~
- ~~(iv) the percentage of the member's average daily nutrition taken by mouth and by tube; and~~
- ~~(v) prescribed daily caloric intake.~~

~~(B) Enteral nutrition products that are administered orally and related supplies are not covered.~~

- ~~(3) Continuous positive airway pressure devices (CPAP).~~

~~(b) **EPSDT/Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services.** Services deemed medically necessary and allowable under federal regulations may be covered by the EPSDT Child Health program even though those services may not be part of the SoonerCare program. These services must be prior authorized. EPSDT services, supplies, or equipment that are determined to be medically necessary for a child, and which are included within the categories of mandatory and optional services in Section 1905(a) of Title XIX, are covered regardless of whether such services, supplies, or equipment are listed as covered in the Oklahoma Medicaid State Plan.~~

~~(c) **Medical necessity.** Federal regulations require OHCA/the Oklahoma Health Care Authority (OHCA) to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or that are considered experimental. For more information regarding clinical trials, see Oklahoma Administrative Code 317:30-3-57.1.~~

**317:30-5-211.1. Definitions**

The following words and terms, when used in this Part, have the following meaning, unless the context clearly indicates otherwise.

"Activities of daily living-basic" means a series of activities performed on a day-to-day basis that are necessary to care for oneself (e.g., personal hygiene, dressing, eating, maintaining continence and transferring).

"Activities of daily living-instrumental" means activities that are not necessarily required on a daily basis but are important to being able to live independently (e.g., basic communication skills, transportation, meal preparation, shopping, housework, managing medication and managing personal finances).

"Adaptive equipment" means devices, aids, controls, appliances or supplies of either a communication or adaptive type, determined necessary to enable the person to increase his or her ability to function in a home and community based setting or private Intermediate Care Facilities for Individuals with Intellectual Disabilities (IFC/IID) with independence and safety.

"Basic activities of daily living" means a series of activities performed on a day to day basis that are necessary to care for oneself (e.g., personal hygiene, dressing, eating, maintaining continence and transferring).

"Capped rental" means monthly payments for the use of the Durable Medical Equipment (DME) medical supplies, equipment, and appliances for a limited period of time not to exceed 13thirteen (13) months. Items are considered purchased and owned by the Oklahoma Health Care Authority (OHCA) after 13thirteen (13) months of continuous rental.

"Certificate of medical necessity (CMN)" means a certificate which is required to help document the medical necessity and other coverage criteria for selected items. Those items are defined in this Chapter. The physician's certification CMN must include the member's diagnosis, the reason the equipment is required, and the physician's, non-physician provider's (NPP's), or dentist's estimate, in months, of the duration of its need.

"Complex needs patient" means an individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities.

"Complex rehabilitation technology" means medically necessary durable medical equipment and items that are individually configured to meet specific and unique medical, physical, and functional needs and capacities for basic activities of daily living and instrumental activities of daily living of a complex needs patient member with complex needs. Such equipment and items include, but are not limited to, individually configured power wheelchairs and accessories, individually configured manual wheelchairs and accessories, adaptive seating and positioning systems and accessories, and other specialized equipment such as standing frames and gait trainers.

"Customized DMEequipment and/or appliances" means items of DMEequipment and/or appliances which have been uniquely constructed or substantially modified for a specific member according to the description and orders of the member's treating physician or other qualified medical professional. For instance, a wheelchair would be considered "customized" if it has been:

~~(A) measuredMeasured, fitted, or adapted in consideration of the member's body size, disability, period of need, or intended use;~~

~~(B) assembledAssembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs; and~~

~~(C) intendedIntended for an individual member's use in accordance with instructions from the member's physician.~~

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**"Durable medical equipment (DME) Equipment and/or appliances"** means ~~equipment that can withstand repeated use (e.g., a type of item that could normally be rented), is used to serve a medical purpose, is not useful to a person in the absence of an illness or injury, and is used in the most appropriate setting, including the home or workplace items that are primarily and customarily used to serve a medical purpose, generally are not useful to an individual in the absence of a disability, illness or injury, can withstand repeated use, can be reusable or removable, and are suitable for use in any setting in which normal life activities take place other than a hospital, long-term care facility, intermediate care facility for individuals with intellectual disabilities, or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board. Refer to 42 Code of Federal Regulations (C.F.R.) 440.70(b).~~

**"Face-to-face encounter"** means a patient visit in which a practitioner, as defined by 42 C.F.R. 440.70(f), completes a face-to-face assessment related to the primary reason the beneficiary requires durable medical equipment. The face-to-face encounter must occur no more than six (6) months prior to the start of services. The ordering physician must document the face-to-face encounter, including the practitioner who conducted the encounter and the date of the encounter. Clinical findings must be incorporated into a written or electronic document included in the beneficiary's medical record. The face-to-face encounter may occur through telehealth.

**"Instrumental activities of daily living"** means activities that are not necessarily required on a daily basis, but are important to being able to live independently (e.g., basic communication skills, transportation, meal preparation, shopping, housework, managing medication and managing personal finances).

**"Invoice"** means a document that provides the following information when applicable: the description of product, quantity, quantity in box, purchase price, NDC, strength, dosage, provider, seller's name and address, purchaser's name and address, and date of purchase. At times, visit notes will be required to determine how much of the supply was expended. When possible, the provider should identify the SoonerCare member receiving the equipment or supply on the invoice.

**"Medical supplies"** means ~~an article used in the cure, mitigation, treatment, prevention, or diagnosis of illnesses. Disposable medical supplies are medical supplies consumed in a single usage and do not include skin care creams or cleansers, health care related items that are consumable or disposable, or cannot withstand repeated use by more than one (1) individual, that are required to address an individual medical disability, illness, or injury. Medical supplies do not include skin care creams, cleansers, surgical supplies, or medical or surgical equipment.~~

**"OHCA CMN"** means a certificate required to help document the medical necessity and other coverage criteria for selected items. Those items are defined in this ~~chapter~~ Chapter. The ~~physician's certification~~ CMN must include the member's diagnosis, the reason equipment is required, and the physician's, NPP's, or dentist's estimate, in months, of the duration

of its need. This certificate is used when the OHCA requires a CMN and one (1) has not been established by CMS.

**"Orthotics"** means ~~an item used for the correction or prevention of skeletal deformities; a device used to support, align, prevent or correct deformities, protect a body function, improve the function of movable body parts or to assist a dysfunctional joint.~~

**"Patient with complex needs"** means an individual with a diagnosis or medical condition that results in significant loss of physical or functional needs and capacities.

**"Prosthetic devices"** **"Prosthetics"** means a ~~replacement, corrective, or supportive device (including repair and replacement parts of the same) worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body an artificial substitute which replaces all or part of a body organ or replaces all or part of the function of a permanently inoperative, absent, or malfunctioning body part.~~

**"Provider"** refers to the treating provider and must be a physician [Medical Doctor (MD), or Doctor of Osteopathy, (DO)], a NPP [Physician Assistant (PA), or Advanced Practice Registered Nurse (APRN)], or a dentist [Doctor of Dental Surgery (DDS), or Doctor of Medicine in Dentistry (DMD)].

**"Qualified complex rehabilitation technology professional"** means an individual who is certified as an Assistive Technology Professional (ATP) by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA).

### 317:30-5-211.2. Medical necessity

(a) **Coverage.** Coverage is subject to the requirement that the equipment be necessary and reasonable for the treatment of an illness or injury, or to improve the functioning of a malformed body member, in accordance with state and federal Medicaid law, including, but not limited to, Oklahoma Administrative Code (OAC) 317:30-3-1(f). The member's diagnosis must warrant the type of equipment or supply being purchased or rented. Items that are used for the following are not a benefit to a member of any age:

- (1) Routine personal hygiene;
- (2) Education;
- (3) Exercise;
- (4) Convenience, safety, or restraint of the member, or his or her family or caregiver;
- (5) Participation in sports; and/or
- (6) Cosmetic purposes.

(b) **Ordering requirements.** All medical supplies, equipment, and appliances as defined by 42 Code of Federal Regulations (C.F.R.) § 440.70 (b)(3) and OAC 317:30-5-211.1, nursing services, and home health aide services provided by a home health agency, must be ordered by a physician, nurse practitioner, clinical nurse specialist or physician assistant, working in accordance with State law, as part of a written plan of care.

- (1) The plan of care must be reviewed in accordance with 42 C.F.R. § 440.70. Medical supplies, equipment, and appliances must be reviewed annually by the ordering provider. Nursing services and home health aide services



provided by a home health agency must be reviewed every sixty (60) days by the ordering provider.

(2) A face-to-face encounter must occur and be documented, in accordance with 42 C.F.R. § 440.70 and OAC 317:30-5-211.1.

(bc) **Prescription requirements.** All ~~DME~~ medical supplies, equipment, and appliances, as those terms are defined by 42 C.F.R. § 440.120 and OAC 317:30-5-211.1, except for hearing aid batteries and equipment repairs with a cost per item of less than ~~\$250.00~~ \$1,000.00 total parts and labor and hearing aid batteries, require a prescription signed by a physician, a physician assistant, or an advanced practice registered nurse. Except as otherwise stated in state or federal law, the prescription must be in writing, or given orally and later reduced to writing by the provider filling the order. Prescriptions are valid for no more than one (1) year from the date written. The prescription must include the following information:

- (1) ~~date of the order;~~
- (2) ~~name and address of the prescriber;~~
- (3) ~~name and address of the member;~~
- (4) ~~name or description and quantity of the prescribed item;~~
- (5) ~~diagnosis for the item requested;~~
- (6) ~~directions for use of the prescribed item; and~~
- (7) ~~prescriber's signature.~~

- (1) The member's name;
- (2) The prescribing practitioner's name;
- (3) The date of the prescription;
- (4) All items, options, or additional features that are separately billed. The description can be either a narrative description (e.g., lightweight wheelchair base), a Healthcare Common Procedure Coding System (HCPCS) code, a HCPCS code narrative, or a brand name/model number; and
- (5) The prescribing practitioner's signature and signature date.

(ed) **Certificate of medical necessity (CMN).** For certain items or services, the supplier must receive a signed CMN/OHCA CMN from the treating physician, non-physician practitioner, or dentist. The supplier must have a signed CMN/OHCA CMN in their records before they submit a claim for payment. The CMN/OHCA CMN may be ~~faxed, copied~~ faxed copy, electronic copy, or the original hardcopy.

(de) **Place of service.**

- (1) ~~OHCA covers DMEPOS for use in the member's place of residence except if the member's place of residence is a nursing facility.~~ The Oklahoma Health Care Authority (OHCA) covers medical supplies, equipment, and appliances for use in the member's place of residence and in any setting in which normal life activities take place except for a hospital, long-term care facility, intermediate care facility for individuals with intellectual disabilities, or any other setting in which payment is or could be made under Medicaid for inpatient services that include room and board.
- (2) ~~For members residing in a nursing facility, most medical supplies and/or DME are considered part of the~~

~~facility's per diem rate. Refer to coverage for nursing facility residents at OAC 317:30-5-211.16.~~ For members residing in a hospital, long-term care facility, intermediate care facility for individuals with intellectual disabilities, or any other setting in which payment is or could be made under Medicaid for inpatient services that include room and board, medical supplies, equipment, and appliances are considered part of the facility's per diem rate.

(f) **Contracting requirements.** Per 42 C.F.R. 455.410(b), medical supplies, equipment, and appliances may only be ordered or prescribed by a SoonerCare contracted provider.

**317:30-5-211.3. Prior authorization (PA)**

(a) **General.** ~~Prior authorization~~ PA is the electronic or written authorization issued by ~~OHCA~~ the Oklahoma Health Care Authority (OHCA) to a provider prior to the provision of a service. Providers should obtain a PA before providing services.

(b) **Requirements.** Billing must follow correct coding guidelines as promulgated by ~~CMS~~ the Centers for Medicare and Medicaid Services (CMS) or per uniquely and publicly promulgated OHCA guidelines. ~~DME~~ Medical supplies, equipment, and appliances claims must include the most appropriate ~~HCPCS~~ Healthcare Common Procedure Coding System (HCPCS) code as assigned by the Medicare Pricing, Data, Analysis, and Coding (PDAC) or its successor. Authorizations for services not properly coded will be denied. ~~The following services require prior authorization (PA):~~ The following services require PA:

- (1) ~~services~~ Services that exceed quantity/frequency limits;
- (2) ~~medical~~ Medical need for an item that is beyond OHCA's standards of coverage;
- (3) ~~use~~ Use of a Not Otherwise Classified (NOC) code or miscellaneous codes;
- (4) ~~services~~ Services for which a less costly alternative may exist; and
- (5) ~~procedures~~ Procedures indicating that a PA is required on the OHCA fee schedule.

(c) **Prior authorization PA requests.** ~~Refer to OAC 317:30-5-216.~~

(1) **PA requirements.** Requirements vary for different types of services. Providers should refer to the service-specific sections of policy or the OHCA website for services requiring a PA. Also refer to OAC 317:30-3-31.

(A) **Required forms.** All required forms are available on the OHCA website.

(B) **Certificate of medical necessity (CMN).** The prescribing physician, non-physician practitioner (NPP), or dentist must complete the medical necessity section of the CMN. This section cannot be completed by the supplier. The medical necessity section can be completed by any health care clinician; however, only the member's physician, NPP, or dentist may sign the CMN. By signing the CMN, the physician, NPP, or dentist is validating the completeness and accuracy of the medical necessity section. The member's medical records must contain documentation substantiating that the member's

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condition meets the coverage criteria and the answers given in the medical necessity section of the CMN. These records may be requested by OHCA or its representatives to confirm concurrence between the medical records and the information submitted with the PA request.

(2) **Submitting PA requests.** Contact information for submitting PA requests may be found in the OHCA Provider Billing and Procedures Manual. An electronic version of this manual is located on the OHCA website.

(3) **PA review.** Upon verifying the completeness and accuracy of clerical items, the PA request is reviewed by OHCA staff to evaluate whether or not each service being requested meets SoonerCare's definition of "medical necessity" [see OAC 317:30-3-1 (f)] as well as other criteria.

(4) **PA decisions.** After the PA request is processed, a notice will be issued regarding the outcome of the review.

(5) **PA does not guarantee reimbursement.** Provider status, member eligibility, and medical status on the date of service, as well as all other SoonerCare requirements, must be met before the claim is reimbursed.

(6) **PA of manually-priced items.** Manually-priced items must be prior authorized. For reimbursement of manually priced items, see OAC 317:30-5-218.

### 317:30-5-211.5. Repairs, maintenance, replacement and delivery

(a) **Repairs.** Repairs to equipment that either the Oklahoma Health Care Authority (OHCA) or a member owns are covered when they are necessary to make the equipment usable. The repair charge includes the use of "loaner" equipment as required. If the expense for repairs exceeds the estimated expense of purchasing or renting another item of equipment for the remaining period of medical need, payment cannot be made for the amount in excess. Repairs of rented equipment are not covered.

(b) **Maintenance.** Routine periodic servicing, such as testing, cleaning, regulating, and checking the member's equipment is considered maintenance and not a separate covered service. ~~DMEPOS~~ DME suppliers must provide equipment-related services consistent with the manufacturer's specifications and in accordance with all federal, state, and local laws and regulations. Equipment-related services may include, but are not limited to, checking oxygen system purity levels and flow rates, changing and cleaning filters, and assuring the integrity of equipment alarms and back-up systems. However, more extensive maintenance, as recommended by the manufacturer and performed by authorized technicians, is considered repairs. This may include breaking down sealed components and performing tests that require specialized testing equipment not available to the member. The supplier of a capped rental item that supplied the item the ~~13<sup>th</sup>~~ thirteenth (13<sup>th</sup>) month must provide maintenance and service for the item. In very rare circumstances of malicious damage, culpable neglect, or wrongful disposition, the supplier may document the circumstances and be relieved of the obligation to provide maintenance and service.

(c) **Replacement.**

(1) ~~If a capped rental item of equipment has been in continuous use~~ If equipment that has met the capped rental period and has been in continued use by the member for the equipment's useful life or if the item is irreparably damaged, lost, or stolen, a prior authorization must be submitted to obtain new equipment. The reasonable useful lifetime for capped rental equipment cannot be less than five (5) years. Useful life is determined by the delivery of the equipment to the member, not the age of the equipment.

(2) Replacement parts must be billed with the appropriate ~~HCPCS~~ Healthcare Common Procedure Coding System (HCPCS) code that represents the item or part being ~~replaced~~ replaced along with a pricing modifier and replacement modifier. If a part that has not been assigned a HCPCS code is being replaced, the provider should use a miscellaneous HCPCS code to bill each part. Each claim that contains miscellaneous codes for replacement parts must include a narrative description of the item, the brand name, model name/number of the item, and an invoice.

(d) **Delivery.** ~~DMEPOS~~ Medical supplies, equipment, and appliance products are set with usual maximum quantities and frequency limits. Suppliers are not expected to provide these amounts routinely, nor are members required to accept ~~DMEPOS~~ medical supplies, equipment, and appliance products at frequencies or in quantities that exceed the amount the member would typically use. Suppliers must not dispense a quantity of any ~~DMEPOS~~ medical supplies, equipment, and appliance product exceeding a member's expected utilization. The reordering or refilling of ~~DMEPOS~~ medical supplies, equipment, and appliance products should always be based on actual member usage. Suppliers should stay attuned to atypical utilization patterns on behalf of their members and verify with the ordering physician that the atypical utilization is warranted. Suppliers must exercise the following guidelines in regard to the delivery of ~~DMEPOS~~ medical supplies, equipment, and appliance products:

(1) For ~~DMEPOS~~ medical supplies, equipment, and appliance products that are supplied as refills to the original order, suppliers must contact the member prior to dispensing the refill. This shall be done to ensure that the refilled item is necessary and to confirm any changes/modifications to the order. Contact with the member regarding refills should take place no sooner than ~~seven (7)~~ five (5) days prior to the delivery/shipping date. For subsequent deliveries of refills, the supplier must deliver the ~~DMEPOS~~ medical supplies, equipment, and appliance product no sooner than ~~five (5)~~ five (5) days prior to the end of the usage for the current product. This is regardless of which delivery method is utilized. A member must specifically request the refill before a supplier dispenses the product. Suppliers must not automatically dispense a quantity of supplies on a predetermined basis, even if the member has authorized this in advance. The supplier must have member contact documentation on file to substantiate that the ~~DMEPOS~~ medical supplies, equipment, and appliance product was refilled in accordance with this section.

(2) For ~~DMEPOS~~ medical supplies, equipment, and appliance products that are supplied via mail order, suppliers must bill using the appropriate modifier which indicates that the ~~DMEPOS~~ medical supplies, equipment, and appliance product was delivered via the mail. Reimbursement for ~~DMEPOS~~ medical supplies, equipment, and appliance products supplied and delivered via mail may be at a reduced rate.

(3) For ~~DMEPOS~~ medical supplies, equipment, and appliance products that are covered in the scope of the Soon-erCare program, the cost of delivery is always included in the rate for the covered item(s).

**317:30-5-211.6. General documentation requirements**

(a) Section 1833(e) of the Social Security Act precludes payment to any provider of service unless "there has been furnished such information as may be necessary in order to determine the amounts due such provider" [42 U.S.S. Section 13951(e)] [42 United States Code (U.S.C.) Section 13951(e)]. The member's medical records will reflect the need for the care provided. The member's medical records should include the physician's office records, hospital records, nursing home records, home health agency records, records from other health care professionals and test reports. This documentation must be provided for prior authorization requests and available to the OHCA Oklahoma Health Care Authority (OHCA) or its designated agent upon request.

(b) Payment is made for durable medical equipment as set forth in this section when a face-to-face encounter has occurred in accordance with provisions of 42 Code of Federal Regulations (C.F.R.) § 440.70 and Oklahoma Administrative Code (OAC) 317:30-5-211.1.

**317:30-5-211.9. Adaptive equipment [REVOKED]**

(a) ~~**Residents of ICF/IID facilities.** Payment is made for customized adaptive equipment for persons residing in private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID). This means customized equipment or devices to assist in ambulation. Standard wheelchairs, walkers, eyeglasses, etc., would not be considered customized adaptive equipment. All customized adaptive equipment must be prescribed by a physician and requires prior authorization.~~

(b) ~~**Members in home and community based waivers.** Refer to OAC 317:40-5-100.~~

**317:30-5-211.10. Durable medical equipment**

**(DME) Medical supplies, equipment, and appliances**

(a) ~~**DME** Medical supplies, equipment, and appliances. DME includes, but is not limited to: medical supplies, orthotics and prosthetics, custom braces, therapeutic lenses, respiratory equipment, and other qualifying items when acquired from a contracted DME provider. See the definition for medical supplies, equipment, and appliances at Oklahoma Administrative Code (OAC) 317:30-5-211.1.~~

(b) ~~**Certificate of medical necessity (CMN).** Certain items of DME medical supplies, equipment, and appliances require~~

a CMN/OHCA CMN which should be submitted with the request for prior authorization. These items include, but are not limited to:

- ~~(1) hospital beds;~~
- ~~(2) support surfaces;~~
- ~~(3) patient lift devices;~~
- ~~(4) external infusions pumps;~~
- ~~(5) enteral and parenteral nutrition;~~
- ~~(6) Oxygen and oxygen related products; and~~
- ~~(7) pneumatic compression devices.~~
- (1) External infusion pumps;
- (2) Hospital beds;
- (3) Oxygen and oxygen related products;
- (4) Pneumatic compression devices;
- (5) Support surfaces;
- (6) Enteral and parenteral nutrition; and
- (7) Osteogenesis stimulator.

(c) ~~**Prior authorization. Rental.** Several medical supplies, equipment, and appliance products are classified as either a capped rental or a continuous rental. Payment for a capped rental is capped at thirteen (13) months and a continuous rental is paid monthly for as long as it is medically necessary. Both require documentation showing that the product is medically necessary.~~

~~(1) **Rental.** Rental of hospital beds, support surfaces, oxygen and oxygen related products, continuous positive airway pressure devices (CPAP and BiPAP), pneumatic compression devices, and lifts require prior authorization and, except for CPAP and BiPAP devices, a completed CMN/OHCA CMN; medical necessity must be documented in the member's medical record, signed by the physician, and attached to the PA.~~

~~(2) **Purchase.** Equipment may be purchased when a member requires the equipment for an extended period of time. During the prior authorization review, the OHCA may change the authorization from a rental to a purchase or a purchase to a rental based on the documentation submitted. The provider must indicate whether the DME item provided is new or used.~~

(d) ~~**Purchase.** Medical supplies, equipment, and appliances may be purchased when a member requires the product for an extended period of time. During the prior authorization review, the Oklahoma Health Care Authority (OHCA) may change the authorization from a rental to a purchase or a purchase to a rental based on the documentation submitted.~~

~~(de) **Backup equipment.** Backup equipment is considered part of the rental cost and is not a covered service without prior authorization.~~

~~(ef) **Home modification.** Equipment used for home modification is not a covered service. Home modifications that require permanent installation are not covered services as they are not removable and therefore do not meet the definition of medical supplies, equipment, and appliances per 42 Code of Federal Regulations (C.F.R.) § 440.70. Refer to Title 317, Chapters 40 and 50 for home modifications covered under Home and Community Based Services Waivers, including the ADvantage Waiver.~~

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### 317:30-5-211.12. Oxygen rental

A monthly rental payment is made for rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators. The rental payment for a stationary system includes all contents and supplies, such as, regulators, tubing, masks, etc., that are medically necessary. An additional monthly payment may be made for a portable liquid or gaseous oxygen system based on medical necessity.

(1) Stationary oxygen systems and portable oxygen systems are covered items for members residing in their home ~~or in a nursing facility~~ and in any setting in which normal life activities take place except for a hospital, long-term care facility, intermediate care facility for individuals with intellectual disabilities, or any other setting in which payment is or could be made under Medicaid for inpatient services that include room and board.

(2) For members who meet medical necessity criteria, SoonerCare covers portable liquid or gaseous oxygen systems. ~~Portable oxygen contents are not covered for adults.~~ Payment for both oxygen contents used with stationary oxygen equipment and oxygen contents used with portable oxygen equipment is included in the monthly payments for oxygen and oxygen equipment. The need for a portable oxygen system must be stated on the CMN. A portable system that is used as a backup system only is not a covered item.

(3) When four (4) or more liters of oxygen are medically necessary, an additional payment will be paid up to ~~150%~~ one hundred and fifty percent (150%) of the allowable for a stationary system when billed with the appropriate modifier.

### 317:30-5-211.13. ~~Prosthetics and orthotics~~ Orthotics and prosthetics

(a) Coverage of prosthetics for adults non-expansion adults is limited to (1) home dialysis equipment and supplies, (2) nerve stimulators, (3) external breast prosthesis and support accessories, and (4) implantable devices inserted during the course of a surgical procedure. Prosthetics prescribed by an appropriate medical qualified provider and as specified in this section are covered items for adults non-expansion adults. There is no coverage of orthotics for adults non-expansion adults.

(1) **Home dialysis.** Equipment and supplies are covered items for members receiving home dialysis treatments only.

(2) **Nerve stimulators.** Payment is made for transcutaneous nerve stimulators, implanted peripheral nerve stimulators, and neuromuscular stimulators.

(3) **Breast prosthesis, bras, and prosthetic garments.** (A) Payment is limited to:

(i) ~~one~~ One (1) prosthetic garment with mastectomy form every ~~12~~ twelve (12) months for use in the postoperative period prior to a permanent breast prosthesis or as an alternative to a mastectomy bra and breast prosthesis;

(ii) ~~two~~ Two (2) mastectomy bras per year; and

(iii) ~~one~~ One (1) silicone or equal breast prosthetic per side every ~~24~~ twenty-four (24) months; or

(iv) ~~one~~ One (1) foam prosthetic per side every six (6) months.

(B) Payment will not be made for both a silicone and a foam prosthetic in the same ~~12~~ twelve (12) month period.

(C) Breast prostheses, bras, and prosthetic garments must be purchased from a Board Certified Mastectomy Fitter.

(D) A breast prosthesis can be replaced if:

(i) ~~lost~~ Lost;

(ii) ~~irreparably~~ Irreparable damaged (other than ordinary wear and tear); or

(iii) ~~the~~ The member's medical condition necessitates a different type of item and the physician provides a new prescription explaining the need for a different type of prosthesis.

(E) External breast prostheses are not covered after breast reconstruction is performed except in instances where a woman with breast cancer receives reconstructive surgery following a mastectomy, but the breast implant fails or ruptures and circumstances are such that an implant replacement is not recommended by the surgeon and/or desired by the member.

(4) **Prosthetic devices inserted during surgery.** Separate payment is made for prosthetic devices inserted during the course of surgery when the prosthetic devices are not integral to the procedure and are not included in the reimbursement for the procedure itself.

(b) Orthotics and prosthetics are covered for expansion adults services when:

(1) Orthotics are medically necessary when required to correct or prevent skeletal deformities, to support or align movable body parts, or to preserve or improve physical function.

(2) Prosthetics are medically necessary as a replacement for all or part of the function of a permanently inoperative, absent, or malfunctioning body part. The member shall require the prosthesis for mobility, daily care, or rehabilitation purposes.

(3) In addition, orthotics and prosthetics must be:

(A) A reasonable and medically necessary part of the member's treatment plan;

(B) Consistent with the member's diagnosis and medical condition, particularly the functional limitations and symptoms exhibited by the member; and

(C) Of high quality, with replacement parts available and obtainable.

(c) Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.1 for definitions of orthotics and prosthetics.

### 317:30-5-211.14. Nutritional support

(a) Enteral nutrition. Enteral nutrition administered only via gravity, syringe, or pump is covered for children and adults at home. Refer to pharmacy policy related to coverage of food supplements at Oklahoma Administrative Code (OAC)

317:30-5-72.1(2)(C). For enteral nutrition authorization guidelines, see OAC 317:30-5-211.20.

(#b) **Parenteral nutrition.** The member must require intravenous feedings to maintain weight and strength commensurate with the member's overall health status. Adequate nutrition must not be possible by dietary adjustment and/or oral supplements.

(1) The member must have a permanent impairment. Permanence does not require a determination that there is no possibility that the member's condition may improve sometime in the future. If the judgment of the attending physician, substantiated in the medical record, is that the condition is of long and indefinite duration (ordinarily at least three (3) months), the test of permanence is met. Parenteral nutrition will be denied as a non-covered service in situations involving temporary impairments.

(2) The member must have a condition involving the small intestine, exocrine glands, or other conditions that significantly impair the absorption of nutrients. Coverage is also provided for a disease of the stomach and/or intestine that is a motility disorder and impairs the ability of nutrients to be transported through the GI system, and other conditions as deemed medically necessary. There must be objective medical evidence supporting the clinical diagnosis.

(3) Re-certification of parenteral nutrition will be required as medically necessary and determined by the ~~OHCA~~Oklahoma Health Care Authority (OHCA) medical staff.

(c) **Long-term care facility enteral and parenteral nutrition.** Enteral and parenteral nutrition products supplied to long-term care facility residents are included in the long-term care facility per diem rate.

(bd) **Prior authorization Claim submission requirements.** A written signed and dated order must be received by the supplier before a claim is submitted to the OHCA. If the supplier bills an item addressed in this policy without first receiving the completed order, the item will be denied as not medically necessary. The ordering physician is expected to see the member within ~~30~~thirty (30) days prior to the initial certification or required re-certification. If the physician does not see the member within this time frame, the physician must document the reason why and describe what other monitoring methods were used to evaluate the member's parenteral nutrition needs.

(e) **Enteral formulas.** ~~Enteral formulas are covered for children only. See OAC 317:30-5-210.2.~~

**317:30-5-211.15. Supplies**~~Medical Supplies~~

The ~~OHCA~~Oklahoma Health Care Authority (OHCA) provides coverage for medically necessary supplies that are prescribed by the appropriate medical provider and meet the ~~special requirements below:~~member's specific needs. Medical supplies include, but are not limited to, IV therapy supplies, diabetic supplies, catheters, colostomy and urostomy supplies, and incontinence supplies.

(1) ~~Intravenous therapy.~~ Supplies for intravenous therapy are covered items. Drugs for IV therapy are

~~covered items only as specified by the Vendor Drug program.~~

(2) **Diabetic supplies.** ~~Glucose test strips and lancets are covered when medically necessary and prescribed by a physician, physician assistant, or an advanced practice nurse. Testing supplies may be limited based on insulin use or type of diabetes. Prior authorization may be required for supplies beyond the standard allowance.~~

(3) **Catheters.** ~~Permanent indwelling catheters, male external catheters, drain bags and irrigation trays are covered items. Single use self catheters when the member has a history of urinary tract infections is a covered item. The prescription from the attending physician must indicate such documentation is available in the member's medical record.~~

(4) **Colostomy and urostomy supplies.** ~~Colostomy and urostomy bags and accessories are covered items.~~

**317:30-5-211.16. Coverage for nursing long-term care facility residents**

(a) For residents in a ~~nursing long-term care facility, most DMEPOS medical supplies, equipment and appliances are considered part of included in the facility's per diem rate. Orthotics and prosthetics are paid separately from the per diem rate in accordance with the Oklahoma Medicaid State Plan. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.13 for orthotics and prosthetics coverage. The following are not included in the per diem rate and may be billed by the appropriate medical supplier:~~

- (1) ~~Services requiring prior authorization:~~
  - (A) ~~ventilators and supplies;~~
  - (B) ~~total parenteral nutrition (TPN), and supplies;~~
  - (C) ~~custom seating for wheelchairs; and~~
  - (D) ~~external breast prosthesis and support accessories.~~
- (2) ~~Services not requiring prior authorization:~~
  - (A) ~~permanent indwelling or male external catheters and catheter accessories;~~
  - (B) ~~colostomy and urostomy supplies;~~
  - (C) ~~tracheostomy supplies;~~
  - (D) ~~catheters and catheter accessories;~~
  - (E) ~~oxygen and oxygen concentrators.~~

(i) **PRN oxygen.** ~~Members in nursing facilities requiring oxygen PRN will be serviced by oxygen kept on hand as part of the per diem rate.~~

(ii) **Billing for Medicare eligible nursing home members.** ~~Oxygen supplied to Medicare eligible nursing home members may be billed directly to OHCA. It is not necessary to obtain a denial from Medicare prior to filing the claim with OHCA.~~

(b) ~~Items not covered include but are not limited to:~~

- (1) ~~diapers;~~
- (2) ~~underpads;~~
- (3) ~~medicine cups;~~
- (4) ~~eating utensils; and~~
- (5) ~~personal comfort items.~~

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### 317:30-5-211.17. Wheelchairs

(a) **Definitions.** The following words and terms, when used in this Section, have the following meaning, unless the context clearly indicates otherwise.

(1) **"Assistive technology professional" or "ATP"** means a for-service provider who is involved in analysis of the needs and training of a consumer in the use of a particular assistive technology device or is involved in the sale and service of rehabilitation equipment or commercially available assistive technology products and devices. All ATPs are required to be credentialed by Rehabilitation Engineering and Assistive Technology Society of North America (RESNA).

(2) **"Custom seating system"** means a wheelchair seating system which is individually made for a member using a plaster model of the member, a ~~computer-generated~~ computer-generated model of the member (e.g., CAD-CAM technology), or the detailed measurements of the member to create either:

(A) ~~a~~ A molded, contoured, or carved (foam or other suitable material) custom-fabricated seating system that is incorporated into the wheelchair base; or

(B) ~~a~~ A custom seating system made from multiple pre-fabricated components or a combination of custom fabricated materials and pre-fabricated components which have been configured and attached to the wheelchair base or incorporated into a wheelchair seat and/or back in a manner that the wheelchair could not be easily re-adapted for use by another individual.

~~(3) "RESNA" means the Rehabilitation Engineering and Assistive Technology Society of North America.~~

~~(4) "Specialty evaluation" means the determination and documentation of the consumer's pathology, history and prognosis, and the physiological, functional, and environmental factors that impact the selection of an appropriate wheeled mobility system.~~

(b) **Medical Necessity.** Medical necessity, pursuant to OAC Oklahoma Administrative Code (OAC) 317:30-5-211.2, is required for a wheelchair to be covered and reimbursed by SoonerCare. Only one (1) wheelchair is covered as medically necessary during its reasonable useful lifetime, unless the member's documented medical condition indicates the current wheelchair no longer meets the member's medical need. Backup wheelchairs are not covered items.

(c) **Prior authorization.** Prior authorization, pursuant to OAC 317:30-5-211.3, is required for selected wheelchairs to be covered and reimbursed by SoonerCare. All prior authorization requests for the purchase of a wheelchair must indicate the length of the warranty period and what is covered under the warranty.

(1) Wheelchairs, wheelchair parts and accessories, and wheelchair modifications that are beneficial primarily in allowing the member to perform leisure or recreational activities are not considered medically necessary and will not be authorized.

(2) Wheelchair parts, accessories, and/or modifications that are distinctly and separately requested and

priced from the original wheelchair request may require prior authorization.

(3) ~~The OHCA~~ Oklahoma Health Care Authority will deny prior authorization requests when the required forms have not been fully completed or the member's medical record does not provide sufficient information to establish medical necessity or to determine that the criteria for coverage has been met.

(d) **Coverage and limitations.**

~~(1) For a member who resides in a personal residence, assisted living facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or long term care facility, the following criteria must be met for the authorization to purchase a wheelchair:~~

~~(A) The member must have a prescription signed by a physician, a physician assistant, or an advanced registered nurse practitioner.~~

~~(B) The member must meet the requirements for medical necessity as determined and approved by the OHCA.~~

~~(C) The member must either have:~~

~~(i) a specialty evaluation that was performed by a licensed or certified medical professional, such as a physical therapist, occupational therapist, or a physician who has specific training and experience in rehabilitation wheelchair evaluations, and that documents the medical necessity for the wheelchair and its special features; or~~

~~(ii) a wheelchair provided by a supplier that employs a RESNA certified assistive technology professional who specializes in wheelchairs and who has direct, in person involvement in the wheelchair selection for the member.~~

~~(2) For members who reside in a long term care facility or ICF/IID, only custom seating systems for wheelchairs are eligible for direct reimbursement to DME providers. For members who reside in a long-term care facility or intermediate care facility for individuals with intellectual disabilities, All standard manual and power wheelchairs are the responsibility of the facility and are considered part of the facility's per diem rate. Repairs and maintenance, ~~except for custom seating systems, are not covered items~~ for wheelchairs and are considered part of the facility's per diem rate.~~

(e) **Rental, repairs, maintenance, and delivery.** Refer to OAC 317:30-5-211.4 through 317:30-5-211.5.

(f) **Documentation.**

(1) The specialty evaluation or wheelchair selection documentation must be submitted with the prior authorization request.

(2) The specialty evaluation or wheelchair selection must be performed no longer than ~~90~~ ninety (90) days prior to the submission of the prior authorization request.

(3) The results of the specialty evaluation or wheelchair selection documentation must be supported by the information submitted on the member's medical record.

(4) A copy of the dated and signed written specialty evaluation or wheelchair selection document must be

maintained by the wheelchair provider. The results of the specialty evaluation or wheelchair selection must be written, signed, and dated by the medical professional who evaluated the member or the ATP who was involved in the wheelchair selection for the member.

**317:30-5-211.20. Enteral nutrition**

(a) **Enteral nutrition.** Enteral nutrition is the delivery of nutrients directly into the stomach, duodenum, or jejunum.

(b) **Medical necessity.** Enteral nutrition supplies must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. Requests by qualified providers for enteral nutrition supplies in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2). Documentation must include:

- (1) Diagnosis;
- (2) Certificate of medical necessity (CMN);
- (3) Ratio data;
- (4) Route;
- (5) Caloric intake; and
- (6) Prescription.
- (7) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

(d) **Reimbursement.**

- (1) Extension sets and Farrell bags are not covered when requested separately from the supply kits;
- (2) Enteral nutrition for individuals in long-term care facilities is not separately reimbursed as this is included in the per diem rate.

(e) **Non-covered items.** The following are non-covered items:

- (1) Orally administered enteral products and/or related supplies;
- (2) Formulas that do not require a prescription unless administered by tube;
- (3) Food thickeners, human breast milk, and infant formula;
- (4) Pudding and food bars; and
- (5) Nursing services to administer or monitor the feedings of enteral nutrition.

**317:30-5-211.21. Incontinence supplies**

(a) **Incontinence supplies and services.** Incontinence supplies and services are those supplies that are used to alleviate or prevent skin breakdown or excoriation associated with incontinence.

(b) **Medical necessity.** Incontinence supplies must be determined by a provider to be medically necessary and documented

in the member's plan of care as medically necessary and used for medical purposes. A request by a qualified provider for incontinence supplies in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2). Documentation must include:

- (1) A signed prescription by a provider specifying the requested item;
- (2) A documented diagnosis of an underlying chronic medical condition that involves loss of bladder or bowel control;
- (3) Documentation must include the height and weight of the member, the type of incontinence (bowel/bladder/combined), and expected length of need;
- (4) Requests submitted for underwear/pull-on(s) the member must be ambulatory or in toilet training;
- (5) The member may qualify for incontinence supplies for a short period of time when the member has documented full-skin thickness injuries;
- (6) When requesting wipes as incontinence supplies, documentation must be submitted specific to the supply being requested. Disposable wipes are only allowed when diapers have been approved;
- (7) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

(d) **Quantity limits.** There is a quantity limit to the products allowed as well as product combinations. For a listing of quantity limits on specific products, refer to the OHCA website, under the Durable Medical Equipment page, "Incontinence Supplies". Requests for quantities or combinations outside of the limits published will require additional medical review for approval.

(e) **Non-covered items.** The following are non-covered items:

- (1) Incontinence supplies for members under the age of four (4) years;
- (2) Reusable underwear and/or reusable pull-ons;
- (3) Reusable briefs and/or reusable diapers;
- (4) Diaper service for reusable diapers;
- (5) Feminine hygiene products;
- (6) Disposable penile wraps; and
- (7) Shipping costs.

**317:30-5-211.22. Pulse oximeter**

(a) **Pulse oximeter.** Pulse oximeter is a device used for measuring blood oxygen levels in a non-invasive manner.

(b) **Medical necessity.** Pulse oximeters must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. A request by a qualified provider for pulse oximeters in and of itself shall not constitute medical

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necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and OAC 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2). Documentation must include:

- (1) A current oxygen order signed and dated by an OHCA-contracted provider, along with a certificate of medical necessity (CMN);
- (2) Pertinent information relating to the member's underlying diagnosis and condition which results in the need for the oximeter and supplies, including documentation of unstable airway events and documentation of current monitor readings if available; and
- (3) Documentation of an available trained caregiver in the home who is able to intervene and address changes in the member's oxygen saturation levels in a medically safe and appropriate manner.
- (4) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

(d) **Reimbursement.**

- (1) Temporary probe covers are not reimbursed separately for rented oximeters as they are included in the price of the rental.
- (2) Pulse oximeters are not reimbursed in conjunction with apnea monitors.

### **317:30-5-211.23. Continuous passive motion device for the knee**

(a) **Continuous passive motion (CPM).** CPM is a postoperative treatment method designed to aid recovery of joint range of motion after joint surgery. CPM provides for early post-operative motion and is considered a substitute for active physical therapy (PT).

(b) **Medical necessity.** CPM must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. A request by a qualified provider for CPM in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity.

- (1) A knee CPM device is covered for up to twenty-one (21) days and does not require a prior authorization (PA) for a patient in an early phase of rehabilitation.
- (2) A knee CPM device required for more than twenty-one (21) days does require a PA of the additional days. These cases will be individually reviewed for medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective

medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2).

(1) Documentation must include:

- (A) Type of surgery performed;
- (B) Date of surgery;
- (C) Date of application of CPM;
- (D) Date of discharge from the hospital; and
- (E) Written prescription issued by a licensed prescriber that is signed and dated no more than thirty (30) days prior to the first date of service and that defines the specific "from" and "to" dates that reflect the actual days the CPM device is to be utilized.

(2) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

(d) **Reimbursement.**

- (1) Separate reimbursement will not be made for use of device while member is hospitalized or in a long-term care facility.
- (2) Billing for dates of service when the patient is no longer actively using the CPM device is not appropriate and is not reimbursable.

### **317:30-5-211.24. Parenteral nutrition**

(a) **Parenteral nutrition (PN).** PN is the provision of nutritional requirements intravenously.

(b) **Medical necessity.** PN must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. A request by a qualified provider for PN in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2).

- (1) Hospital records that have objective medical evidence supporting the clinical diagnosis; if applicable;
- (2) A certificate of medical necessity;
- (3) A prescription; and
- (4) Caloric Intake.
- (5) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

(d) **Reimbursement.**

- (1) Supply kits are all inclusive, unbundled supplies (e.g., gloves, tubing, etc.) are not reimbursable for PN.
- (2) Pumps are rented as a capped rental.

### **317:30-5-211.25. Continuous glucose monitoring**

(a) **Continuous glucose monitoring (CGM).** CGM means a minimally invasive system that measures glucose levels in subcutaneous or interstitial fluid. CGM provides blood glucose levels and can help members make more informed management decisions throughout the day.



(b) **Medical necessity.** CGM must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. A request by a qualified provider for CGM in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity. CGM devices must be approved by the U.S. Food and Drug Administration (FDA) as non-adjunctive and must be used for therapeutic purposes. Devices may only be used for members within the age range for which the devices have been FDA approved.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2). Requests for CGM must include all of the following documentation:

- (1) Prescription by a qualified provider;
- (2) Member diagnosis that correlates to the use of CGM;
- (3) Documentation of the member testing to include the frequency each day;
- (4) Documentation member is insulin-treated to include frequency of daily or is using insulin pump therapy;
- (5) Documentation member's insulin treatment regimen requires frequent adjustment;
- (6) The member and/or family member has participated in age appropriate diabetes education, training, and support prior to beginning CGM; and
- (7) In-person or telehealth visit [within the last six (6) months] between the treating provider, member and/or family to evaluate their diabetes control.
- (8) For full guidelines please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

**317:30-5-211.26. Bathroom equipment**

(a) **Bathroom equipment.** Bathroom equipment is used for bathing and toileting and may be considered primarily medical in nature if used in the presence of an illness and/or injury and if it is necessary for activities of daily living that are considered to be essential to health and personal hygiene.

(b) **Medical necessity.** Bathroom equipment must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. A request by a qualified provider for bathroom equipment in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2).

- (1) Current written prescription for specific medical supply, equipment, and appliance item;
- (2) Letter of medical necessity;
- (3) Product information;
- (4) Manufacturer's suggested retail price (MSRP) for each item requested
- (5) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

**317:30-5-211.27. Positive airway pressure (PAP) devices**

(a) **PAP devices.** PAP devices are both a single level continuous positive airway pressure device (CPAP), and/or a bi-level respiratory assist device with or without back-up rate when it is used in the treatment of obstructive sleep apnea.

(b) **Medical Necessity.** PAP devices must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. A request by a qualified provider for PAP devices in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2).

- (1) A face-to-face clinical evaluation by the treating qualified medical professional within six (6) months prior to receiving device;
- (2) Qualifying polysomnogram that is dated within one (1) year of the prior authorization request submission;
- (3) The patient and/or his or her caretaker have received instruction from the supplier of the device in the proper use and care of the equipment; and
- (4) Medical records supporting the need for a PAP device.
- (5) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

**317:30-5-211.28. Sleep studies**

(a) **Sleep studies.** Sleep studies are the continuous and simultaneous monitoring and recording of specified physiological and pathophysiological parameters during a period of sleep for six (6) or more hours. The study is used to diagnose a variety of sleep disorders and to evaluate a patient's response to therapies such as continuous positive airway pressure (CPAP). A sleep study requires physician review, interpretation, and report.

(b) **Medical necessity.** Sleep studies must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. A request by a qualified provider for sleep studies in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as

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the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2). Documentation requirements include:

- (1) Legible signature of the qualified provider or non-physician practitioner responsible for and providing the care to the patient;
  - (2) All pages in the prior authorization request must be clear and legible;
  - (3) Face-to-face evaluation by the ordering provider, the supervising physician, or the interpreting physician; and
  - (4) Medical records to support the medical indication for the sleep study including results of sleep scale.
- (5) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

(d) **Reimbursement.**

- (1) Sleep studies for children must be performed in a sleep diagnostic testing facility to be reimbursable.
- (2) Sleep studies for adults age twenty-one (21) and older must be performed in a sleep diagnostic testing facility or as a home sleep study to be reimbursable.
- (3) A split study beginning on a given date with the titration beginning after midnight on the subsequent date is one (1) study and may not be billed as two (2) consecutive studies.

## 317:30-5-216. Prior authorization requests [REVOKED]

(a) **Prior authorization requirements.** Requirements vary for different types of services. Providers should refer to the service specific sections of policy or the OHCA website for services requiring PA.

- (1) **Required forms.** All required forms are available on the OHCA web site at [www.okhca.org](http://www.okhca.org).
- (2) **Certificate of medical necessity.** The prescribing provider must complete the medical necessity section of the CMN. This section cannot be completed by the supplier. The medical necessity section can be completed by any health care clinician; however, only the member's treating provider may sign the CMN. By signing the CMN, the physician is validating the completeness and accuracy of the medical necessity section. The member's medical records must contain documentation substantiating that the member's condition meets the coverage criteria and the answers given in the medical necessity section of the CMN. These records may be requested by OHCA or its representatives to confirm concurrence between the medical records and the information submitted with the prior authorization request.

(b) **Submitting prior authorization requests.** Contact information for submitting prior authorization requests may be found in the OHCA Provider Billing and Procedures Manual.

An electronic version of this manual is located on the OHCA web site.

(c) **Prior authorization review.** Upon verifying the completeness and accuracy of clerical items, the PA request is reviewed by OHCA staff to evaluate whether or not each service being requested meets SoonerCare's definition of "medical necessity" [see OAC 317:30-3-1(f)] as well as other criteria.

(d) **Prior authorization decisions.** After the PA request is processed, a notice will be issued regarding the outcome of the review. If the request is approved the notice will include an authorization number, the appropriate date span and procedure codes approved.

(e) **Prior authorization does not guarantee reimbursement.** Provider status, member eligibility, and medical status on the date of service, as well as all other SoonerCare requirements, must be met before the claim is reimbursed.

(f) **Prior authorization of manually priced items.** Manually priced items must be prior authorized. If manual pricing is used, the provider is reimbursed at the provider's documented Manufacturer's Suggested Retail Price (MSRP) minus 30% or invoice cost plus 30%, whichever is the lesser of two. OHCA may establish a fair market price through claims review and analysis.

## 317:30-5-218. Reimbursement

(a) **Medical equipment and supplies, equipment and appliances.**

(1) Reimbursement for ~~durable medical equipment and supplies~~ medical supplies, equipment, and appliances will be made using an amount derived from the lesser of the ~~OHCA~~ Oklahoma Health Care Authority (OHCA) maximum allowable fee or the provider's usual and customary charge. The maximum allowable fee is the maximum amount that the OHCA will pay a provider for an allowable procedure. When a code is not assigned a maximum allowable fee for a unit of service, a fee will be established. ~~The fee schedule will be reviewed annually and adjustments to the fee schedule may be made at any time based on efficiency, budget considerations, and quality of care as determined by the OHCA.~~

(2) The fee schedule will be reviewed annually. Adjustments to the fee schedule may be possible at any time based on efficiency, budget considerations, federal regulations, and quality of care as determined by the OHCA.

(3) Payment for medical supplies, equipment, and appliances will be calculated using the rate methodologies found in the Oklahoma Medicaid State Plan.

(4) Payment is not made for medical supplies, equipment, and appliances that are not deemed as medically necessary or considered over-the-counter.

(5) OHCA does not reimburse medical supplies, equipment, and appliances providers separately for services that are included as part of the payment for another treatment program. For example, all items required during inpatient stays are paid through the inpatient payment structure.

(6) Medical supplies, equipment, and appliance products purchased at a pharmacy are paid the equivalent to Medicare Part B, average sales price (ASP) + six percent

(6%). When ASP is not available, an equivalent price is calculated using wholesale acquisition cost (WAC). If no Medicare, ASP, or WAC pricing is available, then the price will be calculated based on invoice cost.

(b) **Manually-priced medical equipment and supplies.** There may be instances when manual pricing is required. When it is, the following pricing methods will be used:

(1) **Invoice pricing.** Reimbursement is at the provider's documented manufacturer's suggested retail price (MSRP) minus thirty percent (30%) or at the provider's invoice cost plus thirty percent (30%), whichever is the lesser of the two.

(2) **Fair market pricing.** OHCA may establish a fair market price through claims review and analysis. For a list of medical equipment and supplies that are fair market-priced, refer to the OHCA website at [www.okhca.org](http://www.okhca.org) for the fair market value list (Selected medical supplies, equipment, and appliance items priced at fair market price).

(bc) **Oxygen equipment and supplies.**

(1) Payment for stationary oxygen systems (liquid oxygen systems, gaseous oxygen systems, and oxygen concentrators) is based on continuous rental, i.e., a continuous monthly payment that is made as long as it is medically necessary. The rental payment includes all contents and supplies, e.g., regulators, tubing, masks, etc. Portable oxygen systems are considered continuous rental. Ownership of the equipment remains with the supplier.

(2) Separate payment will not be made for maintenance, servicing, delivery, or for the supplier to pick up the equipment when it is no longer medically necessary. In addition, the provider/supplier will not be reimbursed for mileage.

(3) Payment for oxygen and oxygen equipment and supplies will not exceed the Medicare fee for the same procedure code. Reimbursement for members who reside in a nursing facility may be at a reduced rate. The fee schedule will be reviewed annually and adjustments to the fee schedule may be made at any time based on efficiency, budget considerations, and quality of care as determined by the OHCA.

(4) For residents in a long-term care facility, durable medical equipment products, including oxygen, are included in the facility's per diem rate.

## PART 61. HOME HEALTH AGENCIES

### 317:30-5-545. Eligible providers

All eligible home health service providers must be Medicare certified, accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO), or have deemed status with Medicare, and have a current contract with the Oklahoma Health Care Authority (OHCA). Home Health Agencies health agencies billing for durable medical equipment (DME) medical supplies, equipment, and appliances must have a supplier contract and bill equipment on claim form CMS-1500. Additionally, home health services

providers that did not participate in Medicaid prior to January 1, 1998, must meet the "Capitalization Requirements" set forth in 42 CFR 489.2842 Code of Federal Regulations (C.F.R.) § 489.28. Home health services providers that do not meet these requirements will not be permitted to participate in the Medicaid program.

### 317:30-5-546. Coverage by category

Payment is made for home health services as set forth in this section when a face-to-face encounter has occurred in accordance with provisions of 42 CFR 440.70.42 Code of Federal Regulations (C.F.R.) § 440.70. Payment is made for home health services provided by a home health agency in the member's residence and in any setting in which normal life activities take place except for a hospital, long-term care facility, or intermediate care facility for individuals with intellectual disabilities. For individuals eligible for Part B of Medicare, payment is made utilizing the Medicaid allowable for comparable services.

(1) **Adults.** Payment is made for home health services provided in the member's residence to all categorically needy individuals. Coverage for adults is as follows:

(A) **Covered items.**

- (i) Part time or intermittent nursing services;
- (ii) Home health aide services;
- (iii) Standard medical supplies;
- (iv) Durable medical equipment (DME) and appliances; and
- (v) Items classified as prosthetic devices.

(B) **Non-covered items.** The following are not covered:

- (i) Sales tax;
- (ii) Enteral therapy and nutritional supplies;
- (iii) Electro spinal orthosis system (ESO); and
- (iv) Physical therapy, occupational therapy, speech pathology, or audiological services.

(2) **Children.** Home Health Services are covered for persons under age 21.

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

### 317:30-5-547. Reimbursement

(a) Nursing services and home health aide services are covered services on a per visit basis. Reimbursement for any combination of nursing or home aid service shall not exceed 36 visits per calendar year per member. Additional visits for children must be prior authorized when medically necessary. Thirty-six (36) visits per calendar year of nursing and/or home health aide services for any member do not require prior authorization; however, any visit surpassing the thirty-sixth (36) visit will require prior authorization and medical review.

(b) Reimbursement for durable medical equipment and supplies will be made using the amount derived from the lesser of the OHCA Oklahoma Health Care Authority (OHCA) fee schedule or the provider's usual and customary charge. The maximum allowable fee is the maximum amount that OHCA

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will pay a provider for an allowable procedure code. When a procedure code is not assigned a maximum allowable fee for a unit of service, a fee will be established. Once the service has been provided, the supplier is required to include a copy of the invoice documenting the supplier's cost of the item with the claim.

(c) Reimbursement for oxygen and oxygen supplies is as follows:

(1) Payment for oxygen systems (stationary, liquid and oxygen concentrators) is based on continuous rental, i.e., a continuous monthly payment is made as long as it is medically necessary. The rental payment includes all contents and supplies, i.e., regulators, tubing, masks, etc. Portable oxygen systems are also considered continuous rental. Ownership of the equipment remains with the supplier.

(2) Separate payment will not be made for maintenance, servicing, delivery, or for the supplier to ~~pick up~~ pick up the equipment when it is no longer medically necessary.

(3) Payment for oxygen and oxygen equipment and supplies will not exceed the Medicare fee for the same procedure code. ~~Reimbursement for members who reside in a nursing facility may be at a reduced rate.~~ The fee schedule will be reviewed annually and adjustments to the fee schedule may be made at any time based on efficiency, budget considerations, and quality of care as determined by the OHCA.

(4) Physical therapy, occupational therapy, and/or speech pathology and audiology services, are not covered when provided by a home health agency.

## 317:30-5-548. Procedure codes

~~Procedure codes for home health services are assigned HCPCS codes for supplies and durable medical equipment. All home health services are billed using Healthcare Common Procedure Coding System (HCPCS) codes.~~

## 317:30-5-549. Prosthetic devices [REVOKED]

~~Payment may be made to home health agencies for prosthetic devices. Refer to the Medical Suppliers Provider Rules for further information.~~

[OAR Docket #22-416; filed 6-23-22]

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

[OAR Docket #22-432]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. General Provider Policies  
Part 1. General Scope and Administration  
317:30-3-5 [AMENDED]  
(Reference APA WF # 21-40)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 Code of Federal Regulation Section 447.56(a)(1)(vii)

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule changes will further clarify that no copayment is assessed to pregnant women covered by SoonerCare. The policy changes align Oklahoma's administrative rules regarding copayments for pregnant women with current business practices.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 1. GENERAL SCOPE AND ADMINISTRATION

#### 317:30-3-5. Assignment and cost sharing

(a) **Definitions.** The following words and terms, when used in subsection (c) of this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "**Fee-for-service (FFS) contract**" means the provider agreement specified in Oklahoma Administrative Code (OAC) 317:30-3-2. This contract is the contract between the Oklahoma Health Care Authority (OHCA) and medical providers which provides for a fee with a specified service involved.

(2) "**Outside of the scope of the services**" means all medical benefits outside the set of services defined at OAC 317:25-7 and the provisions of the SoonerCare Choice contracts in the SoonerCare program.

(3) "**Within the scope of services**" means the set of covered services defined at OAC 317:25-7 and the

provisions of the SoonerCare Choice contracts in the SoonerCare program.

~~(3) "Outside of the scope of the services" means all medical benefits outside the set of services defined at OAC 317:25-7 and the provisions of the SoonerCare Choice contracts in the SoonerCare program.~~

(b) **Assignment in fee-for-serviceFFS.** Oklahoma's Medicaid State Plan provides that participation in the medical program is limited to providers who accept, as payment in full, the amounts paid by OHCA plus any deductible, coinsurance, or co-payment required by the State Plan to be paid by the member and make no additional charges to the member or others.

(1) OHCA presumes acceptance of assignment upon receipt of an assigned claim. This assignment, once made, cannot be rescinded, in whole or in part by one party, without the consent of the other party.

(2) Once an assigned claim has been filed, the member must not be billed and the member is not responsible for any balance except the amount indicated by OHCA. The only amount a member may be responsible for is a co-payment, or the member may be responsible for services not covered under the medical programs. In any event, the member should not be billed for charges on an assigned claim until the claim has been adjudicated or other notice of action received by the provider. Any questions regarding amounts paid should be directed to OHCA, Provider Services.

(3) When potential assignment violations are detected, the OHCA will contact the provider to assure that all provisions of the assignment agreement are understood. When there are repeated or uncorrected violations of the assignment agreement, the OHCA is required to suspend further payment to the provider.

(c) **Assignment in SoonerCare.** Any provider who holds a ~~fee for serviceFFS~~ contract and also executes a contract with a provider in the SoonerCare Choice program must adhere to the rules of this subsection regarding assignment.

(1) If the service provided to the member is outside of the scope of the services outlined in the SoonerCare contract, then the provider may bill or seek collection from the member.

(2) In the event there is a disagreement whether the services are in or out of the scope of the contracts referenced in (1) of this subsection, the OHCA shall be the final authority for this decision.

(3) Violation of this provision shall be grounds for a contract termination in the ~~fee for serviceFFS~~ and SoonerCare programs.

(d) **Cost sharing/co-payment.** Section 1902(a)(14) of the Social Security Act permits states to require certain members to share some of the costs of SoonerCare by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges. OHCA requires a co-payment of some SoonerCare members for certain medical services provided through the ~~fee for serviceFFS~~ program. A co-payment is a charge which must be paid by the member to the service provider when the service is

covered by SoonerCare. Section 1916(e) of the Act requires that a provider participating in the SoonerCare program may not deny care or services to an eligible individual based on such individual's inability to pay the co-payment. A person's assertion of their inability to pay the co-payment establishes this inability. This rule does not change the fact that a member is liable for these charges, and it does not preclude the provider from attempting to collect the co-payment.

(1) Co-payment is not required of the following members:

(A) Individuals under age twenty-one (21). Each member's date of birth is available on the REVS system or through a commercial swipe card system.

(B) Members in nursing facilities (NF) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID).

(C) Home and Community-Based Services (HCBS) waiver members except for prescription drugs.

(D) American Indian and Alaska Native members, per Section 5006 of the American Recovery and Reinvestment Act of 2009 and as established in the federally-approved Oklahoma Medicaid State Plan.

(E) Individuals who are categorically eligible for SoonerCare through the Breast and Cervical Cancer Treatment program.

(F) Individuals receiving hospice care, as defined in section 1905(o) of the Social Security Act.

(2) Co-payment is not required for the following services:

(A) Family planning services. This includes all contraceptives and services rendered.

(B) Emergency services provided in a hospital, clinic, office, or other facility.

(C) Services furnished to pregnant women, ~~if those services relate to the pregnancy or to any other medical condition which may complicate the pregnancy, including prenatal vitamins.~~

(D) Smoking and tobacco cessation counseling and products.

(E) Blood glucose testing supplies and insulin syringes.

(F) Medication-assisted treatment (MAT) drugs.

(3) Co-payments are required in an amount not to exceed the federal allowable for the following:

(A) Inpatient hospital stays.

(B) Outpatient hospital visits.

(C) Ambulatory surgery visits including free-standing ambulatory surgery centers.

(D) Encounters with the following rendering providers:

(i) Physicians;

(ii) Advanced practice registered nurses;

(iii) Physician assistants;

(iv) Optometrists;

(v) Home health agencies;

(vi) Certified registered nurse anesthetists;

(vii) Anesthesiologist assistants;

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- (viii) Durable medical equipment providers; and
- (ix) Outpatient behavioral health providers.
- (E) Prescription drugs.
- (F) Crossover claims. Dually eligible Medicare/SoonerCare members must make a co-payment in an amount that does not exceed the federal allowable per visit/encounter for all Part B covered services. This does not include dually eligible HCBS waiver members.
- (4) Medicaid premiums and cost sharing incurred by all individuals in the Medicaid household may not exceed an aggregate limit of five percent (5%) of the family's income applied on a monthly basis, as specified by the agency.
- (5) Providers will be required to refund any co-payment amounts the provider collected from the member in error and/or above the family's aggregate cost sharing maximum.

[OAR Docket #22-432; filed 6-23-22]

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

[OAR Docket #22-417]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. General Provider Policies  
Part 1. General Scope and Administration  
317:30-3-35 [NEW]  
(Reference APA WF # 21-08)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes (O.S.); the Oklahoma Health Care Authority Board; and 63 O.S. 63 § 1-133

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 3. General Provider Policies  
Part 1. General Scope and Administration  
317:30-3-35 [NEW]

### Gubernatorial approval:

July 19, 2021

### Register publication:

38 Ok Reg 1595

### Docket number:

21-703

(Reference APA WF # 21-08)

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed policy is necessary to comply with Senate Bill 574 (SB 574) and Oklahoma Statutes Title 63 § 1-133, which create the state designated health information exchange, Oklahoma State Health Information Network and Exchange (OKSHINE). The proposed new policy will outline the program description, definitions, user requirements, and needed certifications of OKSHINE. The implementation of OKSHINE will allow for statewide interoperability and the sharing of Medicaid and public health information.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 1. GENERAL SCOPE AND ADMINISTRATION

#### **317:30-3-35. Oklahoma State Health Information Network and Exchange (OKSHINE)**

(a) **Authority.** This rule is promulgated under the authority granted in Title 63 of the Oklahoma Statutes Section 1-133 (63 O.S. § 1-133). This Section is intended to be read in conjunction with applicable Oklahoma statutes and federal law.

(b) **Applicability and purpose.**

(1) **Applicability.** This section shall apply to and govern the establishment and operation of the statewide health information exchange (HIE), herein referred to as OKSHINE.

(2) **Purpose.** OKSHINE is the state-designated organization that facilitates the exchange of health information to and from authorized individuals and health care organizations in the state for the purpose of improving health outcomes, as per 63 O.S. § 1-133.

(c) **Definitions.** The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **OKSHINE** means an organization that oversees, governs, and facilitates health information exchange among health care providers that are not related health care organizations as defined in the Oklahoma Statutes, to improve the security of patient information, coordination of patient care, and the efficiency of health care delivery.

(2) **Participant** means an organization, health care practitioner or institution, health plan, or health care clearinghouse who has executed a written participation agreement (PA) and business associate agreement (BAA) with OKSHINE.

(3) **Participant agreement** means the agreement between OKSHINE and a participant which authorizes the participant to have access to OKSHINE and outlines the policies and procedures for access, protection, and use of the electronic protected health information.

(4) **Oklahoma Statewide Health Information Exchange (OKHIE)** means a certified HIE as referenced in 63 O.S. § 1-133 whose primary business activity is health information exchange.

(d) **OKHIE Certification.** Per 63 O.S. § 1-133, an initial certification and an annual recertification will be required for health information exchanges to qualify as an OKHIE. In order to receive certification, the applying HIE must submit an application to the Oklahoma Health Care Authority (OHCA) and provide all requested documentation. The application and standards for certification shall be posted on the OHCA OKSHINE public website.

(1) The OHCA shall establish a health information exchange certification with input from stakeholders.

(2) Until such time as the health information exchange certification is established by the OHCA, an OKSHINE or an HIE organization that was previously certified by the Oklahoma Health Information Exchange Trust (OHIET) shall be deemed an OKHIE.

(3) An HIE must provide documentation of certification from OHIET to OHCA in order to receive initial OKHIE certification.

(e) **Fees.**

(1) **Certification fees.** Each health information exchange which applies for certification, will be required to pay annual certification/recertification fees. The OHCA will develop the certification criteria and will publish the criteria and associated fees, when available, on the OHCA OKSHINE public website.

(2) **Participant fees.** Each participant, as defined in this section, will be required to pay an annual participation fee as outlined in the participant agreement. The OHCA will develop the criteria for the fees and will publish the criteria when available. The participant agreement and fee schedule will be posted on the OHCA OKSHINE public website.

[OAR Docket #22-417; filed 6-23-22]

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

[OAR Docket #22-424]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. General Provider Policies
- Part 4. Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program/Child-Health Services
- 317:30-3-65.12 [AMENDED]
- Subchapter 5. Individual Providers and Specialties

- Part 30. Applied Behavior Analysis (ABA) Services [NEW]
  - 317:30-5-310 [NEW]
  - 317:30-5-311 [NEW]
  - 317:30-5-312 [NEW]
  - 317:30-5-313 [NEW]
  - 317:30-5-314 [NEW]
  - 317:30-5-315 [NEW]
  - 317:30-5-316 [NEW]
- (Reference APA WF # 21-31)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

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

November 23, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 18, 2022

**PUBLIC HEARING:**

January 18, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will establish new documentation and signature requirements, for applied behavior analysis (ABA) services, to ensure accuracy and completeness in clinical documentation as well as better individualized treatment plans for members. Additionally, the proposed changes will clarify the conditions under which concurrent billing codes can be used for the treatment of members.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 3. GENERAL PROVIDER POLICIES**

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

**317:30-3-65.12. Applied behavior analysis (ABA) services**  
(a) ~~Purpose and general provisions.~~ The purpose of this Section is to establish guidelines for the provision of ABA services under the EPSDT benefit.

(1) ~~ABA focuses on the analysis, design, implementation, and evaluation of instructional and other environmental modifications to produce meaningful changes in~~

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human behavior. ABA services include the use of direct observation, measurement, and functional analysis of the relations between the environment and behavior. Common ABA-based techniques include, but are not limited to; discrete trial training (DTT); naturalistic developmental behavioral intervention (NDBI); and verbal behavioral intervention.

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

(3) At an initial assessment, target symptoms are identified. A treatment plan is developed to identify core deficits and aberrant behaviors, and includes designated interventions intended to address these deficits and behaviors and that are functional, meaningful and connected to the member's daily activities routines.

(4) ABA services require prior authorization [refer to Oklahoma Administrative Code (OAC) 317:30-3-31 and 317:30-3-65.12(e)].

### (b) **Functional behavior assessment (FBA) and treatment plan components.**

(1) The FBA serves as a critical component of the treatment plan and is conducted by a board-certified behavior analyst (BCBA) to identify the specific behavioral needs of the member. The FBA consists of:

- (A) Description of the problematic behavior (topography, onset/offset, cycle, intensity, severity);
- (B) History of the problematic behavior (long term and recent);
- (C) Antecedent analysis (setting, people, time of day, events);
- (D) Consequence analysis; and
- (E) Impression and analysis of the function of the problematic behavior.

(2) The treatment plan is developed by a BCBA or a licensed psychologist from the FBA. The treatment plan shall:

- (A) Be person centered and individualized;
- (B) Delineate the baseline levels of target behaviors;
- (C) Specify long and short term objectives that are defined in observable, measureable behavioral terms;
- (D) Specify criteria that will be used to determine achievement of objectives;
- (E) Include assessment and treatment protocols for addressing each of the target behaviors;
- (F) Clearly identify the schedule of services planned and the individuals responsible for delivering the services, including frequent review of data on target behaviors and adjustments in the treatment plan and/or protocols by the BCBA or licensed psychologist as needed;
- (G) Include training and supervision to enable board certified assistant behavior analysts (BCaBAs) and registered behavior technicians (RBTs) to implement assessment and treatment protocols;

(H) Include training and support to enable parents and other caregivers to participate in treatment planning and successfully reinforce the established treatment plan;

(I) Include care coordination involving the parents or caregiver(s), school, state disability programs, and others as applicable; and

(J) Ensure that services are consistent with applicable professional standards and guidelines relating to the practice of applied behavior analysis as well as state Medicaid laws and regulations.

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

(1) Board certified behavior analyst<sup>7</sup> (BCBA<sup>7</sup>) B A master's or doctoral level independent practitioner who is certified by the national accrediting Behavior Analyst Certification Board, Inc.<sup>7</sup> (BACB<sup>7</sup>) and licensed by the Oklahoma Department of Human Services' (OKDHS) Developmental Disabilities Services Division (DDS) to provide behavior analysis services. A BCBA may supervise the work of board certified assistant behavior analysts and registered behavior technicians implementing behavior analytic interventions;

(2) Board certified assistant behavior analyst<sup>7</sup> (BCaBA<sup>7</sup>) B A bachelor's level practitioner who is certified by the national accrediting BACB and certified by OKDHS DDS to provide behavior analysis services under the supervision of a BCBA;

(3) Registered behavior technician<sup>TM</sup> (RBT<sup>7</sup>) B A high school level or higher paraprofessional who is certified by the national accrediting BACB and practices under the close and ongoing supervision of a BCBA. The RBT works under the license number of a BCBA and is primarily responsible for the direct implementation of BCBA designed and prescribed behavior analytic services;

(4) Licensed psychologist B An individual who is licensed and in good standing with the Oklahoma State Board of Examiners of Psychologists and has professional experience in the use of ABA therapy may render behavior analysis services. Refer to OAC 317:30-5-275; and

(5) Human services professional A practitioner who is licensed by the State of Oklahoma pursuant to (A) (H), and certified by the national accrediting BACB, and who is working within the scope of his or her practice, to include:

- (A) A licensed physical therapist;
- (B) A licensed occupational therapist;
- (C) A licensed clinical social worker or social worker candidate under the supervision of a licensed clinical social worker;
- (D) A licensed speech language pathologist or licensed audiologist;
- (E) A licensed professional counselor or professional counselor candidate under the supervision of a licensed professional counselor;
- (F) A licensed marital and family therapist or marital and family therapist candidate under the supervision of a licensed marital and family therapist; or



- (G) A licensed behavioral practitioner or behavioral practitioner candidate under the supervision of a licensed behavioral practitioner.
- (d) **Provider criteria.** To direct, supervise, and/or render ABA services, the following conditions shall be met:
- (1) A BCBA shall:
    - (A) Be currently licensed by OKDHS DDS as a BCBA;
    - (B) Have no sanctions or disciplinary actions by OKDHS DDS or the BACB;
    - (C) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
    - (D) Be fully contracted with SoonerCare as a provider.
  - (2) A BCaBA shall:
    - (A) Be currently certified by OKDHS DDS as a BCaBA;
    - (B) Work under the supervision of a SoonerCare contracted BCBA provider;
    - (C) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
    - (D) Be fully contracted with SoonerCare as a provider.
  - (3) An RBT shall:
    - (A) Be currently certified by the national accrediting BACB as an RBT;
    - (B) Work under the supervision of a SoonerCare contracted BCBA provider;
    - (C) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
    - (D) Be fully contracted with SoonerCare as a provider.
  - (4) A human services professional shall:
    - (A) Be currently licensed or certified by the State of Oklahoma, in accordance with Section 1928 of Title 59 of the Oklahoma Statutes;
    - (B) Be currently certified by the national accrediting BACB;
    - (C) Have no sanctions or disciplinary actions by the applicable state licensing board or the BACB;
    - (D) If working under supervision within the scope of his or her practice, have a documented relationship with a fully licensed human service professional working in a supervisory capacity;
    - (E) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
    - (F) Be fully contracted with SoonerCare as a provider.
- (e) **Medical necessity criteria for members under twenty-one (21) years of age.** ABA services are considered

medically necessary when all of the following conditions are met:

- (1) The member is under twenty-one (21) years of age with a definitive diagnosis of an Autism Spectrum Disorder (ASD) from the following providers:
  - (A) Pediatric neurologist or neurologist;
  - (B) Developmental pediatrician;
  - (C) Licensed psychologist;
  - (D) Psychiatrist or neuropsychiatrist; or
  - (E) Other licensed physician experienced in the diagnosis and treatment of ASD.
- (2) A comprehensive diagnostic evaluation completed by one (1) of the above identified professionals must:
  - (A) Be completed within the last two (2) years;
  - (B) Include a complete pertinent medical and social history, including pre and perinatal, medical, developmental, family, and social elements; and
  - (C) Be based on criteria outlined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) or the most current version of the DSM for ASD and/or may also include scores from the use of formal diagnostic tests such as the Autism Diagnostic Interview Revised (ADI-R), Autism Diagnostic Observation Schedule 2 (ADOS-2), Childhood Autism Rating Scale (CARS) or other tools with acceptable psychometric properties. Screening scales are not sufficient to make a diagnosis and will not be accepted as the only formal scale.
- (3) There must be a reasonable expectation that the member will benefit from ABA. The member must exhibit:
  - (A) The ability/capacity to learn and develop generalized skills to assist with his or her independence; and
  - (B) The ability to develop generalized skills to assist in addressing maladaptive behaviors associated with ASD.
- (4) The member is medically stable and does not require twenty-four (24) hour medical/nursing monitoring or procedures provided in a hospital or intermediate care facility for individuals with intellectual disabilities (ICF/IID).
- (5) The member exhibits atypical or disruptive behavior within the most recent thirty (30) calendar days that significantly interferes with daily functioning and activities. Such atypical or disruptive behavior may include, but is not limited to:
  - (A) Impulsive aggression toward others;
  - (B) Self-injury behaviors;
  - (C) Intentional property destruction; or
  - (D) Severe disruption in daily functioning (e.g. the individual's inability to maintain in school, child care settings, social settings, etc.) due to changes in routine activities that have not been helped by other treatments such as occupational, speech therapy, additional psychotherapy and/or school/daycare interventions.

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(6) The focus of treatment is not custodial in nature (which is defined as care provided when the member "has reached maximum level of physical or mental function and such person is not likely to make further significant improvement" or "any type of care where the primary purpose of the type of care provided is to attend to the member's daily living activities which do not entail or require the continuing attention of trained medical or paramedical personnel.") Interventions are intended to strengthen the individual's/parent's/legal guardian's capacity for self care and self sufficiency to decrease interventions in the home by those other than the parent(s)/legal guardian(s).

(7) It has been determined that there is no less intensive or more appropriate level of service which can be safely and effectively provided.

(f) **Prior authorization.** Eligible providers must submit an initial prior authorization request to the Oklahoma Health Care Authority (OHCA) or its designated agent. Prior authorization requests shall be granted up to six (6) months of ABA treatment services at one (1) time unless a longer duration of treatment is clinically indicated. The number of hours authorized may differ from the hours requested on the prior authorization request based on the review by an OHCA reviewer and/or physician. If the member's condition necessitates a change in the treatment plan, the provider must request a new prior authorization. The prior authorization request must meet the following SoonerCare criteria for ABA services:

(1) The criteria includes a comprehensive behavioral and FBA outlining the maladaptive behaviors consistent with the diagnosis of ASD and its associated comorbidities. In addition to completing the initial request form, providers will be required to submit documentation that will consist of the following:

(A) Information about relevant medical status, prior assessment results, response to prior treatment, and other relevant information gathered from review of records and past assessments.

(B) Information gathered from interview of family and/or caregivers, rating scales, and social validity measures to assess perceptions of the client's skill deficits and behavioral excesses, and the extent to which these deficits impede the daily life of the member and the family.

(C) Direct assessment and observation, including any data related to the identified problem behavior. The analysis of such data serves as the primary basis for identifying pretreatment levels of functioning, developing and adapting treatment protocols, and evaluating response to treatment and progress towards goals.

(D) Functional assessment of problem behavior that includes antecedent factors, skill deficits, and consequences contributing to the problem behavior. The treatment plan should address all three (3) areas, including antecedent interventions, teaching replacement skills, and modification of consequences.

(2) The prior authorization for ABA treatment will be time limited for up to thirty (30) hours per week unless

other hours are deemed medically necessary and authorized through a prior authorization request and must:

(A) Be a one on one encounter (face to face between the member and ABA provider) except in the case of family adaptive treatment guidance;

(B) Be child centered and based upon individualized goals that are strengths specific, family focused, and community based;

(C) Be culturally competent and the least intrusive as possible;

(D) Clearly define in measurable and objective terms the intervention plan so it can address specific target behaviors. The intervention plan should be clearly linked to the function of the maladaptive behavior and include antecedent interventions, replacement skills to be taught, and modification of consequences. Additional goals may be identified that are related to the core deficits of ASD and are prioritized based on current research and social significance for the individual.

(E) Record the frequency, rate, symptom intensity/duration, or other objective measures of baseline levels;

(F) Set quantifiable criteria for progress;

(G) Establish and record behavioral intervention techniques that are appropriate to target behaviors. The detailed treatment plan utilizes reinforcement and other behavioral principles and excludes the use of methods or techniques that lack consensus about their effectiveness based on evidence in peer reviewed publications;

(H) Specify strategies for generalization of learned skills beyond the clinical settings such as in the home or other community settings;

(I) Document planning for transition through the continuum of interventions, services, and settings, as well as discharge criteria. Treatment (behavioral training) will be individualized and documentation will support the identified atypical or disruptive behavior.

(J) Include parent(s)/legal guardian(s) in behavioral training techniques so that they can practice additional hours of intervention on their own. The treatment plan is expected to achieve the parent(s)/legal guardian(s) ability to successfully reinforce the established plan of care and support generalization of skills in the home and community settings. Frequency of parental involvement will be determined by the treatment provider and listed on the treatment plan;

(K) Document parent(s)/legal guardian(s) participation in the training of behavioral techniques in the member's medical record. Parent(s)/legal guardian(s) participation is critical to the generalization of treatment goals to the member's environment; and

(L) Ensure that recommended ABA services do not duplicate or replicate services received in a member's primary academic education setting, or provided

within an Individualized Education Plan (IEP), Individualized Service Plan (ISP), or any other individual plan of care. Documentation may be requested by the OHCA to support coordination of services with other providers and to prevent overlap and duplication of services including those in school settings.

(g) ~~ABA extension requests.~~ Extension requests for ABA services must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment and establish the following:

- (1) Eligibility criteria in OAC 317:30-3-65.12(d) 1-6;
- (2) The frequency of the target behavior has diminished since last review, or if not, there has been modification of the treatment or additional assessments have been conducted;
- (3) A functional analysis shall be completed by the provider when no measurable progress has occurred, or it may be requested by the OHCA. The functional analysis should record the member's serious maladaptive target behavioral symptom(s) and precipitants, and document the modifications of the current treatment plan to address progress, as well as make a determination of the function a particular maladaptive behavior serves for the member in the environmental context;
- (4) Appropriate consultations from other staff or experts have occurred (to optimize psychiatric medications and medical treatments to include but not limited to psychiatric consults, pediatric evaluation for other conditions, etc.) and interventions have been changed, including the number of hours per week of service or setting (higher level of care);
- (5) The OHCA may suggest appropriate consultation from other staff or experts during the process of prior authorization;
- (6) Parent(s)/legal guardian(s) have received re training on these changed approaches; and
- (7) The treatment plan documents a gradual tapering of higher intensities of intervention and transitioning to supports from other sources (i.e., schools) as progress allows.

(h) ~~Reimbursement methodology.~~ SoonerCare shall provide reimbursement for ABA services in accordance with the Medicaid State Plan.

- (1) ~~Payment shall only be made to SoonerCare contracted groups or qualified individual providers who are currently licensed and in good standing. Payment is not made to under supervision ABA practitioners/paraprofessionals, including but not limited to, BCaBAs and RBTs.~~
- (2) ~~Reimbursement for ABA services is only made on a fee for services basis. The maximum allowable fee for a unit of service has been determined by OHCA to be a reasonable fee, consistent with efficiency, economy, and quality of care. Payment for covered services is the lower of the provider's actual billed charges, consistent with the provider's usual and customary charge to the general public for the service, or the maximum allowable per unit of service.~~

~~(3) Reimbursement shall only be made for services that have been prior authorized by OHCA or its designee; and performed on an individualized basis and not in a group setting except for family adaptive behavior treatment guidance by a qualified ABA provider [OAC 317:30-3-65.12(b)].~~

~~(4) Reimbursement for ABA services shall not be made to or for services rendered by a parent, legal guardian, or other legally responsible person. ABA services are provided under the EPSDT benefit. Refer to OAC 317:30-5-310 through 317:30-5-316 for coverage, provider and program requirements, and reimbursement methodology.~~

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 30. APPLIED BEHAVIOR ANALYSIS (ABA) SERVICES**

**317:30-5-310. Purpose**

The purpose of this Section is to establish guidelines for the provision of ABA services under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit.

- (1) ABA focuses on the analysis, design, implementation, and evaluation of instructional and other environmental modifications to produce meaningful changes in human behavior. ABA services include the use of direct observation, measurement, and functional analysis of the relations between the environment and behavior. Common ABA-based techniques include but are not limited to; discrete trial training (DTT); naturalistic developmental behavioral intervention (NDBI); and verbal behavioral intervention.
- (2) ABA may be provided in a variety of settings, including home, community, or clinical. It involves development of an individualized treatment plan that includes transition and aftercare planning, and family/caregiver involvement.
- (3) At an initial assessment, target symptoms are identified. A treatment plan is developed to identify core deficits and aberrant behaviors, and includes designated interventions intended to address these deficits and behaviors and that are functional, meaningful, and connected to the member's daily activities routines.
- (4) ABA services require prior authorization [refer to Oklahoma Administrative Code (OAC) 317:30-3-31 and 317:30-5-314].

**317:30-5-311. Eligible providers and requirements**

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

- (1) Board certified behavior analyst® (BCBA®) - A master's or doctoral level independent practitioner who is certified by the national-accrediting Behavior Analyst Certification Board, Inc.® (BACB®) and licensed by the

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Oklahoma Human Services' (OKDHS) Developmental Disabilities Services Division (DDS) to provide behavior analysis services. A BCBA may supervise the work of board-certified assistant behavior analysts and registered behavior technicians implementing behavior analytic interventions;

(2) Board-certified assistant behavior analyst® (BCaBA®) - A bachelor's level practitioner who is certified by the national-accrediting BACB and certified by OKDHS DDS to provide behavior analysis services under the supervision of a BCBA;

(3) Registered behavior technician™ (RBT®) - A high school level or higher paraprofessional who is certified by the national-accrediting BACB and practices under the close and ongoing supervision of a BCBA. The RBT works under the license number of a BCBA and is primarily responsible for the direct implementation of BCBA designed and prescribed behavior-analytic services;

(4) Licensed psychologist - An individual who is licensed and in good standing with the Oklahoma State Board of Examiners of Psychologists and has professional experience in the use of ABA therapy may render behavior analysis services. Refer to OAC 317:30-5-275; and

(5) Human services professional - A practitioner who is licensed by the State of Oklahoma pursuant to (A) - (G), and certified by the national-accrediting BACB, and who is working within the scope of his or her practice, to include:

(A) A licensed physical therapist;

(B) A licensed occupational therapist;

(C) A licensed clinical social worker or social worker candidate under the supervision of a licensed clinical social worker;

(D) A licensed speech-language pathologist or licensed audiologist;

(E) A licensed professional counselor or professional counselor candidate under the supervision of a licensed professional counselor;

(F) A licensed marital and family therapist or marital and family therapist candidate under the supervision of a licensed marital and family therapist; or

(G) A licensed behavioral practitioner or behavioral practitioner candidate under the supervision of a licensed behavioral practitioner.

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

(1) A BCBA shall:

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

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

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

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

(2) A BCaBA shall:

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

(B) Work under the supervision of a SoonerCare-contracted BCBA provider;

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

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

(3) An RBT shall:

(A) Be currently certified by the national-accrediting BACB as an RBT;

(B) Work under the supervision of a SoonerCare-contracted BCBA provider;

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

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

(4) A human services professional shall:

(A) Be currently licensed or certified by the State of Oklahoma, in accordance with Section 1928 of Title 59 of the Oklahoma Statutes;

(B) Be currently certified by the national-accrediting BACB;

(C) Have no sanctions or disciplinary actions by the applicable state licensing board or the BACB;

(D) If working under supervision within the scope of his or her practice, have a documented relationship with a fully-licensed human service professional working in a supervisory capacity;

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

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

### **317:30-5-312. Treatment plan components and documentation requirements**

(a) **Treatment plan.** The treatment plan is developed by a BCBA or a licensed psychologist from the FBA. The treatment plan shall:

(1) Be person-centered and individualized;

(2) Delineate the baseline levels of target behaviors;

(3) Specify long-term and short-term objectives that are defined in observable, measurable behavioral terms;

(4) Specify criteria that will be used to determine achievement of objectives;

(5) Include assessment(s) and treatment protocols for addressing each of the target behaviors such as including antecedent and consequence interventions, and teaching of replacement skills specific to the function of the identified maladaptive behaviors;

(6) Clearly identify the schedule of services planned and the individuals responsible for delivering the services.

including frequent review of data on target behaviors and adjustments in the treatment plan and/or protocols by the BCBA or licensed psychologist as needed;

(7) Include training and supervision to enable board certified assistant behavior analysts (BCaBAs) and registered behavior technicians (RBTs) to implement assessment and treatment protocols;

(8) Include training and support to enable parents and other caregivers to participate in treatment planning and successfully reinforce the established treatment plan in the home and community settings;

(9) Include care coordination involving the parents or caregiver(s), school, state disability programs, and others as applicable; and

(10) Ensure that services are consistent with applicable professional standards and guidelines relating to the practice of applied behavior analysis as well as state Medicaid laws and regulations.

**(b) Assessments.** Initial assessments allow ABA providers to develop a treatment plan that is unique to the member and include all treatment recommendations and goals.

(1) The functional behavior assessment (FBA) serves as a critical component of the treatment plan and is conducted by a board-certified behavior analyst (BCBA) to identify the specific behavioral needs of the member. The FBA consists of:

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

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

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

(D) Consequence analysis; and

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

(2) Other relevant assessments may be submitted in addition to the FBA for review by an OHCA reviewer and/or physician to support medical necessity criteria.

**(c) Documentation requirements.** ABA providers must:

(1) Document all ABA services in the member's record. Refer to OAC 317:30-5-248;

(2) Retain the member's records necessary to disclose the extent of services. Refer to OAC 317:30-3-15; and

(3) Release the medical information necessary for payment of a claim upon request. Refer to OAC 317:30-3-16.

(4) All assessment and treatment services must include the following:

(A) Date;

(B) Start and stop time for each session/unit billed and physical location where service was provided;

(C) Signature of the provider;

(D) Credentials of provider;

(E) Specific problem(s), goals and/or objectives addressed;

(F) Methods used to address problem(s), goals and objectives;

(G) Progress made toward goals and objectives;

(H) Patient response to the session or intervention; and

(I) Any new problem(s), goals and/or objectives identified during the session.

(J) Treatment plans are not valid until all signatures are present. As used in this subsection, all signatures mean:

(i) The signature of acknowledgement of the supervising BCBA or licensed psychologist; and

(ii) The signature of assent of any minor who is age fourteen (14) or older; and

(iii) The signature of consent of:

(I) A parent or legal guardian of any minor; or

(II) If the minor documents a legal exception to parent or legal guardian consent, the excepted minor.

(iv) All signatures:

(I) Must clearly indicate that the signatories approve of and consent, assent, or acknowledge the treatment plan; and

(II) May be provided on a signature page applicable to both the assessment and the treatment plan, if the signed page clearly indicates approval of and consent, assent, or acknowledgment of both the assessment and the treatment plan.

**317:30-5-313. Medical necessity criteria for members under twenty-one (21) years of age**

ABA services are considered medically necessary when all the following conditions are met:

(1) The member is under twenty-one (21) years of age with a definitive diagnosis of an Autism Spectrum Disorder (ASD) from the following providers:

(A) Pediatric neurologist or neurologist;

(B) Developmental pediatrician;

(C) Licensed psychologist;

(D) Psychiatrist or neuropsychiatrist; or

(E) Other licensed physician experienced in the diagnosis and treatment of ASD.

(2) A comprehensive diagnostic evaluation or thorough clinical assessment completed by one (1) of the above identified professionals must:

(A) Include a complete pertinent medical and social history, including pre-and perinatal, medical, developmental, family, and social elements; and

(B) Be based on criteria outlined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) or the most current version of the DSM for ASD and/or may also include scores from the use of formal diagnostic tests such as the Autism Diagnostic Interview-Revised (ADI-R), Autism Diagnostic Observation Schedule-2 (ADOS-2), Childhood Autism Rating Scale (CARS) or other tools with acceptable psychometric properties. Screening scales are not sufficient to make a diagnosis and will not be accepted as the only formal scale.

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(3) There must be a reasonable expectation that the member will benefit from ABA. The member must exhibit:

(A) The ability/capacity to learn and develop generalized skills to assist with his or her independence; and

(B) The ability to develop generalized skills to assist in addressing maladaptive behaviors associated with ASD.

(4) The member is medically stable and does not require twenty-four (24) hour medical/nursing monitoring or procedures provided in a hospital or intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(5) The member exhibits atypical or disruptive behavior within the most recent thirty (30) calendar days that significantly interferes with daily functioning and activities. Such atypical or disruptive behavior may include, but is not limited to:

(A) Impulsive aggression toward others;

(B) Self-injury behaviors;

(C) Intentional property destruction; or

(D) Severe disruption in daily functioning (e.g., the individual's inability to maintain in school, child care settings, social settings, etc.) due to changes in routine activities that have not been helped by other treatments such as occupational therapy, speech therapy, additional psychotherapy and/or school/ daycare interventions.

(6) The focus of treatment is not custodial in nature (which is defined as care provided when the member "has reached maximum level of physical or mental function and such person is not likely to make further significant improvement" or "any type of care where the primary purpose of the type of care provided is to attend to the member's daily living activities which do not entail or require the continuing attention of trained medical or paramedical personnel.") Interventions are intended to strengthen the individual's/parent's/legal guardian's capacity for self care and self sufficiency to decrease interventions in the home by those other than the parent(s)/legal guardian(s).

(7) It has been determined that there is no less intensive or more appropriate level of service which can be safely and effectively provided.

### **317:30-5-314. Prior authorization**

Eligible providers must submit an initial prior authorization request to the Oklahoma Health Care Authority (OHCA) or its designated agent. Prior authorization requests shall be granted up to six (6) months of ABA treatment services at one (1) time unless a longer duration of treatment is clinically indicated. The number of hours authorized may differ from the hours requested on the prior authorization request based on the review by an OHCA reviewer and/or physician. If the member's condition necessitates a change in the treatment plan, the provider must request a new prior authorization. The prior authorization request must meet the following SoonerCare criteria for ABA services.

(1) The criteria include a comprehensive behavioral assessment, FBA, and other supporting assessment(s) outlining the maladaptive behaviors consistent with the diagnosis of ASD and its associated comorbidities. In addition to completing the initial request form, providers will be required to submit documentation that will consist of the following:

(A) Information about relevant medical status, prior assessment results, response to prior treatment, and other relevant information gathered from review of records and past assessments.

(B) Information gathered from interview of family and/or caregivers, rating scales, and social validity measures to assess perceptions of the client's skill deficits and behavioral excesses, and the extent to which these deficits impede the daily life of the member and the family.

(C) Direct assessment and observation, including any data related to the identified problem behavior. The analysis of such data serves as the primary basis for identifying pretreatment levels of functioning, developing, and adapting treatment protocols, and evaluating response to treatment and progress towards goals.

(D) Functional assessment of problem behavior that includes antecedent factors, skill deficits, and consequences contributing to the problem behavior. The treatment plan should address all three (3) areas, including antecedent interventions, teaching replacement skills, and modification of consequences. Other supporting assessments may be additionally submitted for review.

(2) The prior authorization for ABA treatment will be time limited for up to thirty (30) hours per week unless other hours are deemed medically necessary and authorized through a prior authorization request and must:

(A) Be a one-on-one encounter (face to face between the member and ABA provider) except in the case of family adaptive treatment guidance;

(B) Be child-centered and based upon individualized goals that are strengths-specific, family focused, and community based;

(C) Be culturally competent and the least intrusive as possible;

(D) Clearly define in measurable and objective terms the intervention plan so it can address specific target behaviors. The intervention plan should be clearly linked to the function of the maladaptive behavior and include antecedent interventions, replacement skills to be taught, and modification of consequences. Additional goals may be identified that are related to the core deficits of ASD and are prioritized based on current research and social significance for the individual.

(E) Record the frequency, rate, symptom intensity/duration, or other objective measures of baseline levels;

(F) Set quantifiable criteria for progress;

(G) Establish and record behavioral intervention techniques that are appropriate to target behaviors. The detailed treatment plan utilizes reinforcement and other behavioral principles and excludes the use of methods or techniques that lack consensus about their effectiveness based on evidence in peer-reviewed publications;

(H) Specify strategies for generalization of learned skills beyond the clinical settings such as in the home or other community settings;

(I) Document planning for transition through the continuum of interventions, services, and settings, as well as discharge criteria. Treatment (behavioral training) will be individualized, and documentation will support the identified atypical or disruptive behavior.

(J) Include parent(s)/legal guardian(s) in behavioral training techniques so that they can practice additional hours of intervention on their own. The treatment plan is expected to achieve the parent(s)/legal guardian(s) ability to successfully reinforce the established plan of care and support generalization of skills in the home and community settings. Frequency of parental involvement will be determined by the treatment provider and listed on the treatment plan;

(K) Document parent(s)/legal guardian(s) participation in the training of behavioral techniques in the member's medical record. Parent(s)/legal guardian(s)' participation is critical to the generalization of treatment goals to the member's environment; and

(L) Ensure that recommended ABA services do not duplicate, or replicate services received in a member's primary academic education setting or provided within an Individualized Education Plan (IEP), Individualized Service Plan (ISP), or any other individual plan of care. Documentation may be requested by the OHCA to support coordination of services with other providers and to prevent overlap and duplication of services including those in school settings.

**317:30-5-315. ABA extension requests**

Extension requests for ABA services must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment and establish the following:

- (1) Eligibility criteria in OAC 317:30-5-313;
- (2) The frequency of the target behavior has diminished since last review, or if not, there has been modification of the treatment or additional assessments have been conducted;
- (3) A functional analysis shall be completed by the provider when no measurable progress has occurred, or it may be requested by the OHCA. The functional analysis should record the member's serious maladaptive target behavioral symptom(s) and precipitants, and document the modifications of the current treatment plan to address progress, as well as make a determination of the function

a particular maladaptive behavior serves for the member in the environmental context;

(4) Appropriate consultations from other staff or experts have occurred (to optimize psychiatric medications and medical treatments to include but not limited to psychiatric consults, pediatric evaluation for other conditions, etc.) and interventions have been changed, including the number of hours per week of service or setting (higher level of care);

(5) The OHCA may suggest appropriate consultation from other staff or experts during the process of prior authorization;

(6) Parent(s)/legal guardian(s) have received re-training on these changed approaches; and

(7) The treatment plan documents a gradual tapering of higher intensities of intervention and transitioning to supports from other sources (i.e., schools) as progress allows.

**317:30-5-316. Reimbursement methodology**

SoonerCare shall provide reimbursement for ABA services in accordance with the Medicaid State Plan.

(1) Payment shall only be made to SoonerCare-contracted groups or qualified individual providers who are currently licensed and in good standing. Payment is not made to under supervision ABA practitioners/paraprofessionals, including but not limited to, BCaBAs and RBTs.

(2) Reimbursement for ABA services is only made on a fee-for-services basis. The maximum allowable fee for a unit of service has been determined by OHCA to be a reasonable fee, consistent with efficiency, economy, and quality of care. Payment for covered services is the lower of the provider's actual billed charges, consistent with the provider's usual and customary charge to the general public for the service, or the maximum allowable per unit of service.

(3) Reimbursement shall only be made for services that have been prior authorized by OHCA or its designee; and performed on an individualized basis and not in a group setting except for family adaptive behavior treatment guidance by a qualified ABA provider (OAC 317:30-5-311).

(4) Providers may only concurrently bill current Procedural Terminology (CPT) codes when they outline in the prior authorization the following criteria:

(A) The BCBA or licensed psychologist met with the member and/or parent or guardian and directed the RBT through one (1) or more of the following:

- (i) Monitoring treatment integrity to ensure satisfactory implementation of treatment protocols;
- (ii) Directing RBT staff and/or caregivers in the implementation of new or revised treatment protocols;
- (iii) Selection and development of treatment goals, protocols, and data collection systems;
- (iv) Collaboration with family members and other stakeholders;
- (v) Creating materials, gathering materials;

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(vi) Reviewing data to make adjustments to treatment protocols; and/or

(vii) Development and oversight of transition and discharge planning.

(B) The BCBA or licensed psychologist used behavior training in session as appropriate in supervision of the RBT staff and/or caregivers. Behavioral skills training consists of providing instructions, modeling, rehearsal, and feedback between provider and member.

(5) Reimbursement for ABA services shall not be made to or for services rendered by a parent, legal guardian, or other legally responsible person.

[OAR Docket #22-424; filed 6-23-22]

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

[OAR Docket #22-420]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. General Provider Policies

Part 4. Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program/Child-Health Services

317:30-3-65.8 [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-696 [AMENDED]

317:30-5-698 [AMENDED]

317:30-5-699 [AMENDED]

317:30-5-700 [AMENDED]

317:30-5-700.1 [AMENDED]

317:30-5-705 [AMENDED]

(Reference APA WF # 21-17)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Oklahoma Senate Bill 1046

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-696 [AMENDED]

317:30-5-698 [AMENDED]

317:30-5-699 [AMENDED]

317:30-5-700 [AMENDED]

317:30-5-700.1 [AMENDED]

317:30-5-705 [AMENDED]

### Gubernatorial approval:

December 21, 2021

### Register publication:

39 Ok Reg 425

### Docket number:

21-967

(Reference APA WF # 21-17)

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revisions will update the current adult dental policy to outline new benefits for SoonerCare adults. Additional revisions will update the certification requirements for primary care physicians to provide fluoride varnish during a child-health screening. Furthermore, revisions will update the timeframe for dental prophylaxis from once every 184 days to once every six (6) months. Finally, language regarding coverage for periodontal maintenance will be added.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

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

#### 317:30-3-65.8. Dental services

(a) At a minimum, dental services include relief of pain and infection; limited restoration of teeth and maintenance of dental health; and oral prophylaxis every ~~184 days~~ six (6) months. Dental care includes emergency and preventive services and therapeutic services for dental disease which, if left untreated, may become acute dental problems or may cause irreversible damage to the teeth or supporting structures. Other dental services include inpatient services in an eligible participating hospital, and amalgam and composite restorations, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, acrylic partial and lingual arch bars; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized (~~refer to Oklahoma Administrative Code 317:30-5-696(3)(2) for amount, duration and scope~~).

(b) Dental ~~screenings~~ screenings should begin at the first sign of tooth eruption by the primary care provider and with each subsequent visit to determine if the member needs a referral to a dental provider. Dental examinations by a qualified dental provider should begin by age one (1)(unless otherwise indicated) and every six (6) months to one (1) year thereafter. Additionally, members should be seen for prophylaxis once



every ~~184 day~~six (6) months, if indicated by risk assessment. All other dental services for relief of pain and infection, restoration of teeth and maintenance of dental health should occur as the provider deems necessary.

(c) Separate payment will be made to the member's primary care provider for the application of fluoride varnish during the course of a child-health screening for members ages six (6) months to sixty (60) months. Reimbursement is limited to two applications per year ~~by eligible providers who have attended an OHCA approved training course related to the application of fluoride varnish.~~

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 79. DENTISTS**

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

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

(1) **Adults.** The OHCA Dental Program provides basic medically necessary treatment. The services listed below are compensable for members twenty-one (21) years of age and over without prior authorization.

(A) Dental coverage for adults is limited to: **Comprehensive oral evaluation.** The comprehensive oral evaluation may be performed when a member has not been seen by the same dentist for more than thirty-six (36) months. The comprehensive oral evaluation must precede any images, and chart documentation must include image interpretations, six-point periodontal charting, and both medical and dental health history of the member. The comprehensive treatment plan should be the final result of this procedure.

(B) **Periodic oral evaluation.** This procedure may be provided for a member once every six (6) months. An examination must precede any images, and chart documentation must include image interpretations, and both medical and dental health history of member. The comprehensive treatment plan should be the final result of this procedure.

(C) **Limited oral evaluation.** This procedure is only compensable to the same dentist or practice for two (2) visits prior to a comprehensive or periodic evaluation examination being completed.

(D) **Images.** To be SoonerCare compensable, images must be of diagnostic quality and medically necessary. A clinical examination must precede any images. Documentation must indicate medical necessity and diagnostic findings. Images must be properly labeled with date and member name. Periapical images must include at least three (3) millimeters beyond the apex of the tooth being imaged. Panoramic films are only compensable when chart documentation clearly indicates reasons for the exposure based on clinical

findings. This type of panoramic film exposure is not to rule out or evaluate caries. Prior authorization and a narrative detailing medical necessity are required for additional panoramic films taken within three (3) years of the original set.

(E) **Dental prophylaxis.** Dental prophylaxis is provided once every six (6) months along with topical application of fluoride.

(F) **Periodontal Maintenance.** This procedure is provided once every six (6) months for members who have a history of periodontitis and are no longer eligible for oral prophylaxis.

(G) **Smoking and tobacco use cessation counseling.** Smoking and tobacco use cessation counseling is covered per Oklahoma Administrative Code (OAC) 317:30-5-2 (DD) (i) through (iv).

(H) **Medically necessary extractions.** Medically necessary extractions, as defined in OAC 317:30-5-695. Tooth extraction must have medical need documented.

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

(J) **Additional services.** Additional covered services, which require a prior authorization, are outlined in OAC 317:30-5-698.

(i) Medically necessary extractions, as defined in Oklahoma Administrative Code (OAC) 317:30-5-695. Tooth extraction must have medical need documented;

(ii) Limited oral examinations and medically necessary images, as defined in OAC 317:30-5-695, associated with the extraction or with a clinical presentation with reasonable expectation that an extraction will be needed;

(iii) Smoking and tobacco use cessation counseling; and

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

(B) Payment is made for dental care for adults residing in private intermediate care facilities for individuals with intellectual disabilities (ICF/IID) and who have been approved for ICF/IID level of care, similar to the scope of services available to individuals under age twenty one (21).

(C) Limited dental services are available for members who meet all medical criteria, but need dental clearance to obtain organ transplant approval. Providers must obtain prior authorization before delivery of dental service, with the exception of evaluation and extractions. All requests must be filed on the currently approved American Dental Association (ADA) form and must include diagnostic images,

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~~six-point periodontal charting, narratives and comprehensive treatment plans. The Oklahoma Health Care Authority (OHCA) will notify the provider of determination using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization request. The following dental services are available:~~

- ~~(i) Comprehensive oral evaluation;~~
- ~~(ii) Two (2) bitewing images;~~
- ~~(iii) Prophylaxis;~~
- ~~(iv) Fluoride application;~~
- ~~(v) Limited restorative procedures; and~~
- ~~(vi) Periodontal scaling/root planing.~~

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

~~(32) **Children.** The OHCA Dental Program for children provides the basic medically necessary treatment. For services rendered to a minor, the minor's parent or legal guardian must provide a signed, written consent prior to the service being rendered, unless there is an explicit state or federal exception to this requirement. The services listed below are compensable for members under twenty-one (21) years of age without prior authorization. All other dental services must be prior authorized. Anesthesia services are covered for children in the same manner as adults per OAC 317:30-5-696.1. All providers performing preventive services must be available to perform needed restorative services for those members receiving any evaluation and preventive services.~~

~~(A) **Comprehensive oral evaluation.** This procedure should precede any images, and chart documentation must include image interpretations, caries risk assessment, six-point periodontal charting (as applicable), and both medical and dental health history of member. The comprehensive treatment plan should be the final result of this procedure. A comprehensive oral evaluation may be performed when a member has not been seen by the same dentist for more than thirty-six (36) months. The comprehensive oral evaluation must precede any images, and chart documentation must include image interpretations, caries risk assessment, six-point periodontal charting, and both medical and dental health history of member. The comprehensive treatment plan should be the final result of this procedure.~~

~~(B) **Periodic oral evaluation.** This procedure may be provided for a member of record once every six (6) months. An examination should must precede any images, and chart documentation must include image interpretations, caries risk assessment, and both medical and dental health history of member. The comprehensive treatment plan should be the final result of this procedure.~~

~~(C) **Limited oral evaluation.** This procedure is only compensable to the same dentist or practice for two (2) visits prior to a comprehensive or periodic evaluation examination being completed.~~

~~(D) **Images.** To be SoonerCare compensable, images must be of diagnostic quality and medically necessary. A clinical examination must precede any images, and chart documentation must include member history, prior images, caries risk assessment, the six-point periodontal charting (as applicable), and both dental and general health needs of the member. The referring dentist is responsible for providing properly identified images of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. A clinical examination must precede any images, and chart documentation must indicate medical necessity and diagnostic findings. Images must be properly labeled with date and member name. Periapical images must include at least three (3) millimeters beyond the apex of the tooth being imaged. Panoramic films and two (2) bitewings are considered full mouth images. Full mouth images as noted above or traditional [minimum of twelve (12) periapical films and two (2) posterior bitewings] are allowable once in a three (3) year period and must be of diagnostic quality. Individually listed intraoral images by the same dentist/dental office are considered a complete series if the number of individual images equals or exceeds the traditional number for a complete series. Panoramic films are only compensable when chart documentation clearly indicates reasons for the exposure based on clinical findings. This type of exposure is not to rule out or evaluate caries. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three (3) years of the original set.~~

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

~~(F) **Interim caries arresting medicament application.** This service is available for primary and permanent teeth once every ~~one hundred eighty-four (184) days~~ six (6) months for two (2) occurrences per tooth in a lifetime. The following criteria must be met for reimbursement:~~

- ~~(i) A member is documented to be unable to receive restorative services in the typical office environment within a reasonable amount of time;~~
- ~~(ii) A tooth that has been treated should not have any non-cariou structure removed;~~
- ~~(iii) A tooth that has been treated should not receive any other definitive restorative care for three (3) months following an application;~~

- (iv) Reimbursement for extraction of a tooth that has been treated will not be allowed for three (3) months following an application; and
- (v) The specific teeth treated and number and location of lesions must be documented.

(G) **Dental prophylaxis.** This procedure is provided once every ~~one hundred eighty four (184) days~~ six (6) months along with topical application of fluoride.

(H) **Periodontal Maintenance.** This procedure is provided once every six (6) months for members who have a history of periodontitis and are no longer eligible for oral prophylaxis.

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

- (i) Stainless steel crowns are allowed if:
  - (I) The child is five (5) years of age or under;
  - (II) Seventy percent (70%) or more of the root structure remains; or
  - (III) The procedure is provided more than twelve (12) months prior to normal exfoliation.
- (ii) Stainless steel crowns are treatment of choice for:
  - (I) Primary teeth treated with pulpal therapy, if the above conditions exist;
  - (II) Primary teeth where three (3) surfaces of extensive decay exist; or
  - (III) Primary teeth where cuspal occlusion is lost due to decay or accident.
- (iii) Preoperative periapical images and/or written documentation explaining the extent of decay must be available for review, if requested.
- (iv) Placement of a stainless steel crown is allowed once for a minimum period of twenty-four (24) months. No other restoration on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

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

- (i) Stainless steel crowns are the treatment of choice for:
  - (I) Posterior permanent teeth that have completed endodontic therapy if three (3) or more surfaces of tooth is destroyed;
  - (II) Posterior permanent teeth that have three (3) or more surfaces of extensive decay; or
  - (III) Where cuspal occlusion is lost due to decay prior to age sixteen (16) years.
- (ii) Preoperative periapical images and/or written documentation explaining the extent of decay must be available for review, if requested.
- (iii) Placement of a stainless steel crown excludes placement of any other type of crown for

a period of twenty-four (24) months. No other restoration on that tooth is compensable during that period of time.

~~(JK)~~ **Pulpotomies and pulpectomies.**

(i) Therapeutic pulpotomies and pulpal debridement are allowable once per lifetime. Pre-and post-operative periapical images must be available for review, if requested. Therapeutic pulpotomies and pulpal debridement is available for the following:

- (I) Primary molars having at least seventy percent (70%) or more of their root structure remaining or more than twelve (12) months prior to normal exfoliation;
- (II) Tooth numbers O and P before age five (5) years;
- (III) Tooth numbers E and F before six (6) years;
- (IV) Tooth numbers N and Q before five (5) years;
- (V) Tooth numbers D and G before five (5) years.

(ii) Therapeutic pulpotomies and pulpal debridement are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one (1) year or if seventy percent (70%) or more of root structure is remaining.

~~(K) **Endodontics.** Payment is made for the services provided in accordance with the following:~~

- ~~(i) This procedure is allowed when there are no other missing anterior teeth in the same arch requiring replacement.~~
- ~~(ii) The provider documents history of member's improved oral hygiene and flossing ability in records.~~
- ~~(iii) Prior authorization is required for members who have a treatment plan requiring more than two (2) anterior and/or any posterior root canals.~~
- ~~(iv) Pre and post operative periapical images must be available for review.~~
- ~~(v) Pulpal debridement may be performed for the relief of pain while waiting for the decision from the OHCA.~~
- ~~(vi) Providers are responsible for any follow up treatment required due to a failed root canal therapy for twenty four (24) month post completion.~~
- ~~(vii) Endodontically treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.~~

(L) **Space maintainers.** Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six (6) months post insertion.

(i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:

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- (I) This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than five (5) millimeters below the crest of the alveolar ridge.
- (II) First primary molars are not allowed space maintenance if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.
- (III) If there are missing posterior teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.
- (IV) The teeth numbers shown on the claim ~~should~~ must be those of the missing teeth.
- (V) Post-operative bitewing images must be available for review.
- (VI) Bilateral band and loop space maintainer is allowed if member does not have eruption of the four (4) mandibular anterior teeth in position or if sedation case that presents limitations to fabricate other space maintenance appliances.
- (ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:
- (I) Lingual arch bar is used when permanent incisors are erupted and the second primary molar (K or T) is missing in the same arch.
- (II) The requirements are the same as for band and loop space maintainer.
- (III) Pre and post-operative images must be available.
- (M) **Analgesia.** Analgesia services are reimbursable in accordance with the following:
- (i) **Inhalation of nitrous oxide.** Use of nitrous oxide is compensable for four (4) occurrences per year and is not separately reimbursable, if provided on the same date as IV sedation, non-intravenous conscious sedation, or general anesthesia. The medical need for this service must be documented in the member's record.
- (ii) **Non-intravenous conscious sedation.** Non-intravenous conscious sedation is not separately reimbursable, if provided on the same date ~~by the same provider~~ as analgesia, anxiolysis, inhalation of nitrous oxide, IV sedation, or general anesthesia. Non-intravenous conscious sedation is reimbursable when determined to be medically necessary for documented handicapped members, uncontrollable members or justifiable medical or dental conditions. The report must detail the member's condition. No services are reimbursable when provided primarily for the convenience of the member and/or the dentist, it must be medically necessary.
- (N) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted calcium hydroxide or mineral trioxide aggregate (MTA) materials, not a cavity liner or chemical used for dentinal hypersensitivity. Indirect and direct pulp cap codes require specific narrative support addressing materials used, intent and reasons for use. Application of chemicals used for dentinal hypersensitivity is not allowed as indirect pulp cap. Utilization of these codes is verified by post payment review.
- (O) **Protective restorations.** This restoration includes removal of decay, if present, and is reimbursable for the same tooth on the same date of service with a direct or indirect pulp cap, if needed. Permanent restoration of the tooth is allowed after sixty (60) days unless the tooth becomes symptomatic and requires pain relieving treatment.
- (P) **Smoking and tobacco use cessation counseling.** ~~Smoking and tobacco use cessation counseling is covered when performed utilizing the five (5) intervention steps of asking the member to describe his/her smoking, advising the member to quit, assessing the willingness of the member to quit, assisting with referrals and plans to quit, and arranging for follow up. Up to eight (8) sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by physicians, physician assistants, nurse practitioners, certified nurse midwives, Oklahoma State Health Department (OSDH) and Federally Qualified Health Center (FQHC) nurses, and maternal/child health licensed clinical social workers with a Tobacco Treatment Specialist Certification (TTS C). Chart documentation must include a separate note that addresses the 5A's, separate signature, and the member specific information addressed in the five (5) steps and the time spent by the practitioner performing the counseling. Anything under three (3) minutes is considered part of a routine visit. Smoking and tobacco use cessation counseling is covered per OAC 317:30-5-2 (DD) (i) through (iv).~~
- ~~(Q) **Diagnostic casts and/or oral/facial images.** Diagnostic casts and/or oral/facial images may be requested by OHCA or representatives of OHCA. If cast and/or images are received they will be considered supporting documentation and may be used to make a determination for authorization of services. Submitted documentation used to base a decision will not be returned. Providers will be reimbursed for either the study model or images.~~
- ~~(i) Documentation of photographic images must be kept in the client's medical record and medical necessity identified on the submitted electronic or paper claim.~~
- ~~(ii) Oral/facial photographic images are allowed under the following conditions:~~

- ~~(I) When radiographic images do not adequately support the necessity for requested treatment.~~
- ~~(II) When photo images better support medical necessity for the requested treatment rather than diagnostic models.~~
- ~~(III) If a comprehensive orthodontic workup has not been performed.~~
- ~~(iii) For photographic images, the oral/facial portfolio must include a view of the complete lower arch, complete upper arch, and left and right maximum intercuspation of teeth.~~
  - ~~(I) Maximum intercuspation refers to the occlusal position of the mandible in which the cusps of the teeth of both arches fully interpose themselves with the cusps of the teeth of the opposing arch.~~
  - ~~(II) Intercuspation defines both the anterior posterior and lateral relationships of the mandible and the maxilla, as well as the superior inferior relationship known as the vertical dimension of occlusion.~~
  - ~~(iv) Study models or photographic images not in compliance with the above described diagnostic guidelines will not be compensable. The provider may be allowed to resubmit new images that adhere to the diagnostic guidelines. If the provider does not provide appropriate documentation, the request for treatment will be denied.~~
- ~~(Q) **Additional services.** Additional covered services, which require a prior authorization, are outlined in OAC 317:30-5-698.~~
- ~~(3) **1915(c) home and community-based services (HCBS) waivers.** Dental services are defined in each waiver and must be prior authorized.~~

**317:30-5-698. Services requiring prior authorization**

- (a) **Prior authorizations.** Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis [See Oklahoma Administrative Code (OAC) 317:30-5-695(d)(2)]. Requests for dental services requiring prior authorization must be accompanied by sufficient documentation.
- (b) **Requests for prior authorization.** ~~Requests for prior authorization are filed on the currently approved American Dental Association (ADA) form. Requests for prior authorization, and any related documents, must be submitted electronically through the OHCA secure provider portal. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.~~
- (c) **Prosthodontic services.** Prosthodontic services provided to members who have become ineligible mid-treatment are covered if the member was eligible for SoonerCare on the date the final impressions were made.

(d) **Adults.** Listed below are examples of services requiring prior authorization for members twenty-one (21) years of age and over/older. Minimum required records to be submitted with each request are right and left mounted bitewings and periapical films or images of tooth/teeth involved or the edentulous areas if not visible in the bitewings. Images must be of diagnostic quality. Images must be identified by the tooth number and include date of exposure, member name, member ID, provider name, and provider ID. All images, regardless of the media, must be submitted together with a completed and signed comprehensive treatment plan that details all needed treatment at the time of examination, with the prior authorization requesting all needed treatment. The images, digital media, and photographs must be of sufficient type and quality to clearly demonstrate for the reviewer, the pathology which is the basis for the authorization request. Documentation of a periodontal evaluation with six (6) point measurements for teeth to remain must be included with requests.

- (1) **Removable prosthetics.**
  - (A) This includes full and partial dentures.
    - (i) One (1) per every five (5) years is available for adults under twenty-five (25) years of age.
    - (ii) One (1) per every seven (7) years is available for adults twenty-five (25) years of age and over.
    - (iii) Provider is responsible for any needed follow up for a period of two (2) years post insertion.
  - (B) Partial dentures are allowed for replacement of missing anterior permanent teeth or two (2) or more missing posterior teeth in the same arch. Provider must indicate which teeth will be replaced.
- (2) **Periodontal scaling and root planing.** Procedure involves instrumentation of the crown and root surfaces of the teeth to remove plaque and calculus from these surfaces. This procedure requires that each tooth involved have three (3) or more of the six-point measurements (probing pocket depths) equivalent to four (4) millimeters or greater, and image supported alveolar bone loss. Image supported subgingival calculus, and bleeding on probing, must be demonstrated on multiple teeth for consideration of scaling and root planing. A minimum of two (2) teeth per quadrant must be involved, with the appropriate CDT code usage for fewer than four (4) teeth per quadrant. This procedure is not allowed in conjunction with any other periodontal surgery. Four quadrants of scaling and root planing will not be approved in conjunction with recent oral prophylaxis.
- (3) **Scaling in the presence of generalized moderate or severe gingival inflammation.** Procedure is designed for removal of plaque, calculus and stain from supra- and sub-gingival tooth surfaces when there is generalized moderate or severe gingival inflammation as indicated by generalized suprabony pockets and bleeding on probing, in the absence of periodontitis (alveolar bone loss). Generalized supra- and sub-gingival calculus, and moderate to severe inflammation must be demonstrated, with probing pocket depths of five (5) mm or greater. This procedure is intended for scaling of the entire mouth in lieu of oral

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prophylaxis, and is only performed after a comprehensive evaluation has been completed.

~~(de) **Children.** Listed below are examples of services requiring prior authorization for members under twenty-one (21) years of age and eligible intermediate care facilities for individuals with intellectual disabilities (ICF/IID) residents. Minimum required records to be submitted with each request are right and left mounted bitewings and periapical films or images of tooth/teeth involved or the edentulous areas if not visible in the bitewings. Images must be of diagnostic quality. Images must be identified by the tooth number and include date of exposure, member name, member ID, provider name, and provider ID. All images, regardless of the media, must be submitted together with a completed and signed comprehensive treatment plan that details all needed treatment at the time of examination, and a completed current ADA form requesting all treatments requiring prior authorization. prior authorization requesting all needed treatments. The images, digital media, photographs, or printouts must be of sufficient quality to clearly demonstrate for the reviewer, the pathology which is the basis for the authorization request. The images, digital media, and photographs must be of sufficient quality to clearly demonstrate for the reviewer, the pathology which is the basis for the authorization request. If radiographs are not taken, provider must include in narrative sufficient information to confirm diagnosis and treatment plan.~~

(1) **Endodontics.** Root canal therapy is not considered an emergency procedure unless due to trauma to an anterior tooth. The provider must document the member's oral hygiene and flossing ability in the member's records. Pulpal debridement may be performed for the relief of pain while waiting for the decision from the Oklahoma Health Care Authority (OHCA) on request for endodontics.

(A) **Anterior endodontics.** Prior authorization is required for members who have a treatment plan requiring more than two (2) anterior root canals. All rampant, active caries should be removed prior to requesting anterior endodontics. Payment is made for services provided in accordance with the following:

- (i) Permanent teeth only;
- (ii) Accepted ADA materials must be used;
- (iii) Pre and post operative periapical images must be available for review;
- (iv) Providers are responsible for any follow up treatment required by a failed endodontically treated tooth within twenty four (24) months post completion;
- (v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor; and
- (vi) An endodontic procedure may not be approved if the tooth requires a post and core to retain a crown.

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider must document the member's oral hygiene and flossing ability in the member's records.

(ii) Teeth that require pre fabricated post and cores to retain a restoration due to lack of natural tooth structure may not be approved for root canal therapy.

(iii) Pre and post operative periapical images must be available for review.

(iv) Providers are responsible for any follow up treatment required by a failed endodontically treated tooth within twenty four (24) months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area. Approval of second molars is contingent upon proof of medical necessity.

(vi) Only ADA accepted materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(viii) Endodontics will not be considered if:

- (I) An opposing tooth has super erupted;
- (II) Loss of tooth space is one third or greater;
- (III) Opposing second molars are involved unless prior authorized;
- (IV) The member has multiple teeth failing due to previous inadequate root canal therapy or follow up; or
- (V) All rampant, active caries must be removed prior to requesting posterior endodontics.

(ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. Core build up code is only available for use if other restorative codes are not sufficient. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.

(1) **Endodontics.** Root canal therapy is not considered an emergency procedure unless due to trauma to an anterior tooth. The provider must document the member's improved oral hygiene and flossing ability and submit it with the prior authorization request to be considered when requesting endodontic therapy for multiple teeth. Pulpal debridement may be performed for the relief of pain while waiting for the decision from the Oklahoma Health Care Authority (OHCA) on request for endodontics.

(A) Payment is made for services provided in accordance with the following guidelines:

- (i) Permanent teeth only;
- (ii) Only ADA accepted materials are acceptable under the OHCA policy;

(iii) Pre and post-operative periapical images must be available for review;

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within twenty-four (24) months post completion;

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor. Approval of second molars is contingent upon proof of medical necessity; and

(vi) An endodontic procedure may not be approved if the tooth requires a post and core to retain a crown due to lack of tooth structure.

(B) Endodontics will not be considered if:

(i) An opposing tooth has super erupted;

(ii) The tooth impinges upon space of adjacent tooth space by one third or greater;

(iii) Fully restored tooth will not be in functional occlusion with opposing tooth;

(iv) Opposing second molars are involved unless prior authorized;

(v) The member has multiple teeth failing due to previous inadequate root canal therapy or follow-up.

(C) All rampant, active caries must be removed prior to requesting endodontics.

(D) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. Core build-up code is only available for use if other restorative codes are not sufficient. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.

(2) **Crowns for permanent teeth.** Crowns are compensable for restoration of natural teeth for members who are sixteen (16) years of age or older and adults residing in private ICF/IID and who have been approved for ICF/IID level of care through twenty (20) years of age. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure:

(i) All rampant, active caries must be removed prior to requesting any type of crown;

(ii) The tooth must be decayed to such an extent to prevent proper cuspal or incisal function;

(iii) The clinical crown is fractured or destroyed by one-half or more; and

(iv) Endodontically treated teeth must have three (3) or more surfaces restored or lost due to carious activity to be considered for a crown.

(B) The conditions listed above in (A)(i) through (iv) ~~should~~must be clearly visible on the submitted images when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown. ~~Non-authorized restorative codes may be used if available.~~

(D) A crown will not be approved if adequate tooth structure does not remain to establish cleanable margins, there is invasion of the biologic width, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast dowel cores are not allowed for molar or pre-molar teeth.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

(F) Chart documentation must include the OHCA caries risk assessment form demonstrating member is at a low to moderate risk and be submitted with the prior authorization request for crowns for permanent teeth.

(G) Provider is responsible for replacement or repair of all crowns if failure is caused by poor laboratory processes or procedure by provider for forty-eight (48) months post insertion.

~~(3) **Cast frame partial** Partial dentures. This appliance is the treatment of choice for replacement of missing anterior permanent teeth or two (2) or more missing posterior teeth in the same arch for members sixteen (16) through twenty (20) years of age. Provider must indicate which teeth will be replaced. Members must have improved oral hygiene documented for at least twelve (12) months in the provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up for a period of two (2) years post insertion.~~

(A) This appliance is the treatment of choice for replacement of missing anterior permanent teeth or two (2) or more missing posterior teeth in the same arch for members sixteen (16) years of age and older.

(B) Interim partial dentures are available for children five (5) years of age and older.

(C) Provider must indicate which teeth will be replaced.

(D) Members must have improved oral hygiene documented for at least twelve (12) months in the provider's records and submitted with prior authorization request to be considered.

(E) Provider is responsible for any needed follow up for a period of two (2) years post insertion.

(F) This appliance includes all necessary clasps and rests.

~~(4) **Acrylic partial.** This appliance is the treatment of choice for replacement of three (3) or more missing teeth in the same arch for members twelve (12) through sixteen (16) years of age. Provider must indicate tooth numbers to be replaced. This appliance includes all necessary clasps and rests.~~

~~(5) **Occlusal guard.** Narrative of medical necessity must be sent with prior authorization. Model should not be made or sent unless requested.~~

~~(6) **Fixed cast non-precious metal or porcelain/metal bridges.** Only members seventeen (17) through twenty (20) years of age will be considered for~~

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this treatment. Destruction of healthy teeth to replace a single missing tooth is not considered medically necessary. Members must have excellent oral hygiene documented for at least eighteen (18) months in the requesting provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up until member loses eligibility.

**(76) Periodontal scaling and root planing.** Procedure is designed for the removal of calculus or tissue that is contaminated and may require anesthesia and some soft tissue removal. This procedure requires that each tooth have three (3) or more of the six-point measurements four (4) millimeters or greater, and have multiple areas of image supported bone loss, subgingival calculus and must involve two (2) or more teeth per quadrant for consideration. This procedure is not allowed in conjunction with any other periodontal surgery. Procedure involves instrumentation of the crown and root surfaces of the teeth to remove plaque and calculus from these surfaces. This procedure requires that each tooth involved have three (3) or more of the six-point measurements (probing pocket depths) equivalent to four (4) millimeters or greater, and image supported alveolar bone loss. Image supported subgingival calculus, and bleeding on probing, must be demonstrated on multiple teeth for consideration of scaling and root planing. A minimum of two (2) teeth per quadrant must be involved, with the appropriate CDT code usage for fewer than four (4) teeth per quadrant. This procedure is not allowed in conjunction with any other periodontal surgery. Four quadrants of scaling and root planing will not be approved in conjunction with recent oral prophylaxis.

**(87) Scaling in the presence of generalized moderate or severe gingival inflammation.** Procedure is designed for removal of plaque, calculus and stain from supra- and sub-gingival tooth surfaces when there is generalized moderate or severe gingival inflammation, as indicated by generalized suprabony pockets and bleeding on probing, in the absence of periodontitis (bone loss). This procedure is only performed after a comprehensive evaluation has been completed and is not performed in conjunction with a prophylaxis. Procedure is designed for removal of plaque, calculus and stain from supra- and sub-gingival tooth surfaces when there is generalized moderate or severe gingival inflammation as indicated by generalized suprabony pockets and bleeding on probing, in the absence of periodontitis (alveolar bone loss). Generalized supra- and sub-gingival calculus, and moderate to severe inflammation must be demonstrated, with probing pocket depths of five (5) mm or greater. This procedure is intended for scaling of the entire mouth in lieu of oral prophylaxis, and is only performed after a comprehensive evaluation has been completed.

### 317:30-5-699. Restorations

(a) **Utilization parameters.** ~~The Oklahoma Health Care Authority utilization parameters allow only one permanent restorative service to be provided per tooth per 24 months.~~

~~Additional restorations may be authorized upon approval of OHCA in cases of trauma. Teeth receiving a restoration are eligible within three months for consideration of single crown if endodontically treated. Providers must document type of isolation used in treatment progress notes. The provider is responsible for follow up or any required replacement of a failed restoration, if the member is currently SoonerCare eligible.~~

(1) The Oklahoma Health Care Authority utilization parameters allow only one (1) permanent restorative service to be provided per tooth per twenty-four (24) months.

(2) Additional restorations may be authorized upon approval of OHCA in cases of trauma.

(3) The provider is responsible for follow-up or any required replacement of a failed restoration, if the member is currently SoonerCare eligible.

(4) Providers must document type of isolation used in treatment progress notes.

(5) For members who are under twenty-one (21) years of age and who are receiving a restoration are eligible within three (3) months for consideration of a single crown if endodontically treated.

(b) **Coverage for dental restorations.** Restoration of incipient lesions is not considered medically necessary treatment. Any diagnosis not supported by images requires documentation of the medical need on which the diagnosis was made. Services for dental restorations are covered, for adults and children, as follows:

(1) If the mesial occlusal pit and the distal occlusal pit on an upper molar tooth are restored at the same appointment, this is a one (1) surface restoration.

(2) If any two (2) separate surfaces on a posterior tooth are restored at the same appointment, it is a two (2) surface restoration.

(3) If any three (3) separate surfaces on a posterior tooth are restored at the same appointment, it is a three (3) surface restoration.

(4) If the mesial, distal, facial and/or lingual of an upper anterior tooth is restored at the same appointment, this is a four (4) surface restoration.

(5) If any two (2) separate surfaces on an anterior tooth are restored at the same appointment, it is a two (2) surface restoration.

(6) If any three (3) separate surfaces on an anterior tooth are restored at the same appointment, it is a three (3) surface restoration.

(7) An incisal angle restoration is defined as one (1) of the angles formed by the junction of the incisal and the mesial or distal surface of an anterior tooth. If any of these surfaces are restored at the same appointment, even if separate, it is considered as a single incisal angle restoration.

(8) When four (4) or more separate surfaces on a posterior tooth are restored at the same appointment it is a four (4) surface restoration.

(9) Wide embrasure cavity preparations do not become extra surfaces unless at least one half of cusp or surface is involved in the restoration. An MODFL restoration would have to include the mesial-occlusal-distal surfaces as well



as either the buccal groove pit or buccal surface or at least one half the surface of one of the buccal cusps. The same logic applies for the lingual surface.

**317:30-5-700. Orthodontic services**

(a) Orthodontic services are available for members who are SoonerCare-eligible and under eighteen (18) years of age at the time the request for prior authorization for treatment is received. In order to be eligible for SoonerCare orthodontic services, members must be referred through an OHCA contracted primary care dentist using the DEN-2 form found on the Oklahoma Health Care Authority (OHCA) website; a member can receive a referral from a primary care dentist to the orthodontist only after meeting the following:

- (1) The member has had a caries free initial visit; or
- (2) Has all decayed areas restored and has remained caries free for twelve 12 months; and
- (3) Has demonstrated competency in maintaining an appropriate level of oral hygiene.

(b) Member with cleft palate can be referred directly by their treating physician without a dental referral and are exempt from above requirements.

(c) The SoonerCare Orthodontic Program limits orthodontic services to handicapping malocclusions determined to be severe enough to warrant medically necessary treatment. The orthodontic provider has the ability to determine if members may qualify with a visual screening. Diagnostic record accumulation and/or submission should only occur for members with high potential for acceptance. These orthodontic services include the following:

- (1) A handicapping malocclusion, as measured on the Oklahoma Health Care Authority (OHCA) Handicapping Labio-Lingual Deviation Index of Malocclusion (DEN-6) form, with a minimum score of thirty (30);
- (2) Any classification secondary to cleft palate or other maxillofacial deformity;
- (3) If a single tooth or anterior crossbite is the only medical need finding, service will be limited to interceptive treatment;
- (4) Fixed appliances only; and
- (5) Permanent dentition with the exception of cleft defects.

(d) Reimbursement for orthodontic services is limited to:

- (1) Orthodontists, or
- (2) General or Pediatric dental practitioners who have completed at least two-hundred (200) certified hours of continuing education in the field of orthodontics practice and submit for review at least twenty-five successfully completed comprehensive cases. Of these twenty-five comprehensive cases, ten or more must be extraction cases. An applicant for this certification must practice in an OHCA deemed under-served area. The comprehensive cases submitted ~~should~~must be of a complexity consistent with type of handicapping malocclusion likely to be treated in the SoonerCare program.

(A) Cases submitted must include at least one (1) of each of the following types:

- (i) Deep overbite where multiple teeth are impinging upon the soft tissue of the palate;
- (ii) Impacted canine or molar requiring surgical exposure;
- (iii) Bilateral posterior crossbite requiring fixed rapid palatal expansion; and
- (iv) Skeletal class II or III requiring orthognathic surgery.

(B) As with all dental or orthodontia treatment performed and reimbursed by SoonerCare, all pre and post orthodontic records must be available for review.

(C) The OHCA requires all general dentists providing comprehensive orthodontic care to submit a copy of the Oklahoma Board of Dentistry continuing education report and verification that at least twenty (20) continuing education hours in the field of orthodontics has been completed per reporting period. All verification reports must be submitted to OHCA Dental Unit every three (3) years, no later than August 30. In addition, verification of adequate progress for all active orthodontic cases will be reviewed by the OHCA Dental Unit upon completion of twenty-four (24) months of therapy.

(e) The following limitations apply to orthodontic services:

- (1) Cosmetic orthodontic services are not a covered benefit of the SoonerCare program and no requests should be submitted;
- (2) All orthodontic procedures require prior authorization for payment;
- (3) Prior authorization for orthodontic treatment is not a notification of the member's eligibility and does not guarantee payment. Payment for authorized services depends on the member's eligibility at the beginning of each treatment year. Treatment year is determined by date of banding; and
- (4) The member must be SoonerCare-eligible and under eighteen (18) years of age at the time the request for prior authorization for treatment is received by the OHCA. Services cannot be added or approved after eligibility has expired. It is the orthodontist's responsibility to verify that the member has current SoonerCare eligibility and the date of birth indicates the member is under age eighteen (18).

(f) Orthodontic services are an elective procedure. The orthodontist must interview the prospective member as to his/her understanding of and willingness to cooperate fully in a lengthy treatment program.

(g) The interview information is unavailable to OHCA except through the provider's recommendation of treatment. The interview process for OHCA members is equivalent to that of private pay patients.

(h) Providers are not obligated to accept a member when it appears that the member will not cooperate in the orthodontic hygiene treatment program, does not return to the general dentist for preventive visits or is not willing to keep eligibility for SoonerCare current.

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### 317:30-5-700.1. Orthodontic prior authorization

(a) Orthodontic services are available for members who are SoonerCare-eligible and under eighteen (18) years of age, at the time the request for prior authorization for treatment is received, per Oklahoma Administrative Code 317:30-5-700.

The following records and documentation, plainly labeled with the member's full name, recipient identification number (RID), and the orthodontist's name are required for prior authorization of orthodontic services and must be submitted to the Dental Unit of the Oklahoma Health Care Authority (OHCA) Dental Program when the member has a total score of not less than thirty (30) points or meets other eligibility criteria in paragraph (d).

(1) Completed ~~currently approved American Dental Association (ADA) dental claim form~~ prior authorization requesting all needed treatments;

(2) Complete and scored Handicapping Labio-Lingual Deviation (HDL) Index with Diagnosis of Angle's classification;

(3) Detailed description of any oral maxillofacial anomaly;

(4) Estimated length of treatment;

(5) Intraoral photographs showing teeth in centric occlusion and/or photographs of trimmed anatomically occluded diagnostic casts. A lingual view of casts may be included to verify impinging overbites;

(6) Cephalometric images with tracing, and panoramic film, with a request for prior authorization of comprehensive orthodontic treatment;

(7) Completed OHCA caries risk assessment form;

(8) If diagnosed as a surgical case, submit an oral surgeon's written opinion that orthognathic surgery is indicated and the surgeon is willing to provide this service; and

(9) Additional pertinent information as determined necessary by the orthodontist or as requested by the OHCA.

(b) All images and required documentation must be submitted in one (1) package. OHCA is not responsible for lost or damaged materials.

(c) All records and documentation submitted in a request for prior authorization for orthodontic treatment are reviewed by the OHCA orthodontic consultant for compensability and length of treatment. Any documentation on which a decision is made will not be returned.

(d) Some children not receiving a minimum score of thirty (30) on the HDL Index may have other conditions to be considered. In the event an orthodontist believes there are other medical, social, or emotional conditions impacting the general health of the child, he/she refers to the conditions listed on the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) exception section found on the HLD. The following guidelines and restrictions apply to other conditions:

(1) Other medical, social, or emotional conditions are limited to those conditions that affect the medical, social or emotional function of the child;

(2) Other medical, social, or emotional conditions are not scored if the sole condition sought to be improved is the cosmetic appearance of the child;

(3) Such other medical, social, or emotional conditions must be demonstrated by objective evidence such as supported documentation outside the child's immediate family (e.g., a child's teacher, primary care physician, behavioral health provider, school counselor);

(4) Objective evidence must be submitted with the HLD;

(5) When such other medical, social, or emotional conditions are reflected on the HLD, the OHCA orthodontic consultant must review the data and use his or her professional judgment to score the value of the conditions; and

(6) The OHCA orthodontic consultant may consult with and utilize the opinion of the orthodontist who completes the form.

(e) If it is determined that the malocclusion is not severe enough to warrant medically necessary orthodontic services or the member's age precludes approval, a computer generated notice is issued to the provider and member with notice of the denial, the reason for the denial, and appeal rights [see Oklahoma Administrative Code (OAC) 317:2-1 for grievance procedures and processes].

(f) Orthodontic treatment and payment for the services are approved within the scope of the SoonerCare program. If orthodontic treatment is approved, a computer generated notice is issued authorizing the first year of treatment.

(1) Approval of orthodontic treatment is given in accordance with the following:

(A) Authorization for the first year begins on the date of banding and includes the placement of appliances, arch wires, and a minimum of six (6) adjustments. It is expected that orthodontic members be seen every four (4) to eight (8) weeks for the duration of active treatment.

(B) Subsequent adjustments will be authorized in one (1) year intervals and the treating orthodontist must provide a comprehensive progress report at the twenty-four (24) month interval.

(C) All approved treatment is included on the original prior authorization and will include the total payment for that treatment year.

(2) Claim and payment are made as follows:

(A) Payment for comprehensive treatment includes the banding, wires, adjustments as well as all ancillary services, including the removal of appliances, and the construction and placing of retainers.

(B) Payment is not made for comprehensive treatment beyond thirty-six (36) months.

(g) If the member moves from the geographic area or shows a need to change their provider, then the provider who received the yearly payment is financially responsible until completion of that member's orthodontic treatment for the current year.

(h) If the provider who received yearly payment does not agree to be financially responsible, then the OHCA may recoup funds paid for the member's orthodontic treatment.

(i) All orthodontic services are subject to post-utilization review. This review may include a request by the OHCA to submit medical documentation necessary to complete the review. After review is completed, these materials are returned to the orthodontist.

~~(j) Study models or oral/facial images must be diagnostic and meet the following requirements:~~

~~(1) Study models must be properly poured and adequately trimmed without large voids or positive bubbles present.~~

~~(2) Centric occlusion must be clearly indicated by pencil lines on the study models, making it possible to occlude the teeth on the models in centric occlusion.~~

~~(3) 3-D model images are preferred.~~

~~(4) All measurements are made or judged on the basis of greater than or more than the minimal criteria. Measurement, counting, recording, or consideration is performed only on teeth that have erupted and may be seen on the study models.~~

~~(5) For photographic images, the oral/facial portfolio must show a view of the complete lower arch, complete upper arch, and left and right maximum intercuspation of teeth.~~

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

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

(j) Electronic images of casts and/or oral/facial images may be requested by OHCA or representatives of OHCA. Providers will be reimbursed for either the study model or images when obtained for orthodontic evaluation and/or therapy.

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

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

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

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

(3) 3-D model images or photographic images not in compliance with the diagnostic guidelines will not be compensable. The provider may be allowed to resubmit new images that adhere to the diagnostic guidelines. If the provider does not provide appropriate documentation, the request for treatment will be denied.

**317:30-5-705. Billing and reimbursement**

~~Billing for dental services may be submitted on the currently approved version of the American Dental Association (ADA) claim form. Diagnosis codes are requested to be listed in box 34 of the current ADA dental claim form. Electronic submission must be made on the HIPAA compliant Form 837D.~~

~~(a) Dental claims, and any related documents, must be submitted electronically or through the OHCA secure provider portal. Electronic submission must be made on the HIPAA compliant Form 837D.~~

~~(b) Billing and reimbursement methodology, including co-payments, are outlined in the Oklahoma Medicaid State Plan.~~

*[OAR Docket #22-420; filed 6-23-22]*

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

*[OAR Docket #22-428]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. General Provider Policies

Part 6. Out-of-State Services

317:30-3-92 [AMENDED]

(Reference APA WF # 21-35)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 C.F.R. Section 440.170

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will outline who can request the lodging and meal services and the timeframe that the request must be submitted. Additionally, a clause addressing emergency situations will be added to override the timeframe. The proposed revisions will also outline the information that must be submitted with each request. Further revisions will define meal requirements and what constitutes a meal. Additional revisions will outline how lodging providers and members authorize the member's length of stay. Authorization for length of stay includes having the lodging provider create a document/attestation that lists all the dates that the member has stayed in the facility and requiring the member's review and signature of the document/attestation before he/she/they checks out of the lodging

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provider's facility. Furthermore, the revisions will specify that it is the responsibility of both, the lodging provider and the member, to ensure that the document/attestation is verified and signed. Additional policy changes will add descriptions and processes for incidental charges and complaints. These changes are necessary to align the policy with current business practices.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 6. OUT-OF-STATE SERVICES

#### 317:30-3-92. Payment for lodging and mealsLodging and meals services

(a) ~~Payment for lodging and/or meals assistance for an eligible member and one (1) approved medical escort, if needed, is provided only when medically necessary in connection with SoonerCare compensable services. For medically necessary criteria please refer to Oklahoma Administrative Code 317:30-3-1 (f) (1) through (6). The Oklahoma Health Care Authority (OHCA) has discretion and final authority to approve or deny any lodging and/or meal services.~~

~~(1) Lodging and/or meals are reimbursable when prior approved. Payment for lodging and/or meals is limited to a period of up to twenty four (24) hours prior to the start of member's medical services and up to twenty four (24) hours after the services end. If travel arrangements cannot meet the aforementioned stipulations, due to travel issues/restrictions and/or medically necessary services, then lodging and/or meals may be provided with approval from the OHCA.~~

~~(2) Lodging and/or meals will not be provided if a suitable alternative is available at a hospital or non-profit. Factors to be considered in determining availability include, but are not limited to:~~

- ~~(A) Type of hospital room;~~
- ~~(B) Availability of "rooming in";~~
- ~~(C) Shower facilities available for use by the medical escort; and~~
- ~~(D) Member's anticipated length of stay.~~

~~(3) The following conditions must be met in order for lodging and/or meals to be reimbursed, unless the lodging and/or meals provision is determined to be the most cost-effective alternative:~~

- ~~(A) Travel must be to obtain specialty care at the closest appropriate facility and be fifty (50) miles or greater from the member's home;~~

~~(B) The trip cannot be completed during SoonerRide operating hours or the member's medical treatment/condition requires an overnight stay; and~~  
~~(C) Medical necessity must be confirmed and the medical escort must be actively engaged and participative in compensable care.~~

~~(4) Meals will be reimbursed if lodging criteria is met. Duration of the trip must be eighteen (18) hours or greater.~~

~~(5) Reimbursement for meals is based on a daily per diem and may be used for breakfast, lunch or dinner, or all three (3) meals, as required. If meals or meal vouchers are provided by either the hospital or the lodging provider, additional reimbursement will not be provided to the member.~~

~~(6) During the first fourteen (14) days of a member's inpatient or outpatient stay, lodging and meals can be approved per a hospital social worker/provider without prior approval. Additional lodging and/or meals beyond the fourteen (14) days must be prior approved by the OHCA.~~

~~(7) A member may not receive reimbursement for lodging and/or meals services for days the member is inpatient in a hospital or medical facility since that will be provided at the location that the member is receiving inpatient services.~~

(b) ~~Criteria for lodging and/or meals reimbursement is as follows:~~

~~(1) Lodging must be with a SoonerCare contracted room and board provider, when available, before direct reimbursement to a member and/or medical escort can be authorized.~~

~~(2) If lodging and/or meals assistance with contracted room and board providers is not available, the member and any medical escort may request reimbursement assistance by submitting the appropriate travel reimbursement forms. The travel reimbursement forms may be obtained by contacting SoonerCare Population Care Management division.~~

~~(3) Any lodging and/or meal expenses claimed on the travel reimbursement forms must be documented with the required receipts. If the compensable service related to lodging/meals is not verifiable, reimbursement will be denied.~~

~~(4) Reimbursement for lodging will not exceed maximum state allowable amounts.~~

~~(5) In order for lodging to be reimbursed for a medical escort of a hospitalized member, the medical escort must be able to assist the member during escort and be of an age of legal majority recognized under state law. In cases where the lodging facility has additional requirements, the medical escort must comply with them. This includes, but is not limited to, being compliant with the lodging facility's required age to check in.~~

~~(e) If the Oklahoma Department of Human Services (DHS) removes a child from his/her home, a court must appoint a temporary guardian. During this time, the temporary guardian is eligible for medical escort related lodging and/or meals services. If the minor is in need of medical services and a temporary guardian has not been appointed, then the DHS case~~

worker accompanying the minor is eligible for lodging and/or meal services. It is the responsibility of the OHCA to determine this necessity. The decision should be based on the following circumstances:

- (1) When the individual's health or disability does not permit traveling alone; and
- (2) When the individual seeking medical services is a minor child.

(a) **Requests for lodging and meals services.**

(1) Requests for lodging and meals services shall derive from the treating facility or the member. All requests shall be submitted at least three (3) business days prior to check-in, with exceptions made only in emergency situations. Requests will include, but are not limited to, the following information:

(A) SoonerCare member information:

- (i) Name;
- (ii) SoonerCare ID number;
- (iii) Address;
- (iv) Member diagnosis;

(B) Visit information:

- (i) Inpatient/outpatient visit;
- (ii) Facility name;
- (iii) Provider name and number;
- (iv) Appointment date and time:
  - (I) Check-in time;
  - (II) Duration of stay if inpatient;
  - (III) Admission date and time;

(C) Services requested:

- (i) Lodging;
- (ii) Meals; or
- (iii) Both lodging and meals;

(D) Medical escort information:

- (i) Name;
- (ii) Relationship to member;
- (iii) Medical necessity for the need of an escort; and

(E) Any special accommodations that need to be met.

(2) Any additional documentation, including medical records, that may be needed to determine the need for lodging and meals services.

(b) **Meal requirements.**

(1) At least two (2) meals shall be provided/served to receive the per diem payment.

(2) Meals provided shall strive to meet the nutritional guidance outlined in the current United States Department of Agriculture and Health and Human Services Dietary Guidelines.

(3) Meals may be hot, cold, frozen, dried, or canned (with a satisfactory storage life).

(c) **Reimbursement for lodging and meals services.**

(1) Payment is made for lodging and/or meals assistance for an eligible member and one (1) approved medical escort, if needed, only when medically necessary and in connection with SoonerCare compensable services. For medically necessary criteria, please refer to Oklahoma Administrative Code 317:30-3-1 (f) (1) through (6). The

Oklahoma Health Care Authority (OHCA) has discretion and final authority to approve or deny any lodging and/or meal services.

(A) Lodging and/or meals are reimbursable when prior approved. Payment for lodging and/or meals is limited to a period of up to twenty-four (24) hours prior to the start of member's medical service(s) and up to twenty-four (24) hours after the service(s) end. If travel arrangements cannot meet these timeframes, due to travel issues/restrictions and/or medically necessary services, then lodging and/or meals may be provided with approval from the OHCA.

(B) Lodging and/or meals will not be provided if a suitable alternative is available at a hospital or non-profit. Factors to be considered in determining availability include, but are not limited to:

- (i) Type of hospital room;
- (ii) Availability of "rooming-in";
- (iii) Shower facilities available for use by the medical escort; and
- (iv) Member's anticipated length of stay.

(C) The following conditions shall be met for lodging and/or meals to be reimbursed, unless the lodging and/or meals provision is determined to be the most cost-effective alternative:

- (i) Travel to obtain specialty care at the closest appropriate facility and be fifty (50) miles or greater from the member's home;
- (ii) The trip cannot be completed during SoonerRide operating hours or the member's medical treatment/condition requires an overnight stay; and
- (iii) Medical necessity is confirmed and the medical escort will be actively engaged and participative in compensable care.

(D) Meals will be reimbursed if lodging criteria is met. Duration of the trip must be eighteen (18) hours or greater.

(E) Reimbursement for meals is based on a daily per diem and may be used for breakfast, lunch, or dinner, or all three (3) meals, as required.

(i) If meals or meal vouchers are provided by either the hospital or the lodging provider, additional reimbursement will not be provided to the member.

(ii) If meals or meal vouchers are not provided by either the hospital or lodging provider, the member may be reimbursed for getting meals outside of the hospital or lodging provider. In lieu of meals out, groceries may be reimbursed up to the daily per diem limit.

(iii) If meals or meal vouchers are provided by the lodging provider, but the member has a medically indicated dietary need that the lodging provider would not meet on a normal basis, the member may provide their own meals and be reimbursed.

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- (I) Members will be reimbursed based on the daily per diem rate. In lieu of meals out, groceries may be reimbursed up to the daily per diem limit.
- (II) Medical documentation showing medically necessary dietary needs will need to be provided upon request for these circumstances.
- (III) If varying dietary preferences need to be accommodated, that will be at the member's own expense.
- (F) During the first fourteen (14) days of a member's inpatient stay, lodging and meals can be approved per a hospital social worker/provider without prior approval. Additional lodging and/or meals beyond the fourteen (14) days must be prior approved by the OHCA.
- (G) A member may not receive reimbursement for lodging and/or meals services for days the member is inpatient in a hospital or medical facility since that will be provided at the location that the member is receiving inpatient services.
- (2) Criteria for lodging and/or meals reimbursement is as follows:
- (A) If lodging and/or meals assistance with contracted room and board providers is not available, the member and the medical escort may request reimbursement assistance by submitting the appropriate travel reimbursement forms. The travel reimbursement forms may be obtained by contacting the SoonerCare Population Care Management division.
- (B) Any lodging and/or meal expenses claimed on the travel reimbursement forms shall be documented with the required receipts. If the compensable service related to lodging/meals is not verifiable, reimbursement will be denied.
- (C) Reimbursement for lodging will not exceed maximum State allowable amounts.
- (D) In order for lodging to be reimbursed for a medical escort of a hospitalized member, the medical escort is required to actively assist the member during the escort and be of an age of legal majority recognized under State law. In cases where the lodging facility has additional requirements, the medical escort shall comply with them. This includes, but is not limited to, being compliant with the lodging facility's required age to check in.
- (E) The lodging provider is not eligible for reimbursement if the member and/or approved medical escort do not stay overnight. If the member and/or escort do not remove personal belongings, the lodging provider may charge the member and/or medical escort for the room that is occupied.
- (d) **Authorizations and verification of services.**
- (1) The member and/or medical escort shall review and sign an appropriate attestation, from the lodging provider, verifying the correct dates are listed in the length of stay.
- (2) The member and/or medical escort are responsible for notifying the lodging provider, and the OHCA, if they do not stay overnight or if they leave earlier than the days that have been allotted on the authorization. If the member and/or medical escort do not stay overnight, or leave early, the appropriate attestation shall still need to be reviewed, verified, and signed.
- (3) The member and/or approved medical escort may be required to sign in/out at the lodging provider's front desk on a daily basis.
- (e) **Incidental charges, damages, and complaints.**
- (1) **Incidental charges and damages.**
- (A) Any incidental charges, including costs and services that are not covered under the lodging and meals benefit, will not be paid. If the member and/or medical escort makes any charges outside the scope of the lodging and meals benefit, then the member and/or medical escort shall be responsible for the charges incurred.
- (B) The member, and/or approved medical escort, shall be responsible for the payment of any damages that are made to the lodging facility.
- (2) **Complaints on members/medical escorts.**
- (A) If a complaint is received from the lodging provider on a member and/or approved medical escort, the OHCA will reassign the member and/or approved medical escort to another lodging facility.
- (B) If the OHCA receives more than two (2) complaints on the member and/or medical escort, then the member and/or medical escort will be moved to a probationary period. During the probationary period, the member and/or medical escort will be required to provide his, her, or their own lodging which will be eligible for reimbursement up to the daily per diem rate.
- (3) **Complaints on providers/lodging facilities.**
- (A) Any complaints on lodging facilities should be directed to the SoonerCare Population Care Management division. The member should provide as much information as possible, including but not limited to, the time, facility, names, and the exact nature of the complaint.
- (B) If the complaint is a safety issue, then the OHCA will assist the member into getting placed with another lodging provider, if available, or make arrangements for lodging reimbursement.
- (C) The OHCA will gather all pertinent information and document it into the system to see if there are any ongoing trends with the lodging providers who have had complaints filed on them. The OHCA will use this information to attempt to decrease the likelihood of issue reoccurrences.
- (D) If complaints/issues continue to persist, the OHCA will work with the lodging facility and the Oklahoma State Department of Health (OSDH) to create an appropriate solution.
- (f) **Temporary guardians.**
- (1) If the Oklahoma Department of Human Services (DHS) removes a child from his/her/their home, a court must appoint a temporary guardian. During this time, the temporary guardian is eligible for medical escort-related

lodging and/or meals services. If the minor is in need of medical services and a temporary guardian has not been appointed, then the DHS case worker accompanying the minor is eligible for lodging and/or meal services.

(2) It is the responsibility of the OHCA to determine this necessity. The decision will be based on the following circumstances:

- (A) When the individual's health or disability does not permit traveling alone; and
(B) When the individual seeking medical services is a minor child.

(g) Clinical trials. In accordance with federal regulations and OAC 317:30-3-57.1 and 317:30-3-90 (d)(2), exceptions to the lodging and meals prior authorization requirements will be made for members who are participating in a clinical trial that requires the member to go out-of-state.

(h) Final authority. The OHCA has discretion and the final authority in determining the need for lodging and meals, as well as who will be providing the lodging and meals services. This includes the mode of provision for the services, whether it be through a SoonerCare contracted provider or direct reimbursement to a member or a medical escort.

[OAR Docket #22-428; filed 6-23-22]

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

[OAR Docket #22-431]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-20 [AMENDED]
317:30-5-20.1 [AMENDED]
(Reference APA WF # 21-39)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 30, 2021

COMMENT PERIOD:

February 1, 2022 through March 3, 2022

PUBLIC HEARING:

March 8, 2022

ADOPTION:

March 30, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 12, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule changes will remove outdated language referencing "custom panels particular to the ordering provider.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-20. Laboratory services

This Section covers the guidelines for payment of laboratory services by a provider in his/her office, a certified laboratory and for a pathologist's interpretation of laboratory procedures.

- (1) Compensable services. Providers may be reimbursed for compensable clinical diagnostic laboratory services only when they personally perform or supervise the performance of the test. If a provider refers specimen to a certified laboratory or a hospital laboratory serving outpatients, the certified laboratory or the hospital must bill for performing the test.

- (A) Reimbursement for lab services is made in accordance with the Clinical Laboratory Improvement Amendment of 1988 (CLIA). These regulations provide that payment may be made only for services furnished by a laboratory that meets CLIA conditions, including those furnished in physicians' offices. Eligible providers must be certified under the CLIA program and have obtained a CLIA ID number from Centers for Medicare and Medicaid Services and have a current contract on file with the Oklahoma Health Care Authority (OHCA). Providers performing laboratory services must have the appropriate CLIA certification specific to the level of testing performed.
(B) Only medically necessary laboratory services are compensable.

- (i) Testing must be medically indicated as evidenced by patient-specific indications in the medical record.
(ii) Testing is only compensable if the results will affect patient care and are performed to diagnose conditions and illnesses with specific symptoms.
(iii) Testing is only compensable if the services are performed in furtherance of the diagnosis and/or treatment of conditions that are covered under SoonerCare.

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(C) Laboratory testing must be ordered by the physician or non-physician provider, and must be individualized to the patient and the patient's medical history or assessment indicators as evidenced in the medical documentation.

(D) Laboratory testing for routine diagnostic or screening tests following clinical guidelines such as those found in the American Academy of Pediatrics (AAP) Bright Futures' periodicity schedule, the United States Preventive Services Task Force (USPSTF) A and B recommendations, the American Academy of Family Practitioners (AAFP), or other nationally recognized medical professional academy or society standards of care, is compensable. Additionally, such sources as named in this subdivision should meet medical necessity criteria as outlined in Oklahoma Administrative Code (OAC) 317:30-3-1(f).

(2) **Non-compensable laboratory services.**

(A) Laboratory testing for routine diagnostic or screening tests not supported by the clinical guidelines of a nationally recognized medical professional academy or society standard of care, and/or testing that is performed without apparent relationship to treatment or diagnosis of a specific illness, symptom, complaint or injury is not covered.

(B) Non-specific, blanket panel or standing orders for laboratory testing, ~~custom panels particular to the ordering provider,~~ or lab panels which have no impact on the patient's plan of care are not covered.

(C) Split billing, or dividing the billed services for the same patient for the same date of service by the same rendering laboratory into two (2) or more claims is not allowed.

(D) ~~Separate payment is not made for blood specimens obtained by venipuncture or urine specimens collected by a laboratory. These services are considered part of the laboratory analysis.~~ Separate payment is not made for blood specimens obtained by venipuncture, arterial puncture, or urine specimens collected by a provider who is also performing the laboratory testing as these services are considered part of the laboratory analysis.

(E) Claims for inpatient full service laboratory procedures are not covered since this is considered a part of the hospital rate.

(F) Billing multiple units of nucleic acid detection for individual infectious organisms when testing for more than one (1) infectious organism in a specimen is not permissible. Instead, OHCA considers it appropriate to bill a single unit of a procedure code indicated for multiple organism testing.

(G) Billing multiple Current Procedural Terminology (CPT) codes or units for molecular pathology tests that examine multiple genes or incorporate multiple types of genetic analysis in a single run or report is not permissible. Instead, OHCA considers it appropriate to bill a single CPT code for such test. If an

appropriate code does not exist, then one (1) unit for an unlisted molecular pathology procedure may be billed.

(3) **Covered services by a pathologist.**

(A) A pathologist may be paid for the interpretation of inpatient surgical pathology specimen when the appropriate CPT procedure code and modifier is used.

(B) Full service or interpretation of surgical pathology for outpatient surgery performed in an outpatient hospital or ambulatory surgery center setting.

(4) **Non-compensable services by a pathologist.** The following are non-compensable pathologist services:

(A) Experimental or investigational procedures. For more information regarding experimental or investigational including clinical trials, see OAC 317:30-3-57.1.

(B) Interpretation of clinical laboratory procedures.

### 317:30-5-20.1. Drug screening and testing

(a) **Purpose.** Drug Testing is performed for undisclosed drug use and/or abuse, and to verify compliance with treatment. Testing for drugs of abuse to monitor treatment compliance should be included in the treatment plan for pain management when chronic opioid therapy is involved.

(1) Qualitative (presumptive) drug testing may be used to determine the presence or absence of a drug or drug metabolite in the sample and is expressed as a positive or negative result. Qualitative testing can be performed by a CLIA waived or moderate complexity test, or by a high complexity testing method.

(2) Quantitative (definitive) drug testing is specific to the drug or metabolite being tested and is expressed as a numeric result or numeric level which verifies concentration.

(3) Specimen validity testing is used to determine if a specimen has been diluted, adulterated or substituted. Specimen validity tests include, but are not limited to, creatinine, oxidants, specific gravity, urine pH, nitrates and alkaloids.

(b) **Eligible providers.** Providers performing drug testing should have CLIA certification specific to the level of testing performed as described in 317:30-5-20(1)(A).

(c) **Compensable services.** Drug testing must be ordered by the physician or non-physician provider and must be individualized to the patient and the patient's medical history or assessment indicators as evidenced in the medical documentation.

(1) Compensable testing must be medically indicated as evidenced by patient specific indications in the medical record.

(A) Testing is only compensable if the results will affect patient care.

(B) Drugs or drug classes being tested should reflect only those likely to be present.

(2) The frequency of drug screening and/or testing is determined by the patient's history, patient's physical assessment, behavioral assessment, risk assessment, treatment plan and medication history.



(3) Quantitative (definitive) drug testing may be indicated for the following:

- (A) To identify a specific substance or metabolite that is inadequately detected or undetectable by a qualitative (presumptive) test; or
- (B) To definitively identify specific drugs in a large family of drugs; or
- (C) To identify drugs when a definitive concentration of a drug is needed to guide management; or
- (D) To identify a negative, or confirm a positive, qualitative (presumptive) result that is inconsistent with a patient's self-report, presentation, medical history or current prescribed medication plan; or
- (E) To identify a non-prescribed medication or illicit use for ongoing safe prescribing of controlled substances.

(d) **Non-compensable services.** The following tests are not medically necessary and therefore not covered by the OHCA:

- (1) Specimen validity testing is considered a quality control measure and is not separately compensable;
- (2) Drug testing for patient sample sources of saliva, oral fluids, or hair;
- (3) Testing of two different specimen types (urine and blood) from the same patient on the same date of service;
- (4) Drug testing for medico-legal purposes (court ordered drug screening) or for employment purposes;
- (5) Non-specific, blanket panel or standing orders for drug testing, ~~custom panels specific for the ordering provider,~~ routine testing of therapeutic drug levels, or drug panels which have no impact to the member's plan of care;
- (6) Scheduled and routine drug testing (i.e. testing should be random);
- (7) Reflex testing for any drug is not medically indicated without specific documented indications;
- (8) Confirmatory testing exceeding three specific drug classes at an interval of greater than every thirty (30) days will require specific documentation in the medical record to justify the medical necessity of testing; and
- (9) Quantitative (definitive) testing of multiple drug levels that are not specific to the patient's medical history and presentation are not allowed. Justification for testing for each individual drug or drug class level must be medically indicated as reflected in the medical record documentation.

(e) **Documentation requirements.** The medical record must contain documents to support the medical necessity of drug screening and/or testing. Medical records must be furnished on request and may include, but are not limited to, the following:

- (1) A current treatment plan;
- (2) Patient history and physical;
- (3) Review of previous medical records if treated by a different physician for pain management;
- (4) Review of all radiographs and/or laboratory studies pertinent to the patient's condition;
- (5) Opioid agreement and informed consent of drug testing, as applicable;
- (6) List of prescribed medications;

- (7) Risk assessment, as identified by use of a validated risk assessment tool/questionnaire, with appropriate risk stratification noted and utilized;
- (8) Office/provider monitoring protocols, such as random pill counts; and
- (9) Review of prescription drug monitoring data or pharmacy profile as warranted.

[OAR Docket #22-431; filed 6-23-22]

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

[OAR Docket #22-425]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 1. Physicians  
317:30-5-22 [AMENDED]  
(Reference APA WF # 21-32)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Title 42 of the Code of Federal Regulations (C.F.R.), Parts 440 and 441, 42 C.F.R 410.32

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will amend policy to provide coverage of obstetric (OB) ultrasounds in the emergency room (ER) setting when medically necessary and without prior authorization. Finally, the proposed rulemaking will correct minor formatting and grammatical errors.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

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## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 1. PHYSICIANS

#### 317:30-5-22. Obstetrical care

(a) Obstetrical (OB) care is billed using the appropriate CPT codes for ~~Maternity Care and Delivery~~ maternity care and delivery. The date of delivery is used as the date of service for charges for total OB care. Inclusive dates of care should be indicated on the claim form as part of the description. Payment for total OB care includes all routine care, and any ultrasounds performed by the attending physician provided during the maternity cycle unless otherwise specified in this Section. For payment of total OB care, a physician must have provided care for more than one (1) trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB physician outside of the antepartum visits. The antepartum care during the prenatal care period includes all care by the OB attending physician except major illness distinctly unrelated to the pregnancy.

(b) Procedures paid separately from total OB care are listed in (1) - (8) of this subsection.

(1) The completion of an American College of Obstetricians and Gynecologist (ACOG) assessment form or form covering same elements as ACOG<sub>2</sub> and the most recent version of the Oklahoma Health Care Authority's (OHCA) Prenatal Psychosocial Assessment are reimbursable when both documents are included in the prenatal record. SoonerCare allows one (1) assessment per provider and no more than two (2) per pregnancy.

(2) Medically necessary real time antepartum diagnostic ultrasounds will be paid in addition to antepartum care, delivery, and postpartum OB care under defined circumstances. To be eligible for payment, all ultrasound reports must meet the guideline standards published by the American Institute of Ultrasound Medicine (AIUM).

(A) One (1) ultrasound will be covered in the first trimester of an uncomplicated pregnancy. Both an abdominal and vaginal ultrasound may be allowed when clinically appropriate and medically necessary. The ultrasound must be performed by a ~~Board Eligible/Board Certified Obstetrician-Gynecologist~~ board eligible/board certified obstetrician-gynecologist (OB-GYN), Radiologist, or a Board Eligible/Board Certified Maternal Fetal Medicineradiologist, or a board eligible/board certified maternal-fetal medicine specialist. In addition, this ultrasound may be performed by a ~~Certified Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics~~ certified nurse midwife (CNM), family practice physician or advanced practice nurse practitioner (APRN) in obstetrics with a certification in OB ultrasonography.

(B) One (1) ultrasound after the first trimester will be covered. This ultrasound must be performed

by a ~~Board Eligible/Board Certified OB-GYN, Radiologist, or a Board Eligible/Board Certified Maternal Fetal Medicine board eligible/board certified OB-GYN, radiologist, or a board eligible/board certified maternal-fetal medicine specialist~~. In addition, this ultrasound may be performed by a ~~Certified Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics~~ CNM, family practice physician, or APRN with certification in OB ultrasonography.

(C) One (1) additional detailed ultrasound is allowed by a ~~Board Eligible/Board Certified Maternal Fetal Specialist~~ board eligible/board certified maternal fetal specialist or general obstetrician with documented specialty training in performing detailed ultrasounds. This additional ultrasound is allowed to identify or confirm a suspected fetal/maternal anomaly. This additional ultrasound does not require prior authorization. Any subsequent ultrasounds will require prior authorization.

(3) Standby attendance at ~~Cesarean Section (C Section)~~ cesarean section (C-section), for the purpose of attending the baby, is compensable when billed by a physician or qualified health care provider not participating in the delivery.

(4) Anesthesia administered by the attending physician is a compensable service and may be billed separately from the delivery.

(5) Amniocentesis is not included in routine OB care and is billed separately. Payment may be made for an evaluation and management service and a medically indicated amniocentesis on the same date of service. This is an exception to general information regarding surgery found at Oklahoma Administrative Code (OAC) 317:30-5-8.

(6) Additional payment is not made for the delivery of multiple gestations. If one (1) fetus is delivered vaginally and additional ~~fetus(es)are~~ fetus(es) are delivered by C-section by the same physician, the ~~higher~~ higher-level procedure is paid. If one (1) fetus is delivered vaginally and additional fetus(es) are delivered by ~~C-Section~~ C-section, by different physicians, each should bill the appropriate procedure codes without a modifier. Payment is not made to the same physician for both standby and assistant at ~~C-Section~~ C-section.

(7) Reimbursement is allowed for nutritional counseling in a group setting for members with gestational diabetes. Refer to OAC 317:30-5-1076(5).

(8) Limited OB ultrasounds are covered in an emergency room (ER) setting when medically necessary.

(c) Assistant surgeons are paid for ~~C-Sections~~ C-sections which include only in-hospital post-operative care. Family practitioners who provide prenatal care and assist at ~~C-Section~~ C-section bill separately for the prenatal and the six (6) weeks postpartum office visit.

(d) Procedures listed in (1) - (5) of this subsection are not paid or not covered separately from total OB care.

(1) Non stress test, unless the pregnancy is determined medically high risk. See OAC 317:30-5-22.1.

- (2) Standby at ~~C-Section~~ C-section is not compensable when billed by a physician participating in delivery.
  - (3) Payment is not made for an assistant surgeon for OB procedures that include prenatal or postpartum care.
  - (4) An additional allowance is not made for induction of labor, double set-up examinations, fetal stress tests, or pudendal anesthetic. Providers must not bill separately for these procedures.
  - (5) Fetal scalp blood sampling is considered part of the total OB care.
- (e) OB coverage for children is the same as for adults. Additional procedures may be covered under Early and Periodic Screening, Diagnostic and Treatment (EPSDT) provisions if determined to be medically necessary.
- (1) Services deemed medically necessary and allowable under federal Medicaid regulations are covered by the EPSDT/OHCA Child Health Program even though those services may not be part of the OHCA SoonerCare program. Such services must be prior authorized.
  - (2) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental. For more information regarding experimental or investigational and clinical trials see OAC 317:30-3-57.1.

*[OAR Docket #22-425; filed 6-23-22]*

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

*[OAR Docket #22-418]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-58 [AMENDED]

(Reference APA WF # 21-09)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 42 Code of Federal Regulations (C.F.R.) Sections 447.272 and 447.321

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

November 23, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 18, 2022

**PUBLIC HEARING:**

January 18, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-58 [AMENDED]

**Gubernatorial approval:**

July 19, 2021

**Register publication:**

38 Ok Reg 1596

**Docket number:**

21-704

(Reference APA WF # 21-09)

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed changes will amend the Supplemental Hospital Offset Payment Program (SHOPP) policy to be in compliance with Oklahoma Senate Bill 1045. The proposed changes will define directed payments as specific payments made by managed care plans to providers under certain circumstances that assist states in furthering the goals and priorities of their Medicaid programs. The measure provides that funds from SHOPP may be used to fund supplemental or directed payments. Additionally, the changes will modify the assessment calculation methodology from a rate needed to generate an amount up to the sum of certain expenses to a fixed rate. Additionally, the proposed changes renders the portion of the SHOPP fee attributable to certain expenses null and void if federal matching funds for the program become unavailable. The measure also eliminates the termination date of the program and removes a cap on quarterly transfers of funds. Finally, other changes are for grammar and language cleanup and to align the SHOPP rule with current business practice and needed changes for the funding of expansion adults and services through managed care.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS  
AND SPECIALTIES**

**PART 3. HOSPITALS**

**317:30-5-58. Supplemental Hospital Offset Payment Program**

(a) **Purpose.** The Supplemental Hospital Offset Payment Program (SHOPP) is a hospital assessment fee that is eligible for federal matching funds when used to reimburse SoonerCare services in accordance with Section 3241.1 of Title 63 of the Oklahoma Statutes (O.S.).

(b) **Definitions.** The following words and terms, when used in this Section have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Base Year"** means a hospital's fiscal year ending in 2009, as reported in the Medicare Cost Report or as determined by the Oklahoma Health Care Authority (OHCA) if the hospital's data is not included in a Medicare Cost Report.

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- (2) **"Directed payments"** means payment arrangements allowed under 42 Code of Federal Regulations (C.F.R.) Section (§) 438.6(c) that permit states to direct specific payments made by managed care plans to providers under certain circumstances and can assist states in furthering the goals and priorities of their Medicaid programs.
- (23) **"Fee"** means supplemental hospital offset assessment pursuant to Section (§) 3241.1 of Title 63 of the ~~Oklahoma Statutes~~ O.S.
- (34) **"Hospital"** means an institution licensed by the State Department of Health as a hospital pursuant to ~~Section~~ § 1-701.1 of Title 63 of the ~~Oklahoma Statutes~~ O.S., maintained primarily for the diagnosis, treatment, or care of patients.
- (45) **"Hospital Advisory Committee"** means the Committee established for the purposes of advising the OHCA and recommending provisions within and approval of any state plan amendment or waiver affecting the Supplemental Hospital Offset Payment Program.
- (56) **"NET hospital patient revenue"** means the gross hospital revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines "Total inpatient routine care services", "Ancillary services", "Outpatient services") of the Medicare ~~Cost Report~~ cost report, multiplied by hospital's ratio of total net to gross revenue, as reported on Worksheet G-3 (Column 1, Line 3) "Net patient revenues" and Worksheet G-2 (Part I, Column 3, Line "Total patient revenues").
- (67) **"Medicare ~~Cost Report~~ cost report"** means the ~~Hospital Cost Report~~ hospital cost report, Form CMS-2552-96 or subsequent versions.
- (78) **"Upper payment limit ~~“(UPL)”~~"** means the maximum ceiling imposed by ~~42 C.F.R. “42 C.F.R. §§ 447.272 and 447.321~~ on hospital Medicaid reimbursement for inpatient and outpatient services, other than to hospitals owned or operated by state government.
- (89) **"Upper payment limit gap"** means the difference between the upper payment limit and SoonerCare payments not financed using hospital assessments.
- (c) **Supplemental Hospital Offset Payment Program.**
- (1) Pursuant to 63 ~~Okl.~~ Stat. O.S. §§ 3241.1 through 3241.6 the ~~Oklahoma Health Care Authority (OHCA)~~ OHCA is mandated to assess hospitals licensed in Oklahoma, unless exempted under (c) (2) of this Section, a supplemental hospital offset payment fee.
- (2) The following hospitals are exempt from the SHOPP fee:
- (A) a hospital that is owned or operated by the state or a state agency, or the federal government, as determined by OHCA, using most recent Medicare cost report worksheet S-2, column 1, line 18 or other line that indicates ownership, or by a federally recognized Indian tribe or Indian Health Services, as determined by OHCA, using the most recent IHS/Tribal facility list for Oklahoma as updated by the Indian Health Service Office of Resource Access and Partnerships in Partnership with the Centers for Medicare and Medicaid Services and ~~State~~ state operations.
- (B) a hospital that provides more than fifty percent (50%) of its inpatient days under a contract with a state agency other than the OHCA, as determined by OHCA, using data provided by the hospital;
- (C) a hospital for which the majority of its inpatient days are for any one of the following services, as determined by OHCA, using the Inpatient Discharge Data File published by the Oklahoma State Department of Health, or in the case of a hospital not included in the Inpatient Discharge Data File, using substantially equivalent data provided by the hospital:
- ~~treatment~~ Treatment of a neurological injury;
  - ~~treatment~~ Treatment of cancer;
  - ~~treatment~~ Treatment of cardiovascular disease;
  - ~~obstetrical~~ Obstetrical or childbirth services; or
  - ~~surgical~~ Surgical care except that this exemption will not apply to any hospital located in a city of less than five hundred thousand (500,000) population and for which the majority of inpatient days are for back, neck, or spine surgery.
- (D) a hospital that is certified by the Centers for Medicare and Medicaid Services (CMS) as a long term acute hospital, according to the most recent list of LTCH's published on the CMS [http://www.cms.gov/LongTermCareHospitalPPS/08down load.asp](http://www.cms.gov/LongTermCareHospitalPPS/08download.asp) or as a children's hospital; and
- (E) a hospital that is certified by CMS as a critical access hospital, according to the most recent list published by Flex Monitoring Team for Critical Access Hospital (CAH) Information at <http://www.flexmonitoring.org/cahlistRA.cgi>, which is based on CMS quarterly reports, augmented by information provided by state Flex Coordinators.
- (d) **~~The Supplemental Hospital Offset Payment Program~~ SHOPP Assessment.**
- (1) The SHOPP assessment is imposed on each hospital, except those exempted under (c) (2) of this Section, for each calendar year in an amount calculated as a percentage of each hospital's net hospital patient revenue. ~~The assessment rate until December 31, 2012, is two and one-half percent (2.5%). At no time in subsequent years will the assessment rate exceed four percent (4%).~~ The SHOPP assessment is imposed on each hospital, except those exempted under (c) (2) of this Section, in an amount calculated as a percentage of each hospital's net hospital patient revenue. At no time will the assessment rate exceed four percent (4%). For the calendar year ending December 31, 2022, the assessment rate shall be fixed at three percent (3%). For the calendar year ending December 31, 2023, the assessment rate shall be fixed at three and one-half percent (3.5%). For the calendar

year ending December 31, 2024 and for all subsequent calendar years shall, the assessment rate exceed shall be fixed at four percent (4%).

~~(2) OHCA will review and determine the amount of annual assessment in December of each year.~~

~~(32) A hospital may not charge any patient for any portion of the SHOPP assessment.~~

~~(43) The Method method of collection is as follows:~~

(A) The OHCA will send a notice of assessment to each hospital informing the hospital of the assessment rate, the hospital's net hospital patient revenue calculation, and the assessment amount owed by the hospital for the applicable year.

(B) The hospital has thirty (30) days from the date of its receipt of a notice of assessment to review and verify the hospital's net patient revenue calculation, and the assessment amount.

(C) New hospitals will only be added at the beginning of each calendar year.

(D) The annual assessment imposed is due and payable on a quarterly basis. Each quarterly installment payment is due and payable by the fifteenth day of the first month of the applicable quarter (i.e. January 15th, April 15th, etc.)

(E) Failure to pay the amount by the 15th or failure to have the payment mailing postmarked by the 13th ~~will may~~ result in a debt to the State of Oklahoma and is subject to penalties of ~~5% five percent (5%) of the amount and interest of 1.25% one and a quarter percent (1.25%) per month.~~

(F) If a hospital fails to timely pay the full amount of a quarterly assessment, OHCA ~~will may~~ add to the assessment:

(i) ~~a A~~ penalty assessment equal to five percent (5%) of the quarterly amount not paid on or before the due date, and

(ii) ~~on On~~ the last day of each quarter after the due date until the assessed amount and the penalty imposed under section (i) of this paragraph are paid in full, an additional five percent (5%) penalty assessment on any unpaid quarterly and unpaid penalty assessment amounts.

(iii) ~~the The~~ quarterly assessment including applicable penalties and interest must be paid regardless of any appeals action requested by the facility. If a provider fails to pay the OHCA the assessment within the time frames noted on the invoice to the provider, the assessment, ~~and~~ applicable penalty, ~~and interest~~ will be deducted from the facility's payment. Any change in payment amount resulting from an appeals decision in which a recoupment or additional allocation is necessary will be adjusted in future payments in accordance with ~~OAC Oklahoma Administrative Code (OAC) 317:2-1-15~~ SHOPP appeals.

(iv) If additional allocation or recoupment resulting from an appeal is for the current calendar year and another SHOPP payment is scheduled for

the calendar year, an adjustment to the next payment will be calculated. If additional allocation or recoupment is for a prior calendar year, a separate payment/account receivable (AR) will be issued.

(G) The SHOPP assessments excluding penalties and interest are an allowable cost for cost reporting purposes.

~~(e) Supplemental Hospital Offset Payment Program~~ **SHOPP Cost Reports.**

(1) The report referenced in paragraph (b)(6) must be signed by the preparer and by the Owner, authorized Corporate Officer or Administrator of the facility for verification and attestation that the reports were compiled in accordance with this section.

(2) The Owner or authorized Corporate Officer of the facility must retain full accountability for the report's accuracy and completeness regardless of report submission method.

(3) Penalties for false statements or misrepresentation made by or on behalf of the provider are provided at ~~42 U.S.C. United States Code (U.S.C.)~~ Section 1320a-7b which states, in part, "Whoever... (2) at any time knowingly and willfully makes or causes to be made any false statement of a material fact for use in determining rights to such benefits or payment... shall (i) in the case of such statement, representation, failure, or conversion by any person in connection with furnishing (by the person) of items or services for which payment is or may be under this title (42 U.S.C. § 1320 et seq.), be guilty of a felony and upon conviction thereof fined not more than ~~\$25,000 twenty-five thousand dollars (\$25,000)~~ or imprisoned for not more than five (5) years or both, or (ii) in the case of such a statement, representation, concealment, failure or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than ~~\$10,000 ten thousand dollars (\$10,000)~~ or imprisoned for not more than one year, or both."

(4) Net hospital patient revenue is determined using the data from each hospital's applicable Medicare ~~Cost Report cost report~~ contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System (HCRIS) file. The base year for assessment shall be the hospital's fiscal year that ended two years prior (e.g. calendar year 2022 will use 2020 fiscal year cost reports), as contained in the HCRIS file dated June 30 of each year.

~~(A) Through 2013, the base year for assessment shall be the hospital's fiscal year that ended in 2009, as contained in the HCRIS file dated December 31, 2010;~~

~~(B) For years 2014 and 2015, the base year for assessment shall be the hospital's fiscal year that ended in 2012, as contained in the HCRIS file dated June 30, 2013; and~~

~~(C) For subsequent two year periods the base year for assessment shall be the hospital's fiscal year that ended two years prior (e.g., 2016 & 2017 B 2014 fiscal~~

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year; 2018 & 2019 B 2016 fiscal year), as contained in the HCRIS file dated June 30 of the following year.

- (5) If a hospital's applicable Medicare ~~Cost Report~~ cost report is not contained in the Centers for Medicare and Medicaid Services' HCRIS file, the hospital will submit a copy of the hospital's applicable Medicare ~~Cost Report~~ cost report to the ~~Oklahoma Health Care Authority (OHCA)~~ OHCA in order to allow the OHCA to determine the hospital's net hospital patient revenue for the base year.
- (6) If a hospital commenced operations after the due date for a Medicare ~~Cost Report~~ cost report, the hospital will submit its initial Medicare ~~Cost Report~~ cost report to ~~Oklahoma Health Care Authority (OHCA)~~ OHCA in order to allow the OHCA to determine the hospital's net patient revenue for the base year.
- (7) Partial year reports may be prorated for an annual basis. Hospitals whose assessments were based on partial year cost reports will be reassessed the following year using a cost report that contains a full year of operational data.
- (8) In the event that a hospital does not file a uniform cost report under 42 U.S.C., Section 1396a(a)(40), the OHCA will provide a data collection sheet for such facility.
- (f) **Closure, merger and new hospitals.**
- (1) If a hospital ceases to operate as a hospital or for any reason ceases to be subject to the fee, the assessment for the year in which the cessation occurs is adjusted by multiplying the annual assessment by a fraction, the numerator of which is the number of days in the year during which the hospital is subject to the assessment and denominator of which is 365. Within ~~30~~ (30) days of ceasing to operate as a hospital, or otherwise ceasing to be subject to the assessment, the hospital will pay the assessment for the year as so adjusted, to the extent not previously paid.
- (2) Cost reports required under (e)(5), (e)(6), or (e)(8) of this subsection for assessment calculation must be submitted to OHCA by September 30 of each year.
- (g) **Disbursement of payment to hospitals.**
- (1) All in-state inpatient hospitals are eligible for hospital access payments each year as set forth in this subsection except for those listed in OAC 317:30-5-58 (c)
- (2):
- (A) In addition to any other funds paid to inpatient critical access hospital for services provided to SoonerCare members, each critical access hospital will receive hospital access payments equal to the amount by which the payment for these services was less than one hundred one percent (101%) of the hospital's cost of providing these services.
- (B) In addition to any other funds paid to hospitals for inpatient hospital services to SoonerCare members, each eligible hospital will receive inpatient hospital access payments each year equal to the hospital's pro rata share of the inpatient supplemental payment pool as reduced by payments distributed in paragraph (1) (A) of this Section. The pro rata share

will be based upon the hospital's SoonerCare payment for inpatient services divided by the total SoonerCare payments for inpatient services of all eligible hospitals within each class of hospital and cannot exceed the UPL for the class.

(C) Directed payments paid through a managed care organization (MCO) as approved in the CMS-approved 438.6(c) directed payment pre-prints.

- (2) All in-state outpatient hospitals are eligible for hospital access payments each year as set forth in this subsection except for those listed in OAC 317:30-5-58 (c) (2):
- (A) In addition to any other funds paid to outpatient critical access hospital for services provided to SoonerCare members, each critical access hospital will receive hospital access payments equal to the amount by which the payment for these services was less than one hundred one percent (101%) of the hospital's cost of providing these services.
- (B) In addition to any other funds paid to hospitals for outpatient hospital services to SoonerCare members, each eligible hospital will receive outpatient hospital access payments each year equal to the hospital's pro rata share of the outpatient supplemental payment pool as reduced by payments distributed in paragraph (2) (A) of this Section. The pro rata share will be based upon the hospital's SoonerCare payment for outpatient services divided by the total SoonerCare payments for outpatient services of all eligible hospitals within each class of hospital and cannot exceed the UPL for the class.
- (C) Directed payments paid through a managed care organization (MCO) as approved in the CMS-approved 438.6(c) directed payment pre-prints.
- (3) Medicaid payments to a group of facilities within approved categories may not exceed the upper payment limit in accordance with 42 ~~CFRC.F.R.~~ 447.272 (b) (2) and 42 ~~CFRC.F.R.~~ 447.321 (b) (2). If any audit determines that a class of hospitals has exceeded the inpatient and/or outpatient UPL the overpayment will be recouped and redistributed based on the following methods:
- (A) If it is determined prior to issuance of hospital access payments that the pool of hospitals would exceed the upper payment limit estimate of that pool, the amount above the UPL estimate will be allocated to another pool of hospitals that does not exceed the upper payment limit estimate of that pool. The reallocation can be applied to multiple pools if necessary.
- (B) If the overpayment cannot be redistributed due to all classes being paid at their UPL, the overpayment will be deposited in to the SHOPP fund.
- (4) ~~In order to ensure sufficient funds to make payments effective July 1, 2013 OHCA shall reduce the next quarterly payment by 1.4% (OHCA will pay out 23.6% of the assessment rather than 25%). This reduction will be distributed in the fourth (4<sup>th</sup>) quarter of the year as soon as all assessments are received. This payment will also be increased by penalties collected within the year as long as the~~

~~penalties do not cause the payment to exceed the UPL estimate. If all assessments are received prior to the 4<sup>th</sup> quarterly payment being processed the 4<sup>th</sup> quarter may be adjusted to pay out 26.4% plus accrued penalties.~~

~~(5) Effective for all subsequent calendar years the OHCA will distribute payments in the following quarterly percentages: 23.6%, 25%, 25%, 25%. A 5<sup>th</sup> fifth (5<sup>th</sup>) payment of 1.4% in the fourth (4<sup>th</sup>) quarter of each calendar year will also be made as soon as all assessments are received. This payment will also be increased by any penalties collected within the year as long as the penalties do not cause the payment to exceed the UPL estimate. If all assessments are received prior to the 4<sup>th</sup> quarterly payment being processed the 4<sup>th</sup> quarter payment may be adjusted to pay out 26.4% plus accrued penalties.~~

*[OAR Docket #22-418; filed 6-23-22]*

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

*[OAR Docket #22-421]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 5. Individual Providers and Specialties
  - Part 27. Independent Physical Therapists and Physical Therapists Assistants  
317:30-5-291 [AMENDED]
  - Part 81. Chiropractors  
317:30-5-720 [AMENDED]  
317:30-5-721 [AMENDED]
  - Part 82. Alternative Treatments for Pain Management [NEW]  
317:30-5-725 [NEW]  
317:30-5-726 [NEW]  
317:30-5-727 [NEW]  
317:30-5-728 [NEW]
- (Reference APA WF # 21-20)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Oklahoma Senate Bill 1046

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 5. Individual Providers and Specialties

Part 27. Independent Physical Therapists and Physical Therapists Assistants

317:30-5-291 [AMENDED]

Part 81. Chiropractors

317:30-5-720 [AMENDED]

317:30-5-721 [AMENDED]

Part 82. Alternative Treatments for Pain Management [NEW]

317:30-5-722 [NEW]

317:30-5-723 [NEW]

317:30-5-724 [NEW]

317:30-5-725 [NEW]

**Gubernatorial approval:**

December 21, 2021

**Register publication:**

39 Ok Reg 419

**Docket number:**

21-968

(Reference APA WF # 21-20)

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed policy will establish limited coverage for chiropractor services and physical therapy services as a non-pharmacologic alternative for the treatment of spinal pain in SoonerCare adult members. Furthermore, the proposed policy will define provider participation, medical necessity, as well as coverage and service limitation guidelines. The proposed policy will also state that reimbursement is established within the Oklahoma State Plan. Finally, grammatical and formatting errors will be fixed and references to the new sections will be added.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 27. INDEPENDENT PHYSICAL THERAPISTS AND PHYSICAL THERAPISTS ASSISTANTS**

**317:30-5-291. Coverage by category**

Payment is made to registered physical therapists as set forth in this Section.

- (1) **Children.** Initial therapy evaluations do not require prior authorization and must be provided by a fully licensed physical therapist. All therapy services following the initial evaluation must be prior authorized for continuation of service. Prior to the initial evaluation, the therapist must have on file a signed and dated prescription or referral for the therapy services from the member's physician or other licensed practitioner of the healing arts. The prescribing or referring provider must be able to provide, if requested, clinical documentation from the member's medical record that supports the medical necessity for the evaluation and referral.
- (2) **Adults.** There is no coverage for adults for services rendered by individually contracted providers. Coverage

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for adults is permitted in an outpatient hospital setting as described in Oklahoma Administrative Code (OAC) 317:30-5-42.1.

(3) **Individuals eligible for Part B of Medicare.** Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

(4) **Alternative treatments for pain management.** Refer to OAC 317:30-5-728.

### PART 81. CHIROPRACTORS

#### 317:30-5-720. Eligible providers

In order to be eligible for payment, the provider of chiropractic services must have a current Memorandum of Agreement with the Oklahoma Health Care Authority.

(a) Must be appropriately licensed, in good standing in the state in which they practice, and working in accordance with the Oklahoma Chiropractic Practice Act or other applicable statute(s); and

(b) Entered into a provider agreement with the Oklahoma Health Care Authority (OHCA) to provide chiropractic services.

#### 317:30-5-721. Coverage by category

Payment is made to chiropractors as set forth in this Section.

(1) **Children.** There is no coverage for children.

(2) **Adults.** There is no coverage for adults.

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

(4) **Manual spinal manipulation services for pain management.** Refer to Oklahoma Administrative Code 317:30-5-727.

### PART 82. ALTERNATIVE TREATMENTS FOR PAIN MANAGEMENT

#### 317:30-5-725. General

Alternative treatments for pain management are non-pharmacological treatments recommended by a physician or other licensed practitioner of the healing arts for adults age twenty-one (21) or older with acute, subacute, and chronic spinal/back pain or injury. Treatments are intended to reduce pain, increase mobility, optimize function, and decrease use and misuse of opioid medications and may include the services listed in Part 82, of this Chapter.

#### 317:30-5-726. Eligible providers

(a) **Manual spinal manipulation.** Providers must meet the requirements outlined at Oklahoma Administrative Code (OAC) 317:30-5-720.

(b) **Physical therapy (PT) for alternative treatments for pain management.** Providers must meet the requirements outlined at OAC 317:30-5-290.1.

#### 317:30-5-727. Manual spinal manipulation

Chiropractic services are limited to manual spinal manipulation. This includes the manipulation of the five (5) regions of the spinal column for the treatment of back pain in a member with a primary diagnosis of acute or chronic pain and is performed by a licensed chiropractor.

(1) **Medical necessity.** All manual spinal manipulation services should be determined to be medically necessary for the affected member. Documentation in the member's plan of care should support the medical necessity of the need for manual spinal manipulation services. The Oklahoma Health Care Authority (OHCA) will serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-3-1(f) for policy on medical necessity.

(2) **Documentation/requirements.** All documentation submitted to request manual spinal manipulation services should demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2).

(A) **Evaluations.** One (1) initial evaluation and one (1) re-evaluation, for chiropractic manual spinal manipulation, are allowed per calendar year and do not require a PA.

(B) **Prior authorization (PA).** Documentation, for a PA request, will include the following:

(i) The member is over twenty-one (21) years of age;

(ii) Attestation stating that manual spinal manipulation services are being used in place of opioid treatment for pain or used to decrease the use of opioids;

(iii) Primary diagnosis of acute or chronic spinal pain or neuromusculoskeletal disorder related to the spinal column;

(iv) Plan of care that is designed for the treatment of spinal pain;

(v) Signed informed consent for care;

(vi) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

(C) **Subsequent PA requests.** Requests for a subsequent PA will include the following:

(i) All documentation found at (2)(B)(i) through (v) of this Section;

(ii) Medical records that document that the treatments meet the functional needs of the member;

(iii) Treatment goals for acute pain/injury, chronic pain management, or chronic back pain;

(iv) Treatment evaluations that should demonstrate improvement, including but not limited to, improved function, decreased use of pain medications, increased activity level;

(v) Records showing persistent or recurrent conditions;

(vi) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).



- (3) **Frequency/coverage.**
  - (A) SoonerCare covers up to twelve (12) manual spinal manipulation visits per calendar year with an approved PA.
  - (B) Manual spinal manipulation for the treatment of acute or chronic back pain is the only chiropractic service covered by SoonerCare.
- (4) **Reimbursement.** All alternative treatments for pain management services, that are outlined in Part 82 of this Chapter, are reimbursed per the methodology established in the Oklahoma Medicaid State Plan.
- (5) **Discontinuation of services.**
  - (A) If the member's condition is not improving, or the member's condition is regressing, services will not be considered medically necessary.
  - (B) The OHCA may withdraw authorization of payment at any time if it is determined that the member and/or provider is not in compliance with any of the requirements set forth in this Section.
- (6) **Non-covered services.**
  - (A) Manual spinal manipulation provided solely for maintenance.
  - (B) Chiropractor services that are not for the alternative treatments of pain management listed in Part 82 of this Chapter.
  - (C) Manual spinal manipulation services that are provided in a setting other than the chiropractor's office, including but not limited to, inpatient or outpatient hospitals, nursing facilities, rest homes, or the member's home.

**317:30-5-728. Physical therapy (PT) for alternative treatments for pain management**

PT is used to improve a person's ability to move, reduce or manage pain, restore function, and prevent disability. For pain management, PT is provided in a non-hospital based setting with the aim of decreasing pain and suffering while improving physical and mental functioning.

- (1) **Medical necessity.** All services/diagnosis found in the full guidelines at [www.okhca.org/mau](http://www.okhca.org/mau) for alternative treatments for pain management should be determined to be medically necessary for the affected member. Documentation in the member's plan of care should support the medical necessity of the need for alternative treatments for pain management services. The Oklahoma Health Care Authority (OHCA) will serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-3-1(f) for policy on medical necessity.
- (2) **Documentation/requirements.** All documentation submitted to request services should demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2).

- (A) **Evaluations.** One (1) initial PT evaluation and one (1) PT re-evaluation, when necessary, will be covered per calendar year at a non-hospital-based setting and do not require a PA, when the service is performed for the evaluation of therapy services related to alternative treatments of pain management.
- (B) **Prior authorization (PA), Documentation,** for a PA request, will include the following:
  - (i) The member is over twenty-one (21) years of age;
  - (ii) A prescription or a referral from the member's physician or other licensed practitioner of the healing arts, dated within the previous ninety (90) days requesting the PT services for pain management;
  - (iii) Attestation stating that PT services are being used in place of opioid treatment for pain or used to decrease the use of opioids;
  - (iv) Medical records, from the member's physician or other licensed practitioner of the healing arts, documenting the need for the pain management referral;
  - (v) Documentation from the physical therapist that supports the need for the requested services;
  - (vi) A detailed report, from the physical therapist, that is gathered from any tool, test, or measure;
  - (vii) Measurable goals that includes the following:
    - (I) Timeframe;
    - (II) Baseline;
    - (III) Conditions for how goals are expected to be met;
    - (IV) A statement of rationale; and
    - (V) Prognosis for achievement.
  - (viii) A detailed intervention plan that includes:
    - (I) Frequency and duration of the services and the anticipated length of the intervention;
    - (II) Location of where the services are provided;
    - (III) Member and/or family/caregiver involvement in the management and carry-over of the intervention;
    - (IV) Reasons if the intervention was unsuccessful.
  - (ix) A completed therapy PA request form;
  - (x) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).
- (C) **Subsequent PA requests.** Requests for a subsequent PA will include the following:
  - (i) All documentation found at (2)(B) (i) through (viii) of this Section;
  - (ii) Detailed listing of previous goals, including instances of which goals were unmet and why they were not achieved;
  - (iii) Treatment goals for acute pain/injury, chronic pain management, or chronic back pain;

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(iv) Records showing persistent or recurrent conditions;

(v) Treatment evaluations that show avoidance/prevention or reduction of opioid use;

(vi) A completed therapy PA request form;

(vii) For full guidelines, please refer to [www.okhca.org/mau](http://www.okhca.org/mau).

(3) **Frequency/coverage.** A PA for PT for adult treatment of pain management services may be approved for a total of forty-eight (48) units per calendar year. A PT unit for the treatment of pain management in adults is 15 minutes. A visit may consist of multiple units of service on the same date, the time for units of service is added together and rounded up only once per visit.

(4) **Reimbursement.** All alternative treatments for pain management services, that are outlined in Part 82 of this Chapter, are reimbursed per the methodology established in the Oklahoma Medicaid State Plan.

(5) **Discontinuation of services.**

(A) If the member's condition is not improving, or the member's condition is regressing, then services will not be considered medically necessary.

(B) The OHCA may withdraw authorization of payment at any time if it is determined that the member and/or provider is not in compliance with any of the requirements set forth in this section.

(6) **Non-covered services.**

(A) PT provided solely for maintenance.

(B) Therapeutic or physical modalities used to augment a PT program.

[OAR Docket #22-421; filed 6-23-22]

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

[OAR Docket #22-413]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 75. Federally Qualified Health Centers

317:30-5-664.1 [AMENDED]

317:30-5-664.5 [AMENDED]

(Reference APA WF # 21-01)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 42 Code of Federal Regulations Part 491

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 75. Federally Qualified Health Centers

317:30-5-664.1 [AMENDED]

317:30-5-664.5 [AMENDED]

#### Gubernatorial approval:

December 30, 2021

#### Register publication:

39 Ok Reg 423

#### Docket number:

22-7

(Reference APA WF # 21-01)

#### INCORPORATIONS BY REFERENCE:

n/a

#### GIST/ANALYSIS:

The proposed rules add language to clarify that reimbursement for long-acting reversible contraceptive (LARCs) devices will be paid outside of the Federally Qualified Health Center's (FQHCs) encounter rate.

#### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

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

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

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

- (1) Dental services (refer to OAC 317:30-5-696) except for primary preventive dental services;
- (2) Eyeglasses (refer to OAC 317:30-5-431, 317:30-5-432.1 and 317:30-5-451);

- (3) Clinical lab tests performed in the Center lab (other than the specific laboratory tests set out for Health Centers' certification and covered as Health Center services);
- (4) Technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the Center physician is included as physician professional services);
- (5) Durable medical equipment (refer to OAC 317:30-5-210);
- (6) Transportation by ambulance (refer to OAC 317:30-5-335);
- (7) Prescribed drugs (refer to OAC 317:30-5-70);
- (8) Prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;
- (9) Specialized laboratory services furnished away from the clinic;
- (10) Psychosocial rehabilitation services (refer to OAC 317:30-5-241.3);
- (11) Behavioral health related case management services (refer to OAC 317:30-5-241.6); and
- (12) Applied behavior analysis (ABA) (refer to OAC 317:30-3-65.12).
- (13) Diabetes self-management education and support (DSMES) services (refer to OAC 317:30-5-1080 through 317:30-5-1084).
- (14) Long-acting reversible contraceptive devices (devices are not considered part of the FOHC encounter rate and can be billed separately).

**317:30-5-664.5. Federally Qualified Health Center (FOHC) encounter exclusions and limitations**

(a) Service limitations governing the provision of all services apply pursuant to ~~OAC~~Oklahoma Administrative Code (OAC) 317:30. Excluded from the definition of reimbursable encounter core services are:

- (1) Services provided by an independently ~~CLIA~~Clinical Laboratory Improvement Amendments certified and enrolled laboratory;
- (2) Radiology services including nuclear medicine and diagnostic ultrasound services;
- (3) Venipuncture for lab tests is considered part of the encounter and cannot be billed separately. When a member is seen at the clinic for a lab test only, use the appropriate ~~CPT~~Current Procedural Terminology code. A visit for "lab test only" is not considered a Center encounter;
- (4) ~~Durable medical equipment or medical supplies~~Medical supplies, equipment, and appliances not generally provided during the course of a Center visit such as diabetic supplies. However, gauze, band-aids, or other disposable products used during an office visit are considered as part of the cost of an encounter and cannot be billed separately under SoonerCare;

- (5) Supplies and materials that are administered to the member are considered a part of the physician's or other health care practitioner's service;
- (6) Drugs or medication treatments provided during a clinic visit are included in the encounter rate. For example, a member has come into the Center with high blood pressure and is treated at the Center with a hypertensive drug or drug samples provided to the Center free of charge are not reimbursable services and are included in the cost of an encounter. Prescriptions are not included in the encounter rate and must be billed through the pharmacy program by a qualified enrolled pharmacy;
- (7) Administrative medical examinations and report services;
- (8) Emergency services including delivery for pregnant members that are eligible under the Non-Qualified (ineligible) provisions of OAC 317:35-5-25;
- (9) SoonerPlan family planning services;
- (10) Long-acting reversible contraceptive devices (devices are not considered part of the FOHC encounter rate and can be billed separately);
- ~~(11)~~ Optometry and podiatric services other than for dual eligible for Part B of Medicare; ~~and~~
- (12) Diabetes self-management education and support (DSMES) services (refer to OAC 317:30-5-1080 through 317:30-5-1084); and
- ~~(13)~~ Other services that are not defined in this rule or the Oklahoma Medicaid State Plan.

- (b) In addition, the following limitations and requirements apply to services provided by ~~Health Centers~~FOHCs:
  - (1) Physician services are not covered in a hospital; and
  - (2) Behavioral health case management and psychosocial rehabilitation services are limited to ~~Health Centers~~FOHCs enrolled under the provider requirements in OAC 317:30-5-240 and contracted with OHCA as an outpatient behavioral health agency.

[OAR Docket #22-413; filed 6-23-22]

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

[OAR Docket #22-414]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 85. Advantage Program Waiver Services  
317:30-5-761 [AMENDED]  
**(Reference APA WF # 21-02A)**

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 1915 ADvantage Waiver; 42 C.F.R. Section 440.167

# Permanent Final Adoptions

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

November 23, 2021

## COMMENT PERIOD:

December 15, 2021 through January 18, 2022

## PUBLIC HEARING:

January 18, 2022

## ADOPTION:

March 30, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 12, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed revisions will add language to establish guidelines and criteria regarding how an ADvantage member and/or provider are to report critical and non-critical incidents. Additional revisions will align policy with the recently approved 1915c ADvantage waiver renewal and current State Plan Personal Care services authority, which will modify procedures to reflect current business practices. Final revisions will correct grammatical errors.

## CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

#### 317:30-5-761. Eligible providers

ADvantage Program ADvantage Administration (AA) certifies ADvantage Program service providers, except pharmacy providers, must be certified by the ADvantage Program ADvantage Administration (AA) and must they have a current signed SoonerCare (Medicaid) contract on file with the Oklahoma Health Care Authority (OHCA), the State Medicaid agency.

(1) The provider programmatic-certification process ~~must verify~~verifies the provider meets licensure, certification, and training standards as specified in the waiver document and ~~agrees to ADvantage Program Conditions of Participation. Providers~~All providers, except nursing facility (NF) respite; medical equipment and supplies; and environmental modification providers, must obtain programmatic-certification to be ADvantage program certified.

(2) The provider financial-certification process ~~must verify that~~verifies the provider uses sound business management practices and has a financially-stable business. All providers, except for ~~nursing facility (NF) NF respite;~~medical equipment and supplies; and environmental modification providers, must will obtain financial certification to be ADvantage program certified.

(3) At minimum, provider financial certification is re-evaluated annually.

(4) Providers may fail to gain or may lose ADvantage program certification due to failure to meet programmatic or financial standards.

(4) ~~At a minimum, provider financial certification is reevaluated annually.~~

(5) All provider service types must agree to the Conditions of Provider Participation and Service Standards.

(5) ~~The Oklahoma Department of Human Services (DHS) Aging Services (AS) evaluates adult day health and home delivered meal providers for compliance with ADvantage programmatic certification requirements. When an adult day health or home delivered meal provider does not have a contract with AS, the provider must obtain programmatic certification to be ADvantage Program certified. Providers of medical equipment and supplies, environmental modification, personal emergency response systems, hospice, Consumer Directed Personal Assistance Services and Supports (CD-PASS), and NF respite services do not have a programmatic evaluation after the initial certification.~~

(6) ~~DHS AS~~The Oklahoma Human Services (OKDHS) Community Living, Aging and Protective Services (CAP) does not authorize the member's CD-PASS services provider to also have an active power of attorney of afor the member to be the member's CD-PASS services provider.

(7) ~~DHS AS~~OKDHS CAP may authorize a member's legally-responsible spouse or legal guardian to be SoonerCare (Medicaid) reimbursed, per 1915(c) ADvantage Program as a personal care, service provider. Authorization for a spouse or legal guardian as a provider requires the criteria in (A) through (D) of this paragraph and monitoring provisions to be met.

(A) Authorization for a spouse or legal guardian to be ~~thea~~ the member's care provider ~~for a member~~ may occur only when the member is offered a ~~choice of providers~~provider choice and documentation demonstrates:

(i) ~~no~~No provider included on the Certified Agency Report (CAR) or in the member's service area, has available staffing. This is as evidenced by supportive documentation, which Documentation also affirms no provider within the members service area can staff and all area providers attempt to employ staff to serve; or

(ii) ~~the~~The member's needs are so complex that unless the spouse or legal guardian provides the care, the member's risk level would increase; and

- (iii) ~~It~~ is mentally or physically detrimental for someone other than the spouse or legal guardian to provide care. This is evidenced by the documentation from a qualified clinician or medical provider, such as a physician or licensed psychologist.
- (B) The service ~~must~~:
  - (i) ~~meet the~~ Meets service or support definition of a ~~service/support~~ as outlined in the federally-approved waiver document;
  - (ii) ~~be~~ is necessary to avoid institutionalization;
  - (iii) ~~be~~ is a ~~service/support~~ service or support specified in the person-centered service plan;
  - (iv) ~~be~~ is provided by a person who meets the provider qualifications and training standards specified in the waiver for that service;
  - (v) ~~be~~ is paid at a rate that does not exceed ~~that which would otherwise be~~ what is paid to a provider of a similar service and does not exceed ~~what is allowed by OHCA~~ allows for the ~~payment of~~ payment of personal care or personal assistance services; ~~an~~ payment; and
  - (vi) ~~not be~~ is not an activity the spouse or legal guardian would ordinarily perform or is responsible to perform.
- (C) The spouse or legal guardian service provider complies with:
  - (i) ~~providing~~ Providing no more than forty (40) ~~service~~ hours of services in a ~~seven day (7 day)~~ seven (7) day period;
  - (ii) ~~planned~~ Planned work schedules that ~~must be~~ are available in advance for the member's case manager, and variations to the schedule ~~must be~~ are noted and supplied to the case manager two (2) weeks in advance unless the change is due to an emergency;
  - (iii) ~~maintaining~~ Maintaining and submitting time sheets and other required documentation for hours paid; and
  - (iv) ~~the~~ The person-centered service plan as the member's care provider.
- (D) In addition to case management, monitoring, and reporting activities required for all waiver services, the State is obligated to additional monitoring requirements when members elect to use a spouse or legal guardian as a paid service provider. The AA monitors, through quarterly documentation—~~submitted by the case manager,~~ submits, the continued appropriateness of the policy exception that allows the spouse or legal guardian to serve as the member's paid caregiver.
- (8) ~~Providers of durable~~ Durable medical equipment and supplies ~~must~~ providers comply with Oklahoma Administrative Code 317:30-5-210(2) regarding delivery ~~proof of delivery~~ for items shipped to the member's residence.
- (9) ~~DHS AS~~ OKDHS CAP periodically performs a programmatic audit of: ~~adult day health, assisted living, case management, home care (providers of skilled~~

~~nursing, personal care, in home respite, and advanced supportive/restorative assistance and therapy services) and CD-PASS providers. When due to a programmatic audit, a provider Plan of Correction (POC) is required, the AA may stop new cases and referrals to the provider until the (POC) is approved, implemented, and follow up review occurs. Depending on the nature and severity of problems discovered during a programmatic audit and at the discretion of the DHS AS, members determined to be at risk for health or safety may be transferred from a provider requiring a POC to another provider.~~

- (A) Adult day health;
- (B) Assisted living;
- (C) Case Management;
- (D) Home care:
  - (i) Skilled nursing;
  - (ii) Personal care;
  - (iii) In-home respite; and
  - (iv) Advanced supportive or restorative assistance; and
  - (v) Therapy services; and
- (E) CD-PASS providers.
- (10) When, due to a programmatic audit, a provider plan of correction (POC) is required, the AA may stop new cases and referrals to the provider until the POC is approved, implemented, and a follow-up review occurs. Depending on the nature and severity of problems discovered during a programmatic audit (and at OKDHS CAP discretion), members determined to be at risk for health or safety may be transferred from a provider requiring a POC to another provider.

[OAR Docket #22-414; filed 6-23-22]

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

[OAR Docket #22-415]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 5. Individual Providers and Specialties
    - Part 109. Diabetes Self-Management ~~Training~~ Education and Support
      - 317:30-5-1080 [AMENDED]
      - 317:30-5-1081 [AMENDED]
      - 317:30-5-1082 [AMENDED]
      - 317:30-5-1083 [AMENDED]
      - 317:30-5-1084 [AMENDED]
    - Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)
      - 317:30-5-1090 [AMENDED]
- (Reference APA WF # 21-04)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

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

December 30, 2021

# Permanent Final Adoptions

## COMMENT PERIOD:

February 1, 2022 through March 3, 2022

## PUBLIC HEARING:

March 8, 2022

## ADOPTION:

March 30, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 12, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 109. Diabetes Self-Management ~~Training~~ Education and Support

317:30-5-1080 [AMENDED]

317:30-5-1081 [AMENDED]

317:30-5-1082 [AMENDED]

317:30-5-1083 [AMENDED]

317:30-5-1084 [AMENDED]

Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)

317:30-5-1090 [AMENDED]

### Gubernatorial approval:

April 14, 2021

### Register publication:

38 Ok Reg 747

### Docket number:

21-355

(Reference APA WF # 21-04)

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revisions will clarify DSMES provider requirements for registered dietitians, registered nurses, and pharmacists. Revisions will also add other health care providers with certifications as Certified Diabetes Care and Education Specialist (CDCES) or as Board-Certified Advanced Diabetes Management (BC-ADM) as eligible DSMES providers.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 109. DIABETES SELF-MANAGEMENT TRAINING EDUCATION AND SUPPORT

#### 317:30-5-1080. Definitions

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

**"AADE"** means American Association of Diabetes Educators.

**"ADA"** means American Diabetes Association.

**"ADCES"** means the Association of Diabetes Care and Education Specialists.

**"BC-ADM"** means Board-certified advanced diabetes management.

**"CDE/CDCES"** means certified diabetes educator/care and education specialist.

**"DSMT/DSMES"** means diabetes self-management training/education and support.

**"OAC"** means Oklahoma Administrative Code.

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

**"Qualified non-physician provider"** means a physician assistant or advanced practice registered nurse.

#### 317:30-5-1081. Eligible providers and requirements

(a) ~~Eligible DSMT providers include any of the following professionals:~~

(1) ~~A registered dietician (RD) who is licensed and in good standing in the state in which s/he practices, and who is:~~

~~(A) Certified as a CDE; and~~

~~(B) Fully contracted with SoonerCare as a CDE provider.~~

(2) ~~A registered nurse (RN) who is licensed and in good standing in the state in which s/he practices, and who is:~~

~~(A) Certified as a CDE; and~~

~~(B) Fully contracted with SoonerCare as a CDE provider.~~

(3) ~~A pharmacist who is licensed and in good standing in the state in which s/he practices, and who is:~~

~~(A) Certified as a CDE; and~~

~~(B) Fully contracted with SoonerCare as a CDE provider.~~

(b) ~~In order to receive Medicaid reimbursement for DSMT services, professional service groups, outpatient hospitals, Indian Health Services, Tribal Programs and Urban Indian Clinics (I/T/Us), Rural Health Clinics (RHCs), and Federally Qualified Health Centers (FQHCs) must have a DSMT program that meets the quality standards of one (1) of the following accreditation organizations:~~

~~(1) The ADA; or~~

~~(2) The AADE.~~

(c) ~~All DSMT programs must adhere to the national standards for diabetes self-management education.~~

~~(1) Each member of the instructional team must:~~

~~(A) Be a CDE; or~~

~~(B) Have documentation of at least fifteen (15) hours of recent diabetes education or diabetes management experience.~~

~~(2) At a minimum, every instructional team must consist of at least one (1) of the CDE professionals listed in subsection a, above.~~

(d) ~~All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.~~

(a) In order to receive Medicaid reimbursement for DSMES services, providers or provider groups must:

(1) Be working under an accredited DSMES program that meets the quality standards of one (1) of the following accreditation organizations:

(A) The ADA; or

(B) The ADCES.

(2) Be fully contracted with SoonerCare as a "diabetes educator". Eligible DSMES providers include:

(A) A registered dietician (RD) who is:

(i) Licensed and in good standing in the state in which s/he practices.

(ii) Has training and experience pertinent to diabetes self-management education and support verified by the OHCA Pharmacy Services unit.

(B) A registered nurse (RN) who is:

(i) Licensed and in good standing in the state in which s/he practices.

(ii) Has training and experience pertinent to diabetes self-management education and support verified by the OHCA Pharmacy Services unit.

(C) A pharmacist who is:

(i) Licensed and in good standing in the state in which s/he practices.

(ii) Has training and experience pertinent to diabetes self-management education and support verified by the OHCA Pharmacy Services unit.

(D) A health care provider, as defined in Section 3090.2 of Title 63 of the Oklahoma Statutes, who holds a certification as a:

(i) CDCES; or

(ii) BC-ADM.

(b) All DSMES programs must adhere to the national standards for diabetes self-management education.

(1) Each DSMES program must include at least one (1) of the eligible providers listed above in OAC 317:30-5-1081 (a) (2) (A) B (D).

(2) All members of the instructional team must complete the nationally recommended annual continuing education hours for diabetes management.

**317:30-5-1082. Scope of services**

(a) **General provisions.** The OHCA covers medically necessary ~~DSMT~~DSMES services when all the following criteria are met:

(1) The member has been diagnosed with diabetes by a physician or qualified non-physician provider working within the scope of his/her licensure;

(2) The services have been ordered by a physician or qualified non-physician provider who is actively managing the member's diabetes;

(3) The services are provided by a qualified ~~DSMT~~DSMES provider [Refer to OAC 317:30-5-1081 ~~(b)~~(a)(2)]; and

(4) The program meets the current ADA or ~~ADE~~ADCES training standards.

(b) **Training.** ~~DSMT~~DSMES services shall provide one (1) initial assessment per lifetime. Initial ~~DSMT~~DSMES shall

be comprised of up to ten (10) hours [can be performed in any combination of thirty (30) minute increments] of diabetes training within a consecutive twelve (12) month period beginning with the initial training date, including:

(1) One (1) hour of individual instruction, consisting of face-to-face encounters between the ~~CDE~~diabetes educator and the member; and

(2) Nine (9) hours of group instruction.

(c) **Follow-up ~~DSMT~~DSMES.** After the first twelve (12) month period has concluded, members shall only be eligible for two (2) hours of individual or group ~~DSMT~~DSMES instruction per calendar year.

**317:30-5-1083. Coverage by category**

The purpose of ~~DSMT~~DSMES services must be to provide the member with the knowledge, skill, and ability necessary for diabetes self-care.

(1) **Adults.** Payment is made for medically necessary ~~DSMT~~DSMES provided by a ~~registered nurse (RN), registered dietitian (RD), or pharmacist certified as a diabetes educator,~~ eligible providers described in OAC 317:30-5-1081. Refer to OAC 317:30-5-1082 for units of ~~DSMT~~DSMES training allowed.

(2) **Children/adolescents.** Payment is made for medically necessary ~~DSMT~~DSMES for members under twenty-one (21) years of age provided by a ~~RN, RD, or pharmacist certified as a diabetes educator,~~ eligible providers described in OAC 317:30-5-1081. ~~DSMT~~DSMES coverage for children is the same as for adults. Additional ~~DSMT~~DSMES services may be covered under EPSDT provisions if determined to be medically necessary.

**317:30-5-1084. Reimbursement methodology**

SoonerCare shall provide reimbursement for ~~DSMT~~DSMES services as follow:

(1) Payment shall be made to fully-contracted providers. If the rendering provider operates through an enrolled SoonerCare provider, or is contracted to provide services by an enrolled SoonerCare provider, payment may be made to that enrolled SoonerCare provider.

(2) Reimbursement for ~~DSMT~~DSMES services is only made on a fee-for-service basis. The maximum allowable fee for a unit of service has been determined by OHCA to be a reasonable fee, consistent with efficiency, economy, and quality of care. Payment for covered services is the lower of the provider's actual billed charges, consistent with the provider's usual and customary charge to the general public for the service, or the maximum allowable per unit of service.

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

# Permanent Final Adoptions

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

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

Examples of these services include, but are not limited to:

- (1) Durable medical equipment [refer to Oklahoma Administrative Code (OAC) 317:30-5-210];
  - (2) Eyeglasses (refer to OAC 317:30-5-431, 317:30-5-432.1 and 317:30-5-451);
  - (3) Transportation by ambulance (refer to OAC 317:30-5-335);
  - (4) Home health (refer to OAC 317:30-5-546);
  - (5) Inpatient practitioner services (refer to OAC 317:30-5-1100);
  - (6) Non-emergency transportation (~~refer to OAC 317:30-5-322~~); (refer to OAC 317:30-5-326 through 317:30-5-327.9);
  - (7) Behavioral health case management (refer to OAC 317:30-5-241.6);
  - (8) Psychosocial rehabilitative services (refer to OAC 317:30-5-241.3);
  - (9) Psychiatric residential treatment facility services (refer to OAC 317:30-5-95 through 317:30-5-97);
  - (10) Applied behavior analysis (ABA) (refer to OAC ~~317:30-5-123~~ 317:30-5-310 through 317:30-5-316); and
  - (11) Diabetes self-management training (DSMT) education and support (DSMES) (refer to OAC 317:30-5-1080 through 317:30-5-1084).
- (b) If the I/T/U facility chooses to provide other Oklahoma Medicaid State Plan covered health services which are not included in the I/T/U encounter definition, those service providers must be contracted with the Oklahoma Health Care Authority (OHCA) and bill for those services under their assigned provider number consistent with program coverage limitations and billing procedures described by the OHCA.
- (c) Providers may bill for antepartum and postpartum visits, and a cesarean or vaginal delivery as individual encounters, or a provider can bill the packaged/bundled rate for total obstetrical care (OB) (which includes antepartum/postpartum visits and delivery). Providers may not bill for both antepartum/postpartum visits and a packaged/bundled rate for total OB care for the same episode of care. Refer to OAC 317:30-5-22 for more detailed obstetrical care policy.

[OAR Docket #22-415; filed 6-23-22]

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

[OAR Docket #22-419]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Individual Providers and Specialties  
Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)  
317:30-5-1101 [NEW]  
(Reference APA WF # 21-11)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Senate Bill 434

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Individual Providers and Specialties  
Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)  
317:30-5-1101 [NEW]

### Gubernatorial approval:

December 21, 2021

### Register publication:

39 Ok Reg 422

### Docket number:

21-966

(Reference APA WF # 21-11)

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed new rules comply with Senate Bill 434, which allows the Oklahoma Health Care Authority (OHCA) to create a shared savings program and shared savings revolving fund with the I/T/U.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES



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

**317:30-5-1101. I/T/U Shared Savings Program**

(a) **Description.** In accordance with state and federal law, the I/T/U Shared Savings Program is a program that direct the reinvestment of any savings to the Oklahoma Health Care Authority (OHCA) generated by enhanced federal matching authorized under Section 1905(b) of the Social Security Act at a rate of one hundred percent (100%) for covered services received through participating Indian Health Service, Tribal and Urban Indian (I/T/U) facilities.

(1) **Eligibility.** Authorized services provided by a non-I/T/U Medicaid provider to an American Indian or Alaska Native (AI/AN) Medicaid member as a result of a referral from an I/T/U facility provider may be eligible for the enhanced federal matching rate of one hundred percent (100%).

(2) **Distribution criteria.** OHCA will distribute up to fifty percent (50%) of any savings that result from the I/T/U Shared Savings Program to the referring I/T/U, but only after administrative costs incurred by OHCA in implementing the program have been fully satisfied. Distributions issued will ensure the following:

(A) Distributions to participating I/T/U facilities will be used to increase care coordination and to support health care initiatives for AI/AN populations;

(B) OHCA will deposit any shared savings that remain after administrative costs have been fully paid, and after distributions have been made to participating I/T/U facilities, into the I/T/U Shared Savings Revolving Fund for the purpose of increasing Medicaid provider rates;

(C) Monies in the fund will not be used to replace other general revenues appropriated and funded by the Oklahoma Legislature or other revenues used to support Medicaid; or

(D) OHCA will make distributions on a quarterly basis to participating I/T/U facilities based on claims data. The calculation will include the paid claims from the non-I/T/U provider that a member was referred to by an I/T/U. The referring ITU provider will need to be listed on the claim, and there must be an active Care Coordination Agreement (CCA) on file with OHCA. A CCA must be executed between the I/T/U facility and the non-I/T/U provider. A CCA must include, but not limited to the following:

(i) The I/T/U facility provider providing a request for specific services by electronic or other verifiable means and relevant information about the practitioner's member to the non-I/T/U provider;

(ii) The non-I/T/U provider sending information about the care the non-I/T/U provider provides to the patient including the results of any

screening, diagnostic or treatment procedures, to the I/T/U facility provider;

(iii) The I/T/U facility provider continuing to assume responsibility for the member's care by assessing the information and taking appropriate action including, when necessary, furnishing or requesting additional services; and

(iv) The I/T/U facility incorporating the member's information in the medical record through the statewide health information exchange or other agreed-upon means.

(b) **I/T/U Shared Savings Revolving Fund.** A revolving fund for OHCA will be designated as the "I/T/U Shared Savings Revolving Fund". All monies accruing to the credit of the fund will be budgeted and expended by OHCA and will consist of:

(1) All monies received by OHCA as pursuant to Title 63 Section 5061.2 of the Oklahoma Statutes, and as otherwise specified or authorized by other state and federal laws;

(2) All monies accruing to the credit of the fund are appropriated and will be budgeted and expended by OHCA to increase Medicaid provider rates, unless otherwise provided by state and federal law; and

(3) Expenditures from the fund will be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services (OMES) for approval and payment.

(c) **Report Criteria.** An annual report will be prepared by the OHCA's Chief Financial Officer (CFO) and will be submitted to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than thirty (30) days following the end of each state fiscal year. The annual report will account for:

(1) The savings realized by the OHCA as a result of the I/T/U Shared Savings Program;

(2) The administrative costs incurred by the OHCA as a result of the I/T/U Shared Savings Program;

(3) The monies distributed to participating I/T/U facilities as a result of I/T/U Shared Savings Program including, but not limited to, a summary of all specific distributions;

(4) The balance of savings realized by the OHCA as a result of the I/T/U Shared Savings Program and accruing to the credit of the fund after payment of administrative costs and distributions to participating I/T/U facilities and

(5) The monies expended on increasing Medicaid provider rates including, but not limited to, identification of the types of providers affected and the percentage by which the providers' rates were increased.

[OAR Docket #22-419; filed 6-23-22]

# Permanent Final Adoptions

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

[OAR Docket #22-427]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Individual Providers and Specialties  
Part 21. Outpatient Behavioral Health Agency Services  
317:30-5-240.1 [AMENDED]  
Part 24. Certified Community Behavioral Health Clinics  
317:30-5-266 [AMENDED]  
317:30-5-267 [AMENDED]

(Reference APA WF # 21-34)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Section 223 of the Protecting Access to Medicare Act (PAMA)

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

November 23, 2021

### COMMENT PERIOD:

December 15, 2021 through January 18, 2022

### PUBLIC HEARING:

January 18, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revisions update and clarify language regarding covered Certified Community Behavioral Health (CCBH) services. The revisions also update language regarding reimbursement of CCBH services in alignment with changes to the Oklahoma Medicaid State Plan. These changes included language related to rebasing frequency and scope updates to the Prospective Payment System (PPS) rates. Other revisions will clarify the definition of "Client Assessment Record (CAR).

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

#### 317:30-5-240.1. Definitions

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

"**Accrediting body**" means one (1) of the following:

- (A) Accreditation Association for Ambulatory Health Care (AAAHC);
- (B) American Osteopathic Association (AOA);
- (C) Commission on Accreditation of Rehabilitation Facilities (CARF);
- (D) Council on Accreditation of Services for Families and Children, Inc. (COA);
- (E) The Joint Commission (TJC) formerly known as Joint Commission on Accreditation of Healthcare Organizations;
- (F) Accreditation Commission for Health Care (ACHC); or
- (G) ~~other~~Other OHCA approved accreditation.

"**Adult**" means an individual twenty-one (21) and over, unless otherwise specified.

"**AOD**" means ~~Alcohol~~alcohol and ~~Other Drug~~other drug.

"**AODTP**" means ~~Alcohol and Other Drug Treatment Professional~~alcohol and other drug treatment professional.

"**ASAM**" means the American Society of Addiction Medicine.

"**ASAM Patient Placement Criteria**~~patient placement criteria~~ (ASAM PPC)" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"**Behavioral Health (BH) Services**~~health (BH) services~~" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness, substance abuse, and co-occurring disorders.

"**BHAs**" means ~~Behavioral Health Aides~~behavioral health aides.

"**Certifying Agency**~~agency~~" means the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).

"**C.F.R.**" means Code of Federal Regulations.

"**Child**" means an individual younger than twenty-one (21), unless otherwise specified.

"**Client Assessment Record (CAR)**" means the ~~use of~~ standardized tool recognized by OHCA and ODMHSAS to evaluate the functioning of the member as per the OHCA prior authorization manual on the OHCA'S website at [www.oklahoma.gov/ohca](http://www.oklahoma.gov/ohca).

"**CM**" means case management.

"**Cultural competency**" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, age group, religious, sexual orientation, and/or social group.

"**DSM**" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"**EBP**" means an ~~Evidence Based Practice~~evidence-based practice per the Substance Abuse & Mental Health Services Administration (SAMHSA).

"**EPSDT**" means the ~~Medicaid~~—Early and Periodic Screening, Diagnostic and Treatment benefit for children. In addition to screening services, EPSDT also covers the diagnostic and treatment services necessary to ameliorate acute and chronic physical and mental health conditions.

"**FBCS**" means ~~Facility-Based-Crisis-Stabilization~~facility-based crisis stabilization.

"**FSPs**" means ~~Family-Support-Providers~~family support providers.

"**ICF/IID**" means ~~Intermediate-Care-Facility-for-Individuals-with-Intellectual-Disabilities~~intermediate care facility for individuals with intellectual disabilities.

"**Institution**" means an inpatient hospital facility or ~~Institution-for-Mental-Disease~~institution for mental disease (IMD).

"**IMD**" means ~~Institution-for-Mental-Disease~~institution for mental disease as per 42 C.F.R. § 435.1009 as a hospital, nursing facility, or other institution of more than sixteen (16) beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services. The regulations indicate that an institution is an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases. Title XIX of the Social Security Act provides that, except for individuals under age twenty-one (21) receiving inpatient psychiatric care, Medicaid (Title XIX) does not cover services to IMD patients under sixty-five (65) years of age [Section 1905(a)(24)(B) of the Social Security Act].

"**Level of Functioning—Rating**functioning rating" means a standardized mechanism to determine the intensity or level of services needed based upon the severity of the member's condition. The CAR level of function rating scale is the tool that links the clinical assessment to the appropriate level of Mental Health treatment. Either the Addiction Severity Index (ASI) or the Teen—Addiction Severity Index (TASI), based on age, is the tool that links the clinical assessment to the appropriate level of Substance Abuse (SA) treatment.

"**LBHP**" means a licensed behavioral health professional.

"**MST**" means the EBP Multi-Systemic Therapy.

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

"**Objectives**" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and ~~time-limited~~time limited.

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

"**ODMHSAS contracted facilities**" means those providers that have a contract with the ODMHSAS to provide mental health or substance use disorder treatment services, and ~~also~~ contract directly with the Oklahoma Health Care Authority to provide ~~Outpatient Behavioral Health Services~~outpatient behavioral health services.

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

"**OJA**" means the Office of Juvenile Affairs.

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

"**RBMS**" means ~~Residential Behavioral Management Services~~residential behavioral management services within a group home or therapeutic foster home.

"**Recovery**" means an ongoing process of discovery and/or rediscovery that must be self defined, individualized and may contain some, if not all, of the ten fundamental components of recovery as outlined by SAMHSA.

"**PRSS**" means ~~Peer Recovery Support Specialist~~peer recovery support specialist.

"**SAMHSA**" means the Substance Abuse and Mental Health Services Administration.

"**Serious Emotional Disturbance**emotional disturbance (SED)" means a condition experienced by persons from birth to eighteen (18) that show evidence of points of (A), (B) and (C) below:

- (A) The disability must have persisted for six (6) months and be expected to persist for a year or longer.
- (B) A condition or serious emotional disturbance as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious emotional disturbance.
- (C) The child must exhibit either (i) or (ii) below:
  - (i) Psychotic symptoms of a serious mental illness (e.g., Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or
  - (ii) Experience difficulties that substantially interfere with or limit a child or adolescent from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two (2) of the following capacities (compared with expected developmental level):
    - (I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.
    - (II) Impairment in community function manifested by a consistent lack of ~~age-appropriate~~age-appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the juvenile justice system.
    - (III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers and adults.
    - (IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence to siblings and/or parents, disregard for safety and welfare or self or others (e.g., fire setting, serious and chronic destructiveness, inability to

conform to reasonable limitations and expectations which may result in removal from the family or its equivalent).

(V) Impairment in functioning at school manifested by the inability to pursue educational goals in a normal time frame (e.g., consistently failing grades, repeated truancy, expulsion, property damage or violence toward others).

**"Serious Mental Illness (SMI)"** means a condition experienced by persons age eighteen (18) and over that show evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six (6) months and be expected to persist for a year or longer.

(B) A condition or serious mental illness as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious mental illness.

(C) The adult must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a serious mental illness (e.g., Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit an adult from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two (2) of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the criminal justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence, disregard for safety and welfare of self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations).

(V) Impairment in functioning at school or work manifested by the inability to pursue educational or career goals.

**"Trauma informed"** means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of members.

## PART 24. CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS

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

CCBHCs provide a comprehensive array of services that create access, stabilize people in crisis, and provide the needed treatment and recovery support services for those with the most serious and complex mental health and substance use disorders. CCBHCs integrate additional services to ensure an approach to health care that emphasizes recovery, wellness, trauma-informed care, and physical-behavioral health integration. Initial screening, assessment, and diagnosis must be completed in order to receive a covered service. Services must be medically necessary and recommended by an LBHP or licensure candidate (see OAC 317:30-5-263). Services are covered when provided in accordance with a person-centered and family-centered service plan. Coverage includes the following services:

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

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

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

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

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

(iv) Urgent recovery clinic (URC) services provided in accordance with OAC 450:23-3-20 through 450:23-3-24.

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

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

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

- (i) Care coordination for primary health care, specialty health care, and transitional care from emergency departments, hospitals, and PRTFs;
- (ii) Ensuring integration and compatibility of mental health and physical health activities;
- (iii) Providing on-going service coordination and linking members to resources;
- (iv) Tracking completion of mental and physical health goals in member's comprehensive care plan;
- (v) Coordinating with all team members to ensure all objectives of the comprehensive care plan are progressing;
- (vi) Appointment scheduling;
- (vii) Conducting referrals and follow-up monitoring;
- (viii) Participating in hospital discharge processes; and
- (ix) Communicating with other providers and members/family.

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

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

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

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

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

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

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

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

(A) **Service requirements.** This service includes:  
(i) A review and educational session focused on the member's response to medication and compliance with the medication regimen and/or medication administration;

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

(iii) Assisting the member in accessing medications;

(iv) Monitoring medication response and side effects; and

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

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

(6) **Psychosocial rehabilitation services (PSR).**

(A) **Service requirements.**

(i) **Adult.** PSR services are face-to-face behavioral health rehabilitation (BHR) services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live independently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions through the format of curriculum-based education and skills training. This service is generally performed with only the member and the qualified provider, but may include a member and the member's family/support system when providing educational services from a curriculum that focuses on the member's diagnosis, symptom management, and recovery. A member who, at the time of service, is not able to cognitively benefit from the treatment due to active hallucinations, substance abuse, or other impairments, is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery but does not constitute family therapy, which requires a licensed provider. Eligibility requirements and billing limits found in OAC 317:30-5-241.3 do not apply.

(ii) **Children.** PSR services are an array of services that are provided in the child's home, in the location where behavioral challenges are most likely to occur such as school, or in community settings for all children, youth, and young adults ages zero (0) to twenty (20). PSR services must be provided in a context that is child-centered, family-focused, strength-based, culturally competent, and responsive to each child's psychosocial, developmental, and treatment care needs. PSR service array includes:

- (I) Intensive in-home services;
- (II) Therapeutic behavioral services;
- (III) Intensive family intervention; and
- (IV) Intensive outpatient substance abuse rehabilitation.

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- (B) **Qualified professionals.** This service is solely restorative in nature and may be performed by a behavioral health CM II, CADC, LBHP, or licensure candidate, following development of a service plan and treatment curriculum approved by an LBHP or licensure candidate. The behavioral health CM II and CADC for children, services are typically provided by a team that can offer a combination of therapy from a LBHP or licensure candidate and skills training and support from a paraprofessional [CM II, behavioral health aide (BHA)]. The behavioral health CM II, CADC, and BHA must have immediate access to an LBHP who can provide clinical oversight and collaborate with the qualified PSR provider in the provision of services.
- (7) **Psychoeducation and counseling.**
- (A) **Service requirements.** This service is designed to restore, rehabilitate, and support the individual's overall health and wellness. Services are intended for members to provide purposeful and ongoing psychoeducation and counseling that are specified in the individual's person-centered, individualized plan of care. For children and their families, treatment services are an array of therapeutic strategies and services designed to ameliorate or reduce the risk of social, emotional, and behavioral disorders and disruptions in the relationship between an infant and parent/caregiver. Such disorders and disruptions may be due to infant/toddler and/or parent/caregiver vulnerabilities and/or negative environmental factors that are significantly impacting the infant and/or parent/caregiver-infant relationship. Treatment services are grounded in attachment theory and are relationship focused. Components include:
- (i) Delivery of manualized wellness management interventions via group and individual work such as WRAP or IMR/WMR; and
  - (ii) Emotional support, education, resources during periods of crisis, and problem-solving skills.
- (B) **Qualified professionals.** For children, zero (0) to five (5) years old, this service is provided by an LBHP or licensure candidate. For all other ages, this service is provided by a licensed nurse, licensed nutritionist, or CM II or CADC within the scope of their licensure, certification, and/or training.
- (8) **Peer recovery support services.**
- (A) **Service requirements.** See OAC 317:30-5-241.5(d) for service requirements.
- (B) **Qualified professionals.** PRSS must be certified through ODMHSAS pursuant to OAC 450:53.
- (9) **Family support and training.**
- (A) **Service requirements.** See OAC 317:30-5-241.5(c) for service requirements.
- (B) **Qualified professionals.** Family support providers must be trained/credentialed through ODMHSAS.
- (10) **Screening, assessment, and service planning.**
- (A) **Service requirements.** See OAC 317:30-5-241.1 for service requirements. Service billing limitations found in OAC 317:30-5-241.1 do not apply.
- (B) **Qualified professionals.** Screenings can be performed by any qualified team member as listed in OAC 317:30-5-265(b). Assessment and service planning can only be performed by an LBHP or licensure candidate.
- (11) **Occupational therapy.**
- (A) **Service requirements.** This service includes the therapeutic use of everyday life activities (occupations) with an individual or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings for the purpose of promoting health and wellness. Occupational therapy services are provided to those who have developed an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restrictions. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life.
- (B) **Qualified professionals.** This service is solely restorative in nature and provided by a qualified occupational therapist who is contracted with the OHCA or an occupational therapist assistant who is working under the supervision of a licensed occupational therapist (see OAC 317:30-5-295).
- (C) **Coverage limitations.** In order to be eligible for SoonerCare reimbursement, occupational therapy services must be prior authorized and/or prescribed by a physician or other licensed practitioner of the healing arts, in accordance with State and federal law, including, but not limited to, OAC 317:30-5-296, OAC 317:30-5-1020, and 42 C.F.R. § 440.110.
- (12) **Behavioral health targeted case management.**
- (A) **Service requirements.** See OAC 317:30-5-241.6 for service requirements.
- (B) **Qualified professionals.** This service is provided by a CM II certified in accordance with OAC 450:50.
- (C) **Coverage limitations.** Services are provided to individuals of all ages who meet medical necessity criteria.
- (13) **Outpatient substance abuse prevention counseling.**
- (A) **Service requirements.** This service provides counseling to enable individuals to successfully resist social and other pressures to engage in destructive activities.
- (B) **Qualified professionals.** This service must be recommended by a physician or licensed practitioner and provided by LBHP/licensure candidate.
- (C) **Coverage limitations.** Services are provided to individuals under age twenty-one (21) who meet medical necessity criteria.

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

(a) In order to be eligible for payment, CCBHCs must have an approved provider agreement on file with the OHCA. Through this agreement, the CCBHC assures that OHCA's requirements are met and assures compliance with all applicable federal and state Medicaid law, including, but not limited to, OHCA administrative rules, ODMHSAS administrative rules, the Code of Federal Regulations, and the Oklahoma State Medicaid Plan. These agreements are renewed annually with each provider.

(b) Reimbursement is made using a provider-specific prospective payment system (PPS) rate developed based on provider-specific cost report data. The PPS rate varies by category and level of service intensity and is paid when a CCBH program delivers at least one (1) CCBHC covered service, and when a valid individual procedure code is reported for the calendar month. ~~Care coordination services do not trigger a PPS payment when billed alone in a calendar month.~~ For reimbursement purposes, members are categorized as follows, and are assigned to special populations by the State:

- (1) Standard population;
- (2) Special population 1. This population includes individuals eighteen (18) years of age and over with SMI and complex needs including those with co-occurring substance use disorder (SUD). Individuals between eighteen (18) and twenty-one (21) years of age can be served in either special population 1 or 2 depending on the member's individualized needs; and
- (3) Special population 2. This population includes children and youth [ages six (6) through twenty-one (21)] with SED and complex needs, including those with co-occurring mental health and SUD.

~~(c) Payments for services provided to non-established clients will be separately billable. Non-established CCBH clients are those who receive crisis services directly from the CCBHC without receiving a preliminary screening and risk assessment by the CCBHC and those referred to the CCBHC directly from other outpatient behavioral health agencies for pharmacologic management.~~

~~(d) Additional reimbursement may be made to the CCBHC once in the same calendar month as the PPS payment for care coordination provided by CCBHC staff to members who are involved in a drug court or other specialty court program. Physician services provided to these members by the CCBHC are reimbursable using the SoonerCare fee schedule.~~

~~(e) Reimbursement rates will be reviewed bi-annually and updated as necessary by the Medicare Economic Index (MEI).~~

(c) Preliminary screening, risk assessment, and care coordination services are required activities to establish CCBHC members but do not trigger a PPS payment. An additional, qualifying service must be provided in the calendar month for the CCBHC to receive the PPS payment.

(d) Payments for services provided to non-established CCBHC members will be separately billable. Non-established CCBHC members are those who receive crisis services directly from the CCBHC without receiving a preliminary screening and risk assessment by the CCBHC and who are not established at another CCBHC, and those referred to

the CCBHC directly from other outpatient behavioral health agencies for pharmacologic management.

(e) Additional reimbursement may be made to the CCBHC once in the same calendar month as the PPS payment for care coordination provided by CCBHC staff to members who are involved in a drug court or other specialty court program. Physician services provided to these members by the CCBHC are reimbursable using the SoonerCare fee schedule.

(f) Initial provider-specific rates are rebased after one (1) year based on actual cost and visit data. All other provider-specific rates are rebased once every two (2) years. Provider-specific rates are updated between rebasing periods based on the Medicare Economic Index (MEI).

(g) Providers may receive a provider-specific rate adjustment for changes in scope expected to change payment rates by two point five percent (2.5%) or more, once per year, subject to State approval in accordance with the Oklahoma Medicaid State Plan.

[OAR Docket #22-427; filed 6-23-22]

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

[OAR Docket #22-435]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 21. Outpatient Behavioral Health Agency Services  
317:30-5-241.7 [AMENDED]  
(Reference APA WF # 21-43)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 2018 Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act, HR 6, Section 1006

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will update current opioid treatment program (OTP) service and documentation requirements to align with the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS)

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provider certification standards. Finally, the proposed rulemaking will correct minor formatting and grammatical errors.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## **SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

### **PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES**

#### **317:30-5-241.7. Medication-assisted treatment (MAT) services for eligible individuals with opioid use disorder (OUD)**

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Medication-assisted treatment (MAT)"** means an evidence-based practice approved by the Food and Drug Administration (FDA) to treat opioid use disorder, including methadone and all biological products licensed under federal law for such purpose. MAT also includes the provision of counseling and behavioral therapy.
- (2) **"Office-based opioid treatment (OBOT)"** means a fully contracted SoonerCare provider that renders MAT services in OBOT settings. OBOT providers must have capacity to provide all drugs approved by the FDA for the treatment of opioid use disorder, directly or by referral, including for maintenance, detoxification, overdose reversal, and relapse prevention, and appropriate counseling and other appropriate ancillary services.
- (3) **"Opioid treatment program (OTP)"** means a program or provider:
  - (A) Registered under federal law;
  - (B) Certified by the Substance Abuse and Mental Health Services Administration (SAMHSA);
  - (C) Certified by ODMHSAS, unless deemed an exempted entity as defined by federal law;
  - (D) Registered by the Drug Enforcement Agency (DEA);
  - (E) Registered by the Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD); and
  - (F) Engaged in opioid treatment of individuals by use of an opioid agonist treatment medication, including methadone.
- (4) **"Opioid use disorder (OUD)"** means a cluster of cognitive, behavioral, and physiological symptoms in which the individual continues use of opioids despite significant opioid-induced problems.

(5) **"Phase I"** means a minimum ninety (90) day period in which the member attends the opioid treatment program for observation of medication assisted treatment daily or at least six (6) days a week.

(6) **"Phase II"** means the phase of treatment for members who have been admitted for more than ninety (90) days and who have successfully completed Phase I.

(7) **"Phase III"** means the phase of treatment for members who have been admitted for more than six (6) months and who have successfully completed Phase II.

(8) **"Phase IV"** means the phase of treatment for members who have been admitted for more than nine (9) months and who have successfully completed Phase III.

(9) **"Phase V"** means the phase of treatment for members who have been admitted for more than one (1) year.

(10) **"Phase VI"** means the phase of treatment for members who voluntarily seek medically supervised withdrawal and abstinence from all drugs, including methadone as prescribed. A member may enter this phase at any time in the treatment and rehabilitation process.

(b) **Coverage.** The SoonerCare program provides coverage of medically necessary MAT services in OTPs, including but not limited to, methadone treatment, to eligible individuals with OUD. An OTP must have the capacity to provide the full range of services included in the definition of MAT and must document both medication dosing and supporting behavioral health services, including but not limited to, individual, family and group therapy and rehabilitation services. MAT services and/or medications may also be provided in OBOT settings per OAC 317:30-5-9(b)(17).

(c) **OTP requirements.** Every OTP provider shall:

- (1) Have a current contract with the OHCA as an OTP provider;
- (2) Hold a certification as an OTP from ODMHSAS, unless deemed an exempted entity as defined by federal law;
- (3) Hold a certification from the Substance Abuse and Mental Health Services Administration (SAMHSA);
- (4) Be appropriately accredited by a SAMHSA-approved accreditation organization;
- (5) Be registered with the DEA and the OBNDD; and
- (6) Meet all state and federal opioid treatment standards, including all requirements within OAC 450:70.

(d) **Individual OTP providers.** OTP providers include a:

- (1) ~~MAT provider~~ MAT provider who is a physician, physician's assistant (PA), or advanced practice registered nurse (APRN) who may prescribe, dispense, and administer medications in accordance with state and federal law and the Oklahoma Medicaid State Plan.
- (2) ~~OTP behavioral health services practitioner~~ OTP behavioral health services practitioner who is a practitioner that meets the qualifications in OAC 317:30-5-240.3, except for family support and training providers, qualified behavioral therapy aide providers, multi-systemic therapy providers, and case manager I providers, for the provision of outpatient behavioral health services.



(e) **Intake and assessment.** OTPs shall conduct intake and assessment procedures in accordance with OAC 450:70-3-5 through OAC 450:70-3-7.

(f) **Service phases.** In accordance with OAC 450:70-6-17.2 through OAC 450:70-6-17.8, the OTP shall have structured phases of treatment and rehabilitation to support member progress and to establish requirements regarding member attendance and service participation. The OTP shall utilize ASAM criteria to determine the appropriate level of care during each phase of treatment. Treatment requirements for each phase shall include, but not limited to, the following:

(1) ~~During phase I, the member shall participate in a minimum of four (4) sessions of therapy or rehabilitation services per month with at least one (1) session being individual therapy, rehabilitation, or case management.~~

(2) ~~During phase II the member shall participate in at least two (2) therapy or rehabilitation service sessions per month during the first ninety (90) days, with at least one (1) of the sessions being individual therapy, rehabilitation, or case management. After the initial ninety (90) days in Phase II, the member shall participate in at least one (1) session of individual therapy or rehabilitation service per month.~~

(3) ~~During phase III, phase IV and phase V, the member shall participate in at least one (1) session of individual therapy, rehabilitation, or case management per month.~~

(1) During phase I, the member shall participate in a minimum of four (4) treatment sessions per month, including, but not exclusive to, therapy, rehabilitation, case management, and peer recovery support services.

(2) During phase II, the member shall participate in at least two (2) treatment sessions per month during the first ninety (90) days, including, but not exclusive to, therapy, rehabilitation, case management, and peer recovery support services. After the initial ninety (90) days in Phase II, the member shall participate in at least one (1) treatment session per month.

(3) During phase III, phase IV and phase V, the member shall participate in at least one (1) treatment session per month, including, but not exclusive to, therapy, rehabilitation, case management, and peer recovery support services.

(4) During phase VI, the LBHP, licensure candidate or certified alcohol and drug counselor (CADC) determines the frequency of therapy or rehabilitation service sessions with input from the member.

(5) If an OTP is providing MAT medications to members receiving residential substance use disorder services, the required minimum services for the OTP may be delivered by the residential substance use disorder provider. The OTP provider shall document the provision of these services and the provider delivering such services in the member's service plan.

(g) **Service plans.** In accordance with OAC 450:70-3-8, a service plan shall be completed for each member upon completion of the admission evaluation. The service plan shall be based on the patient's presenting problems or diagnosis, intake

assessment, biopsychosocial assessment, and expectations of their recovery.

(1) **Service plan development.** Service plans shall be completed by an LBHP or licensure candidate. Service plans completed by a licensure candidate must be co-signed and dated by a fully-licensed LBHP.

(2) **Service plan content.** Service plans shall address, but not limited to, the following:

- (A) Presenting problems or diagnosis;
- (B) Strengths, needs, abilities, and preferences of the member;
- (C) Goals for treatment with specific, measurable, attainable, realistic and time-limited;
- (D) Type and frequency of services to be provided;
- (E) Dated signature of primary service provider;
- (F) Description of member's involvement in, and responses to, the service plan and his or her signature and date;
- (G) Individualized discharge criteria or maintenance;
- (H) Projected length of treatment;
- (I) Measurable long and short term treatment goals;
- (J) Primary and supportive services to be utilized with the patient;
- (K) Type and frequency of therapeutic activities in which patient will participate;
- (L) Documentation of the member's participation in the development of the plan; and
- (M) Staff who will be responsible for the member's treatment.

(3) **Service plan updates.** Service plan updates shall be completed by an LBHP or licensure candidate. Service updates completed by a licensure candidate must be co-signed and dated by a fully-licensed LBHP. Service plan review and updates shall occur no less than every six (6) months and shall occur more frequently if required based upon the service phase or certain circumstances:

- ~~(A) During phase I, the service plan shall be reviewed and updated a minimum of once monthly.~~
- ~~(B) During phase II, the service plan shall be reviewed and updated a minimum of once every three (3) months.~~
- ~~(C) A service plan review shall be completed for the following situations:~~
  - ~~(i) Change in goals and objectives based upon member's documented progress, or identification of any new problem(s);~~
  - ~~(ii) Change in primary therapist or rehabilitation service provider assignment;~~
  - ~~(iii) Change in frequency and types of services provided;~~
  - ~~(iv) Critical incident reports;~~
  - ~~(v) Sentinel events; or~~
  - ~~(vi) Phase change.~~

(A) Change in goals and objectives based upon member's documented progress, or identification of any new problem(s);

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(B) Change in primary therapist or rehabilitation service provider assignment;

(C) Change in frequency and types of services provided;

(D) Critical incident reports; and/or

(E) Sentinel events.

(4) **Service plan timeframes.** Service plans shall be completed by the fourth ~~therapy or rehabilitation service~~ visit after admission.

(h) **Progress notes.** Progress notes shall be completed in accordance with OAC 317:30-5-248(3).

(i) **Discharge planning.** All members shall be assessed for biopsychosocial appropriateness of discharge from each level of care using ASAM criteria that includes a list of symptoms for all six (6) dimensions and each of the levels of care, to determine a clinically appropriate placement in the least restrictive level of care. This organized process involves a professional determination by an LBHP or licensure candidate for appropriate placement to a specific level of care based on the following symptoms and situations:

- (1) Acute intoxication and/or withdrawal potential;
- (2) Biomedical conditions and complications;
- (3) Emotional, behavioral or cognitive conditions and complications;
- (4) Readiness to change;
- (5) Relapse, continued use or continued problem potential; and
- (6) Recovery/living environment.

(j) **Service exclusions.** The following services are excluded from coverage:

- (1) Components that are not provided to or exclusively for the treatment of the eligible individual;
- (2) Services or components of services of which the basic nature is to supplant housekeeping or basic services for the convenience of a person receiving covered services;
- (3) Telephone calls or other electronic contacts (not inclusive of telehealth);
- (4) Field trips, social, or physical exercise activity groups; ~~and~~

(k) **Reimbursement.** ~~In order to~~ To be eligible for payment, OTPs shall:

- (1) Have an approved provider agreement on file with the OHCA. Through this agreement, the OTP assures that they are in compliance with all applicable federal and State Medicaid law and regulations, including, but not limited to, OHCA administrative rules, ODMHSAS administrative rules, and the Oklahoma Medicaid State Plan.
- (2) Obtain prior authorization for applicable drugs and services by the OHCA or its designated agent before the service is rendered by an eligible provider. Without prior authorization for applicable drugs and services, payment is not authorized.
- (3) Record the National Drug Code (NDC) number for each drug used in every encounter at the time of billing.
- (4) Be reimbursed pursuant to the methodology described in the Oklahoma Medicaid State Plan.

[OAR Docket #22-435; filed 6-23-22]

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

[OAR Docket #22-422]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 5. Individual Providers and Specialties  
Part 3. Hospitals  
317:30-5-42.1 [AMENDED]  
Part 21. Outpatient Behavioral Health Agency Services  
317:30-5-241.2 [AMENDED]  
317:30-5-241.8 [NEW]  
317:30-5-241.9 [NEW]  
317:30-5-241.10 [NEW]  
317:30-5-241.11 [NEW]  
(Reference APA WF # 21-29)

**AUTHORITY:**  
The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Title 42 of the Code of Federal Regulations (C.F.R.), Section 410.43

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 30, 2021

**COMMENT PERIOD:**  
February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**  
March 8, 2022

**ADOPTION:**  
March 30, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed revisions seek to implement partial hospitalization program (PHP) services for individuals ages 21 through 64 with substance use disorder, mental health diagnoses, and/or co-occurring disorders. Currently PHP services is a benefit offered to children under the age of 21, only. The proposed rulemaking will delineate covered service components, provider qualifications, as well as the reimbursement methodology for PHP services provided to adults. Additionally, the proposed rulemaking will reorganize current policy at OAC 317:30-5-241.2 (Psychotherapy, Multi-systemic therapy, PHP, and day treatment programs) into independent sections for clarity and easier retrieval. Moreover, the requested rulemaking will clarify that the clinical team for PHP services for children may include a physician, physician's assistant, or advanced registered nurse practitioner. Finally, the proposed rulemaking will correct minor formatting and grammatical errors.

**CONTACT PERSON:**  
Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 3. HOSPITALS**

**317:30-5-42.1. Outpatient hospital services**

- (a) Hospitals providing outpatient hospital services are required to meet the same requirements that apply to the Oklahoma Health Care Authority (OHCA) contracted, non-hospital providers performing the same services. Outpatient services performed outside the hospital facility are not reimbursed as hospital outpatient services.
- (b) Covered outpatient hospital services must meet ~~all of all~~ the criteria listed in (1) through (4) of this subsection.
  - (1) The care is directed by a physician or dentist.
  - (2) The care is medically necessary.
  - (3) The member is not an inpatient [refer to Oklahoma Administrative Code (OAC) 317:30-5-41].
  - (4) The service is provided in an approved hospital facility.
- (c) Covered outpatient hospital services are those services provided for a member who is not a hospital inpatient. A member in a hospital may be either an inpatient or an outpatient, but not both (see OAC 317:30-5-41).
- (d) In the event a member is admitted as an inpatient, but is determined to not qualify for an inpatient payment based on OHCA criteria, the hospital may bill on an outpatient claim for the ancillary services provided during that time.
- (e) Separate payment is made for prosthetic devices inserted during the course of surgery when the prosthetic devices are not integral to the procedure and are not included in the reimbursement for the procedure itself.
- (f) Physical, occupational, and speech therapy services are covered when performed in an outpatient hospital-based setting. Coverage is limited to one (1) evaluation/re-evaluation visit (unit) per discipline per calendar year and fifteen (15) visits (units) per discipline per date of service per calendar year. Claims for these services must include the appropriate revenue code(s).
- (g) Diabetes self-management education and support (DSMES) services are provided to members diagnosed with diabetes. DSMES services are comprised of one (1) hour of individual instruction (face-to-face encounters between the diabetes educator and the member) and nine (9) hours of group instruction on diabetes self-management. Members shall receive up to ten (10) hours of services during the first twelve (12) month period beginning with the initial training date. After the first twelve (12) month period has ended, members shall only be eligible for two (2) hours of individual instruction on DSMES per calendar year. Refer to OAC 317:30-5-1080 through 317:30-5-1084 for specific provider and program requirements, and reimbursement methodology.
- (h) For high-investment drugs, refer to OAC 317:30-5-42.20.
- (i) For partial hospitalization program services for adults and children, refer to OAC 317:30-5-241.2.2 and 317:30-5-241.2.3.

**PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES**

**317:30-5-241.2. Psychotherapy**

- (a) ~~Psychotherapy.~~ **Individual psychotherapy.**
  - (1) **Definition.** Psychotherapy is a face-to-face treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse, or change maladaptive patterns of behavior, and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. The therapy must be goal directed, utilizing techniques appropriate to the service plan and the member's developmental and cognitive abilities.
  - (2) ~~Interactive Complexity.~~ **Complexity.** Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the qualified practitioner. Sessions typically involve members who have other individuals legally responsible for their care (i.e., minors or adults with guardians); members who request others to be involved in their care during the session (i.e., adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e., child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one (1) of the following communication factors is present:
    - (A) The need to manage maladaptive communication (i.e., related to high anxiety, high reactivity, repeated questions, or disagreement) among participants that complicate delivery of care.
    - (B) Caregiver emotions/behavior that interfere with implementation of the service plan.
    - (C) Evidence/disclosure of a sentinel event and mandated report to a third party (i.e., abuse or neglect with report to state agency) with initiation of discussion of the sentinel event and/or report with patient and other visit participants.
    - (D) Use of play equipment, physical devices, interpreter, or translator to overcome barriers to therapeutic interaction with a patient who is not fluent in the same language or who has not developed or lost expressive or receptive language skills to use or understand typical language.
  - (3) **Qualified practitioners.** Psychotherapy must be provided by a ~~licensed behavioral health professional~~

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~~(LBHP)an LBHP~~ or licensure candidate in a setting that protects and assures confidentiality.

~~(4) **Documentation requirements.** Providers must comply with documentation requirements in OAC 317:30-5-248.~~

~~(45) **Limitations.** A maximum of four (4) units per day per member is compensable. A cumulative maximum of eight (8) units of individual psychotherapy and family psychotherapy per week per member is compensable. Except for psychotherapy involving interactive complexity as described in this Section, only the member and the qualified practitioner should be present during the session. Psychotherapy for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual. Individual psychotherapy is not reimbursable for a child younger than the age of thirty-six (36) months. Limitations exclude outpatient behavioral health services provided in a foster care setting.~~

(b) ~~Group Psychotherapy~~**psychotherapy.**

~~(1) **Definition.** Group psychotherapy is a method of treating behavioral disorders using the interaction between the qualified practitioner and two (2) or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual member's current service plan. This service does not include social or daily living skills development as described under Behavioral Health Rehabilitation Services behavioral health rehabilitation services.~~

~~(2) **Group sizes.** Group Psychotherapy psychotherapy is limited to a total of eight (8) adult [eighteen (18) and over] individuals except when the individuals are residents of an ICF/IID where the maximum group size is six (6). For all children under the age of eighteen (18), the total group size is limited to six (6).~~

~~(3) **Multi-family and conjoint family therapy.** Sessions are limited to a maximum of eight (8) families/units. Billing is allowed once per family unit, though units may be divided amongst family members.~~

~~(4) **Qualified practitioners.** Group psychotherapy will must be provided by an LBHP or licensure candidate. Group Psychotherapy psychotherapy must take place in a confidential setting limited to the qualified practitioner, an assistant or co-therapist, if desired, and the group psychotherapy participants.~~

~~(5) **Documentation requirements.** Providers must comply with documentation requirements in OAC 317:30-5-248.~~

~~(56) **Limitations.** A maximum of six (6) units per day per member is compensable, not to exceed twelve (12) units per week. Group Psychotherapy psychotherapy is not reimbursable for a child younger than the age of three (3) thirty-six (36) months. Limitations exclude outpatient behavioral health services provided in a foster care setting.~~

(c) ~~Family Psychotherapy~~**psychotherapy.**

~~(1) **Definition.** Family Psychotherapy psychotherapy is a face-to-face psychotherapeutic interaction between a~~

qualified practitioner and the member's family, guardian, and/or support system. It is typically inclusive of the identified member, but may be performed if indicated without the member's presence. When the member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided for the direct benefit of the SoonerCare member to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting. This service may include the ~~Evidence Based Practice titled Family Psychoeducation~~ evidence-based practice "Family Psychoeducation". ~~For children under the age of thirty-six (36) months, family psychotherapy is focused on the infant/young child and parent (or primary caregiver) interactions and the relationship needs of the infant/young child.~~

~~(2) **Qualified practitioners.** Family Psychotherapy psychotherapy must be provided by an LBHP or licensure candidate.~~

~~(3) **Documentation requirements.** Providers must comply with documentation requirements in OAC 317:30-5-248.~~

~~(34) **Limitations.** A maximum of four (4) units per day per member/family unit is compensable. A cumulative maximum of eight (8) units of individual psychotherapy and family psychotherapy per week per member is compensable. The practitioner may not bill any time associated with note taking and/or medical record upkeep. The practitioner may only bill the time spent in direct face to face contact. Practitioner must comply with documentation requirements listed in OAC 317:30-5-248 Family psychotherapy for a child younger than thirty-six (36) months must be medically necessary and meet established child [zero (0) through thirty-six (36) months of age] criteria as set forth in the Prior Authorization Manual. Limitations exclude outpatient behavioral health services provided in a foster care setting.~~

~~(d) **Multi-Systemic Therapy (MST).**~~

~~(1) **Definition.** MST intensive outpatient program services are limited to children within an Office of Juvenile Affairs (OJA) MST treatment program which provides an intensive, family and community based treatment targeting specific BH disorders in children with SED who exhibit chronic, aggressive, antisocial, and/or substance abusing behaviors, and are at risk for out of home placement. Case loads are kept low due to the intensity of the services provided.~~

~~(2) **Qualified professionals.** Masters level professionals who work with a team that may include bachelor level staff.~~

~~(3) **Documentation requirements.** Providers must comply with documentation requirements in OAC 317:30-5-248.~~

~~(4) **Service limitations.** Partial billing is not allowed, when only one service is provided in a day, providers should not bill for services performed for less than eight (8) minutes.~~

~~(e) Children/Adolescent Partial Hospitalization Program (PHP).~~

~~(1) **Definition.** Partial hospitalization services are services that (1) Are reasonable and necessary for the diagnosis or active treatment of the member's condition; (2) Are reasonably expected to improve the member's condition and functional level and to prevent relapse or hospitalization and (3) Include the following:~~

~~(A) Assessment, diagnostic and service plan services for mental illness and/or substance use disorders provided by LBHPs or licensure candidates.~~

~~(B) Individual/Group/Family (primary purpose is treatment of the member's condition) psychotherapies provided by LBHPs or licensure candidates.~~

~~(C) Substance use disorder specific services are provided by LBHPs or licensure candidates qualified to provide these services.~~

~~(D) Drugs and biologicals furnished for therapeutic purposes.~~

~~(E) Family counseling, the primary purpose of which is treatment of the member's condition.~~

~~(F) Behavioral health rehabilitation services to the extent the activities are closely and clearly related to the member's care and treatment, provided by a Certified Behavioral Health Case Manager II, Certified Alcohol and Drug Counselor (CADC), LBHP, or licensure candidate who meets the professional requirements listed in OAC 317:30-5-240.3.~~

~~(G) Care Coordination of behavioral health services provided by certified behavioral health case managers.~~

~~(2) **Qualified practitioners.**~~

~~(A) All services in the PHP are provided by a clinical team, consisting of the following required professionals:~~

- ~~(i) A licensed physician;~~
- ~~(ii) Registered nurse; and~~
- ~~(iii) One or more of the licensed behavioral health professionals (LBHP) or licensure candidates listed in OAC 317:30-5-240.3(a) and (b).~~

~~(B) The clinical team may also include a Certified Behavioral Health Case Manager.~~

~~(C) The service plan is directed under the supervision of a physician and the number of professionals and paraprofessionals required on the clinical team is dependent on the size of the program.~~

~~(3) **Qualified providers.** Provider agencies for PHP must be accredited by one of the national accrediting bodies; The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF), Accreditation Commission for Health Care (ACHC) or The Council on Accreditation (COA) for partial hospitalization and enrolled in SoonerCare. Staff providing these services are employees or contractors of the enrolled agency.~~

~~(4) **Limitations.** Services are limited to children 0-20 only. Children under age six (6) are not eligible for behavioral health rehabilitation services, unless a prior authorization for children ages four (4) and five (5) has been~~

~~granted by OHCA or its designated agent based on a finding of medical necessity. Services must be offered at a minimum of three (3) hours per day, five (5) days per week. Therapeutic services are limited to four (4) billable hours per day. PHP services are all inclusive with the exception of physician services and drugs that cannot be self-administered, those services are separately billable. Group size is limited to a maximum of eight (8) individuals as clinically appropriate given diagnostic and developmental functioning. Occupational, Physical and Speech therapy will be provided by the Independent School District (ISD). Academic instruction, meals, and transportation are not covered.~~

~~(5) **Service requirements.**~~

~~(A) Therapeutic Services are to include the following:~~

- ~~(i) Psychiatrist/physician face to face visit two (2) times per month;~~
- ~~(ii) Crisis management services available twenty four (24) hours a day, seven (7) days a week;~~

~~(B) Psychotherapies to be provided a minimum of four (4) hours per week and include the following:~~

- ~~(i) Individual therapy—a minimum of one (1) session per week;~~
- ~~(ii) Family therapy—a minimum of one (1) session per week; and~~
- ~~(iii) Group therapy—a minimum of two (2) sessions per week;~~

~~(C) Interchangeable services which include the following:~~

- ~~(i) Behavioral Health Case Management (face to face);~~
- ~~(ii) Behavioral health rehabilitation services/alcohol and other drug abuse education except for children under age six (6), unless a prior authorization has been granted for children ages four (4) and five (5);~~
- ~~(iii) Medication Training and Support; and~~
- ~~(iv) Expressive therapy.~~

~~(6) **Documentation requirements.** Documentation needs to specify active involvement of the member's family, caretakers, or significant others involved in the individual's treatment. A nursing health assessment must be completed within twenty four (24) hours of admission. A physical examination and medical history must be coordinated with the Primary Care Physician. Service plan updates are required every three (3) months or more frequently based on clinical need. Records must be documented according to OAC 317:30-5-248.~~

~~(7) **Staffing requirements.** Staffing requirements must consist of the following:~~

~~(A) RN trained and competent in the delivery of behavioral health services as evidenced by education and/or experience that is available onsite during program hours to provide necessary nursing care and/or psychiatric nursing care [one (1) RN at a minimum can be backed up by an LPN but an RN must always~~

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be onsite]. Nursing staff administers medications, follows up with families on medication compliance, and restraint assessments.

(B) Medical director must be a licensed psychiatrist.

(C) A psychiatrist/physician must be available twenty four (24) hours a day, seven (7) days a week.

## (f) **Children/Adolescent Day Treatment Program.**

(1) **Definition.** Day Treatment Programs are for the stabilization of children and adolescents with severe emotional and/or behavioral disturbances. Treatment is designed for children who have difficulty functioning in mainstream community settings such as classrooms, and who need a higher intensity of services than outpatient counseling provides. Treatment is time limited and includes therapeutically intensive clinical services geared towards reintegration to the home, school, and community.

(2) **Qualified practitioners.** All services in Day Treatment are provided by a team, which must be composed of one (1) or more of the following participants: physician, registered nurse, licensed behavioral health professional (LBHP) or licensure candidate, a case manager, or other certified Behavioral Health/Substance Abuse paraprofessional staff. Services are directed by an LBHP or licensure candidate.

(3) **Qualified providers.** Provider agencies for Day Treatment must be accredited to provide Day Treatment services by one of the national accrediting bodies; The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF), Accreditation Commission for Health Care (ACHC) or The Council on Accreditation (COA).

(4) **Limitations.** Services must be offered at a minimum of four (4) days per week at least three (3) hours per day. Behavioral Health Rehabilitation Group size is limited to a maximum of eight (8) individuals as clinically appropriate given diagnostic and developmental functioning. Children under age six (6) are not eligible for behavioral health rehabilitation services, unless a prior authorization for children ages four (4) and five (5) has been granted by OHCA or its designated agent based on a finding of medical necessity.

(5) **Service requirements.** On call crisis intervention services must be available twenty four (24) hours a day, seven (7) days a week (When members served have psychiatric needs, psychiatric services are available which include the availability of a psychiatrist twenty four (24) hours a day, seven (7) days a week. A psychiatrist can be available either on site or on call but must be available at all times). Day treatment program will provide assessment and diagnostic services and/or medication monitoring, when necessary.

(A) Treatment activities are to include the following every week:

(i) Family therapy at least one (1) hour per week (additional hours of FT may be substituted for other day treatment services);

(ii) Group therapy at least two (2) hours per week; and

(iii) Individual therapy at least one (1) hour per week.

(B) Additional services are to include at least one (1) of the following services per day:

(i) Medication training and support (nursing) once monthly if on medications;

(ii) Behavioral health rehabilitation services to include alcohol and other drug education if the child meets the criteria established in OAC 317:30-5-241.3 and is clinically necessary and appropriate except for children under age six (6), unless a prior authorization has been granted for children ages four (4) and five (5);

(iii) Behavioral health case management as needed and part of weekly hours for member;

(iv) Occupational therapy as needed and part of weekly hours for member; and

(v) Expressive therapy as needed and part of weekly hours for the member.

(6) **Documentation requirements.** Service plans are required every three (3) months.

## **317:30-5-241.8. Multi-systemic therapy (MST)**

MST intensive outpatient program services are limited to children within an Office of Juvenile Affairs (OJA) MST treatment program which provides an intensive, family and community-based treatment targeting specific BH disorders in children with SED who exhibit chronic, aggressive, antisocial, and/or substance abusing behaviors, and are at risk for out of home placement. Caseloads are kept low due to the intensity of the services provided.

(1) **Qualified professionals.** All MST services are provided by LBHPs or licensure candidates. Licensure candidate signatures must be co-signed by a fully-licensed LBHP in good standing. Additional team support services may be provided by a behavioral health case manager II (CM II) and/or peer recovery support specialist (PRSS) per OAC 317:30-5-240.3.

(2) **Documentation requirements.** Providers must comply with documentation requirements in OAC 317:30-5-248.

(3) **Limitations.** Services are subject to the following:

(A) Partial billing is not allowed. When only one (1) service is provided in a day, providers should not bill for services performed for less than eight (8) minutes.

(B) MST cannot be billed in conjunction with the following:

(i) Children's psychosocial rehabilitation;

(ii) Partial hospitalization/intensive outpatient treatment;

(iii) Targeted case management;

(iv) Individual, family, and group therapy;

(v) Mobile crisis intervention;

(vi) Peer-to-peer services.

(C) Duration of MST services is between three (3) to six (6) months. Weekly interventions may range from three (3) to twenty (20) hours per week. Weekly hours may be lessened as case nears closure.

(4) **Reimbursement.** MST services are reimbursed pursuant to the methodology described in the Oklahoma Medicaid State Plan.

**317:30-5-241.9. Partial hospitalization program (PHP) - Children/Adolescent**

(a) **Definition.** Partial hospitalization is an intermediary, stabilizing step for children and adolescents who have had inpatient psychiatric hospitalization prior to returning to school and community supports or as a less restrictive alternative when inpatient treatment may not be indicated. PHP services are:

- (1) Reasonable and necessary for the diagnosis or active treatment of the member's condition; and
- (2) Reasonably expected to improve the member's condition and functional level and to prevent relapse or hospitalization.

(b) **Eligibility criteria.** This service must be prior authorized by OHCA or its designated agent, and individuals must meet ongoing medical necessity criteria. Treatment is time limited, and length of participation is based on the individual's needs.

(c) **Eligible providers.** Provider agencies for PHP must be accredited to provide partial hospitalization services by The Joint Commission (TJC), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Accreditation Commission for Health Care (ACHC) or The Council on Accreditation (COA) for partial hospitalization and enrolled in SoonerCare. Staff providing these services are employees or contractors of the enrolled agency. The agency is responsible for ensuring that all services are provided by properly credentialed clinicians.

(d) **Qualified practitioners.** Program services are overseen by a psychiatrist. The number of professionals and paraprofessionals required on the clinical team is dependent on the size of the program. The clinical team includes the following required professionals:

- (1) A licensed physician, physician's assistant, or advanced practice registered nurse [any of whom meet the requirements of an LBHP as described at OAC 317:30-5-240.3(a)];
- (2) Registered nurse; and
- (3) One (1) or more LBHPs or licensure candidates listed in OAC 317:30-5-240.3(a) and (b).
- (4) The clinical team may also include a certified behavioral health case manager.

(e) **Service components.** PHP includes the following services:

- (1) Assessment, diagnostic and service plan services for mental illness and/or substance use disorders provided by LBHPs or licensure candidates;
- (2) Individual/group/family (primary purpose is treatment of the member's condition) psychotherapies provided by LBHPs or licensure candidates;

(3) Substance use disorder specific services are provided by LBHPs or licensure candidates qualified to provide these services;

(4) Drugs and biologicals furnished for therapeutic purposes;

(5) Family counseling, the primary purpose of which is treatment of the member's condition;

(6) Behavioral health rehabilitation services to the extent the activities are closely and clearly related to the member's care and treatment, provided by a certified behavioral health case manager II, certified alcohol and drug counselor (CADC), LBHP, or licensure candidate who meets the professional requirements listed in OAC 317:30-5-240.3; and

(7) Care coordination of behavioral health services provided by certified behavioral health case managers.

(f) **Limitations.** Services are subject to the following:

(1) Children under age six (6) are not eligible for behavioral health rehabilitation services unless a prior authorization for children ages four (4) and five (5) has been granted by OHCA or its designated agent based on a finding of medical necessity.

(2) Services must be offered at a minimum of three (3) hours per day, five (5) days per week.

(3) Therapeutic services are limited to four (4) billable hours per day.

(4) Group size is limited to a maximum of eight (8) individuals as clinically appropriate given diagnostic and developmental functioning.

(5) Occupational, physical and speech therapy will be provided by the Independent School District (ISD). Academic instruction, meals, and transportation are not covered.

(6) PHP services cannot be billed in conjunction with the following:

- (A) Children's psychosocial rehabilitation services;
- (B) Residential services [psychiatric residential treatment facility (PRTF) or residential behavior management services (RBMS)];
- (C) Targeted case management (TCM);
- (D) Individual, family, or group therapy;
- (E) Mobile crisis intervention within the PHP setting;
- (F) Peer-to-peer services;
- (G) Certified Community Behavioral Health (CCBH) services;
- (H) Day treatment;
- (I) Multi-systemic therapy (MST);
- (J) Program of Assertive Community Treatment (PACT) [Applicable for individuals eighteen (18) to twenty-one (21) years of age].

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

- (1) Therapeutic services that include the following:
  - (A) Psychiatrist/physician face-to-face visit two (2) times per month; and
  - (B) Crisis management services available twenty-four (24) hours a day, seven (7) days a week.

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- (2) Psychotherapies that are provided at a minimum of four (4) hours per week and include the following:
- (A) Individual therapy - a minimum of one (1) session per week;
  - (B) Family therapy - a minimum of one (1) session per week; and
  - (C) Group therapy - a minimum of two (2) sessions per week.
- (3) Interchangeable services that include the following:
- (A) Behavioral health case management (face-to-face);
  - (B) Behavioral health rehabilitation services/alcohol and other drug abuse education, except for children under age six (6), unless a prior authorization has been granted for children ages four (4) and five (5);
  - (C) Medication training and support; and
  - (D) Expressive therapy.
- (h) **Documentation requirements.** Documentation needs to specify active involvement of the member's family, caretakers, or significant others involved in the individual's treatment. A nursing health assessment must be completed within twenty-four (24) hours of admission. A physical examination and medical history must be coordinated with the primary care physician. Service plan updates are required every three (3) months or more frequently based on clinical need. Records must be documented according to OAC 317:30-5-248.
- (i) **Staffing requirements.** Staffing must consist of the following:
- (1) A registered nurse (RN) trained and competent in the delivery of behavioral health services as evidenced by education and/or experience that is available on-site during program hours to provide necessary nursing care and/or psychiatric nursing care [one (1) RN at a minimum can be backed up by a licensed practical nurse (LPN) but an RN must always be on site]. Nursing staff administers medications, follows up with families on medication compliance, and completes restraint assessments;
  - (2) Medical director must be a licensed psychiatrist;
  - (3) A psychiatrist/physician must be available twenty-four (24) hours a day, seven (7) days a week.
  - (4) One (1) or more LBHPs or licensure candidates listed in OAC 317:30-5-240.3(a) and (b).
- (j) **Reimbursement.** PHP services are reimbursed pursuant to the methodology described in the Oklahoma Medicaid State Plan. PHP reimbursement is all-inclusive of the service components, except for the following:
- (A) Physician services;
  - (B) Medications;
  - (C) Psychological testing by a licensed psychologist.

### **317:30-5-241.10. Partial hospitalization program (PHP) - Adults**

(a) **Definition.** PHP is an intensive nonresidential, structured therapeutic treatment for individuals with substance use disorder, mental health diagnoses, and/or co-occurring disorders. It can be used as an alternative to and/or a step-down

from inpatient or residential treatment, or to stabilize a deteriorating condition that may result in a need for inpatient or residential care. PHP services are:

- (1) Reasonable and necessary for the diagnosis or active treatment of the individual's condition; and
  - (2) Reasonably expected to improve the individual's condition and functional level and to prevent relapse or hospitalization/residential care.
- (b) **Eligibility criteria.** This service must be prior authorized by OHCA or its designated agent, and individuals must meet ongoing medical necessity criteria. Treatment is time limited, and length of participation is based on the individual's needs.
- (c) **Eligible providers.** Provider agencies for PHP must be accredited to provide partial hospitalization services by The Joint Commission (TJC), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Accreditation Commission for Health Care (ACHC) or The Council on Accreditation (COA) and enrolled in SoonerCare. The staff providing PHP services are employees or contractors of the enrolled agency. The agency is responsible for ensuring that all services are provided by properly credentialed clinicians.
- (d) **Qualified practitioners.** Program services are overseen by a psychiatrist. The number of professionals and paraprofessionals required on the clinical team is dependent on the size of the program. The clinical team includes the following required professionals:
- (1) A licensed physician, physician's assistant, or advanced practice registered nurse [any of whom meet the requirements of an LBHP as described at OAC 317:30-5-240.3(a)];
  - (2) A registered nurse; and
  - (3) One (1) or more LBHPs or licensure candidates listed in OAC 317:30-5-240.3(a) and (b).
  - (4) The clinical team may also include a certified behavioral health case manager.
- (e) **Service components.** PHP service components include the following, provided by qualified professionals:
- (1) Behavioral health/alcohol and drug assessment;
  - (2) Behavioral health/alcohol and drug service plan development;
  - (3) Individual/family/group therapy for behavioral health and/or substance abuse;
  - (4) Psychosocial rehabilitation services/substance abuse skills development (individual and group);
  - (5) Medication training and support;
  - (6) Case management;
  - (7) Crisis intervention services must be available twenty-four (24) hours a day, seven (7) days a week.
- (f) **Limitations.** Treatment is time limited, based on medical necessity, and must offered at a minimum of three (3) hours per day, five (5) days a week. PHP cannot be billed in conjunction with the following services:
- (1) Inpatient/residential psychiatric or residential substance use disorder services;
  - (2) Individual/family/group therapy for behavioral health; and/or substance abuse;



- (3) Psychosocial rehabilitation services/substance abuse skills development (individual and group);
- (4) Targeted case management (TCM);
- (5) Mobile crisis intervention provided within the PHP setting;
- (6) Peer recovery support;
- (7) Program of Assertive Community Treatment (PACT);
- (8) Certified Community Behavioral Health (CCBH) services.

(g) **Non-covered services.** The following services are not considered PHP and are not reimbursable:

- (1) Room and board;
- (2) Educational costs;
- (3) Services to inmates of public institutions;
- (4) Routine supervision and non-medical support services in school settings;
- (5) Child care;
- (6) Respite;
- (7) Personal care.

(h) **Documentation requirements.** Documentation needs to specify active involvement of the member. A nursing health assessment must be completed within twenty-four (24) hours of admission. Service plan updates are required every three (3) months or more frequently based on clinical need. Records must be documented according to OAC 317:30-5-248.

(i) **Staffing requirements.** Staffing must consist of the following:

- (1) A registered nurse (RN) trained and competent in the delivery of behavioral health services as evidenced by education and/or experience that is available on-site during program hours to provide necessary nursing care and/or psychiatric nursing care [one (1) RN at a minimum can be backed up by a licensed practical nurse (LPN) but an RN must always be on site];
- (2) Medical director must be a licensed psychiatrist;
- (3) A psychiatrist/physician must be available twenty-four (24) hours a day, seven (7) days a week; and
- (4) One (1) or more LBHPs or licensure candidates listed in OAC 317:30-5-240.3(a) and (b).

(j) **Reimbursement.** PHP services are reimbursed pursuant to the methodology described in the Oklahoma Medicaid State Plan. PHP reimbursement is all-inclusive of the service components, except for the following:

- (1) Physician services;
- (2) Medications;
- (3) Psychological testing by a licensed psychologist.

**317:30-5-241.11. Day treatment program**

Day treatment programs are for the stabilization of children and adolescents with severe emotional and/or behavioral disturbances. Treatment is designed for children who have difficulty functioning in mainstream community settings such as classrooms, and who need a higher intensity of services than outpatient counseling provides. Treatment is time limited and includes therapeutically intensive clinical services geared towards reintegration to the home, school, and community.

(1) **Qualified practitioners.** All services in day treatment are provided by a team, which must be composed of one (1) or more of the following participants: physician, registered nurse, licensed behavioral health professional (LBHP) or licensure candidate, a case manager, or other certified behavioral health/substance abuse paraprofessional staff. Services are directed by an LBHP.

(2) **Qualified providers.** Provider agencies for day treatment must be accredited to provide day treatment services by The Joint Commission (TJC), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Accreditation Commission for Health Care (ACHC) or The Council on Accreditation (COA).

(3) **Limitations.** Services must be offered at a minimum of four (4) days per week at least three (3) hours per day. Behavioral health rehabilitation group size is limited to a maximum of eight (8) individuals as clinically appropriate given diagnostic and developmental functioning. Children under age six (6) are not eligible for behavioral health rehabilitation services unless a prior authorization for children ages four (4) and five (5) has been granted by OHCA or its designated agent based on a finding of medical necessity.

(4) **Service requirements.** On-call crisis intervention services must be available twenty-four (24) hours a day, seven (7) days a week (When members served have psychiatric needs, psychiatric services are available which include the availability of a psychiatrist twenty-four (24) hours a day, seven (7) days a week. A psychiatrist can be available either on site or on call but must be available at all times). Day treatment program will provide assessment and diagnostic services and/or medication monitoring, when necessary.

(A) Treatment activities are to include the following every week:

- (i) Family therapy at least one (1) hour per week (additional hours of family therapy may be substituted for other day treatment services);
- (ii) Group therapy at least two (2) hours per week; and
- (iii) Individual therapy at least one (1) hour per week.

(B) Additional services are to include at least one (1) of the following services per day:

- (i) Medication training and support (nursing) once monthly if on medications;
- (ii) Behavioral health rehabilitation services to include alcohol and other drug education if the child meets the criteria established in OAC 317:30-5-241.3 and is clinically necessary and appropriate except for children under age six (6), unless a prior authorization has been granted for children ages four (4) and five (5);
- (iii) Behavioral health case management as needed and part of weekly hours for member;
- (iv) Occupational therapy as needed and part of weekly hours for member; and

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(v) Expressive therapy as needed and part of weekly hours for the member.

(5) Documentation requirements. Service plans are required every three (3) months. Records must be documented according to OAC 317:30-5-248.

(6) Reimbursement. Day treatment program services are reimbursed pursuant to the OHCA fee schedule based on the type and level of practitioner employed by the agency. All rates are published on the Agency's website [www.oklahoma.gov/ohca](http://www.oklahoma.gov/ohca).

[OAR Docket #22-422; filed 6-23-22]

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

[OAR Docket #22-426]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacies

317:30-5-87 [AMENDED]

(Reference APA WF # 21-33)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Section 256b of Title 42 of the United States Code

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

November 23, 2021

### COMMENT PERIOD:

December 15, 2021 through January 18, 2022

### PUBLIC HEARING:

January 18, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revisions will modify existing rules and the State Plan to improve the identification of 340B drugs and non 340B drug purchases. These revisions will require providers to bill the Agency with a procedure code modifier, on outpatient and hospital claims, that will identify a 340B drug from an orphan drug. Additional revisions will adjust the methodology by which Medicare crossover claims are included on drug rebate invoices to 340B providers.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, [Sandra.Puebla@okhca.org](mailto:Sandra.Puebla@okhca.org).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 5. PHARMACIES

#### 317:30-5-87. 340B Drug Discount Program

(a) ~~The purpose of this Section is to provide special provisions for providers participating in the 340B Drug Discount program. The 340B Drug Discount program special provisions apply to a provider that has asserted it is a "covered entity" or a contract pharmacy for a covered entity under the provisions of 42 U.S.C. § 256b of the United States Code (otherwise known as the 340B Drug Discount Program).~~

(b) ~~Covered Entities.~~

(1) ~~The covered entity must notify OHCA in writing within 30 days of any changes in 340B participation, as well as any changes in name, address, NPI number, etc.~~

(2) ~~The covered entity must maintain their status on the HRSA Medicaid exclusion file and report any changes to OHCA within 30 days.~~

(3) ~~The covered entity must execute a contract addendum with OHCA in addition to their provider contract.~~

(4) ~~To prevent a duplicate discount, quarterly adjustments will be made to all pharmacy or medical claims for drugs submitted by the covered entity. OHCA will adjust each claim by subtracting the 340B Ceiling Price from the amount reimbursed and multiplying the difference by the quantity submitted. All drugs shall be adjusted by the 340B Ceiling Price whether purchased through the 340B program or otherwise when billed using the registered SoonerCare NPI number on the HRSA Medicaid Exclusion File. OHCA will use the 340B Ceiling Price applicable to the quarter in which the claim is paid.~~

(c) ~~Contract pharmacies for covered entities may be permitted to bill drug products purchased under the 340B Drug Discount Program to the Oklahoma Medicaid Program when certain conditions are met and an agreement is in place between OHCA, the contract pharmacy and the covered entity. These pharmacies will be subject to the recovery process stated above.~~

(a) The 340B Drug Discount Program is a drug-pricing program established under section 256b of Title 42 of the United States Code (U.S.C) under which a manufacturer of covered outpatient drugs agrees that it will not charge a 340B covered entity more than the 340B price for a 340B covered outpatient drug.

(b) Covered entities participating in the 340B Drug Discount Program will adhere to the following provisions outlined in this Section and as defined in 42 U.S.C. §256b. Covered entities must:

(1) Notify the OHCA Pharmacy Department in writing within thirty (30) days of any changes in 340B Program

participation, as well as any changes in name, address, National Provider Identification (NPI), SoonerCare Provider Number, etc.

(2) Maintain their status on the Health Resources & Services Administration (HRSA) Medicaid Exclusion File (MEF) and report any changes to the OHCA within thirty (30) days.

(3) Execute a contract addendum with the OHCA in addition to their provider contract.

(c) To prevent a duplicate discount, quarterly adjustments will be made to all pharmacy or medical claims for drugs submitted by covered entities when billed using the registered SoonerCare Provider Number on the MEF.

(1) All pharmacy claims submitted by covered entities shall be adjusted by the 340B ceiling price whether purchased through the 340B Program or otherwise.

(2) Medical claims submitted by covered entities with procedure code modifiers indicating the use of the 340B purchased drugs shall be adjusted by the 340B ceiling price. OHCA will adjust each claim by subtracting the 340B ceiling price from the amount reimbursed and multiplying the difference by the quantity submitted. OHCA will use the 340B ceiling price applicable to the quarter in which the claim is paid. Medical claims submitted by covered entities with a procedure code modifier indicating the use of non 340B purchased drugs will not be adjusted by the 340B ceiling price and will be submitted for federal rebates as required by CMS. Covered entities are required to use an appropriate procedure code modifier on all physician administered drug lines when submitting medical claims.

(d) Contract pharmacies for covered entities may be permitted to bill drug products purchased under the 340B Drug Discount Program to the Oklahoma Medicaid Program when certain conditions are met and an agreement is in place between the OHCA, the contract pharmacy, and the covered entity. These pharmacies will be subject to the recovery process stated in this Section.

[OAR Docket #22-426; filed 6-23-22]

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

[OAR Docket #22-434]

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**  
Subchapter 5. Individual Providers and Specialties  
Part 35. Rural Health Clinics  
317:30-5-356 [AMENDED]  
317:30-5-361 [AMENDED]  
Part 75. Federally Qualified Health Centers  
317:30-5-664.3 [AMENDED]  
(Reference APA WF # 21-42)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will add language that allows for a SoonerCare Choice member, who has chosen an RHC/FQHC as his/her/their Patient Centered Medical Home/Primary Care Provider, to exceed the four (4) visit monthly limitation.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 35. RURAL HEALTH CLINICS**

**317:30-5-356. Coverage for adults**

Payment is made to RHCs for adult services as set forth in this Section.

(1) **RHC services.** Payment is made for one (1) encounter per member per day. Payment is also limited to four (4) visits per member per month. This limit may be exceeded if the SoonerCare Choice member has elected the RHC as his/her/their Patient Centered Medical Home/Primary Care Provider. Preventive service exceptions include:

(A) **Obstetrical care.** An RHC should have a written contract with its physician, PA, APRN, or CNM that specifically identifies how obstetrical care will be billed to SoonerCare, in order to avoid duplicative billing situations. The agreement should also specifically identify the physician's compensation for RHC and other ambulatory services.

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(i) If the clinic compensates the physician, PA, APRN, or CNM to provide obstetrical care, then the clinic must bill the SoonerCare program for each prenatal visit using the appropriate CPT evaluation and management codes.

(ii) If the clinic does not compensate its practitioners to provide obstetrical care, then the independent practitioner must bill the OHCA for prenatal care according to the global method described in the SoonerCare provider specific rules for physicians, PAs, APRNs and CNMs (refer to OAC 317:30-5-22).

(iii) Under both billing methods, payment for prenatal care includes all routine or minor medical problems. No additional payment is made to the prenatal provider except in the case of a major illness distinctly unrelated to pregnancy.

(B) **Family planning services.** Family planning services are available only to members with reproductive capability. Family planning visits do not count as one (1) of the four (4) RHC visits per month.

(2) **Other ambulatory services.** These services are not considered a part of an RHC visit; therefore, these may be billed to the SoonerCare program by the RHC or service provider on the appropriate claim form. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-57, 317:30-5-59, and 317:30-3-60 for general coverage and exclusions under the SoonerCare program. Some specific limitations are applicable to other ambulatory services as set forth in specific provider rules and excerpted as follows:

(A) Coverage under optometrists for adults is limited to treatment of eye disease not related to refractive errors.

(B) There is no coverage for eye exams for the purpose of prescribing eyeglasses, contact lenses or other visual aids. (See OAC 317:30-5-431.)

### 317:30-5-361. Billing

(a) **Encounters.** Payment is made for one (1) encounter per member per day. Encounters with more than one (1) health professional and multiple encounters with the same health professional that takes place on the same day and a single location, constitute a single visit except when the member, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment. Medical review will be required for additional visits for children. Payment is also limited to four (4) visits per member per month for adults. This limit may be exceeded if the SoonerCare Choice member has elected the RHC as his/her/their Patient Centered Medical Home/Primary Care Provider. RHCs must bill the combined fees of all "core" services provided during an encounter on the appropriate claim form. Claims must include reasonable and customary charges.

(1) **RHC.** The appropriate revenue code is required. No HCPCS or CPT code is required.

(2) **Mental health.** Mental health services must include a revenue code and a HCPCS code.

(3) **Obstetrical care.** The appropriate revenue code and HCPCS code are required. The date the member is first seen is required. The primary pregnancy diagnosis code is also required. Secondary diagnosis codes are used to describe complications of pregnancy. Delivery must be billed by the independent practitioner who has a contract with the OHCA.

(4) **Family planning.** Family planning encounters require a revenue code, HCPCS code, and a family planning diagnosis.

(5) **EPSDT screening.** EPSDT screenings must be billed by the attending provider using the appropriate Preventative Medicine procedure code from the CPT Manual. Payment is made directly to the RHC on an encounter basis for on-site dental services by a licensed dentist for members under the age of twenty-one (21).

(6) **Dental.** Dental services for children must be billed on the appropriate dental claim form.

(A) **EPSDT dental screening.** An EPSDT dental screening includes oral examination, prophylaxis and fluoride treatment, charting of needed treatment, and, if necessary, x-rays (including two bite wing films). This service must be filed on claim form ADM-36-D for EPSDT reporting purposes.

(B) **Dental encounter.** A dental encounter consists of all dental treatment other than a dental screening. This service must be billed on the ADM-36-D.

(7) **Visual analysis.** Visual analysis services for a child with glasses, or a child who needs glasses, or a medical eye exam. This includes the refraction and medical eye health evaluation. Visual analysis services are billed using the appropriate revenue code and a HCPCS code. Payment is made directly to the RHC on an encounter basis for on-site optometric services by a licensed optometrist for members under the age of twenty-one (21).

(b) **Services billed separately from encounters.**

(1) Other ambulatory services and preventive services itemized separately from encounters must be billed using the appropriate revenue, HCPC and/or CPT codes. Claims must include reasonable and customary charges from the physical location where services were rendered/performed.

(A) **Laboratory.** The RHC must be CLIA certified for specialized laboratory services performed. Laboratory services must be itemized separately using the appropriate CPT or HCPCS code.

(B) **Radiology.** Radiology must be identified using the appropriate CPT or HCPC code with the technical component modifier. Radiology services are paid at the technical component rate. The professional component is included in the encounter rate.

(C) **Immunizations.** The administration fee for immunizations provided on the same day as the EPSDT exam is billed separately.

(D) **Contraceptives.** Contraceptives are billed independently from the family planning encounter. A revenue code and the appropriate CPT or HCPC codes are required.

(E) **Eyeglasses.** Eyeglasses prescribed by a licensed optometrist are billed using the appropriate revenue code and HCPCS code. Payment is limited to two eyeglasses per year. Any eyeglasses beyond this limit must be prior authorized and determined to be medically necessary.

(2) Other ambulatory services provided off-site by independent practitioners (through subcontracting agreements or arrangements for services not available at the clinic) must be billed to the SoonerCare program by the provider rendering the service. Independent practitioners must meet provider eligibility criteria and must have a current contract with the OHCA.

(12) Any other medically necessary health services (i.e. optometry and podiatry) are also reimbursable as permitted within the FQHCs scope of services when medically reasonable and necessary for the diagnosis or treatment of illness or injury, and must meet all applicable coverage requirements.

(e) Services and supplies incident to the services of a physician, PA, APRN, CNM, CP and CSW are reimbursable within the encounter, as described in 42 C.F.R § 405.2413 and OAC 317:30-5-661.1.

(f) Only drugs and biologicals which cannot be self-administered are included within the scope of this benefit.

[OAR Docket #22-434; filed 6-23-22]

**PART 75. FEDERALLY QUALIFIED HEALTH CENTERS**

**317:30-5-664.3. FQHC encounters**

(a) FQHC encounters that are billed to the OHCA must meet the definition in this Section and are limited to services covered by OHCA. Only encounters provided by an authorized health care professional listed in the approved FQHC State Plan pages within the scope of their licensure trigger a PPS encounter rate.

(b) An encounter is defined as a face-to-face contact between a health care professional and a member for the provision of defined services through a FQHC within a twenty-four (24) hour period ending at midnight, as documented in the member's medical record.

(c) An FQHC may bill for one (1) medically necessary encounter per twenty-four (24) hour period when the appropriate modifier is applied. Medical review will be required for additional visits for children. For information about multiple encounters, refer to OAC 317:30-5-664.4. Payment is limited to four (4) visits per member per month for adults. This limit may be exceeded if the SoonerCare Choice member has elected the FQHC as his/her/their Patient Centered Medical Home/Primary Care Provider.

(d) Services considered reimbursable encounters (including any related medical supplies provided during the course of the encounter) include:

- (1) Medical;
- (2) Diagnostic;
- (3) Dental, medical and behavioral health screenings;
- (4) Vision;
- (5) Physical therapy;
- (6) Occupational therapy;
- (7) Podiatry;
- (8) Behavioral health;
- (9) Speech;
- (10) Hearing;
- (11) Medically necessary FQHC encounters with a registered nurse or licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound members (refer to OAC 317:30-5-661.3); and

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

[OAR Docket #22-430]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 51. Habilitation Services

317:30-5-482 [AMENDED]

(Reference APA WF # 21-38A)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Section 162 and 1025.1 et seq. of Title 56 of the Oklahoma Statutes; and the 21st Century Cares Act

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions to the developmental disabilities services (DDS) policy will add language to clarify that occupational and physical therapy services can include assistive technology, positioning, and mobility. Additional revisions for speech-language pathology services state that a provider cannot bill or receive reimbursement solely for writing the member's report or recording other documentation. Final revisions will correct formatting and grammatical errors, as well as align policy with current business practices.

# Permanent Final Adoptions

## CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465,  
Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 51. HABILITATION SERVICES

#### 317:30-5-482. Description of services

Habilitation services include the services identified in (1) through (15) of this Section. Habilitation services providers must have an applicable agreement with the Oklahoma Health Care Authority (OHCA) to provide Developmental Disabilities Services (DDS) through Home and Community-Based Services (HCBS).

(1) **Dental services.** Dental services are provided per Oklahoma Administrative Code (OAC) 317:40-5-112.

(A) **Minimum qualifications.** Dental services providers must have non-restrictive licensure by the Oklahoma State Board of Dentistry to practice dentistry in Oklahoma.

(B) **Description of services.** Dental services include services for maintenance or improvement of dental health as well as relief of pain and infection. These services may include:

- (i) ~~An oral examination;~~ Oral examinations;
- (ii) ~~Bite wing X-rays;~~ Medically necessary images;
- (iii) ~~Dental cleaning;~~ Prophylaxis;
- (iv) ~~Topical fluoride treatment;~~ Flouride application;
- (v) Development of a sequenced treatment plan that prioritizes:
  - (I) ~~Elimination of pain;~~ Pain elimination;
  - (II) Adequate oral hygiene; and
  - (III) ~~Restoration or an improved~~ Restoring or improving ability to chew;
- (vi) Routine training of member or primary caregiver regarding oral hygiene; and
- (vii) Preventive, restorative, replacement, and repair services to achieve or restore functionality provided after appropriate review when applicable, per OAC 317:40-5-112.

(C) **Coverage limitations.** ~~Coverage of dental services~~ Dental service coverage is specified in the member's Individual Plan (IP) in accordance with applicable Waiver limits. ~~Dental~~ Cosmetic dental services are not authorized ~~when recommended for cosmetic purposes.~~

(2) **Nutrition services.** Nutrition Services are provided, per OAC 317:40-5-102.

(3) **Occupational therapy services.**

(A) **Minimum qualifications.** Occupational therapists and occupational therapy assistants ~~must~~ have current, non-restrictive licensure by the Oklahoma Board of Medical Licensure and Supervision. Occupational therapy assistants ~~must be~~ supervised by occupational therapists, per OAC 317:30-5-295 (b) (1).

(B) ~~Description of services.~~ Service description. Occupational therapy services include evaluation, treatment, and consultation in leisure management, daily living skills, sensory motor, perceptual motor, ~~and mealtime assistance.~~ assistive technology, positioning, and mobility. Occupational therapy services may include ~~the use of~~ occupational therapy assistants, within the limits of the occupational therapist's practice.

(i) Services are:

(I) Intended to help the member achieve greater independence to reside and participate in the community; and

(II) Rendered in any community setting as specified in the member's IP. The IP ~~must include~~ includes a practitioner's prescription.

(ii) For ~~this Section's~~ purposes of this Section, a practitioner ~~is defined as means~~ medical and osteopathic physicians, physician assistants, and other licensed health care professionals with prescriptive authority to order occupational therapy services in accordance with the rules and regulations governing the SoonerCare program.

(iii) ~~The Service~~ provision of services includes a written report or record documentation in the member's record, as required.

(C) **Coverage limitations.** ~~Payment~~ For compensable services, payment is made for compensable services to the individual occupational therapist for direct services or for services provided by a qualified occupational therapist assistant, within the occupational therapist's employment. Payment is made in ~~15 minute~~ fifteen-minute (15-minute) units, with a limit of four hundred and eighty (480) units per Plan of Care (POC) year. Payment is not allowed solely for written reports or record documentation.

(4) **Physical therapy services.**

(A) **Minimum qualifications.** Physical therapists and physical therapist assistants must have current, non-restrictive licensure with the Oklahoma Board of Medical Licensure and Supervision. The physical therapist ~~must supervise~~ supervises the physical therapist assistant, per OAC 317:30-5-290.1 (b) (1).

(B) ~~Description of services.~~ Service description. Physical therapy services include evaluation, treatment, and consultation in locomotion or mobility ~~and~~ skeletal and muscular conditioning, assistive technology, and positioning to maximize the member's

mobility and skeletal/muscular well-being. Physical therapy services may include ~~the use of~~ physical therapist assistants, within the limits of the physical therapist's practice.

(i) Services are intended to help the member achieve greater independence to reside and participate in the community. Services are provided in any community setting as specified in the member's IP. The IP ~~must include~~includes a practitioner's prescription. For ~~this Section's purposes of this Section,~~ practitioners are defined as licensed medical and osteopathic physicians; and physician assistants in accordance with the rules and regulations covering the OHCA SoonerCare program.

(ii) ~~The provision of services~~Service provision includes a written report or record documentation in the member's record, as required.

(C) **Coverage limitations.** ~~Payment For compensable services, payment is made for compensable services~~ to individual physical therapists for direct services or for services provided by a qualified physical therapist assistant within the physical therapist's employment. Payment is made in ~~15 minute~~fifteen-minute (15-minute) units with a limit of four hundred and eighty (480) units per ~~Plan of Care year.POC.~~ Payment is not allowed solely for written reports or record documentation.

(5) **Psychological services.**

(A) **Minimum qualifications.** Qualification ~~as a provider of to provide~~ psychological services requires current, non-restrictive licensure as a psychologist by the Oklahoma State Board of Examiners of Psychologists, or by the licensing board in the state ~~in which~~where the service is provided. Psychological technicians who have completed all board certification and training requirements may provide services under a licensed psychologist's supervision.

(B) **Description of services.**Service description. Psychological services include evaluation, psychotherapy, consultation, and behavioral treatment. Service is provided in any community setting as specified in the member's IP. The provider ~~must develop, implement, evaluate and revise~~develops, implements, evaluates, and revises the Protective Intervention Protocol (PIP) corresponding to the relevant outcomes identified in the member's IP.

(i) Services are:

- (I) Intended to maximize a member's psychological and behavioral well-being; and
- (II) Provided in individual and group formats, with a six-person maximum.

(ii) ~~Approval of services~~Service approval is based ~~upon~~on assessed needs per OAC 340:100-5-51.

(C) **Coverage limitations.**

(i) Payment is made in fifteen (15) minute units. A minimum of fifteen (15) minutes for each individual and group encounter is required.

(ii) Psychological services are authorized for a period, not to exceed twelve (12) months.

(I) Initial authorization ~~must~~does not exceed one hundred and ninety-two (192) units, forty-eight (48) service hours ~~of service~~.

(II) Authorizations may not exceed two hundred and eighty-eight (288) units per ~~plan of care~~POC year unless the DDS Behavior Support Services director or designee makes an exception is made by the DDS director of Behavior Support Services or his or her designee.

(III) No more than twelve (12) hours of services, forty-eight (48) units, may be billed for PIP preparation. Any clinical document ~~must be~~is prepared within sixty (60) calendar days of the request. Further, if the document is not prepared, payments are suspended until the requested document is provided.

(IV) When revising a PIP to accommodate recommendations of a required committee review, the provider may bill for only one (1) revision. The time for preparing the revision ~~must be~~is clearly documented and ~~must~~does not exceed four (4) hours.

(6) **Psychiatric services.**

(A) **Minimum qualifications.** Qualification as a psychiatric services provider requires a current, non-restrictive license to practice medicine in Oklahoma. Certification by the American Board of Psychiatry and Neurology or satisfactory completion of an approved residency program in psychiatry is required.

(B) **Description of services.**Service description. Psychiatric services include outpatient evaluation, psychotherapy, medication and prescription management and consultation, and are provided to eligible members. Services are provided in the community setting specified in the member's IP.

(i) Services are intended to contribute to the member's psychological well-being.

(ii) A minimum of thirty (30) minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is thirty (30) minutes, with a limit of two hundred (200) units, per ~~Plan of Care~~POC year.

(7) **Speech-language pathology services.**

(A) **Minimum qualifications.** Qualification as a speech-language pathology services provider requires current, non-restrictive licensure as a speech-language pathologist, speech-language pathology assistant, or speech-language pathology clinical fellow, by the Oklahoma Board of Examiners for Speech-Language Pathology and Audiology, per OAC 317:30-5-675.

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(B) ~~Description of services.~~ **Service description.** Speech therapy includes evaluation, treatment, and consultation in communication, ~~and oral motor activities,~~ and/or feeding activities provided to eligible members. Services are intended to maximize the member's community living skills and may be provided in the community setting specified in the member's IP.

(i) The IP ~~must include~~ includes a practitioner's prescription. For ~~this Section's purposes of this Section,~~ practitioners are defined as licensed medical and osteopathic physicians, physician assistants, and other licensed professionals with prescriptive authority to order speech ~~and/or~~ language services or both in accordance with rules and regulations covering the OHCA SoonerCare program.

(ii) A minimum of fifteen (15) minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is fifteen (15) minutes, with a limit of two hundred and eighty-eight (288) units, per ~~Plan of Care year.POC.~~ Payment is not allowed solely for written reports or record documentation.

(8) **Habilitation training specialist (HTS) services.**

(A) **Minimum qualifications.** Providers ~~must~~ complete the Oklahoma Department of Human Services (~~DHS~~)(OKDHS) DDS-sanctioned training curriculum. Residential habilitation providers:

(i) Are at least eighteen (18) years of age; or older;

(ii) Are specifically trained to meet members' unique needs;

(iii) ~~Were~~ Have not been convicted of, pled guilty to, or pled nolo contendere to misdemeanor assault and battery, or a felony, per Section (§) 1025.2 of Title 56 of the Oklahoma Statutes (~~O.S.~~); 56 O.S. § 1025.2 unless a waiver is granted, per 56 O.S. § 1025.2; and

(iv) Receive supervision and oversight from contracted-agency staff with a minimum of four (4) years of any combination of college-level education or full-time equivalent experience in serving persons with disabilities.

(B) ~~Description of services.~~ **Service description.** HTS services include services to support the member's self-care, daily living, and adaptive and leisure skills needed to reside successfully in the community. Services are provided in community-based settings in a manner that contributes to the member's independence, self-sufficiency, community inclusion, and well-being.

(i) Payment is not made for:

(I) Routine care and supervision family normally ~~provided by family;~~ provides; or

(II) Services furnished to a member by a person who is legally responsible, per OAC 340:100-3-33.2.

(ii) Family members who provide HTS services ~~must~~ meet the same standards as providers who are unrelated to the member. HTS staff residing in the same household as the member may not provide services in excess of forty (40) hours per week. Members ~~requiring~~ who require HTS services for more than forty (40) hours per week ~~of HTS services, must~~ use staff members, who do not reside in the household, and who are employed by the member's chosen provider agency, to deliver the balance of necessary support staff hours. Exceptions may be authorized, when needed, for members who receive services through the Home-ward Bound Waiver.

(iii) Payment does not include room and board or maintenance, upkeep, or improvement of the member's or family's residence.

(iv) For members who also receive intensive personal supports (IPS), the member's IP ~~must~~ clearly ~~specify~~ specifies the role of the HTS and person providing IPS to ensure there is no service duplication of services.

(v) Review and approval by the DDS plan of care reviewer is required.

(vi) Pre-authorized HTS services accomplish the same objectives as other HTS services, but are limited to situations where the HTS provider is unable to obtain required professional and administrative oversight from an OHCA-approved oversight agency. For pre-authorized HTS services, the service:

(I) Provider receives DDS area staff oversight; and

(II) ~~Must be~~ Is pre-approved by the DDS director or his or her designee.

(C) **Coverage limitations.** HTS services are authorized per OAC 317:40-5-110, 317:40-5-111, 317:40-7-13, and 340:100-3-33.1.

(i) A unit is fifteen (15) minutes.

(ii) Individual HTS ~~services~~ service providers are limited to a maximum of forty (40) hours per week regardless of the number of members served.

(iii) More than one (1) HTS may provide care to a member on the same day.

(iv) Payment cannot be made for services provided by two (2) or more HTSs to the same member during the same hours of a day.

(v) ~~A~~ An HTS may receive reimbursement for providing services to only one (1) member at any given time. This does not preclude services from being provided in a group setting where services are shared among group members ~~of the group.~~

(vi) HTS providers may not perform any job duties associated with other employment including on-call duties, at the same time they are providing HTS services.

(9) **Remote Supports (RS).** RS is provided per OAC 317:40-4-4.



(910) **Self Directed HTS (SD HTS).** SD HTS are provided per OAC 317:40-9-1.

(4011) **Self Directed Goods and Services (SD GS).** SD GS are provided per OAC 317:40-9-1.

(412) **Audiology services.**

(A) **Minimum qualifications.** Audiologists must have licensure as an audiologist by the Oklahoma Board of Examiners for Speech Pathology and Audiology per OAC 317:30-5-675 (d) (1).

(B) **Description of services. Service description.** Audiology services include individual evaluation, treatment, and consultation in hearing to eligible members. Services are intended to maximize the member's auditory receptive abilities.

(i) The member's IP ~~must include~~ includes a practitioner's prescription. For this Section's purposes of this Section, practitioners are defined as licensed medical and osteopathic physicians, and physician assistants in accordance with ~~rules and regulations~~ OAC 317:30-5-1 covering the OHCA SoonerCare program.

(ii) A minimum of fifteen (15) minutes for encounter and record documentation is required.

(C) **Coverage limitations.** Audiology services are provided in accordance with the member's IP.

(4213) **Prevocational services.**

(A) **Minimum qualifications.** Prevocational service providers:

(i) ~~Are at least eighteen (18) years of age;~~ Are eighteen (18) years of age or older;

(ii) Complete the ~~DHS~~ OKDHS DDS-sanctioned training curriculum;

(iii) ~~Were~~ Are not convicted of, pled guilty to, or pled nolo contendere to misdemeanor assault and battery, or a felony per 56 O.S. § 1025.2, unless a waiver is granted per 56 O.S. § 1025.2; and

(iv) Receive supervision and oversight ~~by~~ from a person with a minimum of four (4) years of any combination of college-level education or full-time equivalent experience in serving persons with disabilities.

(B) **Description of services. Service description.** Prevocational services are not available to persons who can be served under a program funded per Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (IDEA) per Section 1401 et seq. of Title 20 of the United States Code.

(i) Prevocational services are learning and work experiences where the ~~individual~~ member can develop general, non-job, task-specific strengths that contribute to employability in paid employment in integrated community settings.

(ii) Activities include teaching concepts, such as communicating effectively with supervisors,

co-workers, and customers, attendance, task completion, problem solving, and safety. These activities are associated with building skills necessary to perform work.

(iii) Pre-vocational services are delivered ~~for the purpose of furthering to further~~ habilitation goals that lead to greater opportunities for competitive, integrated employment. All prevocational services are reflected in the member's IP. Documentation ~~must be~~ maintained in the record of each member receiving this service, noting the service is not otherwise available through a program funded under the Rehabilitation Act of 1973 or IDEA.

(iv) Services include:

(I) Center-based prevocational services, per OAC 317:40-7-6;

(II) Community-based prevocational services per, OAC 317:40-7-5;

(III) Enhanced community-based prevocational services per, OAC 317:40-7-12; and

(IV) Supplemental supports, as specified in OAC 317:40-7-13.

(C) **Coverage limitations.** A unit of center-based or community-based prevocational services is one (1) hour and payment is based on the number of hours the member participates in the service. All prevocational services and supported-employment services combined may not exceed \$27,000, ~~per Plan of Care year,~~ the annual costs set forth in OKDHS Appendix D-26, Developmental Disabilities Services Rates Schedule. The services that may not be provided to the same member at the same time as prevocational services are:

(i) HTS;

(ii) ~~Intensive Personal Supports;~~ IPS;

(iii) Adult Day Services;

(iv) Daily Living Supports; (DLS);

(v) Homemaker; or

(vi) Therapy services, such as occupational therapy; physical therapy; nutrition, speech, or psychological services; family counseling; or family training, except to allow the therapist to assess the individual's needs at the workplace or to provide staff training, per OAC 317:40-7-6.

(4314) **Supported employment.**

(A) **Minimum qualifications.** Supported employment providers:

(i) ~~Are at least~~ Are eighteen (18) years of age; or older;

(ii) Complete the ~~DHS~~ OKDHS DDS-sanctioned training curriculum;

(iii) ~~Were~~ Are not convicted of, pled guilty to, or pled nolo contendere to misdemeanor assault and battery, or a felony, per 56 O.S. § 1025.2 unless a waiver is granted, per 56 O.S. § 1025.5; and

(iv) Receive supervision and oversight ~~by~~ from a person with a minimum of four (4) years of

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any combination of college-level education or full-time equivalent experience in serving persons with disabilities.

(B) ~~Description of services.~~ **Services description.** ~~Supported~~ For members receiving HCBS Waiver services, supported employment is conducted in a variety of various settings, particularly worksites in which where persons without disabilities are employed, and includes activities that are outcome based and needed to sustain paid work by members receiving services through HCBS Waivers, including supervision and training. The supported employment outcome of supported employment is sustained paid employment at or above minimum wage, but not less than the customary wage and benefit level paid by the employer pays for the same or similar work performed by individuals without disabilities. perform. The paid employment occurs in an integrated setting in the general workforce in a job that meets personal and career goals.

(i) When supported-employment services are provided at a worksite in which where persons without disabilities are employed, payment:

(I) Is made for the adaptations, supervision, and training required by members require as a result of their disabilities; and

(II) Does not include payment for the supervisory activities rendered as a normal part of the business setting.

(ii) Services include:

(I) Job coaching per OAC 317:40-7-7;

(II) Enhanced job coaching per OAC 317:40-7-12;

(III) Employment training specialist services per OAC 317:40-7-8; and

(IV) Stabilization per OAC 317:40-7-11.

(iii) Supported-employment services furnished under HCBS Waivers are not available under a program funded by the Rehabilitation Act of 1973 or Individuals with Disabilities Education Act (IDEA). IDEA.

(iv) Documentation that the service is not otherwise available under a program funded by the Rehabilitation Act of 1973 or IDEA must be maintained in the each member's record of each member receiving the service.

(v) Federal financial participation (FFP) may not be claimed for incentive payment subsidies or unrelated vocational training expenses, such as:

(I) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

(II) Payments passed through to users of supported-employment programs; or

(III) Payments for vocational training not directly related to a member's supported-employment program.

(C) **Coverage limitations.** A unit is fifteen (15) minutes and payment is made per OAC 317:40-7-1 through 317:40-7-21. All prevocational services and supported-employment services combined cannot exceed \$27,000, per Plan of Care POC year. The DDS case manager assists the member to identify other alternatives to meet identified needs above the limit. The services that may not be provided to the same member, at the same time as supported-employment services are:

(i) HTS;

(ii) Intensive Personal Supports; IPS;

(iii) Adult Day Services;

(iv) Daily Living Supports; DLS;

(v) Homemaker; or

(vi) Therapy services, such as occupational therapy; physical therapy; nutrition, speech, or psychological services, family counseling, or family training, except to allow the therapist to assess the individual's needs at the workplace or to provide staff training.

(1415) ~~Intensive personal supports (IPS).~~ **IPS.**

(A) **Minimum qualifications.** IPS provider agencies must have a current provider agreement with OHCA and DHSOKDHS DDS. Providers:

(i) Are at least eighteen (18) years of age; or older;

(ii) Complete the DHSOKDHS DDS-sanctioned training curriculum;

(iii) Were Are not convicted of, pled guilty to, or pled nolo contendere to misdemeanor assault and battery, or a felony, per 56 O.S. § 1025.2 unless a waiver is granted, per 56 O.S. § 1025.2;

(iv) Receive supervision and oversight by from a person with a minimum of four (4) years of any combination of college-level education or full-time equivalent experience in serving persons with disabilities; and

(v) Receive oversight regarding specific methods to be used with the member to meet the member's complex behavioral or health support needs.

(B) ~~Description of services.~~ **Service description.**

(i) IPS:

(I) Are support services provided to members who need an enhanced level of direct support in order to successfully reside in a community-based setting; and

(II) Build upon the support level of support provided by a HTS or daily living supports (DLS) DLS staff provides by utilizing a second staff person on duty to provide assistance and training in self-care, daily living, and recreational and habilitation activities.

(ii) The member's Individual Plan (IP) must IP clearly specifies specifies the role of HTS and the person providing IPS to ensure there is no service duplication of services.

(iii) ~~Review and approval by the DDS plan of care reviewer is required. The DDS POC reviewer is required to review and approve services.~~

(C) **Coverage limitations.** IPS are limited to twenty-four (24) hours per day and ~~must be~~ included in the member's IP, per OAC 317:40-5-151 and 317:40-5-153.

~~(1516)~~ **Adult day services.**

(A) **Minimum qualifications.** Adult day ~~services~~ service provider agencies ~~must~~:

(i) Meet ~~the~~ licensing requirements, per 63 O.S. § 1-873 *et seq.* and comply with OAC 310:605; and

(ii) ~~Be~~ Are approved by the ~~DHS~~OKDHS DDS director and have a valid OHCA contract for adult day services.

(B) ~~Description of services.~~ **Service description.** Adult day services provide assistance with the ~~retention~~retaining or ~~improvement of~~improving the member's self-help, ability adaptive and socialization skills, including the opportunity to interact with peers in order to promote a maximum level of independence and function. Services are provided in a non-residential setting away from the home or facility where the member resides.

(C) **Coverage limitations.** Adult day services are furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. A unit is fifteen (15) minutes for up to a maximum of six (6) hours daily, at which point a unit is one (1) day. All services ~~must be~~ authorized in the member's IP.

[OAR Docket #22-430; filed 6-23-22]

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

[OAR Docket #22-429]

**RULEMAKING ACTION:**  
PERMANENT final adoption  
**RULES:**

- Subchapter 5. Individual Providers and Specialties
- Part 62. Private Duty Nursing
- 317:30-5-555 [AMENDED]
- 317:30-5-557 [AMENDED]
- 317:30-5-558 [AMENDED]
- 317:30-5-559 [AMENDED]
- 317:30-5-560 [AMENDED]
- 317:30-5-560.1 [AMENDED]
- 317:30-5-560.2 [AMENDED]
- (Reference APA WF # 21-37)

**AUTHORITY:**  
The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 C.F.R. Section 440.80

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 30, 2021

**COMMENT PERIOD:**  
February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**  
March 8, 2022

**ADOPTION:**  
March 30, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed revisions will update how assessments for PDN services are conducted; clarify who can sign the PDN treatment plan; update grammatical and formatting errors; and reorganize policy for better clarity and understanding.

**CONTACT PERSON:**  
Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 62. PRIVATE DUTY NURSING**

**317:30-5-555. Private Duty Nursing (PDN)**

PDN is medically necessary care provided on a regular basis by a licensed practical nurse or registered nurse. PDN is the level of care that would routinely be provided by the nursing staff of a hospital or skilled nursing facility. PDN services are provided:

(1) In the member's primary residence, unless it is medically necessary for a nurse to accompany the individual in the community.

(A) The individual's place of residence is wherever the individual lives, whether the residence is the individual's own dwelling, a relative's home, or other type of living arrangement. The place of residence cannot include a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(B) The place of service in the community cannot include the residence or business location of the provider of PDN services unless the provider of PDN is a live-in caregiver.

(2) To assist during transportation to routine, Medicaid-compensable health care appointments and/or to

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the nearest appropriate emergency room, ~~but only when SoonerRide is unavailable, and a lack of PDN services during transportation would require transportation by ambulance pursuant to Oklahoma Administrative Code (OAC) 317:30-5-336.~~

(A) The private duty nurse may not drive the vehicle during transportation.

(B) PDN services are not available for non-routine extended home absences unrelated to medically necessary treatment or medical care. [Refer to Oklahoma Administrative Code 317:30-5-558(4) and (13)].

### 317:30-5-557. Coverage by category

(a) **Adults.** SoonerCare does not cover adults ~~(Age 21 or over)~~[twenty-one (21) years of age and over] for private duty nursing (PDN) with the exception of subsection (c).

(b) **Children.** SoonerCare does cover children ~~(Under the age of 21)~~[under twenty-one (21) years of age] if:

(1) ~~the~~The ~~child~~ member is eligible for SoonerCare; and

(2) ~~the~~The Oklahoma Health Care Authority (OHCA), in its discretion, deems the services medically necessary. Medical necessity is determined in accordance with ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-5-560.1.

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

(d) **1915(c) home and community-based services (HCBS) waivers.** If private duty nursing services are provided, they will be defined within each waiver and must be prior authorized.

### 317:30-5-558. Private duty nursing (PDN) coverage limitations

The following provisions apply to all PDN services and provide coverage limitations:

(1) All services must be prior authorized to receive payment from the Oklahoma Health Care Authority (OHCA). Prior authorization means authorization in advance of services provided in accordance with Oklahoma Administrative Code (OAC) 317:30-3-31 and 317:30-5-560.1;

(2) A treatment plan must be completed by ~~the home health agency~~an eligible PDN provider before requesting prior authorization and must be updated at least annually and signed by the physician [medical doctor (MD), or doctor of osteopathy, (DO)], a physician assistant (PA), or advanced practice registered nurse (APRN)];

(3) ~~A telephonic interview and/or personal visit by an OHCA care management nurse is required prior to the authorization for services.~~An assessment by an OHCA care management nurse is required prior to the authorization for services. The assessment will be conducted by the OHCA through one (1) of the following:

(A) Telephone;

(B) Virtually; or

(C) Face-to-face;

(4) Care in excess of the designated hours per day granted in the prior authorization is not SoonerCare compensable. Prior-authorized but unused service hours cannot be "banked," "saved," or otherwise "accumulated" for use at a future date or time. If such hours or services are provided, they are not SoonerCare compensable.

(5) Any medically necessary PDN care provided outside of the home must be counted in and cannot exceed the number of hours requested on the treatment plan and approved by OHCA.

(6) PDN services do not include office time or administrative time in providing the service. The time billed is for direct nursing services only.

(7) Staff must be engaged in purposeful activity that directly benefits the member receiving services. Staff must be physically able and mentally alert to carry out the duties of the job. At no time will OHCA compensate an organization for nursing staff time when sleeping.

(8) OHCA will not approve PDN services if all health and safety issues cannot be met in the setting in which services are provided.

(9) A provider must not misrepresent or omit facts in a treatment plan.

(10) It is outside the scope of coverage to deliver care in a manner outside of the treatment plan or to deliver units over the authorized units of care.

(11) PDN is not authorized in excess of sixteen (16) hours per day. There may be approval for additional hours for a period not to exceed thirty (30) days, if:

(A) The member has an acute episode that would otherwise require hospitalization or immediately following a hospital stay; or

(B) The primary caregiver is temporarily and involuntarily unable to provide care.

(C) The OHCA has discretion and the final authority to approve or deny any additional PDN hours and will take into consideration that the additional hours are not to be a substitute for institutionalized care.

(12) Family and/or caregivers and/or guardians (hereinafter, "caregivers") are required to provide some of the nursing care to the member without compensation. PDN services shall not be provided solely to allow the member's caregiver to work or go to school, nor solely to allow respite for the caregiver.

(13) PDN services will not be approved for overnight trips away from the member's primary residence that are unrelated to medically necessary treatment or medical care.

(A) For a member to receive Medicaid-reimbursable PDN services on an overnight trip that is related to medically necessary treatment or medical care, all provisions of this Part must be met. If said trip occurs out of state, OAC 317:30-3-89 through 317:30-3-92 must also be met.

(B) In instances in which the member's family is temporarily absent due to vacations, any additional PDN hours must be paid for by the family, or provided

by other trained family members without SoonerCare reimbursement.

(14) PDN services will not be approved when services are reimbursed or reimbursable by other insurance, other governmental programs, or Medicaid program services that the member receives or is eligible to receive. For example, if a member receives Medicaid-reimbursable PDN services pursuant to an Individualized Education Program (IEP) in a public school, then those PDN school hours will be counted in the member's daily allotment of PDN services.

**317:30-5-559. ~~How services are authorized~~How Private Duty Nursing (PDN) services are authorized**

~~An eligible provider may have private duty nursing services authorized by following all the following steps:~~

- ~~(1) create a treatment plan for the patient as expressed in OAC 317:30-5-560;~~
- ~~(2) submit the prior authorization request with the appropriate OHCA required forms, the treatment plan, and request the telephonic interview and/or personal visit by an OHCA Care Management Nurse; and~~
- ~~(3) have an OHCA physician determine medical necessity of the service including scoring the member's needs on the Private Duty Nursing Acuity Grid.~~ PDN services may be initiated after completion of the following steps:

- (1) A treatment plan for the patient has been created by an eligible PDN provider per Oklahoma Administrative Code (OAC) 317:30-5-560;
- (2) A prior authorization request is submitted with the appropriate Oklahoma Health Care Authority (OHCA) required data elements and the treatment plan;
- (3) An assessment (telephonic, virtual, or face-to-face) has been conducted by an OHCA care management nurse, per OAC 317:30-5-558 (3); and
- (4) An OHCA physician has determined the medical necessity of the service, including but not limited to, scoring the member's needs on the OHCA PDN assessment.

**317:30-5-560. ~~Treatment Plan~~plan**

(a) An eligible organization must create a treatment plan for the member as part of the authorization process for private duty nursing (PDN) services. The initial treatment plan must be signed by the member's attending physician [medical doctor (MD), or doctor of osteopathy, (DO), a physician assistant (PA), or advanced practice registered nurse (APRN).]

(b) The treatment plan must include all of the following ~~medical and social data so that an OHCA physician can appropriately determine medical necessity including use of the Private Duty Nursing Acuity Grid:~~

- (1) ~~diagnosis~~Diagnosis;
- (2) ~~prognosis~~Prognosis;
- (3) ~~anticipated~~Anticipated length of treatment;
- (4) ~~number~~Number of hours of private duty nursing ~~requested~~requested per day;

- (5) ~~assessment~~Assessment needs and frequency (e.g., vital signs, glucose checks, neuro checks, respiratory);
- (6) ~~medication~~Medication method of administration and frequency;
- (7) ~~age appropriate~~Age-appropriate feeding requirements (diet, method and frequency);
- (8) ~~respiratory~~Respiratory needs;
- (9) ~~mobility~~Mobility requirements including need for turning and positioning, and the potential for skin breakdown;
- (10) ~~developmental~~Developmental deficits;
- (11) ~~easting~~Casting, orthotics, therapies;
- (12) ~~age appropriate~~Age-appropriate elimination needs;
- (13) ~~seizure~~Seizure activity and precautions;
- (14) ~~age appropriate~~Age-appropriate sleep patterns;
- (15) ~~disorientation~~Disorientation and/or combative issues;
- (16) ~~age appropriate~~Age-appropriate wound care and/or personal care;
- (17) ~~communication~~Communication issues;
- (18) ~~social~~Social support needs;
- (19) ~~name~~Name, skill level, and availability of all caregivers; and
- (20) ~~other~~Other pertinent nursing needs such as dialysis, isolation.

**317:30-5-560.1. ~~Prior authorization requirements~~**

- (a) Authorizations are provided for a maximum period of six ~~(6)~~ months.
- (b) Authorizations require:
  - (1) ~~a~~A treatment plan for the member;
  - (2) ~~a telephonic interview and/or personal visit by an OHCA Care Management Nurse~~An assessment (telephonic, virtual, or face-to-face) has been conducted by an Oklahoma Health Care Authority (OHCA) care management nurse, per Oklahoma Administrative Code (OAC) 317:30-5-558 (2); and
  - (3) ~~an~~An OHCA physician to determine medical necessity including use of the ~~Private Duty Nursing Acuity Grid~~OHCA Private Duty Nursing (PDN) assessment.
- (c) The number of hours authorized may differ from the hours requested on the treatment plan based on the review by an OHCA physician.
- (d) If the member's condition necessitates a change in the treatment plan, the provider must request a new prior authorization.
- (e) Changes in the treatment plan may necessitate another ~~telephonic interview and/or personal visit by the OHCA Care Management staff~~assessment (telephonic, virtual, or face-to-face) by an OHCA care management nurse.

**317:30-5-560.2. ~~Record documentation~~**

~~The treatment plan must be updated and signed by the attending physician at least annually. Copies of the attending physician's orders and, at a minimum, the last 30 days of medical records for the actual care provided must be maintained in the home. Medical records must include the beginning and~~

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ending time of the care and must be signed by the person providing care. The nurse's credentials must also be included. All provisions of the treatment plan, such as vital signs, medication administration, glucose/neuro checks, vital signs, respiratory assessments, and all applicable treatments must be documented in the record. All records must meet the requirements set forth in OAC 317:30-3-15.

(a) The treatment plan must be updated and signed by the attending physician [medical doctor (MD), or doctor of osteopathy, (DO)], a physician assistant (PA), or advanced practice registered nurse (APRN) at least annually.

(b) Copies of the attending physician's orders and, at a minimum, the last thirty (30) days of medical records for the actual care provided must be maintained and include the following:

- (1) The beginning and ending time of the care and must be signed by the person providing care;
- (2) The nurse's credentials;
- (3) All provisions of the treatment plan, such as vital signs, medication administration, glucose/neuro checks, vital signs, respiratory assessments, and all applicable treatments must be documented; and
- (4) Meet the record retention requirements set forth in Oklahoma Administrative Code (OAC) 317:30-3-15.

[OAR Docket #22-429; filed 6-23-22]

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

[OAR Docket #22-423]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 5. Individual Providers and Specialties  
Part 6. Inpatient Psychiatric and Substance Use Disorder Services  
317:30-5-95.22 [AMENDED]  
317:30-5-95.29 [AMENDED]  
317:30-5-95.30 [AMENDED]  
317:30-5-95.33 [AMENDED]  
317:30-5-95.34 [AMENDED]  
317:30-5-95.37 [AMENDED]  
317:30-5-95.38 [AMENDED]  
(Reference APA WF # 21-30)

**AUTHORITY:**  
The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board  
**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 23, 2021

**COMMENT PERIOD:**  
December 15, 2021 through January 18, 2022

**PUBLIC HEARING:**  
January 18, 2022

**ADOPTION:**  
March 30, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will eliminate community based extended (CBE) and community based transitional (CBT) levels of care. These facilities contract with the OHCA as a type of Psychiatric Residential Treatment Facility (PRTF); however, there is only one contracted CBE facility and zero CBT facilities. The contracted CBE facility will transition to a standard PRTF with the corresponding rate. Other revisions will reorganize policy for clarity and correct grammatical errors.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 6. INPATIENT PSYCHIATRIC AND SUBSTANCE USE DISORDER SERVICES

#### 317:30-5-95.22. Coverage for children

(a) In order for services to be covered, services in psychiatric units of general hospitals, psychiatric hospitals, and PRTF programs must meet the requirements in OAC 317:30-5-95.25 through 317:30-5-95.30. OHCA rules that apply to inpatient psychiatric coverage for individuals aged twenty-one (21) and under are found in Sections OAC 317:30-5-95.22 through 317:30-5-95.42.

(b) The following words and terms, when used in OAC 317:30-5-95.22 through 317:30-5-95.42, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Acute"** means care delivered in a psychiatric unit of a general hospital or psychiatric hospital that provides assessment, medical management and monitoring, and short-term intensive treatment and stabilization to individuals experiencing acute episodes of behavioral health disorders.

(2) **"Acute II"** means care delivered in a psychiatric unit of a general hospital or psychiatric hospital; however, services at this level of care are designed to serve individuals under twenty-one (21) who need longer-term, more intensive treatment, and a more highly-structured environment than they can receive in family and other community-based alternatives to hospitalization. However, care delivered in this setting is less intense than the care provided in Acute.

(3) **"Border placement"** means placement in an inpatient psychiatric facility that is in one (1) of the states

that borders Oklahoma (Arkansas, Colorado, Kansas, Missouri, New Mexico, and Texas).

(4) **"Border status"** means placement in a facility in a state that does not border Oklahoma, but which facility routinely provides inpatient psychiatric services to SoonerCare members.

(5) **"Chemical dependency/substance abuse services/detoxification"** means services offered to individuals with a substance-related disorder whose biomedical and emotional/behavioral problems are sufficiently severe to require inpatient care.

~~(6) **"Community-based extended"** means a PRTF with sixteen (16) beds or more but less than thirty (30) beds. The typical facility is not a locked facility.~~

~~(7) **"Community-based transitional (CBT)"** means a PRTF level of care designed for individuals under twenty one (21) who require the continued structure and psychiatric intervention of twenty four (24) hour care, but are ready to begin transitioning from more intense residential treatment into the community. It is the intent that members admitted to this level of care should be able to attend public school. Community based transitional facilities are non-secure PRTFs with sixteen (16) beds or less.~~

(86) **"Enhanced treatment unit or specialized treatment"** means an intensive residential treatment unit that provides a program of care to a population with special needs or issues requiring increased staffing requirements, co-morbidities, environmental accommodations, specialized treatment programs, and longer lengths of stay.

(97) **"Evidence-based practice (EBP)"** means programs or practices that are supported by research methodology and have produced consistently positive patterns of results in accordance with the Substance Abuse and Mental Health Services Administration (SAMHSA).

(108) **"Out-of-state placement"** means a placement for intensive or specialized services not available in Oklahoma requiring additional authorization procedures and approval by the OHCA Behavioral Health Unit.

(119) **"Public facilities"** means Oklahoma government owned or operated facilities.

(1210) **"Trauma-informed"** means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of members.

**317:30-5-95.29. Medical necessity criteria Acute II and PRTF admissions for children**

(a) Acute II and PRTF admissions for individuals under twenty-one (21) must meet the terms and conditions in (1), (2), (3), (4), (5) and one (1) of the terms and conditions of (6)(A) through (D) of this subsection.

(1) A primary diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) with the exception of V-codes, adjustment disorders, and substance-related disorders, accompanied by detailed symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of

any personality disorder. Adjustment or substance-related disorders may be a secondary diagnosis.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavior, or status offenses).

(3) Patient has either received treatment in an acute setting or it has been determined by the OHCA, or its designated agent, that the current disabling symptoms could not or have not been manageable in a less-intensive treatment program.

(4) Member must be medically stable.

(5) Requires twenty-four (24) hour observation and treatment as evidenced by:

- (A) Intensive behavioral management;
- (B) Intensive treatment with the family/guardian and child in a structured milieu; and
- (C) Intensive treatment in preparation for re-entry into community.

(6) Within the past fourteen (14) calendar days, the patient has demonstrated an escalating pattern of self-injurious or assaultive behaviors as evidenced by any of (A) through (D) below. Exceptions to the fourteen (14) day requirement may be made in instances when evidence of the behavior could not have reasonably been discovered within fourteen (14) days (e.g., sexual offenses).

- (A) Suicidal ideation and/or threat.
- (B) History of/or current self-injurious behavior.
- (C) Serious threats or evidence of physical aggression.
- (D) Current incapacitating psychosis or depression.

~~(b) CBT admissions for children must meet the terms and conditions in (1) through (6) of this subsection.~~

~~(1) A primary diagnosis from the DSM-V with the exception of V-codes, adjustment disorders, and substance-related disorders, accompanied by detailed symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of any personality disorder.~~

~~(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavioral, or status offenses).~~

~~(3) Patient has either received treatment in Acute, Acute II, PRTF or children's crisis unit setting (refer to OAC 317:30-5-241.4), or it has been determined by OHCA or its designated agent that the current disabling symptoms could not or have not been manageable in a less-intensive treatment program.~~

- ~~(A) Patient must have tried and failed a lower level of care or is stepping down from a higher level of care.~~
- ~~(B) Clinical documentation must support need for CBT, rather than facility based crisis stabilization, therapeutic foster care, intensive treatment foster care, or intensive outpatient services.~~
- ~~(C) There is clear evidence to support a reasonable expectation that stepping down to a lower level of~~

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~~care would result in rapid and marked deterioration of functioning in at least two (2) of the five (5) critical areas, listed below, placing the member at risk of need for acute stabilization/inpatient care.~~

- ~~(i) Personal safety;~~
- ~~(ii) Cognitive functioning;~~
- ~~(iii) Family relations;~~
- ~~(iv) Interpersonal relations; or~~
- ~~(v) Educational/vocational performance.~~

~~(4) Child must be medically stable.~~

~~(5) Within the past fourteen (14) calendar days, the patient must have demonstrated an escalating pattern of self injurious or assaultive behavior as evidenced by any of (a)(5)(A) through (D) above. Exceptions to the fourteen (14) day requirement may be made in instances when evidence of the behavior could not have reasonably been discovered within fourteen (14) days (e.g., sexual offenses).~~

~~(6) Within the past fourteen (14) calendar days, the patient's behaviors have created significant functional impairment.~~

### 317:30-5-95.30. Medical necessity criteria for Acute II and PRTF continued stay for children

(a) For continued stay in Acute II and PRTF programs, members must meet the terms and conditions contained in (1), (2), (3), (4), and either (5) or (6) of this subsection:

(1) A primary diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) with the exception of V codes, adjustment disorders, and substance abuse-related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying primary diagnosis, members eighteen (18) to twenty (20) years of age may have a secondary diagnosis of any personality disorder.

(2) Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, or status offenses).

(3) There is documented continuing need for twenty-four (24) hour observation and treatment as evidenced by:

- (A) Intensive behavioral management.
- (B) Intensive treatment with the family/guardian and child in a structured milieu.
- (C) Intensive treatment in preparation for re-entry into community.

(4) Documented efforts of working with child's family, legal guardian and/or custodian and other human service agencies toward a tentative discharge date.

(5) Patient is making measurable progress toward the treatment objectives specified in the treatment plan.

(A) Progress is measured in behavioral terms and reflected in the patient's treatment and discharge plans.

(B) Patient has made gains toward social responsibility and independence.

(C) There is active, ongoing psychiatric treatment and documented progress toward the treatment objective and discharge.

(D) There are documented efforts and evidence of active involvement with the family, guardian, child welfare worker, extended family, etc.

(6) Child's condition has remained unchanged or worsened.

(A) Documentation of regression is measured in behavioral terms and reflected in the patient's treatment and discharge plans.

(B) If condition is unchanged, there is evidence of re-evaluation of the treatment objectives and therapeutic interventions.

(b) For continued stay in a CBT, members must meet the terms and conditions found in (1) through (5) of this subsection.

(1) A primary diagnosis from the DSM-V with the exception of V codes, adjustment disorders, and substance use disorders, accompanied by detailed symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of any personality disorder.

(2) Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, or status offenses).

(3) There is documented continued need for twenty-four (24) hour observation and treatment as evidenced by:

(A) Patient making measurable progress toward the treatment objectives specified in the treatment plan.

(B) Clinical documentation clearly indicates continued significant functional impairment in two (2) of the following five (5) critical areas, as evidenced by specific clinically relevant behavior descriptors:

- (i) Personal safety;
- (ii) Cognitive functioning;
- (iii) Family relations;
- (iv) Interpersonal relations; or
- (v) Educational/vocational performance.

(4) Clinical documentation includes behavioral descriptors indicating patient's response to treatment and supporting patient's ability to benefit from continued treatment at this level of care.

(5) Documented, clear evidence of consistent, active involvement by patient's primary caregiver(s) in the treatment process.

### 317:30-5-95.33. Individual plan of care for children

(a) An individual plan of care (IPC) is a written plan developed for each member within four (4) calendar days of admission to an Acute, Acute II, or a PRTF that directs the care and treatment of that member. The IPC must be recovery-focused, trauma-informed, and specific to culture, age, and gender and include:

(1) A primary diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) with the



exception of V-codes, adjustment disorders, and substance abuse-related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of any personality disorder. Adjustment or substance-related disorders may be a secondary diagnosis;

- (2) The current functional level of the individual;
  - (3) Treatment goals and measurable, time-limited objectives;
  - (4) Any orders for psychotropic medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the member;
  - (5) Plans for continuing care, including review and modification to the IPC; and
  - (6) Plan for discharge, all of which is developed to improve the member's condition to the extent that the inpatient care is no longer necessary.
- (b) The IPC:
- (1) Must be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual member and reflects the need for inpatient psychiatric care;
  - (2) Must be developed by a team of professionals in consultation with the member, his or her parents or legal guardians [for members under the age of eighteen (18)], or others in whose care he or she will be released after discharge. This team must consist of professionals as specified below:
    - (A) For a member admitted to a psychiatric hospital or PRTF, by the "interdisciplinary team" as defined by OAC 317:30-5-95.35(b)(2), per 42 C.F.R. §§ 441.155 and 483.354; or
    - (B) For a member admitted to a psychiatric unit of a general hospital, by a team comprised of at least:
      - (i) An allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U); and
      - (ii) A registered nurse (RN) with a minimum of two (2) years of experience in a mental health treatment setting; and
      - (iii) An LBHP.
  - (3) Must establish treatment goals that are general outcome statements and reflective of informed choices of the member served. Additionally, the treatment goals must be appropriate to the member's age, culture, strengths, needs, abilities, preferences, and limitations;
  - (4) Must establish measurable and time-limited treatment objectives that reflect the expectations of the member served and parents/legal guardians (when applicable), as well as being age, developmentally, and culturally appropriate. When modifications are being made to accommodate age, developmental level, or a cultural issue,

the documentation must be reflected on the IPC. The treatment objectives must be achievable and understandable to the member and the parents/legal guardians (when applicable). The treatment objectives also must be appropriate to the treatment setting and list the frequency of the service;

- (5) Must prescribe an integrated program of therapies, activities, and experiences designed to meet the objectives;
- (6) Must include specific discharge and aftercare plans that are appropriate to the member's needs and effective on the day of discharge. At the time of discharge, aftercare plans will include referral to medication management, outpatient behavioral health counseling, and case management, to include the specific appointment date(s), names, and addresses of service provider(s) and related community services to ensure continuity of care and reintegration for the member into his or her family, school, and community;
- (7) Must be reviewed, at a minimum, every nine (9) calendar days for members admitted to Acute; every fourteen (14) calendar days for members admitted to Acute II or non-specialty PRTF; every twenty-one (21) calendar days for members admitted to an OHCA-approved longer-term treatment program or specialty Acute II or PRTF; ~~and every thirty (30) calendar days for members admitted to a CBT PRTF.~~ Review must be undertaken by the appropriate team specified in OAC 317:30-5-95.33(b)(2), above, to determine that services being provided are or were required on an inpatient basis, and to recommend changes in the IPC as indicated by the member's overall adjustment, progress, symptoms, behavior, and response to treatment;
- (8) Development and review must satisfy the utilization control requirements for recertification [42 C.F.R. §§ 456.60(b), 456.160(b), and 456.360(b)], and establishment and periodic review of the IPC (42 C.F.R. §§ 456.80, 456.180, and 456.380); and,
- (9) Each IPC and IPC review must be clearly identified as such and be signed and dated individually by the member, parents/legal guardians [for members under the age of eighteen (18)], and required team members. ~~All IPCs and IPC reviews must be signed by the member upon completion, except when a member is too physically ill or the member's acuity level precludes him or her from signing. If the member is too physically ill or the member's acuity level precludes him or her from signing the IPC and/or the IPC review at the time of completion, the member must sign the plan when his or her condition improves, but before discharge. The documentation should indicate the reason the member was unable to sign and when the next review will occur to obtain the signature. IPCs and IPC reviews are not valid until completed and appropriately signed and dated. All requirements for the IPCs and IPC reviews must be met; otherwise, a partial per diem recoupment will be merited. If the member's parent/legal guardian is unable to sign the IPC or IPC review on the date it is completed, then within seventy two (72) hours the provider must in good faith and with due diligence attempt to telephonically notify~~

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~~the parent/legal guardian of the document's completion and review it with them. Documentation of reasonable efforts to make contact with the member's parent/legal guardian must be included in the clinical file. In those instances where it is necessary to mail or fax an IPC or IPC review to a parent/legal guardian or Oklahoma Department of Human Services/Oklahoma Office of Juvenile Affairs (OKDHS/OJA) worker for review, the parent/legal guardian and/or OKDHS/OJA worker may fax back his or her signature. The provider must obtain the original signature for the clinical file within thirty (30) days. Stamped or photocopied signatures are not allowed for any parent/legal guardian or member of the treatment team.~~

(A) All IPCs and IPC reviews must be signed by the member upon completion, except when a member is too physically ill or the member's acuity level precludes him or her from signing.

(i) If the member is too physically ill or the member's acuity level precludes him or her from signing the IPC and/or the IPC review at the time of completion, the member must sign the plan when his or her condition improves, but before discharge.

(ii) The documentation should indicate the reason the member was unable to sign and when the next review will occur to obtain the signature.

(B) IPCs and IPC reviews are not valid until completed and appropriately signed and dated.

(i) All requirements for the IPCs and IPC reviews must be met; otherwise, a partial per diem recoupment will be merited.

(ii) If the member's parent/legal guardian is unable to sign the IPC or IPC review on the date it is completed, then within seventy-two (72) hours the provider must in good faith and with due diligence attempt to telephonically notify the parent/legal guardian of the document's completion and review it with them.

(iii) Documentation of reasonable efforts to make contact with the member's parent/legal guardian must be included in the clinical file.

(iv) In those instances where it is necessary to mail or fax an IPC or IPC review to a parent/legal guardian or Oklahoma Department of Human Services/Oklahoma Office of Juvenile Affairs (OKDHS/OJA) worker for review, the parent/legal guardian and/or OKDHS/OJA worker may fax back his or her signature. The provider must obtain the original signature for the clinical file within thirty (30) days. Stamped or photocopied signatures are not allowed for any parent/legal guardian or member of the treatment team.

(10) Medically necessary Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment (EPSDT) services shall be provided to members, under the age of twenty-one (21), who are residing in an inpatient psychiatric facility, regardless of whether such services are listed on the IPC.

Reimbursement for the provision of medically necessary EPSDT services to individuals under age twenty-one (21), while the member is residing in an inpatient psychiatric facility, will be provided in accordance with the Oklahoma Medicaid State Plan.

### **317:30-5-95.34. Active treatment for children**

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

(1) **"Active treatment"** means implementation of a professionally developed and supervised individual plan of care (IPC) that involves the member and his or her family or guardian from the time of an admission, and through the treatment and discharge process.

(2) **"Discharge/transition planning"** means a patient-centered, interdisciplinary process that begins with an initial assessment of the member's needs at the time of admission and continues throughout the member's stay. Active collaboration with the member, family, and all involved outpatient practitioners and agencies should be ongoing throughout treatment so that effective connections remain intact. Needed services may consist of the wraparound process through Systems of Care, counseling, case management, and other supports in the member's community. The linkages with these supports should be made prior to discharge to allow for a smooth transition.

(3) **"Expressive group therapy"** means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, and experiential (e.g., ropes course), recreational, or occupational therapies that encourage the member to express themselves emotionally and psychologically.

(4) **"Family therapy"** means interaction between an LBHP or licensure candidate, member, and family member(s) to facilitate emotional, psychological, or behavioral changes and promote successful communication and understanding.

(5) **"Group rehabilitative treatment"** means behavioral health remedial services, as specified in the individual care plan, which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living (ADL).

(6) **"Individual rehabilitative treatment"** means a face-to-face, one-on-one interaction which is performed to assist a member who is experiencing significant functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder, in order to increase the skills necessary to perform ADL.

(7) **"Individual therapy"** means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face-to-face, one-on-one interaction between an LBHP or licensure candidate and a member to promote emotional or psychological change to alleviate disorders.

(8) **"Process group therapy"** means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between an LBHP or licensure candidate, and two (2) or more members to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "active treatment". Families and/or guardians must be notified of the dates and times of treatment team meetings and be welcomed to attend. Family members must attend family therapy weekly for continued SoonerCare reimbursement. Reasons for exceptions to this requirement must be well-documented in the member's treatment plan. Family therapy attendance by family members is not a requirement for individuals in the age range of eighteen (18) up to twenty-one (21). Active treatment also includes ongoing assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician.

(c) For individuals ~~ages~~ ages eighteen (18) up to twenty-one (21), the active treatment program must be appropriate to the needs of the member and be directed toward restoring and maintaining optimal levels of physical and psychiatric-social functioning. The services and the IPC must be recovery-focused, trauma-informed, specific to culture, age, and gender, and provided face to face. Services, including type and frequency, will be specified in the IPC.

(d) A treatment week consists of seven (7) calendar days. In an Acute setting, the treatment week begins the day of admission. In Acute II and PRTF, the treatment week starts on Sunday and ends on Saturday. Active treatment service components are provided as per item (e) below if the services are provided within a seven (7) day treatment week. A chart outlining active treatment component requirements and timelines may also be found at [www.okhca.org](http://www.okhca.org). If a member has a length of stay of less than seven (7) days, the treatment week is considered a partial treatment week. Active treatment requirements, when provided during a partial treatment week, are delivered as per item (f) below. An hour of treatment must be sixty (60) minutes. When appropriate to meet the needs of the child, the sixty (60) minute timeframe may be split into sessions of no less than fifteen (15) minutes each, on the condition that the active treatment requirements are fully met by the end of the treatment week.

(e) For individuals under age eighteen (18), the components of active treatment consist of face-to-face integrated therapies that are provided on a regular basis and will remain consistent with the member's ongoing need for care. The services and IPC must be recovery-focused, trauma-informed, and specific to culture, age, and gender. Individuals receiving services in an Acute setting must receive seventeen (17) hours of documented active treatment services each week, with seven (7) of those hours dedicated to core services as described in (1) below. Individuals in Acute II and PRTFs must receive fourteen (14) hours of documented active treatment services each week, with four and a half (4.5) of those hours dedicated to core services as described in (1) below. ~~Individuals in CBT PRTFs must receive ten (10) hours of documented active treatment services each week, with four and a half (4.5) of those hours dedicated~~

~~to core services as described in (1) below.~~ Upon fulfilling the core service hours requirement, the member may receive either the elective services listed in (2) below or additional core services to complete the total required hours of active treatment. The following components meet the minimum standards required for active treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) **Core services.**

(A) **Individual treatment provided by the physician.** Individual treatment provided by the physician is required three (3) times per week for Acute and one (1) time a week in Acute II and PRTFs. Individual treatment provided by the physician will never exceed ten (10) calendar days between sessions in Acute II and PRTFs, and never exceed seven (7) calendar days in a specialty Acute II and specialty PRTF, and never exceed thirty (30) calendar days in CBTs. Individual treatment provided by the physician may consist of therapy or medication management intervention for Acute, Acute II, and PRTF programs.

(B) **Individual therapy.** LBHPs or licensure candidates performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution-focused brief therapy, or another widely accepted theoretical framework for treatment. Ongoing assessment of the member's status and response to treatment, as well as psycho-educational intervention, are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal-directed, utilizing techniques appropriate to the member's plan of care and the member's developmental and cognitive abilities. Individual therapy must be provided two (2) hours per week in Acute and one (1) hour per week in Acute II and PRTFs by an LBHP or licensure candidate. One (1) hour of family therapy may be substituted for one (1) hour of individual therapy at the treatment team's discretion.

(C) **Family therapy.** The focus of family therapy must be directly related to the goals and objectives on the individual member's plan of care. Family therapy must be provided one (1) hour per week in Acute, Acute II, and PRTFs. One (1) hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by an LBHP or licensure candidate.

(D) **Process group therapy.** The focus of process group therapy must be directly related to goals and objectives on the individual member's plan of care. The individual member's behavior and the focus of the group must be included in each member's medical record. This service does not include social skills development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided

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three (3) hours per week in Acute and two (2) hours per week in Acute II and PRTFs by an LBHP or licensure candidate. In lieu of one (1) hour of process group therapy, one (1) hour of expressive group therapy provided by an LBHP, licensure candidate, or licensed therapeutic recreation specialist may be substituted.

(E) **Transition/discharge planning.** Transition/discharge planning must be provided one (1) hour per week in Acute and thirty (30) minutes per week in Acute II and PRTFs. Transition/discharge planning can be provided by any level of inpatient staff.

(2) **Elective services.**

(A) **Expressive group therapy.** Through active expression, ~~inner strengths~~inner strengths are discovered that can help the member deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual member's plan of care. Documentation must include how the member is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy.

(B) **Group rehabilitative treatment.** Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle changes, and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives directly related to the IPC.

(C) **Individual rehabilitative treatment.** Services are provided to reduce psychiatric and behavioral impairment and to restore functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re)development, lifestyle changes, and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the IPC and the member's diagnosis.

(D) **Recreation therapy.** Services are provided to reduce psychiatric and behavioral impairment and to restore, remediate, and rehabilitate an individual's level of functioning and independence in life activities. Services are provided to promote health and wellness, as well as reduce or eliminate barriers caused by illness or disabling conditions that limit or restrict a member from participating in life activities. Recreational therapy can be provided in an individual or group setting. If the only activities prescribed for the individual are primarily diversional in nature, (i.e., to provide some social or recreational outlet for the

individual), it will not be regarded as active treatment. If provided, recreational therapy must be a planned therapeutic activity, facilitated by a licensed therapeutic recreation specialist.

(E) **Occupational therapy.** Services are provided to address developmental and/or functional needs related to the performance of self-help skills, adaptive behavioral, and/or sensory, motor, and postural development. Services include therapeutic goal-directed activities and/or exercises used to improve mobility and ADL functions when such functions have been impaired due to illness or injury. Services must be provided by an occupational therapist appropriately licensed in the state in which he or she practices.

(F) **Wellness resource skills development.** Services include providing direction and coordinating support activities that promote physical health. The focus of these activities should include areas such as nutrition, exercise, support to avert and manage physical health concerns like heart disease, diabetes, and cholesterol, and guidance on the effects that medications have on physical health. Services can include ~~individual/group~~individual/group support, exercise groups, and individual physical wellness plan development, implementation, and assistance.

(3) **Modifications to active treatment.** When a member is too physically ill, or his or her acuity level precludes him or her from active behavioral health treatment, documentation must demonstrate that alternative clinically-appropriate services were provided.

(f) Active treatment components, furnished during a partial treatment week, are provided as per item (1) through (4) below. A chart outlining active treatment component requirements and timelines may also be found at [www.okhca.org](http://www.okhca.org). Assessments/evaluations may serve as the initial individual or family session if completed by an LBHP or licensure candidate. Start and stop time must be documented. Active treatment begins the day of admission. Days noted are calendar days.

(1) **Individual treatment provided by the physician.**

(A) In Acute, by day two (2), one (1) visit is required. By day four (4), two (2) visits are required. By day seven (7), three (3) visits are required.

(B) In Acute II and PRTFs, one (1) visit during admission week is required. In PRTFs, ~~not including CBTs,~~ one (1) visit during the admission week is required, then once a week thereafter. ~~In CBT, one (1) visit is required within seven (7) days of admission, then once a month thereafter.~~ Individual treatment provided by the physician will never exceed ten (10) days between sessions in Acute II and PRTFs, never exceed seven (7) days in specialty Acute II and specialty PRTFs ~~and never exceed thirty (30) days in CBTs.~~ The completion of a psychiatric evaluation or a combined psychiatric evaluation and a history and physical (H&P) evaluation may count as the first visit by the physician if the evaluation was personally rendered by the psychiatrist. If the member is admitted on the last day of the admission week, then the

member must be seen by a physician within sixty (60) hours of admission time.

(2) **Individual therapy.**

(A) In Acute, by day three (3), thirty (30) minutes of treatment are required. By day five (5), one (1) hour of treatment is required. Beginning on day seven (7), two (2) hours of treatment are required each week. This does not include admission assessments/evaluations or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(B) In Acute II and PRTFs, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. The treatment week is defined as Sunday through Saturday. Individual therapy may not exceed a total of ten (10) days between sessions. This does not include admission assessment/evaluation or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(3) **Family therapy.**

(A) In Acute, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. This does not include admission assessments/evaluation or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate and the assessments/evaluation or psychosocial evaluation has not been used to substitute the initial individual therapy requirement.

(B) In Acute II and PRTFs, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. This does not include admissions assessment/evaluation or psychosocial evaluation unless personally (face to face) rendered by the LBHP or licensure candidate and the assessment/evaluation or psychosocial evaluation has not been used to substitute the initial individual therapy requirement. Family therapy provided by the LBHP or licensure candidate should not exceed ten (10) days in between sessions.

(4) **Process group therapy.**

(A) In Acute, by day three (3), one (1) hour of treatment is required. By day five (5), two (2) hours of treatment are required. Beginning on day seven (7), three (3) hours of treatment are required each week.

(B) In Acute II and PRTFs, by day five (5), one (1) hour of treatment is required. Beginning on day seven (7), two (2) hours of treatment are required each week.

(g) When an individual is determined to be too ill to participate in treatment, as determined by medical/nursing staff [registered nurse (RN)/licensed practical nurse (LPN)], documentation must be in the record clearly indicating the reason, limitations, and timeframe for those services to be excused without penalty.

**317:30-5-95.37. Medical, psychiatric and social evaluations for inpatient services for children**

The member's medical record must contain complete medical, psychiatric, and social evaluations.

(1) These evaluations are considered critical documents to the integrity of care and treatment and must be completed as follows:

(A) History and physical evaluation must be completed within twenty-four (24) hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) in Acute, Acute II, and PRTFs, ~~excluding CBTs, and within seven (7) calendar days of admission in a CBT.~~

(B) Psychiatric evaluation must be completed within sixty (60) hours of admission by an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry in Acute, Acute II, and PRTFs, ~~excluding CBTs, and within seven (7) calendar days of admission in a CBT.~~

(C) Psychosocial evaluation must be completed within seventy-two (72) hours of an Acute admission, and within seven (7) calendar days of admission to Acute II and PRTFs, ~~including CBTs~~; by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.), LBHP, or licensure candidate.

(2) Each of the evaluations must be clearly identified as such and must be signed and dated by the evaluators.

(3) Each of the evaluations must be completed when the member changes levels of care if the existing evaluation is more than thirty (30) calendar days from admission. For continued stays at the same level of care, evaluations remain current for twelve (12) months from the date of admission and must be updated annually within seven (7) calendar days of that anniversary date.

(4) Existing evaluations of thirty (30) days or less may be used when a member changes provider or level of care. The evaluation(s) must be reviewed, updated as necessary, and signed and dated by the appropriate level of professional as defined by the type of evaluation.

**317:30-5-95.38. Nursing services for children**

Each facility must have a qualified director of psychiatric nursing. In addition to the director of nursing, there must be adequate numbers of registered nurses (RNs), licensed practical nurses (LPNs), and mental health workers to provide nursing care necessary under the active treatment program and to maintain progress notes on each member. ~~In a CBT, an RN must be on site at least one (1) hour each day and be available twenty four (24) hours a day when not on site. An RN must document member progress at least weekly, except in a CBT where the requirement will be twice a month.~~ The progress note must contain recommendations for revisions in the individual plan of care (IPC), as needed, as well as an

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assessment of the member's progress as it relates to the IPC goals and objectives.

[*OKAR Docket #22-423; filed 6-23-22*]

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

[*OKAR Docket #22-442*]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

317:35-1-2 [AMENDED]

Subchapter 5. Eligibility and Countable Income

Part 3. Non-Medical Eligibility Requirements

317:35-5-25 [AMENDED]

(Reference APA WF # 21-26)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Section 208 of the Consolidated Appropriations Act; P. Law 111-8, Section 602 of the Afghan Allies Protection Act of 2009; P. Law 111-118, Section 8120; P. Law 117-31; and Public Law 117-43, Section 2502

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions

317:35-1-2 [AMENDED]

Subchapter 5. Eligibility and Countable Income

Part 3. Non-Medical Eligibility Requirements

317:35-5-25 [AMENDED]

### Gubernatorial approval:

December 21, 2021

### Register publication:

39 Ok Reg 436

### Docket number:

21-972

(Reference APA WF # 21-26)

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule changes are necessary due to recently enacted federal legislation which extended Medicaid to COFA migrants and recently enacted federal legislation related to immigration status and eligibility determinations for certain Afghan nationals.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:

## SUBCHAPTER 1. GENERAL PROVISIONS

### 317:35-1-2. Definitions

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

"**Acute Care Hospital**" means an institution that meets the requirements defined in Section (§) 440.10 of Title 42 of the Code of Federal Regulations (C.F.R.) and:

(A) ~~is~~is maintained primarily for the care and treatment of patients with disorders other than mental diseases;

(B) ~~is~~is formally licensed or formally approved as a hospital by an officially designated authority for state standard setting; and

(C) ~~meets~~Meets the requirements for participation in Medicare as a hospital.

"**Adult**" means an individual twenty-one (21) years of age or older, unless otherwise specified by statute, regulation, and/or policy adopted by the Oklahoma Health Care Authority (OHCA). For eligibility criteria policy for children and adults, please refer to Oklahoma Administrative Code (OAC) 317:35-5-2.

"**ADvantage Administration (AA)**" means the Oklahoma Department of Human Services (OKDHS) which performs certain administrative functions related to the ADvantage Waiver.

"**Aged**" means an individual whose age is established as sixty-five (65) years or older.

"**Agency partner**" means an agency or organization contracted with the OHCA that will assist those applying for services.

"**Aid to Families with Dependent Children (AFDC)**" means the group of low-income families with children described in Section 1931 of the Social Security Act. The Personal Responsibility and Work Opportunity Act of 1996 established the new eligibility group of low-income families with children and linked eligibility income and resource standards and methodologies and the requirement for deprivation for the new group to the State plan for AFDC in effect on July 16, 1996. Oklahoma has elected to be less restrictive for all SoonerCare members related to AFDC. ~~Effective January 1, 2014, children~~Children covered under Section 1931 are related to the children's group, and adults covered under Section 1931 are related to the parent and caretaker relative group. The Modified Adjusted Gross Income (MAGI) methodology is used to determine eligibility for these groups.

"**Alien**" is synonymous with the word "noncitizen" and means an individual who does not have United States citizenship and is not a United States national.

**"Area nurse"** means a registered nurse in the OKDHS Aging Services Division, designated according to geographic areas who evaluates the Uniform Comprehensive Assessment Tool (UCAT) and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services. The area nurse also approves care plan and service plan implementation for Personal Care services.

**"Area nurse designee"** means a registered nurse selected by the area nurse who evaluates the UCAT and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services.

**"Authority"** means the OHCA.

**"Blind"** means an individual who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.

**"Board"** means the OHCA Board.

**"Buy-in"** means the procedure whereby the OHCA pays the member's Medicare premium.

(A) **"Part A Buy-in"** means the procedure whereby the OHCA pays the Medicare Part A premium for individuals determined eligible as Qualified Medicare Beneficiaries Plus (QMBP) who are enrolled in Part A and are not eligible for premium free enrollment as explained under Medicare Part A. This also includes individuals determined to be eligible as Qualified Disabled and Working Individuals (QDWI).

(B) **"Part B Buy-in"** means the procedure whereby the OHCA pays the Medicare Part B premium for categorically needy individuals who are eligible for Part B Medicare. This includes individuals who receive TANF or the State Supplemental Payment to the Aged, Blind or Disabled, and those determined to be Qualified Medicare Beneficiary Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB) or Qualifying Individual-1 (QI-1). Also included are individuals who continue to be categorically needy under the PICKLE amendment and those who retain eligibility after becoming employed.

**"Caretaker relative"** means a person other than the biological or adoptive parent with whom the child resides who meets the specified degree of relationship within the fifth degree of kinship.

**"Case management"** means the activities performed for members to assist them in accessing services, advocacy and problem solving related to service delivery.

**"Categorically needy"** means that income and, when applicable, resources are within the standards for the category to which the individual is related.

**"Categorically related"** or **"related"** means the individual meets basic eligibility requirements for an eligibility group.

**"Certification period"** means the period of eligibility extending from the effective date of certification to the date of termination of eligibility or the date of the next periodic redetermination of eligibility.

**"Child"** means an individual under twenty-one (21) years of age, unless otherwise specified by statute, regulation, and/or policy adopted by the OHCA. For eligibility criteria policy for children and adults, please refer to OAC 317:35-5-2.

**"County"** means the Oklahoma OKDHS' office or offices located in each county within the State.

**"Custody"** means the custodial status, as reported by OKDHS.

**"Deductible/Coinsurance"** means the payment that must be made by or on behalf of an individual eligible for Medicare before Medicare payment is made. The coinsurance is that part of the allowable medical expense not met by Medicare, which must be paid by or on behalf of an individual after the deductible has been met.

(A) For Medicare Part A (Hospital Insurance), the deductible relates to benefits for inpatient services while the patient is in a hospital or nursing facility. After the deductible is met, Medicare pays the remainder of the allowable cost.

(B) For Medicare Part B (Medical Insurance), the deductible is an annual payment that must be made before Medicare payment for medical services. After the deductible is met, Medicare pays eighty percent (80%) of the allowable charge. The remaining twenty percent (20%) is the coinsurance.

**"Disabled"** means an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than twelve (12) months.

**"Disabled child"** means for purposes of Medicaid Recovery a child of any age who is blind, or permanently and totally disabled according to standards set by the Social Security Administration.

**"Estate"** means all real and personal property and other assets included in the member's estate as defined in Title 58 of the Oklahoma Statutes.

**"Expansion adult"** means an individual defined by 42 Code of Federal Regulations (C.F.R.) § 435.119 who is age nineteen (19) or older and under sixty-five (65), at or below 133 percent of the federal poverty level (FPL), and who are not related to the aged, blind, or disabled.

**"Gatekeeping"** means the performance of a comprehensive assessment by the OKDHS nurse utilizing the UCAT for the determination of ~~Medical~~ medical eligibility, care plan development, and the determination of Level of Care for Personal Care, ADvantage Waiver and Nursing Facility services.

**"Ineligible Spouse"** means an individual who is not eligible for Supplemental Security Income (SSI) but is the husband or wife of someone who is receiving SSI.

**"Lawfully present"** means a noncitizen in the United States who is considered to be in lawful immigration status or class.

**"Lawfully residing"** means the individual is lawfully present in the United States and also meets Medicaid residency requirements.

**"Local office"** means the Oklahoma OKDHS' office or offices located in each county within the State.

**"LOCEU"** means the Oklahoma Health Care Authority's Level of Care Evaluation Unit.

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"**MAGI eligibility group**" means an eligibility group whose financial eligibility is determined through the Modified Adjusted Gross Income (MAGI) methodology. The groups subject to MAGI are defined in 42 C.F.R. § 436.603 and listed in OAC 317:35-6-1.

"**Modified Adjusted Gross Income (MAGI)**" means the financial eligibility determination methodology established by the Patient Protection and Affordable Care Act (PPACA) in 2009.

"**Medicare**" means the federally funded health insurance program also known as Title XVIII of the Social Security Act. It consists of four (4) separate programs. Part A is Hospital Insurance, Part B is Medical Insurance, Part C is Medicare Advantage Plans, and Part D is Prescription Drug Coverage.

(A) "**Part A Medicare**" means Hospital Insurance that covers services for inpatient services while the patient is in a hospital or nursing facility. Premium free enrollment is provided for all persons receiving ~~OASDI~~Old Age, Survivors, and Disability Insurance (OASDI) or Railroad Retirement income who are age sixty-five (65) or older and for those under age sixty-five (65) who have been receiving disability benefits under these programs for at least twenty-four (24) months.

(i) Persons with end-stage renal disease who require dialysis treatment or a kidney transplant may also be covered.

(ii) Those who do not receive OASDI or Railroad Retirement income must be age sixty-five (65) or over and pay a large premium for this coverage. Under Authority rules, these individuals are not required to enroll for Part A to be eligible for SoonerCare benefits as categorically needy. They must, however, enroll for Medicare Part B. Individuals eligible as a QMBP or as a QDWI under Medicaid are required to enroll for Medicare Part A. The Authority will pay Part A premiums for QMBP individuals who do not qualify for premium free Part A and for all QDWI's.

(B) "**Part B Medicare**" means Supplemental Medical Insurance that covers physician and related medical services other than inpatient or nursing facility care. Individuals eligible to enroll in Medicare Part B are required to do so under OHCA policy. A monthly premium is required to keep this coverage in effect.

"**Minor child**" means a child under the age of eighteen (18).

"**Noncitizen**" is synonymous with the word "alien" and means an individual who does not have United States citizenship and is not a United States national.

"**Nursing Care**" for the purpose of Medicaid Recovery is care received in a nursing facility, an intermediate care facility for individuals with intellectual disabilities (ICF/IIDs) or other medical institution providing nursing and convalescent care, on a continuing basis, by professional personnel who are responsible to the institution for professional medical services.

"**OCSS**" means the OKDHS' Oklahoma Child Support Services (formerly Child Support Enforcement Division).

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

"**OHCA Eligibility Unit**" means the group within the OHCA that assists with the eligibility determination process.

~~"OKDHS" means the Oklahoma Department of Human Services.~~

"OKDHS" means the Oklahoma Department of Human Services which is also referenced in rules as Department of Human Services (DHS) and Office of Human Services (OHS).

"**OKDHS nurse**" means a registered nurse in the OKDHS Aging Services Division who meets the certification requirements for UCAT Assessor and case manager, and who conducts the uniform assessment of individuals utilizing the UCAT for the purpose of medical eligibility determination. The OKDHS nurse also develops care plans and service plans for Personal Care services based on the UCAT.

"**Qualified Disabled and Working Individual (QDWI)**" means individuals who have lost their Title II OASDI benefits due to excess earnings, but have been allowed to retain Medicare coverage.

"**Qualified Medicare Beneficiary Plus (QMBP)**" means certain aged, blind or disabled individuals who may or may not be enrolled in Medicare Part A, meet the Medicaid QMBP income and resource standards and meet all other Medicaid eligibility requirements.

"**Qualifying Individual**" means certain aged, blind or disabled individuals who are enrolled in Medicare Part A, meet the Medicaid Qualifying Individual income and resource standards and meet all other Medicaid eligibility requirements.

"**Qualifying Individual-1**" means a Qualified Individual who meets the Qualifying Individual-1 income and resource standards.

"**Reasonably compatible**" means that there is no significant discrepancy between information declared by a member or applicant and other information available to the agency. More specific policies and procedures for determining whether a declaration is reasonably compatible are detailed in Oklahoma's Verification Plan.

"**Recipient lock-in**" means when a member is restricted to one primary physician and/or one pharmacy. It occurs when the OHCA determines that a SoonerCare member has used multiple physicians and/or pharmacies in an excessive manner over a twelve (12) month period.

"**Scope**" means the covered medical services for which payment is made to providers on behalf of eligible individuals. The OHCA Provider Manual (OAC 317:30) contains information on covered medical services.

"**Specified Low Income Medicare Beneficiaries (SLMB)**" means individuals who, except for income, meet all of the eligibility requirements for QMBP eligibility and are enrolled in Medicare Part A.

"**TEFRA**" means the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248). TEFRA provides coverage to certain disabled children living in the home who would qualify for SoonerCare if residents of nursing facilities, ~~ICF/IIDs~~Intermediate Care Facilities for Individuals with



Intellectual Disabilities (ICF/IIDs), or inpatient acute care hospital stays are expected to last not less than sixty (60) days.

"Worker" means the OHCA or OKDHS worker responsible for assisting in eligibility determinations.

**SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME**

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

**317:35-5-25. Citizenship/~~alien~~noncitizen status and identity verification requirements**

(a) **Citizenship/~~alien~~noncitizen status and identity verification requirements.** Verification of citizenship/~~alien~~noncitizen status and identity ~~are~~is required for all adults and children approved for SoonerCare. An exception is individuals who are initially eligible for SoonerCare as deemed newborns; according to Section 1903(x) of the Social Security Act, they will not be required to further document citizenship or identity at any subsequent SoonerCare eligibility redetermination. They are considered to have provided satisfactory documentation of citizenship and identity by virtue of being born in the United States.

(1) The types of acceptable evidence that verify identity and citizenship include:

- (A) United States (U.S.) ~~Passport~~passport;
- (B) Certificate of Naturalization issued by U.S. Citizenship & Immigration Services (USCIS)(Form N-550 or N-570);
- (C) Certificate of Citizenship issued by USCIS (Form N-560 or N-561);
- (D) Copy of the Medicare card or printout of a ~~BENDEX~~Beneficiary Earnings and Data Exchange (BENDEX) or ~~SDX~~State Data Exchange (SDX) screen showing receipt of Medicare benefits, Supplemental Security Income or disability benefits from the Social Security Administration; or
- (E) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, with a photograph of the individual.

(2) The types of acceptable evidence that verify citizenship but require additional steps to obtain satisfactory evidence of identity are listed in subparagraphs (A) and (B). Subparagraph (A) lists the most reliable forms of verification and is to be used before using items listed in (B). Subparagraph (B) lists those verifications that are less reliable forms of verification and are used only when the items in (A) are not attainable.

(A) Most reliable forms of citizenship verification are:

- (i) A U.S. public Birth Certificate showing birth in one (1) of the ~~50~~fifty (50) states, the District of Columbia, Puerto Rico (on or after 1/13/1941), Guam (on or after 4/10/1899), the U.S. Virgin Islands (on or after 1/17/1917), American

Samoa, Swain's Island, or the Northern Mariana Islands after 11/4/1986. For Puerto Ricans whose eligibility is being determined for the first time on or after October 1, 2010 and using a birth certificate to verify citizenship, the birth certificate must be a certified birth certificate issued by Puerto Rico on or after July 1, 2010;

(ii) A Consular Report of Birth Abroad of a U.S. citizen issued by the Department of Homeland Security or a Certification of ~~birth~~Birth issued by the State Department (Form FS-240, FS-545 or DS-1350);

(iii) A U.S. Citizen ~~ID~~Identification Card (Form I-179 or I-197);

(iv) A Northern Mariana Identification Card (Form I-873) (Issued by the former INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before 11/3/1986);

(v) An American Indian Card issued by the Department of Homeland Security with the classification code "KIC" (Form I-872);

(vi) A ~~Final Adoption Decree~~final adoption decree showing the child's name and ~~U. S. U. S.~~ place of birth;

(vii) Evidence of U.S. Civil Service employment before 6/1/1976;

(viii) An Official U.S. Military Record of Service showing a U.S. place of birth (for example a DD-214);

(ix) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, without a photograph of the individual, for Native Americans;

(x) ~~Oklahoma Voter Registration Card~~voter registration card; ~~or~~

(xi) Other acceptable documentation as approved by OHCA; or

(xii) Other acceptable documentation to the same extent as described and communicated by the United States Citizenship and Immigration Service (USCIS) from time to time.

(B) Other less reliable forms of citizenship verification are:

(i) An extract of a hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date and that indicates a U.S. place of birth. For children under ~~16~~sixteen (16) the evidence must have been created near the time of birth or five (5) years before the date of application;

(ii) Life, health, or other insurance record showing a U.S. place of birth that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth;

(iii) Federal or ~~State~~state census record showing U.S. citizenship or a U.S. place of birth (generally for persons born 1900 through 1950). The

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census record must also show the applicant's/member's age; or

(iv) One (1) of the following items that show a U.S. place of birth and was created at least five (5) years before the application for SoonerCare. This evidence must be one (1) of the following and show a U.S. place of birth:

- (I) Seneca Indian tribal census record;
- (II) Bureau of Indian Affairs tribal census records of the Navajo Indians;
- (III) U.S. State Vital Statistics official notification of birth registration;
- (IV) An amended U.S. public birth record that is amended more than five (5) years after the person's birth; or

(V) Statement signed by the physician or midwife who was in attendance at the time of birth.

(3) Acceptable evidence of identity that must accompany citizenship evidence listed in (A) and (B) of paragraph (2) of this subsection includes:

- (A) A driver's license issued by a U.S. state or territory with either a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color;
- (B) A school identification card with a photograph of the individual;
- (C) An identification card issued by ~~Federal~~ federal, state, or local government with the same information included on driver's licenses;
- (D) A U.S. military card or draft record;
- (E) A U.S. military dependent's identification card;
- (F) A Native American Tribal document including Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph of the individual or other personal identifying information;
- (G) A U.S. Coast Guard Merchant Mariner card;
- (H) A state court order placing a child in custody as reported by the OKDHS;
- (I) For children under ~~16~~sixteen (16), school records may include nursery or daycare records;
- (J) If none of the verification items on the list are available, an affidavit may be used for children under ~~16~~sixteen (16). An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and cannot be used if an affidavit for citizenship was provided.

(b) **Reasonable opportunity to obtain citizenship—verification.**

~~(1) When the applicant/member is unable to obtain citizenship or alienage verification, a reasonable opportunity is afforded to the applicant/member to obtain the evidence as well as assistance in doing so. A reasonable opportunity is afforded to the applicant/member before taking action affecting the individual's eligibility for SoonerCare. The reasonable opportunity timeframe afforded to SoonerCare members is the same as authorized under Section~~

~~1902(ee) of the Social Security Act and is stated on the documentation request the agency sends to the applicant/member. The state provides Medicaid to citizens and nationals of the United States and certain noncitizens, including during a reasonable opportunity period pending verification of citizenship, national status, or immigration status. The reasonable opportunity period begins on the date the notice of reasonable opportunity is received by the individual and extends at minimum ninety (90) days. Receipt by the individual is deemed to occur five (5) days after the date on the notice, unless the individual shows that the notice was not received in the five-day period. The state provides an extension of the reasonable opportunity period if the individual subject to verification is making a good faith effort to resolve any inconsistencies or obtain any necessary documentation, or the state needs more time to complete the verification process. The state begins to furnish benefits to otherwise eligible individuals on the date of application containing the declaration of citizenship or immigration status and throughout the reasonable opportunity period.~~

(2) The following methods of verification are the least reliable forms of verification and should only be used as a last resort:

(A) Institutional admission papers from a nursing facility, skilled care facility or other institution. Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth;

(B) Medical (clinic, doctor, or hospital) record created at least five (5) years before the initial application date that indicates a U.S. place of birth. For children under the age of sixteen (16), the document must have been created near the time of birth. Medical records generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. An immunization record is not considered a medical record for purposes of establishing U.S. citizenship;

(C) Written affidavit. Affidavits are only used in rare circumstances. If the verification requirements need to be met through affidavits, the following rules apply:

- (i) There must be at least two (2) affidavits by two (2) individuals who have personal knowledge of the event(s) establishing the applicant's/member's claim of citizenship;
- (ii) At least one (1) of the individuals making the affidavit cannot be related to the applicant/member;
- (iii) In order for the affidavit to be acceptable, the persons making them must be able to provide proof of their own citizenship and identity;
- (iv) If the individual(s) making the affidavit has information which explains why evidence establishing the applicant's/member's claim of

citizenship does not exist or cannot be readily obtained, the affidavit must contain this information as well;

(v) The State must obtain a separate affidavit from the applicant/member or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained; and

(vi) The affidavits must be signed under penalty of perjury.

~~(c) **Alienage verification requirements**~~**Noncitizen eligibility.** SoonerCare services are provided as listed described to the defined groups as indicated in this subsection if they meet all other factors of eligibility, including but not limited to residency requirements, and if the relevant noncitizen status is verifiable by federally approved means.—Persons determined as having lawful alien status must have the status verified through Systematic Alien Verification for Entitlement (SAVE).

~~(1) **Eligible aliens (qualified aliens).**~~ The groups listed in the following subparagraphs are eligible for the full range of SoonerCare services. A qualified alien is:

(A) an alien who was admitted to the United States and has resided in the United States for a period greater than five (5) years from the date of entry and who was:

- (i) lawfully admitted for permanent residence under the Immigration and Nationality Act;
- (ii) paroled into the United States under Section 212(d)(5) of such Act for a period of at least one (1) year;
- (iii) granted conditional entry pursuant to Section 203(a)(7) of such Act as in effect prior to April 1, 1980; or
- (iv) a battered spouse, battered child, or parent or child of a battered person with a petition under 204(a)(1)(A) or (B) or 244(a)(3) of the Immigration and Naturalization Act.

(B) an alien who was admitted to the United States and who was:

- (i) granted asylum under Section 208 of such Act regardless of the date asylum is granted;
- (ii) a refugee admitted to the United States under Section 207 of such Act regardless of the date admitted;
- (iii) an alien with deportation withheld under Section 243(h) of such Act regardless of the date deportation was withheld;
- (iv) a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, regardless of the date of entry;
- (v) an alien who is a veteran as defined in 38 U.S.C. § 101, with a discharge characterized as an honorable discharge and not on the grounds of alienage;
- (vi) an alien who is on active duty, other than active duty for training, in the Armed Forces of the United States;

(vii) the spouse or unmarried dependent child of an individual described in (C) of this paragraph;

(viii) a victim of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000; or

(ix) admitted as an Amerasian immigrant.

~~(C) permanent residents who first entered the country under (B) of this paragraph and who later converted to lawful permanent residence status.~~

~~(2) **Other aliens lawfully admitted for permanent residence (non-qualified aliens).**~~ Non-qualified aliens are those individuals who were admitted to the United States and who do not meet any of the definitions in paragraph (1) of this subsection. Non-qualified aliens are ineligible for SoonerCare for five (5) years from the date of entry except that non-qualified aliens are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention, in accordance with 317:30-3-32. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

~~(3) **Afghan Special Immigrants.**~~ Afghan special immigrants, as defined in Public Law 110-161, who have special immigration status after December 26, 2007, are exempt from the five (5) year period of ineligibility for SoonerCare services. All other eligibility requirements must be met to qualify for SoonerCare services. If these individuals do not meet one of the categorical relationships, they may apply and be determined eligible for Refugee Medical Assistance. Afghan special immigrants are considered lawful permanent residents.

~~(4) **Iraqi Special Immigrants.**~~ Iraqi special immigrants, as defined in Public Law 110-181, who have special immigration status after January 28, 2008, are exempt from the five (5) year period of ineligibility for SoonerCare services. All other eligibility requirements must be met to qualify for SoonerCare services. If these individuals do not meet one of the categorical relationships, they may apply and be determined eligible for Refugee Medical Assistance. Iraqi special immigrants are considered lawful permanent residents.

~~(5) **Undocumented aliens.**~~ Undocumented aliens who do not meet any of the definitions in (1)-(2) of this subsection are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention, in accordance with 30-3-32. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the

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newborn child will meet the citizenship requirement at birth.

### (6) **Ineligible aliens.**

(A) Ineligible aliens who do not fall into the categories in (1) and (2) of this subsection, yet have been lawfully admitted for temporary or specified periods of time include, but are not limited to: foreign students, visitors, foreign government representatives, crewmen, members of foreign media and temporary workers including agricultural contract workers. This group is ineligible for SoonerCare, including emergency services, because of the temporary nature of their admission status. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(B) These individuals are generally issued Form I 94, Arrival Departure Record, on which an expiration date is entered. This form is not the same Form I 94 that is issued to persons who have been paroled into the United States. Parolees carry a Form I 94 that is titled "Arrival Departure Record B Parole Edition". Two other forms that do not give the individual "Immigrant" status are Form I 186, Nonresident Alien Mexican Border Crossing Card, and Form SW 434, Mexican Border Visitors Permit.

(d) **Alienage.** A decision regarding eligibility cannot be made until the eligibility condition of citizenship and alienage is determined.

(1) **Immigrants.** Aliens lawfully admitted for permanent residence in the United States are classified as immigrants by the USCIS. These are individuals who entered this country with the express intention of residing here permanently.

(2) **Parolees.** Under Section 212(d)(5) of the Immigration and Nationality Act, individuals can be paroled into the United States for an indefinite or temporary period at the discretion of the United States Attorney General. Individuals admitted as Parolees are considered to meet the "citizenship and alienage" requirement.

(3) **Refugees and Western Hemisphere aliens.** Under Section 203(a)(7) of the Immigration and Nationality Act, Refugees and Western Hemisphere aliens may be lawfully admitted to the United States if, because of persecution or fear of prosecution due to race, religion, or political opinion, they have fled from a Communist or Communist dominated country or from the area of the Middle East; or if they are refugees from natural catastrophes. These entries meet the citizenship and alienage requirement. Western Hemisphere aliens will meet the citizenship requirement for SoonerCare if they can provide either of the documents in subparagraphs (A) and (B) of this paragraph as proof of their alien status.

(A) Form I 94 endorsed "Voluntary Departure Granted Employment Authorized", or

(B) The following court ordered notice sent by USCIS to each of those individuals permitted to remain

in the United States: "Due to a Court Order in *Silva vs. Levi*, 76 C4268 entered by District Judge John F. Grady in the District Court for the Northern District of Illinois, we are taking no action on your case. This means that you are permitted to remain in the United States without threat of deportation or expulsion until further notice. Your employment in the United States is authorized".

(4) **Special provisions relating to Kickapoo Indians.** Kickapoo Indians migrating between Mexico and the United States carry Form I 94, Arrival Departure Record (Parole Edition). If Form I 94 carries the statement that the Kickapoo is "paroled pursuant to Section 212(d)(5) of the Immigration and Nationality Act" or that the "Kickapoo status is pending clarification of status by Congress" regardless of whether such statements are preprinted or handwritten and regardless of a specific mention of the "treaty", they meet the "citizenship and alienage" requirement. All Kickapoo Indians paroled in the United States must renew their paroled status each year at any local Immigration Office. There are other Kickapoos who have entered the United States from Mexico who carry Form I 151 or Form I 551, Alien Registration Receipt Cards. These individuals have the same status as other individuals who have been issued Form I 151 or Form I 551 and, therefore, meet the citizenship and alienage requirements. Still other Kickapoos are classified as Mexican Nationals by the USCIS. They carry Form I 94, Arrival Departure Record, which has been issued as a visiting visa and does not make mention of the treaty. Such form does not meet the "citizenship and alienage" requirements but provides only the ineligible alien status described in (c)(4)(b) of this Section.

(5) **American Indians born in Canada.** An American Indian born in Canada, who has maintained residence in the United States since entry, is considered to be lawfully admitted for permanent residence if he/she is of at least one half (1/2) American Indian blood. This does not include the non citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least fifty (50) percent or more Indian blood. The methods of documentation are birth or baptismal certificate issued on a reservation, tribal records, letter from the Canadian Department of Indian Affairs, or school records.

(6) **Permanent non-immigrants.** Marshall Islanders and individuals from the Republic of Palau and the Federated States of Micronesia are classified as permanent non-immigrants by USCIS. They are eligible for emergency services only, in accordance with 30-3-32.

(1) **Unauthorized resident noncitizen.** An unauthorized resident noncitizen is a foreign-born individual who is not lawfully present in the United States, regardless of having had authorization during a prior period. Unauthorized resident noncitizens have formerly been known as "illegal" or "undocumented" immigrants or "aliens". Per 8 U.S.C. 1611(a) and (b)(1)(A) an unauthorized resident noncitizen is ineligible for Title XIX Medicaid benefits except for emergency Medicaid as defined at subparagraph

(e) below. However, an unauthorized resident noncitizen who is pregnant is eligible for benefits under Title XXI separate Children's Health Insurance Program (CHIP) for services that benefit the unborn child, if the unborn child meets all eligibility requirements.

(2) **Authorized resident noncitizen, not qualified.** An authorized resident noncitizen is a foreign-born individual who is lawfully present in the United States (U.S.) and is lawfully residing in the U.S., but who does not meet the definition of qualified noncitizen, per 8 U.S.C. 1611(a) and (b)(1)(A). The Oklahoma Medicaid program does not exercise the CHIPRA 214 option; therefore, an authorized resident noncitizen is ineligible for Title XIX or Title XXI Medicaid benefits except for emergency Medicaid as defined at subparagraph (e) below. However, an authorized resident noncitizen who is pregnant is eligible for benefits under Title XXI separate CHIP for services that benefit the unborn child, if the unborn child meets all eligibility requirements.

(3) **Qualified noncitizen.** A "qualified noncitizen" is an authorized resident noncitizen who, at the time of applying for Medicaid, has a "qualified noncitizen" immigration status as identified at 8 U.S.C. 1641, as may be amended from time to time. Any qualified noncitizen is eligible for full Title XIX Medicaid benefits after a five-year waiting period beginning on the date of the noncitizen's entry into the U.S. with an immigration status identified as "qualified noncitizen" if the noncitizen meets all other eligibility criteria at the end of the waiting period. During the waiting period, as per 8 U.S.C. 1613(a), any qualified noncitizen is eligible to receive emergency Medicaid as described in subparagraph (e) below if the noncitizen meets all other eligibility requirements, including but not limited to residency requirements.

(A) **Qualified noncitizen immigration statuses.** Immigration statuses identified by federal law as "qualified noncitizen", as of November 2, 2021, include:

- (i) A noncitizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act [INA], per 8 U.S.C. 1101 et seq.;
- (ii) A noncitizen who is granted asylum under INA section 208, per 8 U.S.C. 1158;
- (iii) A noncitizen who is admitted to the U.S. under INA section 207 refugee, per 8 U.S.C. 1157;
- (iv) A noncitizen who is paroled into the U.S. under INA section 212(d)(5), per 8 U.S.C. 1182(d)(5), for a period of at least one (1) year;
- (v) A noncitizen whose deportation is being withheld under INA section 243(h), per 8 U.S.C. 1253 (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act, per 8 U.S.C. 1231(b)(3) (as amended by section 305(a) of division C of Public Law 104-208);
- (vi) A noncitizen who is granted conditional entry before 1980 pursuant to INA section

203(a)(7), per 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

(vii) A noncitizen who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(viii) A noncitizen who, or whose parent or child, has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or lawful permanent resident spouse or parent or by a member of the spouse's or parent's family residing in the same household, except during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty and only when the alien meets all of the following requirements:

(I) The noncitizen, if not the individual subjected to battery or extreme cruelty, had no active participation in the battery or cruelty;

(II) The noncitizen is a credible victim; and

(III) The noncitizen is able to show a substantial connection between the need for benefits sought and the batter or extreme cruelty; and

(IV) The noncitizen has been approved or has a petition pending which sets forth a prima facie case for one of the following: status as a spouse or child of a U.S. citizen under INA 204(a)(1)(A); classification under INA 204(a)(1)(B)(ii) or (iii); suspension of deportation under INA 244(a)(3); status as a spouse or child of a U.S. citizen under INA 204(a)(1)(A); or classification under INA 204(a)(1)(B); or cancellation of removal under INA 240A(b)(2).

(ix) A noncitizen who is or has been a victim of a severe form of trafficking in persons and who has been granted nonimmigrant status under INA 101(a)(15)(T) or who has a pending application that sets forth a prima facie case for eligibility for such immigration status; or

(x) Beginning December 27, 2020, a noncitizen who lawfully resides in the state in accordance with the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(B) **Five-year wait exception for refugees and asylees.**

(i) Excepted from the five-year waiting period per 8 U.S.C. 1612(b)(2)(A), the following qualified noncitizens are immediately eligible for a Medicaid determination upon the date:

(I) A noncitizen is admitted to the U.S. as a refugee under INA section 207 [INA 207 Refugee], per 8 U.S.C. 1157;

(II) A noncitizen is granted asylum under INA section 208, per 8 U.S.C. 1158;

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(III) A noncitizen's deportation is withheld under INA section 243(h), per 8 U.S.C. 1253 (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act, per 8 U.S.C. 1231(b)(3) (as amended by section 305(a) of division C of Public Law 104-208);

(IV) A noncitizen is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(V) A noncitizen is admitted to the U.S. as an Amerasian immigrant under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, section 584.

(ii) This exception to the five-year waiting period expires seven (7) years after the date of action indicated in the list at (c)(3)(B)(i) above. Upon expiration of the exception, the five-year waiting period must be calculated.

(C) **Five-year wait exception for certain permanent resident noncitizens.** The five-year waiting period does not apply and the noncitizen is immediately eligible for a Medicaid determination per 8 U.S.C. 1612(b)(2)(B), if:

(i) The noncitizen is lawfully admitted to the U.S. for permanent residence;

(ii) The noncitizen has either:

(I) worked forty (40) qualifying quarters of coverage as defined under the Act; or

(II) can be credited with such qualifying quarters as provided under 8 U.S.C. 1645; and

(iii) In the case of any such qualifying quarters creditable for any period beginning after December 31, 1996, the noncitizen did not receive any federal means-tested public benefit during any such period.

(D) **Five-year wait exception for veteran and active-duty noncitizens.** As per 8 U.S.C. 1612(b)(2)(C) and 1613, the five-year waiting period does not apply, and the noncitizen is immediately eligible for a Medicaid determination if the noncitizen is a qualified noncitizen who is lawfully residing in the state and is:

(i) A veteran (as defined at INA sections 101, 1101, or 1301, or as described at 38 U.S.C. section 107) with a discharge characterized as an honorable discharge and not on account of noncitizenship and who fulfills the minimum active-duty service requirements of 38 U.S.C. section 5303A(d);

(ii) On active duty (other than active duty for training) in the Armed Forces of the United States;  
or

(iii) The spouse or unmarried dependent child of an individual described herein as a veteran or active-duty noncitizen; or

(iv) The unremarried surviving spouse of an individual described herein as a veteran or active-

duty noncitizen who is deceased, if the marriage fulfills the requirements of 38 U.S.C. section 1304.

(E) **Five-year wait exception for COFA migrants.** Per 8 U.S.C. 1613(b)(3) and as of December 27, 2020, any noncitizen who lawfully resides in the state in accordance with the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau is, with regard to the Medicaid program, are not subject to the five-year waiting period unless and until the individual's status is adjusted to lawful permanent resident (LPR), at which time the five year waiting period must be calculated, unless the individual meets a separate exception to the five-year waiting period:

(i) If the individual entered the U.S. before December 27, 2020, and the date of adjustment to LPR status occurred before December 27, 2020, then the waiting period begins on the date of adjustment and ends after five (5) years;

(ii) If the individual entered the U.S. before December 27, 2020, and the date of adjustment to LPR status occurred after December 27, 2020, the waiting period expires on December 27, 2025; and

(iii) If the individual entered the U.S. after December 27, 2020, and the date of adjustment to LPR status occurred after December 27, 2020, the waiting period begins on the date of entry into the U.S. and ends after five (5) years.

(F) **Five-year wait exception for qualified noncitizens receiving SSI.** Per 8 U.S.C. 1612(b)(2)(F), a qualified noncitizen who is receiving benefits under the supplemental security income program (SSI) under Title XVI of the Act shall be eligible for medical assistance under a state plan under Title XIX of the Social Security Act, per 42 U.S.C. 1396 et seq), under the same terms and conditions that apply to other recipients of SSI benefits.

(4) **Special categories of noncitizens and conferred benefits.** For the following noncitizens, federal law has expressly authorized Title XIX Medicaid benefits as described below and at law.

(A) **Certain American Indian / Alaskan Native (AI/AN) noncitizens.** The qualified noncitizen requirement and the five-year waiting period do not apply to any individual who is:

(i) An American Indian born in Canada to whom section 289 of the Immigration and Nationality Act apply, per 8 U.S.C. 1359; or

(ii) A member of a federally recognized Indian tribe as defined at 25 U.S.C. 450b(e).

(B) **Certain Iraqi nationals.**

(i) Public Law 110-181, Section 1244, while in force and as amended from time to time, created a new category of special immigrant for Iraqi nationals, including:

- (I) Principal noncitizens who have provided relevant service to the U.S. government, while employed by or on behalf of the U.S. government in Iraq, for not less than 1 year beginning on or after March 20, 2003, and who have experienced or are experiencing an ongoing serious threat as a consequence of that employment;
    - (II) The spouse or surviving spouse of a principal noncitizen; and
    - (III) The child of a principal noncitizen.
  - (ii) Public Law 111-118, Section 8120, while in force and as amended from time to time, extended Iraqi special immigrant eligibility for medical assistance to the same extent as INA 207 Refugees are eligible for medical assistance [see subparagraph (c)(3)(B) above] as of December 19, 2009.
  - (iii) As of August 3, 2021, pursuant to the Office of Refugee Resettlement Policy Letter 21-07, while in force and as may be amended, Iraqi nationals granted special immigrant parole, noncitizens with applications pending for special immigrant status, are also eligible for medical assistance to the same extent as INA 207 Refugees are eligible for medical assistance [see subparagraph (c)(3)(B) above];
- (C) **Certain Afghan nationals.**
- (i) Public Law 111-8, Section 602, while in force and as amended from time to time, created a new category of special immigrant for Afghan nationals, including:
    - (I) Principal noncitizens who have provided relevant service to the U.S. government or the International Security Assistance Force, while employed by or on behalf of the U.S. government in Afghan, for not less than one (1) year beginning on or after October 7, 2001, and who have experienced or are experiencing an ongoing serious threat as a consequence of that employment;
    - (II) The spouse or surviving spouse of a principal noncitizen; and
    - (III) The child of a principal noncitizen.
  - (ii) Public Law 111-118, Section 8120, while in force and as amended from time to time, amended Public Law 111-8, Section 602, to extend Afghan special immigrant eligibility for medical assistance to the same extent as INA 207 Refugees are eligible for medical assistance [see subparagraph (c)(3)(B) above] as of December 19, 2009;
  - (iii) As of August 3, 2021, pursuant to the Office of Refugee Resettlement Policy Letter 21-07,

while in force and as may be amended, Afghan nationals granted special immigrant parole, noncitizens with applications pending for special immigrant status, are also eligible for medical assistance to the same extent as INA 207 Refugees are eligible for medical assistance [see subparagraph (c)(3)(B) above];

(iv) Pursuant to Public Law 117-43, Section 2502, while in force and as may be amended from time to time, "applicable individuals" have time-limited eligibility for medical assistance to the same extent as INA 207 Refugees are eligible for medical assistance [See subsection (c)(3)(B) above], until March 21, 2023, or the term of parole, whichever is later. In this subparagraph, the term "applicable individual" includes only:

(I) A citizen or national of Afghanistan or a person with no nationality who last habitually resided in Afghanistan, if the individual is paroled into the U.S. between July 31, 2021, and September 30, 2022;

(II) The spouse or child of an individual described at (c)(3)(C)(iv)(I) of this section, if the spouse or child is paroled into the U.S. after September 30, 2022; and

(III) The parent or legal guardian of an individual described at (c)(3)(C)(iv)(I) who is determined to be an unaccompanied child, if the parent or legal guardian is paroled into the U.S. after September 30, 2022.

(d) **Continuing conformance with federal law.** Notwithstanding any other provision of this section, any noncitizen population that federal law or authority, as amended from time to time, identifies as eligible for medical assistance under Title XIX is eligible for such benefits to the same extent, under the same conditions, and for the same period of time as indicated in the relevant federal law or official federal guidance documents, including any amendments to the law or guidance.

(e) **Emergency Medicaid.** Emergency Medicaid in this section means medical assistance provided to a noncitizen under Title XIX for care and services that are necessary for the treatment of an emergency medical condition, as defined by section 1903(v)(3) of the Act and including labor and delivery but not related to organ transplant procedure, of the noncitizen involved if the noncitizen otherwise meets eligibility requirements for medical assistance under the state plan, including but not limited to residency requirements.

[OAR Docket #22-442; filed 6-23-22]

# Permanent Final Adoptions

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

[OAR Docket #22-437]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Eligibility and Countable Income

Part 1. Determination of Qualifying Categorical Relationships

317:35-5-2 [AMENDED]

317:35-5-9 [NEW]

Part 5. Countable Income and Resources

317:35-5-48 [NEW]

Part 7. Application and Eligibility Determination Procedures

317:35-5-60 [AMENDED]

317:35-5-63 [AMENDED]

Subchapter 6. Soonercare for Pregnant Women and Families with Children

Part 1. General

317:35-6-1 [AMENDED]

Part 3. Application Procedures

317:35-6-15 [AMENDED]

Part 5. Determination of Eligibility for Soonercare Health Benefits for Pregnant Women and Families with Children

317:35-6-36 [AMENDED]

317:35-6-37 [AMENDED]

Subchapter 7. Medical Services

Part 1. General

317:35-7-1 [AMENDED]

Part 7. Certification, Redetermination and Notification

317:35-7-60 [AMENDED]

Subchapter 10. Other Eligibility Factors for Families with Children and Pregnant Women

Part 3. Resources

317:35-10-10 [AMENDED]

Part 5. Income

317:35-10-26 [AMENDED]

(Reference APA WF # 21-05B)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Section 435.119, Title 42 of the Code of Federal Regulations

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions

317:35-1-2 [AMENDED]

Subchapter 5. Eligibility and Countable Income

Part 1. Determination of Qualifying Categorical Relationships

317:35-5-2 [AMENDED]

317:35-5-9 [NEW]

Part 5. Countable Income and Resources

317:35-5-48 [NEW]

Part 7. Application and Eligibility Determination Procedures

317:35-5-60 [AMENDED]

317:35-5-63 [AMENDED]

Subchapter 6. Soonercare for Pregnant Women and Families with Children

Part 1. General

317:35-6-1 [AMENDED]

Part 3. Application Procedures

317:35-6-15 [AMENDED]

Part 5. Determination of Eligibility for Soonercare Health Benefits for Pregnant Women and Families with Children

317:35-6-36 [AMENDED]

317:35-6-37 [AMENDED]

317:35-6-38 [AMENDED]

Subchapter 7. Medical Services

Part 1. General

317:35-7-1 [AMENDED]

Part 7. Certification, Redetermination and Notification

317:35-7-60 [AMENDED]

Subchapter 10. Other Eligibility Factors for Families with Children and Pregnant Women

Part 3. Resources

317:35-10-10 [AMENDED]

Part 5. Income

317:35-10-26 [AMENDED]

### Gubernatorial approval:

July 1, 2021

### Register publication:

38 Ok Reg 799

### Docket number:

21-639

(Reference APA WF # 21-05B)

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule changes will expand Medicaid eligibility for individuals defined by 42 Code of Federal Regulations § 435.119 who are age nineteen (19) or older and under sixty-five (65), at or below 133 percent of the federal poverty level (FPL), and who are not categorically related to the aged, blind, or disabled.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

### PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIPS

#### 317:35-5-2. Categorically related programs

(a) In order to be eligible for SoonerCare, an individual must first meet the description of a member eligibility group. For individuals related to the aged, blind, or disabled groups, categorical relationship is established using the same definitions of age, disability and blindness as used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) or SSA benefits. If the individual is ~~an~~ an SSA/SSI recipient in current payment status (including presumptive eligibility), a ~~TANF~~ Temporary Assistance for Needy Families (TANF) recipient, an adoption assistance or



kinship guardianship assistance recipient, or is under age nineteen (19), categorical relationship is automatically established. For individuals related to expansion adults the categorical relationship is established and defined by 42 Code of Federal Regulations (C.F.R.) § 435.119. Categorical relationship to the pregnancy group is established when the determination is made by medical evidence that the individual is or has been pregnant. Effective January 1, 2014, verification of pregnancy is only required if the individual's declaration that she is pregnant is not reasonably compatible with other information available to the agency. Pregnancy-related services include all medical services provided within the scope of the program during the prenatal, delivery and postpartum periods for women in this pregnancy group; see Subchapter 22 of this Chapter for services for unborn children covered under Title XXI. For an individual age nineteen (19) or over to be related to the parent and caretaker relative group, the individual must have a minor dependent child. For an individual to be related to the former foster care children group, the individual must not be eligible for the Title XIX pregnancy or parent or caretaker relative groups, must be aged 19-26nineteen (19) to twenty-six (26), and must have been receiving SoonerCare as a foster care child when he/she aged out of foster care in Oklahoma. There is no income or resource test for the former foster care children group. Categorical relationship to Refugee/refugee services is established in accordance with OAC 317:35-5-25. Categorical relationship for the Breast and Cervical Cancer (BCC) Treatment/treatment program is established in accordance with OAC 317:35-24Subchapter 21 of this Chapter. Categorical relationship for the SoonerPlan Family Planning Program/family planning program is established in accordance with OAC 317:35-5-8. Categorical relationship for pregnancy related benefits covered under Title XXI is established in accordance with OAC 317:35-22Subchapter 22 of the Chapter. Benefits for pregnancies covered under Title XXI medical services are provided within the scope of the program during the prenatal, delivery and postpartum care when included in the global delivery payment. To be eligible for SoonerCare benefits, an individual must be related to one (1) of the following eligibility groups and as defined above in this Section:

- (1) Aged;
- (2) Disabled;
- (3) Blind;
- (4) Pregnancy;
- (5) Children, including newborns deemed eligible;
- (6) Parents and Caretaker Relatives/caretaker relatives;
- (7) Refugee;
- (8) Breast and Cervical Cancer Treatment/BCC treatment program;
- (9) SoonerPlan Family Planning Program/family planning program;
- (10) Benefits for pregnancies covered under Title XXI;
- (11) Former foster care children; or
- (12) Expansion adults.

(b) The Authority may provide SoonerCare to reasonable categories of individuals under age twenty-one (21).

(1) Individuals eligible for SoonerCare benefits include individuals between the ages of nineteen (19) and twenty-one (21):

- (A) ~~for~~For whom a public agency is assuming full or partial financial responsibility who are in custody as reported by the Oklahoma Department of Human Services (OKDHS) and in foster homes, private institutions or public facilities; or
- (B) ~~in~~In adoptions subsidized in full or in part by a public agency; or
- (C) ~~individuals~~Individuals under age ~~twenty~~ ~~one~~twenty-one (21) receiving active treatment as inpatients in public psychiatric facilities or programs if inpatient psychiatric services for individuals under age ~~twenty~~ ~~one~~twenty-one (21) are provided under the State Plan and the individuals are supported in full or in part by a public agency; or

(2) Individuals eligible for SoonerCare benefits include individuals between the ages of eighteen (18) and ~~twenty~~ ~~one~~twenty-one (21) if they are in custody as reported by OKDHS on their ~~18<sup>th</sup>~~eighteenth (18<sup>th</sup>) birthday and living in an ~~out-of-home~~out-of-home placement.

**317:35-5-9. Determining the categorical relationship to expansion adults**

(a) To be eligible for SoonerCare under expansion adults, individuals shall meet the following requirements:

- (1) Are age nineteen (19) years or older, and under age sixty-five (65);
- (2) Are not pregnant;
- (3) Are not entitled to or enrolled for Medicare benefits under part A or B;
- (4) Are not eligible for SoonerCare in another mandatory eligibility group under Oklahoma's Medicaid State Plan;
- (5) Have household income that is at or below 133 percent of the federal poverty level (FPL) for their household size; and
- (6) Meet general SoonerCare program eligibility requirements described in Oklahoma Administrative Code (OAC) 317:35, including but not limited to citizenship and residence requirements.

(b) An individual whose household's modified adjusted gross income (MAGI) exceeds the income standard for participation under the parent and caretaker relative group, including those eligible for transitional medical assistance per 317:35-6-64.1, may participate in expansion adults if:

- (1) The individual resides with and assumes primary responsibility for the care of a child under nineteen (19) years of age; and
- (2) The child is enrolled in SoonerCare or other minimum essential coverage, as described by the Affordable Care Act.

**PART 5. COUNTABLE INCOME AND RESOURCES**

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## 317:35-5-48. Determination of income and resources for categorical relationship to expansion adults

Income is determined in accordance with the Modified Adjusted Gross Income (MAGI) methodology for individuals related to expansion adults. See Subchapter 6 of this Chapter for MAGI rules.

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

### **317:35-5-60. Application for SoonerCare; forms**

(a) **Application.** An application for ~~Medical—Services~~medical services consists of the ~~Medical Assistance Application~~SoonerCare application. The application form is signed by the individual, parent, spouse, guardian or someone else acting on the individual's behalf. An individual does not have to have received a medical service nor expect to receive one to be certified for SoonerCare. ~~Effective January 1, 2014, the~~The application form is available as an online application, as a paper form, and is available to be completed by telephone with the assistance of the agency.

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other medical facility or in the county OKDHS office. An application may be made online by individuals who are pregnant, or have children or are applying for family planning services only. A ~~face-to-face~~face-to-face interview is not required. Only SoonerCare applications for women who are pregnant, and families with children and for family planning services are mailed to the OHCA Eligibility Unit. Applications for other medical services may be mailed or faxed to the local county OKDHS office. If faxed, it is not necessary to send the original application. When an individual indicates a need for health benefits, the physician or facility may forward an application or 08MA005E to the OKDHS county office of the patient's residence for processing. The physician or facility may forward an application or OKDHS form 08MA005E for individuals who are pregnant, or have children or are applying for family planning services only to the OHCA Eligibility Unit for processing. If the applicant is unable to sign the application, someone acting on his/her behalf may sign the application. ~~Effective October 1, 2013, an~~An application for SoonerCare may also be submitted through the Health Insurance Exchange.

(2) OKDHS form 08MA005E, Notification of Needed Medical Services, is required only for preauthorization of medical services. Although not required, the form may be submitted by the physician or facility as notification of a need for medical services. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the SoonerCare Application form or OKDHS form 08MA005E constitutes an application for SoonerCare.

(4) If OKDHS form 08MA005E is received and an application cannot be completed, receipt of OKDHS form

08MA005E constitutes an application which must be registered and subsequently denied. The applicant and provider are notified by computer-generated notice.

(5) If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the Medical Assistance Application form.

(b) **Date of application.** When an application is made online, the date of application is the date the application is submitted online. The date of application for a paper application is the date a signed application is received and stamped in by contracted agency partners or OHCA. When a request for SoonerCare is made orally, and that request is followed within ~~20~~twenty (20) days by a signed application, the documented date of the oral request is the date of application. When OKDHS form 08MA005E is received by OKDHS, or received by OHCA and forwarded to OKDHS, the earliest of the date stamps is considered the date of request and should be honored when followed within ~~20~~twenty (20) days by a signed application for SoonerCare.

### **317:35-5-63. Agency responsible for determination of eligibility**

(a) **Determination of eligibility by Oklahoma Health Care Authority (OHCA).** OHCA is responsible for determining eligibility for the following eligibility groups:

- (1) ~~children~~Children;
- (2) ~~newborns~~Newborns deemed eligible;
- (3) ~~pregnant~~Pregnant women;
- (4) ~~pregnancy-related~~Pregnancy-related services under Title XXI;
- (5) ~~parents~~Parents and caretaker relatives;
- (6) ~~former~~Former foster care children;
- (7) ~~Oklahoma Cares—Breast and Cervical Cancer pro-~~gram (BCC) treatment program;
- (8) ~~SoonerPlan Family Planning~~family planning program;
- (9) Programs of All-Inclusive Care for the Elderly (PACE); and
- (10) Expansion adults.

(b) **Determination of eligibility by ~~DHS~~OKDHS.** ~~DHS~~OKDHS is responsible for determining eligibility for the following eligibility groups:

- (1) TANF recipients;
- (2) ~~recipients~~Recipients of adoption assistance or kinship guardianship assistance;
- (3) ~~state~~State custody;
- (4) Refugee ~~Medical Assistance~~medical assistance;
- (5) ~~aged~~Aged;
- (6) ~~blind~~Blind;
- (7) ~~disabled~~Disabled;
- (8) Tuberculosis;
- (9) ~~QMBP~~Qualified Medicare Beneficiary Plus (QMBP);
- (10) ~~QDWI~~Qualified Disabled Working Individual (QDWI);
- (11) ~~SLMB~~Specified Low-Income Medicare Beneficiary (SLMB);

- (12) ~~QI~~Qualifying Individual (QI-1);
  - (13) ~~Long term~~Long-term care services; and
  - (14) ~~alien~~Alien emergency services.
- (c) **Determination of eligibility for programs offered through the Health Insurance Exchange.** ~~Effective October 1, 2013,~~ OHCA assesses applicants who are found to be ineligible for SoonerCare for potential eligibility for affordable insurance programs offered through the Health Insurance Exchange. OHCA does not determine eligibility or ineligibility for those programs. OHCA facilitates the determination for those affordable insurance programs by forwarding applicants' electronic applications to the Health Insurance Exchange.

**SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN**

**PART 1. GENERAL**

**317:35-6-1. Scope and applicability**

- (a) The rules in this Subchapter apply when determining financial eligibility for SoonerCare ~~Health—Benefits~~health benefits for groups whose eligibility is determined using Modified Adjusted Gross Income (MAGI). These rules apply to the following groups:
- (1) Children;
  - (2) Pregnant women;
  - (3) Pregnancy-related services under Title XXI;
  - (4) Parents and caretaker relatives;
  - (5) ~~SoonerPlan Family Planning~~family planning program;
  - (6) Independent foster care adolescents;
  - (7) ~~Inpatients in public psychiatric facilities under 21, and~~
  - (7) Individuals under age twenty-one (21) in public psychiatric facilities;
  - (8) Tuberculosis;
  - (9) Former foster care children;
  - (10) Children with non-IV-E adoption assistance;
  - (11) Individuals in adoptions subsidized in full or part by a public agency; and
  - (12) Expansion adults.
- (b) See ~~42 Code of Federal Regulation, Sec. 435.60342~~ C.F.R. § 435.603 to determine whether MAGI applies to a group not specifically listed in this Section.
- (c) MAGI rules ~~take~~took effect on October 1, 2013.

**PART 3. APPLICATION PROCEDURES**

**317:35-6-15. ~~Application for SoonerCare for Pregnant Women and Families with Children~~SoonerCare application for pregnant women, families with children, and expansion adults; forms**

(a) **Application.** An application for pregnant women ~~and families with children, and expansion adults~~ consists of the SoonerCare application. The application form is signed by the individual, parent, spouse, guardian, or someone else acting on the individual's behalf. An individual does not have to have received a medical service nor expect to receive one to be certified for SoonerCare. ~~Effective October 1, 2013, individuals~~Individuals who wish to use a paper application form to apply for coverage under a MAGI eligibility group must submit the federal Single Streamlined Application to apply for SoonerCare.

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other medical facility, ~~Health Department, in the county OKDHS office~~Oklahoma Department of Health, in the individual's county Oklahoma Department of Human Services (OKDHS) office, or online. A ~~face-to-face~~face-to-face interview is not required. Applications are mailed to the OHCA Eligibility Unit. When an individual indicates a need for SoonerCare, the physician or facility may forward an application to the OHCA Eligibility Unit for processing. If the applicant is unable to sign the application, someone acting on his/her behalf may sign the application. ~~Effective October 1, 2013, an~~An application for SoonerCare may also be submitted through the Health Insurance Exchange.

(2) OKDHS form 08MA005E, Notification of Needed Medical Services, is required only for preauthorization of medical services. Although not required, the form may be submitted by the physician or facility as notification of a need for medical services. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the SoonerCare ~~Application~~application form or OKDHS form 08MA005E constitutes an application for SoonerCare.

(4) If OKDHS form 08MA005E is received and a SoonerCare application cannot be completed, receipt of OKDHS form 08MA005E constitutes an application which must be registered and subsequently denied. The applicant and provider are notified by computer-generated notice.

(5) A hospital providing services may file an electronic Notification of Date of Service (NODOS) form with OHCA up to five (5) days from the date services are rendered. The hospital, applicant, or someone acting on the applicant's behalf has fifteen (15) days from the date the NODOS form was received by OHCA to submit a completed SoonerCare application. Filing a ~~Notification of Date of Service~~NODOS does not guarantee coverage and if a completed application is not submitted within fifteen (15) days, the NODOS is void.

(b) **Date of application.** When an application is made online, the date of application is the date the application is

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submitted online. The date of application for a paper application is the date a signed application is received and stamped in by contracted agency partners or OHCA. When a request for SoonerCare is made orally, and that request is followed within ~~20~~twenty (20) days by a signed application, the documented date of the oral request is the date of application. When OKDHS form 08MA005E is received by OKDHS, or received by OHCA and forwarded to OKDHS, the earliest of the date stamps is considered the date of request and should be honored when followed within ~~20~~twenty (20) days by a signed application for SoonerCare.

(c) **Other application and signature requirements.** For additional rules regarding other application and eligibility determination procedures, see Part 7 of Subchapter 5 of this Chapter.

## PART 5. DETERMINATION OF ELIGIBILITY FOR SOONERCARE HEALTH BENEFITS FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

**317:35-6-36. Financial eligibility of individuals categorically related to ~~AFDC or pregnancy-related services~~aid to families with dependent children (AFDC), pregnancy-related services or expansion adults**

(a) ~~Prior to October 1, 2013.~~ When determining financial eligibility for an individual related to ~~AFDC or pregnancy-related services or expansion adults,~~ the income of the following persons (if living together or if living apart as long as there has been no break in the family relationship) are considered. These persons include the:

- (1) ~~the individual~~Individual;
- (2) ~~the spouse~~Spouse of the individual;
- (3) ~~the biological~~Biological or adoptive parent(s) of the individual who is a minor dependent child. For ~~Health Benefits~~health benefits only, income of the stepparent of the minor dependent child is determined according to OAC 317:35-5-45;
- (4) ~~minor~~Minor dependent children of the individual if the children are being included in the case for ~~Health Benefits~~health benefits. If the individual is ~~19~~nineteen (19) years or older and not pregnant, at least one (1) minor dependent child must be living in the home and included in the case for the individual to be related to AFDC;
- (5) ~~blood~~Blood related siblings, of the individual who is a minor child, if they are included in the case for ~~Health Benefits~~health benefits; or
- (6) ~~a caretaker~~Caretaker relative and spouse (if any) and minor dependent children when the caretaker relative is to be included for coverage.

(b) ~~Prior to October 1, 2013.~~ The family has the option to ~~exclude minor dependent children or blood related siblings [OAC 317:35-6-36(a)(4) and (5)] and their income from the eligibility process. However, for the adult to be eligible, at least one minor child and his/her income must be included in the~~

~~case. The worker has the responsibility to inform the family of the most advantageous consideration in regard to coverage and income. The MAGI methodology is used to determine eligibility for MAGI eligibility groups. See OAC 317:35-6-39 through 317:35-6-54.~~

~~(e) Effective October 1, 2013.~~ The MAGI methodology is used to determine eligibility for MAGI eligibility groups. See OAC 317:35-6-39 through OAC 317:35-6-54.

~~(dc) Effective October 1, 2013.~~ Individuals who are determined to be part of a MAGI household cannot be excluded from the household; likewise, income of individuals determined to be part of a MAGI household cannot be excluded unless the exclusion is expressly required under MAGI rules.

~~(e) When determining financial eligibility for an individual related to the children, parent or caretaker relative, or pregnancy groups, consideration is not given to income of any person who is aged, blind or disabled and receives SSI or is determined to be categorically needy.~~

**317:35-6-37. Financial eligibility of categorically needy individuals related to ~~AFDC or pregnancy-related services~~aid to families with dependent children (AFDC), pregnancy-related services, parent/caretaker relatives, families with children, and expansion adults**

Individuals whose income is less than the SoonerCare ~~Income Guidelines~~income guidelines for the applicable eligibility group are financially eligible for SoonerCare.

(1) **Categorically related to pregnancy-related services.** For an individual related to pregnancy-related services to be financially eligible, the countable income must be less than the appropriate standard according to the family size on the SoonerCare ~~Income Guidelines~~income guidelines. In determining the household size, the pregnant woman and her unborn child(ren) are included.

(2) **Categorically related to ~~children's and parent/caretakers' groups~~the children and parent/caretaker relative groups.**

(A) **Parent/~~caretakers'~~caretaker relative group.** For the individual in the parent/~~caretakers'~~caretaker relative group to be considered categorically needy, the SoonerCare ~~Income Guidelines~~income guidelines must be used.

(i) ~~SoonerCare Income Guidelines.~~ Individuals age ~~19~~nineteen (19) years or older, other than pregnant women, are determined categorically needy if countable income is ~~lesseq~~equal to or less than the ~~Categorically Needy Standard~~categorically needy standard, according to the family size.

(ii) ~~SoonerCare Income Guidelines.~~ All individuals under ~~19~~nineteen (19) years of age are determined categorically needy if countable income is equal to or less than the ~~Categorically Needy Standard~~categorically needy standard, according to the size of the family.

(B) **Families with children.** Individuals who meet financial eligibility criteria for the ~~children's~~children and parent/~~caretakers'~~caretaker relative groups are:

- (i) All persons included in an active TANF case.
- (ii) Individuals related to the ~~children's~~children or parent/~~caretakers'~~caretaker relative groups whose countable income is within the current appropriate income standard, but who do not receive TANF assistance.
- (iii) All persons in a TANF case in ~~Work Supplementation~~work supplementation status who meet TANF eligibility conditions other than earned income.
- (iv) Those individuals who continue to be eligible for Medicaid in a TANF case after they become ineligible for a TANF payment. These individuals will continue to be considered categorically needy if the TANF case was closed due to child or spousal support, the loss or reduction of earned income exemption by any member of the assistance unit, or the new or increased earnings of the parent/caretaker relative.

(3) **Expansion adults.** Individuals who meet financial eligibility criteria for expansion adults are established and defined by 42 C.F.R. § 435.119 and by the Oklahoma Medicaid State Plan.

**SUBCHAPTER 7. MEDICAL SERVICES**

**PART 1. GENERAL**

**317:35-7-1. Scope and applicability**

~~The rules in this Subchapter apply when determining eligibility for Medical Services under Medicaid. The rules in this Subchapter apply when determining eligibility for medical services for children who are reported by OKDHS as being in custody and individuals categorically related to: Aged, Blind and Disabled (ABD); Tuberculosis; SoonerPlan family planning program; Qualified Medicare Beneficiary Plus (QMBP); Qualified Disabled Working Individual (QDWI); Specified Low-Income Medicare Beneficiary (SLMB); Qualifying Individual (QI-1); and TEFRA.~~

**PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION**

**317:35-7-60. Certification for SoonerCare**

- (a) ~~The rules in this Section apply to all categories of eligibles EXCEPT:~~
  - (1) ~~categorically needy SoonerCare members who are categorically related to AFDC or Pregnancy Related Services, AND~~
  - (2) ~~who if eligible, would be enrolled in SoonerCare,~~  
~~or~~

(3) ~~individuals categorically related to the Family Planning Program.~~

(b) ~~An individual determined eligible for SoonerCare may be certified for a medical service provided on or after the first day of the third month prior to the month of application if all eligibility criteria are met during the three month period. The certification period is determined beginning with the month the medical service was received or expected to be received or the month of application for categorically needy cases in which a medical service has not been received. The period of certification may cover retroactive or future months.~~

(4) ~~**Certification as categorically.** A categorically needy individual who is categorically related to ABD is assigned a certification period of 12 months. A categorically needy individual who is determined eligible for a State Supplemental Payment (SSP) is certified effective the month of application. If the individual is also eligible for payment for medical services received during the three months preceding the month of application, the SoonerCare benefit is certified for the appropriate months. If the individual is not eligible for SSP, the first month of certification is the month that a medical service was provided or, if no medical service was provided, the month of application.~~

(A) ~~**Certification of individuals categorically needy and categorically related to ABD.** The certification period for the individual categorically related to ABD can be assigned for up to 12 months. The individual must be determined as categorically needy for each month of the certification period. The certification period is 12 months unless the individual:~~

- (i) ~~is certified as eligible in a money payment case during the 12 month period;~~
- (ii) ~~is certified for long term care during the 12 month period;~~
- (iii) ~~becomes ineligible for medical assistance after the initial month;~~
- (iv) ~~becomes ineligible as categorically needy;~~  
~~or~~
- (v) ~~is deceased.~~

(B) ~~**Certification period.** If any of the situations listed in subparagraph (A) of this paragraph occur after the initial month, the case is closed by the worker.~~

- (i) ~~If income and/or resources change after certification causing the case to exceed the categorically needy maximums, the case is closed.~~
- (ii) ~~A pregnant individual included in an ABD case which closes continues to be eligible for pregnancy related services through the postpartum period.~~

(a) **General.** The rules in this Section apply to the following categories of eligibles:

- (1) Categorically needy SoonerCare members who are categorically related to Aged, Blind, and Disabled (ABD);
- (2) Categorically needy SoonerCare members who are categorically related to ABD, and are eligible for one of the following:
  - (A) Qualified Medicare Beneficiary Plus (QMBP);

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(B) Qualified Disabled and Working Individual (QDWI);

(C) Specified Low-Income Medicare Beneficiary (SLMB);

(D) Tuberculosis (TB) related services;

(E) Qualifying Individual (QI); or

(F) Tax Equity and Fiscal Responsibility Act (TEFRA).

**(b) Certification of individuals categorically needy and categorically related to ABD.** The certification period for the categorically needy individual who is categorically related to ABD can be up to twelve (12) months from the date of certification. The individual must meet all factors of eligibility for each month of the certification period. The certification can be for a retroactive period of coverage, during the three (3) months directly before the month of application, if the individual received covered medical services at any time during those three (3) months and would have been eligible for SoonerCare at the time he or she received the services. The cash payment portion of the State Supplemental Payment (SSP) may not be paid for any period prior to the month of application.

(1) The certification period is twelve (12) months unless the individual:

(A) Is certified as eligible in a money payment case during the twelve (12) month period;

(B) Is certified for long-term care during the twelve (12) month period;

(C) Becomes ineligible for medical assistance after the initial month;

(D) Becomes ineligible as categorically needy; or

(E) Is deceased.

(2) If any of the situations listed in subparagraph (1) of this paragraph occur after the initial month, the case is closed by the worker.

(A) If income and/or resources change after certification causing the case to exceed the categorically needy maximums, the case is closed.

(B) A pregnant individual included in an ABD case which closes continues to be eligible for pregnancy related services through the postpartum period.

**(c2) Certification of individuals categorically related to ABD and eligible as ~~Qualified Medicare Beneficiaries~~ Plus QMBP.** The SoonerCare benefit may be certified on the first day of the third month prior to the month of application or later. If the individual receives Medicare and is eligible for SSP, the effective date of certification for the Medicare Part B premium buy-in is the month of certification for SSP. If the individual receives Medicare and is not eligible for SSP, the effective date of certification for the Medicare Part B premium buy-in is the first day of the month following the month in which the eligibility determination is made (regardless of when application was made).

(1A) An individual determined eligible for QMBP benefits is assigned a certification period of ~~12~~twelve (12) months. At any time during the certification period that the individual becomes ineligible, the case is closed using regular negative action procedures.

(2B) At the end of the certification period a redetermination of QMBP eligibility is required, using the same forms and procedures as for ABD categorically needy individuals.

**(d3) Certification of individuals categorically related to ABD and eligible as ~~Qualified Disabled and Working Individual~~ QDWI.** The Social Security Administration (SSA) is responsible for referrals of individuals potentially eligible for QDWI. Eligibility factors verified by the SSA are Medicare Part A eligibility and discontinuation of disability benefits due to excessive earnings. When the OKDHS State Office office receives referrals from the SSA, the county will be notified and is responsible for obtaining an application and establishing other factors of eligibility. If an individual contacts the county office stating he/she has been advised by SSA that he/she is a potential QDWI, the county takes a SoonerCare application. The effective date of certification for QDWI benefits is based on the date of application and the date all eligibility criteria, including enrollment for Medicare Part A, are met. For example, if an individual applies for benefits in October and is already enrolled in Medicare Part A, eligibility can be effective October 1 (or up to three (3) months prior to October 1, if all eligibility criteria are met during the three (3) month period). However, if in the example, the individual's enrollment for Part A is not effective until November 1, eligibility cannot be effective until that date. Eligibility can never be effective prior to July 1, 1990, the effective date of this provision. These cases will be certified for a period of ~~12~~twelve (12) months. At the end of the ~~12-month~~twelve (12) month period, eligibility redetermination is required. If the individual becomes ineligible at any time during the certification period, the case is closed.

**(e4) Certification of individuals categorically related to ABD and eligible as ~~Specified Low-Income Medicare Beneficiary (SLMB)~~ SLMB.** The effective date of certification of SLMB benefits may begin on the first day of the third month prior to the month of application or later. A certification can never be earlier than the date of entitlement of Medicare Part A. An individual determined eligible for SLMB benefits is assigned a certification period of ~~12~~twelve (12) months. At any time during the certification period the individual becomes ineligible, the case is closed using standard negative action procedures. At the end of the certification period a redetermination of SLMB eligibility is required. A redetermination of SLMB eligibility must also be done at the same time a dually eligible individual has a redetermination of eligibility for other SoonerCare benefits such as long-term care.

**(f5) Certification of individuals categorically related to disability and eligible for TB related services.**

(1A) An individual determined eligible for TB related services may be certified the first day of the third month prior to the month of application or later, but no earlier than the first day of the month the TB infection is diagnosed.

(2B) A certification period of ~~12~~twelve (12) months will be assigned. At any time during the certification period that the individual becomes ineligible, the case is closed using the regular negative action procedures.

(3C) At the end of the certification period a new application will be required if additional treatment is needed.

(g6) **Certification of individuals categorically related to ABD and eligible as ~~Qualifying Individuals~~ QI.** The effective date of certification for the QI-1 may begin on the first day of the third month prior to the month of application or later. A certification can never be earlier than the date of entitlement of Medicare Part A. An individual determined eligible for QI benefits is assigned a certification period of ~~12~~twelve (12) months. At any time during the certification period the individual becomes ineligible, the case is closed using standard negative action procedures. At the end of the certification period, a redetermination of QI eligibility is required.

(1A) Since the State's allotment to pay Medicare premiums for this group of individuals is limited, the State must limit the number of QIs so that the amount of assistance provided during the year does not exceed the State's allotment for that year.

(2B) Persons selected to receive assistance are entitled to receive assistance with their Medicare premiums for the remainder of the federal fiscal year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year.

(h7) **Certification of individuals ~~Related~~related to Aid to the Disabled for TEFRA.** The certification period for individuals categorically related to the Disabled for TEFRA is ~~12~~twelve (12) months.

**SUBCHAPTER 10. OTHER ELIGIBILITY FACTORS FOR FAMILIES WITH CHILDREN AND PREGNANT WOMEN**

**PART 3. RESOURCES**

**317:35-10-10. Capital resources**

Capital resources are disregarded for individuals related to the children, parent and caretaker relative, former foster care children, SoonerPlan family planning program, expansion adults, or pregnancy eligibility groups, including pregnancies covered under Title XXI. Countable income generated from any resource is considered in accordance with Part 6 of Subchapter 6 of this Chapter.

**PART 5. INCOME**

**317:35-10-26. Income**

(a) **General provisions regarding income.**

(1) The income of categorically needy individuals who are related to the children, ~~parent or caretaker relative~~parent/caretaker relative, SoonerPlan family planning program, or Title XIX and XXI pregnancy eligibility groups or expansion adults does not require verification, unless questionable. If the income information is

questionable, it must be verified. If there appears to be a conflict in the information provided, the worker must investigate the situation to determine if income verification is necessary.

(2) All available income, except that required to be disregarded by law or ~~OHCA's~~Oklahoma Health Care Authority's (OHCA's) policy, is taken into consideration in determining need. Income is considered available both when it is actually available and when the applicant or member has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. The member is responsible for reporting all income, the source, amount and how often received.

(A) Income received on behalf of a member of the benefit group by another individual such as, but not limited to, a guardian or conservator, is considered available to the benefit group.

(B) Money received and used for the care and maintenance of a third party who is not included in the benefit group is not counted as income if it can be identified and verified as intended for third party use.

(C) If it appears any member of the benefit group or an individual whose income is considered when determining eligibility is eligible for any type of income or benefits, the benefit group must be notified in writing by the ~~Oklahoma Health Care Authority~~(OHCA)OHCA. The notice must contain the information that failure to apply for and take all appropriate steps to obtain such benefits within ten (10) days from the date of the notice will result in a determination of ineligibility. An application for Supplemental Security Income (SSI) is not required.

(D) If the member and spouse are living together or they are living apart but there has not been a clear break in the family relationship, income received by either spouse and income received jointly is considered as family income. Income cannot be diverted to a household member who is not included in the household size for health benefits. Consideration is not given to ~~an~~ SSI recipient's income in computing eligibility for the AFDC or Pregnancy related unit. The ~~MAGI~~Modified Adjusted Gross Income (MAGI) methodology rules determine whose income is considered in a particular household for MAGI eligibility groups as defined in ~~OAC~~Oklahoma Administrative Code (OAC) 317:35-6-1.

(E) Income which can reasonably be anticipated to be received is considered to be available for the month its receipt is anticipated.

(F) Income produced from resources must be considered as unearned income.

(3) Income that must be verified is verified by the best available information such as pay stubs presented by the member or an interview with the employer. If OHCA

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is unable to verify income through the Oklahoma Employment Securities Commission, then pay stubs may only be used for verification if they have the member's name and/or social security number indicating that the pay stubs are in fact the member's wages. The stubs should also include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer verification is required. The worker verifies medical insurance which may be available at the same time that income is verified. When a member of the benefit group accepts employment and has not received any wages, verification (if necessary) of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer and provided to OHCA within ten (10) days. Income which is expected to be received during a month is considered available to the benefit group and is counted in determining eligibility for the month of receipt.

(4) Monies received in a lump sum from any source are considered income in the month received, with the exception of certain lottery or gambling winnings as specified in OAC 317:35-6-55. Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment. Exception: lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age eighteen (18) are excluded as income. The interest income generated from dedicated bank accounts is also excluded.

(A) Whether a source of income is countable for MAGI eligibility groups is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

(B) Whether a source of income is countable is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

(C) When a lump sum is received by a stepparent not included in the household size, only the stepparent's contribution is considered in accordance with the stepparent's liability policy. Income received by a stepparent is considered in accordance with MAGI household and income counting rules.

(D) When a third party reveals that a lump sum payment has been received or is expected to be received by the applicant or member, adverse action notification is given or mailed to the applicant/member and appropriate action taken.

(E) Recurring lump sum income received from any source for a period covering more than one (1) month, that is received in a lump sum recurrently (such as annual rentals from surface or minerals, Windfall Profits tax refund, etc.) is prorated over a period of time it is intended to cover, beginning with the month of receipt of a lump sum payment.

(F) Net income from oil and gas production (gross minus production taxes withheld), received in varying amounts on a regular or irregular basis for the past six

(6) months, will be averaged and considered as income for the next six (6) months. In instances where an applicant or a member receives new income from oil and gas production and verification for the past six (6) months is not available, the worker accepts the available verification and averages over the period of time intended to cover. Net income may be verified by seeing the individual's production check stub, or by contacting the oil and gas company. Whether a source of income is countable is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

(5) Income that is based on the number of hours worked, as opposed to income based on regular monthly wages, must be computed as irregular income. The income received irregularly or in varying amounts will be averaged using the past two (2) months to establish the amount to be anticipated and considered for prospective budgeting.

(6) MAGI household rules are used to determine whether a caretaker relative or stepparent is included in a household.

(A) MAGI household and income counting rules are used to determine whether a caretaker relative and his/her spouse or a stepparent are included in the household and whether their income is considered for the children.

(B) MAGI household and income counting rules are used to determine whose income is considered and whether that income is counted. If an individual is eligible in the parent or caretaker relative group, his/her spouse, if living with him/her, is also related to the parent or caretaker relative group.

(7) A stepparent, if living with the parent or caretaker relative, can also be related to the parent or caretaker relative group, regardless of whether the parent is incapacitated or not in the home.

(8) MAGI household and income counting rules are used to determine whose income is considered and whether that income is counted.

(b) **Earned income.** The term "earned income" refers to monies earned by an individual through the receipt of wages, salary, commission or profit from activities in which the individual is engaged as self-employed or as an employee. Whether income is countable for MAGI eligibility groups is determined using MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(1) **Earned income from self-employment.** For MAGI eligibility groups, the calculation of countable self-employment income is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(2) **Earned income from wages, salary or commission.** Countable income for MAGI eligibility groups is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(3) **Earned income from work and training programs.** Countable income for MAGI eligibility groups is



determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(4) **No individual earned income exemptions.** No earned income exemptions are subtracted to determine countable income for MAGI eligibility groups. The only deduction applied to determine net countable income under the MAGI methodology is the deduction of five percent (5%) of the ~~FPL~~Federal Poverty Level (FPL) for the individual's household size as defined in OAC 317:35-6-39.

(5) **Formula for determining the individual's net earned income for MAGI eligibility groups.** To determine net income, see MAGI rules in OAC 317:35-6-39.

(c) **Unearned income.** Countable earned and unearned income for MAGI eligibility groups is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(d) **Income disregards.** For MAGI eligibility groups, whether a source of income is disregarded is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(ge) **Computing monthly income.** In computing monthly income, cents will be rounded down at each step. Income which is received monthly but in irregular amounts is averaged using two (2) month's income, if possible, to determine income eligibility. Less than two (2) month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

- (1) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.
- (2) **Weekly.** Income received weekly is multiplied by 4.3.
- (3) **Twice a month.** Income received twice a month is multiplied by two (2).
- (4) **Biweekly.** Income received every two (2) weeks is multiplied by 2.15.

[OAR Docket #22-437; filed 6-23-22]

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

[OAR Docket #22-443]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Eligibility and Countable Income  
Part 1. Determination of Qualifying Categorical Relationships  
317:35-5-4 [AMENDED]  
(Reference APA WF # 21-27)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

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

November 23, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 18, 2022

**PUBLIC HEARING:**

January 18, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions will update a section of policy which describes the process when an individual is determined retroactively eligible for Social Security Disability or Supplemental Security Income (SSI). Current policy states that payment will be made for medical services only if the claim is received within twelve (12) months. The updated policy will refer to two relevant sections of policy: "Timely Filing Limitation" (six months) and "Resolution of Claim Payment" (twelve months if claim initially filed timely).

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME**

**PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIPS**

**317:35-5-4. Determining categorical relationship to the disabled**

An individual is related to disability if he/she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than twelve (12) months.

(1) **Determination of categorical relationship to the disabled by Social Security Administration (SSA).** The procedures outlined in (A) through (G) of this paragraph are applicable when determining categorical relationship based on a SSA disability decision:

(A) **Already determined eligible for Social Security disability benefits.** If the applicant states he/she is already receiving Social Security benefits on the basis of disability, the information is verified by

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seeing the applicant's notice of award or the Social Security benefit check. If the applicant states an award letter approving Social Security disability benefits has been received but a check has not been received, this information is verified by seeing the award letter. Such award letter or check establishes categorical relationship. The details of the verification used are recorded in the case record.

(B) **Already determined eligible for Supplemental Security Income (SSI) on disability.** If the applicant, under age sixty-five (65), states he/she is already receiving SSI on the basis of his/her disability (or that a written notice of SSI eligibility on disability has been received but has not yet received a check) this information is verified by seeing the written notice or check. If neither are available, the county clears on the terminal system for the Supplemental Data Exchange (SDX) record. The SDX record shows, on the terminal, whether the individual has been approved or denied for SSI. If the individual has been approved for such benefits, the county uses this terminal clearance to establish disability for categorical relationship. The details of the verification used are recorded in the case record.

(C) **Pending SSI/SSA application or has never applied for SSI.** If the applicant says he/she has a pending SSI/SSA application, an SDX record may not appear on the terminal. Therefore, it is requested that the applicant bring the notice regarding the action taken on his/her SSI/SSA application to the county office as soon as it is received. The other conditions of eligibility are established while awaiting the SSI/SSA decision. When the SSI/SSA notice is presented, the details of the verification are recorded in the case record and the indicated action is taken on the Title XIX application. If the applicant says he/she has never applied for SSI/SSA but appears potentially eligible from the standpoint of unearned income and has an alleged disability which would normally be expected to last for a period of twelve (12) months, he/she is referred to the SSA office to make SSI/SSA application immediately following the filing of the Title XIX application.

(D) **Already determined ineligible for SSI.** If the applicant says he/she has been determined ineligible for SSI, the written notice of ineligibility from SSA is requested to determine if the denial was based on failure to meet the disability definition. If the SSI notice shows ineligibility was due to not meeting the disability definition, and the applicant says the medical condition has not worsened since the SSI denial, the Title XIX application is denied for the same reason. If written notice is not available, the SDX record on the terminal system is used. This record shows whether the individual has been determined eligible or ineligible for SSI. If he/she has been determined ineligible, the payment status code for ineligibility is shown. The definition of this code is found on

OKDHS Appendix Q in order to determine the reason for SSI ineligibility. If the reason for SSI ineligibility was based on failure to meet the disability definition, the Title XIX application is denied for the same reason and the details of the verification are recorded in the case record. If the reason for SSI ineligibility was based on some reason other than failure to meet the disability definition (and therefore, a determination of disability was not made), the Level of Care Evaluation Unit (LOCEU) must determine categorical relationship. In any instance in which an applicant who was denied SSI on "disability" states the medical condition has worsened since the SSI denial, he/she is referred to the SSA office to reapply for SSI immediately following the filing of the Title XIX application.

(E) **Already determined ineligible for Social Security disability benefits.** If the applicant says he/she has been determined ineligible for Social Security disability benefits, he/she is requested to provide written notice of ineligibility to determine if the denial was based on failure to meet the disability definition. If the SSA notice shows ineligibility was due to not meeting the disability definition, and the applicant says the medical condition has not worsened since the denial, the Title XIX application is denied for the same reason. The details of the verification used are recorded in the case record. If the written notice is not available, third party query procedure (TPQY) is used to verify the denial and the reason for ineligibility. If the reason for ineligibility was based on failure to meet the disability definition, the Title XIX application is denied for the same reason and the details of the verification are recorded in the case record. If the reason for ineligibility was based on some reason other than failure to meet the disability definition (and a determination of disability was, thus, not made), the LOCEU must determine categorical relationship. In any instance in which an applicant who was denied Social Security benefits on disability states the medical condition has worsened since the denial, he/she is referred to the SSA office to reapply immediately following the filing of the Title XIX application.

(F) **Determined retroactively eligible for SSA/SSI due to appeal.** If an individual becomes retroactively eligible for SSA/SSI due to a decision on an appeal, categorical relationship is established as of the effective date of the retroactive disability decision. Payment will be made for medical services only if the claim is received ~~within twelve (12) months from the date of medical services~~ timely, per Oklahoma Administrative Code (OAC) 317:30-3-11. After the submission of a timely claim, a claim may be resubmitted, per OAC 317:30-3-11.1. If the effective date of the retroactive disability decision does not cover the period of the medical service because the SSA/SSI application was made subsequent to the service, a medical social summary with pertinent

medical information is sent to the LOCEU for a categorical relationship decision for the time period of the medical service.

(G) **SSA/SSI appeal with benefits continued.** A Title XIX recipient who has filed an appeal due to SSA's determination that he/she is no longer disabled may continue to receive SSA benefits. The recipient has the option to have Title XIX benefits continued until the appeal decision has been reached. After the decision has been reached, the appropriate case action is taken. If SSA's decision is upheld, an overpayment referral is submitted for any Title XIX benefits the recipient received beginning with the month that SSA/SSI determined the recipient did not meet disability requirements.

(H) **Applicant deceased.** Categorical relationship to the disabled is automatically established if an individual dies while receiving a medical service or dies as a result of an illness for which he/she was hospitalized if death occurs within two (2) months after hospital release. The details of the verification used are recorded in the case record.

(2) **Determination of categorical relationship to the disabled by the LOCEU.**

(A) A disability decision from the LOCEU to determine categorical relationship to the disabled is required only when SSA makes a disability decision effective after medical services were received or when the SSA will not make a disability decision. The LOCEU is advised of the basis for the referral. SSA does not make disability decisions on individuals who:

- (i) have been determined ineligible by SSA on some condition of eligibility other than disability,
- (ii) have unearned income in excess of the SSI standard and, therefore, are not referred to SSA, or
- (iii) do not have a disability which would normally be expected to last twelve (12) months but the applicant disagrees.

(B) A disability decision from the LOCEU is not required if the disability obviously will not last twelve (12) months and the individual agrees with the short term duration. The case record is documented to show the individual agrees with the short term duration.

(C) The local DHS office is responsible for submitting a medical social summary on DHS form ABCDM-80-D 08MA022E with pertinent medical information substantiating or explaining the individual's physical and mental condition. The medical social summary should include relevant social information such as the worker's personal observations, details of the individual's situation including date of onset of the disability, and the reason for the medical decision request. The worker indicates the beginning date for the categorical relationship to disability. Medical information submitted might include physical exam results, psychiatric, lab, and x-ray reports, hospital admission and discharge summaries, and/or

doctors' notes and statements. Copies of medical and hospital bill and DHS Form 08MA005E are not normally considered pertinent medical information by themselves. Current (less than ninety (90) days old) medical information is required for the LOCEU to make a decision on the client's current disability status. If existing medical information cannot be obtained without cost to the client, the county administrator authorizes either payment for existing medical information or one general physical examination by a medical or osteopathic physician of the client's choice. The physician cannot be in an intern, residency or fellowship program of a medical facility, or in the full-time employment of Veterans Administration, Public Health Service or other Agency. Such examination is authorized by use of DHS form 08MA016E, Authorization for Examination and Billing. The DHS worker sends the 08MA016E and DHS form 08MA080E, Report of Physician's Examination, to the physician who will be completing the exam.

(3) **Responsibility of Medical Review Team in the LOCEU.** The responsibilities of the Medical Review Team in the LOCEU include:

(A) The decision as to whether the applicant is related to Aid to the Disabled.

(B) The effective date (month and year) of eligibility from the standpoint of disability. (This date may be retroactive for any medical service provided on or after the first day of the third month prior to the month in which the application was made.)

(C) A request for additional medical and/or social information when additional information is necessary for a decision.

(D) When the LOCEU has made a determination of categorical relationship to disability and SSA later renders a different decision, the Oklahoma Health Care Authority (OHCA) uses the effective date of the SSA approval or denial as their date of disability approval or denial. No overpayment will occur based solely on the SSA denial superseding the LOCEU approval.

(E) Public Law 97-248, the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, provides coverage to certain disabled children living in the home if they would qualify for Medicaid as residents of nursing facilities, ICF/IIDs, or inpatient acute care hospital stays expected to last not less than sixty (60) days. In addition to disability, LOCEU determines the appropriate level of care and cost effectiveness.

(4) **Determination of categorical relationship to the disabled based on Tuberculosis (TB) infection.**

Categorical relationship to disability is established for individuals with a diagnosis of TB. An individual is related to disability for TB related services if he/she has verification of an active TB infection established by a medical practitioner.

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(5) **Determination of categorical relationship to the disabled for TEFRA.** Section 134 of TEFRA allows states, at their option, to make Medicaid benefits available to children, under nineteen (19) years of age, living at home who are disabled as defined by the SSA, even though these children would not ordinarily be eligible for SSI benefits because of the deeming of parental income or resources. Under TEFRA, a child living at home who requires the level of care provided in an acute care hospital (for a minimum of sixty (60) days), nursing facility or intermediate care facility for individuals with intellectual disabilities, is determined eligible using only his/her income and resources as though he/she were institutionalized.

[OAR Docket #22-443; filed 6-23-22]

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

[OAR Docket #22-438]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-41.6 [AMENDED]

(Reference APA WF # 21-07)

### **AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and 42 CFR 435.120

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

December 30, 2021

### **COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

### **PUBLIC HEARING:**

March 8, 2022

### **ADOPTION:**

March 30, 2022

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

March 30, 2022

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

### **FINAL ADOPTION:**

June 21, 2022

### **EFFECTIVE:**

September 12, 2022

### **SUPERSEDED EMERGENCY ACTIONS:**

#### **Superseded rules:**

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-41.6 [AMENDED]

### **Gubernatorial approval:**

July 19, 2021

### **Register publication:**

38 Ok Reg 1600

### **Docket number:**

21-705

(Reference APA WF # 21-07)

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

The proposed revisions update Aged, Blind, and Disabled (ABD) countable income policy. Oklahoma is an SSI-criteria state for determining ABD eligibility. In accordance with amended SSI rules, payments from trusts for the purpose of clothing expenses are not countable as income.

### **CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

### PART 5. COUNTABLE INCOME AND RESOURCES

#### **317:35-5-41.6. Trust accounts**

Monies held in trust for an individual applying for or receiving SoonerCare must have the availability of the funds determined. Funds held in trust are considered available when they are under the direct control of the individual or his/her spouse, and disbursement is at their sole discretion. Funds may also be held in trust and under the control of someone other than the individual or his/her spouse, such as the courts, agencies, other individuals, or the Bureau of Indian Affairs (BIA).

(1) **Availability determinations.** The worker should be able to determine the availability of a trust using the definitions and explanations listed in (2) of this subsection. However, in some cases, the worker may wish to submit a trust to the Oklahoma Department of Human Services (OKDHS) State Office for determination of availability. In these instances, all pertinent data is submitted to Family Support Services Division, Attention: Health Related and Medical Services Section, for a decision.

(2) **Definition of terms.** The following words and terms, when used in this paragraph, have the following meaning, unless the context clearly indicates otherwise:

(A) **Beneficiary.** Beneficiary means the person(s) who is to receive distributions of either income or principal, or on behalf of whom the trustee is to make payments.

(B) **Corpus/principal.** Corpus/principal means the body of the trust or the original asset used to establish the trust, such as a sum of money or real property.

(C) **Discretionary powers.** Discretionary powers means the grantor gives the trustee the power to make an independent determination whether to distribute income and/or principal to the beneficiary(ies) or to retain the income and add it to the principal of the trust.

(D) **Distributions.** Distributions means payments or allocations made from the trust from the principal or from the income produced by the principal (e.g., interest on a bank account).

(E) **Grantor (trustor/settlor).** Grantor (trustor/settlor) means the individual who establishes the trust by transferring certain assets.

(F) **Irrevocable trust.** Irrevocable trust means a trust in which the grantor has expressly not retained the right to terminate or revoke the trust and reclaim the trust principal and income.

(G) **Pour over or open trust.** Pour over or open trust means a trust which may be expanded from time to time by the addition to the trust principal (e.g., a trust established to receive the monthly payment of an annuity, a workers' compensation settlement, a disability benefit or other periodic receivable). The principal may accumulate or grow depending upon whether the trustee distributes the receivable or permits it to accumulate. Generally, the terms of the trust will determine the availability of the income in the month of receipt and the availability of the principal in subsequent months.

(H) **Primary beneficiary.** Primary beneficiary means the first person or class of persons to receive the benefits of the trust.

(I) **Revocable trust.** Revocable trust means a trust in which the grantor has retained the right to terminate or revoke the trust and reclaim the trust principal and income. Unless a trust is specifically made irrevocable, it is revocable. Even an irrevocable trust is revocable upon the written consent of all living persons with an interest in the trust.

(J) **Secondary beneficiary.** Secondary beneficiary means the person or class of persons who will receive the benefits of the trust after the primary beneficiary has died or is otherwise no longer entitled to benefits.

(K) **Testamentary trust.** Testamentary trust means a trust created by a will and effective upon the death of the individual making the will.

(L) **Trustee.** Trustee means an individual, individuals, a corporation, court, bank or combination thereof with responsibility for carrying out the terms of the trust.

(3) **Documents needed.** To determine the availability of a trust for an individual applying for or receiving SoonerCare, copies of the following documents are obtained:

(A) Trust document;

(B) When applicable, all relevant court documents including the Order establishing the trust, Settlement Agreement, Journal Entry, etc.; and

(C) Documentation reflecting prior disbursements (date, amount, purpose).

(4) **Trust accounts established on or before August 10, 1993.** The rules found in (A) - (C) of this paragraph apply to trust accounts established on or before August 10, 1993.

(A) **Support trust.** The purpose of a support trust is the provision of support or care of a beneficiary. A support trust will generally contain language such as "to provide for the care, support and maintenance of ...", "to provide as necessary for the support of ...", or "as my trustee may deem necessary for the support, maintenance, medical expenses, care, comfort and general welfare." Except as provided in (i)-(iii) of this subparagraph, the amount from a support trust deemed available to the beneficiary is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee(s) for distribution of the maximum amount to the beneficiary. The beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise discretion with respect to distributions, may show that the amounts deemed available are not actually available by:

(i) Commencing proceedings against the trustee(s) in a court of competent jurisdiction;

(ii) Diligently and in good faith asserting in the proceedings that the trustee(s) is required to provide support out of the trust; and

(iii) Showing that the court has made a determination, not reasonably subject to appeal, that the trustee must pay some amount less than the amount deemed available. If the beneficiary makes the showing, the amount deemed available from the trust is the amount determined by the court. Any action by a beneficiary or the beneficiary's representative, or by the trustee or the trustee's representative, in attempting a showing to make the Agency or the State of Oklahoma a party to the proceeding, or to show to the court that SoonerCare benefits may be available if the court limits the amounts deemed available under the trust, precludes the showing of good faith required.

(B) **Medicaid Qualifying Trust (MQT).** A MQT is a trust, or similar legal device, established (other than by will) by an individual or an individual's spouse, under which the individual may be the beneficiary of all or part of the distributions from the trust and such distributions are determined by one or more trustees who are permitted to exercise any discretion with respect to distributions to the individual. A trust established by an individual or an individual's spouse includes trusts created or approved by a representative of the individual (parent, guardian or person holding power of attorney) or the court where the property placed in trust is intended to satisfy or settle a claim made by or on behalf of the individual or the individual's spouse. This includes trust accounts or similar devices established for a minor child pursuant to 12 Oklahoma Statutes 83. In addition, a trust established jointly by at least one of the individuals who can establish an MQT and another party or parties (who do

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not qualify as one of these individuals) is an MQT as long as it meets the other MQT criteria. The amount from an irrevocable MQT deemed available to the individual is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the individual assuming the full exercise of discretion by the trustee(s). The provisions regarding MQT apply even though an MQT is irrevocable or is established for purposes other than enabling an individual to qualify for SoonerCare, and, whether or not discretion is actually exercised.

(i) **Similar legal device.** MQT rules listed in this subsection also apply to "similar legal devices" or arrangements having all the characteristics of an MQT except that there is no actual trust document. An example is the member petitioning the court to irrevocably assign all or part of his/her income to another party (usually the spouse). The determination whether a given document or arrangement constitutes a "similar legal device" should be made by the OKDHS Office of General Counsel, Legal Unit.

(ii) **MQT resource treatment.** For revocable MQTs, the entire principal is an available resource to the member. Resources comprising the principal are subject to the individual resource exclusions (e.g., the home property exclusion) since the member can access those resource items without the intervention of the trustee. For irrevocable MQTs, the countable amount of the principal is the maximum amount the trustee can disburse to (or for the benefit of) the member, using his/her full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the principal and has discretionary power to disburse the entire principal to the member (or to use it for the member's benefit), the entire principal is an available resource to the member. Resources transferred to such a trust lose individual resource consideration (e.g., home property transferred to such a trust is no longer home property and the home property exclusions do not apply). The value of the property is included in the value of the principal. If the MQT permits a specified amount of trust income to be distributed periodically to the member (or to be used for his/her benefit), but those distributions are not made, the member's countable resources increase cumulatively by the undistributed amount.

(iii) **Income treatment.** Amounts of MQT income distributed to the member are countable income when distributed. Amounts of income distributed to third parties for the member's benefit are countable income when distributed.

(iv) **Transfer of resources.** If the MQT is irrevocable, a transfer of resources has occurred to the extent that the trustee's access to the principal

(for purposes of distributing it to the member or using it for the member's benefit) is restricted (e.g., if the trust stipulates that the trustee cannot access the principal but must distribute the income produced by that principal to the member, the principal is not an available resource and has, therefore, been transferred).

(C) **Special needs trusts.** Some trusts may provide that trust benefits are intended only for a beneficiary's "special needs" and require the trustee to take into consideration the availability of public benefits and resources, including SoonerCare benefits. Some trusts may provide that the trust is not to be used to supplant or replace public benefits, including SoonerCare benefits. If a trust contains such terms and is not an MQT, the trust is not an available resource.

(5) **Trust accounts established after August 10, 1993.** The rules found in (A) - (C) of this paragraph apply to trust accounts established after August 10, 1993.

(A) For purposes of this subparagraph, the term "trust" includes any legal document or device that is similar to a trust. An individual is considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if the trust was established other than by will and by any of the following individuals:

- (i) the individual;
- (ii) the individual's spouse;
- (iii) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
- (iv) a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(B) Where trust principal includes assets of an individual described in this subparagraph and assets of any other person(s), the provisions of this subparagraph apply to the portion of the trust attributable to the assets of the individual. This subparagraph applies without regard to the purposes for which the trust is established, whether the trustees have or exercise any discretion under the trust, and restrictions on when or whether distributions may be made from the trust, or any restrictions on the use of the distribution from the trust.

(C) There are two types of trusts, revocable trusts and irrevocable trusts.

(i) In the case of a revocable trust, the principal is considered an available resource to the individual. Payments from the trust to or for the benefit of the individual are considered income of the individual. Other payments from the trust are considered assets disposed of by the individual for purposes of the transfer of assets rule and are subject to the ~~60~~sixty (60) months look back period.

(ii) In the case of an irrevocable trust, if there are any circumstances under which payments from

the trust could be made to or for the benefit of the individual, the portion of the principal of the trust, or the income on the principal, from which payment to the individual could be made is considered available resources. Payments from the principal or income of the trust is considered income of the individual. Payments for any other purpose are considered a transfer of assets by the individual and are subject to the ~~60~~sixty (60) months look back period. Any portion of the trust from which, or any income on the principal from which no payment could under any circumstances be made to the individual is considered as of the date of establishment of the trust (or if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of the asset transfer rules and are subject to the 60 months look back period.

(6) **Exempt trusts.** Paragraph (5) of this subsection does not apply to the following trusts:

(A) A trust containing the assets of a disabled individual under the age of ~~65~~sixty-five (65) which was established for the benefit of such individual by the individual, parent, grandparent, legal guardian of the individual or a court if the State receives all amounts remaining in the trust on the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual. This type of trust requires:

- (i) The trust may only contain the assets of the disabled individual.
- (ii) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the OKDHS or the Oklahoma Health Care Authority (OHCA).
- (iii) Trust records must be open at all reasonable times to inspection by an authorized representative of the OHCA or OKDHS.
- (iv) The exception for the trust continues after the disabled individual reaches age ~~65~~sixty-five (65). However, any addition or augmentation after age ~~65~~sixty-five (65) involves assets that were not the assets of an individual under age ~~65~~sixty-five (65); therefore, those assets are not subject to the exemption.
- (v) Establishment of this type of trust does not constitute a transfer of assets for less than fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under the age of ~~65~~sixty-five (65).
- (vi) Payments from the trust are counted according to SSI rules. According to these rules, countable income is anything the individual receives in cash or in kind that can be used to meet the individual's needs for food, ~~clothing~~ and shelter. Accordingly, any payments made directly to the individual are counted as income to the individual because the payments could be used for food,

~~clothing~~, or shelter for the individual. This rule applies whether or not the payments are actually used for these purposes, as long as there is no legal impediment which would prevent the individual from using the payments in this way. In addition, any payments made by the trustee to a third party to purchase food, ~~clothing~~, or shelter for the individual can also count as income to the individual. For example, if the trustee makes a mortgage payment for the individual, that payment is a shelter expense and counts as income.

(vii) A corporate trustee may charge a reasonable fee for services in accordance with its published fee schedule.

(viii) The OKDHS Form 08MA018E, Supplemental Needs Trust, is an example of the trust. Workers may give the sample form to the member or his/her representative to use or for their attorney's use.

(ix) To terminate or dissolve a Supplemental Needs Trust, the worker sends a copy of the trust instrument and a memorandum to OKDHS Family Support Services Division, Attention: Health Related and Medical Services (~~HR&MS~~), explaining the reason for the requested termination or dissolution of the Supplemental Needs Trust, and giving the name and address of the trustee. The name and address of the financial institution and current balance are also required. Health Related and Medical Services (HRMS) notifies Oklahoma Health Care Authority/Third Party Liability (OHCA/TPL) to initiate the recovery process.

(B) A trust (known as the Medicaid Income Pension Trust) established for the benefit of an individual if:

- (i) The individual is in need of long-term care and has countable income above the categorically needy standard for long-term care (OKDHS Appendix C-1 Schedule VIII.B) but less than the average cost of nursing home care per month (OKDHS Appendix C-1 Schedule VIII.B).
- (ii) The ~~Trust~~trust is composed only of pension, social security, or other income of the individual along with accumulated income in the trust. Resources cannot be included in the trust.
- (iii) All income is paid into the trust and the applicant is not eligible until the trust is established and the monthly income has been paid into the trust.
- (iv) The trust must retain an amount equal to the member's gross monthly income less the current categorically needy standard of OKDHS Appendix C-1. The Trustee distributes the remainder.
- (v) The income disbursed from the trust is considered as the monthly income to determine the cost of their care, and can be used in the computations for spousal diversion.

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- (vi) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the OHCA. Trust records must be open at all reasonable times to inspection by an authorized representative of the OHCA or OKDHS.
- (vii) The State will receive all amounts remaining in the trust up to an amount equal to the total SoonerCare benefits paid on behalf of the individual subsequent to the date of establishment of the trust.
- (viii) Accumulated funds in the trust may only be used for medically necessary items not covered by SoonerCare, or other health programs or health insurance and a reasonable cost of administering the trust. Reimbursements cannot be made for any medical items to be furnished by the nursing facility. Use of the accumulated funds in the trust for any other reason will be considered as a transfer of assets and would be subject to a penalty period.
- (ix) The trustee may claim a fee of up to ~~3%~~ three percent (3%) of the funds added to the trust that month as compensation.
- (x) An example trust is included on OKDHS Form 08MA011E. Workers may give this to the member or his/her representative to use or for their attorney's use as a guide for the Medicaid Income Pension Trust.
- (xi) To terminate or dissolve a Medicaid Income Pension Trust, the worker sends a memorandum with a copy of the trust to OKDHS Family Support Services Division, Attention: HR&MS, explaining the reason and effective date for the requested termination or dissolution of the Medicaid Income Pension Trust, and giving the name and address of the trustee. The name and address of the financial institution, account number, and current balance are also required. ~~Health Related and Medical Services~~ HRMS notifies OHCA/TPL to initiate the recovery process.
- (C) A trust containing the assets of a disabled individual when all of the following are met:
- The trust is established and managed by a non-profit association;
  - The trust must be made irrevocable;
  - The trust must be approved by the OKDHS and may not be amended without the permission of the OKDHS;
  - The disabled person has no ability to control the spending in the trust;
  - A separate account is maintained for each beneficiary of the trust but for the purposes of investment and management of funds, the trust pools these accounts;
  - The separate account on behalf of the disabled person may not be liquidated without payment to OHCA for the medical expenses incurred by the members;

- (vii) Accounts in the trust are established by the parent, grandparent, legal guardian of the individual, the individual, or by a court;
- (viii) To the extent that amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts an amount equal to the total medical assistance paid on behalf of the individual. A maximum of ~~30%~~ thirty percent (30%) of the amount remaining in the beneficiary's account at the time of the beneficiary's death may be retained by the trust.

(7) **Funds held in trust by Bureau of Indian Affairs (BIA).** Interests of individual Indians in trust or restricted lands are not considered in determining eligibility for assistance under the Social Security Act or any other federal or federally assisted program.

(8) **Disbursement of trust.** At any point that disbursement occurs, the amount disbursed is counted as a non-recurring lump sum payment in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is treated as unearned income in the month received.

[OAR Docket #22-438; filed 6-23-22]

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

[OAR Docket #22-444]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-42 [AMENDED]

(Reference APA WF # 21-28)

#### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; and 42 CFR, Subpart P Premiums and Cost-Sharing Subsidies for Low-Income Individuals (§§ 423.771 - 423.800)

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

December 30, 2021

#### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

#### PUBLIC HEARING:

March 8, 2022

#### ADOPTION:

March 30, 2022

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

March 30, 2022

#### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

#### FINAL ADOPTION:

June 21, 2022

#### EFFECTIVE:

September 12, 2022



**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions clarify policy on how the Agency deems income from an ineligible spouse to an eligible member within the Aged, Blind and Disabled (ABD) eligibility group. The proposed revisions will also clarify that when the eligible member's countable income is over the Social Security Income (SSI) standard, the eligible member must still be evaluated for the Medicare savings program called QMBP.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME**

**PART 5. COUNTABLE INCOME AND RESOURCES**

**317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled**

(a) **General.** The term income is defined as a gross gain or gross recurrent benefit that derives from labor, business, property, retirement and other benefits or sources that are available for use on a regular basis.

(1) If it appears the applicant or SoonerCare member is eligible for any type of income (~~excluding Supplemental Security Income (SSI)~~excluding Supplemental Security Income (SSI)) or resources, Oklahoma Department of Human Services (OKDHS) staff must notify the individual in writing of his/her potential eligibility, per Section 416.210 of Title 20 of the Code of Federal Regulations (20 C.F.R. § 416.210).

(A) Potential income may include, but is not limited to:

- (i) Retirement, Survivors, Disability Insurance (RSDI) benefits;
- (ii) Benefits from the United States (U.S.) Department of Veterans Affairs (VA);
- (iii) Workers' compensation payments;
- (iv) Unemployment insurance benefits (UIB);
- (v) Annuities;
- (vi) Pensions or other retirement benefits; or
- (vii) Disability benefits.

(B) The notice must contain the information that failure to file for and take all appropriate steps to obtain the potential income within thirty (30) calendar days from the date of the notice will result in an ineligibility determination of ineligibility.

(C) When the individual has a good cause reason for not filing for the potential income within the thirty (30) calendar day period or taking other necessary steps to obtain the income, he or she is not determined ineligible.

(2) If spouses live in their own home, the couple's total income and/or resources are divided equally between the two (2) cases. If they both enter a nursing facility, their income and resources are considered separately.

(3) When an eligible individual or child resides with an ineligible spouse or parent(s), a portion of the ineligible spouse's or parent's income is deemed as available income to the eligible individual, per Oklahoma Administrative Code (OAC) 317:35-5-42(k).

(4) If only one (1) spouse in a couple is eligible and the couple stops living together, only the income and resources that the ineligible spouse actually contributes to the eligible spouse are considered in determining the eligible spouse's eligibility, beginning with the month after the month they stop living together.

(5) Refer to OAC 317:35-9-68 to determine how to consider a community spouse's income eligibility for SoonerCare (Medicaid) when his or her spouse:

- (A) Is institutionalized in a nursing facility or an intermediate care facility for the intellectually disabled;
- (B) Is sixty-five (65) years or older and lives in a mental health hospital; or
- (C) Receives ADvantage or Home and Community Based Waiver services.

(6) In certain circumstances, the amount of income determined to be available to an individual may be greater than the amount of income the individual actually receives for his or her own use. This includes, but is not limited to:

- (A) Court-ordered income deductions for child and/or spousal support even when the support is paid directly to the child's guardian or spouse by the individual's employer or benefit payer;
- (B) Deductions due to a repayment of an overpayment, loan, or other debt, unless the amount being withheld to reduce a previous overpayment was included when determining the amount of unearned income for a previous month in the determination of medical assistance eligibility; or
- (C) Garnishments or liens placed against earned or unearned income of the individual, regardless of the purpose for the garnishment or lien.

(7) The individual's statement regarding the source and amount of available income must be verified at application, renewal, and when changes occur by:

- (A) Award letters, warrants, or other documents provided by the individual;
- (B) Automated data exchange with other agencies such as Beneficiary and Earnings Data Exchange System (BENDEX); Supplemental Security Income (SSI)/State Data Exchange System (SDX), or UIB;
- (C) The Asset Verification System (AVS) when income is held in bank accounts or other financial institutions;

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- (D) Public records; or
  - (E) Collateral contacts such as employers, agencies, businesses, or community action groups.
- (8) The individual is responsible for reporting and verifying income changes within ten (10) calendar days of the change occurring.
- (b) **Sources of income considered.** The individual is responsible for reporting information regarding all sources of available income. All monies or payments that are available for current living expenses, unless specifically disregarded per (c) of this Section are considered in determining monthly gross income. Some of the more common income sources to be considered in determining eligibility are included in (1) through (8) of this subsection:
- (1) **Annuities, pensions, retirement, disability, and other payments.** In accordance with 20 C.F.R. §416.1123, benefits and payments are considered for the month they are received, unless they include retroactive payments. Retroactive payments are considered as lump sum payments per (b)(5) of this Section.
    - (A) Payments include, but are not limited to:
      - (i) RSDI and SSI benefits;
      - (ii) Veteran's benefits;
      - (iii) Railroad retirement annuities;
      - (iv) Pensions, retirement, or disability benefits from government or private sources;
      - (v) Workers' compensation; and
      - (vi) UIB.
    - (B) Determination of RSDI benefits to be considered; disregarding cost-of-living adjustments (COLAs) for former State Supplemental Payment recipients, who are reapplying for medical benefits under the Pickle Amendment, are computed, per OKDHS Appendix C-2-A, COLA Increase Computation Formulas.
    - (C) The U.S. Department of Veterans Affairs allows their recipients to request reimbursement for medical expenses not covered by SoonerCare. When a recipient is eligible for a readjustment payment, it is paid in a lump sum for the entire past year. When received, this reimbursement is disregarded as income or a resource for the month received. Any amount retained in the month following receipt is considered as a resource.
    - (D) Government financial assistance in the form of ~~VA~~ Veterans Affairs (VA) Aid and Attendance or Champus payments are considered as:
      - (i) A third-party resource whether paid to the individual or the facility when the individual resides in a nursing facility. These payments do not affect income eligibility or the vendor payment of the member; or
      - (ii) Excluded income when paid for an attendant in the individual's home.
    - (E) SSI benefits may be continued for up to three (3) months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care

facility for individuals with an intellectual disability, or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three (3) months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(F) A veteran or his or her surviving spouse who receives a VA pension may have the pension reduced to ninety dollars (\$90) per month if the veteran does not have dependents, is SoonerCare (Medicaid) eligible, and resides in a nursing facility that is approved under SoonerCare, per Section 8003 of Public Law (P.L.) 101-508. The VA pension for a veteran or his or her surviving spouse who meets these conditions is reduced the month following the month of admission to a SoonerCare (Medicaid) approved nursing facility.

(i) The reduced VA pension is not used to compute the vendor payment or spenddown. The nursing facility resident is entitled to receive the ninety-dollars (\$90) reduced VA pension and the regular nursing facility maintenance standard, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.B.2, Maximum Income, Resource, and Payment Standards.

(ii) The vendor payment or spenddown is computed using other income minus the monthly nursing facility maintenance standard and any applicable medical deductions.

(2) **Child support and alimony payments.** Child support and alimony payments are counted as unearned income whether in cash or in-kind. Per (f)(11) of this Section, one-third ( $\frac{1}{3}$ ) of child support payments received on behalf of the disabled minor child is excluded.

(3) **Dividends, interest, and certain royalties.** Dividends, interest, and certain royalties are counted as unearned income. Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property or natural resources. Royalties are considered earned income when received as part of the individual's trade or business or in conjunction with a work publication.

(4) **Income from capital resources and rental property.** Income from capital resources may be received from the use of real or personal property, such as land, housing, machinery, leasing of minerals, a life estate, homestead rights, or interest.

(A) Rental income may be treated as self-employment income when the individual participates in the management of the trade or business or invests his/her own labor in producing the income. When the individual does not participate in the management of the trade or business or does not invest his/her own labor in producing the income, it is considered as unearned income.

- (i) The individual's federal income tax return or business records verify when the rental income is considered as self-employment income. When the individual's federal tax return or business records do not verify the rental income is from self-employment, the income is considered unearned income.
  - (ii) Expenses necessary for the production or collection of the rental income are deducted when paid, not when they are incurred. Examples of deductible expenses include interest on debt, state and local taxes on real or personal property and on motor fuel, general sales taxes, and expenses on managing or maintaining the property. Depreciation or depletion of property is not considered a deductible expense.
  - (iii) When rental property is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the individual is considered as income.
- (B) If the individual receives royalty income monthly but in irregular amounts or less often than monthly, the income is averaged over the previous six (6) month period to determine the countable monthly income.
- (i) At any time a dramatic increase or decrease in royalty income occurs, the previous two (2) months of royalty income is averaged to compute the countable monthly income.
  - (ii) When the difference between the gross and net royalty income is due to a production or severance tax, the net income is used to determine income eligibility as this tax is considered the cost of producing the income.
- (5) **Lump sum payments.** Any income received in a lump sum, with the exception of an SSI or RSDI lump sum, covering a period of more than one (1) month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount retained on the first day of the month following receipt of the lump sum is considered as a resource.
- (A) A lump sum payment may be considered as earned or unearned income, depending on the source of the lump sum payment. Lump sum payments may include, but are not limited to:
- (i) Wages or wage bonuses;
  - (ii) Retroactive RSDI, VA, or workers' compensation payments;
  - (iii) Bonus lease payments;
  - (iv) Annual rentals from land or minerals;
  - (v) Life insurance death benefits;
  - (vi) Lottery or gambling winnings;
  - (vii) Personal injury awards or settlements; or
  - (viii) Inheritances.
- (B) RSDI and SSI retroactive payments do not count as income in the month of receipt. Any unspent portion retained on the first day of the month following receipt of the lump sum is excluded from

resources for nine (9) calendar months, per 20 C.F.R. § 416.1233. However, unspent money from a retroactive payment must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds, but if this is done in such a fashion that the retroactive amount can no longer be separately identified, that amount is counted toward the resource limit.

(C) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for children with disabilities or blindness who are under eighteen (18) years of age are excluded as income or a resource. The interest income generated from dedicated bank accounts is also excluded.

(D) A life insurance death benefit received by the individual for another person is considered as income in the month received except for amounts paid for the person's last illness and burial expenses. Money retained in the month following receipt of the benefit is counted as a resource to the extent that it is available.

(E) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment, all other things being equal.

(6) **Non-negotiable notes and mortgages.** Installment payments received on a note or mortgage are considered as monthly unearned income.

(7) **Income from the Workforce Innovation and Opportunity Act (WIOA).** Unearned income received by an adult, such as a need-based payment, cash assistance, compensation in lieu of wages, or allowances from a program funded by WIOA is considered as any other unearned income.

(8) **In-kind support and maintenance.** In-kind support and maintenance is food or shelter given to the individual or that the individual receives because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. The value of this support may be counted as income using the one-third (1/3) reduction rule, per 20 C.F.R. §§ 416.1131 through 416.1133 or the presumed value rule, per 20 C.F.R. §§ 416.1140 through 416.1145.

(A) **One-third (1/3) reduction rule.** The one-third (1/3) reduction rule applies when the individual or the individual and his/her spouse lives in the household of a person who provides him/her with both food and shelter for at least a full calendar month. Per 20 C.F.R. § 416.1131, instead of determining the actual value of in-kind support and maintenance, one-third (1/3) of the SSI federal benefit rate, per OKDHS Appendix C-1, Schedule VIII.C is counted as income.

(i) The one-third (1/3) reduction rule applies in full or not at all. When the individual lives in another person's household and the one-third (1/3) reduction rule applies, no income exclusions are applied to the reduction amount.

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- (ii) When the one-third ( $\frac{1}{3}$ ) reduction rule applies and the individual receives other support and maintenance, the other support and maintenance is not counted.
- (iii) The one-third ( $\frac{1}{3}$ ) reduction rule does not apply when the individual or the individual and his/her spouse:
  - (I) Lives in another person's household but does not receive both food and shelter from that person;
  - (II) Lives in his/her own household; or
  - (III) Lives in a non-medical institution such as a public or private non-profit educational or vocational institution, or a private non-profit retirement home.
- (B) **Another person's household.** The individual is considered to be living in another person's household if the person is not considered to be living in his/her own home per (C) of this subsection, the person who supplies the support and maintenance lives in the same household, and is not:
  - (i) The individual's spouse;
  - (ii) A minor child; or
  - (iii) An ineligible person whose income may be deemed to the individual per OAC 317:35-5-42(k).
- (C) **Living in own household.** The individual or the individual and his/her spouse are considered to be living their own household when:
  - (i) The individual, the individual and his/her spouse, or a person whose income is deemed to the individual, live in a home in which one of them has an ownership interest or life estate in the home;
  - (ii) The individual, the individual and his/her spouse, or a person whose income is deemed to the individual is liable for any part of the rent charges;
  - (iii) The individual pays at least a pro rata share of the household and operating expenses;
  - (iv) The individual lives in a non-institutional care setting. The individual is considered to be living in a non-institutional care situation when:
    - (I) He/she is placed by a public or private agency under a specific program such as foster or family care;
    - (II) The placing agency is responsible for the individual's care;
    - (III) He/she lives in a private household that is licensed or approved by the placing agency to provide care; and
    - (IV) The individual, a public agency, or someone else pays for his/her care; or
  - (v) All members of the household receive public maintenance payments such as:
    - (I) Supplemental Security Income (SSI);
    - (II) State Supplemental Payment (SSP);
    - (III) Temporary Assistance for Needy Families (TANF);
    - (IV) Refugee cash assistance;
- (V) Assistance provided under the Disaster Relief and Emergency Assistance Act;
- (VI) Bureau of Indian Affairs (BIA) general assistance programs;
- (VII) State or local government assistance programs based on need; or
- (VIII) VA payments based on need.
- (D) **Presumed value rule.** The presumed value rule applies when the individual receives in-kind support and maintenance and the one-third ( $\frac{1}{3}$ ) reduction rule does not apply. The maximum presumed value is one-third ( $\frac{1}{3}$ ) of the SSI ~~FBR~~ Federal Benefit Rate (FBR), per OKDHS Appendix C-1, Schedule VIII.C plus the ~~\$20~~ twenty dollars (\$20) general income exclusion.
  - (i) The presumed value rule allows the individual to show that the amount of in-kind support and maintenance is not equal to the maximum presumed value. When the individual does not question the maximum presumed value, one-third ( $\frac{1}{3}$ ) of the SSI ~~FBR~~ FBR, per OKDHS Appendix C-1, Schedule VIII.C plus the ~~\$20~~ twenty dollars (\$20) general income exclusion is counted as unearned income.
    - (I) When the individual disputes the amount counted for in-kind support and maintenance, he/she may verify that the current market value of the food or shelter he/she receives or the actual amount someone else pays for the individual's food and shelter is lower than the maximum presumed value.
    - (II) When the individual verifies that the food or shelter received is lower the maximum presumed value, the lower amount is used as the presumed value and counted as unearned income.
    - (III) When the individual verifies the actual value of the food or shelter he she receives and it is higher than the maximum presumed value amount, the actual amount is counted as unearned income.
  - (ii) In-kind support and maintenance received by an individual is excluded if:
    - (I) It is identified as excluded per (e) or (f) of this Section,
    - (II) It is received from another member of a public assistance household; or
    - (iii) The individual receives SSI and the SSA does not reduce the individual's SSI benefit because of in-kind support and maintenance.
    - (iv) When the individual or the individual and his or her spouse live in a household in which all members receive a public maintenance payment per (b)(8)(C)(v) of this subsection, in-kind support and maintenance is not counted unless the individual receives food and shelter from someone outside of the household.
- (9) **Earned income.** Earned income may include:

(A) **Wages.** Wages include the gross income earned for work performed as an employee before deductions, such as taxes, bonds, pensions, union dues, credit union payments, or cafeteria plans are subtracted.

(i) Wages paid in cash may include salaries, commissions, tips, piece-rate payments, longevity payments, bonuses, severance pay, and any other special payments received due to employment.

(ii) Wages paid to uniformed service members include basic pay, some types of special pay, and some allowances. Allowances paid for on-base housing or privatized military housing are considered unearned income in the form of in-kind support and maintenance. Allowances paid for private housing are considered wages.

(iii) Wages paid in-kind may include the value of food, clothing, shelter, or other items provided in lieu of or in conjunction with wages. The cash value of in-kind benefits must be verified by the employer. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered a countable in-kind benefit. Exception: In-kind pay received by a domestic or agricultural worker is considered unearned income.

(iv) Work study received by an individual who is attending school is considered as earned income with appropriate earned income exclusions, per (g) of this Section applied.

(v) Payments received for services performed in a sheltered workshop or work activities center are counted as earned income. Payments for each calendar quarter are averaged to determine monthly income.

(vi) Income received as wages from a program funded by WIOA is counted as any other earned income.

(vii) Earnings received from the Senior Community Service Employment Program under Title V of the Older Americans Act of 1965 as amended and employment positions allocated at the discretion of Governor of Oklahoma are counted as earned income.

(B) **Self-employment income.** Self-employment income is the gross income earned from a trade or business. Self-employment income also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise, such as an exchange of business or labor, the individual's share of profit or loss in any partnership to which he/she belongs, and money received for the sale of whole blood or plasma. Income eligibility is based on the individual's net self-employment income after subtracting business expenses. Refer to (i)(4) of this Section for self-employment income determination procedures.

(c) **What is not income.** Items that are not considered income per 20 C.F.R. § 416.1103 because the individual cannot

use them as food or shelter or to obtain food or shelter include, but are not limited to:

(1) Medical care and services, including medical insurance premiums paid directly by anyone on the individual's behalf;

(2) Social services, as follows:

(A) Assistance provided in cash or in-kind under any federal, state, or local government program to provide social services such as vocational rehabilitation or VA aid and attendance services;

(B) In-kind assistance provided under a non-governmental program for social services. This does not include food or shelter;

(C) Cash provided by a non-governmental social services program, except for cash to cover food or shelter, when the cash:

(i) Is a repayment for program-approved services for which the individual already paid; or

(ii) Is a payment restricted to the future purchase of a program-approved service.

(3) Receipts from the sale, exchange, or replacement of a resource, including cash or an in-kind item provided to replace or repair a resource that was lost, damaged, or stolen;

(4) Any amount refunded on income taxes already paid by the individual;

(5) Payments made to the individual under a credit life or credit disability insurance policy;

(6) Money the individual borrows or receives as repayment of a loan. When the individual borrow money, regardless of use, it is not considered income if a bona fide debt or obligation to pay can be established. Interest the individual receives on money he/she loans someone else is considered income. Criteria to establish a loan as bona fide includes:

(A) An acknowledgment of the obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, OKDHS Form 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E are not available, documentation must show that the loan is bona fide and how the debt amount and date of receipt was verified.

(B) The borrower's acknowledgment of obligation to repay, with or without interest, and the lender's verification of the loan are required to indicate that the loan is bona fide when the loan is from a person(s) not in the loan business.

(7) Bills paid for the individual by someone else directly to the provider unless it is considered payment for food or shelter;

(8) Replacement of income that is lost, destroyed, or stolen, such as receiving a replacement paycheck because the original payment was stolen;

(9) Weatherization assistance; or

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- (10) Receipt of certain non-cash items that would be excluded as a non-liquid resource.
- (d) **Income exclusions.** Certain types and amounts of income are excluded in determining the individual's eligibility for SoonerCare. When applying exclusions:
- (1) Unearned income exclusions are applied before applying earned income exclusions;
  - (2) Income excluded by other federal laws per (e) of this Section are excluded first and then unearned income excluded by the Social Security Act per (f) of this Section;
  - (3) Earned income exclusions are then applied in the order listed per (h) of this Section;
  - (4) Income must never reduce income below zero (0);
  - (5) Unused portions of a monthly exclusion must not be carried over for use in a subsequent month;
  - (6) Other than the ~~\$20~~ twenty dollars (\$20) general income exclusion, unused unearned income exclusions are not applied to earned income; and
  - (7) Unused earned income exclusions are never applied to unearned income.
- (e) **Income excluded by other federal laws.** Unearned income excluded by federal laws other than the Social Security Act, per the Appendix to Subpart K of Part 416, includes:
- (1) Federal food and nutrition programs, including:
    - (A) The value of Supplemental Nutrition Assistance Program (SNAP) food benefits;
    - (B) U.S. Department of Agriculture food commodities distributed by a private or governmental program;
    - (C) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;
    - (D) Women, infants, and children program (WIC); and
    - (E) Nutrition programs for older Americans;
  - (2) Housing and utility programs including:
    - (A) Energy assistance provided through the Low-Income Home Energy Program that includes the Energy Crisis Assistance Program;
    - (B) Housing assistance provided under the:
      - (i) U.S. Housing Act of 1937;
      - (ii) National Housing Act;
      - (iii) Governmental rental or housing subsidies received in-kind or in cash by governmental agencies, such as the Department of Housing and Urban Development (HUD) for rent, mortgage payments, or utilities;
      - (iv) Title V of the Housing Act of 1949; or
      - (v) Any payment received under Section 216 of P. L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
  - (3) Student financial assistance that includes:
    - (A) Grants or loans to undergraduate students made or insured under programs administered by the Secretary of Education under Section 507 of the Higher Education Amendments of 1968 (P. L. 90-575);
    - (B) Wages, allowances, or reimbursements for transportation and attendant care costs, unless excepted on a case-by-case basis, when received by an eligible individual with disabilities employed in a project under Title VI of the Rehabilitation Act of 1973 as added by 29 U.S.C. § 795(b)(c); and
    - (C) Student financial assistance received for attendance costs from a program funded in whole or in part under Title IV of the Higher Education Act of 1965, as amended, or under BIA student assistance programs when it is made available for tuition and fees normally assessed to a student carrying the same academic workload, as determined by the institution. This includes costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution, under Section 14(27) of P. L. 100-50, the Higher Education Technical Amendments Act of 1987 (20 U.S.C. § 1087uu);
  - (4) Native American payments excluded without regard to a specific tribe or group includes:
    - (A) Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under P. L. 93-134 as amended by Section 4 of P. L. 97-458 (25 U.S.C. § 1408). Indian judgment funds include interest and investment income accrued while such funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds but does not apply to sales or conversions of initial purchases or to subsequent purchases. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;
    - (B) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under P.L. 98-64 (25 U.S.C. § 117b). Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from countable income under this exclusion. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;
    - (C) Cash distributions and dividends received by an individual Alaska Native or descendant under the Alaska Native Claims Settlement Act Amendments of 1987, P.L. 100-241, (43 U.S.C. § 1626(c)) to the extent that it does not, in the aggregate, exceed two-thousand dollars (\$2,000) per individual each year. This exclusion does not apply in deeming income from sponsors to aliens;
    - (D) Up to two-thousand dollars (\$2,000) per year received by Indians that is derived from individual

- interests in trust or restricted lands under P.L. 103-66, (25 U.S.C. § 1408), as amended;
- (5) Payments made to members of specific Indian tribes and groups. Refer to 20 C.F.R § 416 Subpart K Appendix, Section IV.B for the complete list. Payments to tribes in Oklahoma on this list include:
- (A) Judgement funds distributed per capita to, or held in trust for, members of the Sac and Fox Indian Nation, and the availability of such funds under Section 6 of P. L. 94-189. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;
  - (B) Any judgement funds distributed per capita or made available for programs for members of the Delaware Tribe of Indians and the Absentee Delaware Tribe of Western Oklahoma under Section 8 of P. L. 96-318;
  - (C) Any distribution of judgement funds to members of the Wyandotte Nation of Oklahoma under Section 6 of P. L. 97-371;
  - (D) Distributions of judgement funds to members of the Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants) under Section 7 of P. L. 97-372;
  - (E) Judgement funds distributed per capita or made available for programs for members of the Miami Tribe of Oklahoma and the Miami Indians of Indiana under Section 7 of P. L. 97-376;
  - (F) Judgement funds distributed per capita or made available for any tribal program for members of the Wyandotte Nation of Oklahoma and the Absentee Wyandottes under Section 106 of P. L. 98-602; and
  - (G) Judgement funds distributed per capita, or held in trust, or made available for programs, for members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida under Section 8 of P. L. 101-277. This exclusion applies to income of sponsors of aliens only when the alien lives in the sponsor's household;
- (6) Receipts from lands held in trust and:
- (A) Distributed to members of certain Indian tribes under Section 6 of P.L. 94-114, (25 U.S.C. § 459e);
  - (B) Awarded to the Pueblo of Santa Ana and distributed to members of that tribe under Section 6 of P.L. 95-498; and
  - (C) Awarded to the Pueblo of Zia in New Mexico and distributed to members of that tribe under Section 6 of P.L. 95-499;
- (7) Compensation provided to volunteers by the Corporation for National and Community Service (CNCS), unless determined by the CNCS to constitute the federal or state minimum wage. Programs included under CNCS include:
- (A) AmeriCorps programs;
  - (B) The Retired Senior Volunteer Program;
  - (C) The Foster Grandparent Program; and
  - (D) The Senior Companion Program;
- (8) Benefits from State and Community Programs on Aging, per Title III of the Older Americans Act of 1965, as amended by P.L. 114-144, Older Americans Act Reauthorization Act of 2016. Income received from the Senior Community Service Employment Program under Title V of the Older Americans Act as well as employment positions allocated at the discretion of Governor of Oklahoma is counted as earned income;
- (9) Payments made as restitution under the Civil Liberties Act of 1988 to certain individuals of Japanese ancestry who were detained in internment camps during World War II;
- (10) Payments made on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) under P. L. 101-201 and Section 10405 of P.L. 101-239;
- (11) Payments made under Section 6 of the Radiation Exposure Compensation Act, P.L. 101-426 for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
- (12) The value of any ~~child-care~~ childcare provided or arranged under the Child Care and Development Block Grant Act, as amended by Section 8(b) of P.L. 102-586.
- (13) Payments made to individuals because of their status as victims of Nazi persecution per P.L. 103-286;
- (14) Matching funds and any interest earned on these funds that are deposited into individual development accounts (IDAs), as a demonstration project or TANF-funded, per 42 U.S.C. § 604;
- (15) Payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations, per P.L. 105-78;
- (16) Payments made to certain Vietnam or Korea veterans' children with spina bifida, per P.L. 104-204 (38 U.S.C. § 1805(a)) or PL 108-183;
- (17) Payments made to the children of women Vietnam veterans who suffer from certain birth defects, per P.L. 106-419 (38 U.S.C. § 1833(c));
- (18) Payments of the refundable child tax credit made under Section 24 of the Internal Revenue Code of 1986;
- (19) Assistance provided for flood mitigation activities, per Section 1 of P.L. 109-64 (42 U.S.C. § 4031);
- (20) Payments made to individuals under the Energy Employees Occupational Illness Compensation Program Act of 2000, per Section 1 of P.L. 106-398 (42 U.S.C. § 7385e); and
- (21) The Oklahoma Achieving a Better Life Experience (ABLE) Program, in accordance with OAC 317:35-5-41.9(c)(1) and 26 U.S.C. § 529A. Money deposited into or withdrawn from a qualified ABLE Program account or a qualified ABLE Program account set up in any other state, is excluded as income or a resource when the individual:

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- (A) Provides documents to verify the account meets exemption criteria;
  - (B) Verifies money deposited in the account does not exceed the annual federal gift tax exclusion amount per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as countable income in the amount deposited; and
  - (C) Verifies withdrawals from the account were used to pay qualified disability expenses (QDE). Money withdrawn for reasons other than to pay QDE is considered as income for the month of withdrawal.
- (22) Any other income exempted by new or revised federal statutes that are in effect before the Subpart K Appendix is updated.
- (f) **Unearned income excluded by the Social Security Act.** Unearned income excluded by the Social Security Act, per 20 C.F.R. § 416.1124 includes:
- (1) Any public agency's refund of taxes on real property or food;
  - (2) Need-based assistance that is wholly funded by a State or one of its political subdivisions. For purposes of this rule, an Indian tribe is considered a political subdivision of a State. Assistance is based on need when it is provided under a program that uses the individual's income as an eligibility factor. State need-based assistance programs include the SSP program, but not federal/state programs such as TANF;
  - (3) Any portion of a grant, scholarship, fellowship, or gift used or set aside for paying tuition, fees, or other necessary educational expenses. This does not include any portion set aside or actually used for food or shelter;
  - (4) Food raised by the individual and/or his or her spouse, if it is consumed by the individual or the individual's household;
  - (5) Assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any federal statute because of a presidentially-declared disaster;
  - (6) The first sixty dollars (\$60) of unearned income received in a calendar quarter that is received infrequently or irregularly. Income is considered:
    - (A) To be infrequent when the individual receives it only once during a calendar quarter from a single source and did not receive that type of income in the month preceding or following the month the income was received; and
    - (B) Irregular when the individual cannot reasonably expect to receive it;
  - (7) Alaska longevity bonus payments;
  - (8) Payments for providing foster care to an ineligible child placed in the individual's home by a public or private nonprofit child placement or ~~child care~~ childcare agency;
  - (9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become a part of the separate burial fund;
  - (10) Certain support and maintenance assistance as described in 20 C.F.R. § 416.1157 that is certified in writing by the appropriate state agency to be both based on need and:
    - (A) Provided in-kind by a private nonprofit agency; or
    - (B) Provided in cash or in-kind by a:
      - (i) Supplier of home heating oil or gas;
      - (ii) Rate-of-return entity providing home energy; or
      - (iii) A municipal utility providing home energy;
  - (11) One-third (1/3) of child support payments received on behalf of the minor child with disabilities;
  - (12) The first twenty dollars (\$20) of any unearned income received in a month other than income in the form of in-kind support and maintenance received in the household of another per (b)(8) of this Section and need-based income. Need-based income is a benefit that uses financial need as a factor to determine eligibility. The twenty dollars (\$20) exclusion does not apply to a needs-based benefit that is totally or partially funded by the federal government or by a nongovernmental agency. However, assistance which is based on need and funded wholly by a State or one of its political subdivisions, such as SSP, is excluded totally from income. When the individual has less than twenty dollars (\$20) of unearned income in a month, the rest of the twenty dollars (\$20) exclusion may be deducted from the individual's countable earned income;
  - (13) Any unearned income received and used to fulfill an approved plan to achieve self-support (PASS) for an individual with disabilities or blindness. The Social Security Administration (SSA) approves the plan, the amount of income excluded, and the period of time approved;
  - (14) Federal housing assistance provided under:
    - (A) The U.S. Housing Act of 1937;
    - (B) The National Housing Act;
    - (C) Section 101 of the Housing and Urban Development Act of 1965;
    - (D) Title V of the Housing Act of 1949; or
    - (E) Section 202(h) of the Housing Act of 1959;
  - (15) Any interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement. This exclusion from income applies to interest accrued on or after April 1, 1990;
  - (16) The value of any commercial transportation ticket among the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, that is received as a gift and is not converted to cash;
  - (17) Payments received by an individual from a fund established by a state to aid crime victims;
  - (18) Relocation assistance provided by a state or local government that is comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 that is subject to the treatment required by Section 216 of that Act;



- (19) Special pay received from one of the uniformed services, per 37 U.S.C. § 310;
- (20) Interest or other earnings on a dedicated account established for an eligible individual under eighteen (18) years of age when past due benefit payments must or may be paid into such an account, per 20 C.F.R. § 416.1247;
- (21) Gifts to children under eighteen (18) years of age with life-threatening conditions from an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, provided that:
  - (A) In-kind gifts not converted to cash; or
  - (B) Cash gifts do not exceed two-thousand dollars (\$2,000) within a calendar year;
    - (i) ~~Is blind or disabled;~~
    - (ii) ~~Is under twenty two (22) years of age; and~~
    - (iii) ~~Attends a college, university, or a course of vocational or technical training designed to prepare students for gainful employment;~~
- (22) Interest and dividend income from a countable resource or from a resource excluded under a federal statute other than Section 1613(a) of the Social Security Act;
- (23) AmeriCorps State and National and ~~AmeriCorps~~ AmeriCorps National Civilian Community Corps cash or in-kind payments made to participants or on their behalf, such as food, shelter, and clothing allowances;
- (24) Any annuity paid by a state to an individual, or his or her spouse, based on the State's determination that the individual is a veteran and is blind, disabled, or aged; and
- (25) The first two-thousand dollars (\$2,000) per calendar year received as compensation for participation in clinical trials that meet the criteria, per Section 1612(b)(26) of the Social Security Act.

(g) **Earned income exclusions.** Per 20 C.F.R. § 416.1112, earned income exclusions are applied after the unearned income exclusions, and in the order listed per (1) through (11) of this subsection. Earned income exclusions must not exceed the amount earned and include:

- (1) Earned income tax credit and child tax credit payments;
- (2) The first ~~\$30~~ thirty dollars (\$30) of infrequent or irregular earned income received in a calendar quarter;
- (3) The student earned income exclusion (SEIE) up to the SEIE monthly limit, per OKDHS Appendix C-1, Schedule VIII.E is applied to the earned income of a student who:
  - (A) Is blind or disabled;
  - (B) Is under twenty-two (22) years of age; and
  - (C) Attends a college, university, or a course of vocational or technical training designed to prepare students for gainful employment.
- (4) Any portion of the twenty (\$20) month general income exclusion that was not excluded from unearned income in the same month;
- (5) The first five-hundred dollars (\$500) of the monthly earnings of an individual who is blind, per Section 15 of Title 7 of the Oklahoma Statutes;

- (6) Sixty-five dollars (\$65) of earned income in a month. This exclusion is applied once per couple;
- (7) The earned income individuals with disabilities who are not blind used to pay impairment-related work expenses, per 20 C.F.R. § 404.1576, including, but not limited to:
  - (A) Attendant care services;
  - (B) Assistance with personal functions;
  - (C) Payments for medical devices;
  - (D) Payments for prosthetic devices;
  - (E) Payments for work-related equipment;
  - (F) Payments for drugs and medical services used to control the impairment; and
  - (G) Payments for transportation costs;
- (8) One-half (1/2) of any remaining earned income in a month;
- (9) Actual work expenses paid by individuals who are blind and under age sixty-five (65) or who receive SSI as a blind person the month before reaching the age of sixty-five (65), such as transportation expenses to and from work and job performance or improvement expenses;
- (10) Earned income received and used to fulfill an approved plan to achieve self-support (PASS) for individuals who are blind or disabled and under sixty-five (65) years of age or who are blind and disabled and received SSI as a blind or disabled person for the month before reaching sixty-five (65) years of age. The SSA approves the plan, the amount of income excluded, and the period of time approved; and
- (11) Payments made to participants in AmeriCorps State and National and AmeriCorps National Civilian Community Corps (NCCC). These payments may be made in cash or in-kind and may be made directly to the AmeriCorps participant or on the AmeriCorps participant's behalf. These payments include, but are not limited to: living allowance payments, stipends, educational awards, and payments in lieu of educational awards.
  - (A) ~~Earned or unearned exclusions are never reduced below zero;~~
  - (B) ~~Portions of a monthly exclusion cannot be carried over for use in a subsequent month;~~
  - (C) ~~Earned income exclusions are never applied to unearned income;~~
  - (D) ~~Unearned income exclusions are not applied to earned income except for any remaining portion of the \$20 general income exclusion.~~
- (h) **Unused exclusions.** Unused:
  - (1) Earned or unearned exclusions are never reduced below zero (0);
  - (2) Portions of a monthly exclusion cannot be carried over for use in a subsequent month;
  - (3) Earned income exclusions are never applied to unearned income; and/or
  - (4) Unearned income exclusions are not applied to earned income except for any remaining portion of the twenty dollars (\$20) general income exclusion.

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(i) **Monthly income determination.** The total gross amount of earned and unearned income available to the eligible individual and eligible or ineligible spouse is determined before subtracting applicable unearned and earned income exclusions per (d) through (g) of this section. In calculating monthly income, cents are included in the computation until the monthly amount of each income source is established. Once the monthly amount of each income source is established, cents are rounded to the nearest dollar, (one (1) to forty-nine (49) cents is rounded down, and fifty (50) to ninety-nine (99) cents is rounded up).

(1) **Averaging income.** When the individual indicates that he/she receives income monthly, but on an irregular basis, the most recent two (2) months of income are averaged to determine income eligibility.

(A) Income that is received less often than monthly or in amounts that vary significantly over the course of a year may be averaged over a longer period of time. For instance, royalty income must be averaged over a six (6) month period.

(B) Less than two (2) months of income may be used when the income started less than two (2) months ago or previous income amounts are not representative of future income. For instance, the individual may have started a new job less than two (2) months ago or may have received a one-time bonus or overtime pay that is not expected to recur.

(2) **Converting income to a monthly amount.** Income received more often than monthly is converted to monthly amounts as indicated in (A) through (E) of this subsection:

(A) **Daily.** Income received on a daily basis is converted to a weekly amount. When there is consistency in days worked each week and regular pay dates, the income is multiplied by 4.3. When there is no consistency, refer to (3) of this subsection for irregular income processing.

(B) **Weekly.** Income received weekly is multiplied by 4.3.

(C) **Twice a month.** Income received twice a month is multiplied by two (2).

(D) **Biweekly.** Income received every two (2) weeks is multiplied by 2.15.

(E) **Irregular income.** Income received monthly but at irregular intervals is not converted by 4.3, 2, or 2.15 when there is no consistency in the work offered or when pay is received. Instead, the income received over the last two (2) months is added together and divided by two (2) to arrive at a monthly average.

(3) **Infrequent or irregular income.** Infrequent or irregular income is considered countable income in the month it is received unless excluded per (C) of this paragraph.

(A) Income is considered to be infrequent if the individual receives it only once during a calendar quarter from a single source and the individual did not receive that type of income in the month preceding or following the month the income was received.

(B) Income is considered to be irregular if the individual cannot reasonably expect to receive it.

(C) When the individual receives infrequent or irregular income, exclude the first:

(i) ~~\$30~~ **Thirty dollars (\$30)** per calendar quarter of earned income; and

(ii) ~~\$60~~ **Sixty dollars (\$60)** per calendar quarter of unearned income.

(4) **Self-employment income determination.** Self-employment income is determined per (A) through (E) of this paragraph:

(A) When filed, the federal income tax form for the most recent year is used to calculate the individual's self-employment income and business expenses for the certification period. The net earnings shown on the income tax form after business expenses are subtracted is divided by twelve (12) months to determine the individual's monthly countable self-employment income.

(B) When the individual did not file a federal tax form for the most recent year, the individual's business records showing monthly income and expenses are used to determine the individual's self-employment income. When the business was in operation for the entire year, the individual's net income after subtracting business expenses is divided by twelve (12) months to determine the individual's monthly countable self-employment income.

(C) Self-employment income that represents a household's annual support is prorated over a twelve-month (12-month) period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a twelve-month (12-month) period if the income represents the farmer's annual support.

(D) If the household's business has operated for less than a year, the income from that business is averaged over the period of time the business has operated to establish the monthly income amount.

(E) After the net countable self-employment income is determined, the earned income exclusions per (g) of this section are then applied to establish countable earned income.

(5) **SSI recipients.** If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income does not affect SoonerCare receipt and the State Supplemental Payment (SSP) payment amount as long as the changed income amount does not cause SSI ineligibility.

(A) Income considered by SSI in the retrospective cycle is not counted until SSI makes the change, so the income is not counted twice. If the SSI change is not made timely by SSA, the income is counted as if it had been timely.

(B) If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the SoonerCare and SSP benefit. Any SSI overpayment caused by

SSA not making timely changes will result in recovery by SSI in the future. When the OKDHS worker becomes aware of income changes that affect the individual's SSI eligibility or payment amount, he/she shares the information with the SSA office.

(j) **Computation of income.** After determining the individual's and his/her spouse's monthly income.

(1) **General income exclusion.** The general income exclusion of twenty dollars (\$20) per month is subtracted from the combined unearned income of the eligible individual and eligible or ineligible spouse, unless the only unearned income is SSP. If any portion of the general income exclusion is not subtracted from unearned income, it is subtracted from earned income.

(2) **Earned income deduction.** When the individual has earned income, after deducting the twenty dollars (\$20) exclusion, the sixty-five (\$65) and one-half of the remaining combined earned income is then deducted.

(3) **Deeming computation procedures.** Refer to OAC 340:35-5-42(k) for deeming computation procedures from an ineligible spouse, ineligible parent, sponsor of an alien or an essential person to the eligible individual or child.

(k) **General income deeming procedures.** The term deeming is used to identify the process for considering another individual's income to be available to the applicant or SoonerCare member, described in this Section as the eligible individual or child. Per Section 416.1160 of Title 20 of the Code of Federal Regulations (20 C.F.R. § 416.1160), there are four (4) categories of individuals whose income may be deemed when determining eligibility: an ineligible spouse, ineligible parent, the sponsor of an alien, or an essential individual. The first step in deeming is determining how much income the applicable individual(s) has. When deeming rules apply, it does not matter if the other individual's income is actually available to the eligible individual or child.

(1) **Ineligible spouse.** An ineligible spouse is a spouse who lives in the same household with the eligible individual and is not eligible for Supplemental Security Income (SSI). For spouse-to-spouse deeming to apply, the eligible individual must be eligible based on his or her own income.

(2) **Ineligible parent.** An ineligible parent is a natural or adoptive parent or stepparent who lives with an eligible child under eighteen (18) years of age and is not eligible for SSI. A stepparent's income is not deemed if the eligible child's natural or adoptive parent dies or permanently leaves the home, per 20 C.F.R. § 416.1165.

(3) **Sponsor of an alien.** A sponsor is an individual, not an organization or an employer, who signs an affidavit agreeing to support the alien as a condition for the alien's admission for permanent residence in the ~~United States~~ (U.S.)U.S. A portion of the sponsor's income is deemed to the alien for three (3) years even when the sponsor and alien do not live together unless (A) if this paragraph applies.

(A) Deeming rules regarding sponsored aliens do not apply when the alien:

(i) Is a refugee admitted to the ~~United States~~ (U.S.)U.S., per Section 203(a)(7), 207(c)(1) or Section 212(d)(5) the Immigration and Nationality Act;

(ii) Was granted asylum by the Attorney General of the U. S.; or

(iii) Becomes blind or disabled, per 20 C.F.R. § 416.901 after admission to the U. S. When this occurs, the sponsor's income is no longer deemed beginning with the month in which you're the disability or blindness begins.

(B) If the sponsor is the alien's ineligible spouse or ineligible parent(s), the spouse-to-spouse or parent-to-child deeming calculations apply.

(C) If a sponsored alien has a sponsor and an ineligible spouse or ineligible parent(s) who is not his/her sponsor, both sponsor-to-alien and spouse-to-spouse or parent-to-child deeming calculations apply.

(4) **Household definition.** A household for deeming purposes may include the eligible individual or child, an eligible or ineligible spouse, and any children of the couple or of either member of the couple. A household for an eligible child includes the eligible child's parent(s), and any other children of the parent(s).

(A) A child is considered a member of the household from birth for deeming purposes unless the parent(s) completed paperwork to give the child up for adoption or the child was placed in the temporary custody of a public children's services agency. Exception: A premature infant born at thirty-seven (37) weeks or less whose birth weight in less than two (2) pounds ten (10) ounces is considered disabled by the ~~Social Security Administration~~SSA even if no other medical impairment exists. When this occurs, the parent(s)' income is not deemed to the child until the month after the month the child leaves the hospital and begins living with his/her parent(s).

(B) An eligible individual or an ineligible spouse or ineligible parent who is temporarily absent from the home per (5) of this subsection, is considered to be a member of the household for deeming purposes per 20 C.F.R. § 416.1167.

(5) **Temporary absence for deeming purposes.** During a temporary absence, per 20 C.F.R. § 416.1167, the absent individual is considered a household member for deeming purposes when an:

(A) Eligible individual or child, ineligible spouse, ineligible parent, or an ineligible child leaves the household but intends to and does return in the same month or the next month;

(B) Eligible individual or child enters a medical treatment facility for up to two (2) or three (3) full months;

(C) Eligible child is away at school but comes home on some weekends or lengthy holidays and is subject to his/her parent's control; or

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(D) Ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty.

(l) **Income exclusions for an ineligible spouse or ineligible parent.** Income excluded for an ineligible spouse or parent per 20 C.F.R. § 416.1161 include:

(1) Income excluded by federal laws other than the Social Security Act, per the Appendix to Subpart K of Part 416 and Oklahoma Administrative Code (OAC) 317:35-5-42(e);

(2) Any public income-maintenance payments the ineligible spouse or parent receives and any income that was counted or excluded in figuring the amount of that payment. Per 20 C.F.R. § 416.1142, these payments include SSI, State Supplemental Payment (SSP), TANF, refugee cash assistance, disaster relief and emergency assistance, general assistance provided by the Bureau of Indian Affairs, and U.S. Department of ~~Veteran~~Veterans Affairs, State or local government assistance programs based on need;

(3) Any of the ineligible spouse's or parent's income that is used by a public income-maintenance program to determine that program's benefits to someone else;

(4) Income used to comply with the terms of court-ordered support, or support payments enforced under Title IV-D of the Social Security Act;

(5) Income the ineligible spouse or ineligible parent was paid under a federal, state, or local government program to provide the eligible spouse or child with chore, attendant, or homemaker services, such as payments under Title XX of the Social Security Act;

(6) Any portion of a grant, scholarship, fellowship, or gift used or set aside to pay tuition, fees or other necessary educational expenses;

(7) Money received for providing foster care to an ineligible child;

(8) The value of Supplemental Nutrition Assistance Program food benefits and the value of Department of Agriculture donated foods;

(9) Food raised by the spouse or parent and consumed by members of the household in which you live;

(10) Tax refunds on income, real property, or food purchased by the family;

(11) Income used to fulfill an approved plan for achieving self-support, per 20 C.F.R. §§ 416.1180 through 416.1182 and OAC 317:35-5-42(f)(13) and (g)(10);

(12) The value of in-kind support and maintenance as described in OAC 317:35-5-42(b)(8);

(13) Alaska longevity bonus payments;

(14) Disaster assistance, per 20 C.F.R. §§ 416.1150 and 416.1151;

(15) Income received infrequently or irregularly, per 20 C.F.R. §§ 416.1112(c)(1) and 416.1124(c)(6) and OAC 317:35-5-42(f)(6) and (g)(2);

(16) Work expenses if the ineligible spouse or parent is blind such as transportation expenses to and from work and job performance or improvement expenses;

(17) Certain support and maintenance assistance, per 20 C.F.R. § 416.1157(c) and OAC 317:35-5-42(e)(10);

(18) Housing assistance, per 20 C.F.R. § 416.1124(c)(14);

(19) The value of a commercial transportation ticket, per 20 C.F.R. § 416.1124(c)(16). However, if such a ticket is converted to cash, the cash is income in the month your spouse or parent receives the cash;

(20) Refunds of ~~Federal~~federal income taxes and advances made by an employer relating to an earned income tax credit, per 20 C.F.R. § 416.1112(c);

(21) Payments from a fund established by a State to aid victims of crime, per 20 C.F.R. § 416.1124(c)(17);

(22) Relocation assistance, per 20 C.F.R. § 416.1124(c)(18);

(23) Special pay received from one of the uniformed services pursuant to Section 310 of Title 37 of the United States Code;

(24) Impairment-related work expenses, per 20 C.F.R. § 404.1576 and OAC 317:35-5-42(g)(7), incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under Title II of the Social Security Act;

(25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to accumulate as part of the value of agreements representing the purchase of excluded burial spaces per 20 C.F.R. § 416.1124(c)(9) and (15));

(26) Interest and dividend income from a countable resource or from a resource excluded under a Federal statute other than Section 1613(a) of the Social Security Act;

(27) Earned income of a student, per 20 C.F.R. § 416.1112(c)(3) and OAC 317:35-5-42(g)(3); and

~~(28) Any additional increment in pay, other than any increase in basic pay, received while serving as a member of the uniformed services, if the ineligible spouse or parent:~~

(28) Any additional increment in pay, other than any increase in basic pay, received while serving as a member of the uniformed services, if the ineligible spouse or parent:

(A) Received the pay as a result of deployment to or service in a combat zone; and

(B) Was not receiving the additional pay immediately prior to deployment to or service in a combat zone.

(m) **Deeming from an ineligible spouse.** When the eligible individual lives with an ineligible spouse who has income, the deeming steps in (1) through (5) of this paragraph are used to calculate the amount of income to deem to the eligible individual.

(1) The ineligible's spouse's total gross unearned and earned income is determined and appropriate exclusions per (l) of this Section are applied.

(2) An ineligible child allocation is then subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.C.

(A) The ineligible child allocation is subtracted from the ineligible spouse's unearned income before subtracting any remaining allocation from his/her earned income.

(B) An ineligible child allocation is not allowed for a child who receives a public income-maintenance ~~payments~~ payment, per 20 C.F.R. § 416.1142 and as listed per (1)(2) of this Section.

(C) When the ineligible child has countable income, the child's income is subtracted from the ineligible child allocation before subtracting the remaining allocation from the ineligible spouse's income.

(3) When the ineligible spouse sponsors an alien(s), the allocation for the alien(s) that is deemed from the ineligible spouse's income is subtracted from the ineligible spouse's unearned income before subtracting any remaining allocation from his/her earned income.

(A) The allocation for each sponsored alien is the difference between the SSI ~~federal benefit rate (FBR)~~FBR for an eligible couple minus the FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C.

(B) Each alien's allocation is reduced by the amount of the alien's own income, per (m) of this Section.

(4) When, after subtracting the ineligible child allocation and, if appropriate, the sponsored alien allocation, the ineligible spouse's income is less than or equal to the difference between the SSI FBR for an eligible couple and the SSI FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C, no income is deemed from the ineligible spouse.

(A) In this instance, only the eligible individual's own countable income minus exclusions per (l) of this Section is considered.

(B) When the eligible individual's countable income is less than or equal to the SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, he/she is financially eligible for SoonerCare (Medicaid). When the eligible individual's countable income is over the SSI FBR standard, the individual's eligibility for Qualified Medicare Beneficiary Plus (QMBP) must still be evaluated.

(5) When, after subtracting the appropriate allocations, the ineligible spouse's income is greater than the difference between the SSI FBR for an eligible couple and the SSI FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C, the spouses are treated as an eligible couple by:

(A) Combining the remainder of the ineligible spouse's unearned income with the eligible individual's unearned income and the remainder of the ineligible spouse's earned income with the eligible individual's earned income;

(B) Applying appropriate income exclusions, per OAC 317:35-5-42(e), (f), and (g) from the eligible spouse's income, including the ~~\$20~~twenty dollars

~~(\$20)~~ general exclusion from the couple's unearned income and ~~\$65~~sixty-five dollars (\$65) plus one-half (1/2) of the remaining earned income from the couple's earned income; and

(C) Subtracting the couple's countable income from the SSI FBR for an eligible couple, per OKDHS Appendix C-1, Schedule VIII.C. When the income is less than or equal to the SSI FBR for an eligible couple, the eligible individual is financially eligible for SoonerCare (Medicaid). When the eligible individual's countable income is over the SSI FBR standard, the individual's eligibility for Qualified Medicare Beneficiary Plus (QMBP) must still be evaluated.

(n) **Deeming from ineligible parent(s).** When a child with disabilities or blindness lives with ineligible parent(s), the deeming steps in (1) through (6) of this paragraph are used to calculate the amount of income to deem to the eligible child, up through the month in which the child reaches age eighteen (18).

(1) The gross unearned and earned income of each ineligible parent living in the home is determined and appropriate exclusions are applied, per (l) of this Section.

(2) An ineligible child allocation is subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Schedule VIII.C. Exception: An ineligible child allocation is not allowed for a child who receives public income-maintenance payments, per 20 C.F.R. § 416.1142 and as listed per (1)(2) of this Section.

(A) The ineligible child allocation is first subtracted from the ineligible parent(s)' combined unearned income before subtracting any remaining allocation from their earned income.

(B) When the ineligible child has countable income, the child's income is subtracted from the ineligible child allocation before applying the allocation.

(3) When the ineligible parent sponsors an alien(s), the allocation for the alien(s) that is deemed from the ineligible parent's income per (p) of this Section is subtracted from the ineligible parent(s)' income.

(4) An allocation is then subtracted for the ineligible parent(s) unless the parent receives public income-maintained payments. The allocation is calculated by:

(A) Subtracting the twenty dollars (\$20) general exclusion from the combined unearned income of the ineligible parent(s). If there is less than twenty dollars (\$20) of unearned income, subtract the twenty dollars (\$20) remaining exclusion from their combined earned income;

(B) Subtracting sixty-five dollars (\$65) and one-half of the remainder of their earned income; and

(C) Totaling the ineligible parent(s)' remaining earned and unearned income and, depending on the number of parents in the home, subtracting the SSI FBR for an individual or a couple, per OKDHS Appendix C-1, Schedule VIII.C.

(5) The parent(s)' remaining income is then deemed to the eligible child. When there is more than one (1)

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eligible child in the home, the parent(s)' remaining income is divided by the number of eligible children in the home.

(6) The deemed income is added to the eligible child's own countable unearned income. When the eligible child's deemed and own unearned and earned income, minus appropriate exclusions, per OAC 317:35-5-42(e),(f), and (g), is less than or equal to the SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the child is financially eligible for SoonerCare (Medicaid).

(A) When a child with intellectual disabilities is ineligible for SoonerCare due to the deeming process, he/she may be approved for SoonerCare under the Home and Community Based Services Waiver (HCBS) Program, per OAC 317:35-9-5.

(B) When a child is eligible for Tax Equity & Fiscal Responsibility Act (TEFRA), the income of child's parent(s) is not deemed to him/her.

(C) The parent(s)' income is not deemed to a premature infant born at thirty-seven (37) weeks or less whose birth weight is less than twelve hundred (1200) grams or approximately two (2) pounds ten (10) ounces until the child leaves the hospital and begins living with his/her parent(s).

(o) **Deeming when the household includes an ineligible spouse, an eligible spouse, and an eligible and ineligible child.** When the household includes an ineligible spouse, an eligible spouse, one or more eligible children, and one or more ineligible children, the ineligible spouse's income is first deemed to the eligible spouse and the remainder to the eligible child(ren) using the deeming steps in (1) through (6) of this subsection.

(1) The gross unearned and earned income of the ineligible spouse is determined and appropriate exclusions are applied, per (1) of this Section.

(2) An ineligible child allocation is subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Schedule VIII.C. Exception: An ineligible child allocation is not allowed for a child who receives public income-maintenance payments, per 20 C.F.R. § 416.1142 and as listed per (1)(2) of this Section.

(3) If the ineligible spouse's remaining income is less than or equal to the current SSI FBR for a couple minus the current SSI FBR for an individual, no income is deemed to the eligible spouse or eligible child(ren).

(A) Compare the eligible spouse's and each eligible child's own countable income, after applying appropriate exclusions, per OAC 317:35-5-42(e),(f), and (g) to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(B) When the eligible spouse's and/or each eligible child's own income is less than or equal to the current SSI FBR for an individual, they are financially eligible for SoonerCare.

(4) If the ineligible spouse's remaining income after subtracting the ineligible child allocation(s) is greater than the current SSI FBR for a couple minus the current SSI FBR for an individual:

(A) Combine the ineligible spouse's post-allocation unearned and earned income and the eligible spouse's unearned and earned income, after applying the appropriate exclusions, per OAC 317:35-5-42(e),(f), and (g);

(B) Subtract the twenty dollars (\$20) general exclusion from the couple's combined unearned income. If there is less than twenty dollars (\$20) of unearned income, then subtract the remainder of the exclusion from the couple's combined earned income; and

(C) Subtract sixty-five dollars (\$65) plus one-half of the remainder from the couple's combined earned income.

(5) If the couple's countable income is less than or equal to the current SSI FBR for a couple, per OKDHS Appendix C-1, Schedule VIII.C, the eligible spouse is financially eligible for SoonerCare and no income is deemed to the eligible child(ren). If the couple's countable income is greater than the current SSI FBR for a couple, the eligible spouse is not financially eligible for SoonerCare.

(6) When the eligible spouse is not financially eligible for SoonerCare, the amount of the couple's income in excess of the SSI FBR for a couple is divided by the number of eligible children in the household. The resulting amount is deemed to each eligible child.

(A) Any income deemed to an eligible child is added to the eligible child's own unearned income.

(B) The eligible child's unearned and earned income are combined after applying appropriate exclusions, per OAC 317:35-5-42(e),(f), and (g).

(C) If each eligible child's resulting countable income is less than or equal to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the eligible child is financially eligible for SoonerCare.

(p) **Deeming from a sponsor to an alien.** Sponsor-to-alien deeming applies regardless of whether the sponsor and the sponsored alien live in the same household or whether the sponsor actually provides any support to the sponsored alien unless (a)(3)(A) applies.

(1) The income of the sponsor and the sponsor's spouse, if applicable, is first determined and applicable exclusions applied, per OAC 317:35-5-42(e).

(2) The appropriate allocation for the sponsor, the sponsor's spouse, and any children of the sponsor is then subtracted. An ineligible dependent's income is not subtracted from the sponsor's child(ren)'s allocation.

(A) The allocation amount for the sponsor is the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(B) The allocation for each sponsor's spouse and child(ren) of each sponsor is one-half of the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(3) The remaining income amount is deemed to the sponsored alien as unearned income. If the sponsor sponsors multiple aliens, the deemed amount is applied in full to each sponsored alien.

(4) The sponsored alien's unearned and earned income is combined and applicable exclusions applied, per OAC 317:35-5-42(e),(f), and (g). When the alien's countable income and deemed income is less than or equal to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the alien is financially eligible for SoonerCare.

[OAR Docket #22-444; filed 6-23-22]

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

[OAR Docket #22-440]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 6. SoonerCare for Pregnant Women and Families with Children  
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children  
317:35-6-38 [AMENDED]  
(Reference APA WF # 21-16)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes (O.S.); and the Oklahoma Health Care Authority Board; 42 CFR § 435.1110; and 42 CFR § 435.119

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

December 30, 2021

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 8, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 6. SoonerCare for Pregnant Women and Families with Children  
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children  
317:35-6-38 [AMENDED]

**Gubernatorial approval:**

December 21, 2021

**Register publication:**

39 Ok Reg 446

**Docket number:**

21-970

(Reference APA WF # 21-16)

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed policy will add expansion adults to the list of groups eligible to have a presumptive eligibility determination made by a qualified hospital participating in the Hospital Presumptive Eligibility (HPE) program. HPE is a limited period of SoonerCare eligibility for certain eligibility groups that can be determined by a qualified hospital on the basis of preliminary information provided by the applicant while the complete SoonerCare application is being processed.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN**

**PART 5. DETERMINATION OF ELIGIBILITY FOR SOONERCARE HEALTH BENEFITS FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN**

**317:35-6-38. Hospital Presumptive Eligibility presumptive eligibility (HPE)**

(a) **General.** ~~Hospital Presumptive Eligibility (HPE)~~HPE is a limited period of SoonerCare eligibility for individuals who are categorically related to certain ~~MAGI~~Modified Adjusted Gross Income (MAGI) eligibility groups listed in OAC 317:35-6-38(a)(1)(A)(i) through (vi) and are also determined by a qualified hospital (~~see OAC 317:35-6-38(a)(2)(A) through (L)~~) for the conditions of a qualified hospital [~~see OAC 317:35-6-38(a)(2)(A) through (L) for the conditions of a qualified hospital~~], on the basis of preliminary information provided by the applicant on a completed HPE application, to be eligible for SoonerCare services. The rules in this ~~section~~Section apply only to those individuals applying for, or qualified hospitals determining eligibility under, the HPE program.

(1) **Individuals eligible to participate in the HPE program.** To be eligible to participate in the HPE program, an individual must be categorically related to a MAGI eligibility group (see OAC 317:35-5-2 for categorical relationship criteria) and also meet the income standard and non-medical eligibility specified in this ~~section~~Section.

(A) ~~MAGI Eligibility Groups~~eligibility groups. The following MAGI eligibility groups are eligible to have a presumptive eligibility (PE) determination made by a qualified hospital participating in the HPE program:

- (i) ~~children~~Children;
- (ii) ~~pregnant~~Pregnant women;

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(iii) ~~parents and caretaker relatives~~ Parent/caretaker relatives;

(iv) Expansion adults;

(v) ~~former~~ Former foster care children;

(vi) ~~Breast and Cervical Cancer Treatment~~ (BCC) treatment program; and

(vii) ~~SoonerPlan Family planning~~ family planning program.

(B) **Income standard.** The income that is counted in determining PE for an individual is that individual's household income. The income limit for the MAGI eligibility groups covered under the HPE program is the same as defined in OAC 317:35-6-39(b)(8) and is listed on the HPE application. The calculation of countable household income for an individual covered under the HPE program is the same as OAC 317:35-6-39, except that, in determining the individual's household composition, only the MAGI household composition non-filer rules listed under OAC 317:35-6-43 apply for all individuals applying for the HPE program regardless of whether or not the individual is a tax filer, plans on filing taxes, or is a tax dependent.

(C) **Non-medical eligibility requirements.** Individuals covered under the HPE program must also meet the non-medical eligibility requirements described in OAC 317:35-5-25.

(D) **Pregnant women covered under the HPE program.** Coverage for pregnant women who are covered under the HPE program is limited to ambulatory prenatal care only, and the number of PE periods that may be authorized for pregnant women is one (1) per pregnancy. Pregnant women who may be covered for the benefit of the unborn child(ren) under Title XXI are not eligible for the HPE program.

(E) **Other individuals covered under the HPE program.** Coverage for other individuals listed under OAC 317:35-6-38(a)(1)(A)(i) through (vi) who are covered under the HPE program, except for pregnant women, is the same as covered under the State Plan. The number of PE periods that may be authorized is one (1) period every ~~365~~ three hundred sixty-five (365) days beginning on the date the individual is enrolled in HPE.

(2) **Qualified hospital.** The decision that a hospital is qualified to make PE determinations is made by the ~~OHCA~~ Oklahoma Health Care Authority. In order to participate in the HPE program and make PE determinations, a qualified hospital must:

(A) Meet all the conditions of an eligible provider under OAC 317:30-5-40;

(B) Elect to participate in the HPE program by:

(i) Completing and submitting a HPE Statement of Intent and Memorandum of Understanding to the OHCA and agreeing to all the terms and conditions of the HPE program;

(ii) Amending its current contract with the OHCA to include participation in the HPE program;

(C) Assign and designate a hospital employee to serve as the HPE program administrator and point of contact;

(D) Assign and designate hospital employees to make PE determinations. The term ~~Authorized Hospital Employee(s) (AHE)~~ "authorized hospital employee(s) (AHE)" means all individuals making PE determinations on behalf of a hospital participating in the HPE program. The AHE must meet the following conditions:

(i) Be an employee of the hospital (i.e. the AHE may not be a third party contractor);

(ii) Attend, complete, and pass the HPE program training course provided and assessed by the OHCA;

(iii) The AHE certificate of HPE course completion must be kept in the worker's file at the hospital and must be made available to the OHCA upon request;

(iv) Follow state and federal privacy and security requirements regarding patient confidentiality;

(v) Agree to abide by all the rules and guidelines of the HPE program established by the OHCA under this ~~section~~ Section.

(E) Notify the OHCA of any changes in the AHE's employment status or in the designation of that individual as the hospital's AHE;

(F) Abide by the rules and regulations of the Uniform Electronic Transaction Act as outlined in OAC 317:30-3-4.1;

(G) Keep internal records of all individuals for whom a PE determination was made and make those records available to the OHCA upon request;

(H) Agree to submit all completed HPE applications and PE determinations to the OHCA within ~~5~~ (5) days of the PE determination;

(I) Notify the applicant in writing, or in cases where the HPE application was made on behalf of a child, notify the child's parent or caretaker of the PE determination outcome and provide and explain to eligible members the "HPE Program Policy and Enrollment" form;

(J) Assist HPE applicants with the completion of a full SoonerCare application within ~~15~~ (15) days of the HPE application submission to the OHCA;

(K) Agree to adhere to the processes and procedures established by the OHCA regarding the operation and oversight of the HPE program; and

(L) Cooperate with the OHCA regarding audit and quality control reviews on PE determinations the hospital makes. The agency may terminate the HPE agreement with the hospital if the hospital does not meet the standards and quality requirements set by the OHCA.



(3) **Limited hospital PE determinations.** The agency limits the PE determinations that a hospital may make to only those eligibility groups described in OAC 317:35-6-38(a)(1)(A) using the MAGI methodology rules established for the HPE program. Additionally, PE determinations made for individuals categorically related to the Breast and Cervical Cancer ~~Treatment~~(BCC) treatment program are limited to qualified hospitals that are also qualified entities through the ~~NBCCEDP~~National Breast and Cervical Cancer Early Detection Program (NBC-CEDP).

(b) **General provisions of the HPE program.** The agency provides SoonerCare coverage to eligible individuals covered during a period of PE.

(1) **PE period.** The PE period begins on the date a qualified hospital determines an individual to be eligible under the HPE program. A qualified hospital has ~~5~~five (5) days to notify the agency of its PE determination. The PE period ends with the earlier of:

(A) The day the agency receives the SoonerCare application form as described in OAC 317:35-5-60 and an eligibility determination is made by the agency; or

(B) If a SoonerCare application is not received, the last day of the month following the month in which the PE determination was made.

(2) **Agency approval of PE.** When the OHCA receives a timely and completed HPE application, a case number and, if needed, SoonerCare member ID is assigned to the member by the agency. Qualified hospitals will be able to review member enrollment and eligibility, once those members have been entered into the system by the OHCA, for claims billing and member eligibility verification.

(3) **Incomplete HPE applications.** Upon receiving a HPE ~~Application~~application, the OHCA reviews it for completeness and correctness. The HPE application is considered incomplete if it is not filled out in its entirety (e.g., the applicant's first or last name is not provided on the application) or if the application is not filed timely with the OHCA. When the HPE application is determined to be incomplete, the HPE application is returned to the AHE or the HPE program administrator at the qualified hospital to correct the application errors or amend the HPE application. To maintain the original PE certification period, the qualified hospital must return the completed or corrected HPE application to the agency within ~~five~~five (5) working days.

(4) **Applicant appeal.** The HPE applicant cannot appeal the PE determination made by a qualified hospital or the expiration date of the PE period.

(5) **Applicant ineligibility.** Applicants ineligible for the HPE program are individuals who do not meet the HPE criteria, individuals who have previously been enrolled in the HPE program within the last ~~365~~three hundred sixty-five (365) days, and individuals currently enrolled in SoonerCare. Individuals currently enrolled in SoonerPlan ~~Family Planning~~family planning are not eligible for HPE family planning services, but may be eligible for

other programs under HPE. When the OHCA receives a HPE application from a qualified hospital for an ineligible applicant (~~e.g., the applicant has been previously enrolled in the HPE program within the last 365 days~~)[~~e.g., the applicant has been previously enrolled in the HPE program within the last three hundred sixty-five (365) days~~], the OHCA will disenroll the individual from the HPE program immediately and notify the hospital of the error. The hospital will be responsible for following up with that individual to notify them of their disenrollment from the HPE program. If the applicant is not currently enrolled into SoonerCare, the applicant may submit a full SoonerCare application and receive a full eligibility determination by the OHCA. HPE services provided to ineligible applicants, other than persons currently enrolled into SoonerCare or SoonerPlan ~~Family Planning~~family planning program, may not be eligible for reimbursement by the OHCA.

[OAR Docket #22-440; filed 6-23-22]

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

[OAR Docket #22-436]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 15. State Plan Personal Care Services  
317:35-15-1 [AMENDED]  
317:35-15-2 [AMENDED]  
317:35-15-3 [AMENDED]  
317:35-15-4 [AMENDED]  
317:35-15-5 [AMENDED]  
317:35-15-6 [AMENDED]  
317:35-15-7 [AMENDED]  
317:35-15-8 [AMENDED]  
317:35-15-8.1 [AMENDED]  
317:35-15-8.2 [REVOKED]  
317:35-15-9 [AMENDED]  
317:35-15-10 [AMENDED]  
317:35-15-12 [AMENDED]  
317:35-15-13.1 [AMENDED]  
317:35-15-13.2 [AMENDED]  
317:35-15-14 [AMENDED]  
317:35-15-15 [AMENDED]  
Subchapter 17. Advantage Waiver Services  
317:35-17-5 [AMENDED]  
317:35-17-16 [AMENDED]  
317:35-17-27 [NEW]  
(Reference APA WF # 21-02B)

**AUTHORITY:**  
The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 1915e ADvantage Waiver; 42 C.F.R. Section 440.167

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

November 23, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 18, 2022

**PUBLIC HEARING:**

January 18, 2022

# Permanent Final Adoptions

## ADOPTION:

March 30, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 12, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 15, State Plan Personal Care Services

317:35-15-2 [AMENDED]

317:35-15-3 [AMENDED]

317:35-15-4 [AMENDED]

317:35-15-5 [AMENDED]

317:35-15-6 [AMENDED]

317:35-15-7 [AMENDED]

317:35-15-8 [AMENDED]

317:35-15-8.1 [AMENDED]

317:35-15-8.2 [REVOKED]

317:35-15-9 [AMENDED]

317:35-15-10 [AMENDED]

317:35-15-13.1 [AMENDED]

317:35-15-13.2 [AMENDED]

317:35-15-14 [AMENDED]

### Gubernatorial approval:

July 1, 2021

### Register publication:

38 Ok Reg 820

### Docket number:

21-636

(Reference APA WF # 21-02)

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revisions will add language to establish guidelines and criteria regarding how an ADvantage member and/or provider are to report critical and non-critical incidents. Additional revisions will align policy with the recently approved 1915c ADvantage waiver renewal and current State Plan Personal Care services authority, which will modify procedures to reflect current business practices. Final revisions will correct grammatical errors.

### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 15. STATE PLAN PERSONAL CARE SERVICES

### 317:35-15-1. Overview of long-term medical care services; relationship to QMBP, SLMB, Qualified Medicare Beneficiary Plus (QMBP), Specified Low-Income Medicare Beneficiary (SLMB), and other SoonerCare services and eligibility

Long-term medical care for the categorically needy includes care in a nursing facility (refer to OAC 317:35-19), public and private intermediate care facility for individuals with

intellectual disabilities (refer to OAC 317:35-9), persons age 65 years or older in mental health hospitals (refer to OAC 317:35-9), Home and Community Based Waiver Services for the Intellectually Disabled (refer to OAC 317:35-9), Home and Community Based Waiver Services for the ADvantage program (refer to OAC 317:35-17), and Personal Care services (refer to this subchapter). Personal Care provides services in the member's own home. Any time an individual is certified as eligible for SoonerCare coverage of long-term care, the individual is also eligible for other SoonerCare services. Another application is not required. Any time an aged, blind, or disabled individual is determined eligible for long-term care, a separate determination must be made to see if eligibility conditions as a Qualified Medicare Beneficiary Plus (QMBP) or Specified Low-Income Medicare Beneficiary (SLMB) are met. Another application for QMBP or SLMB benefits is not required.

#### (a) Long-term medical care for the categorically needy includes:

(1) Care in a nursing facility, per Oklahoma Administrative Code (OAC) 317:35-19;

(2) Public and private intermediate care facility for individuals with intellectual disabilities (ICF/IID), per OAC 317:35-9;

(3) Persons age sixty-five (65) years or older in mental health hospitals, per OAC 317:35-9;

(4) Home and Community-Based Waiver Services for the Intellectually Disabled, per OAC 317:35-9;

(5) Home and Community-Based Waiver Services for the ADvantage program, per OAC 317:35-17; and

(6) State Plan Personal Care services, per OAC 317:35-15.

(b) State Plan Personal Care provides services in the member's own home. Any time an individual is certified as eligible for long-term care SoonerCare coverage, the member is also eligible for other SoonerCare services. Another application is not required. Any time an aged, blind, or disabled individual is determined eligible for long-term care, a separate determination is made to check if the member meets eligibility conditions as a QMBP or an SLMB. Another application for QMBP or SLMB benefits is not required.

### 317:35-15-2. State Plan Personal Care (SPPC) services

(a) Personal care SPPC services is assistance to an individual ~~assist a member~~ in carrying out Activities of Daily Living (ADLs) or ~~in carrying out~~ Instrumental Activities of Daily Living (IADLs) directly related to the member's personal care needs ~~to prevent~~. SPPC services ~~prevent~~ or minimize physical health regression or deterioration. Personal care ~~service requires~~ SPPC services ~~require~~ a skilled nursing assessment ~~to of~~ need, development of a care plan to meet identified personal care needs, care plan oversight, and periodic re-assessment and updating, of the care plan, when necessary. Personal care services do not include technical services, such as suctioning, tracheal care, gastrostomy tube feeding or care, specialized feeding due to choking risk, application of compression stockings, bladder catheterization, colostomy irrigation, wound care, application of prescription lotions or topical ointments,

range of motion exercises, or the operation of equipment of a technical nature, such as a patient lift or oxygen equipment.

- (1) Assess a member's needs;
- (2) Develop a care plan to meet the member's identified personal care needs;
- (3) Manage care plan oversight; and
- (4) Periodically reassess and update the care plan when necessary.

(b) SPPC services do not include technical services, such as:

- (1) Suctioning;
- (2) Tracheal care;
- (3) Gastrostomy-tube feeding or care;
- (4) Specialized feeding due to choking risk;
- (5) Applying compression stockings;
- (6) Bladder catheterization;
- (7) Colostomy irrigation;
- (8) Wound care;
- (9) Applying prescription lotions or topical ointments;
- (10) Range of motion exercises; or
- (11) Operating equipment of technical nature, such as a patient lift or oxygen equipment.

(bc) Personal care SPPC members may receive services in limited types of living arrangements.—The specific living arrangements are set forth below, as per (1) through (5) of this subsection.

(1) Personal care SPPC members are not eligible to receive services while residing in an institutional setting including, but not limited to, licensed facilities, such as a hospital, nursing facility, licensed residential care facility or licensed assisted living facility, or in an unlicensed institutional living arrangement, such as a room and board home or facility. Personal care may not be approved when the client lives in the personal care assistant's home except with the approval of Oklahoma Department of Human Services (DHS) Aging Services.

(A) Licensed facilities, such as a:

- (i) Hospital;
- (ii) Nursing facility;
- (iii) Licensed residential care facility; or
- (iv) Licensed assisted living facility; or

(B) In an unlicensed institutional living arrangement, such as a room and board home or facility.

(2) SPPC is not approved when the member lives in the personal care assistant's (PCA) or the individual personal care assistant's (IPCA) home, except with Oklahoma Human Services (OKDHS) Medicaid Services Unit approval.

(2) Additional living arrangements in which members

(3) Members may receive personal care services are SPPC services in the member's own home, apartment, or a family member's or friend's home or apartment. A home or apartment unit is defined as a self-contained living space having a lockable entrance to the unit including a bathroom and food storage/preparation storage and preparation amenities in addition to bedroom/living/bedroom and living space.

(34) For personal care SPPC members who are full-time students, a dormitory room qualifies as an allowable living arrangement in which to receive personal care services for

the period during which the member is a student. SPPC services.

(45) With prior OKDHS Health Care Management Nurse III approval of the DHS area nurse, personal care SPPC services may be provided in an educational or employment setting to assist the member to achieve vocational goals identified in the care plan.

(ed) Personal care services may be provided by an individual employed by the member referred to as an individual personal care assistant (IPCA) or by a personal care assistant (PCA). A member may employ an IPCA to provide SPPC services. An IPCA may provide SPPC services when he or she is employed by a home care agency, provided the home care agency is certified to provide personal care services and contracted with the Oklahoma Health Care Authority (OHCA) to provide personal care SPPC services. Before providing SPPC services, DHS must determine an OKDHS determines whether the IPCA to be is qualified to provide personal care services and the IPCA is not identified as formal/informal formal or informal support for member before they can provide services. Persons eligible to serve as either IPCAs or PCAs must: PCAs:

- (1) be Are at least 18eighteen (18) years of age;
- (2) have Have no pending notation related to abuse, neglect, or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry;
- (3) not be Are not included in the DHSOKDHS Community Services Worker Registry;
- (4) not be Are not convicted of a crime or and do not have anya criminal background history or registry listings that prohibit employment per O.S. Title 63, Section 1-1950.1; Title 63 of the Oklahoma Statutes Section 1-1944 through 1-948;
- (5) demonstrate Demonstrate the ability to understand and carry out assigned tasks;
- (6) not be Are not a legally responsible family member, such as a spouse, legal guardian, or parent of a minor child of the member being served, such as a spouse, legal guardian, or a minor child's parent exceptions may be made for a legal guardian to provide services only with prior approval from DHS Aging Services;
- (7) have Have a verifiable work history and/or or personal references, and verifiable identification; and
- (8) meet Meet any additional requirements outlined in the contract and certification requirements with OHCA.

(de) Eligibility for Personal Care SPPC services eligibility is contingent on an individual a member requiring one (1) or more of the services offered at least monthly that include including personal care, meal preparation, housekeeping, laundry, shopping or errands, or specified special tasks to meet ADL or IADL assessed needs.

**317:35-15-3. Application for State Plan Personal Care (SPPC) services**

(a) Requests for Personal Care SPPC services. A request for Personal Care is made to the local OKDHS office or ADvantage Administration (AA). The SPPC application process initiates when an online application is completed for SPPC services. A written financial application is not required

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for an ~~individual applicant~~ who has an active SoonerCare case. A financial application for ~~Personal Care SPPC~~ services is initiated when there is no active SoonerCare case. The ~~Medicaid~~ application is signed by the applicant, parent, spouse, guardian or someone ~~else~~ acting on the applicant's behalf. All ~~financial eligibility~~ conditions of ~~financial eligibility~~ ~~must be~~ verified and documented in the case record. When ~~current available~~ information ~~already available in the local office~~ establishes eligibility, the information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or ~~his/her~~ his or her guardian, or a person acting on the applicant's behalf, such as an authorized representative or power-of-attorney, ~~must sign~~ signs the application form.

(b) **Date of application.** Application date. The application date is when the benefits request is received and entered into the electronic system by OKDHS. Exceptions can occur when OKDHS has contracts with certain providers who accept and obtain applications and appropriate documentation. Once the documentation, for the SoonerCare eligibility determination, has been obtained, the contracted provider will forward the application and all applicable documentation to either the OKDHS county office or the Medicaid Services Unit-ADvantage Administration.

(1) The date of applications is:

(A) the date the applicant or someone acting on his/her behalf signs the application in the county of fee;

(B) the date the application is stamped into the county office when the application is initiated outside the county office; or

(C) the date when the request for SoonerCare is made orally and the financial application form is signed later.

(2) An exception to paragraph (1) of this subsection would occur when OKDHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contract provider forwards the application and documentation to the OKDHS county office of the applicant's county of residence for SoonerCare eligibility determination. The application date is the date the applicant signed the application form for the provider.

(c) **Eligibility status.** Financial and medical eligibility ~~must be~~ established before services can be initiated.

### 317:35-15-4. Determination of State Plan Personal Care (SPPC) services medical eligibility for Personal Care determination

(a) **Eligibility.** The Oklahoma Department of Human Services (~~DHS~~) (~~OKDHS~~) ~~area nurse~~ Health Care Management Nurse (HCMN) III determines medical eligibility for ~~personal care SPPC~~ services based on the Uniform Comprehensive Assessment Tool (UCAT) ~~Part III~~ and the determination that the member has unmet care needs that require personal care ~~services assistance~~. ~~Personal care SPPC~~ services are initiated to support the regular care provided in the member's home. ~~Personal care SPPC~~ services are not intended to take the place

of regular care, ~~and~~ general maintenance tasks, or meal preparation ~~shared or done for one another~~ provided by natural supports, such as spouses or other adults who live in the same household. Additionally, ~~personal care SPPC~~ services are not furnished when they principally benefit the family unit. To be eligible for ~~personal care SPPC~~ services, the ~~individual must~~ applicant:

(1) ~~have~~ Has adequate informal supports ~~consisting of~~. This means there is adult supervision that is present or available to contribute to care, or decision-making ability, as documented on the UCAT ~~Part III, to~~. To remain in his or her home without risk to his or her health, safety, and well-being, the ~~individual~~ applicant:

(A) ~~must have~~ Has the decision-making ability to respond appropriately to situations that jeopardize his or her health and safety, or has available supports that compensate for his or her lack of ability as documented on the UCAT ~~Part III~~; or

(B) ~~who has his or her~~ Has his or her decision-making ability, ~~but~~ lacks the physical capacity to respond appropriately to situations that jeopardize health and safety, and ~~was informed by the DHS nurse an~~ OKDHS HCMN I or II informed him or her of potential risks and consequences, ~~may be eligible of~~ remaining in the home.

(2) ~~require a plan of care involving the planning and administration of services delivered under the supervision of professional personnel;~~ Requires a care plan for planning and administering services delivered under a professional personnel's supervision;

(3) ~~have~~ Has a physical impairment or combination of physical and mental impairments as documented on the UCAT ~~Part III~~. An ~~individual applicant~~ who poses a threat to ~~self himself or herself~~ or others, as supported by professional ~~or credible~~ documentation ~~or other credible~~ documentation, may not be approved for ~~Personal Care SPPC~~ services. An individual who is actively psychotic or believed to be in danger of potential harm to ~~self himself or herself~~ or others may not be approved ~~for~~ personal care services;

(4) ~~not have members of the household or~~ Does not have household members or persons who routinely visit the household who, as supported by professional ~~or credible~~ documentation ~~or other credible~~ documentation, pose a threat of harm or injury to the ~~individual applicant~~ or other household visitors;

(5) ~~lack~~ Lacks the ability to meet personal care needs without additional supervision or assistance, or to communicate needs to others; and

(6) ~~require~~ Requires assistance, not of a technical nature, to prevent or minimize physical health regression and deterioration.

(b) **Definitions.** The following words and terms, when used in this subsection, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Activities of Daily Living" (ADL) means ~~activities of daily living are~~ activities that reflect the applicant's

or member's ability to perform self-care tasks essential for sustaining health and safety, such as:

- (A) ~~bathing~~; Bathing;
- (B) ~~eating~~; Eating;
- (C) ~~dressing~~; Dressing;
- (D) ~~grooming~~; Grooming;
- (E) ~~transferring~~ ~~includes~~ Transferring, including activities such as getting in and out of a tub or moving from bed to chair;
- (F) ~~mobility~~; Mobility;
- (G) ~~toileting~~; Toileting; and
- (H) ~~bowel/bladder~~ Bowel or bladder control.

(2) **"ADLs score of three (3) or greater"** means the applicant or member cannot do at least one (1) ADL at all or needs some help with two (2) or more ADLs.

(3) **"Consumer Applicant or Member support very low-need"** means the applicant's or member's UCAT Part III Consumer Support score is zero (0), which this indicates, in the UCAT Part III-assessor's clinical judgment, the formal and informal sources are sufficient for the applicant's or member's present need level of member need-in most functional areas.

(4) **"Consumer Applicant or Member support low need"** means the member's UCAT Part III Consumer Support score is five (5), which this indicates, in the UCAT Part III-assessor's clinical judgment, the support from formal and informal sources are nearly sufficient for the applicant's or member's present need level of member need-in most functional areas. The applicant or member, family, or informal supports are meeting most needs typically expected of family or household members to share or do for one another, such as general household maintenance. There is little risk of institutional placement with loss of current supports.

(5) **"Consumer Applicant or Member support moderate-need"** means the UCAT Part III Consumer applicant or member score is fifteen (15), which this indicates, in the UCAT Part III-assessor's clinical judgment, the formal and informal support is available, but overall, it is inadequate, changing, fragile, or otherwise problematic. The applicant or member requires additional assistance that usually includes personal care assistance with one (1) or more ADLs not available through Medicare, the Veterans Administration, or other federal entitlement programs. Support provided by informal caregivers is of questionable reliability due to one (1) or more of the following: Informal caregiver support is considered questionable or unreliable due to one (1) or more criteria in (A) through (D) of this paragraph:

- (A) ~~care~~ Care or support is required continuously with no relief or backup available;
- (B) ~~informal~~ Informal support lacks continuity due to conflicting responsibilities such as work or child care;
- (C) ~~care or support is provided by persons~~ Persons with advanced age or disability; ~~or provide care; or~~
- (D) ~~institutional~~ Institutional placement can reasonably be expected with any loss of existing support.

(6) **"Consumer Applicant or Member support high-need"** means the ~~member's UCAT Part III Consumer applicant or member score is twenty-five (25) which this indicates, in the UCAT Part III-assessor's clinical judgment, the formal and informal supports are not sufficient as there is very little or no support available to meet the applicant's or member's high degree of member need.~~

(7) **"Community services—worker" Services Worker"** means any non-licensed health professional employed by or under contract with a community services provider who provides, for compensation or as a volunteer, health-related services, training, or supportive assistance to frail elderly, disabled person(s), or person(s) with developmental disabilities.

(8) **"Community Services Worker Registry"** means ~~aan~~ OKDHS established registry established by the ~~DHS, OKDHS~~ per Section (§) 1025.1 of Title 56 of the Oklahoma Statutes (O.S.) ~~to list listing~~ community services workers ~~against whom who~~ have a final investigative finding of abuse, neglect, or exploitation, per 43A O.S. § 10-103, involving a frail elderly, ~~person, disabled person(s), or person(s) with developmental or other disabilities was made by DHS/OKDHS or an administrative law judge; and amended in 2002, to include the listing of~~ SoonerCare (Medicaid) personal care assistants (PCAs) providing personal care services.

(9) **"Instrumental activities of daily living (IADL)" Activities of Daily Living (IADL)"** means those daily activities that reflect the applicant or member's ability to perform household chores and tasks within the community essential for sustaining health and safety, such as:

- (A) ~~shopping~~; Shopping;
- (B) ~~cooking~~; Cooking;
- (C) ~~cleaning~~; Cleaning;
- (D) ~~managing~~ Managing money;
- (E) ~~using~~ Using a phone;
- (F) ~~doing~~ Doing laundry;
- (G) ~~taking~~ Taking medication; and
- (H) ~~accessing~~ Accessing transportation.

(10) **"IADLs score is at least six (6)"** means the applicant or member needs some help with at least three (3) IADLs or cannot do two (2) IADLs at all.

(11) **"IADLs score of eight (8) or greater"** means the applicant or member needs some help with at least four (4) IADLs or the member cannot do two (2) IADLs at all and needs some help with one (1) or more other IADLs.

(12) **"MSQ"** means the ~~mental status questionnaire.~~ Mental Status Questionnaire.

(13) **"MSQ moderate risk range"** means a total weighted-score of seven (7) to eleven (11) that indicates an orientation-memory-concentration impairment or memory impairment.

(14) **"Nutrition moderate risk"** means ~~the a~~ total weighted UCAT Part III Nutrition score is eight (8) or ~~more~~ greater that indicates poor appetite or weight loss

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combined with special diet requirements, medications, or difficulties in eating.

(15) **"Social resources Resource score is eight (8) or more"** means the applicant or member lives alone, or has no informal support when he or she is sick, or needs assistance, or has little or no contact with others.

(c) **Medical eligibility minimum criteria for personal care SPPC.** The medical eligibility minimum criteria for personal care SPPC services are the minimum UCAT ~~Part III~~ score criteria that an applicant or member must meet for medical eligibility for personal care and are:

(1) ADLs score is five (5) or greater; or has an IADLs score of eight (8) or greater; or Nutrition score is (8) or greater; or the MSQ score is seven (7) or greater; or the ADLs score is three (3) and IADLs score is at least six (6); and

(2) ~~Consumer~~ Applicant or Member Support score is fifteen (15) or more; or Consumer Applicant or Member Support score is five (5) and the Social Resources score is eight (8) or more greater.

(d) **Medical eligibility determination.** Medical OKDHS HCMN III determines medical eligibility for personal care SPPC services is determined by the DHS. The medical decision for personal care is made by the DHS area nurse utilizing the UCAT Part III.

(1) ~~Categorical relationship must be established for SPPC services financial eligibility determination of eligibility for personal care. When categorical relationship to Aid to the Disabled was not established but there is an extremely emergent need for personal care, and current medical information is not available, the local office authorizes a medical examination. When authorization is necessary, the county director issues Form 08MA016E, Authorization for Examination, and Form 08MA02E, Report of Physician's Examination, to a licensed medical or osteopathic health care professional, refer to Oklahoma Administrative Code (OAC) 317:30-5-1. The licensed health care professional cannot be in a medical facility internship, residency, or fellowship program or in the full time employment of the Veterans Administration, United States Public Health Service, or other agency. The DHS county worker submits the information to the Level of Care Evaluation Unit (LOCEU) to request a determination of eligibility for categorical relationship. LOCEU renders a decision on the categorical relationship using the Social Security Administration (SSA) definition. A follow up is required by the DHS county worker with (SSA) to ensure the SSA disability decision is also the LOCEU decision.~~

(A) When categorical relationship to Aid to the Disabled is not established, but there is an extremely emergent need for personal care, and current medical information is not available, the local office authorizes a medical examination.

(B) When authorization is necessary, the county director issues Form 08MA016E, Authorization for

Examination, and Form 08MA02E, Report of Physician's Examination, to a licensed medical or osteopathic health care professional, refer to Oklahoma Administrative Code (OAC) 317:30-5-1.

(C) The licensed health care professional cannot be in a medical facility internship, residency, or fellowship program or in the full-time employment of the Veterans Administration, United States Public Health Service, or other agency.

(D) The OKDHS county worker submits the information to the Level of Care Evaluation Unit (LOCEU) to request a medical eligibility determination for categorical relationship. LOCEU renders a decision on the categorical relationship using the Social Security Administration (SSA) definition. The OKDHS county worker is required to conduct a follow-up with SSA to ensure the SSA disability decision is also the LOCEU decision.

(2) ~~Approved contract agencies or the ADvantage Administration (AA) may complete UCAT Part I for intake and screening and forward the form to the county office.~~ the electronic application. This alerts the social services specialist (SSS) of application date.

(3) ~~Upon receipt of the referral, DHS county staff may initiate the UCAT, Part I, referral receipt, OKDHS SSS starts the financial eligibility determination.~~

(4) ~~The DHS nurse OKDHS HCMN I or II is responsible for completing the UCAT Part III assessment visit within ten business (10 business) ten (10) business days of the personal care referral application for the applicant who is SoonerCare eligible at the time of the request. The DHS nurse OKDHS HCMN I or II completes the assessment visit within twenty business (20 business) twenty (20) business days of the referral for the applicant not determined SoonerCare eligible at the time of the request. When the UCAT Part I application indicates the request is from an individual who resides at home and an immediate response is required to ensure the applicant's health and safety of the person, to prevent an emergency situation, or to avoid institutional placement, the UCAT Part III assessment visit has top-scheduling priority.~~

(5) ~~During the assessment visit, the DHS nurse OKDHS HCMN I or II completes the UCAT Part III and reviews rights to privacy, fair hearing, provider choice, and the pre-service acknowledgement agreement with the member. The DHS nurse informs OKDHS HCMN I or II gives the applicant of information about medical eligibility criteria and provides information about DHS OKDHS long-term care service options. The DHS nurse OKDHS HCMN I or II documents if the member wants to be considered for nursing facility level of care services or if the member is applying for a specific service program on the UCAT Part III. When, based on the information obtained during the assessment, the DHS nurse OKDHS HCMN I or II determines if the member may be at risk for health and safety, an immediate referral is made to Adult Protective Services (APS) or~~

Child Protective Services, as applicable. The referral is documented on the UCAT ~~Part III~~.

(A) When ~~SPPC services are not sufficient to meet the applicant's or member's need~~~~cannot be met by personal care services alone~~, the ~~DHS nurse informs the applicant of the~~~~OKDHS HCMN I or II provides information about other community long-term care service options~~. The ~~DHS nurse~~~~OKDHS HCMN I or II~~ assists the applicant in accessing service options selected by the applicant or member selects in addition to, or in place of, ~~Personal Care~~~~SPPC~~ services.

(B) When multiple household members are applying for SoonerCare ~~personal care~~~~SPPC~~ services, the UCAT ~~Part III~~ assessment is done for all the household members at the same time.

(C) The ~~DHS nurse informs~~~~OKDHS HCMN I or II provides~~ the applicant of the or member with ~~information about the~~ qualified agencies in his or her local area that provide services and obtains the applicant's ~~or member's~~ primary and secondary ~~choice of agencies~~~~agency choice~~. When the applicant or family declines to choose a primary personal care service agency, the ~~DHS nurse selects an agency from a list of all available agencies, using a round-robin rotation system~~ is used for agency selection. The ~~DHS nurse~~~~OKDHS HCMN I or II~~ documents the ~~selected personal care provider agency's name~~ of the selected ~~personal care provider agency~~.

(6) The ~~DHS nurse~~~~OKDHS HCMN I or II~~ completes the UCAT ~~Part III~~ in the ~~electronic system~~ and sends it to the ~~DHS area nurse for~~~~OKDHS HCMN III~~ makes the medical eligibility determination. ~~Personal care~~~~SPPC~~ service eligibility is established on the date medical eligibility is approved and financial eligibility is established. This date serves as the certification date for services to be initiated.

(A) When the ~~time length of time~~ from the initial assessment to the date of service eligibility determination exceeds ~~ninety calendar~~ ~~(90 calendar)~~ ninety (90) calendar days, a new UCAT ~~Part III~~ and assessment ~~visit~~ is required.

(B) The ~~DHS area nurse~~~~OKDHS HCMN III~~ assigns a medical certification period of not more than thirty-six (36) months for persons eighteen (18) years of age and older or not more than twelve (12) months for persons younger than eighteen (18) years of age. The service plan period ~~under the Service Authorization Model (SAM)~~ is for a period of twelve (12) months and is provided by the ~~DHS nurse~~.

(7) The ~~DHS area nurse~~ notifies the ~~DHS county worker~~~~SSS~~ is notified via ~~Electronic Data Entry and Retrieval System (ELDERS)~~ the ~~electronic system~~ of the personal care certification. The ~~authorization line is open via automation from ELDERS~~.

(8) Upon ~~establishment of personal care~~ establishing ~~SPPC~~ certification, the ~~DHS nurse~~ contacts ~~OKDHS HCMN I or II~~ notifies the ~~applicant's or member's~~ preferred provider agency, or when necessary, the secondary

provider agency or the provider agency selected by the round robin ~~rotation~~ system. Within ~~one business~~ ~~(1 business)~~ one (1) business day of provider agency acceptance, the ~~DHS nurse forwards~~~~OKDHS HCMN I or II~~ submits the ~~referral information via electronic system~~ to the provider agency for ~~SAM~~ plan development. Refer to OAC 317:35-15-8(a).

(9) Following the ~~SAM packet~~ provider agency's ~~SPPC plan~~ development, and within ~~three business~~ ~~(3 business)~~ three (3) business days of receipt of the ~~packet~~ from the provider agency, the ~~DHS nurse~~~~OKDHS HCMN I or II~~ reviews the documentation to ensure agreement with the plan. Once agreement is established, the ~~packet~~ plan is authorized by the ~~designee~~ or submitted to the ~~area nurse~~~~OKDHS HCMN III~~ for review.

(10) Within ~~ten business~~ ~~(10 business)~~ ten (10) business days of the ~~SPPC plan~~ receipt of the ~~SAM case~~ from the ~~DHS nurse~~, the ~~DHS area nurse~~~~OKDHS HCMN I or II~~, the ~~OKDHS HCMN III~~ authorizes or denies the ~~SAM plan~~ units. If the ~~SAM case~~ plan fails to meet standards for authorization, the ~~case~~ it is returned to the ~~DHS nurse~~~~OKDHS HCMN I or II~~ for further justification.

(11) Within ~~one business~~ ~~(1 business)~~ one (1) business day of knowledge of the authorization, the ~~DHS nurse forwards~~~~OKDHS HCMN I or II~~ submits the ~~service plan~~ authorization to the provider agency ~~via electronic system~~.

**317:35-15-5. General financial eligibility requirements for State Plan Personal Care**

Financial eligibility for ~~Personal Care~~~~SPPC~~ is determined using the rules on income and resources according to the eligibility group to which the individual member is related to. Income and resources are evaluated on a monthly basis for all individuals ~~members~~ requesting payment for ~~Personal Care~~~~SPPC~~ who are categorically related to ~~ABD~~ Aged, Blind, or Disabled (ABD); maximum countable monthly income and resource standards for individuals related to ABD are found on ~~OKDHS~~ Oklahoma Human Services (OKDHS) form 08AX001E (Appendix C-1), Schedule VI (QMBP program standards) Qualified Medicare Beneficiary Plus program standards.

**317:35-15-6. Determining financial eligibility of categorically needy individuals**

Financial eligibility for ~~Personal Care~~ State Plan Personal Care (SPPC) services for categorically needy individuals is determined as follows:

(1) **Financial eligibility for MAGI Modified Adjusted Gross Income (MAGI) eligibility groups**. See MAGI eligibility rules in Subchapter 6 of this Chapter to determine financial eligibility for MAGI eligibility groups.

(2) **Financial eligibility/categorically eligibility or categorically related to ABD Aged, Blind, and Disabled**. In determining income and resources for the individual member related to ABD, the "family" includes the individual and spouse, if any. To be categorically needy, the countable income ~~must be~~ is less than the categorically

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needy standard as shown on the OKDHS form 08AX001E (Appendix C-1), Schedule VI (~~QMBP standard~~) Qualified Medicare Beneficiary Plus standard. If ~~an individual and a member and his or her spouse~~ cease to live together for reasons other than institutionalization or receipt of ~~the ADvantage waiver or HCBW/MRa Home and Community Based Waiver, ADvantage or Developmental Disabilities~~ services, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts ~~which are actually contributed~~ to the spouse after the mutual consideration has ended are considered.

(3) **Determining financial eligibility for State Plan Personal Care. (SPPC).** For individuals determined categorically needy for ~~Personal Care, SPPC~~, the member will not pay a vendor payment for ~~Personal Care SPPC~~ services.

### 317:35-15-7. Certification for State Plan Personal Care

(a) **State Plan Personal Care (SPPC) certification period.** The first month of the ~~Personal Care SPPC~~ certification period ~~must be~~ is the first month the member ~~was~~ is determined financially and medically eligible for ~~Personal Care, SPPC~~ ~~both financially and medically~~. When eligibility or ineligibility for ~~Personal Care SPPC~~ is established, the local OKDHS office updates the computer-generated ~~form~~ notice and the appropriate notice is mailed to the member.

(b) **Financial certification period.** The financial certification period for ~~Personal Care SPPC~~ services is ~~12~~ twelve (12) months. ~~Redetermination of eligibility~~ Eligibility redetermination is completed according to the categorical relationship.

(c) **Medical certification period.** A medical certification period of not more than thirty-six (36) months is assigned for ~~an individual member~~ who is approved for ~~Personal Care, SPPC~~. The certification period for ~~Personal Care SPPC~~ services is based on the Uniform Comprehensive Assessment Tool (UCAT) evaluation and clinical judgment of the Oklahoma ~~Department of Human Services (DHS) area nurse or designee.~~ HCMN III.

### 317:35-15-8. Agency State Plan ~~personal care~~ Personal Care (SPPC) service authorization and monitoring

(a) Within ~~10 business~~ ten (10) business days of referral receipt of the ~~referral for personal care SPPC~~ services, the personal care provider agency nurse completes a Service Authorization Model (SAM) visit in the home to assess an assessment of the member's personal care service needs and completes and submits the packet person-centered plan based on the member's needs to the ~~DHS nurse.~~ Oklahoma Human Services (OKDHS) Health Care Management Nurse (HCMN) I or II. The ~~member's SAM packet includes DHS Forms;~~ plan includes the:

(1) ~~02AG044E, Personal Care Progress Notes;~~ Adv/SPPC-Nurse Evaluation;

(2) ~~02AG030E, Personal Care Planning Schedule/Service Plan;~~ SPPC-Service Planning; and

(3) ~~02AG029E, Personal Care Plan SPPC Member Service Agreement.~~

(b) When more than one (1) person in the household ~~was~~ is referred to receive ~~personal care SPPC~~ or ADvantage services, all household members' ~~SAM packets~~ plans are discussed and developed with the eligible members so service delivery is coordinated to achieve the most efficient use of resources. The number of SPPC service units of personal care service authorized for each individual is distributed between all eligible family members, ~~to ensure that the absence of one family member~~ This ensures one (1) family member's absence does not adversely affect the family member(s) remaining in the home. When one (1) or more persons in the same household with a ~~personal care~~ SPPC member ~~were~~ is referred to or ~~are receiving~~ receives other formal services, such as ADvantage or Developmental Disability Services, then those services are coordinated as well.

(c) The personal care provider agency receives documentation from ~~DHS as the~~ OKDHS HCMN I or II for authorization to begin services. The agency ~~delivers~~ provides a copy of the ~~care plan Form 02AG029E and the Personal Care Planning Schedule/Service Plan~~ to the member upon initiating services.

(d) Prior to the provider agency placing a personal care assistant Personal Care Assistant (PCA) in the member's home or other service-delivery setting ~~by the provider agency~~, an Oklahoma State Bureau of Investigation (~~OSBI~~) ~~background check~~, an Oklahoma State Department of Health Registry check, and an ~~DHS~~ OKDHS Community Services Worker Registry check ~~must be~~ is completed per Sections 1-1944 through 1-1948 of Title 63 of the Oklahoma Statutes. Payment is made for PCAs who provide ~~personal care SPPC~~ services and meet criteria ~~OAC 317:35-15-2(e)(1) 1 through 8).~~ Oklahoma Administrative Code (OAC) 317:35-15-2(c) (1) through (8).

(e) The provider agency nurse monitors the member's care plan of care.

(1) The personal care provider agency nurse or staff contacts the member within ~~five business~~ five (5) business days of authorized document receipt of the authorized document in order to ensure services ~~were~~ are implemented according to the authorized care plan of care.

(2) The provider agency nurse makes a SAM home monitoring visit using the Adv/SPPC Nurse Evaluation at least every six (6) months to assess the member's satisfaction with his or her care and to evaluate the ~~SAM packet~~ care plan for adequacy of goals and authorized units. Whenever a home monitoring visit is made, the provider agency nurse documents findings in the ~~Personal Care Progress Notes~~ electronic system. The provider agency forwards a copy of the Progress Notes to the ~~DHS nurse~~ submits monitoring documentation to the OKDHS HCMN I or II for review within ~~five business~~ five (5) business days of the visit. A registered nurse (RN) conducts the monitoring visit when the PCA is performing hands-on personal care. The A licensed practical nurse may only conduct the monitoring visit may be conducted by a Licensed Practical Nurse (LPN) only when the PCA



is not performing hands-on personal care. ~~A Registered Nurse (RN) must also co-sign~~ An RN also co-signs the progress notes.

(3) ~~Requests by the~~ The provider agency nurse's ~~requests~~ requests to change the number of ~~authorized~~ authorized units ~~authorized~~ authorized in the ~~SAM packet~~ SPPC plan are submitted ~~via the electronic system to (DHS) the OKDHS HCMN III~~ via the electronic system to (DHS) the OKDHS HCMN III and ~~are approved or denied by the (DHS) area nurse or designee, to approve or deny~~ are approved or denied by the (DHS) area nurse or designee, to approve or deny prior to changed number of ~~authorized units~~ unit implementation.

(4) Annually, or more frequently when the member's needs change, the provider agency nurse re-assesses the member's ~~need's~~ needs and develops a new ~~SAM packet~~ plan to meet the member's needs. The provider agency nurse ~~conducts a home visit and completes~~ conducts a home visit and completes and submits the annual reassessment documents to the ~~DHS nurse~~ OKDHS HCMN I or II no sooner than ~~60 calendar~~ sixty (60) calendar days before the existing service plan end-date, and no later than ~~14 calendar~~ fourteen (14) calendar days prior to service.

(5) When the member is unstaffed, the provider agency ~~nurse or staff~~ nurse or staff communicates with the member and makes efforts to re-staff. ~~It is recommended the provider agency contacts unstaffed members weekly by phone to actively monitor the health and safety of the member and documents ongoing efforts to provide staff.~~ When consecutively unstaffed for seven (7) calendar days, or fewer depending on the member's needs, the provider agency nurse or staff contacts the unstaffed member weekly by phone to actively monitor the member's health and safety and documents ongoing efforts to provide staff using the electronic system. When the member is unstaffed for ~~30 calendar~~ thirty (30) days, the provider agency notifies the ~~DHS nurse on Form 02AG032E, Provider Communication Form.~~ OKDHS HCMN I or II via the Case Note for SPPC thirty (30) day unstaffed note in the electronic system. ~~The DHS nurse~~ The HCMN I or II contacts the member and when the member chooses, initiates a ~~member~~ transfer of the member to another provider agency that can provide staff.

**317:35-15-8.1. Agency State Plan Personal Care services; billing, and problem resolution**

The ADvantage Administration (AA) certifies qualified personal care provider agencies and facilitates the execution of the agencies' SoonerCare (Medicaid) contracts on ~~behalf of the Oklahoma Health Care Authority~~ Authority's (OHCA) behalf. OHCA checks the list of providers barred from Medicare/SoonerCare (Medicaid) participation to ensure that the personal care services agency is not listed.

(1) **Payment for State Plan personal care.** Personal Care (SPPC). Payment for ~~personal care~~ SPPC services is made for care provided in the member's ~~"own home"~~ own home or in other limited living arrangement types of living arrangements, per ~~OAC~~ Oklahoma Administrative Code (OAC) 317:35-15-2(b)(1 through 4).

(A) ~~Use of provider~~ Provider agency use. To provide ~~personal care~~ SPPC services, an agency must

be licensed by the Oklahoma State Department of Health, ~~meet~~ meets certification standards identified by the ~~Oklahoma Department of Human Services (DHS),~~ (OKDHS), and ~~possess~~ possesses a current SoonerCare (Medicaid) contract.

(B) **Reimbursement.** ~~Personal care~~ SPPC services payment on a ~~member's~~ member's behalf of a ~~member~~ member is made according to the service type of ~~service~~ service and number of ~~units of personal care services authorized in the Service Authorization Model (SAM) packet.~~ authorized service units.

(i) The amount paid to provider agencies for each service unit of service is determined according to established SoonerCare (Medicaid) rates for the ~~Personal Care~~ personal care services. Only authorized units contained in each eligible member's individual ~~SAM packet~~ plan are eligible for reimbursement. Provider agencies serving more than one ~~personal care service~~ member residing in the same residence ensure the members' ~~SAM packets~~ plans combine units in the most efficient manner to meet the needs of all eligible persons in the residence.

(ii) ~~Payment for personal care~~ SPPC services payment is for tasks performed in accordance per ~~OAC 317:30-5-951 only when listed on an~~ with the authorized care plan of care per OAC 317:30-5-951. Payment for personal care skilled nursing service is made on the ~~member's~~ member's behalf of the ~~member~~ member for ~~assessment/evaluation~~ assessment, evaluation, and associated service planning per ~~SAM~~ nursing visit.

(iii) ~~Service~~ SPPC service time for ~~personal care~~ services is documented through the ~~use of the~~ Electronic Visit Verification System (EVV), previously known as Interactive Voice Response Authentication (IVRA) system, when services are provided in the home.

(2) **Issue resolution.**

(A) The provider agency provides a written copy of their grievance process to each member at ~~the~~ service commencement of ~~services.~~ The written grievance process includes the name and phone number of a provider agency contact person who is responsible for responding to such complaints and grievances. When the member is dissatisfied with the ~~Personal Care~~ SPPC provider agency or the assigned PCA and has exhausted attempts to work with the ~~Personal Care~~ provider agency's grievance process without resolution, the member is referred to the ~~DHS~~ OKDHS State Plan Care Unit to attempt to resolve the issue(s). The member has the right to appeal to OHCA per OAC 317:2-1-2.

(B) When a PCA performance issue is identified, provider agency staff conducts a counseling conference with the member ~~and/or~~ and/or the PCA as appropriate. Provider agency staff counsels the PCA

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regarding problems with ~~his/her/his~~ or her performance.

- (3) **Persons ineligible to serve as PCAs.** ~~a PCA.~~ Payment from SoonerCare funds for ~~personal care~~ SPPC services may not be made to an individual who is a legally responsible family member of the member, such as a spouse, legal guardian, or parent of ~~a~~ minor child, ~~to whom he/she~~ when he or she is providing ~~personal care~~ SPPC services ~~(exceptions may be made for legal guardians with prior approval from the Department of Human Services/Aging Services (DHS/AS)).~~

### 317:35-15-8.2. State Plan Personal Care Eligible Provider Exception [REVOKED]

The Oklahoma Department of Human Services (OKDHS) Aging Services (AS) may authorize a member's legal guardian to be eligible for SoonerCare (Medicaid) reimbursement when he or she is hired by a home care provider agency as a personal care service provider. Authorization for a legal guardian as a provider requires the criteria in (1) through (4) of this Section and monitoring provisions to be met.

- (1) Authorization for a legal guardian to be the member's care provider may occur only when the member is offered a choice of providers and documentation demonstrates:
- (A) Another provider is not available; or
  - (B) The member's needs are so extensive that the legal guardian providing the care is prohibited from obtaining employment.
- (2) The service must:
- (A) Fall under the State Plan Personal Care (SPPC) program guidelines;
  - (B) Be necessary to avoid institutionalization;
  - (C) Be a service and/or support specified in the person-centered service plan;
  - (D) Be provided by a person who meets provider qualifications;
  - (E) Be paid at a rate that does not exceed what would be paid to a provider of a similar service and does not exceed what is allowed by Medicaid (SoonerCare) for the payment of personal care or personal assistance services; and
  - (F) Not be an activity the legal guardian would ordinarily perform or is responsible to perform.
- (3) The legal guardian service provider complies with:
- (A) Providing no more than forty (40) hours of services in a seven (7) calendar day period;
  - (B) Planned work schedules that must be available in advance for the member's home care agency. Variations to the schedule must be noted and supplied to the home care agency two (2) weeks in advance unless the change is due to an emergency;
  - (C) Utilization of the Electronic Visit Verification System (EVV) also known as the Interactive Voice Response Authentication (IVRA) system; and
  - (D) Being identified and monitored by the home care agency.

- (4) The home care agency is required to submit a request and obtain approval for eligible provider exceptions to OKDHS AS prior to employing a legal guardian as a member's personal care assistant (PCA). Eligible provider exceptions require the home care agency to:

- (A) Provide monitoring and complete the Eligible Provider Exception Six Month Review document, when in the member's home completing the six month Nurse Evaluation document in the Medicaid waiver information system; and
- (B) Annually complete the Eligible Provider Exception Request and submit it with the annual Service Authorization Model (SAM) documentation no later than forty five (45) calendar days prior to the previous eligible provider exception service authorization end date.

### 317:35-15-9. Redetermination of financial eligibility redetermination for State Plan Personal Care

The OKDHS county Social Services Specialist must complete Oklahoma Human Services social services specialist completes a redetermination of financial eligibility redetermination before the end of the certification period. A notice is generated only if there is a change which ~~affects~~ affecting the member's financial eligibility.

### 317:35-15-10. Redetermination of medical eligibility redetermination for personal care State Plan Personal Care (SPPC) services

- (a) **Medical eligibility redetermination.** The Oklahoma Department of Human Services (DHS) area nurse must complete a (OKDHS) Health Care Management Nurse (HCMN) III completes a medical redetermination of medical eligibility before the end of the long-term care medical certification period.
- (b) **Recertification.** The ~~DHS nurse~~ OKDHS HCMN I or II re-assesses the ~~personal care services member~~ SPPC service members eighteen (18) years of age and older, for medical re-certification based on the member's needs and level of caregiver support required, using the Uniform Comprehensive Assessment Tool (UCAT) ~~Part III~~ at least every thirty-six (36) months. ~~Those members, who are~~ Members younger than eighteen (18) years of age, are re-evaluated by the ~~DHS nurse~~ OKDHS HCMN I or II using the UCAT ~~Part III~~ on a twelve (12) month basis or sooner when needed. During this re-certification assessment, the ~~DHS nurse~~ OKDHS HCMN I or II informs the member of the state's other SoonerCare (Medicaid) long-term care options. The ~~DHS nurse~~ OKDHS HCMN I or II submits the re-assessment to the ~~DHS area nurse~~ OKDHS HCMN III for recertification. Documentation is sent to the ~~DHS~~ OKDHS area nurse no later than the ~~tenth calendar (10<sup>th</sup> calendar)~~ tenth (10<sup>th</sup>) calendar day of the month in which the certification expires. When the ~~DHS area nurse~~ OKDHS HCMN III determines medical eligibility for

~~personal care~~SPPC services, a recertification review date is entered on the system.

(c) **Change in amount of units or tasks.** When the ~~personal care~~SPPC provider agency determines a need for a change in the amount of units or tasks ~~within the personal care~~in the service, a ~~new Service Authorization Model (SAM) packet~~care plan is completed and submitted to ~~DHS~~OKDHS within five (5) business days of identifying the assessed need. ~~The OKDHS HCMN III approves or denies the change is approved or denied by the DHS area nurse or designee, prior to implementation.~~

(d) **~~Voluntary closure of personal care services.~~SPPC services voluntary closure.** When a SPPC member decides personal care services are no longer needed to meet his or her needs, a medical decision is not needed. The member ~~and the DHS nurse or DHS county Social Services Specialist completes and signs DHS Form 02AG038E, State Plan Personal Care/ADvantage Program is sent a Voluntary Withdrawal Request, for confirmation and signature, and the request is entered into the electronic system upon receipt.~~ ~~The DHS nurse submits~~A closure notification is submitted to the provider agency; ~~via the electronic system.~~

(e) **Resuming personal care services.** When a ~~SPPC~~ member approved for ~~personal care~~SPPC services is without ~~personal care~~services for less than ~~ninety calendar (90 calendar)~~ninety (90) calendar days, but ~~the member has current medical and SoonerCare (Medicaid) financial eligibility approval, personal care~~SPPC services may be resumed using the member's previously approved ~~SAM packet~~plan. The personal care provider agency nurse contacts the member to determine when changes in health or service needs occurred. When changes are identified, the provider agency nurse ~~makes a home~~completes an assessment visit and submits a ~~personal care~~area SPPC services skilled nursing need re-assessment of need within ~~ten business (10 business)~~ten (10) business days of the resumed plan start date, using the ~~State Plan Personal Care Progress Notes, DHS Form 02AG044E.~~ When the member's needs dictate, the personal care provider agency may submit a request for a change in authorized ~~personal care services~~SPPC service units with a SAM packet to DHS. When no changes occur, the agency nurse documents the contact on ~~State Plan Personal Provider Communication Form 02AG032E and forwards it to the DHS nurse within ten business (10 business)~~in the electronic system for the ~~OKDHS HCMN I or II~~ten (10) business days of the resumed plan start date.

(f) **Financial ineligibility.** When the ~~DHS~~OKDHS social services specialist (SSS) determines a ~~personal care services~~member does not meet SoonerCare (Medicaid) financial eligibility criteria, the ~~DHS office notifies the DHS area nurse~~OKDHS HCMN III is notified to initiate the closure process due to financial ineligibility. ~~Individuals determined~~When OKDHS determines a member to be financially ineligible for ~~personal care~~SPPC services, ~~are notified by DHS~~they notify the member of the determination, and his or her right to appeal the decision in writing of the determination and of their right to appeal the decision. ~~The DHS nurse~~

~~submits~~A closure notification is submitted to the provider agency.

(g) **Closure due to medical ineligibility.** ~~Individuals determined~~When OKDHS determines to be medically ineligible for ~~personal care~~SPPC services ~~are notified by DHS, they notify the member of the determination, and his or her right to appeal the decision, in writing of the determination and of their right to appeal the decision.~~ When medical eligibility redetermination is not made prior to current medical eligibility expiration, the existing medical eligibility certification is automatically extended until ~~care level of care~~redetermination is established. For members:

(1) ~~who~~Who are not hospitalized or in an extended medical care facility, the existing medical eligibility certification is extended for a maximum ~~sixty calendar (60 calendar)~~days ~~sixty (60) calendar days~~ from the date of the previous medical eligibility expiration date;

(2) ~~who~~Who are hospitalized or in an extended medical care facility, the existing medical eligibility certification is extended for ~~thirty calendar (30 calendar)~~thirty (30) calendar days from the date of discharge from the facility or for ~~sixty calendar (60 calendar)~~sixty (60) calendar days from the date of previous medical eligibility expiration date, whichever is longer;

(3) ~~whose~~Whose medical eligibility redetermination is not made by applicable extended deadline, the member is determined to be ~~no longer medically eligible;~~ineligible; or

(4) ~~who~~Who no longer meet medical eligibility or cannot be located to complete the redetermination assessment, ~~the area nurse or nurse designee, the HCMN I or II notifies the HCMN III. The HCMN III updates the system's medical eligibility end date and notifies the DHS State Plan Care Unit (SPCU) nurse~~HCMN I or II of effective end date. ~~The DHS SPCU nurse submits~~A closure notification is submitted to the provider agency.

(h) **Termination of State Plan personal care services.**~~Per-~~sonal Care services termination.

(1) ~~Personal care~~State Plan Personal Care (SPPC) services may be discontinued when:

(A) ~~the~~Professional documentation supports the member poses a threat to self or others ~~as supported by professional documentation;~~

(B) ~~other~~Other household members of the household or persons who routinely visit the household who, as ~~supported by professional or credible documentation or other credible documentation,~~supports, pose a threat to the member or other household visitors;

(C) ~~the~~The member or the other household members use threatening, intimidating, degrading, or sexually inappropriate language ~~and/or~~or innuendo or behavior towards service providers, either in the home or through other contact or communications; ~~and efforts. Efforts to correct such behavior were~~are unsuccessful as ~~supported by professional or credible documentation or other credible documentation~~supported; ~~supports;~~

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(D) ~~the~~The member or family member fails to cooperate with Personal Care SPPC service delivery or to comply with Oklahoma Health Care Authority (OHCA) or DHS/OKDHS rules as supported by professional or credible documentation; supports;

(E) ~~the~~The member's health or safety is at risk as supported by professional or credible documentation; supports;

(F) ~~additional~~Additional services, either "formal" such as, paid by Sooner Care (Medicaid) or some other funding source or "informal" such as, unpaid are provided in the home eliminating. This eliminates the need for Sooner Care personal care SPPC services;

(G) ~~the individual's~~The member's living environment poses a physical threat to self or others as supported by professional or credible documentation supports where applicable, and measures to correct hazardous conditions or assist the person to move are unsuccessful or are not feasible; or

(H) ~~the~~The member refuses to select and/or accept the services of a provider agency or personal care assistant (PCA) Personal Care Assistant (PCA) service for ninety consecutive ~~(90 consecutive)~~ninety (90) consecutive days as supported by professional or credible documentation; supports.

(2) For persons~~members~~ receiving personal care SPPC services, the personal care provider agency submits documentation with the recommendation to discontinue services to DHS/OKDHS. The DHS nurse/OKDHS HCMN I or II reviews the documentation and submits it to the DHS area nurse/OKDHS HCMN III for determination. The DHS nurse notifies the personal care provider agency or PCA and the local DHS county worker/OKDHS social services specialist is notified of the decision to terminate services; via the electronic system. The member is sent an official closure notice informing him or her of appropriate member rights to appeal the decision to discontinue services.

### 317:35-15-12. Case changes

Any time there are changes which affect/affecting the State Plan Personal Care case; eligibility, computer generated notices are issued.

### 317:35-15-13.1. Individual personal care assistant (IPCA) service management

(a) An Individual Personal Care Assistant (IPCA) may be utilized to provide personal care SPPC services when it is documented to be in the member's best interest of ~~the member~~ to have an IPCA, or when there are no qualified personal care provider agencies available in the member's local area. Oklahoma Health Care Authority (OHCA) checks the list of providers barred from Medicare/Medicaid participation to ensure the IPCA is not listed.

(b) After personal care SPPC services eligibility is established, and prior to implementation of personal care SPPC services using an IPCA, the DHS nurse/OKDHS Health Care

Management Nurse I or II reviews the care plan with the member and IPCA and notifies ~~the member and IPCA~~ them to begin personal care SPPC services delivery. The DHS nurse/OKDHS HCMN I or II maintains the original care plan and forwards a copy of ~~the care plan~~ to the selected IPCA and member within ~~one business~~ one (1) business day of approval receipt of approval.

(c) The DHS nurse/HCMN I or II contacts the member within ~~five business~~ five (5) business days to ensure services are in place and meeting the member's needs. The HCMN I or II also ~~and~~ monitors the care plan for members with an IPCA. For any member receiving personal care SPPC services utilizing an IPCA, the DHS nurse/OKDHS HCMN I or II makes a home visit at least every six (6) months beginning within ~~90 calendar~~ ninety (90) calendar days from the date of personal care service initiation. DHS/OKDHS HCMN I or II assesses the member's satisfaction with his or her personal care SPPC services and evaluates the care plan for adequacy of goals and units allocated. Requests for changes in the units authorized in the care plan ~~must be~~ are approved by the DHS area nurse or designee/HCMN III prior to implementation of ~~the changed number of units~~.

### 317:35-15-13.2. Individual personal care assistants (IPCA) provider contractor; billing, training, and problem resolution

While the Oklahoma Health Care Authority (OHCA) is the contractor authorized under federal law, the Oklahoma Department of Human Services (DHS nurse/OKDHS Health Care Management Nurse (HCMN) I or II) initiates initial contracts with qualified individuals for provision of personal care eligible members to provide SPPC services per Oklahoma Administrative Code (OAC) 317:35-15-2. The OHCA is responsible for IPCA contract renewal ~~for the IPCA is the responsibility of OHCA~~.

(1) **IPCA payment.** Payment for personal care SPPC services is made for care provided in the member's ~~"own home"~~ own home or in other limited types of living arrangements per OAC 317:35-15-2(b)(1) through (4). Personal care SPPC services may not be approved when the client/member lives in the Personal Care Assistant's (PCA's) (PCA) home, except with the approval of DHS/OKDHS Community Living, Aging Services, and Protective Services.

(A) **Reimbursement.** Personal care payment for a member is made according to the number of personal care units of service identified in the service plan.

(i) The amount per unit ~~amounts~~ paid to individual contractors is determined according to the established rates. A service plan is developed for each eligible individual/member in the home and service units of service are assigned to meet ~~the each member's needs of each member~~. The service plans combine units ~~in the most efficient manner~~ efficiently to meet ~~the needs of all eligible persons~~ members needs in the household.

(ii) From the total amounts ~~billed by the IPCA~~ bills in (i) of this subparagraph, ~~the~~ OHCA, acting

as agent for the member-employer, withholds the appropriate FICA tax percentage of FICA tax and sends it to the Internal Revenue Service as the individual contractor's contribution toward Social Security coverage. To ensure the Social Security account is credited, the individual contractor's Social Security account may be properly credited, it is vital that the individual contractor's Social Security number be entered correctly on each claim.

(iii) The contractor payment fee covers all personal care SPPC services included on the service and care plans developed by the DHS nurse, the OKDHS HCMN I or II develops. Payment is only made for eligible members' direct services and care of the eligible member(s) only. The area nurse, or designee, OKDHS HCMN III, authorizes the number of units of service units the member receives.

(iv) A member may select more than one (1) IPCA. This may be The service and care plan indicates when this is necessary as indicated by the service and care plans.

(v) The IPCA may provide SoonerCare personal care SPPC services for several households during one (1) week as long as the daily number of paid service units does not exceed eight (8) hours, 32

(B) **Release of IPCA wage and/or employment information for IPCAs release.** Any inquiry received by the local office requesting wage and/or employment information for an IPCA is forwarded to the OHCA, Claims Resolution.

(2) **IPCA member selection.** Members and/or family members recruit, interview, conduct reference checks, and select the individual applicants for IPCA consideration. Prior to placing a personal care service provider an IPCA in the member's home, an OSBI Oklahoma State Bureau of Investigation (OSBI) background check, a DHS and an OKDHS Community Services Worker Registry check must be completed per Section 1-1944 through 1-1948 of Title 63 of the Oklahoma Statutes (O.S. 63 §§ 1-1944 through 1-1948). The DHS nurse must also check OKDHS HCMN I or II also checks the Certified Nurse Aide Registry. The DHS nurse must affirm that OKDHS HCMN I or II affirms the applicant's name is not contained on any of the registries. The DHS nurse OKDHS HCMN I or II notifies OHCA when the applicant is on the Registry any registry.

(A) **Persons eligible to serve as IPCAs.** Payment SPPC services payment is made for personal care services to IPCAs who provide personal care services who meet the criteria per OAC 317:35-15-2(c)(1) through (8).

(B) **Persons ineligible to serve as IPCAs.** Payment SPPC services payment from SoonerCare funds for personal care services may not be made to an individual who is at the member's legally responsible family member, such as a spouse, legal guardian, or parent of a minor child of the member being served; exceptions to legal guardian are made only with prior approval from Aging Services Division.

(i) Payment cannot be made to a DHS or an OKDHS or OHCA employee. Payment cannot be made to an immediate family member of a DHS an OKDHS employee who works in the same county without DHS Aging Services OKDHS Medicaid Services Unit approval. When a family member relationship exists between a DHS nurse an OKDHS HCMN I or II and an IPCA in the same county, the DHS nurse OKDHS HCMN I or II cannot manage services for a member whose IPCA is his or her family member of the DHS nurse.

(ii) If it is determined that an a DHS an OKDHS HCMN I or II or an OHCA employee is interfering in the process of providing service service provision for personal or family benefit, he or she the employee is subject to disciplinary action.

(3) **IPCA orientation.** When a member selects an IPCA, the DHS nurse contacts OKDHS HCMN I or II notifies the individual selected IPCA to report to the county office to complete the Oklahoma State Department of Health form (OSDH) Form 805, Uniform Employment Application for Nurse Aide Staff, and the DHS OKDHS Form 06PE039E, Employment Application Supplement, and for a qualification determination of qualifications and orientation, determination. For personal care SPPC members, this process is the responsibility of the DHS nurse, OKDHS HCMN I or II responsibility. The IPCA can begin work when after:

(A) he or she was interviewed by the member, The member interviews him or her;

(B) he or she was oriented by the The OKDHS nurse, orients him or her;

(C) he or she executed a A contract (OHCA-0026) is executed with the OHCA;

(D) the The effective service date was is established;

(E) all All registries were are checked and the IPCA's name is not listed;

(F) the Oklahoma State Department of Health OSDH Nurse Aide Registry was is checked and no notations were are found; and

(G) the OSBI background check was is completed.

(4) **Training of IPCAs. IPCA training.** It is the responsibility of the DHS nurse OKDHS HCMN I or II responsibility to make sure the IPCA has the training needed to carry out the care plan of care prior to each member's service initiation for each member.

(5) **Problem resolution related to the IPCA performance of the IPCA.** When it comes to the attention of

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~~the DHS nurse that~~ OKDHS HCMN I or II attention there is a problem related to the IPCA performance of the IPCA, a counseling conference is held between the member, OKDHS nurse, HCMN I or II, and worker IPCA. The ~~DHS nurse~~ OKDHS HCMN I or II counsels the IPCA regarding problems with his or her performance. ~~Counseling is considered when staff believes counseling will result when doing so results~~ in improved performance.

### (6) Termination of the IPCA Provider Agreement termination.

(A) ~~An IPCA contract termination recommendation for the termination of an IPCA's contract~~ is submitted to OHCA and IPCA services are suspended immediately when ~~the IPCA:~~

(i) ~~an IPCA's performance is such that his or her continued participation in the program could pose~~ Performance poses a threat to the member's health and safety of the member or to others; or

(ii) ~~the IPCA failed~~ Failed to comply with the ~~expectations outlined in the PCA Provider Agreement~~ expectations and counseling is not appropriate or ~~was not effective~~; or

(iii) ~~an IPCA's name~~ Name appears on the ~~DHS~~ OKDHS Community Services Worker Registry, or any of the registries registry listed in Section 1-1947 of Title O.S. 63 of the Oklahoma Statutes, § 1-1947, even though his or her name may not have appeared on the Registry when his or her name is not on the registry at the time of application or hiring.

(B) The ~~DHS nurse~~ OKDHS HCMN makes the IPCA termination recommendation for the ~~termination of the IPCA to DHS~~ to OKDHS Community Living, Aging and Protective Services Medicaid Services Unit (MSU), who notifies MSU then notifies the OHCA Legal Division of the recommendation. When the problem is related to abuse, neglect, or exploitation allegations of abuse, neglect, or exploitation, ~~DHS~~ OKDHS Adult Protective Services, State Attorney General's Medicaid Unit, OHCA, and the Oklahoma State Department of Health OSDH are notified by the DHS nurse.

(C) When the problem is related to abuse, neglect, or exploitation allegations of abuse, neglect, or exploitation the ~~DHS nurse~~ OKDHS HCMN follows the process, as outlined in per OAC 340:100-3-39.

### 317:35-15-14. Billing procedures for State Plan personal care

Billing procedures for ~~personal care~~ State Plan Personal Care (SPPC) services are contained in the Oklahoma Medicaid Management Information Systems (OKMMIS) Billing and Procedure Manual. Questions regarding billing procedures that cannot be resolved through a ~~study of~~ studying the manual are referred to the Oklahoma Health Care Authority (OHCA). ~~Contractors for Personal Care~~ SPPC contractors bill on CMS-1500 claim form. OHCA provides instructions to ~~an~~ a contracted Individual ~~personal care assistant~~ Personal

Care Assistant (IPCA) ~~contracted provider~~ for claim completion of the ~~claim at the time of the contractor~~ contractor's orientation. The contracted provider submits a claim for each member. The contracted provider prepares claims for services provided and submits the claims to the fiscal agent responsible for ensuring claims ~~were~~ are properly completed. All personal care contractors must have a unique provider number. New contracted providers are mailed the provider number after ~~they~~ are being placed on the claims processing contractor's provider file. All services provided in the ~~service recipients~~ member's home, ~~member's home~~ including Personal Care and Nursing ~~must be,~~ and all work completed in the provider's office, are documented through the Electronic Visit Verification (EVV) system. Additionally, ~~work completed in the provider's office is documented in the EVV system.~~ The EVV system provides alternate backup solutions if the automated system is unavailable; however, in the event of an EVV system failure, the provider documents time in accordance with internal provider agency policy and procedures backup plan. This documentation is sufficient to account for both in-home and in-office services. The provider agency's backup procedures are only permitted when the EVV system is unavailable.

### 317:35-15-15. Referral for social services Social services referral

In many situations, members who are receiving medical services through SoonerCare (Medicaid) need social services. The OKDHS nurse HCMN I or II may make referrals for social services to the OKDHS worker social services specialist (SSS) in the local office. In addition to these referrals, a member, or another individual acting on the member's behalf, may initiate a social services request for social services may be initiated by a member or by another individual acting upon behalf of a member.

(1) ~~The~~ OKDHS Social Services Specialist SSS is responsible for ~~providing~~ provides the indicated services, or for ~~referral~~ makes referrals to the appropriate resource outside the Department outside resources if the services are not available within the Department. OKDHS.

(2) Among the OKDHS SSS provided services provided by the OKDHS Social Services Specialist are:

(A) ~~Services that will enable individuals~~ Enable members to attain and/or maintain as good physical and mental health as possible;

(B) ~~Services to assist patients~~ Assist members who are ~~receiving~~ receive care outside their own homes in planning for and returning to their own homes or to other alternate care;

(C) ~~Services to encourage~~ Encourage the development and maintenance of family and community ~~interest~~ interests and ties;

(D) ~~Services to promote~~ Promote member's maximum independence in the ~~management of~~ managing their own affairs;

(E) ~~Protective~~ Include protective services, ~~including evaluation of that~~ evaluate the need for and ~~arranging for~~ arrange guardianship; and

(F) ~~Appropriate~~ Offer family planning services, ~~which include assisting the~~ including family assistance in acquiring means to responsible parenthood. Services are offered in making the necessary referral and follow-up.

**SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES**

**317:35-17-5. ADvantage program medical eligibility determination**

The Oklahoma ~~Department~~ of Human Services (~~DHS~~) OKDHS area nurse or nurse designee, makes the medical eligibility determination utilizing professional judgment, the Uniform Comprehensive Assessment Tool (UCAT) ~~Parts I and III~~, and any other available medical information.

(1) When ADvantage care services are requested or the UCAT application is received in the county office, the:

(A) ~~DHS~~ OKDHS nurse is responsible for ~~completing~~ completes the UCAT ~~III~~; and

(B) ~~social service~~ Social services specialist (SSS) is responsible for ~~contacting~~ contacts the applicant within three (3) business days to initiate the financial eligibility application process.

(2) Categorical relationship ~~must be~~ is established for ADvantage services eligibility determination for eligibility for ADvantage services. When a member's categorical relationship to a disability ~~was~~ is not established, the local ~~social service specialist~~ SSS submits the same information, per Oklahoma Administrative Code (OAC) 317:35-5-4(2) to the Level of Care Evaluation Unit (LOCEU) of the Oklahoma Health Care Authority to request a medical categorical relationship eligibility determination of eligibility for categorical relationship. LOCEU ~~renders a decision~~ decides on the categorical relationship to the person with the disability using the Social Security Administration (SSA) definition. ~~An SSS follow-up with SSA is required by the DHS social service specialist with SSA to ensure the disability decision agrees with the LOCEU decision.~~

(3) Community agencies and waiver service applicants may complete the UCAT ~~I~~ application and forward the form to the county office ~~OKDHS~~. When the UCAT ~~I~~ indicates the applicant does not qualify for Medicaid long term care services, the applicant is referred to appropriate community resources. Members may call the care line at 1-800-435-4711.

(4) ~~The DHS~~ When an applicant is Medicaid eligible at the request time, an OKDHS nurse completes the UCAT ~~III~~ assessment visit with the member applicant within ~~10 business~~ ten (10) business days of referral receipt of the referral for ADvantage services for an applicant who is Medicaid eligible at the time of the request. The ~~DHS~~ OKDHS nurse completes the UCAT ~~III~~ assessment visit within ~~20 business~~ twenty (20) business days of the date the Medicaid application is completed for new applicants.

(5) For initial level of care (LOC), the OKDHS nurse assesses the applicant through an electronic format such as phone or video conference, using the UCAT unless there are limiting factors which necessitate a face-to-face assessment.

(A) The OKDHS nurse determines LOC based upon the assessment outcome unless the applicant is medically ineligible. In this case, a face-to-face visit is scheduled to either validate the initial electronic format assessment or to provide additional documentation to support the applicant meeting medical LOC.

(B) Applicants are not denied access to the waiver solely based on an assessment completed through an electronic format.

(~~56~~) During the UCAT ~~III~~ assessment ~~visit~~, the ~~DHS~~ OKDHS nurse informs the applicant of medical eligibility criteria and provides information about the different long-term care service options. ~~When there are multiple household members applying for the ADvantage program, the UCAT assessment is done for them during the same visit.~~ The ~~DHS~~ OKDHS nurse documents whether the member applicant chooses nursing facility program services or ADvantage program services and makes a level of care an LOC and service program recommendation.

(~~67~~) The ~~DHS~~ OKDHS nurse informs the member applicant and family of agencies certified to deliver ADvantage case management and in-home care services in the local area to obtain the applicant's primary and secondary informed ~~choices~~ provider choice, ensuring adherence to conflict free case management requirements.

(A) ~~Providers of ADvantage services for the member providers, or for those who have an interest in, or are employed by an ADvantage provider, for the member must not~~ do not provide case management or develop the person-centered service plan, ~~except~~ The only exception is when the ADvantage Administration (AA) demonstrates the only there are no more than two (2) willing and qualified entity/entities to provide case management and/or and develop person-centered service plans in a geographic area, and those agencies also provides provide other ADvantage services.

(B) When the member and/or applicant or family declines to make a provider choice, the ~~DHS~~ OKDHS nurse documents the decision on ~~Form 02CB001, Member Consents and Rights~~ the consents and rights document.

(C) ~~The AA~~ OKDHS uses a rotating system to select an agency/agencies for the member applicant from a list of all local, certified case management and in-home care agencies/providers, ensuring adherence to conflict free case management requirements.

(~~78~~) The ~~DHS~~ OKDHS nurse documents ~~the chosen agency names of the chosen agencies, or the choice to decline to select agencies, and the applicant's agreement of the member, by dated signature, to receive waiver services provided by the agencies.~~

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(89) When the ~~member's~~ applicant's needs require an immediate interdisciplinary team (IDT) meeting with the case manager and home healthcare provider agency nurse participation to develop a person-centered service plan, the ~~DHS~~ OKDHS nurse documents the priority processing need for priority processing.

(910) The ~~DHS~~ OKDHS nurse ~~scores the UCAT III. The DHS nurse forwards the completed UCAT III and documentation of financial eligibility, documentation of the member's case management and in-home care agency choices to the area nurse or nurse designee for medical eligibility determination.~~

(411) When ~~based upon the information obtained during the OKDHS nurse determines the UCAT the assessment, the DHS nurse determines indicates the member may be health and safety are at risk for health and safety, DHS~~ OKDHS Adult Protective Services staff is notified immediately and the referral is documented on the UCAT.

(412) Within ~~40 business~~ ten (10) business days of receipt of a complete ADvantage application, the area nurse or nurse designee determines medical eligibility using nursing facility level-of-care LOC criteria and service eligibility criteria, per OAC 317:35-17-2 and 317:35-17-3, and enters the medical decision on the system.

(4213) Upon SSS financial eligibility notification of financial eligibility from the social service specialist, medical eligibility, and medical eligibility approval for ADvantage entry from the area nurse or nurse designee, ~~the AA~~ communicates with the case management provider to begin care and service plan development. The AA communicates to the case management provider, the member's name, address, case number, Social Security number, AA provides the member's demographic and assessment information, and the number of units of case management and the number of units of home care agency nurse evaluation units authorized for service plan development. When the member requires an immediate home visit to develop a person-centered within 24 hours, the plan, AA contacts the case management provider directly to confirm availability and request IDT priority electronically sends the new case packet information to the case management provider.

(4314) When ~~the~~ a member is being discharged from a nursing facility or hospital and transferred home, services must be in place to ensure the member's health and safety ~~of the member upon discharge to the home from the nursing facility or hospital, a.~~ The member's chosen case manager from an ADvantage case management provider selected by the member and referred by the AA follows the ADvantage institutional transition, case management procedures for care, and service plan development and implementation.

(4415) A new medical level-of-care LOC determination is required when a member requests any changes change in service program, setting, from:

(A) State Plan Personal Care (SPPC) services to ADvantage services;

(B) ADvantage to ~~State Plan Personal Care~~ SPPC services;

(C) ~~nursing~~ Nursing facility to ADvantage services; or

(D) ADvantage to nursing facility services.

(4516) A new medical level-of-care LOC determination is not required when a member requests ADvantage services re-activation of ~~ADvantage services after a short term stay of 90 calendar~~ staying ninety (90) calendar days or less in a nursing facility when the member had previous ADvantage services and the ADvantage certification period has not expired, by the date the member is discharged.

(4617) When a UCAT assessment ~~was~~ is completed more than ~~90 calendar~~ ninety (90) calendar days prior to submission to the area nurse or nurse designee for a medical decision, a new assessment is required.

### 317:35-17-16. Member annual level of care re-evaluation and annual service plan reauthorization

(a) The ADvantage case manager reassesses the member's needs annually using the Uniform Comprehensive Assessment Tool (UCAT) ~~Parts I and III,~~ then evaluates the member's progress of the member toward person-centered service plan goals and objectives. The ADvantage case manager develops the annual person-centered service plan with the member and interdisciplinary team and submits the person-centered service plan to the ADvantage Administration (AA) for authorization. The ADvantage case manager initiates the UCAT reassessment and ~~development of~~ develops the annual person-centered service plan at least forty (40) calendar days, but not more than sixty (60) calendar days, prior to the existing plan's end date ~~of the existing person-centered service plan.~~ The ADvantage case manager provides AA the ~~reassessment person-centered service plan packet~~ reassessment documents no less than thirty (30) calendar days prior to the existing plan's end date ~~of the existing plan.~~ The reassessment ~~person-centered service plan packet includes~~ documents include the person-centered service plan, UCAT ~~Parts I and III,~~ Nursing Assessment and Monitoring Tool and supporting documentation.

(b) ~~For medical eligibility reassessment, The Oklahoma Department of Human Services (DHS) (OKDHS) recertification nurse reviews the UCAT Parts I and III the ADvantage case manager submitted by the ADvantage case manager for a level-of-care redetermination.~~ When policy defined criteria for nursing facility level-of-care LOC cannot be determined or justified from available documentation or through direct contact with the ADvantage case manager, the member is referred to the local OKDHS nurse. UCAT Parts I and III are completed in the member's home by the DHS nurse. The DHS nurse submits the UCAT evaluation to the area nurse or nurse designee, to make the medical eligibility level of care determination. The OKDHS nurse then re-assesses the applicant using the UCAT through an electronic format such as a phone and video conference, unless there are limiting factors which necessitate a face-to-face assessment.



(1) The OKDHS nurse determines LOC based on the assessment's outcome unless the applicant is determined to be medically ineligible. In this case, a face-to-face visit is scheduled to either validate the electronic format assessment or provide additional documentation to support the applicant meeting medical LOC.

(2) Applicants are not medically denied access to the waiver solely based on an assessment completed through an electronic format.

(c) When medical eligibility redetermination is not made prior to the current medical eligibility expiration, the existing medical eligibility certification is automatically extended.

(1) For members who are not receiving inpatient; acute care, long term acute care, rehab or skilled nursing services, the existing medical eligibility certification is extended for a maximum of sixty (60) calendar days from the date of the previous medical eligibility expiration date.

(2) For members who are receiving inpatient; acute care, long term acute care, rehab or skilled nursing services, the existing medical eligibility certification is extended for thirty (30) calendar days from the facility discharge date, of discharge from the facility or the for sixty (60) calendar days from the previous medical eligibility's date of the previous medical eligibility date, whichever is longer.

(3) When the medical eligibility redetermination is not made by the applicable extended deadline, the member ~~is determined to no longer meet~~meets medical eligibility. The area nurse or nurse designee updates the system's medical eligibility end date ~~and simultaneously notifies AA electronically.~~

(d) When ~~DHS~~OKDHS determines a member no longer meets medical eligibility; to receive waiver services, the:

(1) ~~area~~Area nurse or nurse designee updates the medical eligibility end date ~~and notifies the AA electronically;~~

(2) AA communicates to the member's ADvantage case manager that the member ~~was determined to no longer need~~meets medical eligibility for ADvantage as of the eligibility determination effective date of the eligibility determination; and

(3) ADvantage case manager communicates with the member and when requested, assists with access to other services.

**317:35-17-27. Incident reporting**

(a) **Reporting requirement.** Certified ADvantage provider staff should report critical and non-critical incidents involving the health and welfare of ADvantage Waiver members to the Oklahoma Human Services Medicaid Services Unit (MSU).

(b) **Critical incidents.** Critical incidents are events with potential to cause significant risk or serious harm to an ADvantage member's safety or well-being. Critical Incidents Reports (CIR) are completed for:

(1) Suspected maltreatment including abuse, neglect, or exploitation, per Section 10-103 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-103);

(2) Attempted suicide or suicidal ideation exhibition;

(3) Unexpected or questionable death;

(4) Falls or injuries requiring medical attention;

(5) Residence loss due to disaster;

(6) An interruption of needed medical supports;

(7) Lost or missing members;

(8) A medication error requiring medical attention;

(9) Use of physical restraints; or

(10) Allegations related to Personal Care Assistant (PCA) or Personal Service Assistant (PSA).

(c) **Non-critical incidents.** Non-critical incidents are events with potential to cause risk to an ADvantage member's safety and well-being, but do not rise to the critical incident level. Non-critical incidents include:

(1) Falls or injuries that do not require medical attention;

(2) Theft allegations;

(3) Threatening or inappropriate behavior;

(4) Substance abuse or use;

(5) Serious allegations related to a provider agency; and

(6) Law enforcement involvement due to challenging behaviors.

(d) **Incident notification requirements.** The reporting provider documents and submits to MSU incidents included in (b) and (c) of this Section in the electronic system on the CIR document, within one business day of becoming aware of the incident. The reporting provider notifies other persons or entities as required by law or regulation, including:

(1) When a service recipient dies, per OAC 340:100-3-35; and

(2) Investigative authorities immediately in cases of suspected maltreatment, as applicable, including:

(A) Local law enforcement;

(B) The Office of Client Advocacy when the alleged perpetrator is a community service worker, per OAC 340:2-3-33; and

(C) Adult Protective Services when the alleged perpetrator is not a community service worker per 43A O.S. § 10-104.

(e) **Internal Investigation.** The provider completes an internal investigation of all critical incidents, unless directed otherwise by an authorized government entity.

(1) All provider investigative reports are submitted to the MSU within ten (10) working days after the initial CIR is completed.

(2) The provider coordinates internal critical incident investigation and response efforts with governmental investigative authorities as required by law.

(3) Provider supervisory staff run a monthly report from the electronic system to review all critical incidents submitted to the MSU. Doing so ensures proper handling and dispensation occurs, as required by the Centers for Medicare and Medicaid Services.

(f) **Escalated issues.** The Escalated Issues (EI) team reviews all CIR and determines whether the appropriate response occurred. EI coordinates their investigation and response efforts with governmental investigative authorities as required by law. For non-critical incident reports, EI reviews and works with the member, the member's informal support,

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provider, and others to verify appropriate actions are taken to identify barriers to service, prevent future incidents, and assure continued member health and welfare. Investigation results are communicated to the member, legal guardian, or next of kin as appropriate.

(g) **Members and their representatives.** Upon entry into the program and at least annually, each member is provided with resources and contact information to self-report complaints, abuse, neglect, exploitation, or other issues.

[OAR Docket #22-436; filed 6-23-22]

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

[OAR Docket #22-441]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 22. Pregnancy Related Benefits Covered Under Title XXI  
317:35-22-2.1 [AMENDED]  
(Reference APA WF # 21-22)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 22. Pregnancy Related Benefits Covered Under Title XXI  
317:35-22-2.1 [AMENDED]

#### Gubernatorial approval:

December 21, 2021

#### Register publication:

39 Ok Reg 448

#### Docket number:

21-971

(Reference APA WF # 21-22)

#### INCORPORATIONS BY REFERENCE:

n/a

#### GIST/ANALYSIS:

The proposed revisions will amend policy to provide certain dental benefits to pregnant women covered under the Title XXI State Plan.

#### CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:

## SUBCHAPTER 22. PREGNANCY RELATED BENEFITS COVERED UNDER TITLE XXI

### 317:35-22-2.1. Non-covered services

(a) Services and benefits provided to evaluate and/or treat maternal conditions that are not related to or impact the pregnancy outcome.

(b) ~~Dental.~~

[OAR Docket #22-441; filed 6-23-22]

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

[OAR Docket #22-439]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 23. Living Choice Program  
317:35-23-2 [AMENDED]  
(Reference APA WF # 21-10)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 23. Living Choice Program  
317:35-23-2 [AMENDED]

#### Gubernatorial approval:

December 21, 2021

#### Register publication:

39 Ok Reg 449

#### Docket number:

21-969

(Reference APA WF # 21-10)

#### INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will add language that allows the Developmental Disabilities Services Division (DDSD) to transition members, who have been a resident in a public or private Medicaid Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or qualified long term care facility, into a community setting through the Living Choice MFP program. The proposed revisions also change the required amount of consecutive time an individual must be in the long-term care institution prior to being eligible for transition into the community setting from "at least ninety (90) consecutive days" to sixty (60) consecutive days. Additionally, proposed revision will be removing language that pertained to a pilot program involving the PRTF population, which was not successful and will no longer be implemented. Finally, revisions will remove outdated language to reflect current business practices.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:

SUBCHAPTER 23. LIVING CHOICE PROGRAM

317:35-23-2. Eligibility criteria

(a) Adults with disabilities or long-term illnesses, members with intellectual disabilities and members with physical disabilities are eligible to transition into the community through the Living Choice program if they meet all of the criteria in paragraphs (1) through (7) of this subsection.

- (1) He/she must be at least nineteen (19) years of age.
(2) He/she must reside in a nursing facility or a qualified long term care facility, or a public or private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) for at least ninety (90) sixty (60) consecutive days prior to the proposed transition date. If any portion of the ninety (90) sixty (60) days includes time in a skilled nursing facility, those days cannot be counted toward the ninety (90) sixty (60) day requirement, if the member received Medicare post-hospital extended care rehabilitative services.
(3) He/she must have at least one (1) day of Medicaid paid long-term care services prior to transition.
(4) If transitioning from an out of state institution, he/she must be SoonerCare eligible.
(5) He/she requires at least the same level of care that necessitated admission to the institution.
(6) He/she must reside in a qualified residence after leaving the institution. A qualified residence is defined in (A) through (C) of this paragraph.
(A) a home owned or leased by the individual or the individual's family member;
(B) an apartment with an individual lease, with a locking entrance/exit, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; and

(C) a residence, in a community-based residential setting, in which no more than four (4) unrelated individuals reside.

(7) His/her needs can be met by the Living Choice program while living in the community.

(8) He/she must not be a resident of a nursing facility or ICF/IID in lieu of incarceration.

(b) Youth ages sixteen (16) through eighteen (18) are eligible to transition back into the community from a psychiatric residential treatment facility (PRTF) through the Living Choice program if they meet the following criteria:

- (1) Have been in a PRTF facility for ninety (90) or more days during an episode of care; and
(2) Meet Level 3 criteria on the Individual Client Assessment Record; or
(3) Meet the criteria for Serious Emotional Disturbance as defined in OAC 317:30-5-240.1; or
(4) Show critical impairment on a caregiver rated Ohio Scales (score of 25 and above on the Problems Subscale or a score of 44 and below on the Functioning Subscale).

[OAR Docket #22-439; filed 6-23-22]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES

[OAR Docket #22-445]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Member Services
Part 1. Agency Companion Services
317:40-5-5 [AMENDED]
317:40-5-6. [REVOKED]
Part 3. Guidelines to Staff
317:40-5-40 [AMENDED]
Part 5. Specialized Foster Care
317:40-5-50 [AMENDED]
317:40-5-51 [REVOKED]
317:40-5-52 [REVOKED]
317:40-5-54 [REVOKED]
317:40-5-55 [AMENDED]
317:40-5-56 [REVOKED]
317:40-5-57 [AMENDED]
317:40-5-58 [AMENDED]
317:40-5-59 [AMENDED]
317:40-5-62 [AMENDED]
Subchapter 7. Employment Services Through Home and Community-Based Services Waivers
317:40-7-2 [AMENDED]
317:40-7-22 [NEW]
Subchapter 9. Self-Directed Services
317:40-9-1 [AMENDED]
(Reference APA WF # 21-38B)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Section 162 and 1025.1 et seq. of Title 56 of the Oklahoma Statutes; and the 21st Century Cares Act

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 30, 2021

# Permanent Final Adoptions

## COMMENT PERIOD:

February 1, 2022 through March 3, 2022

## PUBLIC HEARING:

March 8, 2022

## ADOPTION:

March 30, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 12, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed revisions to the developmental disabilities services (DDS) policy will address agency companion services, guidelines to staff, specialized foster care, value-based payments, and self-directed services. Additional revisions will correct formatting and grammatical errors, as well as align policy with current business practices.

## CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

## SUBCHAPTER 5. MEMBER SERVICES

### PART 1. AGENCY COMPANION SERVICES

#### **317:40-5-5. Agency companion services (ACS) provider requirements and responsibilities**

(a) ~~Companions are required to meet all applicable standards outlined in this subchapter and competency based training per Oklahoma Administrative Code (OAC) 340:100-3-38. The provider agency ensures all companions meet the criteria in this Section. The member or legal guardian, the provider agency, or Oklahoma Human Services (OKDHS) Developmental Disabilities Services (DDS) case manager may identify an applicant to be screened for approval to serve as a companion.~~

(b) ~~Failure to follow any rules or standards, failure to promote the independence of the member, or failure to follow recommendation(s) of the personal support team (Team) results in problem resolution, per OAC 340:100-3-27, for the companion, and when warranted, revocation of approval of the companion.~~ DDS approval for a person to provide contracted Agency Companion Services (ACS) requires the applicant to:

- (1) Be twenty-one (21) years of age or older;
- (2) Attend DDS or provider agency ACS orientation;

(3) Contract with a provider agency that has a current contract with Oklahoma Health Care Authority (OHCA) to provide ACS;

(4) Complete the DDS application packet within the required time period, per Oklahoma Administrative Code (OAC) 317:40-5-40, and to submit the packet to designated DDS staff or the provider agency staff;

(5) Cooperate with designated DDS or provider agency staff in the development and completion of the home profile approval process, per OAC 317:40-5-40; and

(6) Complete all training per OAC 340:100-3-38, including medication administration training, and all provider agency pre-employment training, per OAC 317:40-5-40.

~~(e) The companion:~~

~~(1) Ensures no other adult or child is cared for in the home on a regular or part time basis, including other Oklahoma Department of Human Services (OKDHS) placements, family members, or friends without prior written authorization from the Developmental Disabilities Services (DDS) area residential services programs manager or state office residential services programs manager;~~

~~(2) Meets the requirements of OAC 317:40-5-103. Neither the companion nor the provider agency may claim transportation reimbursement for vacation travel;~~

~~(3) Transports or arranges transportation for the member to and from school, employment programs, recreational activities, medical appointments, and therapy appointments;~~

~~(4) Delivers services in a manner that contributes to the member's enhanced independence, self-sufficiency, community inclusion, and well-being;~~

~~(5) Participates as a member of the member's Team and assists in the development of the member's Individual Plan (Plan) for service provision;~~

~~(6) Develops, implements, evaluates, and revises the training strategies corresponding to the relevant outcomes for which the companion is responsible, as identified in the Plan. The companion may request assistance from the case manager or program coordinator. The companion documents and provides monthly data and health care summaries to the provider agency program coordination staff;~~

~~(7) Delivers services at appropriate times as directed in the Plan;~~

~~(8) Does not deliver services that duplicate the services mandated to be provided by the public school district pursuant to the Individuals with Disabilities Education Act (IDEA);~~

~~(9) Is sensitive to and assists the member in participating in the member's chosen religious faith. No member is expected to attend any religious service against his or her wishes;~~

~~(10) Participates in, and supports visitation and contact with the member's natural family, guardian, and friends, when visitation is desired by the member;~~

~~(11) Obtains permission from the member's legal guardian, a guardian is assigned, and notifies the family,~~

the provider agency program coordination staff, and the case manager prior to:

- (A) Traveling out of state;
  - (B) Overnight visits; or
  - (C) Involvement of the member in any publicity;
- (12) Serves as the member's health care coordinator, per OAC 340:100-5-26;
- (13) Ensures the monthly room and board contribution received from the member is used toward the cost of operating the household;
- (14) Assist the member in accessing entitlement programs for which the member may be eligible and maintains records required for the member's ongoing eligibility;
- (15) Works closely with the provider agency program coordination staff and the DDS case manager, to ensure all aspects of the member's program are implemented to the satisfaction of the member, the member's family or legal guardian, when appropriate, and the member's Team;
- (16) Assist the member to achieve the member's maximum level of independence;
- (17) Submits, in a timely manner, to the provider agency program coordination staff all necessary information regarding the member;
- (18) Ensures the member's confidentiality is maintained per, OAC 340:100-3-2;
- (19) Supports the member in forming and maintaining friendships with neighbors, co-workers, and peers, including people who do not have disabilities;
- (20) Implements training and provides supports that enable the member to actively join in community life;
- (21) Does not serve as representative payee for the member without a written exception from the DDS area residential services programs manager or state office residential services program manager.
- (A) The written exception and approved DDS home profile are retained in the member's home record.
  - (B) When serving as payee, the companion complies with OAC 340:100-3-4 requirements;
- (22) Ensures the member's funds are properly safeguarded;
- (23) Obtains prior approval from the member's representative payee when making a purchase of over fifty dollars (\$50) with the member's funds;
- (24) Allows provider agency and DDS staff to make announced and unannounced visits to the home;
- (25) Develops an Evacuation Plan, using (OKDHS) Form 06AC020E, Evacuation/Escape Plan, for the home and conducts training with the member;
- (26) Conducts fire and weather drills at least quarterly and documents the fire and weather drills using OKDHS Form 06AC021E, Fire and Weather Drill Record;
- (27) Develops and maintains a personal possession inventory for personal possessions and adaptive equipment, using OKDHS Form 06AC022E, Personal Possession Inventory;

- (28) Supports the member's employment program by:
- (A) Assisting the member to wear appropriate work attire; and
  - (B) Contacting the member's employer as outlined by the Team and in the Plan;
- (29) Is responsible for the cost of the member's meals and entertainment during recreational and leisure activities. Activities must be affordable to the member. Concerns about affordability are presented to the Team for resolution;
- (30) For adults, reports suspected maltreatment including abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation of a vulnerable adult per Section 10-104 of Title 43A of the Oklahoma Statutes, to the OKDHS Office of Client Advocacy (OCA);
- (31) For children, reports abuse, neglect, sexual abuse, or sexual exploitation per Section 1-2-101 of Title 10A of the Oklahoma Statutes to the Child Abuse and Neglect Hotline at 1-800-522-3511;
- (32) Follows all applicable rules promulgated by the Oklahoma Health Care Authority and DDS, including:
- (A) OAC 340:100-3-27;
  - (B) OAC 340:100-3-34;
  - (C) OAC 340:100-3-38;
  - (D) OAC 340:100-3-40;
  - (E) OAC 340:100-5-22.1;
  - (F) OAC 340:100-5-26;
  - (G) OAC 340:100-5-32;
  - (H) OAC 340:100-5-33; and
  - (I) OAC 340:100-5-50 through 340:100-5-58.
- (33) Is neither the member's spouse, nor when the member is a minor child, the member's parent. A family member servicing as companion must meet all requirements listed in this Subchapter; and
- (34) Is not the Chief Executive Officer of a provider agency.
- (c) Companions are required to meet all applicable standards outlined in this subchapter and competency-based training, per OAC 340:100-3-38. The provider agency ensures all companions meet the criteria in this Section.
- (d) The companion's failure to follow any rules or standards, promote the member's independence, or follow the Personal Support Team's (Team) recommendation(s) results in problem resolution, per OAC 340:100-3-27, for the companion, and when warranted, results in revocation of approval of the companion.
- (e) The companion:
- (1) Ensures no other adult or child is cared for in the home on a regular or part-time basis, including other OKDHS placements, family members, or friends without prior written authorization from DDS area residential services programs manager or state office residential services programs manager;
  - (2) Meets transportation requirements per OAC 317:40-5-103. Neither the companion nor the provider agency may claim transportation reimbursement for vacation travel;

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- (3) Transports or arranges member transportation to and from school, employment programs, recreational activities, medical appointments, and therapy appointments;
- (4) Delivers services in a manner that contributes to the member's enhanced independence, self-sufficiency, community inclusion, and well-being;
- (5) Participates in the member's Team and assists in developing the member's Individual Plan (Plan) for service provision;
- (6) Develops, implements, evaluates, and revises training strategies that correspond to the Plan's relevant outcomes. The companion may request assistance from the case manager or program coordinator. The companion documents monthly data and health care summaries and submits them to the provider agency program coordination staff;
- (7) Delivers services at appropriate times as directed in the Plan;
- (8) Does not deliver services that duplicate the services public school districts provide pursuant to the Individuals with Disabilities Education Act (IDEA);
- (9) Respects the member's chosen religious faith and assists the member in religious participation. No member is expected to attend any religious service against his or her wishes;
- (10) Participates in, and supports visitation and contact with, the member's natural family, guardian, and friends, when the member desires visitation;
- (11) Obtains permission from the member's assigned legal guardian and notifies the family, the provider agency program coordination staff, and the case manager prior to:
  - (A) Traveling out-of-state;
  - (B) Overnight visits; or
  - (C) The member's involvement in any publicity, including the following: advertising, promotions, marketing campaigns, or involvement with the media;
- (12) Serves as the member's health care coordinator, per OAC 340:100-5-26;
- (13) Ensures the member's monthly room and board contribution is used toward household operation costs;
- (14) Assist the member in accessing entitlement programs for which the member may be eligible and maintains records required for the member's ongoing eligibility;
- (15) Works closely with the provider agency program coordination staff and the DDS case manager, to ensure all aspects of the member's program are implemented to the satisfaction of the member, the member's family or legal guardian, when appropriate, and the member's Team;
- (16) Assist the member to achieve his or her maximum level of independence;
- (17) Submits all necessary information regarding the member to the provider agency program coordination staff in a timely manner;
- (18) Ensures the member's confidentiality is maintained per, OAC 340:100-3-2;
- (19) Supports the member in forming and maintaining friendships with neighbors, co-workers, and peers, including people who do not have disabilities;
- (20) Implements training and provides supports that enable the member to actively join in community life;
- (21) Does not serve as the member's representative payee without a written exception from the DDS area residential services programs manager or state office residential services program manager.
  - (A) The written exception and approved DDS home profile are retained in the member's home record.
  - (B) When serving as payee, the companion complies with OAC 340:100-3-4 requirements;
- (22) Ensures the member's funds are safeguarded;
- (23) Obtains prior approval from the member's representative payee when making a purchase of over fifty dollars (\$50) with the member's funds;
- (24) Allows provider agency and DDS staff to make announced and unannounced visits to the home;
- (25) Develops an evacuation plan for the home using OKDHS Form 06AC020E, Evacuation/Escape Plan, and conducts training with the member;
- (26) Conducts fire and weather drills, per OAC 340:100-5-22.1, using OKDHS Form 06AC021E, Fire and Weather Drill Record;
- (27) Develops and maintains a personal possession inventory for personal possessions and adaptive equipment, using OKDHS Form 06AC022E, Personal Possession Inventory;
- (28) Supports the member's employment program by:
  - (A) Ensuring the member wears appropriate work attire; and
  - (B) Contacting the member's employer as outlined by the Team and in the Plan;
- (29) Is responsible for the member's meals and entertainment costs during recreational and leisure activities. Activities are affordable to the member. Concerns about affordability are presented to the Team for resolution;
- (30) For vulnerable adults, reports of suspected maltreatment including abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, per Section 10-104 of Title 43A of the Oklahoma Statutes (43A O.S. § 10 - 104), are submitted to OKDHS Office of Client Advocacy;
- (31) For children, reports of abuse, neglect, sexual abuse, or sexual exploitation, per 10A O.S. § 1-2-101, are submitted to the Child Abuse and Neglect Hotline at 1-800-522-3511;
- (32) Follows all applicable promulgated OHCA and DDS rules including:
  - (A) OAC 340:100-3-27;
  - (B) OAC 340:100-3-34;
  - (C) OAC 340:100-3-38;
  - (D) OAC 340:100-3-40;
  - (E) OAC 340:100-5-22.1;
  - (F) OAC 340:100-5-26;
  - (G) OAC 340:100-5-32;

- (H) OAC 340:100-5-33; and
- (I) OAC 340:100-5-50 through 340:100-5-58.
- (33) Is neither the member's spouse nor, when the member is a minor child, the member's parent. A family member serving as a companion must meet all requirements listed in this Subchapter; and
- (34) Is not the chief executive officer of a provider agency.

**317:40-5-6. Agency Companion contractor requirements [REVOKED]**

- (a) ~~The service recipient or legal guardian, the provider agency, or the Oklahoma Department of Human Services Developmental Disabilities Services (DDS) case manager may identify an applicant to be screened for approval to serve as companion.~~
- (b) ~~Approval by DDS for a person to provide contracted Agency Companion Services (ACS) requires the applicant:~~
  - (1) ~~is 21 years of age or older;~~
  - (2) ~~has attended the DDS or provider agency ACS orientation;~~
  - (3) ~~contracts with a provider agency having a current contract with the Oklahoma Health Care Authority to provide ACS;~~
  - (4) ~~submits the completed DDS application packet per Oklahoma Administrative Code (OAC) 317:40-5-40 within the required time period to designated DDS staff or the provider agency staff;~~
  - (5) ~~cooperates with designated DDS or provider agency staff in the development and completion of the home profile approval process per OAC 317:40-5-40; and~~
  - (6) ~~has completed all training required by OAC 340:100-3-38, including medication administration training, and all provider agency pre-employment training per OAC 317:40-5-40.~~

**PART 3. GUIDELINES TO STAFF**

**317:40-5-40. Home profile process 1 & 2**

- (a) **Applicability.** This Section establishes procedures for the Developmental Disabilities Services (DDS) home profile process. A home profile is required for:
  - (1) Agency companion services (ACS);
  - (2) Specialized ~~fo~~ Foster Care (SFC) services;
  - (3) Respite services delivered in the provider's home;
  - (4) Approving services in a home shared by a non-relative provider and a member; and
  - (5) Any other situation that requires a home profile.
- (b) **Pre-screening.** Designated DDS staff provides the applicant with program orientation and completes pre-screening activities ~~to~~ that include, but are not limited to:
  - (1) ~~Facts description, and guiding principles of the Home and Community Based Services (HCBS) program;~~
  - (2) An explanation of:
    - (A) Home and Community-Based Services (HCBS) program's guiding principles;
    - (AB) The home profile process;

- (BC) Basic provider qualifications;
- (CD) Health, safety, and environmental issues; and
- (DE) Training required per Oklahoma Administrative Code (OAC) 340:100-3-38; and
- (3) Gathering relevant information about the applicant and applicant's family, including household members, addresses, ~~and~~ contact information, and motivation to provide services; and
- (4) An explanation of ~~at~~ the background investigation that is conducted on the applicant and on any adult or child living in the applicant's home.
  - (A) Background investigations are conducted at the time of application and include, but are not limited to:
    - (i) An Oklahoma State Bureau of Investigation (OSBI) name and criminal records history search, including the Oklahoma Department of Public Safety (~~DPS~~), Sex Offender Registry, Mary Rippy Violent Offender Registries, and Nurse Aide and Non-technical Services Worker Registry;
    - (ii) Federal Bureau of Investigation (FBI) national criminal history search, which is based on the applicant's fingerprints ~~of the applicant and any adult members of the household;~~ household member's fingerprints; except when an exception is necessary as outlined ~~below in~~ (I) through (II) of this subsection.
      - (I) When fingerprints are low quality, ~~(as determined by OSBI, FBI, or both)~~ as determined by OSBI, FBI, or both, and make it impossible for the national crime information databases to provide results, In this instance, a name-based search, ~~(state, national, or both)~~ state, national, or both, may be authorized.
      - (II) When the DDS State Office residential staff ~~request~~ requests an exception from an individual, who has a severe physical condition precluding the individual from being fingerprinted, a name-based search, ~~(state, national, or both)~~ state, national, or both may be authorized.
- (iii) ~~Search~~ A search of any involvement as a party in a court action;
- (iv) ~~Search~~ A search of all OKDHS records, including Child Welfare Services records, Community Services Worker Registry, and Restricted Registry;
- (v) A search of all applicable out-of-state child abuse and neglect registries for any applicant or adult household member who has not lived in Oklahoma continuously for the past five (5) years. A home is not approved without the results ~~of the out of state child abuse and neglect registry checks, when a registry is maintained in the applicable state,~~ out-of-state child abuse and neglect registry check for all adult household members living in the home. When a child abuse and neglect registry is not maintained in the applicable state,

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~~an information request for information~~ is made to the applicable state; and

(vi) ~~Search~~ A search of Juvenile Justice Information System—(JOLTS) records for any child older than thirteen (13) years of age in the applicant's household.

(B) An application is denied when the applicant or any person residing in the applicant's home:

(i) Has a criminal conviction of, or pled guilty or no contest to:

(I) Physical assault, battery, or a drug-related offense in the ~~five-year~~ five(5) year period preceding the application date;

(II) Child abuse or neglect;

(III) Domestic abuse;

(IV) A crime against a child, including, but not limited to, child pornography;

(V) A crime involving violence, including, but not limited to, rape, sexual assault, or homicide, including manslaughter, excluding physical assault and battery; or

(ii) Does not meet OAC 340:100-3-39 requirements;

(c) **Home profile process.** When the applicant meets the ~~prescreening requirements of the prescreening~~, the initial home profile process described in (1) through (8) of this subsection is initiated.

(1) The applicant provides required information for ~~the home profile completion of the home profile~~.

(2) When an incomplete form or other information is returned to DDS, designated DDS staff sends a letter to the provider or provider agency identifying information needed to complete the required forms. The home profile is not completed until all required information is provided to DDS.

(3) Designated DDS staff completes the home profile when all required forms are completed and provided to DDS.

(4) For each reference ~~provided by the applicant~~, provides, designated DDS staff documents the completed reference check results of each ~~completed reference check~~.

(5) Designated DDS staff, through interviews, visits, and phone calls, gathers information required to complete the home profile.

(6) DDS staff review policies and responsibility areas ~~of responsibilities~~ with the applicant and ~~acknowledgment is made in writing by the applicant and designated DDS staff~~. DDS staff and the applicant acknowledge the review in writing.

(7) The DDS ~~area residential services~~ area residential services programs manager sends ~~to~~ the applicant:

(A) A provider approval letter confirming the applicant is approved to serve as a provider; or

(B) A denial letter stating the application and home profile are denied.

(8) DDS staff records the completion dates of ~~completion~~ of each part of the home profile process.

(d) **Home standards.** In order to qualify and remain in compliance, the applicant's or provider's home must meet the provisions in (1) through (11) of this subsection.

(1) **General conditions.**

(A) The home, buildings, and furnishings ~~must be~~ must be comfortable, clean, and in good repair, and the grounds ~~must be~~ must be maintained. There ~~must be~~ no accumulation of accumulating garbage, debris, or rubbish or offensive odors.

(B) The home must:

(i) Be accessible to school, employment, church, day programming, recreational activities, health facilities, and other community resources as needed;

(ii) Have adequate heating, cooling, and plumbing; ~~and~~

(iii) Provide space for the member's personal possessions and privacy; ~~and~~

(iv) Allow adequate space for the occupants' recreational and social needs ~~of the occupants~~.

(C) Provisions for the member's safety ~~must be~~ must be present, as needed, including:

(i) Guards and rails on stairways;

(ii) Wheelchair ramps;

(iii) Widened doorways;

(iv) Grab bars;

(v) Appropriate lifting equipment as needed for safe transfers;

(vi) Access to safe bathing and toileting;

~~(vii)~~ Adequate lighting;

~~(viii)~~ Anti-scald devices; and

~~(ix)~~ Heat and air conditioning equipment guarded and installed in accordance with manufacturer requirements. Home modifications and equipment may be provided through HCBS Waivers operated by DDS.

(D) Providers must not permit members to access or use swimming or other pools, hot tubs, saunas, ponds, or spas on the premises without supervision. Swimming pools, hot tubs, saunas, ponds, or spas ~~must be~~ must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access.

(E) The household ~~must be~~ must be covered by homeowner's or renter's insurance including personal liability insurance.

(2) **Sanitation.**

(A) Sanitary facilities ~~must be~~ must be adequate and safe, including toilet and bathing facilities, water supply, and garbage and sewer disposal.

(B) When a septic tank or other non-municipal sewage disposal system is used, it ~~must be~~ must be in good working order.

(C) Garbage and refuse ~~must be~~ must be stored in readily cleanable containers, pending weekly removal.

~~(D) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards.~~



~~(i) Proof of rabies or other vaccinations as required by a licensed veterinarian for household pets must be maintained on the premises.~~

~~(ii) Pets not confined in enclosures must be under control and not present a danger to members or guests.~~

~~(E) There must be adequate control of insects and rodents, including doors and windows with ventilation screens used for ventilation in good repair on doors and windows.~~

~~(F) Universal precautions for infection control must be followed in care to the member. The member's care. Hands and other skin surfaces must be washed immediately and thoroughly when contaminated with blood or other body fluids.~~

~~(G) Laundry equipment, if in the home, must be located in a safe, well-ventilated, and clean area, with the dryer vented to the outside.~~

(3) **Bathrooms.** A bathroom must:

(A) Provide for individual privacy and have a finished interior;

(B) Be clean and free of objectionable odors; and

(C) Have a bathtub or shower, flush toilet, and sink in good repair, and hot and cold water in sufficient supply to meet the member's hygiene needs.

(i) A sink must be located near each toilet.

~~(ii) For members who are non-ambulatory or who have limited mobility, a toilet, shower and sink must be provided on each floor where their rooms of members who are non-ambulatory or with limited mobility are located.~~

(iii) There must be at least one (1) toilet, one (1) sink, and one (1) bathtub or shower for every six (6) household occupants, including the provider and family.

(4) **Bedrooms.** A bedroom must:

(A) ~~Have~~Has been constructed as such for that purpose when the home was built or remodeled under permit;

(B) ~~Be~~Is provided for each member.

~~(i) Exception~~The DDS are residential services program manager may make exceptions to allow members to share a bedroom may be made by DDS area residential program manager, when DDS determines sharing a bedroom is in the members' best interest of the member interests.

(ii) A member must not share a bedroom with more than one (1) other person; member;

(iii) Minor members must not share bedrooms with adults. an adult member. Exceptions may be approved by the DDS Area Field Administrator when (I) through (III) of this section are met. Additional exceptions to these rules may be approved by the division director or designee:

(I) The minor is at least sixteen (16) years of age;

(II) The adult member does not present a risk of harm to the minor; and

(III) The members are sharing a room at the time the older member turns eighteen (18) years of age;

(C) ~~Have~~Has two (2) means of egress and a minimum of eighty (80) square feet of usable floor space for each member or one-hundred and twenty (120) square feet for two (2) members and two (2) means of egress. The home's provider, family members, or other occupants of the home must not sleep in areas designated as common use living areas, nor share bedrooms with members;

(i) Exceptions to allow non-members and members to share a bedroom may be approved by the Division Director or designee when:

(I) The member agrees and the agreement is documented in the IP annually;

(II) Neither the member nor the non-member are determined to be at risk or harm; and

(III) Neither the member nor the non-member are eighteen (18) years or older; and

(ii) Consideration is given to age, gender, support needs, behavioral health needs, number of restrooms available in the home, and total household square footage.

(D) ~~Be~~Is finished with standard construction walls or partitions of standard construction that go from floor to ceiling;

(E) ~~Be~~Is adequately ventilated, heated, cooled, and lighted;

(F) ~~Include~~Includes an individual bed for each member consisting of a frame, box spring, when other support is not included in the frame, and a mattress at least thirty-six (36) inches wide, unless a specialized bed is required to meet identified needs. Cots, rollaways, rollaway beds, couches, futons, air mattresses, and folding beds must not be used for members. The division director or designee may make exceptions for temporary respite when the Personal Support Team (Team) is able to demonstrate that privacy can be maintained.

(i) Each bed must have clean bedding in good condition consisting of a mattress pad, bedspread, two (2) sheets, pillow, pillowcase, and blankets adequate for the weather.

(ii) Sheets and pillowcases must be laundered at least weekly or more often if necessary.

(iii) Waterproof mattress covers must be used for members who are incontinent;

(G) ~~Have~~Has sufficient space for each member's clothing and personal effects, including hygiene and grooming supplies.

(i) Members must be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space.

(ii) The provider assists the member in furnishing and decorating the member's bedroom.

(iii) Window coverings must be in good condition and allow privacy for members;

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- (H) ~~Be~~Is on ground level for members with impaired mobility or who are non-ambulatory; and
- (I) ~~Be~~Is in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with an alert system.
- (5) **Food.**
- (A) Adequate storage ~~must be~~is available to maintain food at the proper temperature, including a properly working refrigerator. ~~Food storage must be such that, and to keep food is~~protected from dirt and contamination ~~and maintained at proper temperatures to~~prevent spoilage.
- (B) Utensils, dishes, glassware, and food supplies ~~must not be~~not stored in bedrooms, bathrooms, or living areas.
- (C) Utensils, dishes, and glassware ~~must be~~are washed and stored to prevent contamination.
- (D) Food storage and preparation areas and equipment must be clean, free of offensive odors, and in good repair.
- (6) **Phone.**
- (A) ~~A~~There is a working phone ~~must be provided in~~the home that is available and accessible for the member's use ~~for incoming and outgoing calls including during periods of time when the member is home alone.~~
- (B) Phone numbers to the home and providers ~~must be~~are kept current and provided to DDS and, when applicable, the provider agency.
- (7) **Safety.**
- (A) Buildings must meet all applicable state building, mechanical, and housing codes.
- (B) Heating, in accordance with manufacturer's specifications, and electrical equipment, including wood stoves, ~~must be~~are installed in accordance with all applicable fire and life safety codes. Such equipment ~~must be~~is used and maintained properly and ~~kept in good repair.~~
- (i) ~~Protective~~Fireplaces are required to have protective glass screens or metal mesh curtains attached at top and bottom ~~are required on fireplaces.~~
- (ii) Unvented portable oil, gas, or kerosene heaters are prohibited.
- (C) Extension cord wiring ~~must not be~~is not used in place of permanent wiring.
- (D) Hardware for all exit and interior doors must have an obvious operation method ~~of operation~~that cannot be locked against egress.
- (8) **Emergencies.**
- (A) Working smoke detectors ~~must be~~are provided in each bedroom, adjacent hallways, and in two (2) story homes, at the top of each stairway. Alarms ~~must be~~are equipped with a device that ~~warns of low battery condition,~~has a low battery warning when battery operated.
- (B) At least one (1) working fire extinguisher ~~must be~~is in a readily accessible location.
- (C) A working flashlight ~~must be~~is available for emergency lighting on each floor of the home.
- (D) The provider:
- (i) ~~Mainstays~~Maintains a working carbon monoxide detector in the home;
- (ii) ~~Mainstays a~~Maintains the home's written evacuation plan ~~for the home and conducts~~evacuation training ~~for evacuation~~with the member;
- (iii) Conducts fire drills quarterly and severe weather drills twice per year;
- (iv) Makes fire and severe weather drill documentation available for DDS review ~~by DDS;~~
- (v) Has a written back-up plan for temporary housing in the event of an emergency; and
- (vi) Is responsible to ~~re-establish~~for re-establishing a residence; if the home becomes uninhabitable.
- (E) A first aid kit ~~must be~~is available in the home.
- (F) The home's address ~~of the home~~ ~~must be~~is clearly visible from the street.
- (9) **Special hazards.**
- (A) Firearms and other dangerous weapons ~~must be~~are stored in a locked permanent enclosure. Ammunition ~~must be~~is stored in a separate locked location. Providers are prohibited from assisting members to obtain, possess, or use dangerous or deadly weapons, per OAC 340:100-5-22.1.
- (B) Flammable and combustible liquids and hazardous materials ~~must be~~are safely and properly stored in original, properly labeled containers.
- (C) Cleaning supplies, medical sharps containers, poisons, and insecticides ~~must be~~are properly stored in original, properly labeled containers in a safe area away from food, food preparation areas, dining areas, and medications.
- (D) Illegal substances are not permitted on the premises.
- (10) **Vehicles.**
- (A) All vehicles used to transport members ~~must meet~~ meet local and state requirements for accessibility ~~and~~, safe transit, licensing, inspection, insurance, and capacity.
- (B) Drivers ~~of vehicles~~ ~~must~~ have valid and appropriate driver licenses.
- (11) **Medication.** Medication for the member is stored, per OAC 340:100-5-32.
- (12) **Pets.** Sanitation for household pets and other domestic animals is required to prevent health hazards.
- (A) For all household pets, proof of rabies and/or other vaccinations as required by a licensed veterinarian is maintained on the premises.
- (B) Pets not confined in enclosures must not jeopardize the safety of residents and visitors to the home.
- (C) Animals and pets are in good health, do not show evidence of carrying disease, and do not present a threat to member health, safety, or welfare.

(D) Appropriate supervision is required when the member is in the presence of household animals and pets.

(E) If an animal or pet bites a member, the provider ensures the member receives medical treatment when appropriate, contacts designated DDS staff as soon as the member is safe, and completes an incident report per OAC 340:100-3-34.

(e) **Evaluating the applicant and home.** The initial home profile evaluation includes, but is not limited to:

- (1) Evaluating the applicant's:
  - (A) Interest and motivation;
  - (B) Life skills;
  - (C) Children;
  - (D) Methods of behavior support and discipline;
  - (E) Marital status, background, and household composition;
  - (F) Income and money management; and
  - (G) Teamwork and supervision, back-up plan, and relief use of relief; and
- (2) Assessment and recommendation. DDS staff:
  - (A) Evaluates the applicant's ability of ~~the applicant~~ to provide services;
  - (B) Assesses the applicant's overall compatibility of ~~the applicant~~ and with the service recipient, ensuring the lifestyles and personalities of each are compatible for the shared living arrangement. The applicant ~~must~~:
    - (i) ~~Express~~Expresses a long term commitment to the service member unless the applicant will only be providing respite services;
    - (ii) ~~Demonstrate~~Demonstrates the skills to meet the individual member's needs of ~~the member~~;
    - (iii) ~~Express~~Expresses an understanding of the commitment required as a service provider of ~~services~~;
    - (iv) ~~Express~~Expresses an understanding of the impact the arrangement will have on personal and family life;
    - (v) ~~Demonstrate~~Demonstrates the ability to establish and maintain positive relationships, especially during stressful situations; and
    - (vi) ~~Demonstrates~~Demonstrates the ability to work collaboratively and cooperatively with others in a team process;
  - (C) ~~Approves only~~Only approves applicants who can fulfill the service provider expectations of ~~the role of service provider~~; and
  - (D) ~~When~~Ensures that when the applicant does not meet standards, per OAC 317:40-5-40, ~~ensures~~ the final recommendation includes:
    - (i) A basis for the denial decision; and
    - (ii) An effective date for determining the applicant does not meet standards. ~~Reasons for denying a request to be a provider may include, but are not limited to;~~ and

(iii) Reasons for denying a request to be a provider. Reasons may include, but are not limited to:

- (I) A lack of stable, adequate income to meet the applicant's own or total family needs, or poor management of the available income;
- (II) A physical facility that is inadequate to accommodate the addition of a member to the home or presents health or safety concerns;
- (III) The applicant's age, health, or any other condition of ~~the applicant~~ that impedes ~~the applicant's~~ his or her ability to provide appropriate care for a member;
- (IV) Relationships in the applicant's household that are unstable and unsatisfactory;
- (V) The applicant's, other family member's or household member's mental health of the applicant or other family or household member that impedes the applicant's ability to provide appropriate care for a member;
- ~~(VI) References who are guarded or have reservations in recommending the applicant;~~
- ~~(VII) The applicant failed to complete the application, required training, or verifications in a timely manner as requested or provided incomplete, inconsistent, or untruthful information;~~
- ~~(VI) The applicant's failure to complete verifications in a timely manner as requested, or the applicant's provision of incomplete, inconsistent, or untruthful information;~~
- ~~(VII) The home is determined unsuitable for the member requiring placement;~~
- ~~(VIII) Confirmed abuse, neglect, or exploitation of any person;~~
- ~~(X) Breach of confidentiality;~~
- ~~(IX) Confidentiality breach;~~
- ~~(XI) Involvement of the applicant~~
- ~~(X) Applicant or provider involvement in criminal activity or criminal activity in the home;~~
- ~~(XII) Failures to complete training, per OAC 340:100-3-38;~~
- ~~(XIII) Failures of the home~~
- ~~(XII) Home's failure to meet standards per subsection (d) of this Section; and~~
- ~~(XIV) Failures~~
- ~~(XIII) Failure to follow applicable OKDHS or Oklahoma Health Care Authority (OHCA) rules;~~
- ~~(XIV) References who are guarded or have reservations in recommending the applicant; and~~
- ~~(XV) The applicant's failure to complete the application in a timely manner.~~
- (E) Notifies the applicant in writing of the home profile's final approval or denial of ~~the home profile~~; and

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- (F) ~~When an application is canceled or withdrawn prior to completion of the home profile, completes a final written assessment that includes the:~~ Completes a final written assessment when an application is canceled or withdrawn prior to the home profile's completion. The written assessment includes the:
- (i) Reason the application was canceled or withdrawn;
  - (ii) ~~DDS staff's~~ staff impression of the applicant based on information obtained; and
  - (iii) ~~Effective date of cancellation or withdrawal.~~ date. Written notice is sent to the applicant to confirm application cancellation or withdrawal ~~of the application~~, and a copy is included in local and State Office records.
- (f) **Unrelated habilitation training specialist (HTS) staff home.** Designated DDS staff and provider agency staff work together to complete a home evaluation when the member lives with an unrelated HTS staff.
- (1) The provider agency:
    - (A) Obtains pre-employment screening in compliance with OAC 340:100-3-39;
    - (B) Obtains background checks for all household residents in accordance with (b) (4) of this Section; and
    - (C) Assesses HTS fitness for work; and the
  - (2) Designated DDS staff:
    - (A) Assesses household members' appropriateness;
    - (B) Develops an evacuation plan;
    - (C) Reviews policy, procedures, and responsibilities with the HTS;
    - (D) Ensures pet vaccinations are current;
    - (E) Evaluates any other conditions that may affect the health or safety of a member's care; and
    - (F) Completes a home safety inspection initially and annually, then as needed.
- (f) **Frequency of evaluation.**
- (g) **Evaluation frequency.** Home profile evaluations are completed for an applicant's initial approval or denial ~~of an applicant.~~ After an initial approval, a home profile review is conducted annually and as needed for compliance and continued approval. DDS area residential services staff ~~conducts~~ conducts at least biannual home visits to ~~specialized foster care~~ SFC providers. The annual home profile review is a comprehensive review of the living arrangement, the provider's continued ability to meet standards, ~~the needs of the member and the home~~ and the member's and home's needs to ensure ongoing compliance with home standards. A home profile review is conducted when a provider notifies DDS of his or her intent to move to a new residence. DDS staff assesses the home to ensure the new home meets home standards and is suitable to meet the member's needs. The annual home profile review;
  - (1) Includes information specifically related to the provider's home and is documented, as an annual review;
  - (2) Includes a medical examination report completed a minimum of every three (3) years following the initial

- approval, unless medical circumstances warrant more frequent completion;
- (3) ~~Includes information from the DDS case manager, the provider of agency companion or SFC services, the Child Welfare specialist, Adult Protective Services, and Office of Client Advocacy staff, and the provider agency program coordinator when applicable;~~
  - (4) Includes information from the service member indicating satisfaction with service and a desire to continue the arrangement;
  - (5) Includes ~~areas of service~~ areas where improvement is needed;
  - (6) Includes ~~areas of service~~ areas where progress was noted or were of significant benefit to the member;
  - (7) Ensures background investigation, per OAC 317:40-5-40(b), is repeated every year, except for the OSBI and FBI national criminal history search;
  - (8) Ensures the FBI national criminal history search, per OAC 317:40-5-40(b)(4)(A)(ii), is repeated every five (5) years;
  - (9) ~~Ensures~~ When applicable, ensures written notification of continued provider approval to providers and agencies, ~~when applicable, of the continued approval of the provider; and~~
  - (10) Includes written notification to providers and agencies, when the provider or agency fails to comply with the home standards, per OAC 317:40-5-40, including correction deadlines for ~~correction~~ of the identified standards.
- (gh) **Home profile denial.** Reasons a home profile review may be denied include, but are not limited to: reasons stated in subsection (e) (2) (D) (iii) (I through XIII) of this Section and :
- (1) ~~Lack of stable, adequate income to meet the provider's own or total family needs or poor management of available income;~~
  - (2) ~~A physical facility that is inadequate to accommodate the addition of a member to the home or presents health or safety concerns;~~
  - (3) ~~The age, health, or any other condition of the provider that impedes the provider's ability to provide appropriate care for a member;~~
  - (4) ~~Relationships in the provider's household that are unstable and unsatisfactory;~~
  - (5) ~~The mental health of the provider or other family or household member impedes the provider's ability to provide appropriate care for a member;~~
  - (6) ~~The provider fails to complete required training, or verifications in a timely manner as requested or provides incomplete, inconsistent, or untruthful information;~~
  - (7) ~~The home is determined unsuitable for the member;~~
  - (8) ~~Failure of the provider~~
    - (1) Provider's failure to complete tasks related to problem resolution, as agreed, per OAC 340:100-3-27;
    - (9) ~~Failure of the provider~~
      - (2) Provider's failure to complete a ~~plan of action~~ an action plan, as agreed, per OAC 317:40-5-63;
      - (10) ~~Confirmed abuse, neglect, or exploitation of any person;~~
      - (11) ~~Breach of confidentiality;~~

- ~~(12) Involvement of the applicant or provider involvement in the criminal activity or criminal activity in the home;~~
- ~~(13) Failure to provide for the service member's care and well-being of the service member;~~
- ~~(14) Failure or continued failure to implement the individual member's Individual Plan, per OAC 340:100-5-50 through 100-5-58;~~
- ~~(15) Failure to complete and maintain training, per OAC 340:100-3-38;~~
- ~~(16) Failure to report changes in the household;~~
- ~~(17) Failure to meet standards of the home per subsection (d) of this Section;~~
- ~~(18) Failure or continued failure to follow applicable OKDHS or OHCA rules;~~
- ~~(19) Decline of in the provider's health to the point he or she can no longer meet the service member's needs of the service member;~~
- ~~(20) Employment by the provider~~
- ~~(7) Provider employment without prior approval of the DDS area programs manager for residential services; DDS area residential services programs manager approval; or~~
- ~~(21) Domestic disputes that cause emotional distress to the member.~~

**(h) Termination of placement.**

- (i) Placement termination.** When an existing placement is terminated for any reason:
  - (1) The Team meets to develop an orderly transition plan; and
  - (2) DDS staff ensures the member's and state property of the member and state is removed promptly and appropriately by the member or his or her designee.

**PART 5. SPECIALIZED FOSTER CARE**

**317:40-5-50. Purpose of Specialized Foster Care Scope**

- (a) Specialized Foster Care (SFC) provides up to ~~24~~twenty-four (24) hours per day of in-home residential habilitation services funded through the Community Waiver or the Homeward Bound Waiver. SFC serves individuals ~~ages~~ three (3) years of age and older. SFC provides an individualized living arrangement in a family setting including up to ~~24~~twenty-four (24) hours per day of supervision, supportive assistance, and training in daily living skills.
- (b) SFC is provided in a setting that best meets the member's specialized needs ~~of the service recipient~~.
- (c) Members in SFC have a written plan that addresses visitation, reunification, or permanency planning, and which may also address guardianship as the member approaches eighteen (18) years of age.
- (d) As per the requirements in (1) through (4) of this subsection, SFC providers:
  - (1) Are approved through the home profile process described in Oklahoma Administrative Code (OAC) 317:40-5-40;

- (2) Have a current Home and Community-Based Services (HCBS) Waiver contract with the Oklahoma Health Care Authority; and
- (3) Have a current Fixed Rate Foster Home Contract for room and board reimbursement with Developmental Disabilities Services (DDS) when:
  - (A) The member is a child; or
  - (B) Required by the adult member's Personal Support Team (Team).
- (e) A child in Oklahoma Human Services (OKDHS) or tribal custody who is determined eligible for HCBS Waiver services, per OAC 317:40-1-1, is eligible to receive SFC services if the child's special needs cannot be met in a Child Welfare Services (CWS) foster home.

- (1) SFC provides a temporary, stable, nurturing, and safe home environment for the child while OKDHS plans for reunification with the child's family.
- (2) In the event reunification is not achievable, SFC may be provided on a long-term basis while other more permanent living arrangements are sought.
- (3) When the court has established a specific visitation plan, the CWS specialist informs the SFC provider, the member, the DDS case manager, and the natural family of the visitation plan.
  - (A) The SFC provider cooperates with the visitation plan between the child and family as prescribed by the court or the member's Team.
  - (B) The reunification effort is the joint responsibility of the:
    - (i) CWS worker;
    - (ii) DDS case manager;
    - (iii) Natural family; and
    - (iv) SFC family.
  - (C) For children in OKDHS custody, CWS and DDS work together to determine the need for guardianship. When it has been established that a legal guardian is in the child's best interest, both programs work together to locate a guardian.

**(f) SFC is a temporary service provided to children who are not in OKDHS custody when SFC services are needed to prevent institutionalization.**

- (1) SFC intent is to allow the member's family relief that cannot be satisfied by respite services provisions or other in-home supports.
- (2) SFC provides a nurturing, substitute home environment for the member while plans are made to reunify the family.
- (3) Visitation with the family is a part of the reunification efforts for non-custody children. Visitation must not be intrusive to the SFC home.
- (4) Parents of a child receiving SFC services must comply with the requirements listed in (A) through (D) of this paragraph.
  - (A) Natural or adoptive parents retain the responsibility for their child's ongoing involvement and support while the child is in SFC.

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- (i) The parents are required to sign a written agreement allowing OKDHS to serve as the representative payee for the child's Social Security Administration (SSA) benefits, other government benefits, and court-authorized child support.
- (ii) SSA and other government benefits, and child support are used to pay for room and board (maintenance). HCBS services do not pay for room and board (maintenance).
- (B) Parental responsibilities of a child receiving voluntary SFC are to:
  - (i) Provide respite to the SFC provider;
  - (ii) Provide transportation to and from parental visitation;
  - (iii) Provide a financial contribution toward their child's support;
  - (iv) Provide in kind supports, such as disposable undergarments, if needed, clothing, recreation, birthday and holiday presents, school supplies, and allowances or personal spending money;
  - (v) Follow the visitation plan as outlined by the member's Team, per OAC 317:40-5-52;
  - (vi) Maintain ongoing communication with the member and SFC provider by letters, telephone calls, video conferencing, or email;
  - (vii) Be available in an emergency;
  - (viii) Work toward reunification when appropriate;
  - (ix) Provide written consent for medical treatments as appropriate;
  - (x) Attend medical appointments, when possible, and keep informed of the member's health status;
  - (xi) Participate in the member's education plan in accordance with Oklahoma State Department of Education regulations; and
  - (xii) Be present for all Team meetings.
- (C) When moving out of Oklahoma, parents of a child receiving voluntary SFC are responsible for taking their minor child with them, since the child is no longer eligible for services because he or she is no longer an Oklahoma resident.
- (D) For children eighteen (18) years of age and younger, the case manager reports to CWS if the family moves out of Oklahoma without taking their child with them or if the family cannot be located.
- (g) SFC is an appropriate living arrangement for many adults. The decision to use SFC for an adult is based on the member's need for residential support as described in his or her Individual Plan.
  - (1) In general, SFC is appropriate for members who have not experienced family life. A child served in SFC may continue to receive services in the home indefinitely after turning eighteen (18) years of age.
  - (2) The member who receives SFC services lives in the provider's home.

- (3) Visitation with the adult member's family is encouraged and arranged according to the member's preference. Visitation is not intrusive to the SFC home.

### 317:40-5-51. Scope of Specialized Foster Care [REVOKED]

- (a) ~~**Children in OKDHS custody.** A child in the custody of the Oklahoma Department of Human Services (OKDHS) who is determined eligible for HCBS Waiver services in accordance with OAC 317:40-1-1 is eligible to receive Specialized Foster Care (SFC) services if the special needs of the child cannot be met in a Division of Children and Family Services (DCFS) foster home.~~
  - (1) ~~SFC provides a temporary, stable, nurturing, and safe home environment for the child while the OKDHS plans for reunification with the child's family.~~
  - (2) ~~In the event reunification is not achievable, SFC may be provided on a long term basis while other more permanent living arrangements are sought.~~
- (b) ~~**Non-custody children.** SFC is a temporary service provided to children who are not in the custody of OKDHS when needed to prevent institutionalization.~~
  - (1) ~~The intent of SFC is to allow the service recipient's family relief that cannot be satisfied by the provision of respite services or other in-home supports.~~
  - (2) ~~SFC provides a nurturing, substitute home environment for the service recipient while plans are made to reunify the family.~~
  - (3) ~~Parents of a child receiving SFC services must comply with requirements of OAC 317:40-5-56.~~
- (c) ~~**Adults.** SFC is an appropriate living arrangement for many adults. The decision to use SFC for an adult is based on the service recipient's need for residential support as described in his or her Plan.~~
  - (1) ~~In general, SFC is appropriate for service recipients who have not experienced family life. A child served in SFC may continue to receive services in the home indefinitely after turning 18 years of age.~~
  - (2) ~~The service recipient who receives SFC services lives in the provider's home.~~

### 317:40-5-52. Visitation and reunification in Specialized Foster Care [REVOKED]

- ~~Service recipients in Specialized Foster Care (SFC) have a written plan that addresses visitation, reunification, or permanency planning, and which may also address guardianship as the service recipient approaches age 18.~~
- (1) ~~**Custody children.** When the Court has established a specific visitation plan, the Division of Children and Family Services (DCFS) specialist informs the SFC provider, the service recipient, the Developmental Disabilities Services Division (DDSD) case manager, and the natural family of the visitation plan.~~
    - (A) ~~The SFC provider cooperates with the visitation plan between the child and family as prescribed by the Court or the service recipient's Team.~~

(B) The reunification effort is a joint responsibility of:

- (i) the DCFS worker;
- (ii) the DDS case manager;
- (iii) the natural family; and
- (iv) the SFC family.

(C) For children in the custody of the Oklahoma Department of Human Services (OKDHS) who are attaining the age of 18, DCFS and DDS work together to determine the need for guardianship. When it has been established that a legal guardian is in the child's best interest, both divisions work together to locate a guardian.

(2) **Non-custody children.** Visitation with the family is a part of the reunification efforts for non-custody children. Visitation must not be intrusive to the SFC home.

(3) **Adults.** Visitation with the adult service recipient's family is encouraged and arranged according to the preference of the service recipient. Visitation must not be intrusive to the SFC home.

**317:40-5-54. Selection of Specialized Foster Care provider [REVOKED]**

Providers of Specialized Foster Care (SFC) must meet the requirements of this Section:

- (1) Each provider is approved through the home profile process described in OAC 317:40-5-40.
- (2) The individual provider of Specialized Foster Care is required to have a current Home and Community Based Waiver (HCBW) services contract with the Oklahoma Health Care Authority.
- (3) The provider is required to have a current Fixed Rate Contract for room and board reimbursement with Developmental Disabilities Services Division (DDSD) when:
  - (A) the SFC service recipient is a child; or
  - (B) required by the adult SFC recipient's Team.
- (4) OKDHS Form DCW-SH-2, Claim for Foster and Adoptive Home Purchase of Care, if required in accordance with paragraph (3) of this subsection, is completed and submitted monthly to OKDHS Finance by staff as designated by the DDSD area manager.

**317:40-5-55. Specialized Foster Care (SFC) provider responsibilities**

(a) **General responsibilities.** The responsibilities of all Specialized Foster Care (SFC) providers The SFC providers responsibilities are listed in (a) through (c) of this Section. Each provider:

- (1) Providers of SFC are required Is required to meet all applicable standards per OAC 317:40-5-40;
- (2) Providers of SFC are required Is required to receive competency-based competency-based training per OAC 340:100-3-38. The provider keeps all required training up to date current and submits documentation to the SFC specialist at the time training is completed;

(3) ~~The provider is an~~ Is an active participant of the member's Personal Support Team (Team) and assists in the development of developing the member's Individual Plan (Plan), per OAC 340:100-5-50 through 100-5-58;

(4) ~~The provider documents~~ Documents and notifies the case manager of any changes in ~~behavior~~ the member's behavior or medical conditions of ~~the member~~ within one working day. ~~Incident reports are completed by the SFC provider and submitted~~ The SFC provider completes incident reports and submits them to the Developmental Disabilities Services Division ~~(DDSD)~~ (DDS) case manager per OAC 340:100-3-34;

(5) ~~The SFC provider is~~ Is available to the member at any time;

(6) ~~The~~ Has primary responsibility of ~~the SFC provider~~ is to provide SFC services to the member. The SFC provider does not have employment unless the employment ~~has been~~ is pre-approved by the ~~residential programs supervisor for DDSD/DDS area residential services programs manager or the State Office residential services programs manager;~~

(A) ~~Generally, providers are not approved for employment because the~~ The provider must be available before and after school or vocational programs and ~~often~~ as needed during the day due to holidays or illnesses;

(B) ~~If, after~~ After receiving employment approval for employment, it is found that if the SFC provider's employment interferes with the member's care, training, or supervision ~~needed by the member,~~ the provider must determine if he or she wants to terminate the employment or have the member moved from the home; and

(C) ~~DDSD/DDS~~ DDS does not authorize ~~Homemaker, Habilitation Training Specialist, homemaker, habilitation training specialist,~~ or respite services in order for the SFC provider to perform employment.

(7) ~~The provider does~~ Does not deliver services that duplicate the public school district mandated services ~~mandated to be~~ that are provided by the public school district pursuant to the Individuals ~~With~~ with Disabilities Education Act (IDEA-B);

(8) ~~The provider allows~~ Allows the member to have experiences, both in and out of the home, to enhance the member's development, learning, growth, independence, community inclusion, and well-being, while assisting the member to achieve his or her maximum level of independence;

(9) ~~The provider ensures~~ Ensures confidentiality is maintained regarding the member per OAC 340:100-3-2;

(10) ~~The provider is~~ Is sensitive to, and assists the member in participating in, the member's ~~choice of~~ religious faith. No member is expected to attend any religious service against his or her wishes;

(11) ~~The provider arranges,~~ Arranges for, and ensures ~~that~~ the member obtains, a dental examination at least annually, and is responsible for obtaining regular and emergency medical services as needed;

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~~(12) The provider has~~Has a valid Oklahoma driver license, and maintains a motor vehicle in working order, and complies with requirements ofper OAC 317:40-5-103, Transportation;

~~(13) The provider transports~~Transports, or arranges transportation, using adapted transportation when appropriate, for the member, to and from school, employment, church, recreational activities, and medical or therapy appointments using adapted transportation when appropriate, per OAC 317:40-5-103, the SFC provider:

(A) SFC providers mayMay enter into a transportation contract;

(B) ~~The provider must assure~~Assures availability and use of an approved and appropriate child auto restraint system as required by law in transporting children and, in cases of adults receiving services, any additional safety devices identified as necessary in the Plan; and

(C) Does not claim transportation reimbursement for vacation travel or any other transportation service not covered per OAC 317:40-5-103.

~~(14) The provider assures~~Assures the member is clean, appropriately dressed, and on time for activities and appointments;

~~(15) The provider ensures~~Ensures no other adult or child is cared for or resides in the home on a regular or part-time basis ~~that was who~~ is not approved through the home profile review process or without prior approval from the ~~DDS~~DDS area residential services programs manager or designee;

~~(16) The provider does~~Does not provide services to more than three (3) individuals regardless of ~~the type of service provided, service type provided,~~ including SFC, ~~Children and Family Services Division~~Welfare Services foster care, respite, baby-sitting, or other such services. Any exception to this paragraph must be approved in writing by the ~~director of DDS~~DDS director or designee prior to authorization or service delivery;

~~(17) The provider permits visitation and monitoring of the home by authorized DDS staff.~~Permits DDS staff to conduct monitoring and home visits. In order to assure ~~maintenance of standards, are maintained,~~ some visits are unannounced. The visits occur at least monthly and are not intended to be intrusive but to ensure the member's safety and well-being ~~of the member;~~

~~(18) The provider encourages~~Encourages and cooperates in planning visits in the SFC home by the member's relatives, guardians, or friends ~~of the member.~~ Visits by the member to the home of friends or relativesMember visits to his or her friends' or relative's homes must be approved by the member's legally authorized representative;

~~(19) The provider abides by the policies of DDS per OAC 340:100-3-12, Prohibition of client abuse, and OAC 340:100-5-58, Prohibited procedures. The provider is~~Is prohibited from signing an authorization for school personnel to use physical discipline or corporal punishment;

~~(20) The provider notifies~~Notifies the ~~DDS case manager~~DDS social services specialist (SSS) when the

need arises for substitute supervision ~~in the event of an emergency, in accordance with the Backup Plan,~~ per OAC 317:40-5-59. ~~If~~When the provider is out of the home for a short duration, a natural support in the home can provide time-limited substitute supervision;

(A) A natural support is defined as an adult relative or spouse of the specialized foster parent ~~that~~who resides in the home;

(B) The Team approves the natural support and defines when this support may be accessed;

(C) Persons ~~who are~~considered a natural support must complete training, per OAC 340:100-3-38.12;

(D) Persons acting as a natural support may only provide supervision for brief, intermittent time periods, and do so without payment;

(E) When the Team determines it to be appropriate, the SFC provider may select a volunteer to serve as a substitute caregiver for a member eighteen (18) years of age and younger. The volunteer resides outside the home, has no waiver contract, is not employed by a contracted agency, and has an established relationship with the member;

(i) A volunteer is defined as an adult, at least twenty-one (21) years of age, who is the SFC provider's a friend, relative, or neighbor;

(ii) A volunteer may provide support for up to two (2) consecutive days. The member may not be in volunteer care for more than three (3) days total in a thirty (30) calendar day period;

(iii) The SFC provider ensures the volunteer possesses the maturity and skills necessary to address the member's needs;

(iv) The foster care provider notifies the DDS SSS within one (1) business day when volunteer respite is used and includes address, contact information and length of stay;

(v) When the member is also a child in OKDHS or tribal custody, the SFC provider gives the volunteer contact information for the DDS SSS, case manager, and child welfare specialist (CWS) as well as his or her own contact information;

(vi) A volunteer must not be someone who has been excluded by OKDHS; and

(vii) The volunteer is not subject to background check or home profile requirements unless the stay will exceed two (2) consecutive days.

(F) When the Team determines it to be appropriate, the SFC provider may select a camp, retreat, or conference program as a substitute caregiver for the member when the member wishes to attend the program. A camp, retreat, or conference program is defined as a day or overnight program with adult supervision for children, teenagers, or adults conducted for educational, athletic, or cultural development. The SFC provider:

(i) Ensures the program has the essential skills and supports to meet the member's needs;



- (ii) Notifies the DDS SSS prior to the member attending the program; and
- (iii) Provides the program with contact information for the foster care provider, DDS SSS, case manager, and CWS when the member is also a child in OKDHS or tribal custody.
- (21) ~~The provider provides written 30 day~~Provides written thirty (30) calendar day notice to the member and ~~DDS~~DDS case manager when it is necessary for a member to be moved from the home;
- (22) ~~The SFC provider does~~Does not serve as the member's representative payee for the member;
- (23) ~~The provider ensures~~Ensures the member's funds are properly safeguarded;
- (24) ~~The provider assists~~Assists the member in accessing and using entitlement programs for which the member may be eligible;
- (25) ~~The provider must~~Must use the room and board reimbursement payment to meet the member's needs, as specified in ~~per the room and board contract.~~Fixed Rate Foster Home Contract:
  - (A) ~~The provider retains a copy of the current room and board contract~~Fixed Rate Foster Home Contract in the home at all times;
  - (B) Items purchased with the room and board reimbursement include, but are not limited to:
    - (i) ~~housing;~~Housing;
    - (ii) ~~food;~~Food;
    - (iii) ~~clothing;~~Clothing;
    - (iv) ~~care;~~Care;
    - (v) ~~incidental~~Incidental expenses such as:
      - (I) ~~birthday~~Birthday and Christmas gifts;
      - (II) ~~haircuts;~~Haircuts;
      - (III) ~~personal~~Personal grooming equipment;
      - (IV) ~~allowances;~~Allowances;
      - (V) ~~toys;~~Toys;
      - (VI) ~~school~~School supplies and lunches;
      - (VII) ~~school~~School pictures;
      - (VIII) ~~costs~~Costs of recreational activities;
      - (IX) ~~special~~Special clothing items required for dress occasions and school classes such as gym shorts and shirts;
      - (X) ~~extracurricular~~Extracurricular athletic and other equipment, including uniforms, needed for the member to pursue his or her particular interests or job;
      - (XI) ~~from~~Prom and graduation expenses including caps, gowns, rings, pictures, and announcements;
      - (XII) ~~routine~~Routine transportation expenses involved in meeting the member's medical, educational, or recreational needs, unless the provider has a transportation contract;
      - (XIII) ~~non-prescription~~Non-prescription medication; and
      - (XIV) ~~other~~Other maintenance supplies required by the member.

- (C) All items purchased for the member with the room and board payment are the member's property of the member. Purchased items are documented on OKDHS Form 06AC022E, Personal Possession Inventory, and are given by the provider provided to the member when a residence change of residence occurs; and
- (D) The room and board payment is made on a monthly basis and is prorated based on the actual days the member is in the home on the initial and final months of residence.
- (26) ~~The provider maintains a~~Maintains Form 06AC022, Personal Possession Inventory, Form 06AC022E (DDS-22) for each member living in the home;
- (27) ~~The provider maintains~~Maintains the member's home record, per OAC 340:100-3-40;
- (28) ~~The provider immediately~~Immediately reports to the ~~DDS~~ SFC staff DDS SSS all changes in the household including, but not limited to:
  - (A) ~~telephone~~Phone number;
  - (B) ~~address;~~Address;
  - (C) ~~marriage~~Marriage or divorce;
  - (D) ~~persons~~Persons moving into or out of the home;
  - (E) ~~provider's~~Provider's health status;
  - (F) ~~provider's~~Provider's employment; and
  - (G) ~~provider's~~Provider's income.
- (29) ~~The provider maintains~~Maintains home owner's or renter's insurance, including applicable liability coverages, and provides a copy to the ~~SFC Specialist~~DDS SSS;
- (30) ~~The provider serves~~Serves as the Health Care Coordinator health care coordinator, and follows the ~~Health Care Coordinator policy~~rules per OAC 340:100-5-26; and
- (31) ~~Each SFC provider follows~~Follows all applicable OKDHS and Oklahoma Health Care Authority rules, ~~of the Oklahoma Department of Human Services and the Oklahoma Health Care Authority, promotes the independence of the member, and follows recommendations of the member's Team~~included but not limited to:
  - (A) OAC 340:100-3-27;
  - (B) OAC 340:100-5-32; and
  - (C) OAC 340:100-5-33.
- (b) **Responsibilities specific to SFC providers serving children.** The provider is charged with the same general legal responsibility as any parent has to exercise. The SFC provider exercises reasonable and prudent behavior in his or her actions and in the supervision and support of the child. The SFC provider:
  - (1) ~~The provider works~~Works with the ~~DDS~~DDS case manager and ~~CFSD~~CWS staff when the provider needs respite for a child in OKDHS or tribal custody;
  - (2) ~~The provider participates~~Participates in the ~~development of~~developing the Individual Education Plan (IEP) and may serve as surrogate parent when appropriate;
  - (3) ~~The provider obtains~~Obtains permission and legal consent from the child's custodial parent or guardian

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and ~~DDS~~ case manager prior to traveling out of state for an overnight visit. If the child is in the OKDHS or tribal custody, of the OKDHS, the CWS permission of the CFSD specialist is also secured;

(4) ~~The provider obtains~~ Obtains permission and legal consent from the child's custodial parent or guardian and ~~DDS~~ case manager prior to the child's involvement of the child in any publicity. If the child is in OKDHS or tribal custody, the CWS permission of the CFSD specialist is also secured; and

(5) The provider reports any suspected abuse, neglect, sexual abuse, or sexual exploitation of children per Section 1-2-101 of Title 10A of the Oklahoma Statutes to the Abuse Hotline at 1-800-522-3511 to CWS, per 10A O.S. § 1-2-101 and OAC 340:2-3-33.

(c) **Responsibilities specific to SFC providers serving adults.** Additional SFC provider responsibilities for serving adults are given in this Subsection.

(1) The SFC provider obtains permission from the member's legal guardian, when applicable, and notifies the ~~DDS~~ case manager, prior to:

(A) ~~traveling out of state~~ Traveling out-of-state for an overnight visit; or

(B) ~~The member's involvement of the member in any publicity.~~

(2) When the member is his or her own payee or has a representative payee, the SFC provider ensures the monthly service contribution, for services as identified in a written agreement between the member and the SFC provider, is used toward the cost of food, rent, and household expenses.

(A) The member's minimum monthly contribution is ~~\$250.00~~ \$300.00 per month.

(B) Changes in the member's monthly contribution are ~~developed~~ made on an individualized basis by the member's Team.

(3) ~~Reports~~ The SFC provider reports any suspected maltreatment including abuse, verbal abuse, sexual abuse, neglect, financial neglect, and/or or exploitation of a vulnerable adult per Section 10-104 of Title 43A of the Oklahoma Statutes to the Office of Client Advocacy (OCA) to:

(A) The Office of Client Advocacy for a vulnerable adult receiving Home and Community-Based Services (HCBS) when the alleged perpetrator is a community service worker, per OAC 340:2-3-33; or

(B) Adult Protective Services for a vulnerable adult when the alleged perpetrator is not a community service worker through HCBS, per 43A O.S. § 10-104.

## 317:40-5-56. Responsibilities of the parents of individuals in voluntary specialized foster care [REVOKED]

(a) ~~Natural or adoptive parents retain the responsibility for on-going involvement and support of their child while the child is in specialized foster care (SFC).~~

(1) ~~The parents are required to sign a written agreement allowing the Oklahoma Department of Human Services (OKDHS) to serve as the representative payee for the child's Social Security, other government benefits, and court authorized child support.~~

(2) ~~Social Security, other government benefits, and child support are used to pay for room and board (maintenance). Home and Community Based Services (HCBS) services do not pay for room and board (maintenance).~~

(b) Responsibilities of the parents of a child receiving voluntary SFC are:

(1) ~~to provide respite to the foster SFC provider;~~

(2) ~~to provide transportation to and from parental visitation;~~

(3) ~~to provide a financial contribution toward the support of their child;~~

(4) ~~to provide in-kind supports such as disposable undergarments if needed, clothing, recreation, birthday and holiday presents, school supplies, and allowances or personal spending money;~~

(5) ~~to follow the visitation plan as outlined by the service recipient's Team; (see OAC 317:40-5-52);~~

(6) ~~to maintain ongoing communication with the service recipient and SFC provider by letters and telephone calls;~~

(7) ~~to be available in the event of an emergency;~~

(8) ~~to work toward reunification when appropriate;~~

(9) ~~to provide written consent for medical treatments as appropriate;~~

(10) ~~to attend medical appointments, when possible, and keep informed of the service recipient's health status;~~

(11) ~~to participate in the service recipient's education plan in accordance with the Department of Education regulations; and~~

(12) ~~to be present for all Team meetings.~~

(c) ~~When moving out of Oklahoma, parents of a child receiving voluntary SFC are responsible to take their minor child with them, since the child is no longer eligible for services because he or she is no longer a resident of the State of Oklahoma.~~

(d) ~~For children under age 18, the case manager reports to DCFS if the family moves out of Oklahoma without taking their child with them or cannot be located.~~

## 317:40-5-57. Developmental Disabilities Services Division ~~DDS~~ Specialized Foster Care (SFC) case manager management roles and responsibilities regarding Specialized Foster Care

In addition to other identified roles and responsibilities, the ~~Developmental Disabilities Services Division~~ (~~DDS~~) ~~DDS~~ case manager is responsible for:

(1) ~~reporting~~ Reporting any significant changes with the member or the SFC household to the SFC specialist; ~~DDS social service specialist (SSS);~~

(2) ~~assessing~~ The member's guardianship needs;

(3) ~~facilitating~~ pre-placement Pre-placement visits when approved by the SFC specialist; ~~DDS SSS;~~

- (4) ~~monitoring for current~~ Reviewing the member's backup plan, as described in OAC per Oklahoma Administrative Code (OAC) 317:40-5-59;
- (5) ~~monitoring the service recipient's personal inventory, Form DDS 22; Reporting policy violations to the DDS SSS per OAC 317:40-5-63, and assists the DDS SSS in developing the provider's action plan when appropriate;~~ Ensuring the SFC provider documents the member's personal belongings on Oklahoma Human Services (OKDHS) Form 06AC022, Personal Possession Inventory, including adaptive equipment;
- (6) ~~monitoring the service recipient's funds and resources monthly;~~ Ensuring the SFC provider documents the member's personal belongings on Oklahoma Human Services (OKDHS) Form 06AC022, Personal Possession Inventory, including adaptive equipment;
- (7) ~~reporting any potential violations of policy and standards to the SFC specialist in accordance with OAC 317:40-5-63 and assisting with the development of the provider's plan of action, if appropriate;~~ Attending court hearings for children in OKDHS and tribal custody;
- (8) ~~assisting in the inventory of any necessary adaptive equipment, Form DDS 22; Forwarding quarterly progress reports to the OKDHS Child Welfare Services (CWS) specialist for children in OKDHS custody;~~ Attending court hearings for custody children; Notifying the CWS or legally authorized representative of needed medical consents for pre-planned or emergency services; and
- (10) ~~forwarding copies of monthly contact reports on custody children to the DCFS specialist; Completing the appropriate section of OKDHS Form 06AC024E, SFC/Agency Companion Services (ACS) Annual Review, and providing the information to the DDS SSS.~~ Completing the appropriate section of OKDHS Form 06AC024E, SFC/Agency Companion Services (ACS) Annual Review, and providing the information to the DDS SSS.
- (11) ~~notifying the DCFS specialist or legally authorized representative of needed medical consents for pre-planned or emergency services; and~~ Notifying the CWS or legally authorized representative of needed medical consents for pre-planned or emergency services; and
- (12) ~~completing appropriate section of Form DDS 24, Annual Review, and providing the information to the SFC specialist.~~ Completing appropriate section of Form DDS 24, Annual Review, and providing the information to the SFC specialist.

**317:40-5-58. Developmental Disabilities Services Division (DDS) Specialized Foster Care (SFC) staff Social Services Specialist (SSS) roles and responsibilities**

Developmental Disabilities Services Division (DDSD) SFC DDS SSS staff have the responsibility for:

- (1) ~~SFC applicant orientation and prescreening of SFC applicants;~~ SFC applicant orientation and prescreening of SFC applicants;
- (2) ~~making~~ Making contact with the potential SFC provider within five ~~(5)~~ (5) working days of receipt of receiving a completed application to schedule interviews and start the Home Profile Process, described in home profile process, per OAC 317:40-5-40;
- (3) ~~completing the Home Profile~~ Completing the home profile within ~~90 working~~ ninety (90) calendar days after application assignment of the application. The SFC specialist DDS SSS documents the reason for any delay beyond ~~90~~ ninety (90) calendar days;
- (4) ~~maintaining~~ Maintaining regular contact with the SFC provider by making a monitoring visit every six ~~(6)~~ (6) months with a minimum of one telephone contact in all

~~other months, and completing OKDHS Form 06AC023E, Monitoring Report;~~

- (A) ~~The SFC specialist completes the Monitoring Report (DDS 23) for each monitoring review.~~ The SFC specialist completes the Monitoring Report (DDS 23) for each monitoring review.
- (B) ~~Items to be discussed during the telephone contacts are detailed in the Monthly Contact Monitoring Guide.~~ Items to be discussed during the telephone contacts are detailed in the Monthly Contact Monitoring Guide.
- (5) ~~completing~~ Completing OKDHS Form ~~06AC024E~~, Specialized Foster Care/Agency Companion Annual Review (DDS-24) for the annual re-evaluation of each SFC provider home by the renewal date;
- (6) ~~attending~~ Attending member's Personal Support Team meetings for service recipients in SFC as necessary;
- (7) ~~responding to requests for~~ Responding to SFC and respite care requests;
- (8) ~~providing~~ Providing technical assistance and training to SFC providers regarding claims and ~~resolution of problems,~~ problem resolutions, such as:
  - (A) ~~payments;~~ Payments;
  - (B) ~~family~~ Family dynamics;
  - (C) ~~DDS~~ DDS policy;
  - (D) ~~setting~~ Setting up the in-home record as described in per OAC 340:100-3-40;
  - (E) ~~setting~~ Setting up the SFC provider record; and
  - (F) ~~SFC provider training;~~ SFC provider training;
- (9) ~~making~~ Making unannounced home visits to ensure homes and providers are in compliance with ~~DDSD standards and~~ DDS policy;
- (10) ~~reporting to DDSD State Office Training Staff as the provider's training occurs and is updated;~~ Reporting to DDSD State Office Training Staff as the provider's training occurs and is updated;
  - (A) ~~the provider's name;~~ the provider's name;
  - (B) ~~the provider's Social Security Number; and~~ the provider's Social Security Number; and
  - (C) ~~dates and places of specific provider training;~~ Providing SFC providers with technical assistance and training regarding room and board responsibilities.
- (11) ~~facilitating a written agreement for room and board contributions on behalf of the service recipient, if the Oklahoma Department of Human Services is not the representative payee for the service recipient;~~ Completing or obtaining the authorization for SFC services on OKDHS Form 06AC075E, Authorization Form Parent or Guardian for Specialized Foster Care Placement and Medical Care of Client, that:
  - (A) Is signed by the parent or legal guardian for members not in OKDHS or tribal custody who are requesting SFC services; and
  - (B) Allows for authorization of routine or emergency medial care and provides insurance information.
- (12) ~~completing or obtaining the:~~ completing or obtaining the:
  - (A) ~~Room and Board Reimbursement for Foster Care (DCW FH 2);~~ Room and Board Reimbursement for Foster Care (DCW FH 2);
  - (B) ~~Authorization for SFC Services (DDS SFC 1), that:~~ Authorization for SFC Services (DDS SFC 1), that:
    - (i) is signed by the parent or legal guardian for service recipients not in custody who are requesting SFC services; and

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(ii) ~~allows for authorization of routine or emergency medical care and provides insurance information.~~

## 317:40-5-59. Back-up Plan for personsmembers receiving Specialized Foster Care (SFC)

Prior to a member moving into ~~Specialized Foster Care (SFC),~~SFC, the SFC provider and the ~~SFC specialist~~Developmental Disabilities Services (DDS) social services specialist (SSS) develop a Back-up Plan. The ~~SFC specialist~~DDS SSS communicates the Back-Up Plan in writing to the ~~DDSDDS~~DDS case manager for incorporation into the Individual Plan.

- (1) The Back-up Plan identifies the person(s) who provides emergency back-up supports.
- (2) The member's natural family is considered as the first resource for the Back-up Plan at no cost to ~~OKDHS,~~Oklahoma Human Services (OKDHS), unless the member is in ~~the OKDHS or tribal custody of the Oklahoma Department of Human Services.~~
- (3) The Back-up Plan contains the name(s) and current ~~telephone~~phone number(s) of the person(s) providing back-up service.
- (4) When paid SFC providers are necessary, the Back-up Plan explains specifically where the service is to be provided.

(A) If back-up service is to be provided outside the SFC home, ~~a Home Profile must be completed for the back-up staff per OAC 317:40-5-40.;~~

(i) By a volunteer or at a camp, retreat, or conference center, the Personal Support Team's process must be followed as described in OAC 317:40-5-56; or

(ii) In a contracted SFC provider's home, a home profile must be completed for the back-up staff per OAC 317:40-5-40.

(B) If back-up service is to be provided in the SFC home, the person providing this service must have completed all necessary requirements to become a paid SFC provider, including:

(i) ~~an~~An Oklahoma State Bureau of Investigation (OSBI) name and criminal history records ~~history~~search, including the Department of Public Safety (DPS), Sex Offender, and Mary Rippy Violent Offender ~~Registries;~~registries;

(ii) ~~a~~A Federal Bureau of Investigation (~~FBI~~) national criminal history search, based on the substitute applicant's fingerprints of the applicant;

(iii) ~~a~~A search of any involvement as a party in a court ~~action that~~action that may impact the member's safety or stability of the member that includes:

(I) ~~victims~~Victims protective order; or

(II) ~~bankruptcy;~~Bankruptcy;

(iv) ~~a~~A search of all ~~Oklahoma Department of Human Services (OKDHS)~~OKDHS records, including ~~child welfare (CW)~~Child Welfare Services' records;

(v) ~~a~~A search of all applicable out-of-state child abuse and neglect registries for any applicant who has not lived continuously in Oklahoma for the past five years. The applicant is not approved without the results of the out-of-state maintained child abuse and neglect registry checks, if a registry is maintained in the applicable state;

(vi) Community Services Worker registry check;

(vii) Oklahoma statutorily mandated liability insurance coverage, and a valid driver license; and

(viii) ~~completion~~Completion of required ~~DDSDDS~~DDS training per OAC 340:100-3-38.4.

(C) The Back-up Plan details where the member and SFC provider will stay if the SFC provider's home is not habitable. If there is a fee to stay in the alternate location, ~~the provider pays the fee is paid by the provider and is not reimbursed by DDSDDS.~~

(5) The Back-up Plan is jointly reviewed at least monthly by the ~~SFC specialist~~DDS SSS and the SFC provider to ensure the Back-up Plan continues to be appropriate and current.

(6) The SFC provider is responsible to ~~report for~~reporting any needed changes in the Back-up Plan to the ~~SFC specialist.~~DDS SSS.

(7) ~~The SFC specialist will report~~DDS SSS reports any changes in the Back-up Plan to the DDS case manager.

## 317:40-5-62. Evaluation of Specialized Foster Care (SFC) policy violationviolations or program concern in a specialized foster care homeconcerns

(a) ~~Developmental Disabilities Services Division (DDSD)DDS~~Specialized Foster Care (SFC) staff begin an evaluation ~~process~~process upon receipt of a complaint or observation of ~~program concern(s) or policy violation(s) by the provider.~~SFC provider policy violations or concerns.

(b) Concerns may include: ~~the SFC provider's:~~

(1) ~~provider's use~~Use of judgment;

(2) ~~provision~~Provision of program supervision;

(3) ~~non-compliance~~Non-compliance with ~~DDSDDS~~Oklahoma Human Services or Oklahoma Health Care Authority policy or contract; or

(4) ~~other~~Other related issues.

(c) When abuse, neglect, or exploitation is suspected, appropriate authorities are contacted, as specified in OAC 317:40-5-61.

(d) The evaluation includes interviews with:

(1) ~~the~~The service recipient;

(2) ~~the~~The DDS case manager;

(3) ~~the~~The provider;

(4) ~~any~~Any other person(s) living in the home; and

(5) ~~any~~Any other person(s) who may have relevant information.

(e) When the evaluation findings indicate ~~programming concern(s) or violation(s) of policy or contract, the DDSDDS~~SFC staff, policy or contract concerns or violations, the DDS social services specialist (SSS), and the SFC provider meet

to develop a Plan of Action for correcting the ~~concern(s) or violation(s)~~ concerns or violations. The ~~SFC staff~~ DDS SSS notifies the ~~DDS~~ DDS case manager of the agreed Plan of Action; when the case manager is responsible for monitoring to ensure the Plan of Action is accomplished. ~~The case manager monitors to ensure the Plan is accomplished.~~

(f) When the provider fails to complete the Plan of Action, the DDS SSS consults the area residential services programs manager to determine if the home should be closed, per OAC 317:40-5-64.

**SUBCHAPTER 7. EMPLOYMENT SERVICES THROUGH HOME AND COMMUNITY-BASED SERVICES WAIVER**

**317:40-7-2. Definitions**

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

**"Commensurate wage"** means wages paid to a worker with a disability based on the worker's productivity in proportion to the wages and productivity of workers without a disability performing essentially the same work in the same geographic area. Commensurate wages must be based on the prevailing wage paid to experienced workers without disabilities doing the same job.

**"Competitive integrated employment"** means work in the competitive labor market performed on a full-time or part-time basis in integrated community settings. The individual is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Competitive employment is an individual placement.

**"Employment assessment"** means the evaluation that identifies the unique preferences, strengths, and needs of members in relation to work. The assessment determines work skills and work behaviors, is supplemented by personal interviews and behavioral observations, and incorporates information that addresses the member's desired medical, physical, psychological, social, cultural, and educational outcomes, as well as present and future employment options. The assessment is updated annually or more frequently as needed, and includes support needs, environmental preferences, and possible accommodations.

**"Enhanced rate"** means a differential rate established to provide an incentive to provider agencies to provide community employment services to members with significant needs.

**"Group placement"** means ~~two to eight~~ either two (2) to three (3) workers with disabilities ~~abilities~~ making minimum wage or four (4) to five (5) workers with disabilities who may earn less than minimum wage situated close together, who are provided continuous, long-term training and support in an integrated job site. Members may be employed by the company or by the provider agency. The terms "work crew" and "enclave" also describe a group placement.

**"Individual placement in community-based services"** means the member is provided supports that enable him or her to participate in approved community-based activities per Oklahoma Administrative Code 317:40-7-5, individually and not as part of a group placement.

**"Individual placement in job coaching services"** means one member receiving job coaching services, who:

- (A) ~~works~~ Works in an integrated job setting;
- (B) ~~receives~~ Receives minimum wage or more;
- (C) ~~does~~ Does not receive services from a job coach who is simultaneously responsible for continuous job coaching for a group;
- (D) ~~is~~ Is employed by a community employer or the provider agency; and
- (E) ~~has~~ Has a job description that is specific to his or her work.

**"Integrated employment site"** means an activity or job that provides regular interaction with people without disabilities, excluding service providers, to the same extent that a worker without disabilities in a comparable position interacts with others.

**"Job coach"** means an individual who holds a DDS-approved training job coach certification and provides ongoing support services to eligible persons in supported employment placements. Services directly support the member's work activity including marketing and job development, job and work site assessment, training and worker assessment, job matching procedures, development of co-worker natural and paid supports, and teaching job skills.

**"Job sampling"** means a paid situational assessment whereby a member performs a job at a prospective employer's integrated job site in order to determine the member's interests and abilities. Situational assessments adhere to the Department of Labor (DOL) regulations regarding wages. The Personal Support Team determines the appropriate type and number of situational assessments for each member.

**"On-site supports"** means a situation in which the job coach is physically at the job site providing job training to a member.

**"Situational assessment"** means a comprehensive community-based evaluation of the member's functioning in relation to the supported job including the job site, community through which the member must travel to and from the job, and those at the job site, such as the job coach, co-workers, and supervisors.

**"Sub-contract with industry"** means the provider agency enters into a sub-contract with an industry or business to pay industry employees to provide supports to members. When the industry agrees, the provider agency may contract directly with an industry employee(s) to provide the services. The state continues to pay the provider agency and the agency provides all pertinent information required for persons served by the agency. The Team determines what, if any, training is required for the employees of the industry providing services.

**"Supported employment"** means competitive work in an integrated work setting with ongoing support services for

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members for whom competitive employment has not traditionally occurred or was interrupted or intermittent as a result of the member's disabilities.

**"Unpaid training"** means unpaid experience in integrated employment sites per ~~with DOL regulations, Sections 785.27 through 785.32 of Title 29 of the Code of Federal Regulations (29 C.F.R. §§ 785.27 through 785.32).~~ Members do a variety of tasks that do not equal the full job description of a regular worker.

**"Volunteer job"** means an unpaid activity in which a member freely participates.

### **317:40-7-22. Value-Based Payments (VBP)**

(a) **Purpose.** Oklahoma Human Services (OKDHS) Developmental Disabilities Services (DDS) provides incentive payments to support a member as he or she moves toward competitive integrated employment. VBPs are intended to further opportunities for Oklahomans with disabilities to live independently and work in competitive integrated employment. VBPs are included in the member's Individual Plan (Plan) and arrangements for this service are made through the DDS case manager. VBPs support members eighteen (18) years of age and older who receive employment services through the:

- (1) In-Home Supports Waiver;
- (2) Homeward Bound Waiver; or
- (3) Community Waiver.

(b) **Payment criteria.** VBPs support a member as he or she progresses towards competitive employment per the OKDHS Appendix D-26, Developmental Disabilities Services Rates Schedule. VBPs are paid:

- (1) After a member is employed for fifteen (15) business days;
- (2) When the member is employed a minimum of fifteen (15) hours weekly; and
- (3) In accordance with the limits set forth in OKDHS Appendix D-26, Developmental Disabilities Services Rates Schedule.

## SUBCHAPTER 9. SELF-DIRECTED SERVICES

### **317:40-9-1. Self-directed services (SDS)**

(a) **Applicability.** This Section applies to SDS provided through Home and Community-Based Services (HCBS) Waivers operated by the Oklahoma Department of Human Services ~~OKDHS~~ (OKDHS) Developmental Disabilities Services (DDS).

(b) **Member option.** Traditional service delivery methods are available for eligible members who do not elect to self-direct services.

(c) **General information.** SDS are an option for members receiving HCBS through the In-Home Supports Waiver for Adults ~~(HHSW-A)~~, In-Home Supports Waiver for Children ~~(HHSW-C)~~, and the Community Waiver when the member lives in a non-residential setting. SDS provides a ~~member~~ members the opportunity to exercise choice and control in identifying, accessing, and managing specific Waiver services and supports

in accordance with his or her needs and personal preferences. SDS are Waiver services OKDHS DDS specifies may be directed by the member or representative using employer and budget authority.

(1) SDS may be directed by:

- (A) An adult member, when the member has the ability to self-direct;
- (B) A member's legal representative including a parent, spouse or legal guardian; or
- (C) A non-legal representative who the member or legal representative freely chosen by the member or his or her legal representative chooses.

(2) The person directing services ~~must:~~

- (A) ~~Be~~ Is eighteen (18) years of age or older;
- (B) ~~Comply~~ Complies with DDS and Oklahoma Health Care Authority (OHCA) rules and regulations;
- (C) ~~Complete~~ Completes required DDS training for self-direction;
- (D) ~~Sign~~ Signs an agreement with DDS;
- (E) ~~Be~~ Is a member or legal representative approved by the member or his or her legal representative to act in the capacity of a representative; ~~a representative capacity;~~
- (F) ~~Demonstrate~~ Demonstrates knowledge and understanding of the member's needs and preferences; and
- (G) ~~Not~~ Does not serve as the Self-Directed (SD) ~~Habilitation Training Specialist~~ habilitation training specialist (HTS) for the member ~~whom~~ when he or she is directing the member's services.

(d) **The SDS program includes:**

(1) The SDS budget. A ~~plan of care~~ Plan of Care (POC) is developed to meet the member's needs without SDS consideration. The member may elect to self-direct part or the entire amount identified for traditional HTS services. This amount is under the member's control and discretion of the member in accordance with this policy and the approved ~~plan of care~~ POC, and is the allocated amount that may be used to develop the SDS budget. The SDS budget details the specific ~~spending plan for spending.~~

(A) The SDS budget is developed annually at the time of the annual plan ~~development~~ and updated, ~~as necessary by~~ Individuals who participate in the budget development include, the member, case manager, parent, legal guardian, and others the member invites to participate ~~in the development of the budget.~~

(B) Payment may only be authorized for goods and services (GS) not covered by SoonerCare, or other generic funding sources, and must meet service necessity criteria of ~~service necessity~~, per Oklahoma Administrative Code (OAC) 340:100-3-33.1.

(C) The member's SDS budget includes the actual cost of administrative activities including fees for financial management services (FMS) performed by a financial management services (FMS) sub-agent, background checks, workers' compensation insurance, and the amount identified for SD-HTS, SD

Job Coaching, and Self-directed goods and services (SD-GS).

(D) ~~The SDS budget is added to the plan of care~~POC to replace any portion of traditional HTS services to be self-directed.

(E) The member's employment services costs, excluding transportation services, cannot exceed limits set forth in OKDHS Appendix D-26, Developmental Disabilities Services Rates Schedule, per POC year.

(2) The SD-HTS supports the member's self-care, and the daily living and leisure skills needed to reside successfully in the community. Services are provided in community-based settings in a manner that contributes to the member's independence, self-sufficiency, community inclusion, and well-being. SD-HTS services must be included in the approved SDS budget. Payment is not made for routine care and supervision that is ~~normally~~typically provided by a family member or the member's spouse. SD-HTS services are provided only during periods when staff is engaged in purposeful activity that directly or indirectly benefits the member. SD-HTS services are limited to a daily average of no more than nine (9) hours per day, per OAC 340:100-5-35. At no time are SD-HTS services authorized for periods ~~during which~~when staff is allowed to sleep. Legally responsible persons may not provide services, per OAC 340:100-3-33.2. Other family members providing services must be employed by provider agencies per OAC 340:100-3-33.2. For the purpose of this rule, family members include parents, siblings, step-parents, step siblings, and anyone living in the same home as the member. Payment does not include room and board, maintenance, or upkeep or improvements to the member's or family's residence. ~~An SD-HTS must:~~

- (A) ~~Be~~Is eighteen (18) years of age; and older;
- (B) ~~Pass~~Passes a background check, per OAC 340:100-3-39;
- (C) ~~Demonstrate~~Demonstrates competency to perform required tasks;
- (D) ~~Complete~~Completes required training, per OAC 340:100-3-38 et seq.;
- (E) ~~Sign~~Signs an agreement with DDS and the member;
- (F) ~~Be~~Is physically able and mentally alert to carry out the job's duties of the job;
- (G) ~~Not~~Does not work as an SD-HTS more than forty (40) hours in any week ~~in the capacity of a SD-HTS;~~
- (H) ~~Not~~Does not implement prohibited procedures, per OAC 340:100-5-58;
- (I) ~~Provide~~Provides services to only one (1) member at any given time. This does not preclude providing services from being provided in a group setting where services are shared among group members of the group; and
- (J) ~~Not~~Does not perform any job duties associated with other employment, including on-call duties, at the same time they are providing SD-HTS services.

(3) SD-Job Coaching services:

(A) Are pre-planned, documented activities related to the member's identified employment outcomes. This includes training at the work site and support by job coach staff who have completed DDS sanctioned training per OAC 340:100-3-38.2;

(B) Promote the member's capacity to secure and maintain integrated employment at the member's chosen job, provided the job pays at or more than minimum wage, or the member is working to achieve minimum wage;

(C) Provide active participation in paid work. Efforts are made in cooperation with employers, and an active relationship with the business is maintained, to adapt normal work environments to fit the member's needs;

(D) Are available for individual placements. Individual placement is one member receiving job coaching services who:

- (i) Works in an integrated job setting;
- (ii) Is paid at or more than minimum wage;
- (iii) Does not receive services from a job coach who is simultaneously responsible for continuous job coaching for a group;
- (iv) Is employed by a community employer; and
- (v) Has a job description that is specific to the member's work; and

(E) Is authorized when on-site supports by a certified job coach are provided more than twenty (20 percent of the member's compensable work time. Job coaching services rate continues until a member reaches twenty (20) percent or less job coach intervention for four (4) consecutive weeks, at which time stabilization services begin.

(F) Are based on the amount of time the member is compensated by the employer, except per OAC 317:40-7-11;

(G) For members in individual placements, the Personal Support Team (Team):

- (i) Evaluates the job coaching services need at least annually; and
- (ii) Documents a plan for fading job coaching services as the member's independence increases.

(H) In order to participate in individual placement, the individual is found ineligible for services funded through the Department of Rehabilitation Services or have a closed case; and

(I) An SD-Job Coach:

- (i) Is eighteen (18) years of age;
- (ii) Passes a background check per OAC 340:100-3-39;
- (iii) Demonstrates competency to perform required tasks;
- (iv) Completes required training per OAC 340:100-3-38 et seq.;
- (v) Signs an agreement with DDS and the member;

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- (vi) Is physically able and mentally alert to carry out job duties;
  - (vii) Does not work more than forty (40) hours in any week as an SD-Job Coach or SD-HTS;
  - (viii) Does not implement restrictive or intrusive procedures per OAC 340:100-5-57;
  - (ix) Provides services to only one member at any given time; and
  - (x) Does not perform any job duties associated with other employment including on-call duties at the same time he or she is providing SD-Job Coaching services; and
- (34) ~~SD-GS are incidental, non-routine—goods—and services that, and~~ promote the member's self-care, daily living, adaptive functioning, general household activities, meal preparation, and leisure skills needed to reside successfully in the community ~~and, SD-GS do not duplicate other services authorized in the member's plan of care-POC. These SD-GS must be included in the individual plan~~ Individual Plan (Plan) and approved SDS budget. SD-GS must meet the requirements listed in (A) through (F); of this paragraph.
- (A) The item or service is justified by a licensed professional's recommendation from a licensed professional.
  - (B) The item or service is not prohibited by federal or state statutes and regulations.
  - (C) ~~One (1) The item or service meets one (1) or more of the following additional criteria are met listed in (i) through (iii) of this subparagraph.~~ The item or service would:
    - (i) ~~Increase~~ Increases the member's functioning related to the disability;
    - (ii) ~~Increase~~ Increases the member's safety in the home environment; or
    - (iii) ~~Decrease~~ Decreases dependence on other SoonerCare funded services.
  - (D) SD-GS may include, but are not limited to:
    - (i) Fitness items that can be purchased at retail stores;
    - (ii) Short duration camps lasting fourteen (14) consecutive calendar days or less;
    - (iii) A food catcher;
    - (iv) A specialized swing set;
    - (v) Toothettes or an electric toothbrush;
    - (vi) A seat lift;
    - (vii) Weight loss programs or gym memberships when:
      - (I) There is an identified ~~need for~~ weight loss or increased physical activity; need;
      - (II) Justified by outcomes related to weight loss, increased physical activity or stamina; and
      - (III) In subsequent ~~plan of care~~ POC year requests, documentation is provided that supports the member's progress toward weight loss ~~or, increased physical activity, or stamina; or~~
    - (viii) Swimming lessons.
  - (E) SD-GS ~~may~~ is not be used for:

- (i) ~~Co-payments for medical services; Medical services co-payments;~~
  - (ii) Over-the-counter medications;
  - (iii) Items or treatments not approved by the Food and Drug Administration;
  - (iv) Homeopathic services;
  - (v) Services available through any other funding source, such as SoonerCare, Medicare, private insurance, the public school system, rehabilitation services, or natural supports;
  - (vi) Room and board including deposits, rent, and mortgage payments;
  - (vii) Personal items and services not directly related to the member's disability;
  - (viii) Vacation expenses;
  - (ix) Insurance;
  - (x) Vehicle maintenance or other transportation related expense;
  - (xi) Costs related to internet access;
  - (xii) Clothing;
  - (xiii) Tickets and related costs to attend recreational events;
  - (xiv) Services, goods, or supports provided to; the member or benefiting persons other than the member;
  - (xv) Experimental goods or services;
  - (xvi) Personal trainers;
  - (xvii) Spa treatments; or
  - (xviii) Goods or services with costs that significantly exceed community norms for the same or similar goods or services.
- (F) SD-GS are reviewed and approved by the DDS director or designee.
- (e) **Member Responsibilities.** When the member chooses the SDS option, the member or member's representative is the employer of record and ~~must:~~
- (1) ~~Enroll and complete~~ Within forty-five (45) calendar days of enrolling in SDS training, the member or member's representatives completes the DDS-sanctioned self-direction training course within forty five (45) calendar days of SDS training enrollment. Exceptions to this timeframe may be approved by the DDS director or his/her designee. The training ~~must be~~ completed prior to the implementation of self direction and covers: implementing SD. The training covers:
    - (A) Staff recruitment;
    - (B) Hiring of staff as an employer of record;
    - (C) Staff orientation and instruction;
    - (D) Staff supervision including scheduling and service provisions;
    - (E) Staff evaluation;
    - (F) Staff discharge;
    - (G) ~~Philosophy of self direction;~~ SD philosophy
    - (H) ~~OHCA SD policy on self direction;~~
    - (I) Individual budgeting;
    - (J) ~~Development of a self directed~~ SD support plan; development;
    - (K) Cultural diversity; and



- (L) ~~Rights, risks, and responsibilities;~~ and
- (2) ~~Sign~~Signs an agreement with DDS;
- (3) ~~Agree~~Agrees to utilize the ~~services of a FMS subagent;~~ services;
- (4) ~~Agree~~Agrees to pay administrative costs for background checks, FMS subagent ~~fee, fees,~~ and workers' compensation insurance from his or her SDS budget;
- (5) ~~Comply~~Complies with federal and state employment laws and ~~ensure~~ensures no employee works more than forty (40) hours per week in ~~the capacity of an SD-HTS;~~ capacity;
- (6) ~~Ensure~~Ensures that each employee is qualified to provide the services for which he or she is employed to do and that all billed services are actually provided;
- (7) ~~Ensure~~Ensures that each employee complies with all DDS training requirements per OAC 340:100-3-38 et seq.;
- (8) ~~Recruit, hire, supervise, and discharge~~Recruits, hires, supervises, and discharges all employees providing ~~self directed services, SDS,~~ when necessary;
- (9) ~~Verify~~Verifies employee qualifications;
- (10) ~~Obtain~~Obtains background screenings on all employees providing SD-HTS services per OAC 340:100-3-39;
- (11) ~~Send~~Sends progress reports per OAC 340:100-5-52.
- (12) ~~Participate~~Participates in the ~~Individual—Plan and SDS budget process;~~
- (13) ~~Immediately notify~~Notifies the DDS case manager of any emergencies or changes in circumstances that may require modification of the type or amount of services provided for in the member's ~~Individual Plan or SDS budget;~~
- (14) ~~Wait~~Waits for budget modification approval of budget modifications before implementing changes;
- (15) ~~Comply~~Complies with DDS and OHCA administrative rules;
- (16) ~~Cooperate~~Cooperates with DDS monitoring requirements per OAC 340:100-3-27;
- (17) ~~Cooperate~~Cooperates with FMS subagent requirements to ensure accurate records and prompt payroll processing including:
  - (A) Reviewing and signing employee time cards;
  - (B) Verifying the accuracy of hours worked; and
  - (C) Ensuring the appropriate ~~expenditure of funds;~~fund expenditures; and
- (18) ~~Complete~~Completes all required documents within established timeframes;
- (19) ~~Pay~~Pays for services incurred in excess of the budget amount;
- (20) ~~Pay~~Pays for services not identified and approved in the member's SDS budget;
- (21) ~~Pay~~Pays for services provided by an unqualified provider;
- (22) ~~Determine~~Determines staff duties, ~~qualifications, and specify~~ and qualifications and specifies service delivery practices consistent with SD-HTS Waiver service specifications;

- (23) ~~Orient and instruct~~Orients and instructs staff in duties;
  - (24) ~~Evaluate~~Evaluates staff performance;
  - (25) ~~Identify and train~~Identifies and trains back-up staff, when required;
  - (26) ~~Determine~~Determines amount paid for services within plan limits;
  - (27) ~~Schedule~~Schedules staff and ~~the provision of services;~~ the services provisions;
  - (28) ~~Ensure~~Ensures SD-HTS do not implement prohibited procedures per OAC 340:100-5-58; and
  - (29) ~~Sign~~Signs an agreement with the SD-HTS.
- (f) **FMS.** The FMS subagent is an entity ~~designated that DDS designates as an agent by DDS to act on behalf of members who have a member's behalf who has employer and budget authority for the~~ The FMS subagent's purpose of managing is to manage payroll tasks for the member's employee(s) and for making payment of SD-GS payments as authorized in the member's plan. FMS subagent duties include, but are not limited to:
- (1) Compliance with all DDS and OHCA administrative rules and contract requirements;
  - (2) Compliance with DDS or OHCA random and targeted audits;
  - (3) Tracking individual expenditures and monitoring SDS budgets;
  - (4) Processing the member's employee payroll, withholding, filing and paying of applicable federal, state, and local employment-related taxes and insurance;
  - (5) ~~Collection and process of employee's~~Employee time sheets collection and processing and making payment to member's employees;
  - (6) ~~Processing and payment of invoices for SD-GS in-~~ voice collection and processing as authorized in the member's SDS budget;
  - (7) Providing each member with information that assists with the SDS budget management;
  - (8) Providing reports to ~~members/representatives;~~ members and member representatives, as well as providing monthly reports to DDS and to OHCA upon request;
  - (9) Providing DDS and OHCA authorities access to individual member's accounts through a web-based program;
  - (10) Assisting members in verifying employee citizenship status;
  - (11) Maintaining separate accounts for each member's SDS budget;
  - (12) Tracking and reporting member funds, balances, and disbursements;
  - (13) Receiving and disbursing funds for SDS payment per OHCA agreement; and
  - (14) Executing and maintaining a contractual agreement between DDS and the SD-HTS (employee).
- (g) **DDS case management responsibilities in support of SDS.**
- (1) The DDS case manager develops the member's plan per OAC 340:100-5-50 through 340:100-5-58;

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(2) The DDS case manager meets with the member, or, when applicable, the member's representative,—or legal guardian,~~when applicable,~~ to discuss the Waiver service delivery options in (A) and (B) of this paragraph:

- (A) Traditional Waiver services; and
- (B) ~~Self-directed—services,SDS~~ including information regarding scope of choices, options, rights, risks, and responsibilities associated with ~~self-direction,SDS.~~

(3) When the member chooses ~~self-direction,SDS,~~ the DDS case manager:

- (A) Discusses ~~with member or representative~~ the available amount in the budget; with the member or the member's representative;
- (B) Assists the member or representative ~~with the development in~~ developing and ~~modification of~~ modifying the SDS budget;
- (C) Submits request for SD-GS to the DDS director or designee for review and approval;
- ~~(D) Develops the SDS budget and modifications;~~
- ~~(E) Assists the member or representative develop or revise~~ developing or revising an emergency back-up plan;
- ~~(F) Monitors plan implementation of the plan~~ per OAC 340:100-3-27;
- ~~(G) Ensures services are initiated within required time frames;~~
- ~~(H) Conducts ongoing monitoring of plan implementation and~~ of the member's health and welfare; and
- ~~(I) Ensures the SD-HTS does not implement prohibited procedures, per OAC 340:100-5-58~~ are not implemented by the SD-HTS. If the Team determines restrictive or intrusive procedures are necessary to address behavioral challenges, requirements must be met, per OAC 340:100-5-57.

(h) **Government fiscal/employer agent model.** DDS serves as the Organized Health Care Delivery System (OHCD) and FMS provider in a Centers for Medicare and Medicaid Services (CMS)—approved government fiscal/employer agent model. DDS has an interagency agreement with OHCA.

(i) **Voluntary termination of self-directed services.** Members may discontinue ~~self-directing services,SDS~~ without disruption at any time, provided traditional Waiver services are in place. Members or representatives may not choose the ~~self-directed,SDS~~ option again until the next annual planning meeting, with services resuming no earlier than the beginning of the next ~~plan of care,POC.~~ A member desiring to file a complaint must follow procedures per OAC 340:2-5-61.

(j) **Involuntary termination of self-directed services,SDS involuntary termination.**

(1) Members may be involuntarily terminated from ~~self-direction,SDS~~ and offered traditional Waiver services when ~~it has been determined by the DDS director or designee that any of the following exist;~~ the DDS director or designee has determined that any of the criteria in (A) through (F) of this paragraph exist:

(A) Immediate health and safety risks associated with self-direction, such as, imminent risk of death or irreversible or serious bodily injury related to Waiver services;

(B) Intentional misuse of funds following notification, assistance and support from DDS;

(C) Failure to follow and implement policies of self-direction after receiving DDS technical assistance and guidance;

(D) ~~Fraud;~~ Suspected fraud or abuse of funds;

(E) A member no longer receives a minimum of one (1) SDS Waiver service per month and DDS is unable to monitor the member; or

(F) Reliable information shows the employer of record or SD-HTS engaged in illegal activity.

(2) When action is taken to involuntarily terminate the member from ~~self-directed services,SDS,~~ the case manager assists the member ~~access in~~ assessing needed and appropriate services through the traditional Waiver services option, ~~ensuring~~ The case manager ensures that no lapse in necessary services occurs for which the member is eligible.

(3) The Fair Hearing process, per OAC 340:100-3-13 applies.

(k) **Reporting requirements.** While operating as an OHCD, DDS provides OHCA reports detailing provider activity in the format and at times OHCA requires.

[OAR Docket #22-445; filed 6-23-22]

## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 45. INSURE OKLAHOMA

[OAR Docket #22-446]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

317:45-1-1 [AMENDED]

317:45-1-2 [AMENDED]

317:45-1-3 [AMENDED]

317:45-1-4 [AMENDED]

Subchapter 7. Insure Oklahoma ESI Employer Eligibility

317:45-7-5 [AMENDED]

Subchapter 9. Insure Oklahoma ESI Employee Eligibility

317:45-9-1 [AMENDED]

Subchapter 11. Insure Oklahoma IP [REVOKED]

Part 1. Individual Plan Providers [REVOKED]

317:45-11-1 [REVOKED]

317:45-11-2 [REVOKED]

Part 3. Insure Oklahoma IP Member Benefits [REVOKED]

317:45-11-10 [REVOKED]

317:45-11-11 [REVOKED]

Part 5. Insure Oklahoma IP Member Eligibility [REVOKED]

317:45-11-20 [REVOKED]

317:45-11-21 [REVOKED]

317:45-11-21.1 [REVOKED]

317:45-11-22 [REVOKED]

317:45-11-23 [REVOKED]

317:45-11-24 [REVOKED]

317:45-11-26 [REVOKED]

317:45-11-27 [REVOKED]

317:45-11-28 [REVOKED]  
(Reference APA WF # 21-06)

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Section 435.119, Title 42 of the Code of Federal Regulations

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

November 23, 2021

**COMMENT PERIOD:**

December 15, 2021 through January 18, 2022

**PUBLIC HEARING:**

January 18, 2022

**ADOPTION:**

March 30, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 12, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 1. General Provisions
  - 317:45-1-1 [AMENDED]
  - 317:45-1-2 [AMENDED]
  - 317:45-1-3 [AMENDED]
  - 317:45-1-4 [AMENDED]
- Subchapter 7. Insure Oklahoma ESI Employer Eligibility
  - 317:45-7-5 [AMENDED]
- Subchapter 9. Insure Oklahoma ESI Employee Eligibility
  - 317:45-9-1 [AMENDED]
- Subchapter 11. Insure Oklahoma IP [REVOKED]
  - Part 1. Individual Plan Providers [REVOKED]
    - 317:45-11-1 [REVOKED]
    - 317:45-11-2 [REVOKED]
  - Part 3. Insure Oklahoma IP Member Health Care Benefits [REVOKED]
    - 317:45-11-10 [REVOKED]
    - 317:45-11-11 [REVOKED]
  - Part 5. Insure Oklahoma IP Member Eligibility [REVOKED]
    - 317:45-11-20 [REVOKED]
    - 317:45-11-21 [REVOKED]
    - 317:45-11-21.1 [REVOKED]
    - 317:45-11-22 [REVOKED]
    - 317:45-11-23 [REVOKED]
    - 317:45-11-24 [REVOKED]
    - 317:45-11-26 [REVOKED]
    - 317:45-11-27 [REVOKED]
    - 317:45-11-28 [REVOKED]

**Gubernatorial approval:**

July 1, 2021

**Register publication:**

38 Ok Reg 831

**Docket number:**

21-640

(Reference APA WF # 21-06)

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed changes reflect that current Insure Oklahoma (IO) Individual Plan (IP) members, and IO Employer-Sponsored Insurance (ESI) members with incomes at or below 133% of the federal poverty level (FPL), will transition to and be provided services by the SoonerCare program under the expansion adult option. Additionally, proposed changes will remove references to the IO IP program as the program is being terminated. Finally, proposed changes add new timely filing requirements for subsidy payments; and revisions will align and better clarify policy with current practice and correct grammatical errors.

**CONTACT PERSON:**

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:

**SUBCHAPTER 1. GENERAL PROVISIONS**

**317:45-1-1. Purpose and general program provisions**

The purpose of this Chapter is to provide rules, in compliance with all applicable federal and state regulations, for the Insure Oklahoma program that establishes access to affordable health coverage for low-income working adults, their dependents, and their spouses; foster parents; and qualified college students.

**317:45-1-2. Program limitations**

(a) The Insure Oklahoma program is contingent upon federal waiver approval and sufficient funding that is collected and dispersed through a revolving fund within the State Treasury designated as the "Health Employee and Economy Improvement Act (HEEIA) Revolving Fund". This fund is a continuing fund, not subject to fiscal year limitations.

(1) All monies accruing to the credit of the fund are budgeted and expended by the ~~OHCA~~Oklahoma Health Care Authority (OHCA) to implement the program.

(2) The program is funded through a portion of monthly proceeds from the Tobacco Tax, ~~Okla. Stat. '68-302-5~~Title 68 of the Oklahoma Statutes (O.S.) § 302-5 et seq., collected and dispersed through the HEEIA revolving fund, pursuant to ~~Title 68, Section 302-5 (B.1. and D.1.)~~ and Section 402-3 (B.1 and C.1.) of the Oklahoma Statutes 68 O.S. §§ 302-5 (B)(1) & (C)(1) and 402-3 (B)(1) & (D)(1).

(3) The program is limited in scope such that available funding is not exceeded. Available funding includes the estimated annual deposits from tax collections, accrued interest, federal matching funds and any other revenue source deposited in the HEEIA Revolving Fund for the purpose of this program. If at any time it becomes apparent there is risk the available funding may be exceeded, OHCA must take action to ensure the Insure Oklahoma program continues to operate within its fiscal capacity.

(A) Insure Oklahoma may limit eligibility based on:

- (i) ~~the federally approved Health Insurance Flexibility and Accountability (HIFA) Waiver/1115 Waiver~~The 1115 Waiver;
- (ii) Tobacco ~~Tax~~tax collections; and
- (iii) ~~the~~The State Child Health Plan for the State Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act.

(B) The Insure Oklahoma program may limit eligibility when the utilization of services is projected to exceed the spending authority, or, may suspend

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new eligibility determinations instead, establishing a waiting list.

(i) Applicants, not previously enrolled and participating in the program, submitting new applications for the Insure Oklahoma program ~~are~~ may be placed on a waiting list. Applications, with the exception of college students, are identified by region ~~and Insure Oklahoma program~~. Regions are established based on population density statistics as determined through local and national data and may be periodically adjusted to assure statewide availability. Insure Oklahoma program size is determined by OHCA and may be periodically adjusted.

(ii) The waiting list utilizes a "first in - first out" method of selecting eligible applicants by region and program.

(iii) When an applicant is determined eligible and moves from the waiting list to active participation, the applicant must submit a new application.

(iv) Enrolled applicants who are currently participating in the program are not subject to the waiting list.

(v) For approved employers, if the employer hires a new employee after the employer's program eligibility begins, the new employee is allowed to participate.

(vi) For approved employers, if the employer has an employee who has a qualifying event after the employer's program eligibility begins, the employee is allowed to make changes pertaining to the qualifying event.

(b) College student eligibility and participation in the Insure Oklahoma program is contingent upon sufficient funding from the Oklahoma legislature. This funding is separate from the funding described in subsection (a) of this Section.

### 317:45-1-3. Definitions

The following words or terms, when used in this Chapter, will have the following meanings unless the context clearly indicates otherwise:

"Carrier" means:

(A) ~~an~~ An insurance company, insurance service, insurance organization, or group health service, which is licensed to engage in the business of insurance in the State of Oklahoma and is subject to State law which regulates insurance, or Health Maintenance Organization (HMO) which provides or arranges for the delivery of basic health care services to enrollees on a prepaid basis, except for copayments or deductibles for which the enrollee is responsible, or both and is subject to State law which regulates Health Maintenance Organizations (HMOs);

(B) ~~a~~ A Multiple Employer Welfare Arrangement (MEWA) licensed by the Oklahoma Insurance Department;

(C) ~~a~~ A domestic MEWA exempt from licensing pursuant to Title 36 ~~O.S., Section of the Oklahoma~~

~~Statutes (O.S.) § 634(B) that otherwise meets or exceeds all of the licensing and financial requirements of MEWAs as set out in Article 6A of Title 36~~ Title 36 O.S.; or

(D) ~~any~~ Any entity organized pursuant to the Interlocal Cooperation Act, ~~Section 1001 et seq. of Title 74 of the Oklahoma Statutes~~ 74 O.S. § 1001 et seq. as authorized by ~~Title 36 Section 607.1 of the Oklahoma Statutes~~ 36 O.S. § 607.1 and which is eligible to qualify for and hold a certificate of authority to transact insurance in this State and annually submits on or before March 1st a financial statement to the Oklahoma Insurance Department in a form acceptable to the Insurance Commissioner covering the period ending December 31st of the immediately preceding fiscal year.

"~~Child Care Center~~ care center" means a facility licensed by the Oklahoma Department of Human Services (DHS) which provides care and supervision of children and meets all the requirements in ~~OAC 340:110-3-1 through OAC 340:110-3-33~~ 340:110-3-275 through 340:110-3-311.

"~~College Student~~ student" means an Oklahoma resident between the age of nineteen (19) through twenty-two (22) that is a full-time student at an Oklahoma accredited ~~University~~ university or ~~College~~ college.

"~~DHS~~" means ~~the Oklahoma Department of Human Services~~.

"~~Dependent~~" means the spouse of the approved applicant and/or child under nineteen (19) years of age or his or her child ~~nineteen (19) years through twenty-two (22) years of age who is attending an Oklahoma qualified institution of higher education and relying upon the insured employee or member for financial support.~~

"~~Eligibility period~~" means the period of eligibility extending from an approval date to an end date.

"~~Employee~~" means a person who works for an employer in exchange for earned income. This includes the owners of a business.

"~~Employer~~" means the business entity that pays earned income to employees.

"~~Employer Sponsored Insurance (ESI)~~" means the program that provides premium assistance to qualified businesses for approved applicants.

"~~Explanation of Benefit (EOB)~~" means a statement issued by a carrier that indicates services rendered and financial responsibilities for the carrier and Insure Oklahoma member.

"~~Full-time Employer~~ employer" means the employer who employs an employee per Federal and State regulations, to perform work in exchange for wages or salary.

"~~Full-time Employment~~ employment" means a normal work week per Federal and State regulations.

"~~Individual Plan (IP)~~" means ~~the safety net program for those qualified individuals who do not have access to Insure Oklahoma ESI.~~

"~~In-network~~" means providers or health care facilities that are part of a benefit plan's network of providers with which

it has negotiated a discount, and services provided by a physician or other health care provider with a contractual agreement with the insurance company paid at the highest benefit level.

**"Insure Oklahoma (IO)"** means a benefit plan purchasing strategy in which the State uses public funds to pay for a portion of the costs of benefit plan coverage for eligible populations.

**"Member"** means an individual enrolled in the Insure Oklahoma ESI ~~or IP~~ program.

**"Modified Adjusted Gross Income (MAGI)"** means the financial eligibility determination methodology established by the Patient Protection and Affordable Care Act (PPACA) in 2009.

**"OAC"** means the Oklahoma Administrative Code.

**"OESC"** means the Oklahoma Employment Security Commission.

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

**"OKDHS"** means the Oklahoma Department of Human Services which is also referenced in rules as Department of Human Services (DHS) and Office of Human Services (OHS).

**"Premium"** means a monthly payment to a carrier for benefit plan coverage.

**"Primary Care Provider/care provider (PCP)"** means a provider under contract with the OHCA to provide primary care services, including all medically necessary referrals.

**"Professional Employer Organization/employer organization (PEO)"** means any person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act as provided in Title 40, Chapter 16 of Oklahoma Statutes, Section 600.1 et. seq. ~~40 O.S. § 600.1 et. seq.~~

**"Qualified Benefit Plan/benefit plan (QBP)"** means a benefit plan that has been approved by the OHCA for participation in the Insure Oklahoma program.

**"Qualifying Event/event"** means the occurrence of an event that permits individuals to join a group benefit plan outside of the "open enrollment period" and/or that allows individuals to modify the coverage they have had in effect. Qualifying events are defined by the employer's benefit plan and meet federal requirements under Public Law 104-191 (HIPAA), and 42 U.S.C. 300bb-3.

**"State"** means the State of Oklahoma, acting by and through the OHCA.

**317:45-1-4. Reimbursement for out-of-pocket expenses**

(a) Out-of-pocket expenses for all approved and eligible members (and/or their approved and eligible dependents) will be limited to five (5) percent of their annual gross household income. The OHCA will provide reimbursement for out-of-pocket expenses in excess of the five (5) percent annual gross household income. An expense must be for an allowed and covered service by a ~~qualified benefit plan (QBP)~~ QBP to be eligible for reimbursement. For the purpose of this Section, an allowed and covered service is defined as an in-network service covered in accordance with a QBPs benefit summary

and policies. For instance, if a QBP has multiple in-network reimbursement percentage methodologies (~~80% eighty (80) percent~~ for level 1 provider and ~~70% seventy (70) percent~~ for level 2 provider) the OHCA will only reimburse expenses related to the highest percentage network.

(b) For all eligible expenses as defined above in OAC 317:45-1-4(a), the member must submit the OHCA required form and all OHCA required documentation to support that the member incurred and paid the out-of-pocket expense. The OHCA required documentation must substantiate that the member actually incurred and paid the eligible out-of-pocket expense. The OHCA may request additional documentation at any time to support a member's request for reimbursement of eligible out-of-pocket expenses.

**SUBCHAPTER 7. INSURE OKLAHOMA ESI EMPLOYER ELIGIBILITY**

**317:45-7-5. Reimbursement**

In order to receive a premium subsidy, the employer must submit all pages of the current benefit plan invoice. Due to timely filing requirements, subsidy payments will not be paid on invoices older than six (6) months.

**SUBCHAPTER 9. INSURE OKLAHOMA ESI EMPLOYEE ELIGIBILITY**

**317:45-9-1. Employee eligibility requirements**

(a) Employees must complete and submit the OHCA required forms and application to be considered for participation in the program.

(b) The eligibility determination will be processed within thirty (30) days from the date the application is received. The employee will be notified in writing of the eligibility decision.

(c) All eligible employees described in this section must be enrolled in their employer's qualified benefit plan. Eligible employees must:

(1) ~~have~~ Have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma ESI Income Guidelines form;

(A) ~~Effective January 1, 2016, financial~~ Financial eligibility for Insure Oklahoma ESI benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through ~~OAC 317:35-6-54~~ 317:35-6-55 for the applicable MAGI rules for determining household composition and countable income.

(B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma ESI Benefits.

(2) ~~be~~ Be a US citizen or alien as described in OAC 317:35-5-25;

(3) ~~be~~ Be Oklahoma residents;

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- (4) ~~furnish~~Furnish, or show documentation of an application for, a Social Security number at the time of application for Insure Oklahoma ESI benefits;
- (5) ~~not~~Not be receiving benefits from SoonerCare or Medicare;
- (6) ~~be~~Be employed with a qualified employer at a business location in Oklahoma;
- (7) ~~be~~Be age nineteen (19) through age sixty-four (64);
- (8) ~~be~~Be eligible for enrollment in the employer's ~~qualified benefit plan~~QBP;
- (9) ~~not~~Not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2);
- (10) ~~select~~Select one of the ~~qualified benefit plans~~QBPs the employer is offering; and
- (11) ~~provide~~Provide in a timely manner any and all documentation that is requested by the Insure Oklahoma program by the specified due date.
- (d) An employee's dependents are eligible when:
- (1) ~~the~~The employer's benefit plan includes coverage for dependents;
- (2) ~~the~~The employee is eligible;
- (3) ~~if~~If employed, the spouse may not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1 (a)(1)-(2); and
- (4) ~~the~~The dependents are enrolled in the same benefit plan as the employee.
- (e) If an employee or their dependents are eligible for multiple ~~qualified benefit plans~~QBPs, each may receive a subsidy under only one benefit plan.
- (f) College students may enroll in the Insure Oklahoma ESI program as dependents. ~~Effective January 1, 2016, financial~~Financial eligibility for Insure Oklahoma ESI benefits for college students is determined using the MAGI methodology. See OAC 317:35-6-39 through ~~OAC 317:35-6-54~~317:35-6-55 for the applicable MAGI rules for determining household composition and countable income. Dependent college students must enroll under their parents and all annual gross household income (including parent income) must be included in determining eligibility. Independent college students may apply on their own without parent income included in the household. College student status as dependent or independent is determined by the student's current Free Application for Federal Student Aid (FAFSA) or the university's financial aid office. College students must also provide a copy of their current student schedule to prove full-time student status.
- (g) Working dependent children must have countable income at the appropriate standard according to the family size on the Insure Oklahoma ESI Income Limits Guidelines form. ~~Effective January 1, 2016, financial~~Financial eligibility for Insure Oklahoma ESI benefits is determined using the MAGI methodology. See OAC 317:35-6-39 through ~~OAC 317:35-6-54~~317:35-6-55 for the applicable MAGI rules for determining household composition and countable income. Children found to be eligible for SoonerCare may not receive coverage through Insure Oklahoma.

- (h) ESI approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within ten (10) days of the change.
- (i) When the agency responsible for determining eligibility for the member becomes aware of a change in the member's circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

### SUBCHAPTER 11. INSURE OKLAHOMA IP [REVOKED]

#### PART 1. INDIVIDUAL PLAN PROVIDERS [REVOKED]

##### 317:45-11-1. Insure Oklahoma Individual Plan providers [REVOKED]

~~Insure Oklahoma Individual Plan (IP) providers must comply with existing SoonerCare rules found at 317:25 and 317:30. In order to receive reimbursement, the IP provider:~~

- (1) ~~must enter into a SoonerCare contract; and~~
- (2) ~~must complete Insure Oklahoma IP addendum if provider wants to provide primary care services as a PCP.~~

##### 317:45-11-2. Insure Oklahoma Individual Plan (IP) provider payments [REVOKED]

~~Payment for covered benefits rendered to Insure Oklahoma IP members is made to contracted Insure Oklahoma IP healthcare providers for medical and surgical services within the scope of OHCA's medical programs, provided the services are medically necessary as defined in Oklahoma Administrative Code 317:30-3-1(f).~~

- (1) ~~Coverage of certain services requires prior authorization and may be based on a determination made by a medical consultant in individual circumstances; and~~
- (2) ~~The provider may collect the member's co-payment in addition to the SoonerCare reimbursement for services provided.~~

#### PART 3. INSURE OKLAHOMA IP MEMBER BENEFITS [REVOKED]

##### 317:45-11-10. Insure Oklahoma IP adult benefit [REVOKED]

~~(a) All IP adult benefits are subject to rules delineated in OAC 317:30 except as specifically set out in this Section. The scope of IP adult benefits described in this Section is subject to specific non-covered services listed in OAC 317:45-11-11.~~

~~(b) A PCP referral is required to see any other provider with the exception of the following services:~~

- (1) ~~behavioral health services;~~

- (2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;
  - (3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;
  - (4) women's routine and preventive health care services;
  - (5) emergency medical condition as defined in OAC 317:30-3-1; and
  - (6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.
- (e) IP-covered adult benefits for in-network services and limits are listed in this subsection. Member cost sharing related to premium and co-payments cannot exceed federal maximums with the exception of emergency room visits, in which case the State establishes the maximum for member cost share. Native American adults providing documentation of ethnicity who receive items and services furnished by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services are exempt from co-payments. Coverage for IP services includes:
- (1) Anesthesia/Anesthesiologist Standby. Covered in accordance with OAC 317:30-5-7. Eligible services are covered for covered illness or surgery including services provided by a Certified Registered Nurse Anesthetist (CRNA) or Anesthesiologist Assistant (AA).
  - (2) Blood and Blood Products. Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.
  - (3) Chelation Therapy. Covered for heavy metal poisoning only.
  - (4) Diagnostic X-ray, including Ultrasound. Covered in accordance with OAC 317:30-5-22(b)(2). PCP referral is required.
  - (5) Emergency Room Treatment, services and supplies for treatment in an emergency. Contracted provider services are subject to a \$30 co-pay per occurrence. The emergency room co-pay will be waived if the member is admitted to the hospital or death occurs before admission.
  - (6) Inpatient Hospital Benefits. Covered in accordance with OAC 317:30-5-41, OAC 317:30-5-47 and OAC 317:30-5-95.
  - (7) Preventive Office Visit. For services of evaluation and medical management (wellness exam); one visit per year. This visit counts as an office visit.
  - (8) Office Visits/Specialist Visits. Covered in accordance with OAC 317:30-5-9, OAC 317:30-5-10, and OAC 317:30-5-11. For services of evaluation and medical management; up to four visits are covered per month; PCP referral required for specialist visits.
  - (9) Outpatient Hospital/Facility Services.
    - (A) Includes hospital surgery services in an approved outpatient facility including outpatient services and diagnostic services. Prior authorization required for certain procedures.
    - (B) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for persons with proven malignancies or opportunistic infections.
    - (C) Physical, Occupational and Speech Therapy services. Coverage is limited to one evaluation/re-evaluation visit (unit) per discipline per calendar year and 15 visits (units) per discipline per date of service per calendar year. Must be hospital based.
  - (10) Maternity (Obstetric). Covered in accordance with OAC 317:30-5-22.
  - (11) Laboratory/Pathology. Covered in accordance with OAC 317:30-5-20.
  - (12) Mammogram (Radiological or Digital). Covered in accordance with OAC 317:30-5-901.
  - (13) Immunizations. Covered in accordance with OAC 317:30-5-2.
  - (14) Assistant Surgeon. Covered in accordance with OAC 317:30-5-8.
  - (15) Dialysis, Kidney dialysis, and services and supplies, either at home or in a facility.
  - (16) Oral Surgery. Services are limited to the removal of tumors or cysts.
  - (17) Behavioral Health (Mental Health and Substance Abuse) Treatment (Inpatient). Covered in accordance with OAC 317:30-5-95.1.
  - (18) Behavioral Health (Mental Health and Substance Abuse) Treatment (Outpatient). Outpatient benefits are limited to 48 visits per calendar year. Additional visits may be approved as medically necessary.
    - (A) Agency services. Covered in accordance with OAC 317:30-5-241 and OAC 317:30-5-596.
    - (B) Individual provider services. Licensed Behavioral Health Professionals (LBHPs) are defined as follows for the purpose of Outpatient Behavioral Health Services and Outpatient Substance Abuse Treatment:
      - (i) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.
      - (ii) Practitioners with a license to practice in the state in which services are provided.
        - (I) Psychology,
        - (II) Social Work (clinical specialty only),
        - (III) Professional Counselor,
        - (IV) Marriage and Family Therapist,
        - (V) Behavioral Practitioner, or
        - (VI) Alcohol and Drug Counselor.
      - (iii) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.
      - (iv) A Physician's Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing

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mental health therapeutic, diagnostic, or counseling functions.

(v) LBHPs must have a valid Insure Oklahoma contract in order to bill for services rendered.

(vi) LBHP services require prior authorization and are limited to four (4) therapy services per month per member and eight (8) testing units per year per member.

(19) Durable Medical Equipment and Supplies. Covered in accordance with OAC 317:30-5-210 through OAC 317:30-5-218. A PCP referral and prior authorization is required for certain items.

(20) Diabetic Supplies. Covered in accordance with OAC 317:30-5-211.15.

(21) Oxygen. Covered in accordance with OAC 317:30-5-211.11 through OAC 317:30-5-211.12.

(22) Pharmacy. Covered in accordance with OAC 317:30-5-72.1 and OAC 317:30-5-72. Prenatal vitamins and smoking cessation products do not count against monthly prescription limits.

(23) Smoking Cessation Products. Products do not count against monthly prescription limits. Covered in accordance with OAC 317:30-5-72.1.

(24) Nutrition Services. Covered in accordance with OAC 317:30-5-1076.

(25) External Breast Prosthesis, Bras and Prosthetic Garments. Covered in accordance with OAC 317:30-5-211.13.

(26) Surgery. Covered in accordance with OAC 317:30-5-8.

(27) Home Dialysis. Covered in accordance with OAC 317:30-5-211.13.

(28) Parenteral Therapy. Covered in accordance with OAC 317:30-5-211.14.

(29) Family Planning Services and Supplies, including Sterilizations. Covered in accordance with OAC 317:30-3-57.

(30) Home Health and Medications, Intravenous (IV) Therapy and Supplies. Covered in accordance with OAC 317:30-5-211.15 and OAC 317:30-5-42.16(b)(3).

(31) Fundus photography.

(32) Emergency ground ambulance transportation. Covered in accordance with OAC 317:30-5-336.

### 317:45-11-11. Insure Oklahoma IP adult non-covered services [REVOKED]

Certain health care services are not covered in the Insure Oklahoma IP adult benefit package listed in OAC 317:45-11-10. These services include, but are not limited to:

- (1) services not considered medically necessary;
- (2) any medical service when the member refuses to authorize release of information needed to make a medical decision;
- (3) organ and tissue transplant services;
- (4) weight loss intervention and treatment including, but not limited to, bariatric surgical procedures or any other weight loss surgery or procedure, drugs used primarily for the treatment of weight loss including appetite

suppressants and supplements, and/or nutritional services prescribed only for the treatment of weight loss;

(5) procedures, services and supplies related to sex transformation;

(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;

(7) cosmetic surgery, except as medically necessary and as covered in OAC 317:30-3-59(19);

(8) over the counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;

(9) experimental procedures, drugs or treatments;

(10) dental services (preventive, basic, major, orthodontia, extractions or services related to dental accident);

(11) vision care and services (including glasses), except services treating diseases or injuries to the eye;

(12) physical medicine including chiropractic and acupuncture therapy;

(13) hearing services;

(14) non-emergency transportation and emergency air transportation;

(15) allergy testing and treatment;

(16) hospice regardless of location;

(17) Temporomandibular Joint Dysfunction (TMD) (TMJ);

(18) genetic counseling;

(19) fertility evaluation/treatment and services;

(20) sterilization reversal;

(21) Christian Science Nurse;

(22) Christian Science Practitioner;

(23) skilled nursing facility;

(24) long-term care;

(25) stand-by services;

(26) thermograms;

(27) abortions (for exceptions, refer to OAC 317:30-5-6);

(28) services of a Lactation Consultant;

(29) services of a Maternal and Infant Health Licensed Clinical Social Worker;

(30) enhanced services for medically high risk pregnancies as found in OAC 317:30-5-22.1;

(31) ultraviolet treatment actinotherapy;

(32) private duty nursing;

(33) payment for removal of benign skin lesions;

(34) sleep studies;

(35) prosthetic devices; and

(36) continuous positive airway pressure devices (CPAP).

### PART 5. INSURE OKLAHOMA IP MEMBER ELIGIBILITY [REVOKED]

#### 317:45-11-20. Insure Oklahoma IP eligibility requirements [REVOKED]

(a) Oklahoma employed working adults not eligible to participate in an employer's qualified benefit plan, employees of non-participating employers, self-employed, unemployed



seeking work, workers with a disability, and qualified college students may apply for the Individual Plan. Applicants, unless a qualified college student, must be: considered "employed" in accordance with State law, including, but not limited to, Title 40 O.S. ' 1 210; engaged in routine, for profit activity, if self-employed; or considered "unemployed" in accordance with State law, including, but not limited to Title 40 O.S. ' 1 217. Applicants cannot obtain IP coverage if they are eligible for ESI.

(b) The eligibility determination will be processed within thirty (30) days from the date the complete application is received. The applicant will be notified of the eligibility decision.

(c) In order to be eligible for the IP, the applicant must:

- (1) choose a valid PCP according to the guidelines listed in OAC 317:45 11 22, at the time he/she completes application;
- (2) be a US citizen or alien as described in OAC 317:35 5 25;
- (3) be an Oklahoma resident;
- (4) furnish, or show documentation of an application for, a Social Security number at the time of application for Insure Oklahoma IP benefits;
- (5) be not currently enrolled in, or have an open application for SoonerCare or Medicare;
- (6) be age 19 through 64;
- (7) make premium payments by the due date on the invoice;
- (8) not have full time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45 7 1(a) (1) (2);
- (9) be not currently covered by a private insurance policy or plan; and
- (10) provide in a timely manner any and all documentation that is requested by the Insure Oklahoma program by the specified due date.

(d) If employed and working for an approved Insure Oklahoma employer who offers a qualified benefit plan, the applicant must meet the requirements in subsection (c) of this Section and:

- (1) have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.
  - (A) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP benefits is determined using the MAGI methodology. Unless questionable, the income of applicants do not require verification. See OAC 317:35 6 39 through OAC 317:35 6 54 for the applicable MAGI rules for determining household composition and countable income.
  - (B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Benefits;
- (2) be ineligible for participation in their employer's qualified benefit plan due to number of hours worked.

(e) If employed and working for an employer who does not offer a qualified benefit plan, the applicant must meet the requirements in subsection (c) of this Section and have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(1) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35 6 39 through OAC 317:35 6 54 for the applicable MAGI rules for determining household composition and countable income.

(2) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Benefits.

(f) If self employed, the applicant must meet the requirements in subsection (c) of this Section and:

(1) have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(A) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35 6 39 through OAC 317:35 6 54 for the applicable MAGI rules for determining household composition and countable income.

(B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Benefits.

(2) must not have full time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45 7 1(a)(1) (2).

(3) must verify self employment by completing and submitting to Insure Oklahoma the Self Employment Attestation Form. In addition,

(A) for any applicant who filed a Federal tax return for the tax year immediately preceding the date of application, he or she must provide a copy of such tax return with all supporting schedules and forms, or

(B) for any applicant exempt from filing a Federal tax return for the previous tax year in accordance with Federal law, including, but not limited to, 26 Code of Federal Regulation, Section 1.6017 1, he or she must submit a completed 12 Month Profit and Loss Worksheet to Insure Oklahoma, as well as any other information requested by Insure Oklahoma that could reasonably be used to substantiate the applicant's regular, for profit business activity.

(g) If unemployed seeking work, the applicant must meet the requirements in subsection (c) of this Section and the following:

(1) Applicants must have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(2) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP benefits is determined using the MAGI methodology. Unless questionable, the income

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of applicants does not require verification.— See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(3) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Benefits. Applicant must verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:

- (A) A OESC eligibility letter;
- (B) A OESC weekly unemployment payment statement; or;
- (C) A bank statement showing state treasurer deposit.

(h) If working with a disability, the applicant must meet the requirements in subsection (e) of this Section and the following:

(1) Applicants must have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(2) Applicants may need to verify eligibility of their enrollment in the Ticket to Work program.

(3) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification.— See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(4) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Benefits.

(i) IP approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within 10 days of the change.

(j) When the agency responsible for determining eligibility for the member becomes aware of a change in the member's circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

(k) College students may enroll in the Insure Oklahoma IP program as dependents. Effective January 1, 2016, financial eligibility for Insure Oklahoma IP benefits for college students is determined using the MAGI methodology.— See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income. Dependent college students must enroll under their parents and all annual gross household income (including parent income) must be included in determining eligibility. Independent college students may apply on their own without parent income included in the household. College student status as dependent or independent is determined by the student's current Free Application for Federal Student Aid (FAFSA) or the university's financial aid office. College students must also provide a copy of their current student schedule to prove full-time student status.

(l) Any misleading or false representation, or omission of any material fact or information required or requested by OHCA as part of the Insure Oklahoma application process, may result in, among other things, closure of eligibility pursuant to OAC 317:45-11-27.

### 317:45-11-21. Dependent eligibility [REVOKED]

(a) If the spouse of an Insure Oklahoma IP approved individual is eligible for Insure Oklahoma ESI, they must apply for Insure Oklahoma ESI. Spouses cannot obtain Insure Oklahoma IP coverage if they are eligible for Insure Oklahoma ESI.

(b) The employed or self-employed spouse of an approved applicant must meet the guidelines listed in 317:45-11-20 (a) through (g) to be eligible for Insure Oklahoma IP.

(c) The dependent of an applicant approved according to the guidelines listed in 317:45-11-20(h) does not become automatically eligible for Insure Oklahoma IP.

(d) The applicant and the dependents' eligibility are tied together. If the applicant no longer meets the requirements for Insure Oklahoma IP, then the associated dependent enrolled under that applicant is also ineligible.

(e) College students may enroll in the Insure Oklahoma IP program. Effective January 1, 2016, financial eligibility for Insure Oklahoma IP benefits for college students are determined using the MAGI methodology. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(f) IP approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within 10 days of the change.

(g) When the agency responsible for determining eligibility for the member becomes aware of a change in the dependents circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

### 317:45-11-21.1. Certification of newborn child deemed eligible [REVOKED]

(a) A newborn child is deemed eligible on the date of birth for SoonerCare benefits when the child is born to a member of Insure Oklahoma Individual Plan (IP) and the annual gross household income does not exceed SoonerCare requirements. The newborn child is deemed eligible for SoonerCare benefits through the last day of the month the child attains the age of one (1) year.

(b) The newborn child's SoonerCare eligibility is not dependent on the mother's continued eligibility in Insure Oklahoma IP. The child's SoonerCare eligibility is based on the original eligibility determination of the mother for Insure Oklahoma IP and consideration is not given to any income or resource changes that occur during the deemed eligibility period.

(c) The newborn child's certification period for SoonerCare is shortened only in the event the child:

- (1) Loses Oklahoma residence; or
- (2) Expires.

(d) No other conditions of eligibility are applicable, including social security number enumeration and citizenship and identity verification. However, it is recommended that social security number enumeration be completed as soon as possible after the child's birth.

**317:45-11-22. Primary Care Physician (PCP) choices [REVOKED]**

- (a) The applicant and any covered dependent(s) are required to select a valid PCP.
- (b) The applicant and any covered dependent(s) must make a PCP selection through their mysoonercare.org account.
- (c) After initial enrollment in Insure Oklahoma Individual Plan the applicant any covered dependent(s) may change their PCP selection through their mysoonercare.org account or by calling the Insure Oklahoma helpline.
- (d) To ensure members have access to their Patient Centered Medical Home, Insure Oklahoma staff may facilitate enrollment as applicable.

**317:45-11-23. Member eligibility period [REVOKED]**

- (a) The rules in this subsection apply to member's eligibility according to OAC 317:45-11-20(a) through (e).
  - (1) The member's eligibility period begins only after approval of the application and receipt of the premium payment.
    - (A) If the application is approved and the premium payment is made by the last day of the same month, eligibility will begin the first day of the next month.
    - (B) If the application is approved and the premium payment is made between the first and 15<sup>th</sup> day of the next month, eligibility will begin the first day of the second consecutive month.
    - (C) If the application is approved and the premium payment is not made within 45 days, eligibility will not begin.
  - (2) Employee eligibility is contingent upon the employer meeting the program guidelines.
  - (3) The employee's eligibility is determined using the eligibility requirements listed in OAC 317:45-9-1 or OAC 317:45-11-20(a) through (e).
  - (4) If the employee is determined eligible for Insure Oklahoma IP, he/she is approved for a period not greater than 12 months.
- (b) The rules in this subsection apply to applicants eligible according to OAC 317:45-11-20(a) through (e) and OAC 317:45-11-20(f) through (h).
  - (1) The applicant's eligibility is determined using the eligibility requirements listed in OAC 317:45-11-20(a) through (e) and OAC 317:45-11-20(f) through (h).
  - (2) If the applicant is determined eligible for Insure Oklahoma IP, he/she is approved for a period not greater than twelve (12) months.
  - (3) The applicant's eligibility period begins only after receipt of the premium payment.

**317:45-11-24. Member cost sharing [REVOKED]**

- (a) Members are given monthly invoices for their benefit plan premiums. IP health plan premiums are established by the OHCA. The premiums are due monthly and must be paid in full.
  - (1) Members are responsible for their monthly premiums, in an amount not to exceed four percent (4%) of their monthly gross household income.
  - (2) Working disabled individuals are responsible for their monthly premiums in an amount not to exceed four percent (4%) of their monthly gross household income, based on a family size of one and capped at one hundred percent (100%) of the Federal Poverty Level.
  - (3) Cost sharing, including premium payments and copayments, are not required of American Indian and Alaska Native members, as is established in the federally approved Oklahoma Medicaid State Plan.
- (b) IP coverage is not provided until the premium and any other amounts due are paid in full. Other amounts due may include but are not limited to any fees, charges, or other costs incurred as a result of returned payments.

**317:45-11-26. Reviews [REVOKED]**

Members participating in the Insure Oklahoma program are subject to reviews related to their eligibility, subsidy payments, premium payments and out of pocket reimbursements. Eligibility may be reversed at any time if inconsistencies are found. Any monies paid in error will be subject to recoupment.

**317:45-11-27. Closure [REVOKED]**

- (a) Members are mailed a notice 10 days prior to closure of eligibility.
  - (b) The employer and employees' eligibility are tied together. If the employer no longer meets the requirements for Insure Oklahoma then eligibility for the associated employees enrolled under that employer are also ineligible.
  - (c) The employee's certification period may be terminated when:
    - (1) the member requests closure;
    - (2) the member moves out of state;
    - (3) the covered member dies;
    - (4) the employer's eligibility ends;
    - (5) a review indicates a discrepancy that makes the member or employer ineligible;
    - (6) the employer is terminated from Insure Oklahoma;
    - (7) the member fails to pay their premium;
    - (8) the qualified benefit plan or carrier no longer meets the requirements set forth in this chapter;
    - (9) the member begins receiving SoonerCare or Medicare benefits;
    - (10) the member begins receiving coverage by a private benefit policy or plan;
    - (11) the member or employer reports any change affecting eligibility; or
    - (12) the member no longer meets the eligibility criteria set forth in this Chapter.

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~~(d) This subsection applies to applicants eligible according to 317:45-11-20(a) through (c) and 317:45-11-20(f) through (h). The member's certification period may be terminated when:~~

- ~~(1) the member requests closure;~~
- ~~(2) the member moves out of state;~~
- ~~(3) the covered member dies;~~
- ~~(4) the employer's eligibility ends;~~
- ~~(5) a review indicates a discrepancy that makes the member or employer ineligible;~~
- ~~(6) the member fails to pay their premium;~~
- ~~(7) the member becomes eligible for SoonerCare or Medicare;~~
- ~~(8) the member begins receiving coverage by a private benefit policy or plan;~~
- ~~(9) the member or employer reports any change affecting eligibility; or~~
- ~~(10) the member no longer meets the eligibility criteria set forth in this Chapter.~~

## 317:45-11-28. Appeals [REVOKED]

~~Member appeal procedures based on denial of eligibility due to income are described at 317:2-1-2.~~

*[OAR Docket #22-446; filed 6-23-22]*

## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 55. MANAGED CARE

*[OAR Docket #22-447]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Provision [NEW]
  - 317:55-1-1 [NEW]
  - 317:55-1-2 [NEW]
  - 317:55-1-3 [NEW]
- Subchapter 3. General Program Information [NEW]
  - Part 1. Eligibility [NEW]
    - 317:55-3-1 [NEW]
    - 317:55-3-2 [NEW]
    - 317:55-3-3 [NEW]
  - Part 3. Scope And Administration [NEW]
    - 317:55-3-10 [NEW]
    - 317:55-3-11 [NEW]
    - 317:55-3-12 [NEW]
    - 317:55-3-13 [NEW]
    - 317:55-3-14 [NEW]
  - Part 5. Required Federal Authorizations [NEW]
    - 317:55-3-20 [NEW]
    - 317:55-3-21 [NEW]
- Subchapter 5. Requirements for Managed Care Organizations and Dental Benefits Managers [NEW]
  - Part 1. Accreditation and Readiness [NEW]
    - 317:55-5-1 [NEW]
    - 317:55-5-2 [NEW]
  - Part 3. Provider Requirements [NEW]
    - 317:55-5-10 [NEW]
    - 317:55-5-11 [NEW]
    - 317:55-5-12 [NEW]
    - 317:55-5-13 [NEW]
    - 317:55-5-14 [NEW]

- Part 5. Finance [NEW]
    - 317:55-5-20 [NEW]
    - 317:55-5-21 [NEW]
    - 317:55-5-22 [NEW]
    - 317:55-5-23 [NEW]
    - 317:55-5-24 [NEW]
    - 317:55-5-25 [NEW]
  - Part 7. The Managed Care Quality Advisory Committee [NEW]
    - 317:55-5-30 [NEW]
    - 317:55-5-31 [NEW]
  - Part 9. Accountable Care Organizations [NEW]
    - 317:55-5-40 [NEW]
    - 317:55-5-41 [NEW]
- (Reference APA WF # 21-15)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Title 56 of the Oklahoma Statutes, Sections 4002-4004; Title 42 of the Code of Federal Regulations, Part 438

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

December 30, 2021

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 8, 2022

### ADOPTION:

March 30, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 12, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

- Subchapter 1. General Provisions [NEW]
  - 317:55-1-1 [NEW]
  - 317:55-1-2 [NEW]
  - 317:55-1-3 [NEW]
- Subchapter 3. General Program Information [NEW]
  - Part 1. Eligibility [NEW]
    - 317:55-3-1 [NEW]
    - 317:55-3-2 [NEW]
    - 317:55-3-3 [NEW]
  - Part 3. Scope And Administration [NEW]
    - 317:55-3-10 [NEW]
    - 317:55-3-11 [NEW]
    - 317:55-3-12 [NEW]
    - 317:55-3-13 [NEW]
    - 317:55-3-14 [NEW]
  - Part 5. Required Federal Authorizations [NEW]
    - 317:55-3-20 [NEW]
    - 317:55-3-21 [NEW]
- Subchapter 5. Requirements for Managed Care Organizations and Dental Benefits Managers [NEW]
  - Part 1. Accreditation and Readiness [NEW]
    - 317:55-5-1 [NEW]
    - 317:55-5-2 [NEW]
  - Part 3. Provider Requirements [NEW]
    - 317:55-5-10 [NEW]
    - 317:55-5-11 [NEW]
    - 317:55-5-12 [NEW]
    - 317:55-5-13 [NEW]
    - 317:55-5-14 [NEW]
  - Part 5. Finance [NEW]
    - 317:55-5-20 [NEW]
    - 317:55-5-21 [NEW]
    - 317:55-5-22 [NEW]
    - 317:55-5-23 [NEW]
    - 317:55-5-24 [NEW]

317:55-5-25 [NEW]  
Part 7. The Managed Care Quality Advisory Committee [NEW]  
317:55-5-30 [NEW]  
317:55-5-31 [NEW]  
Part 9. Accountable Care Organizations [NEW]  
317:55-5-40 [NEW]  
317:55-5-41 [NEW]

**Gubernatorial approval:**

December 21, 2021

**Register publication:**

39 Ok Reg 450

**Docket number:**

21-973

(Reference APA WF # 21-15)

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed policy changes will comply with Senate Bill 131 (SB131), otherwise known as the "Ensuring Access to Medicaid Act" by addressing the specific requirements that are outlined throughout the bill. The requirements include, but are not limited to, enrollment and voluntary enrollment into a managed care delivery model, developing specific network adequacy standards, prior authorization requirements, and developing requirements for appeals and hearings.

**CONTACT PERSON:**

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**317:55-1-1. Purpose; use of manuals**

The purpose of this Chapter is to provide detailed rules which govern the delivery of health care services provided by managed care organizations or dental benefits managers as required by the "Ensuring Access to Medicaid Act", 2021 Okla. Sess. Law Serv. Ch. 542 (S.B. 131), Title 56 of the Oklahoma Statutes, Sections 4002-4004 and 42 Code of Federal Regulations (C.F.R.), Part 438. The Oklahoma Health Care Authority may also develop manuals and medical guidelines that formalize terms, conditions, and applicable policy of awarded contracts.

**317:55-1-2. Monitoring system for all managed care programs**

In accordance with 42 C.F.R. § 438.66, the Oklahoma Health Care Authority will monitor each managed care organization or dental benefits manager to assess its ability and capacity to comply with program- and contract-specific requirements and to assess its ability to perform satisfactorily in all major operational areas.

**317:55-1-3. Definitions**

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

**"1115 waiver"** means the demonstration waiver, as amended and including all active special terms and conditions (STCs) at a specific point in time, that authorizes Oklahoma Health Care Authority (OHCA) to operate a program in which one or more requirements of Title XIX of the Social Security Act (Act) are waived based on the waiver authority of section 1115 of the Act.

**"1915(c) waiver"** means any waiver, authorized by section 1915(c) of the Act, that allows specific coverage of home- and community-based services to a limited group of Medicaid-eligible individuals as an alternative to institutional care.

**"Accountable care organization" or "ACO"** means a group of clinicians, hospitals, or other health care providers who come together voluntarily to give coordinated high-quality care to a designated group of patients.

**"Act"** means the Social Security Act.

**"Adult"** means an individual twenty-one (21) years of age or older, unless otherwise specified by statute, regulation, and/or policy adopted by the OHCA. For eligibility criteria policy for children and adults, please refer to Oklahoma Administrative Code (OAC) 317:35-5-2.

**"Adverse determination"** means a determination by a health carrier, including an managed care organization (MCO) or dental benefits manager (DBM), or its designee that an admission, availability of care, continued stay or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service or payment for services is therefore denied, reduced or terminated.

**"Alternative benefit plan"** means the benefit package delivered to expansion adults which is developed by OHCA and approved by the Centers for Medicare and Medicaid Services (CMS) in accordance with the requirements of Subpart C of 42 C.F.R. Part 440.

**"American Indian/Alaska Native" or "AI/AN"** means any individual as defined in 25 U.S.C. §§ 1603(13), 1603(28) or 1679(a) or who has been determined eligible as an Indian under 42 C.F.R. § 136.12.

**"Appeal"** means a review by an MCO or DBM of an adverse benefit determination.

**"Authorized representative"** means a competent adult who has the managed care enrollee's signed, written authorization to act on the managed care enrollee's behalf during the grievance, appeal, and State fair hearing process. The written authority to act will specify any limits of the representation.

**"Capitation payment"** means a payment, based on an actuarially sound capitation rate for the provision of Oklahoma Medicaid State Plan services under a managed care contract, that OHCA makes periodically to the MCO or DBM behalf of each enrollee enrolled in that MCO or DBM, regardless of whether the enrollee actually receives services during the period covered by the payment.

**"Capitation rate"** means the actuarially sound per-enrollee, per-month amount, including any adjustments, that OHCA agrees to pay an MCO or DBM for the provision of State Plan services.

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**"Child"** means an individual under twenty-one (21) years of age, unless otherwise specified by statute, regulation, and/or policy adopted by the OHCA. For eligibility criteria policy for children and adults, please refer to OAC 317:35-5-2.

**"Children's Health Insurance Program"** or **"CHIP"** means a federal Medicaid program authorized under Title XXI of the Social Security Act.

**"Choice counseling"** means the provision of information and services designed to assist eligibles in making enrollment decisions related to the managed care program. Choice counseling includes answering questions and identifying factors to consider when choosing among MCOs or DBMs, as well as when choosing a patient-centered medical home provider or dental home provider. Choice counseling does not include making recommendations for or against enrollment into a specific MCO or DBM.

**"Chronic condition"** means a condition that is expected to last one (1) year or more and requires ongoing medical attention and/or limits activities of daily living (ADL).

**"Civil monetary damage"** means a damage imposed by OHCA which the MCO must pay for acting or failing to act in accordance with 42 C.F.R. § 438.700 et seq. Amounts may not exceed those specified in 42 C.F.R. § 438.704.

**"Claims denial error rate"** means the rate of claims denials that are overturned on appeal.

**"Clean claim"** means a properly completed billing form with coding based on Current Procedural Terminology (CPT), 4th Edition or a more recent edition, the Tenth Revision of the International Classification of Diseases or a more recent revision, or Healthcare Common Procedure Coding System (HCPCS), where applicable, to provide information specifically required in the OHCA Provider Billing and Procedure Manual.

**"C.F.R."** means the Code of Federal Regulations.

**"Contract"** means the risk contract or the written and executed agreement between OHCA and a health plan or managed care organization or dental benefit manager for health plan or managed care services and includes the solicitation, the bid, the contract addenda, appendices, attachments, and amendments, and any documents incorporated into the contract by reference or otherwise, as well as any document or information subject to the rules on legally binding procurement in Chapter 10 of these rules.

**"Copayment"** means a fixed amount that an enrollee pays for a covered health care service when the enrollee receives the service.

**"Cost sharing"** means the State's requirement that an enrollee bear some of the cost of their care through mechanisms such as copayments, deductibles, and other similar charges.

**"Deemed newborn"** means children born to SoonerCare enrolled mothers and determined eligible under 42 C.F.R. § 435.117.

**"Dental benefits manager"** or **"DBM"** means a health plan under contract with the OHCA to manage and deliver dental benefits and services to enrollees and designated as a pre-paid ambulatory health plan (PAHP) under 42 C.F.R. Part 438.

**"Dental home"** or **"DH"** means the care coordinated delivery system as defined within the contract between OHCA and a DBM.

**"Disenrollment"** means OHCA's removal of an enrollee from participation in a specific MCO or DBM or from participation in the managed care program.

**"Dual eligible individuals"** means individuals eligible for both Medicaid and Medicare.

**"Eligible"** means an individual who has been deemed eligible for Medicaid in the State of Oklahoma and is eligible for participation in the managed care program but who is not yet enrolled in an MCO or DBM.

**"Emergency services"** means medical services provided for a medical condition, including injury, manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the individual's health, or the health of an unborn child, in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organs or parts.

**"Enrollee"** means an individual who has been deemed eligible for Medicaid in the State of Oklahoma, who has been deemed eligible for enrollment in a managed care program, and who is currently enrolled in a managed care program.

**"Enrollee handbook"** means a guidebook prepared as a model by OHCA and modified and distributed by the MCO or DBM to its enrollees. The enrollee handbook is designed to help the enrollee understand the MCO or DBM, the managed care program, and the rights and responsibilities that come with enrollment in the program.

**"Enrollment"** means the OHCA process by which an eligible becomes an enrollee with an MCO or DBM.

**"Enrollment activities"** means activities that OHCA performs or conducts related to distributing, collecting, or processing enrollment materials, taking enrollments by technological device or in person, or enrolling or disenrolling eligibles into any MCO or DBM.

**"Essential community provider"** means a provider defined by 45 C.F.R. § 156.235.

**"Essential hospital services"** means tertiary care hospital services to which the MCO must provide access, including but not limited to neonatal, perinatal, pediatric, trauma and burn services.

**"Expansion adult"** means an individual nineteen (19) or older and under age sixty-five (65), with income at or below one hundred thirty-eight percent (138%) of the federal poverty level (FPL) determined eligible in accordance with 42 C.F.R. § 435.119), and who are not categorically related to the aged, blind, and disabled.

**"Former foster children"** or **"FFC"** means individuals under age twenty-six (26) determined eligible in accordance with 42 C.F.R. § 435.150 who were in foster care under the responsibility of the State or an Indian Tribe within Oklahoma and enrolled in SoonerCare on the date of attaining age eighteen (18) or aging out of foster care.

**"Foster children (FC)"** means children in foster care under the responsibility of the State, including children and youth who are in State custody due to abuse or neglect.

**"Fraud"** means intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or State law.

**"Grievance"** means an enrollee's expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee or failure to respect the enrollee's rights regardless of whether remedial action is requested. A grievance includes an enrollee's right to dispute an extension of time to make an authorization decision when proposed by the MCO or DBM.

**"Grievance and appeal system"** means the processes the MCO or DBM must implement in accordance with 42 C.F.R. Part 438, Subpart F, to handle enrollee grievances and appeals, as well as the processes to collect and track information about them.

**"Health care services"** means all Medicaid State Plan services provided, according to contract, by the MCO or DBM in any setting. Health care services may include but are not limited to medical care, behavioral health care, dental care, and pharmacy services.

**"Health plan"** means the same in these rules as at 36 O.S. § 4405.1.

**"Implementation"** means the process by which OHCA and the MCO or DBM performs actions and responsibilities to actively implement a managed care program or contract for the first time. Implementation also means, depending on its use, the moment in time that such actions and responsibilities are fully completed.

**"Implementation period"** means the period of time, as defined in contract, during which implementation occurs.

**"Indian health care provider" or "IHCP"** means a health care program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. § 1603).

**"Initial enrollment"** means an eligible's enrollment in an MCO or DBM during the initial enrollment period.

**"Initial enrollment period"** means the first period of time, as defined in contract, prior to or immediately following managed care program or contract implementation, when eligibles can first enroll in an MCO or DBM for the managed care program.

**"Managed care organization" or "MCO"** means a health plan designated as a managed care organization pursuant to 42 C.F.R. 438.2 and under contract with OHCA to participate in the managed care program and to deliver health care services to enrollees.

**"Managed care program" or "managed care" or "MCP"** means a health care delivery system organized to manage cost, utilization, and quality that is operated by a state

as authorized under sections 1915(a), 1915(b), 1932(a), or 1115(a) of the Social Security Act and relevant state law.

**"Manual" or "guide"** means any document, outside of the Medicaid State Plan, any Medicaid waiver, and the rules, that is created by or for OHCA for use in interpreting or implementing contractual terms. "Manual" is synonymous with guide, guidebook, companion guide, manual, reference book, dictionary, handbook, model, instructions, primer, workbook, or any other words denoting a document that is handled as a matter of convenience.

**"Material change"** means, but not limited to, any change in the overall business operations such as policy, process or protocol which affects, or can reasonably be expected to affect, more than five percent (5%) of enrollees or participating providers of the MCO or DBM.

**"Medical necessity"** means a standard for evaluating the appropriateness of services as established under OAC 317:30-3-1.

**"National Provider Identifier (NPI)"** means a unique identification number for covered health care providers. Covered health care providers and all MCOs, DBMs, and health care clearinghouses must use an NPI in the administrative and financial transactions adopted under the Health Insurance Portability and Accountability Act (HIPAA). The NPI is a ten-position, intelligence-free numeric identifier (ten-digit number). This means that the numbers do not carry other information about healthcare providers, such as the state in which they live or their medical specialty. The NPI must be used in lieu of legacy provider identifiers in the HIPAA standards transactions.

**"Non-participating provider"** means a physician or other provider who has not contracted with or is not employed by the MCO or DBM to deliver services under the managed care program.

**"Non-urgent sick visit"** means medical care given for an acute onset of symptoms which is not emergent or urgent in nature but which requires face-to-face medical attention within seventy-two (72) hours of enrollee notification of a non-urgent condition, as clinically indicated. Examples of non-urgent sick visits include cold symptoms, sore throat, and nasal congestion.

**"Open enrollment"** means an eligible's selection of and enrollment in an MCO or DBM during the open enrollment period.

**"Open enrollment period"** means the annual period of time, as defined by contract, when managed care enrollees and eligibles can enroll in and select an MCO or DBM for the managed care program.

**"Parent and caretaker relative"** means an individual determined eligible under 42 C.F.R. § 435.110.

**"Participating provider"** means a physician or other provider who has a contract with or is employed by an MCO or DBM to provide health care services to enrollees under the capitated managed care delivery model of the managed care program.

**"Patient-centered medical home" or "PCMH"** means, in this chapter, the care coordinated delivery system as defined within the contract between OHCA and an MCO.

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**"Pregnant women"** means women determined eligible for SoonerCare under 42 C.F.R. § 435.116.

**"Presumptive eligibility"** means limited period of managed care program eligibility for individuals who are categorically related to certain eligibility groups listed in OAC 317:35-6-38(a)(1)(A)(i) through (vi) and are also determined by a qualified hospital, on the basis of preliminary information provided by the applicant on a completed HPE application, to be eligible for managed care program services.

**"Primary care dentist"** or **"PCD"** means a provider under contract with a DBM to provide primary health care services, as contracted, and case management, including all medically necessary referrals for specialty services and prior authorizations. In these rules, "dental home provider" or "DH provider" bears the same meaning as "primary care dentist" or "PCD".

**"Primary care provider"** or **"PCP"** means a provider under contract with an MCO to provide primary health care services, as contracted, and case management, including securing all medically necessary referrals for specialty services and prior authorizations. In these rules, "patient-centered medical home provider" or "PCMH provider" bears the same meaning as "primary care provider" or "PCP".

**"Prior authorization"** or **"PA"** means a requirement that an enrollee, through the enrollee's provider, obtain the MCO's or DBM's approval before a requested medical service is provided or before services by a non-participating provider are received. Prior authorization is not a guarantee of claims payment; however, failure to obtain prior authorization may result in denial of the claim or reduction in payment of the claim.

**"Provider"** means a health care services provider licensed or certified in this State.

**"Provider agreement"** means an agreement between the MCO or DBM and a participating provider that describes the conditions under which the participating provider agrees to furnish covered health care services to enrollees.

**"Risk contract"** means a contract between OHCA and an MCO, prepaid inpatient health plan (PIHP), or prepaid ambulatory health plan (PAHP), as those terms are defined at 42 C.F.R. § 438.2, under which the contractor assumes risk for the cost of the services covered under the contract and incurs loss if the cost of furnishing the services exceeds the payments under the contract.

**"SoonerCare"** means the Oklahoma Medicaid program.

**"Soon-To-Be-Sooner"** means Oklahoma's separate CHIP providing coverage to unborn children of families earning up to and including one hundred eighty-five percent (185%) of the FPL.

**"Specialty Children's Plan"** means the single statewide managed care plan, as contracted with a single MCO, that will coordinate and deliver health care services, as defined by contract, in a highly coordinated manner to the specialty population. The specialty population includes Medicaid eligibles who are FFC, select juvenile justice involved Office of Juvenile Affairs (OJA), in foster care (FC), children with an open prevention services case (PSC) through case workers or receiving adoption assistance (AA).

**"State Plan"** means an agreement between OHCA and CMS describing how Oklahoma administers its Medicaid and CHIP programs.

**"Steady state enrollment"** means the period of time, as defined by contract, when an individual, who first became an eligible during steady state operations or who became eligible again during steady state operations after more than two (2) months lapse of eligibility, can first enroll in and select an MCO or DBM for the managed care program.

**"Steady state operations"** or **"steady state"** means the period of time, as defined by contract, after initial implementation and prior to contract termination, during which all managed care program elements are expected to be operational.

**"Third party liability"** or **"TPL"** means all or part of the expenditures for a managed care enrollee's medical assistance furnished under the Oklahoma Medicaid State Plan that may be the liability of a third-party individual, entity or program.

**"Value-added benefit"** means any benefit or service offered by an MCO or DBM when that benefit or service is not a covered benefit per the State Plan. These benefits are subject to change annually as determined by the MCO or DBM and OHCA.

**"Value-based payment arrangement"** means a payment arrangement between an MCO or DBM and its participating providers when payment is intentionally aligned with quality measures OHCA applies to the MCO or DBM.

**"Value-based purchasing"** means the provisions of a contract for managed care services when those provisions intentionally align OHCA payments to the MCO or DBM under contract with quality measures or other performance factors OHCA may apply to the MCO or DBM.

## **SUBCHAPTER 3. GENERAL PROGRAM INFORMATION**

### **PART 1. ELIGIBILITY**

#### **317:55-3-1. Mandatory populations**

(a) **Mandatory MCO enrollment.** Per 56 O.S. § 4002.3, eligibles in the following categories will be mandatorily enrolled in the MCP and with an MCO:

- (1) Expansion adults;
- (2) Parents and caretaker relatives;
- (3) Pregnant women;
- (4) Deemed newborns;
- (5) Children; and
- (6) All other populations requiring mandatory coverage pursuant to in 42 C.F.R. Part 435, Subpart B (§§ 435.100 435.172), unless otherwise covered by Sooner-Care.

(b) **Mandatory Specialty Children's Plan enrollment.** Per 56 O.S. § 4002.3, eligibles in the following categories, upon entering custody of the State, will be mandatorily enrolled in the MCP and with the MCO under contract to provide the Specialty Children's Plan:

- (1) Foster children (FC); and



- (2) Certain children in the custody of OJA.
- (c) **Mandatory Specialty Children's Plan enrollment, opt out.** Per 56 O.S. § 4002.3, eligibles in the following categories will be mandatorily enrolled in the MCP and with the MCO under contract to provide the Specialty Children's Plan, if they do not select a different MCO during initial enrollment, open enrollment, or steady state enrollment:
  - (1) Former foster care (FFC); and
  - (2) Children receiving adoption assistance (AA).
- (d) **Mandatory DBM enrollment.** Per 56 O.S. § 4002.3, the following eligibles will be mandatorily enrolled in the MCP and with a DBM:
  - (1) Expansion adults;
  - (2) Parents and caretaker relatives;
  - (3) Pregnant women;
  - (4) Deemed newborns;
  - (5) Former foster children;
  - (6) Certain children in the custody of OJA;
  - (7) Foster care children;
  - (8) Children receiving adoption assistance; and
  - (9) Children.

**317:55-3-2. Excluded populations**

- (a) Per 56 O.S. § 4002.3, individuals in the following categories will be excluded from enrollment in a MCP contracted with one (1) or more MCOs:
  - (1) Dual eligible individuals;
  - (2) Individuals enrolled in the Medicare Savings Program, including Qualified Medicare Beneficiaries (QMB), Specified Low Income Medicare Beneficiaries (SLMB), Qualified Disabled Workers (QDW) and Qualified Individuals (QI);
  - (3) Persons with a nursing facility or intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care, except that enrollees who are transitioning into long-term care will remain enrolled in any MCO for up to sixty (60) days while the enrollee's level of care determination is pending. Prior to disenrollment from an MCO, such excepted enrollees will receive a facility's pre-admission screening and resident review (PASRR) process. If OHCA approves the PASRR and designates the nursing facility or ICF/IID level of care, reimbursement will be made to the facility and the enrollee will be disenrolled from their MCO;
  - (4) Individuals during a period of presumptive eligibility;
  - (5) Individuals infected with tuberculosis eligible for tuberculosis-related services under 42 C.F.R. § 435.215;
  - (6) Individuals determined eligible for SoonerCare on the basis of needing treatment for breast or cervical cancer under 42 C.F.R. § 435.213;
  - (7) Individuals enrolled in a 1915(c) waiver;
  - (8) Undocumented persons eligible for emergency services only in accordance with 42 C.F.R. § 435.139;
  - (9) Insure Oklahoma employee sponsored insurance (ESI) dependent children in accordance with the Oklahoma Title XXI State Plan;

- (10) Coverage of pregnancy-related services under Title XXI for the benefit of unborn children (Soon-to-be-Sooners), as allowed by 42 C.F.R. § 457.10; and
- (11) Individuals determined eligible for Medicaid on the basis of age, blindness or disability.
- (b) Per 56 O.S. § 4002.3, eligibles in the following categories will be excluded from enrollment in a MCP contracted with one (1) or more DBMs:
  - (1) Dual eligible individuals;
  - (2) Individuals enrolled in the Medicare Savings Program, including QMB, SLMB, QDW and QI;
  - (3) Persons with a nursing facility or ICF-IID level of care, except that enrollees who are transitioning into long-term care will remain enrolled in any DBM for up to sixty (60) days while the enrollee's level of care determination is pending. Prior to disenrollment from a DBM, such excepted enrollees will receive a facility's PASRR process. If OHCA approves the PASRR and designates the nursing facility or ICF/IID level of care, reimbursement will be made to the facility and the enrollee will be disenrolled from the DBM.
  - (4) Individuals during a period of presumptive eligibility;
  - (5) Individuals infected with tuberculosis eligible for tuberculosis-related services under 42 C.F.R. § 435.215;
  - (6) Individuals determined eligible for SoonerCare on the basis of needing treatment for breast or cervical cancer under 42 C.F.R. § 435.213;
  - (7) Individuals enrolled in a §1915(c) waiver;
  - (8) Undocumented persons eligible only for emergency services in accordance with 42 C.F.R. § 435.139;
  - (9) Insure Oklahoma Employee Sponsored Insurance (ESI) dependent children in accordance with the Oklahoma Title XXI State Plan;
  - (10) Coverage of Pregnancy-related services under Title XXI for the benefit of unborn children (Soon-to-be-Sooners), as allowed by 42 C.F.R. § 457.10; and
  - (11) Individuals determined eligible for Medicaid on the basis of age, blindness or disability.

**317:55-3-3. Voluntary enrollment and disenrollment**

- (a) Per 56 O.S. § 4002.3, AI/AN populations that are eligible for SoonerCare will have the option to:
  - (1) Voluntarily enroll in the MCP through an opt-in process;
  - (2) Enroll in an MCO or DBM at each open enrollment period, regardless of initial selection or past disenrollment from the MCP;
  - (3) Receive services from an IHCP;
  - (4) Choose the IHCP as the enrollee's PCMH provider or DH provider, if the provider has the capacity to provide such services;
  - (5) Obtain services covered under the contract from out-of-network IHCPs when the enrollee is otherwise eligible to receive the IHCP's services;
  - (6) Self-refer for services provided by IHCPs to AI/AN enrollees;

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(7) Obtain services covered under the contract from out-of-network IHCPs when the AI/AN enrollee is otherwise eligible to receive the IHCP's services; and

(8) Disenroll from any MCO or DBM at any time without cause.

(b) Children receiving prevention services from child welfare services have the option to enroll in the MCO contract to provide health care services under the Specialty Children's Plan.

## **PART 3. SCOPE AND ADMINISTRATION**

### **317:55-3-10. Grievances and appeals**

(a) **Filing.** Grievances and appeals are to be initially filed with each enrollee's MCO or DBM. Grievances may be filed with the enrollee's MCO or DBM at any time, either orally or in writing. A provider or an authorized representative may file an appeal, grievance, or request for a State fair hearing on behalf of an enrollee, provided that the provider or authorized representative has obtained the enrollee's written consent.

(b) **Levels of appeal.** Pursuant to 42 C.F.R. § 438.402, MCOs and DBMs will only have one (1) level of appeal. Enrollees and providers may file an appeal to OHCA seeking the review of a final adverse benefit determination rendered by an MCO or DBM.

(c) **Governing rules.** The provisions at OAC 317:2-1-1 et seq. will govern any enrollee or provider right to file a grievance, complaint, appeal or request for a State fair hearing pursuant to 56 O.S. § 4002-4004, 42 C.F.R. Parts 431 or 438, or the managed care contract.

### **317:55-3-11. Intermediate sanctions**

(a) **Intermediate sanctions obligation.** OHCA will establish intermediate sanctions that it may impose on an MCO if OHCA makes any of the determinations specified in 42 C.F.R. § 438.700(b)-(d).

(b) **Adoption of intermediate sanctions.** OHCA adopts the intermediate sanctions as provided at 42 C.F.R. § 438.702.

(c) **Imposition of sanctions.** If OHCA makes a determination per 42 C.F.R. §§ 438.700 or 438.706 and thereby imposes intermediate sanctions as listed at 42 C.F.R. §§ 438.702 or 438.706, OHCA will consider the totality of and follow all relevant regulations at 42 C.F.R. Part 438, Subpart I.

(d) **Required imposition of temporary management.** In accordance with 42 C.F.R. § 438.706(b), OHCA will impose the intermediate sanction of temporary management, regardless of any other sanction that may be imposed, if OHCA finds that an MCO has repeatedly failed to meet substantive requirements in sections 1903(m) or 1932 of the Act or 42 C.F.R. Part 438. In this situation, OHCA will also grant enrollees the right to terminate enrollment without cause, as described in 42 C.F.R. § 438.702(a)(3), and must notify the affected enrollees of their right to terminate enrollment. Notwithstanding any other Section of these rules, OHCA will not delay imposition of temporary management to provide a hearing before

imposing this sanction. OHCA will continue this sanction until the MCO can ensure that the sanctioned behavior will not recur.

(e) **Retained authority.** OHCA retains authority to impose additional sanctions under State statutes or State regulations that address areas of noncompliance specified in 42 C.F.R. § 438.700, as well as additional areas of noncompliance. Nothing in 42 C.F.R. Part 438, Subpart I, prevents OHCA from exercising that authority.

(f) **Notice.** Before imposing an intermediate sanction, OHCA will give the affected MCO timely written notice that explains the basis and nature of the sanction and any other appeal rights that OHCA elects to provide.

(g) **Right to request fair hearing.** Though not required under federal regulation, OHCA provides each MCO the right, upon notice of a sanction other than optional or required temporary management, to request a fair hearing before an administrative law judge (ALJ) retained by OHCA. The cost of actions necessary to process an MCO's request will be paid by OHCA.

(1) An MCO must file any request for fair hearing within thirty (30) days after receiving the notice.

(2) The ALJ has jurisdiction to hear any request under this section. The ALJ will review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the ALJ will conduct an administrative hearing according to the hearing practices of OAC 317:2-1-5, provide proposed findings of fact and conclusions of law to the parties, and send written notice to the parties of the final order sustaining or denying imposition of the sanction.

(3) At the ALJ's discretion, the ALJ will:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions;

(D) Require briefing of any or all issues;

(E) Conduct hearings in a forum and manner as determined by the ALJ;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses;

(H) Impose appropriate sanctions against any person failing to obey an order of the ALJ or authorized under the rules in this section which will include:

(i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;

(ii) Excluding all testimony of an unresponsive or evasive witness; or

(iii) Expelling the person from further participation in the hearing;

(I) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;

(J) Administer oaths or affirmations;

- (K) Determine the location of the hearing and manner in which it will be conducted;
- (L) Allow either party to request that the hearing be recorded by a court reporter with costs to be borne by the requesting party. The original of such transcription, if ordered, will be given to the ALJ with a copy to be given to the requesting party;
- (M) Recess and reconvene the hearing;
- (N) Set and/or limit the time frame of the hearing;
- (O) Make proposed findings of facts and conclusions of law; and
- (P) Sustain or deny OHCA's imposition of the sanction(s).

**317:55-3-12. Non-compliance damages and remedies**

If OHCA finds an MCO or DBM to be in violation of the provisions of 56 O.S. §§ 4002-4004, rules promulgated thereto, or the terms and conditions of the contract, OHCA may enforce any damages or remedies for non-compliance as required by CMS, as provided for in the contract, or as permitted by State or Federal law.

**317:55-3-13. Termination of managed care contract**

(a) Termination of an MCO, permitted by 42 C. F.R. § 438.708. Members impacted by the contract termination of an MCO will be enrolled with a different MCO or be provided Medicaid benefits through options as prescribed in the Oklahoma Medicaid State Plan. OHCA may terminate a contract with an MCO if OHCA determines that the MCO:

- (1) Failed to carry out the substantive terms of the contract; or
- (2) Failed to meet applicable requirements of sections 1903(m), 1905(t), or 1932 of the Act.

(b) Termination permitted by contract, MCO or DBM. Grounds for termination include:

- (1) Mutual consent. OHCA and the MCO or DBM may terminate the contract by a mutually written agreement. The MCO or DBM does not have the right to appeal the termination. Enrollees impacted by the contract termination will be enrolled with a different MCO or DBM of their choosing or, if no choice is made, a default MCO or DBM.
- (2) Termination for convenience. OHCA may terminate a contract for convenience, in whole or part, with a sixty (60) day written notice to the MCO or DBM if the State determines that termination is in the State's best interest. Any partial termination of the contract will not be construed as a waiver of, and will not affect, the rights and obligations of any party regarding portions of the contract that remain in effect. Upon receipt of notice of such termination, the MCO or DBM will immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice.
- (3) Termination for unavailability of funds. OHCA may terminate a contract for lack of the availability of funds with written notice to the managed care. OHCA

will give written notice to the MCO or DBM, effective the close of business on the day specified. OHCA is the final authority on the availability of funds, and the MCO or DBM does not have the right to appeal this termination.

(4) Termination for lack of authority. In the event that the State is determined, in whole or part, to lack Federal or State approval or authority to contract with an MCO or DBM, OHCA may terminate the contract immediately, effective on the close of business on the day specified. The MCO or DBM does not have the right to appeal this termination.

(5) Termination for default. OHCA may terminate the contract, in whole or in part, whenever the MCO has failed to carry out the terms of the contract or meet the applicable readiness requirements of §§ 1932, 1903(m) or 1905(t) of the Act.

(6) Termination for financial instability. In the event that OHCA, in its sole discretion, deems an MCO or DBM to be financially unstable to the point of threatening the ability of OHCA to obtain the services provided for under this contract, or to conduct business in the normal course, makes a general assignment for the benefit of creditors or suffers or permits the appointment of a receiver for its business or its assets, then OHCA may, at its option, immediately terminate the contract effective on the close of business on the date specified. In the event OHCA elects to terminate the contract under this provision, the MCO or DBM will be notified in writing specifying the date of termination. In the event of the filing of a petition in bankruptcy court by or against a principal subcontractor, the MCO or DBM will immediately advise OHCA. The MCO or DBM will ensure that all tasks related to the subcontract are performed in accordance with the terms of the contract.

(7) Termination for debarment. Section 1932(d)(1) of the Act prohibits affiliations with individuals debarred by federal agencies. The MCO will not knowingly have an individual or affiliate, as defined in Section 1932(d)(1)(C), who has been debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549.

(c) Notice and pre-termination hearing. Prior to terminating an MCO's contract for default, financial instability, or debarment, OHCA will provide the MCO a pre-termination hearing. OHCA will:

- (1) Give the MCO written notice of the intent to terminate, the reason for termination, and the time and place of the hearing. The notice will detail how the MCO has failed to carry out the terms of the contract and/or failed to comply with the requirements of 1932, 1903(m) and 1905(t) of the Act. A time period will be provided, if applicable, in which the MCO is allowed to cure the default prior to the pre-termination hearing. If the MCO cures the default within the specified timeframe, no further action is required;

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(2) After the hearing, the MCO will receive written notice of the decision affirming or reversing the proposed termination of the contract. In the event the decision is affirmed the notice is to include the effective date of the termination; and

(3) Upon affirmation of a decision, OHCA will give enrollees of the MCO written notice, comporting with the content requirements of 42 C.F.R. § 438.10, of the termination and information identifying options for receiving Medicaid services following the effective date of termination. This notice will be provided within five (5) business days of the affirming decision.

(d) **Hearing timing.** Though not required under federal regulation, OHCA provides each MCO the right, upon notice of a termination, to request a fair hearing before an administrative law judge (ALJ) retained by OHCA. The cost of actions necessary to process an MCO's request will be paid by OHCA.

(1) An MCO will file any request for fair hearing within thirty (30) days after receiving the notice.

(2) The ALJ has jurisdiction to hear any request under this section. The ALJ will review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the ALJ will conduct an administrative hearing according to the hearing practices of OAC 317:2-1-5, provide proposed findings of fact and conclusions of law to the parties, and send written notice to the parties of the final order sustaining or denying imposition of the sanction.

(3) At the ALJ's discretion, the ALJ will:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions;

(D) Require briefing of any or all issues;

(E) Conduct hearings in a forum and manner as determined by the ALJ;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses;

(H) Impose appropriate sanctions against any person failing to obey an order of the ALJ or authorized under the rules in this section which will include:

(i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;

(ii) Excluding all testimony of an unresponsive or evasive witness; or

(iii) Expelling the person from further participation in the hearing;

(I) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;

(J) Administer oaths or affirmations;

(K) Determine the location of the hearing and manner in which it will be conducted;

(L) Allow either party to request that the hearing be recorded by a court reporter with costs to be borne by

the requesting party. The original of such transcription, if ordered, will be given to the ALJ with a copy to be given to the requesting party;

(M) Recess and reconvene the hearing;

(N) Set and/or limit the time frame of the hearing;

(O) Make proposed findings of facts and conclusions of law; and

(P) Sustain or deny OHCA's imposition of the termination(s).

### **317:55-3-14. Record retention**

In addition to the requirements found at OAC 317:30-3-15 and 317:30-5-70.2, the MCO or DBM and its affiliates, sub-contractors, and employees must retain records in compliance with the provisions and spirit of 42 C.F.R. §§ 438.3(h) and (u), to the extent applicable.

## **PART 5. REQUIRED FEDERAL AUTHORIZATIONS**

### **317:55-3-20. Authorizations**

Prior to the implementation of any MCP authorized under 42 C.F.R. Part 438, OHCA will receive the following authorizations:

(1) Federal authority through a State Plan Amendment or waiver of the Act;

(2) CMS approval of each contract in relation to the MCP;

(3) CMS approval of all contract rates authorized under the MCP; and

(4) CMS approval of direct payment arrangements authorized under the MCP.

### **317:55-3-21. Timing**

OHCA may only execute transition to a managed care delivery system ninety (90) days after CMS has approved all contracts entered into between OHCA and all MCOs or DBMs following OHCA's submission of readiness review results to CMS, pursuant to 42 C.F.R. § 438.66.

## **SUBCHAPTER 5. REQUIREMENTS FOR MANAGED CARE ORGANIZATIONS AND DENTAL BENEFITS MANAGERS**

### **PART 1. ACCREDITATION AND READINESS**

#### **317:55-5-1. MCO or DBM accreditation**

All MCOs and DBMs will be accredited in accordance with 45 C.F.R. § 165.275 by an accrediting entity recognized by the United States Department of Health and Human Services.

**317:55-5-2. MCO or DBM readiness**

(a) According to 42 C.F.R. § 438.66, during implementation and prior to enrollment effective dates, the MCO or DBM will participate in a readiness review process. To be deemed eligible to effect enrollments, the MCO or DBM will complete all readiness review activities to the satisfaction of OHCA and CMS. The readiness reviews will be conducted through one (1) or more desk reviews and one or more on-site reviews. The MCO or DBM must satisfactorily demonstrate readiness for MCP operations, including but not limited to focus areas identified at 42 C.F.R. § 438.66(b). At any stage(s) of the readiness review process, OHCA may but is not required to provide an MCO or DBM with notice(s) of deficiency and reasonable opportunity(ies) to cure the deficiency. As between the parties to the managed care contract, OHCA has sole authority to determine the readiness of any MCO or DBM.

(b) As a part of any readiness review, OHCA will ensure the MCO or DBM meets the requirements at 56 O.S. § 4002.10.

**PART 3. PROVIDER REQUIREMENTS**

**317:55-5-10. Provider contracts and credentialing standards**

(a) All MCOs and DBMs will formally credential and recredential network providers at a frequency required by a single, consolidated provider enrollment and credentialing process established by OHCA in accordance with 42 C.F.R. § 438.214 and in coordination with MCOs and DBMs.

(b) All MCOs and DBMs will contract to the extent possible and practicable with all essential community providers who receive directed payments in accordance with 42 C.F.R. Part 438 and any other providers as specified by OHCA through contract.

(c) Every MCO and DBM will contract with every participating provider through a written provider agreement that:

- (1) Identifies the contractual obligations between the MCO or DBM and the participating provider; and
- (2) Incorporates any provision required by the contract between OHCA and the MCO or DBM for inclusion in the provider agreement.

(d) An MCO or DBM or any subcontractor thereof will not enforce with any provider a policy or contract term that requires the provider to contract for all products currently offered or that may be offered in the future by the MCO, DBM, or subcontractor.

**317:55-5-11. Network adequacy standards**

In accordance with 42 C.F.R. § 438.604, the MCO or DBM will submit documentation for which OHCA will base its certification to CMS that the MCO or DBM has complied with requirements for availability and accessibility of services, including health professional shortage areas and adequacy of the MCO's or DBM's network, as set forth in 42 C.F.R. §§ 438.206, 438.14 and 438.68.

**317:55-5-12. Prior authorization requirements, generally**

The OHCA will establish prior authorization requirements that are consistent with 56 O.S. §§ 4002-4004. MCOs and DBMs may establish prior authorization of benefits to the extent these are consistent with OHCA's policies and rules. The MCO or DBM may propose to impose additional prior authorization requirements, subject to OHCA's review and approval, except for those benefits identified in the Oklahoma Medicaid State Plan, rules, or practices as exempt from prior authorization. The MCO or DBM may be less restrictive on the requirements of a prior authorization than OHCA but may not impose greater restrictions.

**317:55-5-13. Notification of material change**

An MCO or DBM will promptly, within one (1) business day, notify OHCA of all changes materially affecting the delivery of care or the administration of the MCP.

**317:55-5-14. Patient data**

An MCO or DBM will provide patient data to a provider upon request to the extent allowed under federal or State laws, rules, or regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996.

**PART 5. FINANCE**

**317:55-5-20. Capitation rates**

OHCA will contract with an actuary, as defined at 42 C.F.R. § 438.2, to establish actuarially sound capitation rates, as described at 42 C.F.R. §§ 438.3(c), 438.4, and 438.5, for OHCA to pay to MCOs and DBMs.

**317:55-5-21. Medical loss ratio**

An MCO or DBM will have a medical loss ratio that, at minimum, meets the standards provided by 42 C.F.R. § 438.8.

**317:55-5-22. Value-based purchasing**

In any contract for managed care services, OHCA may include provisions in which payments OHCA makes to an MCO or DBM are based in whole or in part on quality measures and/or any other performance metric as defined in the contract.

**317:55-5-23. Special contract provisions related to payment**

(a) **Federal regulation.** Any special contract provision related to payment, as described at 42 C.F.R. § 438.6, will meet all related standards within the federal regulation.

(b) **Provider payments.**

(1) OHCA will establish minimum rates of reimbursement paid by MCOs and DBPs to providers who choose not to enter into value-based payment arrangements for health care items and services furnished by such providers to enrollees.

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(A) For participating providers, the reimbursement rate until July 1, 2026, will be equal to or greater than one hundred percent (100%) of the reimbursement rate for the applicable item or service per the applicable OHCA fee schedule.

(B) For non-participating providers and subject to CMS approval as a directed payment or otherwise, the reimbursement rate, until July 1, 2026, will be equal to or greater than ninety percent (90%) of the reimbursement rate for the applicable item or service provided by a non-participating provider per the applicable OHCA fee schedule as of January 1, 2021.

(2) Notwithstanding any other provision of this section, OHCA will comply with payment methodologies required by federal law or regulation for specific types of providers including, but not limited to, Federally Qualified Health Centers (FQHCs), rural health clinics (RHCs), pharmacies, Indian Health Care Providers (IHCPs), and emergency services.

(c) **Optional value-based payments.** The MCO or DBM will offer optional value-based payment arrangements to all providers. Reimbursement amounts to providers in value-based payment arrangements align with the quality measures OHCA applies to MCOs or DBMs, respectively.

### **317:55-5-24. Hospital readmission damages**

The OHCA will establish a hospital readmission damage program to reduce potentially preventable readmissions. The program will use a nationally recognized tool to establish a base measurement year and a performance year and will provide for risk-adjustment based on the population of the state Medicaid program covered by the MCOs or DBMs. The program will be fully described in the managed care contract so that the program will be founded on contract-current tools, populations, and other factors.

### **317:55-5-25. Claims processing and methodology; post payment audits**

(a) **Claims payment systems.** The MCO or DBM will maintain a claims payment system capable of processing and adjudicating claims for payment in an accurate and timely manner and in full compliance with all State and Federal laws.

(b) **Claim filing.** A claim that is filed by a provider within six (6) months of the date the item or service was furnished will be considered timely, per Oklahoma Administrative Code (OAC) 317:30-3-11.

(c) **Clean claims.** The MCO or DBM will process a clean claim within the time frame outlined in 36 O.S. § 1219.

(1) The MCO or DBM will ensure that at least ninety percent (90%) of clean claims received from all providers are paid within fourteen (14) days of receipt.

(2) A clean claim that is not processed within the time frame will bear simple interest at the monthly rate of one and one-half percent (1.5%), which is payable to the provider.

(d) **Additional documentation.** After a claim has been paid but not prior to payment, the MCO or DBM may request medical records, if additional documentation is needed to review the claim for medical necessity.

(e) **Claim denials.**

(1) A claim denial will include the following information:

(A) Detailed explanation of the basis for the denial; and

(B) Detailed description of the additional information necessary to substantiate the claim.

(2) The MCO or DBM will establish a process for all claim denials by which the provider may identify and provide additional information to substantiate the claim.

(3) A provider will have six (6) months from the receipt of a claim denial to file an appeal per OAC 317:2-3-10.

(f) **Post payment audits.**

(1) In accordance with OAC 317:30-5-70.2, the MCO or DBM will comply with the post payment audit process established by OHCA.

(2) The MCO or DBM will adhere to limits set forth by OHCA regarding the percentage of claims that can be subjected to post payment audits.

(3) An MCO or DBM who has a claims denial error rate of greater than five percent (5%) will be subject to damages as set forth by OHCA in the managed care contract.

## **PART 7. THE MANAGED CARE QUALITY ADVISORY COMMITTEE**

### **317:55-5-30. Managed care quality advisory committee**

(a) The Chief Executive Officer (CEO) of OHCA will establish and appoint members to the MC Quality Advisory Committee (Committee). Committee members serve without compensation and at the pleasure of the CEO. The Committee will consist of:

(1) Participating providers as a majority of the Committee members;

(2) Representatives of hospitals and health systems;

(3) Members of the health care community; and

(4) Members of the academic community with an expertise in health care or other applicable field.

(b) The primary power and duty of the Committee is set forth at 56 O.S. § 4002.13.

(c) Committee meetings will be subject to the Oklahoma Open Meeting Act.

(d) The Committee will select from among its membership a chair and vice chair.

(e) The Committee may meet as often as may be required in order to perform the duties imposed on it.

(f) A quorum of the Committee will be required to approve any final action of the Committee. A majority of the members of the Committee will constitute a quorum.

**317:55-5-31. Quality scorecard**

- (a) Within one (1) year of beginning steady state operations of any MCP, OHCA will create a quality scorecard, in accordance with 56 O.S. § 4002.11, that compares MCOs to one another and DBMs to one another.
(b) OHCA will provide the most recent quarterly scorecard for initial enrollees during choice counseling.
(c) OHCA will provide the most recent quarterly scorecard to all enrollees at the beginning of each open enrollment period.
(d) OHCA will publish each quarterly scorecard on its website.

PART 9. ACCOUNTABLE CARE ORGANIZATIONS

**317:55-5-40. Accountable care organization, no prohibition**

OHCA will not contract with or otherwise prohibit an MCO or DBM from contracting with a statewide or regional ACO to implement the capitated managed care delivery model of the State Medicaid program.

**317:55-5-41. Accountable care organization, duties**

- (a) Any MCO or DBM that contracts with an ACO will retain full responsibility as to all terms of the MCO's or DBM's managed care contract with OHCA.
(b) The MCO or DBM will track and report quality metrics of any contracted ACO in accordance with the terms of the MCO's or DBM's managed care contract with OHCA.
(c) The MCO or DBM will timely and accurately collect and analyze data related to patient utilization and costs. All such data and analysis will be shared with OHCA.
(d) The MCO or DBM in coordination with the ACO must use collected data to improve quality and target patients for care management interventions and program.

[OAR Docket #22-447; filed 6-23-22]

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

[OAR Docket #22-476]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
320:15-1-1 [AMENDED]
320:15-1-3 [AMENDED]
Subchapter 2. Grant Applications
320:15-2-1 [AMENDED]
320:15-2-2 [AMENDED]
320:15-2-3 [AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 24, 2021

COMMENT PERIOD:

December 15, 2021, through January 18, 2022

PUBLIC HEARING:

January 18, 2022

ADOPTION:

January 26, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 2, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The Oklahoma Heritage Preservation Grant Program provides financial assistance to cities, counties, non-profit organizations, and tribal governments to operate and improve the effectiveness of museums and historical organizations. The purpose of the Heritage Preservation Grant Program is to encourage the collecting, preserving, and sharing of Oklahoma history. Proposed changes to the rules include 320:15-1-1, which removes an outdated objective of the program. Proposed changes to 320:15-1-3 clarifies definitions to "cash match," "not-for-profit historical organization," and "strategic plan," and creates a definition for "capacity building." Proposed changes to 320:15-2-1 include increasing the eligibility threshold for an organization's operating budget, changing the financial match for organizations requesting less than \$5,000 from a cash match to the option of an in-kind match. Proposed changes are being made to the list of ineligible expenses to clarify expenses related to historic preservation and allowing for certain expenses to be considered on a case-by-case basis and/or addressed in the grant contract as needed. Proposed changes to 320:15-2-2 add two additional examples of items utilized to formulate a score under weighted criteria; project budget and strength of strategic plan (if applicable). Proposed changes to 320:15-2-3 creates additions to the list of typical projects to reflect changes to the rules made last year that now allow for certain types of historic preservation funding, as well as, clarifying expectations of digitization and copyright/fair use. Additional changes outline staff member involvement in evaluation process and the process for project and/or budget modification.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PROPOSED PERMANENT RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

320:15-1-1. Purpose

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

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~~(1) Create a statewide, online database that identifies collections, programs, and exhibits that will encourage the sharing of resources between institutions.~~

(21) Encourage improvement in the care of collections, a higher quality of exhibits, and the expansion of Oklahoma history programs at the local level where a sense of community and the spirit of volunteerism are assets that can be tapped for historical purposes.

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

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

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

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

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

**"Capital Improvement"** means or refers to a durable upgrade, adaptation, or enhancement of a property that increases its value, often involving a structural change. Provided, however, it does not include any improvements to items in collections, or collections care, nor any modification or improvements made to exhibits or installing exhibits.

**"Cash match"** means or refers to the money that the applicant organization will provide toward the project. This money can be from a number of sources, examples include: general operations, donation, or a fundraiser. Cash match would not include the salary of a full-time staff member already working for the applicant organization. Matching funds must be expended after the grant contract is signed.

**"Collections"** means or refers to the objects, photographs, manuscripts, videos, audio recordings, maps, periodicals, microforms, books, vertical files, archaeological material, historic buildings, or oral histories.

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

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

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

**"Historic Buildings"** means or refers to a structure listed or eligible for listing on the National Register of Historic Places.

**"Indirect costs"** means or refers to an organization's overhead, administrative, or other expenses not directly related to the project and also possibly supporting other projects or functions. An example of this would be another division of the applicant organization managing the financial aspects of the grant and wanting a percentage of the grant funds to pay for the financial overhead costs incurred.

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

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

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

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

**"Not-for-profit historical organization"** means or refers to museums, historic sites, historical associations, historic preservation organizations, archives, libraries with special collections, or genealogical associations. These organizations must be located in the state of Oklahoma, be registered and in good standing with the Oklahoma Secretary of State as a domestic not for profit, and feature Oklahoma history as a major component of their mission.

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

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

**"OHS staff review committee"** means or refers to the OHS staff members selected by the OHS Executive Director who will evaluate applications based on the weighted criteria and adherence to program requirements. The OHS Grants Administrator is excluded from appointment to this committee and has no grant decision making power.

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

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

**"Organizational Development"** means or refers to training for board and staff, professional assistance with organizational issues, improving governance structures, volunteer or membership program development, and assessments or strategic plans (including paid facilitators/consultants).

**"Operating budget"** means or refers to the most recent operating budget approved for the applicant organization. This budget shall include staff salaries but exclude non-reoccurring costs. Applicants of tribal or municipal governments may use the operating budget of the division in which the project will take place. If an applicant organization is a sub-entity of tribal or municipal government but is a historical organization



(museum, historic site, historical association, archive, library with special collection or genealogical association) they will use the sub-entity's operating budget. Support organizations must use the operating budget of the primary beneficiary of the grant funds, regardless of the funding source of that operating budget. Libraries with special collections may use the operating budget allotted to special collections. An example of this would be a city government applying for a grant to digitize historic maps. This applicant would use the operating budget for the division which oversees archives, not the entire budget of the city government.

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

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

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

**"Repair"** means or refers to fix or mend a thing suffering from damage or fault, or refers to fixing or repairing of facilities, not the repair of items in collections.

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

**"Support groups"** means or refers to a not-for-profit organization whose purpose is to support the mission and provide financial support to the applicant organization. This term could also include friend's groups or foundations. An example of this would be a library operated by an institute of higher learning having a friend's group that supports the organization through applying for grants, receiving and managing donations, or hosting donor events.

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

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

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

## SUBCHAPTER 2. GRANT APPLICATIONS

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

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

- (1) Applicants must be municipal, county, or tribal governments, not-for-profit historical organizations as defined in section 320:15-1-3, or a support group of a municipal, county, or tribal government or a not-for-profit historical organizations.

(2) Applicant organizations must be engaged in the collection, preservation, and sharing of collections that may include but are not limited to: objects, photographs, manuscripts, videos, audio recordings, maps, periodicals, microforms, books, vertical files, archaeological material, or historic buildings.

(3) Applicant organizations must have a strategic plan for their organization. If an organization does not have a strategic plan, the only project that will be eligible for consideration is the development of a strategic plan.

(4) Applicant organizations must have an operating budget under ~~\$300,00~~ \$500,000.

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

(1) The minimum amount requested shall be \$1,000 and the maximum amount requested shall be \$20,000, with the exception of grant requests for the development of a strategic plan which shall be a minimum of \$500 to and a maximum of \$5,000.

(2) Applicants requesting \$5,000 to \$20,000 in grant funds must provide a cash match of ten (10) percent of the total grant funds ~~awarded~~ distributed by the OHS. Applicants requesting less than \$5,000 must provide a financial match (cash or in-kind) of ten (10) percent of the total grant funds distributed by the OHS.

(3) Proposed projects must be completed within twelve (12) months of receipt of grant contract.

(c) **Ineligible Project Expenses.** The following expenses will not be eligible for a grant funding:

(1) Repair, maintenance, or expansion of facilities (projects affecting a facility that is directly related to collections, collections care, or exhibits will be considered)

(2) Rent or mortgage payments

(3) Utilities or insurance

(4) Salaries, wages, or benefits for employees (project-specific salaries will be considered)

(5) Creation of new monuments, sculptures, murals, or other works of art, unless it serves as an integral part of a larger exhibit

(6) Acquisition of real estate

(7) Landscaping or site work, unless it serves as an exhibit, an integral part of an exhibit, or educational program

(8) Planning for new construction

(9) Indirect costs

(10) ~~Food or drink~~ Projects to remodel or modernize building interiors unrelated to collections, collections care, or exhibit construction.

(11) Fundraising events

(12) ~~Digitization of materials for which the applicant organization or primary beneficiary does not hold copyright or permission from the copyright holder.~~ Entities utilizing federal and/or state historic tax credits for proposed project.

(13) Historic preservation projects that are part of a federal undertaking

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

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

- (1) Historical importance of the collections or theme of the applicant organization as defined by the most current OHS Historic Context Review Report (available upon request), which is in effect at the time of the solicitation of proposals. This criteria shall be weighted at a factor of three (3).
- (2) Project potential, which may include, fulfilling a demonstrated need in the community or for the applicant organization, economic impact on community or organization, publicly accessible product/service, project sustainability, possible impact on the scope of collections, or produces measurable outcomes. This criteria shall be weighted at a factor of five (5).
- (3) Institutional readiness of applicant organization, which may include past accomplishments, programming/activities, facilities, base of support, strength of organizational strategic plan, community engagement, participation of board members/volunteers, accessibility to the public, or record of collecting experience/care. This criteria shall be weighted a factor of three (3).
- (4) Implementation of project, which may include a clear and comprehensive explanation of the project, a clear explanation of how the project will be accomplished, development of project budget based on vendor quotes or market-based research, identification of staff, volunteer, and/or third-party vendor responsibilities, identification of deadlines, method for gauging project impact, or ability to complete project within one year. This criteria shall be weighted at a factor of three (3).
- (5) Organizational impact, which may include a description of how the project fits into the long-term goals or strategic plan of the applicant organization, a description of how the project will increase the ability to attract and diversify future funders, and the ability to capitalize on the project's success to springboard into future projects/collaborations. This criteria shall be weighted at a factor of three (3).
- (6) Failure to meet requirements from past Heritage Preservation Grant award (if applicable). This criteria shall be weighted at a factor of negative two (-2).

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

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

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

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

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

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

- (1) Storage, management, and/or care of collections
- (2) Conducting, transcribing, or cataloging oral histories
- (3) Digital conversion of historical collections (copyright and fair use will be the responsibility of the applicant organization, however the OHS reserves the right to not fund digitization projects for which there are concerns about copyright).
- (4) Preservation assessments
- (5) Emergency Preparedness Efforts
- (6) Environmental assessments and monitoring systems
- (7) Exhibit research, writing, graphic design, fabricating, mounting, and installation
- (8) Production or installation of audio/visual components of exhibits
- (9) Governance capacity building, including board development, constitution and bylaws, or policies and procedures
- (10) Strategic plan/succession planning
- (11) Board, staff, and volunteer training
- (12) Public programs, such as guided tours, classes, or lectures
- (13) Publications
- (14) Historical markers
- (15) Website development
- (16) ~~Regional~~ Educational workshops
- (17) Acquisition of collections
- (18) Archeological/architectural/historical surveys
- (19) Archaeological field work
- (20) Preservation covenant/easement preparation

(e) **Application requirements.** Application forms will be available online through the Oklahoma Historical Society's website following the announcement of solicitation of proposals. This form must be submitted online following the instructions on the website. Applicants with questions regarding the application may contact the OHS Grants office. Any staff member(s) designated to facilitate the grant program ~~responding directly to questions regarding the grants process~~ will not be part of the evaluation or award decision process.

- (1) The following information will be requested in the application:

- (A) Project name
  - (B) Organization with name and contact information of authorizing official
  - (C) Organization status (non-profit, governmental entity, tribal)
  - (D) Filing number with the Oklahoma Secretary of State, if applicant organization is a domestic not-for-profit.
  - (E) Organization type (museum, historic site, historical society, library with special collection, or archive, etc.)
  - (F) Organization description (including, if applicable, existing programs, scope and approximate number of collections, visitation, sources of financial support, participation of board members, and total membership)
  - (G) Accessibility to the public (this may include hours of operation, website, social media, workshops, or regularly scheduled meetings)
  - (H) Key staff/volunteers (if applicable) and board members
  - (I) Project summary
  - (J) Plan for project and organizational sustainability
  - (K) Project cost
  - (L) Amount requested
  - (M) Source of ten (10) percent cash/financial match
  - (N) Strategic plan (not applicable if grant request is for strategic plan development)
  - (O) Organization's annual budget
  - (P) Timeline of project
  - (Q) Date board of directors approved submitting a project proposal
  - (R) Proposed project budget which shall account for items outlined in project narrative, account for applicant organization's cash match, and include quotes from vendors or use of market research to formulate budget
  - (S) Any other information as may be requested
- (2) OHS staff will evaluate all project proposals and certify whether each meets the minimum eligibility requirements. Incomplete applications, or applications received after the application deadline will not be considered.
- (3) Only one completed application will be considered per organization each grant selection cycle.
- (f) **Draft application.** Applicant organizations may voluntarily send a draft application to the Grants Administrator for feedback. This draft application must be sent following the guidelines and due date found on the OHS website. Participation in the draft application feedback will not guarantee funding nor will non participation negatively affect an organization's ability to receive funding. The applicant organization is able to accept or disregard in whole or part the recommendations offered by the Grants Administrator. It is important to remember that the Grants Administrator does not have grant decision making authority.
- (g) **Application evaluation and awards.**
- (1) The OHS staff review committee appointed by the OHS Executive Director, shall rank the proposed projects using the weighted criteria. The OHS staff member(s) designated to facilitate the program and grant application process will be excluded from appointment to this committee.
- (2) Using the established weighted criteria (320:15-2-2[1-6]), a rating of one (1) to five (5) will be applied to each criteria, with one (1) signifying minimum value and five (5) signifying maximum value. The rating then will be multiplied by the weight assigned to each criteria to determine a total value. In making the list for recommendation the OHS staff review committee shall evaluate based on the weighted criteria and adherence to statutory and regulatory program requirements. These requirements are geographic balance, cash/local financial match, the existence of a strategic plan for the applicant organization, tribal division, or governmental department, as well as, consideration of failure to meet requirements from past Heritage Grant awards.
- (3) The OHS Executive Director shall submit the staff evaluations and accompanying recommendations to the Oklahoma Heritage Preservation Grant Review Committee for review and recommendation to the full Board.
- (4) The OHS Board of Directors will make the final decision of which projects will be funded, the amount of each grant, and the number of organizations to receive a grant. In awarding grants the Board will, in accordance with statutory requirements, give preference to projects affecting collections, educational programs, and exhibits (53 O.S. Section 415). Because the grant application procedure(s) are not individual proceedings, the awarding of grants by the Board is not subject to appeal under the Administrative Procedures Act.
- (5) The OHS will initiate a contract with each grant recipient. Modifications to project scope or project budget, in excess of ten percent of any line item/spending category will require prior approval in writing from OHS executive director.
- (6) The Grants Administrator may contact the applicant organization for clarification or for additional information regarding an application.
- (7) No employee of the OHS shall act as an individually paid third-party vendor for a project with an applicant organization that receives grant funds.
- (h) **Payment procedures.** Where applicable, payments for projects, programs, services, or activities for the Heritage Preservation Grant Program will be made according to the Central Purchasing Act (74 O.S. Section 85.1 et seq.) and Central Purchasing Rules as established by the Oklahoma Office of Management and Enterprise Services Administrative rules OAC 260:115. Grant recipients must submit documentation for completed work and invoices to receive reimbursement as the project moves forward. All reimbursements will be made after proof that work has been completed.
- (i) **Audit.**

# Permanent Final Adoptions

(1) The grantee shall retain all books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the successful grant recipient agrees any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant contract.

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

[OAR Docket #22-476; filed 6-27-22]

## TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 40. VETERINARIAN PRACTICES AND RESTRICTIONS

[OAR Docket #22-570]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

325:40-1-2 [AMENDED]

### AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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

November 4, 2021

### COMMENT PERIOD:

December 2, 2021, and ending January 6, 2022

### PUBLIC HEARING:

January 6, 2022

### ADOPTION:

February 17, 2022

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

February 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule amendments modify definitions.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

### 325:40-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Act"** means the Oklahoma Horse Racing Act 3A O.S. § 200 et seq.

**"Administer"** means the application of any veterinary treatment permitted under the Oklahoma Veterinary Practice Act, 59 O.S., § 698.1 et seq.

**"Animal chiropractic diagnosis and treatment"** means treatment that includes vertebral subluxation complex and spinal manipulation of horses. The term "animal chiropractic diagnosis and treatment" shall not be interpreted to allow taking x-rays, performing surgery, administering medications, or offering traditional veterinary care.

**"Commissioner"** means a member of the Oklahoma Horse Racing Commission.

**"Day"** means a 24-hour period beginning and ending at midnight.

**"Direct supervision"** means directions have been given to a registered veterinary technician for medical care following the examination of a horse by the Commission licensed veterinarian responsible for the professional care of the horse.

**"Enclosure"** means all buildings, structures, and grounds utilized for the conduct of the Organization license race meetings and gaming at the race track and shall include both public areas and any additional areas with restricted access designated by the Commission.

**"Entered horse"** means a horse appearing on the overnight sheet posted by the Racing Secretary.

**"Horse"** means any equine including mares, fillies, stallions, colts, ridglings and geldings.

**"Occupation license"** means a state requirement for any person acting in any capacity pursuant to the provisions of the Act.

**"Official Veterinarian"** means a person who is licensed to practice veterinary medicine by the State of Oklahoma and employed by the Commission and qualified and licensed by the Commission as an Official Veterinarian.

**"Organization license"** means a state requirement for any person or entity conducting a race meeting in Oklahoma within the minimum standards required by the Act and the rules of the Commission.

**"Owner"** means any person who holds in whole or in part, any right, title or interest in a horse or any person who is a lessee or lessor of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

**"Permitted substance"** means any substance having a listed threshold for a particular breed of horse unless otherwise specified by Commission rules.

"Practicing veterinarian" means a person employed by a trainer or owner to medically treat horses, is licensed to practice veterinary medicine by the State of Oklahoma, and is licensed as a veterinarian by the Commission.

"Prohibited substance" means any substance, chemical, or analog that is not listed by Commission rules as a permitted substance for a particular breed of horse or is not a naturally occurring substance.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when live races are conducted at that racetrack.

"Racing Veterinarian" means a person who is licensed to practice veterinary medicine by the State of Oklahoma, employed by the organization licensee, and qualified and licensed by the Commission as a Racing Veterinarian.

"Registered veterinary technician" means a person who is registered by the Oklahoma Board of Veterinary Medical Examiners and licensed by the Commission as a registered veterinary technician.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Substance" means any kind of physical matter existing in a solid, liquid, or gaseous state or some combination thereof and includes any drugs or medications referred to under the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq.

"Teeth floating" means, as provided by a non-veterinary equine dental care provider, the removal of enamel points and the smoothing, contouring and leveling of dental arcades and incisors of horses' teeth.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Veterinarian-client-patient relationship" means the practicing veterinarian has assumed the responsibility for making medical judgements regarding the health of the horse and the need for medical treatment, and the trainer, owner or other caretaker has agreed to follow the instructions of the practicing veterinarian; there is sufficient knowledge of the horse by the practicing veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the horse or horses in that the practicing veterinarian has recently seen or is personally acquainted with the keeping and care of the horse or the practicing veterinarian has made medically necessary and timely visits to the premises where the horse is stabled; the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy, or has arranged for emergency medical coverage; and the practicing veterinarian's actions would conform to applicable state and federal law and regulations.

"Veterinary prescription medications" means such prescription substance as are in the possession of practicing veterinarians regularly and lawfully engaged in the practice of veterinary medicine and the federal Food and Drug Administration-approved human medications for animals which because of their toxicity or other potential for harmful effects, or method of use, or the collateral measures necessary for use, are labeled by the manufacturer or distributor in compliance with federal law and regulations to be sold only to or on the

prescription order or under the supervision of a licensed veterinarian for use in the course of professional practice. Veterinary prescription medications shall not include over-the-counter products for which adequate directions for lay use can be written.

"Week" means a seven (7) day period.

"Year" means a 365 day period.

[OAR Docket #22-570; filed 7-7-22]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 45. PROHIBITED PRACTICES AND EQUINE TESTING**

[OAR Docket #22-571]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

325:45-1-2 [AMENDED]

**AUTHORITY:**

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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

November 4, 2021

**COMMENT PERIOD:**

December 2, 2021, and ending January 6, 2022

**PUBLIC HEARING:**

January 6, 2022

**ADOPTION:**

February 17, 2022

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

February 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule amendments are necessary to modify definitions.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**325:45-1-2. Definitions**

In addition to the definitions provided at 3A O.S. § 200.1, the following words or terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

## Permanent Final Adoptions

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"**Act**" means the Oklahoma Horse Racing Act 3A O.S. § 200 et seq.

"**Analog**" means any chemical with structural or chemical similarity to the parent or original chemical.

"**Assistant Trainer**" means a person qualified and licensed by the Commission as an Assistant Trainer.

"**Biological sample**" means any physical sample collected from any part of a horse.

"**Bleeder**" means a horse that is bleeding through one or both nostrils or hemorrhaging in the lumen of the respiratory tract during or following exercise or a race.

"**Chemical**" means a substance having a specific molecular composition.

"**Commissioner**" means a member of the Oklahoma Horse Racing Commission.

"**Compound substance**" means combining two or more substances which constitutes the development of a new substance.

"**Conditions of a race**" means the requirements which determine the eligibility of a horse to be entered in a race.

"**Day**" means a 24-hour period beginning and ending at midnight.

"**Enclosure**" means all buildings, structures, and grounds utilized for the conduct of the Organization licensee race meetings and gaming at the race track and shall include both public areas and any additional areas with restricted access designated by the Commission.

"**Entered horse**" means a horse appearing on the overnight sheet posted by the Racing Secretary.

"**Horse**" means any equine including mares, fillies, stallions, colts, ridglings, and geldings.

"**Intra-articular injection**" means the injection of a substance into a joint space.

"**Listed threshold**" means the maximum concentration of a substance detected in a post-race test which is permitted within a particular breed of horse by Commission rules.

"**Metabolite**" or "**metabolic derivative**" means any by-product resulting from a substance metabolizing within a horse's body.

"**ml**" means the standard unit of volume, milliliter.

"**Naturally occurring substance**" means any chemical, analog, metabolite, or metabolic derivative that exists naturally in the body of an untreated horse.

"**ng**" means the standard unit of weight, nanogram.

"**Official Veterinarian**" means a person who is licensed to practice veterinary medicine by the State of Oklahoma and employed by the Commission and qualified and licensed by the Commission as an Official Veterinarian.

"**Official work**" means a timed work at a pre-determined distance, as recognized by Equibase.

"**Out-of-competition testing**" means any testing within the enclosure by the Official Veterinarian that is not pre-race testing or post-race testing.

"**Organization license**" means a state requirement for any person or entity conducting a race meeting in Oklahoma within the minimum standards required by the Act and the rules of the Commission.

"**Owner**" means any person who holds, in whole or in part, any right, title or interest in a horse or any person who is a lessee or lessor of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"**Parenteral administration**" means administration of substances by injection, including intravenous, intramuscular, or subcutaneous injections.

"**Permitted substance**" means any substance having a listed threshold for a particular breed of horse unless otherwise specified by Commission rules.

"**pg**" means the standard unit of weight, picogram.

"**Plasma**" means the fluid portion of the blood, which includes fibrinogen but does not include blood cells.

"**Post-race testing**" means the collection of biological samples by the Official Veterinarian or designee from any horse participating in a race and directed to report to the test barn following the finish of a race or as otherwise provided by Commission rules if the horse cannot report to the test barn.

"**Practicing veterinarian**" means a person employed by a trainer or owner to medically treat horses, is licensed to practice veterinary medicine by the State of Oklahoma, and is licensed as a veterinarian by the Commission.

"**Pre-race testing**" means the collection of biological samples by the Official Veterinarian or designee from any horse entered to participate in a race prior to the actual running of the race.

"**Prima Facie evidence**" means evidence sufficient to establish a fact unless rebutted by other evidence.

"**Primary laboratory**" means the laboratory or subcontractor of the laboratory approved by the Commission for primary analysis of biological samples.

"**Prohibited substance**" means any substance, chemical, or analog that is not listed by Commission rules as a permitted substance for a particular breed of horse or is not a naturally occurring substance.

"**Race**" means a contest between horses.

"**Race day**" means a day during a race meeting when live races are conducted at that racetrack.

"**Racing Veterinarian**" means a person who is licensed to practice veterinary medicine by the State of Oklahoma, employed by the organization licensee, and qualified and licensed by the Commission as a Racing Veterinarian.

"**Referee laboratory**" means a Commission approved laboratory which accepts referee/split samples previously reported by the primary laboratory as positive for prohibited substances, reported as exceeding the listed threshold for a permitted substance, or reported as exceeding the listed threshold of a naturally occurring substance.

"**Safety Steward**" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"**Steward**" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"**Serum**" means the liquid portion of plasma that remains after fibrinogen has been removed.

"**Substance**" means any kind of physical matter existing in a solid, liquid, or gaseous state or some combination thereof and includes any drugs or medications referred to under the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq..

"Substance violation" means any violation of medication laws or the rules contained within this Chapter.

"Test Barn" means a structure with sufficient facilities to collect biological samples in the manner required by Commission rules.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"ug" means the standard unit of weight, microgram."

"Veterinarian's list" means the veterinarian's list specified by OAC 325:20-1-23.

"Week" means a seven (7) day period.

"Year" means a 365 day period.

[OAR Docket #22-571; filed 7-7-22]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 60. RUNNING THE RACE

[OAR Docket #22-572]

RULEMAKING ACTION:

PERMANENT final adoption RULES:

RULES:

325:60-1-2 [AMENDED]

325:60-1-20 [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 4, 2021

COMMENT PERIOD:

December 2, 2021, and ending January 6, 2022

PUBLIC HEARING:

January 6, 2022

ADOPTION:

February 17, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 24, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 15, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments modify definitions and provide for steward determination of certain interference and placement of horse.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

325:60-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"Assistant Trainer" means a person qualified as and licensed by the Commission as an Assistant Trainer.

"Authorized Agent" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor on whose behalf the Agent will act, and limited to the actions as specified on the affidavit. The affidavit shall be on file with the Commission.

"Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Day" means a 24-hour period ending at midnight.

"Dangerous Riding" means a Jockey causes a serious infraction by:

(A) purposely interfering with another Horse or Jockey; or

(B) riding in a way which is far below that of a competent and careful Jockey and where it would be obvious to a competent and careful Jockey that riding in that way would likely endanger the safety of another Horse or Jockey.

"Field" means all horses competing in a race.

"Foul" means an action by any horse or Jockey that hinders or interferes with another horse or Jockey during the running of a race.

"Horse" means:

(A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) an intact equine male five (5) years of age and older.

"Inquiry" means:

(A) an investigation by the Stewards of potential interference in a contest prior to declaring the result of said contest official; or

(B) the Stewards or Commission investigation of a matter alleged to be related to the provisions of the Act or the rules of the Commission.

"Jockey" means a rider licensed to race.

"Objection" means:

(A) A written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered.

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(B) A verbal claim of foul in a race lodged by the horse's Jockey, Trainer, Owner, or the Owner's licensed Authorized Agent before the race is declared official.

**"Occupation license"** means a state requirement for any person acting in any capacity pursuant to the provisions of the Act.

**"Official order of finish"** means the order of finish of the horses in a contest as declared official by the Stewards.

**"Organization license"** means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

**"Owner"** means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

**"Post position"** means the position in the starting gate assigned to the horse for the start of the race.

**"Post time"** means the scheduled time set for the arrival of the horses at the starting gate for the race.

**"Race"** means a contest between horses.

**"Race day"** means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

**"Races"** mean:

(A) **Allowance.** An overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, sex, earnings, number of wins, and distance of race.

(B) **Claiming.** A race in which any horse starting may be claimed and purchased for a designated amount in conformance with the rules in this Title.

(C) **Exhibition.** A race on which no wagering is permitted.

(D) **Handicap.** A race in which the weights to be carried by the horses are assigned by the Racing Secretary.

(E) **Invitational.** A race in which the competing horses are selected by inviting their Owners to enter specific horses.

(F) **Maiden.** A race restricted for non-winners.

(G) **Match.** A race contested between two or more horses under conditions agreed to by their Owners.

(H) **Nomination.** A race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least seventy-two (72) hours before the first post time of the day the race is originally scheduled to be run.

(I) **Oklahoma-Bred.** A race for which entry may be restricted to accredited Oklahoma-Bred registered horses.

(J) **Overnight (Purse).** A race for which entries close at a time set by the Racing Secretary.

(K) **Progeny.** A race restricted to the offspring of a specific stallion or stallions.

(L) **Schooling.** A preparatory race for entry qualification in official races which conforms to requirements adopted by the Commission.

(M) **Stakes.** A race in which nomination, entry, or starting fees contribute to the purse.

(N) **Trial.** A race or a series of races in which horses participate for the purpose of determining eligibility for a subsequent contest.

(O) **Walkover.** A race in which only one horse starts or in which all the starters are owned by the same interest. To claim the purse, a horse must start and go the distance of the race.

**"Restricted area"** means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the Organization Licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

**"Rules"** means the rules adopted by the Commission to implement the provisions of the Act.

**"Starter"** means a horse whose stall door of the starting gate opens in front of such horse at the time the Starter (the Official) dispatches the horses.

**"Safety Steward"** means a duly appointed Racing Official with powers and duties specified by statutes or rules.

**"Steward"** means a duly appointed Racing Official with powers and duties specified by statutes or rules.

**"Trainer"** means a person qualified and licensed by the Commission as a Trainer.

**"Weigh in"** means the presentation of a Jockey to the Clerk of Scales for weighing after a race.

**"Weigh out"** means the presentation of a Jockey to the Clerk of Scales for weighing prior to a race.

## **325:60-1-20. Stewards to determine ~~fouls~~interference and extent of ~~disqualification~~placement**

~~The Stewards shall determine the extent of interference in cases of fouls or riding infractions. They may disqualify the offending horse and place it behind such other horses as in their judgment it interfered with, or they may place it last. The Stewards may determine that a horse shall be unplaced if a Horse or its Jockey has caused an interference and finished in front of the Horse it interfered with, and, if not for the interference, the Horse would have finished behind the Horse it interfered with, the interfering Horse shall be placed immediately behind the Horse with which it interfered. If the interference is a result of Dangerous Riding, the Stewards shall place the interfering Horse in last place.~~

[OAR Docket #22-572; filed 7-7-22]



**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 65. PARI-MUTUEL WAGERING**

[OAR Docket #22-573]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
325:65-1-31.1 [AMENDED]

**AUTHORITY:**

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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

November 4, 2021

**COMMENT PERIOD:**

December 2, 2021, and ending January 6, 2022

**PUBLIC HEARING:**

January 6, 2022

**ADOPTION:**

February 17, 2022

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

February 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule amendments modify definitions.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**325:65-1-31.1. Definitions**

In addition to the definitions provided in Section 200.1 Title 3A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act [3A O.S. 200, et seq.].

"Betting interest" means one or more horses in a pari-mutuel contest which are identified by a single program number for wagering purposes.

"Breakage" means the net pool minus payout.

"Carryover" means non-distributed pool monies which are retained and added to a corresponding pool in accordance with these rules.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Complaint" means a written allegation of a violation of statute or these rules.

"Contest" means a competitive racing event on which pari-mutuel wagering is conducted.

"Contestant" means an individual participant in a contest.

"Coupled entry" means two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes (also see "Entry").

"Dark day" means a day during a live race meeting when no pari-mutuel wagering is conducted.

"Day" means a 24-hour period ending at midnight.

"Dead heat" means the finish of a race in which the noses of two or more horses reach the finish line at the same time.

"Enclosure" means all buildings, structures, and grounds utilized for the conduct of race meetings and gaming at the race track and any additional areas designated by the Commission.

"Entry" means:

- (A) a horse eligible for and entered in a race, or
- (B) two or more horses, entered in the same race, which have common ties of ownership, lease or training (see "Coupled Entry").

"Expired ticket" means an outstanding ticket which was not presented for redemption within the required time period for which it was issued.

"Field" means all horses competing in a race.

"Guest organization licensee" means an association which offers licensed pari-mutuel wagering on contests conducted by another organization licensee which is the host in either the same jurisdiction or another jurisdiction.

"Handle" means the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Host organization licensee" means the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

"Inquiry" means:

- (A) an investigation by the Stewards of potential interference in a contest prior to declaring the result of said contest official; or
- (B) the Stewards or Commission investigation of a matter alleged to be related to the provisions of the Act or the rules of the Commission.

"Mutuel field" means two or more contestants treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

"Net pool" means the amount of gross ticket sales less refundable wagers and statutory commissions.

"No contest" means a race canceled for any reason by the stewards.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

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**"Official order of finish"** means the order of finish of the horses in a contest as declared official by the Stewards.

**"Organization licensee"** means any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

**"Outstanding ticket"** means a winning or refundable pari-mutuel ticket which was not cashed during the performance for which it was issued; also known as "Outs."

**"Pari-mutuel system"** means the manual, electro-mechanical or computerized system and all software (including the totalizator, account betting system and off-site betting equipment) that is used to record bets and transmit wagering data.

**"Pari-mutuel wagering"** means a form of wagering on the outcome of a contest in which all wagers are pooled and held by an organization licensee for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.

**"Payout"** means the amount of money payable to winning wagers.

**"Performance"** means a schedule of races run consecutively as one program.

**"Post position"** means the position in the starting gate assigned to the horse for the start of the race.

**"Post time"** means the scheduled time set for the arrival of the horses at the starting gate for the race.

**"Profit"** means the net pool after deduction of the amount bet on the winners.

**"Profit split"** means a division of profit among separate winning betting interests or winning betting combinations resulting in two or more payout prices.

**"Program"** means the published listing of all contests and contestants for a specific performance.

**"Race"** means a contest between horses.

**"Race day"** means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

**"Restricted area"** means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by either the organization licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

**"Result"** means that part of the official order of finish used to determine the pari-mutuel payout of pools for each individual contest.

**"Rules"** means the rules adopted by the Commission to implement the provisions of the Act.

**"Scratch"** means the act of withdrawing an entered horse from a contest after the closing of entries.

**"Simulcast"** means the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.

**"Simulcast day"** means a day on which pari-mutuel wagering is conducted only on simulcast racing.

**"Single price pool"** means an equal distribution of profit to winning betting interests or winning betting combinations through a single payout price.

**"Steward"** means a duly appointed Racing Official with powers and duties specified by statutes or rules.

**"Takeout"** means the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule.

**"Unclaimed ticket"** means:

(A) a winning or refundable pari-mutuel ticket which was not cashed during the performance for which it was issued; or

(B) proceeds which shall be remitted by the Organization Licensee to the Commission for deposit in the Oklahoma Breeding Development Fund Special Account in accordance with provisions of statute and as prescribed by the Commission.

**"Unique wager"** means:

(A) the total amount wagered on one and only one winning combination selecting the first-place finisher in each of the pick (n) contests, based upon the official order of finish, is equal to the minimum allowable wager;

(B) there is more than one combination selecting the first-place finisher in each of the pick (n) contests equal to the minimum allowable wager and all winning combinations are on one ticket or single account wagering transaction that has a unique serial number assigned by the tote company that issued the ticket and the multiple winning combinations is solely a result of a wagering interest being scratched and replaced with the post time favorite;

(C) there is more than one combination selecting the first-place finisher in each of the pick (n) contests equal to the minimum allowable wager and all winning combinations are on one ticket or single account wagering transaction that has a unique serial number assigned by the tote company that issued the ticket and the multiple winning combinations is solely a result of a dead heat;

(D) there is more than one combination selecting the first-place finisher in each of the pick (n) contests equal to the minimum allowable wager and all winning combinations are on one ticket or single account wagering transaction that has a unique serial number assigned by the tote company that issued the ticket and the multiple winning combinations is solely a result of a surface change after the pick (n) pool has closed and as a result the race is a "Win All"; or

(E) there is more than one combination selecting the first-place finisher in each of the pick (n) contests equal to the minimum allowable wager and all winning combinations are on one ticket that has a unique serial number assigned by the tote company that issued the ticket and the multiple winning combinations is solely a result of some combination of (B), (C), and (D) above.

"Winner" means the horse whose nose reaches the finish line first or is placed first as a result of a disqualification by the stewards.

"Year" means a calendar year.

[OAR Docket #22-573; filed 7-7-22]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 1. FUNCTION AND STRUCTURE OF THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES

[OAR Docket #22-533]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

340:1-1-1 [AMENDED]

340:1-1-2 [REVOKED]

340:1-1-4 [REVOKED]

340:1-1-17 [REVOKED]

340:1-1-19 [REVOKED]

(Reference WF 22-1A)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); and 75 O.S. §§ 250 through 323.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 20, 2021

COMMENT PERIOD:

January 18, 2022 through March 18, 2022

PUBLIC HEARING:

March 23, 2022

ADOPTION:

March 23, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2022

APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 15, 2022

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Chapter 1, Subchapter 1 is revised as part of the Governor's Executive Order 2020-03 to reorganize and make non-substantive changes to improve rule clarity.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

340:1-1-1. Purpose, legal basis, and Director of Human Services (Director)

(a) Purpose. This ChapterSubchapter describes the Oklahoma Department of Human Services (OKDHS) organizational structure and function and includes the legal basis and other rules governing OKDHS operations.

(b) Legal basis. The Director's position and duties are authorized by and described in Section 162 of Title 56 of the Oklahoma Statutes. OKDHS responsibilities, and the Director's authority to ensure those responsibilities are carried out, is found in the Oklahoma Statutes.

(c) Director of Human Services. The Director serves, at the pleasure of the Governor with Senate confirmation, as Oklahoma Human Services (OKDHS) chief executive and administrative officer. The Director is responsible for the daily direction of the activities necessary for OKDHS to accomplish its mission.

(d) Organizational chart. OKDHS is organized as the Director deems appropriate to achieve the OKDHS mission. OKDHS Administrative Services provides organizational charts upon request.

340:1-1-2. Legal basis [REVOKED]

The position of Director of Human Services (Director) is authorized by Section 162 of Title 56 of the Oklahoma Statutes. The responsibilities of the Oklahoma Department of Human Services, and the Director's authority to see those responsibilities are carried out, is found in the Oklahoma Statutes.

340:1-1-4. Director of Human Services [REVOKED]

(a) The Director of Human Services (Director) serves, at the pleasure of the Governor with Senate confirmation, as the Oklahoma Department of Human Services (OKDHS) chief executive and administrative officer. The Director is charged with the responsibility for the daily direction of the activities necessary for OKDHS to attain its mission.

(b) The Director's duties are described in Section 162 of Title 56 of the Oklahoma Statutes.

340:1-1-17. Organizational structure [REVOKED]

(a) Citizen advisory panels. Section 162.1b of Title 56 of the Oklahoma Statutes creates four citizen advisory panels (Panels) each with five members for issues regarding children and families, aging, disabilities, and administration. The Panels' purpose is to evaluate OKDHS core program and administrative areas and develop recommendations to improve them. The Panels provide advice, information, findings, and analysis to the Director of Human Services (Director) regarding Oklahoma Department of Human Services (OKDHS) policies, practices, and impact on outcomes. At the call of the Director, all Panels meet together at least one time per year in a Joint Citizens Advisory Panel.

(b) Organizational chart. OKDHS is organized as the Director deems appropriate to achieve the OKDHS mission. OKDHS Administrative Services provides organizational charts upon request.

# Permanent Final Adoptions

## 340:1-1-19. Open Meeting Act [REVOKED]

Oklahoma Department of Human Services (OKDHS) public meetings are conducted in compliance with the Oklahoma Open Meeting Act. [25 O.S. § 301 through 314] The Oklahoma Secretary of State website serves as the open meeting clearinghouse.

[OAR Docket #22-533; filed 7-5-22]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 1. FUNCTION AND STRUCTURE OF THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES

[OAR Docket #22-534]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 11. Civil Rights and Nondiscrimination  
Part 1. Administration Methods  
340:1-11-12 [AMENDED]  
(Reference WF 22-1B)

### AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 74 O.S. §840-1.3; 74 O.S. §840-1.9; 74 O.S. §840-6.2; 74 O.S. § 840-6.6; OAC 260:25-3-72; OAC 340:1-11-43; and OAC 340:50-1-5.

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

December 20, 2021

### COMMENT PERIOD:

January 18, 2022 through March 18, 2022

### PUBLIC HEARING:

March 23, 2022

### ADOPTION:

March 23, 2022

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

March 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed amendment to Chapter 1, Subchapter 11 amends the rule to remove information that is misleading or inaccurate in regards to individuals' right to appeal and to whom.

The proposed amendment to strike information regarding the appeal process removes language that refers to offices to which individuals cannot appeal.

### CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 11. CIVIL RIGHTS AND NONDISCRIMINATION

### PART 1. ADMINISTRATION METHODS

#### 340:1-11-12. Complaint policy and procedures

(a) Any person or group who believes they were subjected to discrimination in an Oklahoma Department of Human Services (~~DHS~~)(OKDHS) program subject to Oklahoma Administrative Code (OAC) 340:1-11-1 may make a complaint of discrimination in person, by representation, by phone, or by written communication. The complainant has a right to file ~~an alleged discriminatory action(s) complaint of the alleged discriminatory action(s)~~ with ~~DHS~~OKDHS, the Food and Nutrition Service (FNS), or with the Department of Health and Human Services-Office of Civil Rights (DHHS-OCR).

(b) For Supplemental Nutrition Assistance Program or service-delivery complaints, refer to OAC 340:1-11-20.

(c) Employees or applicants for employment have the right to file ~~an alleged discriminatory action(s) complaint of alleged discriminatory action(s)~~ with any or all of the entities listed in (1) - (4) of this subsection. The complainant may file with:

- (1) ~~DHS~~OKDHS within 180-calendar days. When the complaint is filed directly with ~~DHS-OKDHS~~, at the State Office, a local county office, or at a facility, representatives of that office or facility explain both the federal and state complaint systems and advise the complainant of his or her right to file in either, or both, systems;
- (2) the Oklahoma Attorney General's Office for Civil Rights Enforcement within 180-calendar days;
- (3) the Equal Employment Opportunity Commission within 300-calendar days;
- (4) the Oklahoma Merit Protection Commission (MPC) within 20-calendar days of the discriminatory action; or
- (5) the ~~DHS~~OKDHS Employee Grievance Program within 20-calendar days of the discriminatory action.

(d) Any person who expresses an interest in filing a complaint or files a complaint is protected from retaliation.

(e) ~~DHS~~OKDHS conducts a prompt and thorough complaint investigation. The Office for Civil Rights (OCR) administrator determines if discrimination occurred. When discrimination occurred, ~~DHS-OKDHS~~ takes all necessary action to correct the discriminatory practice(s). The complainant is timely advised of ~~DHS~~OKDHS findings regarding his or her complaint and, if appeal is available, is advised of the right to appeal to ~~DHHS-OCR, FNS, or MPC~~ the appropriate state or federal agency ~~when~~ if not satisfied with the ~~DHS~~OKDHS decision. Records are maintained by OCR according to the OKDHS OCR consolidated records disposition schedule that include the nature of the complaint, the investigation details, and the ~~DHS~~OKDHS actions taken.

(f) When the complaint is initially filed with DHHS-OCR, that office may investigate the complaint utilizing its own resources.

(g) The complainant's identity is kept confidential, except to the extent necessary to conduct the investigation, hearing, or judicial proceeding. Violations of confidentiality are subject to corrective discipline.

[OAR Docket #22-534; filed 7-5-22]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #22-536]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-2 [AMENDED]

Part 3. Investigations

340:2-3-36 [AMENDED]

340:2-3-36.1 [NEW]

340:2-3-39 [AMENDED]

Part 7. Grievance and Abuse Review Committee

340:2-3-61 [AMENDED]

340:2-3-62 [REVOKED]

(Reference WFs 22-2B and 21-06)

AUTHORITY:

Section 1-1-101 et seq. of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-101 et seq.); 10A O.S. § 162; 43A § 10-102 et seq.; Director of Human Services; O.S. 56 § 162; and Section 5101 et seq. of Title 42 of the United States Code.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 20, 2022

COMMENT PERIOD:

January 18, 2022 through March 18, 2022

PUBLIC HEARING:

March 23, 2022

ADOPTION:

March 23, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2022

APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 15, 2022

SUPERSEDED EMERGENCY ACTIONS:

Superseded Rules:

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-2 [AMENDED]

Part 3. Investigations

340:2-3-39 [AMENDED]

(WF 21-06)

Gubernatorial Approval:

January 12, 2022

Register Publication:

39 Ok Reg 561

Docket Number:

22-56

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 2, Subchapter 3 create new rules to separate investigative procedures for vulnerable adults from investigative procedures for child abuse or neglect.

The proposed amendments to Chapter 2, Subchapter 3 amend existing rules to: (1) bring rules into conformity with recently passed statutes; (2) bring rules into conformity with federal regulation; (3) harmonize Office of Client Advocacy (OCA) rules with other Oklahoma Human Services (OKDHS) program's rules; (4) and to clarify and simplify existing rules.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-2. Definitions

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

"Abandonment" means the willful intent by words, actions, or omissions of the person responsible for the child's (PRFC) health, safety, or welfare not to return for a child per Oklahoma Administrative Code (OAC) 340:75-3-120 and Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105).

"Abuse" means, with regard to:

(A) children, per Section 1-1-105 of the Oklahoma Statutes (10A O.S. § 1-1-105) harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare (PRFC) including, but not limited to:

- (i) non-accidental physical or mental injury;
(ii) sexual abuse; or
(iii) sexual exploitation.

(B) vulnerable adults, per 43A O.S. § 10-103, causing or permitting the:

- (i) the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or personal degradation; or
(ii) deprivation of nutrition, clothing, shelter, health care, or other care or services by a caretaker or other person providing services to a vulnerable adult without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

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**"Administrative information"** means information reported to or obtained by Oklahoma Human Services (OKDHS) regarding the community services provider during the investigative process that may be appropriate for internal administrative action but does not have the potential to impact the immediate health, safety, or welfare of recipients of community services, has not been verified as true and is for informational purposes only, per 56 O.S. § 1025.1.

**"Administrator"** or **"administrator's designee"** means, with regard to:

(A) children in ~~Oklahoma Department of Human Services (DHS)~~(OKDHS) custody living in a private, residential facility; the facility's chief administrative officer;

(B) children in ~~DHS~~OKDHS custody living in a ~~DHS-operated~~an OKDHS-operated shelter or group home, the shelter or group home director;

(C) children in ~~DHS~~OKDHS custody living in any other setting, including any type of out-of-home placement; the applicable ~~DHS~~OKDHS district director;

(D) foster care parents; the applicable ~~DHS~~OKDHS district director or deputy director;

(E) children in residential care facilities operated by the Oklahoma Department of Rehabilitation Services (ODRS); facilities that contract with, or are licensed by, the Oklahoma Office of Juvenile Affairs (OJA), with the exception of OJA-operated secure facilities, the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS); and the J.D. McCarty Center or ~~DHS~~OKDHS and other residential care facilities; the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;

(F) day treatment programs; the person charged with responsibility for program administration;

(G) adults and children who are in OKDHS Developmental Disabilities Services (DDS) specialized foster care and DDS specialized foster care parents; the applicable DDS area manager;

(H) ~~residents of the~~ Robert M. Greer Center (Greer) residents; the facility director;

(I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community; the provider's chief executive officer; and

(J) residents of group homes for persons with developmental disabilities; the group home director.

**"Advocate"** means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve their problems, helping protect their rights, and seeking to improve the quality of their lives and care.

**"Advocate general"** means the OCA chief administrative officer designated in 10A O.S. § 1-9-112(A)(2).

**"Age-appropriate"** or **"developmentally-appropriate"** means:

(A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age group; and

(B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child per 10A O.S. § 1-1-105.

**"Agency companion"** means a person who provides agency companion services, per OAC 317:40-5-3, to:

(A) members 18 years of age or older who are eligible for services through Community or Homeward Bound waivers, or

(B) persons under 18 years of age, with approval from the OKDHS Developmental Disability Services (DDS) director or designee.

**"Area manager"** means an administrator of one of the three service delivery areas designated by OKDHS DDS.

**"Area(s) Areas of Concern"** or **"(AOC)"** means:

(A) with regard to children: issues that do not rise to the level of a ~~confirmed finding abuse or neglect~~, but may constitute possible deficiencies, irregularities, or deviations from policies and best practices. AOCs are brought to the provider's attention of ~~the provider~~ or informational purposes or for appropriate corrective action, ~~if when applicable~~; and

(B) with regard to individuals served by a community services worker, issues that do not rise to the level of a substantiated finding, but may constitute possible deficiencies, irregularities, or deviations from policies and best practices by the community services provider, which has the potential to impact the health, safety, or welfare of recipients of community-based services, and OKDHS has conducted sufficient inquiry into the issue to meet the probable cause investigative standard, per 56 O.S. § 1025.1.

**"Behavioral health"** means mental health, substance ~~use or abuse~~, or co-occurring mental health and substance ~~use or abuse~~ diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance ~~use or abuse~~ treatment, per 10A O.S. § 1-1-105.

**"Caretaker"** means, with regard to vulnerable adults per 43A O.S. § 10-103, a person who has:

(A) ~~has~~ the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

(B) assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

(C) was appointed a guardian, limited guardian, or conservator ~~per~~ pursuant to the Oklahoma Guardianship and Conservatorship Act.

**"Caretaker misconduct"** means, per 10A O.S. § 1-9-112, an act or omission ~~that by a PRFC that does not rise to the level of abuse, neglect, sexual abuse, or sexual exploitation with regard to any child or resident:~~

~~(A) violates a statute, regulation, written rule, policy, procedure, directive, or accepted professional standards and practices residing outside their own homes other than children in foster care or children in the custody of OJA and placed in an OJA secure facility;~~

~~(B) is not found to be abuse or neglect; and in a day treatment program as defined in 10 O.S. § 175.20;~~

~~(C) results in, or creates the risk of harm to a child, or to a vulnerable adult residing at Greer; and includes, but is not limited to, receiving services from a community services worker as that term is defined in 56 O.S. § 1025.1; and~~

~~(i) acts or omissions that contribute to the delinquency of a child;~~

~~(ii) unintentionally excessive or unauthorized use of force not rising to the level of abuse or neglect;~~

~~(iii) unintentionally causing mental anguish;~~

~~(iv) other acts exposing a vulnerable adult residing at Greer or a child to harm or threatened harm to his or her health, safety, or welfare; or~~

~~(v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse~~

~~(D) residing in a state institution listed in 10 O.S. § 1406.~~

**"Case manager"** means the person assigned by DDS who has responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

**"Child"** means any unmarried person younger than 18 years of age, except any person convicted of a crime specified in 10A O.S. § 2-5-101 or any person certified as an adult per 10A O.S. § 2-2-403, and convicted of a felony.

**"Child Care Restricted Registry"** also known as **"Joshua's List"** means the Registry created in accordance with 10 O.S. § 405.3, for the purpose of recording individuals who have a:

~~(A) substantiated finding of abuse or neglect, per 10A O.S. § 1-1-105, by an individual when the abuse or neglect occurred to a child while in the care of a child care program licensed by DHS or by an adult in a family child care home when the adult's presence is incidental to the operation of the family child care home;~~

~~(B) denial or revocation of a child care program license; and~~

~~(C) specified criminal history of an individual, per OAC 340:110-1-10.1.~~

**"Child-placing agency"** means an agency that arranges for, or places a child in, a foster family home, family-style living program, group home, adoptive home, or a successful adulthood program per ~~10 O.S. § 402~~10A O.S. § 1-1-105.

**"Child with a disability"** means any child who has a physical or mental impairment that substantially limits one or more of the major life activities of the child or who is regarded as having such impairment by a competent medical professional, per 10A O.S. § 1-1-105.

**"Client"** means, with regard to OCA:

(A) investigative services: individuals listed in OAC 340:2-3-32(a)(2);

(B) grievance services: individuals listed in OAC 340:2-3-45(a)(2); and

(C) advocacy program: individuals listed in OAC 340:2-3-71(b).

~~**"Community-based services"** or **"community-based programs"** mean services or programs that maintain community participation or supervision in planning, operation, and evaluation. Community based services and community based programs may include, but are not limited to:~~

~~(A) ease supervision;~~

~~(B) consultation;~~

~~(C) counseling;~~

~~(D) crisis intervention;~~

~~(E) early intervention and diversionary substance abuse treatment;~~

~~(F) educational;~~

~~(G) emergency shelters;~~

~~(H) group work;~~

~~(I) home based services;~~

~~(J) job placement;~~

~~(K) medical;~~

~~(L) sexual abuse treatment;~~

~~(M) training;~~

~~(N) transition to successful adulthood;~~

~~(O) transitional living;~~

~~(P) vocational, social, preventive, and psychological guidance;~~

~~(Q) volunteer recruitment and training; and~~

~~(R) other related services and programs.~~

**"Community services provider"** means a community-based program, corporation, or individual who contracts with, or is licensed or funded by, OKDHS to provide residential or vocational services to persons who are elderly or persons with intellectual or developmental disabilities, or contracts with the Oklahoma Health Care Authority (OHCA) to provide services to individuals with intellectual disabilities through a Home and Community-Based Waiver, except a private Intermediate Care Facility for Individuals with Intellectual Disabilities, per 56 O.S. § 1025.1.

**"Community services worker"** or **"[CSW]"** means any person:

(A) other than a licensed health professional who is employed by or under contract with a community services provider to provide who provides, for compensation or as a volunteer, health-related services, training, or supportive assistance per 56 O.S. § 1025.1, to persons who are elderly or persons with developmental disabilities; or

~~(B) and who is not a licensed health professional or any person who contracts with the Oklahoma~~

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~~Health Care Authority~~ OHCA to provide specialized foster care, habilitation training specialist services, or homemaker services to persons with developmental disabilities, per 56 O.S. § 1025.1.

**"Community Services Worker Registry"** or **"(CSW Registry)"** means the Registry established by ~~DHS~~ OKDHS per 56 O.S. § 1025.3.

**"Complaint"** means a report communicating a grievance, concern, or perceived harm, submitted by phone, email, or in writing by ~~the~~ a foster parent or a child being served by Child Welfare Services (CWS) to the Oklahoma Commission of Children and Youth (OCCY) Office of Juvenile System Oversight (OJSO) of the Oklahoma Commission of Children and Youth (OCCY). If not submitted in writing, the complaint is entered into the written format established by OCA and OJSO.

**"Contractor's employee"** means an employee of a contractor, provider, or facility when the employee is the accused person responsible for the child of interest (PRFCI) or the vulnerable adult caretaker (VAC) in an investigation opened by OCA.

**"Custodian"** means, per 10A O.S. § 1-1-105, an individual other than a parent, legal guardian, or Indian custodian, to whom legal custody of the child ~~was~~ has been awarded by the court. The term "custodian" ~~does~~ shall not mean ~~DHS~~ OKDHS.

**"Day treatment program"** means a ~~—~~ non-residential, partial hospitalization program programs, or day treatment programs, and day hospital program where programs in which children are provided intensive services, such as and adolescents are placed for psychiatric or psychological treatment, per 10 O.S. § 175.20.

**"DHS"** means the Oklahoma Department of Human Services.

**"Discrimination"** means differential treatment, such as conduct, actions, or decisions based on race, color, national origin, sex, religion, age, or disability, unless authorized by law per OAC 340:1-11-1.1.

**"Disposition"** means, with regard to OCA intake processes, the OCA intake unit action taken in response to a referral received, per OAC 340:2-3-35.

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

**"DRS"** means the Oklahoma Department of Rehabilitation Services.

**"Educational employee"** means ~~an~~ a school district employee of a school district, providing contract who provides contractual educational services on-site at a facility, who is either a witness or the accused PRFCI or VAC alleged perpetrator in an OCA investigation.

**"Emergency"** means a situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

**"Emergency custody"** means court ordered custody of a child prior to adjudication of the child.

**"Exploit/Exploitation"** or **"exploitation/exploit"** with regard to vulnerable adults means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment,

duress, deception, false representation, or false pretense, per 43A O.S. § 10-103.

**"Facility"** means:

(A) a public or private agency, corporation, partnership, or other entity that:

(i) operates a residential child care center; or  
(ii) contracts with, or is licensed or funded by DHS, the Oklahoma Office of Juvenile Affairs (OJA), or ODMHSAS for the physical custody, detention, or treatment of children;

(B) a DHS operated shelter;

(C) a DHS, ODMHSAS, or DRS operated residential child care program;

(D) a community based youth services shelter or community intervention center;

(E) the J.D. McCarty Center;

(F) a day treatment program;

(G) a private psychiatric facility for children;

(H) sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program; or

(I) Greer.

**"Failure to protect"** means, per 10A O.S. § 1-1-105, failure to take reasonable action to remedy or prevent child abuse or neglect, and includes the conduct of a non-abusing parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals, or fails to report the child abuse or neglect or otherwise take reasonable action to end the abuse or neglect.

**"Financial neglect"** means, with regard to vulnerable adults, per 43A O.S. § 10-103, means repeated instances by a caretaker or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

(A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;

(B) refusing to pay for necessities or utilities in a timely manner; or

(C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

**"Force"** means, as used by an alleged perpetrator with regard to a child residing outside of his or her home, other than in foster care:

(A) "authorized use of physical force" by a PRFC with regard to a child residing outside of his or her home, other than a child in foster care means:

(i) the use of using physical contact to control or contain a child when the PRFC alleged perpetrator reasonably considers him or her the child to:

(ii) pose a risk of inflicting harm to himself or herself or others; or

(iii) be in the process of leaving a facility without authorization; and

(iv) when the use of physical force is authorized, the least force necessary under the circumstances is employed;



(B) "excessive use of force" by a PRFCI with regard to a child residing outside of his or her home, other than a child in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including the:

- (i) grounds for belief that force was necessary;
- (ii) ages, genders, and strengths of the parties involved;
- (iii) nature of the force employed;
- (iv) availability of alternative means of force or control available;
- (v) extent of the inflicted harm; and
- (vi) provider's established method(s) of restraint and intervention for use with the child against whom the force was used, consistent with the child's individualized plan, protective intervention plan, or treatment plan; and

(C) "unauthorized use of force" by a PRFCI with regard to a child residing outside of his or her home, other than a child in foster care, means a use of force that is not an authorized use of physical force per this Section paragraph. Unauthorized use of force includes unacceptable physical handling of and contact with a child including, but not limited to:

- (i) slapping;
- (ii) kicking;
- (iii) punching;
- (iv) poking;
- (v) pulling hair or an ear;
- (vi) pinching;
- (vii) using a chokehold;
- (viii) smothering;
- (ix) spitting;
- (x) head butting; and
- (xi) tugging.

"Foster care" or "foster care services" means continuous 24-hour care and supportive services provided for an individual child in a foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent, per 10A O.S. § 1-1-105.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means any person maintaining a therapeutic, emergency, specialized community, tribal, kinship, or foster family home, responsible for providing care, supervision, guidance, rearing, and other foster care services to a child.

"GARC" means the Grievance and Abuse Review Committee, per OAC 340:2-3-61.

"Group home for persons with developmental or physical disabilities" means a facility:

- (A) any establishment for not more than 12 residents who:
  - (i) are 18 years of age or older; and
  - (ii) who have developmental or physical disabilities;

(B) that and which offers or provides supervision, residential accommodations, food service, and training and skill development opportunities designed to lead to residents' increased independence of the residents and which offers or provides supportive assistance to residents requiring supportive assistance; and

(C) that is not:

- (i) a residential care home;
- (ii) a nursing facility;
- (iii) an assisted living facility;
- (iv) a home where agency companion services or specialized foster care is provided; or
- (v) a home owned or leased by the service recipient or his or her legal guardian, per 10 O.S. § 1430.2.

"Guardian" or "guardian of an incapacitated person" means, per 30 O.S. § 1-111 a person who has been appointed by a court to ensure serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, the person are met, to manage the estate or financial resources of the ward person, or both. As used in this Subchapter, guardian The term includes: a persons appointed as general or limited guardian guardians of the person; a, general or limited guardian guardians of the estate; a property, and special guardian; and a temporary guardian. The term does guardian, but does not include a person appointed as guardian ad litem, per 30 O.S. § 1-106.

"Guardian ad litem" or "GAL" means a person appointed by a court, per 10A O.S. § 1-1-105, to represent the interests of an individual as specified in the court order.

"Harm or threatened harm to the health, or safety, or welfare of a child" means, with regard to a child, any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency, per 10A O.S. § 1-1-105.

"Heinous and shocking abuse" means abuse that includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. Serious bodily injury means, but is not limited to, injury that involves:

- (A) substantial risk of death;
- (B) extreme physical pain;
- (C) protracted disfigurement;
- (D) loss or impairment of a function of a body member, organ, or mental faculty;
- (E) an injury to an internal or external organ or the body;
- (F) bone fracture;
- (G) sexual abuse or sexual exploitation;
- (H) chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation that is repeated or continuing;
- (I) torture including, but not limited to, inflicting, participating in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or

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terrorizing a child or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person; or

(J) any other similar aggravated circumstance.

**"Heinous and shocking neglect"** means neglect that includes, but is not limited to:

(A) chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child that results in harm to the child;

(B) neglect that has resulted in a diagnosis of the child as an inorganic failure to thrive;

(C) an act or failure to act by a parent that results in:

- (i) serious physical or emotional harm;
- (ii) sexual abuse or sexual exploitation;
- (iii) death or near death of a child or sibling; or
- (iv) presents an imminent risk of serious harm to a child; or

(D) any other similar aggravating circumstance.

**"Hissom class member"** means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound, Inc., et al. vs. Hissom Memorial Center, et al.*, Case No. 85-CV-437-GKF.

**"Hotline"** means the statewide ~~Oklahoma Abuse and Neglect Hotline~~ Centralized Abuse and Neglect Hotline, toll free toll-free phone number, maintained by ~~DHSOKDHS~~ for the purpose of receiving reports of abuse, neglect, or exploitation of children and vulnerable adults. The Hotline operates 24 hours a day, seven days a week, 365 days a year.

**"Incapacitated person"** means a person, per 43 O.S. § 10-103:

(A) any person 18 years of age or older

(i) who is impaired by reason of mental or physical illness or disability, dementia, or related disease, intellectual disability, developmental disability, or other cause, and

(ii) whose ability to receive and evaluate information effectively or to make and communicate responsible decisions is impaired to such an extent ~~that~~ that such person lacks the capacity to manage his or her financial resources or meet essential requirements for his or her mental or physical health or safety without assistance from others; or

(B) a person for whom a guardian, limited guardian, or ~~caretaker~~ conservator has been appointed ~~per~~ pursuant to the Oklahoma Guardianship and Conservatorship Act ~~per~~ O.S. 30 § 1-111.

**"Indecent exposure"** means, per 43A O.S. § 10-103, forcing or requiring a vulnerable adult to:

(A) look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

(B) touch or feel the body or private parts of another.

**"Infant"** means a child who is 12 months of age or younger, per 10A O.S. § 1-1-105(36).

**"In-home supports"** or **"HHS(IHS)"** means services funded through Medicaid Home and Community-Based Waivers—~~(HCBW)~~, per Section 1915(c) of the Social Security Act and administered by ~~DHSOKDHS DDS~~. Services are provided in the service recipient's home, ~~and that~~ are not residential services, per OAC 340:100-5-22.1, or group home services per 10 O.S. § 1430.2.

**"Injury"** means any hurt, harm, appreciable physical pain, or mental anguish.

**"Intermediate Care Facility for the Intellectually Disabled"** ~~"Individuals with Intellectual Disabilities"~~ or **"ICF/IID(FC/IID)"** also known as or a **"specialized facility for the intellectually disabled individuals with intellectual disabilities,"** means a private or public residential facility, licensed per state law and certified by the federal government as a Medicaid services provider of Medicaid services, for ~~intellectually disabled persons~~ individuals with intellectual disabilities as defined in Title XIX rules and regulations of the Social Security Act.

**"Investigation"** means, regarding a:

(A) child, per 10A O.S. § 1-1-105(38), a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of a child, making it necessary to determine:

(i) the current safety of the child and the risk of subsequent abuse or neglect; and

(ii) ~~if whether~~ child abuse or neglect of the child occurred and whether the family needs prevention- and intervention-related services; or

(B) vulnerable adult, a response to ~~an~~ maltreatment allegation of ~~abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult~~, making it necessary to determine if maltreatment of the vulnerable adult occurred.

**"Investigative Investigation results"** means, per 10A O.S. § 1-1-105, a written response stating one of the following findings:

(A) regarding a child:

(i) "substantiated" means OCA determined, after an investigation of a report of child abuse or neglect and based upon some credible evidence, that child abuse or neglect occurred;

(ii) "unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect, that insufficient evidence exists to fully determine ~~if whether~~ child abuse or neglect occurred; or

(iii) "ruled out" means OCA determined, after an investigation of a report of child abuse or neglect that no child abuse or neglect occurred; or

(B) regarding a vulnerable adult:

(i) "substantiated" means that ~~the preponderance of the available evidence establishes the alleged maltreatment occurred in~~ OKDHS judgment, there appears to be probable cause to suspect the existence of abuse, neglect, or exploitation;

(ii) "not substantiated" means ~~the preponderance of the available evidence indicates the~~

~~alleged maltreatment did not occur that OKDHS has found insufficient evidence of abuse, neglect, or exploitation; or~~

~~(iii) "ruled out" means no evidence was discovered indicating the alleged maltreatment occurred.~~

"**Maltreatment**" means, per 56 O.S. §1025.1, abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, or sexual exploitation of vulnerable adults, ~~per~~ as those terms are defined in 43A O.S. § 10-103; or abuse, neglect, sexual abuse or sexual exploitation of children, per 10A O.S. § 1-1-105.

"**Medicaid personal care assistant**" ~~or "MPCA"~~ means, per 56 O.S. § 1025.1, a person who provides Medicaid services funded under Oklahoma's personal care program and is not a certified nurse aide or a licensed professional.

"**Medicaid personal care services provider**" means, per 56 O.S. § 1025.1, a program, corporation, or individual who provides services under the state Medicaid program personal care program or ADvantage Waiver to individuals who are elderly, or who have a physical disability.

"**Mental anguish**" means, in regard to a vulnerable adult, mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward one's self or others.

"**Mental health facility**" means ~~a mental health or substance abuse treatment facility per the Inpatient Mental Health and Substance Abuse Treatment of Minors Act~~ a public or private hospital or related institution, as defined by 63 O.S. § 1-701, offering or providing inpatient mental health services, a public or private facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation of Healthcare Organizations, or a facility operated by the Department of Mental Health and Substance Abuse Services (DMHSAS) and designated by the Commissioner of DMHSAS as appropriate for the inpatient evaluation or treatment of minors, per 43A O.S. § 5-502(40).

"**Minor physical injury**" means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non therapeutic conduct, illness, a new or an increased impairment of physical or cognitive functioning, or evidence of a physical injury, such as a laceration, bruise, or burn, or an injury confirmed by a licensed health care professional.

~~"Multidisciplinary child abuse team" means any team established per 10A O.S. § 1-9-102 of three or more persons who are trained in the prevention, identification, investigation, prosecution, and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention related services related to child abuse.~~

"**Near death**" means a child is in serious or critical condition as ~~verified~~ certified by a licensed health care professional physician, as a result of abuse or neglect, per 10A O.S. § 1-1-105. Verification may be given in person or by phone, mail, email, or fax.

"**Neglect**" means in regard to:

- (A) children, per 10A O.S. § 1-1-105:

- (i) the failure or omission to provide any of the following:

- (I) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education;
- (II) medical, dental, or behavioral health care;
- (III) supervision or appropriate caretakers to protect the child from harm or threatened harm of which any reasonable and prudent person responsible for the child's health, safety or welfare would be aware; or
- (IV) special care made necessary by the physical or mental condition of the child;

- (ii) the failure or omission to protect a child from exposure to any of the following:

- (I) the use, possession, sale, or manufacture of illegal drugs;
- (II) illegal activities;
- (III) sexual acts or materials that are not age-appropriate; or

- (iii) abandonment; or

- (B) vulnerable adults, per 43A O.S. § 10-103:

- (i) the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;
- (ii) the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or
- (iii) negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

~~"OCA" means the DHS Office of Client Advocacy.~~

"**OCA intake**" means the ~~OCA maintained,~~ OCA maintained centralized intake system that receives authorized referrals of ~~alleged abuse, neglect, verbal abuse, financial neglect, and financial exploitation involving vulnerable adults.~~

~~"OJA" means the Oklahoma Office of Juvenile Affairs.~~

"**Ombudsman**" or "**ombuds**" means an advocate.

"**Person responsible for the child's (PFRC)(PRFC) health, safety, or welfare**" means, per 10A O.S. § 1-1-105, a parent; legal guardian; custodian; foster parent; person 18 years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of:

- (A) a public or private residential home, institution, ~~or facility above the level of foster family care;~~
- (B) ~~a~~ or day treatment program, per as defined in 10 O.S. § 175.20; or
- (C) an owner, operator, or employee of a child care program facility, per as defined by 10 O.S. § 402; or
- (D) ~~any other adult residing in the home of the child.~~

~~"Person responsible for the child of interest (PRFCI)" means a person responsible for the child who is the subject of an investigation involving allegations of abuse or neglect.~~

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**"Personal degradation"** means, per 43A O.S. § 10-103, a willful act by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a vulnerable adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. Personal degradation includes the taking, transmitting, or display of an electronic image of a vulnerable adult by a caretaker, where the caretaker's actions constitute a willful act intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. Personal degradation does not include:

(A) the taking, transmission, or display of an electronic image or a vulnerable adult for the purpose of reporting vulnerable adult abuse to law enforcement, OKDHS, or other regulatory agency that oversees caretakers or enforces abuse or neglect laws or rules.

(B) the taking, transmission, or display of an electronic image of a vulnerable adult for the purpose of treatment or diagnosis, or

(C) the taking, transmission, or display of an electronic image of a vulnerable adult as part of an ongoing investigation.

**"Personal support team"** or **"(team),"** formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, per OAC 340:100-5-52.

**"Physical abuse"** means, in regard to children, an injury resulting from punching, beating, kicking, biting, burning, or otherwise harming a child. Even when the injury is not an accident, the alleged perpetrator may not have intended to hurt the child.

(A) The injury may result from:

(i) extreme physical punishment inappropriate to the child's age or condition;

(ii) a single episode or repeated episodes that range in severity from significant bruising to death;  
or

(iii) any action that involves hitting with a closed fist, kicking, inflicting burns, shaking, or throwing the child, even when no injury is sustained, but the action places the child at risk of grave physical danger.

(B) A minor injury on a child older than 10 years of age is not considered physical abuse unless the actions that caused the injury placed the child in grave physical danger.

**"Plan for Immediate Safety"** means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a child or vulnerable adult.

**"Preponderance of the evidence"** means ~~information or evidence is of a greater weight or is more convincing than the information or evidence offered in opposition. The degree of proof that is more probable than not.~~

**"Probable cause"** means, in regards to vulnerable adults, information or evidence that would lead a reasonable person to believe that abuse, neglect, or exploitation has been committed.

**"Problem resolution"** means verbal or written communications that seek to resolve concerns, complaints, service inadequacies, or issues ~~identified by the client or the client's team members of the client's team~~ identify, including the client's guardian, ~~the OCA advocate for the client,~~ volunteer advocate ~~for the client,~~ and/or other persons interested in the client's welfare.

**"Protective custody"** means custody of a child taken by law enforcement or designated ~~court employee of the court,~~ without a court order.

**"Provider"** means ~~a program, corporation, partnership, association, individual, or other entity that contracts with or is licensed or funded by DHS to provide community-based residential or vocational services to persons with intellectual or developmental disabilities; or contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with intellectual or developmental disabilities through HBCW.~~

**"Reasonable and prudent parent standard"** means, per 10A O.S. § 1-1-105, the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities per 10A O.S. § 1-1-105. For purposes of this definition, the term "caregiver" means a foster parent with whom a child in foster care has been placed, a representative of a group home where a child in foster care has been placed, or a designated official for a residential child care ~~program~~ facility where a child in foster care has been placed.

**"Referring party"** means the individual who informs OCA, calls the Hotline, or reports in writing that an incident occurred.

**"Reportable incident"** means an incident that must be reported because the person reporting knows, or has reasonable cause to believe or suspect, that a child or vulnerable adult ~~was~~ may have been subjected to abuse or neglect.

**"Reporting party"** means the individual who initially tells someone verbally or in writing that an incident occurred.

**"Residential child care facility"** means, per 10A O.S. § 1-1-105, ~~a 24-hour-a-day~~ 24-hour residential ~~group care~~ facility where ~~a specified number of children, normally unrelated,~~ reside with live together with or are supervised by adults ~~other than~~ who are not their parents or relatives.

**"Restricted registry" or "Joshua's List"** means the registry created per 10 O.S. § 405.3, for the purpose of recording individuals who have:

(A) a substantiated finding of abuse or neglect, as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, by an individual when the abuse or neglect occurred to a child while in the care of a facility licensed, certified, operated, or contracted by or with OKDHS or OJA. The provisions of this subparagraph shall apply to:

(i) the Central Oklahoma Juvenile Center, the Oklahoma Juvenile Center for Girls, and the Southwest Oklahoma Juvenile Center upon the effective date of this act; and

(ii) facilities licensed by, certified by, or contracting with the Office of Juvenile Affairs after November 1, 2018.

(B) revocation or denial of a child care facility license; and

(C) a specified criminal history of an individual, as defined by OAC 340:110-1-10.1.

~~"Risk" means the likelihood that an incident of child abuse or neglect will occur in the future.~~

~~"Safety analysis" means a DHS action taken in response to a report of alleged child abuse or neglect that may include an assessment or investigation based upon an analysis of the information received according to DHS adopted, priority guidelines and other criteria.~~

~~"Safety evaluation" means a DHS evaluation of a child's situation using a structured, evidence-based tool to determine if the child is subject to a safety threat.~~

~~"Safety threat" means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and that without the another person's intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death.~~

~~"Secure facility" means, per 10A O.S. § 1-1-105, a facility that which is designed and operated to ensure all entrances and exits from the facility are subject to the exclusive control of facility staff the staff of the facility, whether or not the child juvenile being detained has freedom of movement within the perimeter of the facility, or a facility that relies on locked rooms and buildings, fences, or physical restraint in order to control resident behavior of its residents. This definition excludes OJA-operated secure facilities.~~

~~"Self-neglect" means, per 43A O.S. § 10-103, the action or inaction of a vulnerable adult that which causes the that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.~~

~~"Serious physical injury" means a physical injury to a person's body determined to be serious by a licensed health care professional. It includes, but is not limited to, death, suicide attempt, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful, near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, an eye injury, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, or second or third degree burns and other burns for which complications are present. Also included are multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks without a clear, known explanation.~~

~~"Sexual abuse" means, with regard to:~~

(A) children, per 10A O.S. § 1-1-105, conduct, which that includes, but is not limited to, rape, incest, and lewd or indecent acts or proposals made to a child as defined by law, by a PRFC; or

(B) vulnerable adults, per 43A O.S. § 10-103:

(i) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object;

(ii) for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

(iii) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

~~"Sexual exploitation" means, with regard to:~~

(A) children, per 10A O.S. § 1-1-105, conduct that includes, but is not limited to, allowing, permitting, or encouraging, or forcing a child to engage in:

(i) prostitution, per state as defined by law, by any person 18 years of age or older or by a PRFC; or

(ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a PRFC per state law; or

(B) vulnerable adults, per 43A O.S. § 10-103, conduct that includes, but is not limited to, a caretaker's causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult, per state law as those acts are defined by state law.

~~"Specialized foster care" means, per OAC 317:40-5-50, foster care that:~~

(A) provided to a child or adult in a DDS certified and monitored specialized foster or agency contracted home, funded through the DDS administered HCBW Program per OAC 317:30-3-39 provides up to 24 hours per day of in-home residential habilitation services funded through the Community Waiver or the Homeward Bound Waiver. Specialized foster care serves individual ages 3 and older, up to 24 hours per day of supervision, supportive assistance, and training in daily living skills.

(B) is provided in a setting that best meets the specialized needs of the service recipient.

~~"State Office" means the DHS administrative offices in Oklahoma City, Oklahoma.~~

~~"State Office administrator" means, with regard to grievances filed by a:~~

(A) foster parent, by a child in DHS custody being served by CWS, or by an individual filing on behalf

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of a child ~~in DHS custody being served by CWS;~~ the ~~DHS~~OKDHS CWS director, or his or her designee;

(B) ~~DDS client or by an individual filing on behalf of a DDS client;~~ the DDS director, or ~~the director's~~his or her designee.

**"Subpoena"** means a request to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a request for records or other designated items to be delivered.

**"Suspicious injury"** means, regarding a vulnerable adult, an injury that includes, but is not limited to, an injury that:

- (A) includes, but is not limited to, an injury that:
  - (i) appears inconsistent with the offered explanation(s) for the injury;
  - (ii) is unusual;
  - (iii) cannot be explained as the result of an accident, self-injurious behavior, or normal activities of daily living;
  - (iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during daily living activities; or
  - (v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, but have no clear, known explanation; and
- (B) when evaluated for whether an injury is suspicious, the determination is made from the point of view of an independent, skeptical reviewer, with an injury being deemed suspicious when there is no credible explanation for it consistent with the injury not being the result of maltreatment is unusual;

(C) cannot be explained as the result of an accident, self-injurious behavior, or normal activities of daily living;

(D) is a minor injury located on or near a private body part or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during daily living activities; or

(E) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, but have no clear, known explanation.

**"Unexplained injury"** means an injury for which there is no known credible origin or cause, even when a possible explanation for the injury may be offered.

**"Verbal abuse"** means the use of words, sounds, or other communication including, but not limited to, gestures, actions, or behaviors by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation, per 43A O.S. § 10-103.

**"Vulnerable adult"** means, per 43A O.S. § 10-103, an individual who is an incapacitated person or who because of physical or mental disability, including persons with Alzheimer's disease or other dementias, incapacity, or other disability, is substantially impaired in the ability to:

- (A) provide adequately for the care or custody of himself or herself; or is unable to
- (B) manage his or her property and financial affairs effectively; or to
- (C) meet essential requirements for mental or physical health or safety; or to
- (D) protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

**"Vulnerable adult caretaker" or "VAC"** means a person responsible for the health, safety, or welfare of a vulnerable adult including:

- (A) Hissom class members;
- (B) Greer residents; and
- (C) vulnerable adults receiving services from a community services provider, community services worker, Medicaid personal care services provider, or Medicaid personal care assistant per 56 O.S. § 1025.1.

**"Ward"** means a person over whom a guardianship has been given by the court.

## PART 3. INVESTIGATIONS

### 340:2-3-36. Office of Client Advocacy (OCA) investigation procedures for cases involving child victims

#### (a) **Initiation of OCA investigation initiation.**

(1) Per Section 1-9-112 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112), Oklahoma ~~Department of~~ Human Services (DHS)(OKDHS) OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, sexual abuse, or sexual exploitation of a child within priority guidelines, per 10A O.S. § 1-2-105 and Oklahoma Administrative Code (OAC) 340:75-3-130.

(2) ~~DHS OCA within its investigative scope and authority, per 43A O.S. § 10-105, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult with intellectual disabilities who is a recipient of home and community based waiver services.~~

(A) ~~An OCA investigator initiates an investigation by making face to face contact with the vulnerable adult, who is the alleged victim.~~

(B) ~~The OCA investigator initiates the investigation, as soon as possible, but within five calendar days, and not to exceed 120 hours from the time of the receipt of the referral.~~

(C) ~~In the case of an emergency when a priority response is required, an OCA investigator initiates the investigation, as soon as possible, but not to exceed 24 hours from the date of case assignment.~~

(D) ~~During an investigation, when the OCA investigator has concerns that the vulnerable adult victim may be engaging in acts of self neglect or is in need of involuntary protective services or court intervention, the OCA investigator promptly makes a referral to Adult Protective Services (APS) and coordinates~~

with APS to ensure the safety of the vulnerable adult, per 43A O.S. § 10-106.

(b) ~~Joint investigations with law enforcement are conducted during children and vulnerable adult investigations when possible.~~ In accordance with 10A O.S. § 1-9-102, the multidisciplinary team (MDT) approach is used:

- (1) whenever feasible for investigations involving cases of child sexual abuse, sexual exploitation, physical abuse, and neglect cases;
- (2) to enhance the investigative process and maximize services provided to affected children and families; and
- (3) to consult with other MDT team members, as appropriate.

(c) ~~Notice of investigation~~ Investigation notice and written description of investigation process provided to person responsible for the child of interest (PRFCI) alleged perpetrator. ~~At~~ Per 10A O.S. § 1-2-106, at initial contact with a ~~PRFCI~~ alleged perpetrator who is the subject of an investigation, ~~DHS~~ OCA advises the ~~PRFCI~~ alleged perpetrator of the specific complaint or allegation made against him or her, ~~per 10A O.S. § 1-2-106.~~ If OCA is unable to locate the alleged perpetrator, as soon as possible after initiating the investigation, OCA provides him or her a brief and easily understood written description of the investigation process, per 10A O.S. § 1-2-106.

(d) ~~Written description of the investigation process provided to PRFCI.~~ When DHS is unable to locate the PRFCI who is the subject of an investigation, DHS as soon as possible after initiating the investigation of the person, provides the person a brief and easily understood written description of the investigation process that includes information, per 10A O.S. § 1-2-106.

(e) ~~Reportable incident regarding vulnerable adult reported by DHS to law enforcement.~~ The DHS investigation of a vulnerable adult includes notification of the allegation to the local law enforcement agency, per 43A O.S. § 10-105(B)(1).

(f) ~~Notice of investigation provided to vulnerable adult's caretaker (VAC), legal guardian, and next of kin.~~

(1) As soon as possible after initiating an investigation of a referral regarding a vulnerable adult, DHS provides the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and a written description of the investigation process, whether or not the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult, per 43A O.S. § 10-105.1.

(2) ~~When the vulnerable adult retains capacity to consent to voluntary services and does not want a caretaker or next of kin to receive notification of the investigation, DHS abides by the vulnerable adult's wishes.~~

(g) ~~Facility or provider administrator responsibility to arrange document production, visits, and interviews.~~ The applicable facility or provider agency administrator or the administrator's designee arranges document production, site visits, and interviews per OCA request.

(1) The facility or provider administrator or the administrator's designee who employed the ~~accused PRFCI~~ or

~~VAC~~ alleged perpetrator at the time of the alleged incident informs the employee of:

- (A) the OCA investigator's name and phone number;
- (B) the investigative process described in this Section;
- (C) ~~except as stated in (2) of this subsection,~~ the employee's rights and responsibilities relating to the investigation described in (1) of this Section, except as stated in (2) of this subsection using Form 15IV005E, Rights and Responsibilities of Accused Caretakers; Form 15IV006E, Investigations of Foster Parent Retaliation Complaints—Rights and Responsibilities of Accused DHS Employees; Form 15IV004E, Investigations of Client Maltreatment—Rights and Responsibilities of Accused DHS Employees; Alleged Perpetrators, or a substantially similar provider or agency form, and Form 15IV004E, Address Information Notice, a copy of which is provided to the OCA investigator ~~except as stated in (2) of this subsection;~~ and
- (D) the allegation made against the ~~PRFCI~~ or ~~VAC~~ alleged perpetrator without divulging the reporting party's identity of the reporting party or the substance of the evidence.

(2) When the ~~PRFCI~~ or ~~VAC~~ alleged perpetrator is subject to the Community Services Worker (CSW) Registry maintained by DHS Legal Services, the rights and responsibilities of the accused community services worker and Medicaid personal care assistant are found in OAC 340:100-3-39 ~~340:2-3-39.1.~~

(A) The facility or provider administrator or the administrator's designee promptly completes Form ~~06PE059E15IV005E,~~ Rights and Responsibilities of Community Services Worker in an Investigation of Maltreatment and Form 15IV004E per OAC 340:100-3-39(e)(2)(C).

(B) The facility or provider administrator or the administrator's designee mails Form ~~06PE059E15IV005E~~ and Form 15IV004E to the worker when it is not possible to hand-deliver it to the worker who is no longer employed by the provider.

(h) ~~OCA access to victims, employees, clients, facilities, files, and other records.~~

(1) The applicable facility or provider administrator or the administrator's designee arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still at the facility's or provider's client of the facility or provider.

(2) During an OCA investigation, ~~DHS~~ OCA, Office of Juvenile Affairs (OJA), Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS), the J.D. McCarty Center, providers, and facilities and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.

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- (3) Denial of access may be grounds for a contract termination between DHSOKDHS and the contractor or for other courses of action.
- (i) **Court order allowing entry to premises, access to and exam of the child, and access to child's medical, psychological, or psychiatric records.** Per 10A O.S. § 1-2-105:
- (1) ~~the investigation may include a medical, psychological, or psychiatric examination of any child in the home or in an out-of-home placement. When admission to the home, school, or any place where the child may be located cannot be obtained, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the PRFCI or the person in charge of any place where the child may be located, to allow entrance for the interview, examination, and investigation;~~
- (2) ~~when the PRFCI does not consent to the DHS requested medical, psychological, or psychiatric examination of the child, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the examination to be made at the times and places designated by the court; and~~
- (3) ~~the investigation may include an inquiry into the possibility the child has a history of mental illness. When the PRFCI does not allow DHS access to requested behavioral health records or treatment plans that may be relevant to the alleged abuse or neglect, the district court having jurisdiction, upon application by the district attorney and upon good cause shown, allows DHS by order, access to the records pursuant to terms and conditions prescribed by the court.~~
- (j) **Court order allowing entry to premises, private access to the vulnerable adult, or records and documentation.**
- (1) Per 43A O.S. § 10-105, the DHS investigation includes:
- (A) ~~a visit to the home or other place of residence of the person who is the subject of the report;~~
- (B) ~~a private interview with the person who is the subject of the report; and~~
- (C) ~~consultation with persons who have knowledge of the circumstances.~~
- (2) ~~When in the course of an investigation, DHS is denied entrance to the home or other place of residence of a person believed to be a vulnerable adult in need of protective services, or is denied a private interview with the vulnerable adult, DHS may petition the court for an order allowing entry to the premises or private access to the vulnerable adult, per 43A O.S. § 10-105.~~
- (3) ~~The court makes a finding of probable cause of the vulnerability of the adult before issuing the order.~~
- (4) ~~When documentation, or access to records, or other information relating to the alleged vulnerable person is denied, DHS may petition the court for an order allowing entry or access. The petition states the name and address of the person who is the subject of the report and alleges specific facts sufficient to show the circumstances of the person are in need of investigation.~~
- (5) ~~When it is necessary to forcibly enter the premises, DHS enters, accompanied by a peace officer, per 43A O.S. § 10-105.~~
- (kf) **Discrimination, retaliation, or interference in an OCA investigation prohibited and subject to criminal penalties.**
- (1) ~~An employer, supervisor, or administrator, or governing body or entity must not interfere, with the any employee's or other person's reporting obligations or in any manner discriminate, or retaliate against a person who in good faith provides information or testifies, reports suspected child abuse or neglect or provides testimony in any proceeding involving child abuse or neglect, per 10A O.S. § 1-2-101(B)(4).~~
- (2) 21 O.S. § 455 states it is a felony to:
- (A) ~~willfully prevent or attempt to prevent, threaten, cause, or procure physical harm through force or fear; any person who makes an abuse or neglect report, pursuant to 10A O.S. § 1-2-101 from giving testimony or producing any record document or other object; or~~
- (i) ~~with intent to prevent a witness from testifying or to alter his or her testimony;~~
- (ii) ~~from providing any record, document, or object in any proceeding; or~~
- (iii) ~~from making a report of child abuse or neglect or a report of abuse, neglect, or exploitation to a vulnerable adult; or~~
- (B) ~~harass, or cause a witness to be harassed because of: threaten physical harm through force or fear, cause or procure physical harm, harass or cause a person to be harassed because of testimony in a civil or criminal trial proceeding or because of making a report of child abuse or neglect.~~
- (i) ~~testimony given by that person in any proceeding; or~~
- (ii) ~~making a report of child abuse or neglect or a report of abuse, neglect, or exploitation to a vulnerable adult.~~
- (3) ~~A DHS employee who interferes with an OCA investigation may be subject to administrative action. Interference includes, but is not limited to:~~
- (A) ~~intimidating, harassing, or threatening a party to the investigation;~~
- (B) ~~retaliation against an employee for reporting an allegation; or~~
- (C) ~~denial of access to clients, employees, facilities, witnesses, records, or evidence.~~
- (4) ~~43A O.S. § 10-104(K) states an employer will not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on an employee solely for the reason the employee made or caused to be made a report, or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. §§ 10-101 et seq.~~
- (lg) **Rights and responsibilities of accused PRFCI or VAC.** The alleged perpetrator's rights and responsibilities of the accused PRFCI or VAC during an OCA investigation are outlined



in this subsection, ~~except when the accused is a CSW, whose rights and responsibilities are found at OAC 340:100-3-39.~~

(1) **Rights.** During the investigation process, an ~~accused PRFCI or VAC~~ alleged perpetrator has the right to:

- (A) be advised ~~by OCA~~ of the nature of each allegation made against him or her;
- (B) be advised by OCA of the investigative process ~~involving caretaker maltreatment;~~
- (C) be interviewed by the OCA investigator and allowed to give his or her position regarding the allegation;
- (D) be advised by the OCA investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;
- (E) submit or supplement a written statement relating to the allegations;
- (F) seek advice from other parties concerning a ~~PRFCI's or VAC's~~ his or her rights and responsibilities in OCA investigations, including the right to seek counsel;
- (G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and
- (H) ~~be notified in writing by his or her employer of the outcome of the investigation when the investigation involves a VAC; and~~
- (~~H~~) be notified in writing by OCA of the outcome of the investigation ~~when the investigation involves a PRFCI.~~

(2) **Responsibilities.** During the investigative process, the ~~accused PRFCI or VAC~~ alleged perpetrator has the responsibility to:

- (A) prepare written statements and reports relevant to the investigation, upon request;
- (B) be available for interviews and accommodate the OCA investigator with scheduling interviews;
- (C) refrain from action that interferes with the investigation including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
- (D) provide pertinent information and respond fully and truthfully to questions.

(~~mh~~) **Educational employees.** This subsection applies to an educational employee of a school district providing ~~contract educational services on site at a facility per OAC 340:2-3-2,~~ who is either a witness or the ~~accused PRFCI or VAC~~ alleged perpetrator in an OCA investigation.

(1) The facility or provider administrator where the incident took place notifies the school principal of the nature of the allegation and the assigned OCA investigator's name.

(2) ~~The school principal is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not~~

~~extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The facility administrator where the alleged incident took place is responsible for client protection.~~

(~~3~~) OCA investigates educational employees who meet the definition of a caretaker, per OAC 340:2-3-2.

(~~ni~~) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an ~~accused PRFCI or VAC~~ alleged perpetrator in an OCA investigation ~~opened by OCA.~~

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the assigned OCA investigator's name.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for notification purposes ~~of notification and coordination~~ and to coordinate with the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

(~~oj~~) **Document collection and review.** The OCA investigator gathers and reviews relevant documents including, but not limited to:

- (1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
- (2) medical records;
- (3) photographs ~~and/or~~ video; and
- (4) facility or provider logs; and
- (5) activity and tracking documents.

(~~pk~~) **Investigative interviews.** When an injury is alleged, the OCA investigator or other appropriate person observes, notes, and documents apparent injuries and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person, other than the OCA investigator and the person interviewed, is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the person interviewed ~~attends~~ may attend an interview only as a silent observer with the advocate general's or the advocate general's designee's prior permission ~~of the advocate general or the advocate general's designee.~~

(~~ql~~) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, ~~and~~ persons ~~who~~ allegedly ~~were~~ directly or indirectly involved in the allegation, persons with relevant knowledge of relevant information, and each ~~caretaker accused of the maltreatment~~ alleged perpetrator.

(~~rm~~) **Conducting the investigation.** ~~OCA investigators conduct investigations in a professional manner.~~

(~~s~~) **Recording investigation interviews.** OCA interviews are audio-recorded. To maintain information confidentiality

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provided in an interview, ~~recording~~ by the person interviewed or anyone in attendance is not permitted to record. ~~Recordings of interviews~~ Interview recordings remain with the OCA investigative file. ~~OCA files and recordings are not public documents.~~

(~~tn~~) **"Plan for Immediate Safety"** means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a child or ~~vulnerable adult~~.

(~~uo~~) **Presentation of the allegation** ~~Allegation presentation for witnesses later identified as alleged perpetrators.~~ During an investigation, when a witness is identified as a ~~potential accused caretaker~~ alleged perpetrator, the OCA investigator interviews the witness again to inform the witness that he or she is a ~~potential accused caretaker~~ alleged perpetrator. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond. The OCA investigator informs the facility or provider agency administrator or ~~provider agency~~ administrator of the new allegation and of the potential, additional ~~accused caretaker(s)~~ alleged perpetrators. ~~The OCA investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.~~

(~~vp~~) **Opportunity for accused caretakers** ~~alleged perpetrators to respond.~~ Following the alleged perpetrator's initial interview of the ~~accused caretaker~~, if the OCA investigator obtains information the ~~accused caretaker~~ alleged perpetrator did not have an opportunity to respond to, the OCA investigator conducts another interview with the ~~care-taker~~ alleged perpetrator. The OCA investigator advises the ~~accused caretaker~~ alleged perpetrator of the substance of the new information and provides an opportunity to present a response.

(~~wq~~) **Interpreter services for persons who are deaf or hard of hearing or have limited English proficiency.** When OCA interviews ~~the~~ a person who is deaf or hard of hearing or with limited English proficiency, ~~the facility or provider agency that employed the person at the time of the alleged incident~~ OCA provides oral or sign language interpreter services by an independent and qualified interpreter, ~~at no cost to OCA~~. Interpreter services for ~~DHS~~ OKDHS employees and clients are provided per OAC 340:1-11-10.

(~~xr~~) **Scheduling interviews.** To schedule an interview with an ~~accused caretaker~~ alleged perpetrator, the OCA investigator phones, emails, or mails the facility or provider agency administrator, ~~the provider agency administrator~~, or the administrator's designee that employs the ~~caretaker~~ alleged perpetrator. After two documented attempts to schedule an interview, the OCA investigator ~~in writing~~, contacts the facility or provider agency administrator, ~~provider agency administrator~~, or the administrator's designee in writing advising the administrator of his or her responsibility to compel the employee to participate. The OCA investigator notifies Developmental Disabilities Services (DDS) Quality Assurance (~~QA~~) or Child Welfare Services Specialized Placements and Partnerships Unit (~~SPPU~~) staff to ensure compliance with contract provisions. If unsuccessful, the OCA investigator sends a

letter by mail to the ~~caretaker's~~ alleged perpetrator's last known address notifying the ~~caretaker~~ alleged perpetrator of the investigation, offering an opportunity to be interviewed, and setting a date and time for a response. The letter informs the ~~caretaker~~ alleged perpetrator of the consequence of failing to participate. The OCA investigative report is completed without the ~~caretaker's~~ alleged perpetrator's statement, and a finding is made based on the available information. For other persons needing to be interviewed, the OCA investigator follows the same protocol for an ~~accused caretaker~~ alleged perpetrator, but the letter only requests his or her participation in an interview.

(~~ys~~) **Areas(s) of concern (AOC) notification.** During the investigation, the assigned OCA investigator emails or phones the applicable facility or provider administrator or the administrator's designee and informs ~~the facility or provider agency administrator or the administrator's designee~~ him or her of AOCs. Upon ~~completion~~ of the investigation ~~investigation's completion~~, all identified AOCs are provided in writing to the facility or agency provider administrator.

(~~zt~~) **The written investigative report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written investigative report containing:

- (1) the referral allegation(s) investigated, including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;
- (2) a statement of any physical injuries the alleged victims sustained ~~by the alleged victim(s)~~;
- (3) information regarding involved law enforcement entities;
- (4) a recommendation for the district attorney to consider further investigation;
- (5) the applicable definition(s) of caretaker misconduct or the maltreatment type of ~~maltreatment~~ at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
- (6) the finding(s), per (~~aa~~) and (~~cc~~)(~~x~~) of this Section;
- (7) a list of the involved parties, titles and roles in the matter, if they were interviewed and, when interviewed, ~~were~~ whether the interviews face-to-face or by phone;
- (8) the name, address, and phone numbers of any interpreter employed during the investigation;
- (9) an explanation of the basis for the finding(s);
- (10) a summary of relevant information obtained during each interview conducted during the investigation;
- (11) ~~AOCs relating to the referral identified during the investigation regarding facility, provider, or DHS practices or procedures that have implications for the safety, health, or welfare of clients but do not rise to the level of abuse or neglect;~~
- (~~12~~) a list of relevant documents and records reviewed during the investigation;
- (~~13~~) a list of attachments to the report provided upon request; and
- (~~14~~) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section.

~~(aa) OCA findings and completion time requirements regarding investigations involving a child in DHS custody. Per 10A O.S. § 1-9-112.1, the OCA investigation of a child abuse or neglect report of abuse or neglect of a child in DHS custody results in a written report, with findings, within 30-calendar days from the referral date of the referral stating one of the findings in (1) through (3) of this subsection.~~

- ~~(1) "Substantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody and based upon credible evidence, that child abuse or neglect occurred.~~
- ~~(2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred.~~
- ~~(3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody, that no child abuse or neglect occurred.~~

~~(bb) OCA findings and completion time requirements regarding investigations involving a child not in DHS custody. OCA investigations involving a child not in DHS custody results in a written report within 30 calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.~~

- ~~(1) "Substantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody and based upon credible evidence, that child abuse or neglect occurred.~~
- ~~(2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred.~~
- ~~(3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody, that no child abuse or neglect occurred.~~

~~(cc) OCA findings regarding investigations involving a vulnerable adult. The OCA investigation of a report of abuse or neglect of a vulnerable adult results in a written response within 45 calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.~~

- ~~(1) "Substantiated" means the preponderance of the available evidence establishes the alleged maltreatment occurred.~~
- ~~(2) "Unsubstantiated" means the preponderance of the available evidence indicates the alleged maltreatment did not occur.~~
- ~~(3) "Ruled Out" means no evidence was discovered that indicated the alleged maltreatment occurred;~~

~~(dd) Identification of the responsible VAC. Regarding investigations involving a vulnerable adult, when the evidence gathered during the investigation is sufficient to substantiate maltreatment of a vulnerable adult but the person responsible for the maltreatment cannot be identified, the substantiated finding is made on an unknown VAC. The administration may be named as responsible VAC when the policies, procedures, or practices adopted by the administration of a facility or provider~~

~~are the primary factor resulting in the maltreatment of individual clients.~~

~~(ee) Notice of findings of abuse, neglect, sexual abuse, financial exploitation, or financial neglect to a vulnerable adult.~~

- ~~(1) After completion of the OCA investigation, a findings letter is mailed to the:
 
  - ~~(A) alleged VAC;~~
  - ~~(B) legal guardian and next of kin; and~~
  - ~~(C) facility administrator.~~~~
- ~~(2) When a facility administrator is named as an accused VAC, a findings letter is mailed to the facility's chair of the board of directors, or to the director of the state agency operating the facility, as applicable.~~

~~(ffv) Notice of child abuse or neglect findings of child abuse or neglect to a child.~~

- ~~(1) After completion of completing the OCA investigation, a findings letter is mailed sent to the:
 
  - ~~(A) alleged PRFCI perpetrator; and~~
  - ~~(B) facility or provider administrator.~~~~
- ~~(2) When a facility or provider administrator is named as an accused PRFCI alleged perpetrator, a findings letter is mailed to the facility's or provider's chair of the board of directors or governing entity, or to the director of the state agency operating the facility, as applicable.~~
- ~~(3) The OCA investigator verbally provides the findings to the child victim's parents or legal guardian.~~

~~(ggw) Appeal process for substantiated child abuse or neglect findings of child abuse or neglect. The 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires that DHSOKDHS provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect with a procedure for appealing and responding to appeals of those findings, per OAC 340:2-3-39.~~

~~(hh) Appeal process for substantiated findings of vulnerable adult abuse, neglect, financial exploitation, financial neglect, or verbal abuse. The appeal process is provided for VACs who disagree with a substantiated finding of vulnerable adult abuse, neglect, financial exploitation, financial neglect, or verbal abuse, per OAC 100-3-39.~~

~~(iix) OCA investigation report submitted to Child Welfare Services (CWS). Per 10A O.S. § 1-9-112.1, in addition to the requirements of 10A O.S. § 1-9-112, the OCA abuse or neglect investigation report concerning a report of abuse or neglect of the child in DHSOKDHS custody is submitted to the CWS director or the director's designee within 30-calendar days from the referral date.~~

~~(jj) Dissemination of OCA investigative reports involving VACs not subject to the CSW Registry.~~

- ~~(1) Except as provided in (aa) of this Section and consistent with 43A O.S. § 10-110B, a summary of the final OCA investigation report involving a vulnerable adult client is sent to the administrator of an affected facility or provider agency. The summary is provided within five-business days of closure of the investigation. The administrator is responsible for notifying the client of any OCA finding. OCA is also responsible for notifying the accused~~

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caretaker and the legal guardian or next of kin of a vulnerable adult of the OCA finding.

(2) When the referral alleges abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, a copy of the report is sent to the applicable district attorney.

(3) A copy of the report is also sent to the DHS State Office administrator, ODRS director, or ODMHSAS director, as applicable.

(4) When a facility or provider administrator is named as an accused VAC in the allegation, OCA forwards the investigative report to the facility or provider agency chair of the board of directors or to the director of the state agency operating the facility.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) when the investigation involves a day treatment program.

(6) The administrator provides the accused DHS employee who is a VAC, a letter summarizing the allegation and states the OCA finding.

(7) When client maltreatment by a licensed nurse is substantiated, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation including, but not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry and includes sending OSDH a copy of any report when at least one of the accused VACs is a certified nurse aide (CNA).

(9) When maltreatment by a guardian is substantiated, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(10) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.

### **~~(kk)~~ Dissemination of OCA investigative reports involving PRFCIs not subject to the Restricted Registry.**

(1) A copy of the investigation report is sent to the:  
(A) district attorney in the county where the suspected maltreatment occurred per 10A O.S. § 1-2-105(E);

(B) appropriate DHS State Office administrator, OJA executive director, or the J.D. McCarty Center director, as applicable; and

(C) Oklahoma State Board of Nursing, when client maltreatment by a licensed nurse is substantiated.

(2) Form 04KI019E, Notification Concerning Findings of Child Abuse/Neglect, is sent to the DHS operated facility administrator and applicable DHS director or the director's designee. When an accused PRFCI is a DHS employee who does not work at a DHS operated facility, the applicable DHS director or the director's designee is responsible for providing the employee with a letter summarizing the allegation and stating the OCA finding.

(3) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.

### **~~(Hy)~~ Dissemination of investigation reports involving Hisson class members (HCMs) and VACs persons subject to the Community Services Worker (CSW) Registry.**

(1) All OCA investigations involving a substantiated finding against a CSW or Medicaid personal care assistant employed by a Medicaid personal care services provider, are processed for the CSW Registry, per OAC 340:100-3-39 and 317:35-15340:2-3-29.

(2) A copy of the investigative report is sent to the district attorney in the county where the suspected maltreatment occurred, per 43A O.S. § 10-104(F).

(3) OCA sends an investigation summary of the investigation to the designated leadership within the facility or provider administrator within five DHS business days of closure of the investigation closing. Nothing in this subsection will be construed as an OCA determination that the subject of the investigation report may be placed on the CSW Registry.

(4) The investigation report is sent to the DDS director or designee, the Aging Services director or designee, or the Oklahoma Health Care Authority (OHCA) director or designee, as applicable.

(5) OCA notifies the accused caretaker and legal guardian or next of kin of a vulnerable adult of the investigation finding. When the vulnerable adult is a HCM, the HCM's assigned OCA advocate notifies the HCM and the HCM's guardian or close family member of the investigation finding.

(6) When an investigation involves a vulnerable adult with a guardian, a copy of the completed investigation report must be filed with the court to which the guardian is accountable, per 43A O.S. § 10-105 (D).

### **~~(mmz)~~ Dissemination of reports involving PRFCIs alleged perpetrators subject to the Restricted Registry, Joshua's List.**

(1) All OCA investigations involving a substantiated abuse or neglect finding against a PRFCI an alleged perpetrator when the abuse or neglect occurred to a child while the child is in the care of a child care program facility licensed, certified, operated, or contracted with OKDHS or OJA are processed for the Restricted Registry, per OAC 340:110-1-10.1; and OCA submits a copy of the report to the Office of Background Investigations.

(2) A copy of the investigation report is sent to the district attorney in the county where the suspected maltreatment abuse or neglect occurred, per 10A O.S. § 1-2-105(E).

(3) In addition to (aa) of this Section, when the victim is a child receiving DDS services, OCA sends a copy of the report to the DDS director or the director's designee.

### **~~(aaa)~~ Confidentiality of OCA investigative reports confidentiality.**

(4) Persons receiving copies of OCA investigative reports regarding a child are bound by the confidentiality provisions of 10A O.S. §§ 1-6-102 through 1-6-107.

(2) Persons receiving copies of OCA investigative reports regarding a vulnerable adult are bound by the confidentiality provisions of 43A O.S. § 10-110.

(A) Per 43A O.S. § 10-110(A) of the Protective Services for Vulnerable Adults Act, all reports, records, and working papers used or developed in an investigation of the circumstances of a vulnerable adult are confidential and can be disclosed only pursuant to rules promulgated by DHS, by court order, or as otherwise provided in the "Public Disclosure" provisions, per 43A O.S. § 10-110.1 when a VAC is charged with committing a crime that resulted in the death or near death of the vulnerable adult.

(B) All reports, records, and working papers may be disclosed without a court order, upon showing of proper credentials and pursuant to their lawful duties, per 43A O.S. § 10-110(B), to:

- (i) any district attorney and their staff upon presentation of proper credentials in the course of their official duties, per 43A O.S. § 10-110 or in the prosecution of crimes against a vulnerable adult;
- (ii) the attorney representing a vulnerable adult in a proceeding per the Protective Services for Vulnerable Adults Act;
- (iii) employees of a law enforcement agency of this or another state;
- (iv) employees of adult protective services agencies of this or another state;
- (v) a licensed health care professional, who upon examination or treatment of a vulnerable adult suspects, the vulnerable adult was abused or neglected or any health care or mental health professional involved in the evaluation or treatment of the vulnerable adult;
- (vi) a caretaker, legal guardian, custodian, or other family members of the vulnerable adult; provided, DHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure;
- (vii) any public or private agency or person authorized by DHS to supervise or provide other services to a vulnerable adult who is the subject of a report or record of abuse or neglect; provided, DHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure; and
- (viii) any person or agency for research purposes, when the conditions in (I) and (II) are met the person or agency conducting:
  - (I) such research is employed by, or is under contract with the State of Oklahoma and is authorized by DHS to conduct such research; and
  - (II) the research ensures all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; and that all identifying information is

redacted from documents used in the research when the research is completed.

(C) A summary disclosed, per 43A O.S. § 10-110(B) excludes:

- (i) Social Security numbers and financial account numbers of the:
  - (I) alleged victim;
  - (II) alleged VAC;
  - (III) DHS caseworker;
  - (IV) vulnerable adults identified in the investigation; and
  - (V) any other person identified in the record; and
- (ii) all identifying information including, but not limited to, names, addresses, and phone numbers of the person(s) who reported the abuse, neglect, or exploitation, and all such identifying information of any other vulnerable adults in the home or facility.

(D) The OCA investigation report may be provided in lieu of a separately created summary and the identifying information found in this subsection is redacted.

(E) All investigative records received by DHS and created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.

(F) Persons seeking redacted identifying information listed in (2)(C) of this subsection contained in the OCA investigative report, in any summary, or other information contained in any other reports, records, or working papers used or developed in the investigation must obtain a court order authorizing release of such information.

- (i) All reports, records, working papers, and all information contained therein remain confidential after the DHS release; and
- (ii) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.

(oo) **Substantiated findings involving Greer.** The OCA investigation report findings involving client maltreatment at a DHS operated facility are considered final when the time for requesting Grievance and Abuse Review Committee (GARC) review, per OAC 340:2-3-62(b) expired and a review was not requested, or the review was timely requested and concluded.

(1) When Child Welfare Services (CWS) or DDS staff receives a copy of a final OCA investigative report or notice that a review, per OAC 340:2-3-62 is concluded, within 30 calendar days, the applicable director notifies the advocate general in writing of:

- (A) the personnel action taken or to be taken with regard to each accused PRFCI or VAC named in the report;
- (B) the corrective action taken or to be taken regarding AOCs noted in the report; and

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~~(C) whether, for each worker found to have engaged in maltreatment, there were prior OCA or facility confirmations for client maltreatment by the worker and, when so, the basis for each such finding, and the personnel action taken in response.~~

~~(2) When a personnel action is or will be taken, the applicable director notifies the DHS Human Resource Management director. When the final OCA finding does not substantiate maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused PRFCI or VAC.~~

~~(3) OCA reports information regarding substantiated findings to the DHS Director.~~

~~(pp) **Findings involving a HCM.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed an accused VAC named in an OCA investigation report. Within 60 calendar days of receipt of a final OCA investigation report, the DDS director or the director's designee notifies the advocate general in writing:~~

~~(1) when personnel action was or will be taken with regard to each accused VAC named in the report; and~~

~~(2) of corrective action taken or to be taken regarding AOC noted in the report.~~

### **340:2-3-36.1. Office of Client Advocacy (OCA) investigation procedures for cases involving vulnerable adults**

(a) **Initiation of OCA investigation initiation.** Oklahoma Human Services (OKDHS) OCA within its investigative scope and authority, per Section 10-105 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105), conducts a prompt and thorough investigation upon receiving a report of maltreatment of a vulnerable adult who is a recipient of home and community based waiver services, State Plan Personal Care (SPPC) services, living choice waiver services, medically fragile waiver services, or a Hissom Class Member, or a resident of the Robert M. Greer Center (Greer).

(1) An OCA investigator initiates an investigation when they make face-to-face contact with the vulnerable adult, who is the alleged victim.

(2) The OCA investigator initiates the investigation as soon as possible within five-calendar days, not to exceed 120 hours from the time of the referral receipt.

(3) In the case of an emergency when a priority response is required, an OCA investigator initiates the investigation as soon as possible, but not to exceed 24 hours from the date of case assignment.

(4) During an investigation, when the OCA investigator has concerns that the vulnerable adult victim may be engaging in acts of self-neglect or needs involuntary protective services or court intervention, the OCA investigator promptly makes a referral to the Adult Protective Services (APS) and coordinates with APS to ensure the vulnerable adult's safety, per 43A O.S. § 10-106.

(b) **Joint investigations with law enforcement.** Investigations regarding vulnerable adults are conducted jointly with law enforcement when possible.

(c) **Reportable incident regarding vulnerable adults.** The OKDHS vulnerable adult investigations include allegation notification to the local law enforcement agency, per 43A O.S. § 10-105.

(d) **Investigation notice provided to vulnerable adult's caretaker (VAC), legal guardian, and next of kin.**

(1) As soon as possible after initiating an investigation of a referral regarding a vulnerable adult, OKDHS provides the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and a written description of the investigation process, regardless of whether the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult, per 43A O.S. § 10-105.1.

(2) When the vulnerable adult retains the capacity to consent to voluntary services and does not want a caretaker or next of kin to receive an investigation notification, OKDHS abides by the vulnerable adult's wishes.

(e) **Facility or provider administrator responsibility to arrange document production, visits, and interviews.** The applicable facility or provider agency administrator or the administrator's designee arranges document production, site visits, and interviews per OCA request.

(1) The facility or provider administrator or the administrator's designee who employed the accused VAC at the time of the alleged incident informs the employee of:

(A) the OCA investigator's name and phone number;

(B) the investigative process described in this Section;

(C) the employee's rights and responsibilities relating to the investigation described in (j) of this Section, using Form 15IV005E, Rights and Responsibilities of Accused Caretakers, or a substantially similar provider or agency form, and Form 15IV004E, Address Information Notice, a copy of which is provided to the OCA investigator; and

(D) the allegation made against the VAC without divulging the reporting party's identity or the substance of the evidence.

(2) When the VAC is subject to the Community Services Worker (CSW) Registry maintained by OKDHS Legal Services, the rights and responsibilities of the accused community services worker and Medicaid personal care assistant are found in Oklahoma Administrative Code (OAC 340:2-3-29.1).

(A) The facility or provider administrator or the administrator's designee promptly completes Form 15IV005E and Form 15IV004E, per 340:100-3-30.

(B) The facility or provider administrator obtains the CSW's signature of the CSW and gives a copy to the OCA investigator.

(f) **OCA access to victims, employees, clients, facilities, files, and other records.**

(1) Per 43A O.S. § 10-105, the OKDHS investigation includes:

(A) a visit to the home or other place of residence of the person who is the subject of the report;

(B) a private interview with the person who is the subject of the report; and

(C) consultation with persons who have knowledge of the circumstances.

(2) The applicable facility or provider administrator or the administrator's designee arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider.

(3) During an OCA investigation, OKDHS, Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (OMDHSAS), providers, and facilities and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.

(4) Denying access may be grounds for a contract termination between OKDHS and the contractor.

**(g) Discrimination, retaliation, or interference in an OCA investigation prohibited.**

(1) 21 O.S. § 455 states it is a felony to:

(A) willfully prevent or attempt to prevent any person who make an abuse or neglect report, pursuant to 43A O.S. § 10-104 from giving testimony or producing any record document or other object; or

(B) threaten physical harm through force or fear, cause or procure physical harm, harass or cause a person to be harassed because of testimony in a civil or criminal trial proceeding or because of making a report of child abuse or neglect.

(2) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action. Interference includes, but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denying access to clients, employees, facilities, witnesses, records, or evidence.

(3) 43A O.S. § 10-104 states no employer shall terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason the employee made or caused to be made a report, or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. § 10-101 et seq.

**(h) Rights and responsibilities of accused VAC.** The rights and responsibilities of the accused VAC during an OCA investigation are outlined in this subsection.

(1) Rights. During the investigation process, an accused VAC has the right to:

(A) be advised of the nature of each allegation made against him or her;

(B) be advised by OCA of the investigative process involving caretaker maltreatment.

(C) be interviewed by the OCA investigator and allowed to give his or her position regarding the allegation;

(D) be advised by the OCA investigator of the substance of the evidence against him or her, but not the reporting party's identity;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a his or her rights and responsibilities in OCA investigations, including the right to seek counsel;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the investigation's outcome when the investigation involves a VAC.

(2) Responsibilities. During the investigative process, the accused VAC has the responsibility to:

(A) prepare written statements and reports relevant to the investigation, upon request;

(B) be available for interviews and accommodate the OCA investigator with scheduling interviews;

(C) refrain from action that interferes with the investigation including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions.

(i) Educational employees. This subsection applies to an educational employee who is either a witness or the accused VAC in an OCA investigation.

(1) The facility or provider agency administrator where the incident took place notifies the school principal of the nature of the allegation and the assigned OCA investigator's name.

(2) OCA investigates educational employees who meet the caretaker definition, per this subsection.

(j) Contractor's employees. This subsection applies to an employee of a provider or facility contractor when the employee is an accused VAC in an OCA investigation.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the assigned OCA investigator's name.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative review, advising the employee of his or her rights and responsibilities related to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for notification purposes and to coordinate with the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

(k) Document collection and review. The OCA investigator gathers and reviews relevant documents including, but not limited to:

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- (1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
  - (2) medical records;
  - (3) photographs, videos, or both;
  - (4) facility or provider logs;
  - (5) activity and tracking documents;
  - (6) the vulnerable adult's Individual Plan (IP); and
  - (7) all relevant Developmental Disability Services (DDS) documents and forms.
- (l) **Investigative interviews.** When there is an alleged injury, the OCA investigator or other appropriate person observes, notes, and documents apparent injuries and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the OCA investigator and the person interviewed is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the interviewee attends an interview only as a silent observer with the advocate general's or the advocate general's designee's prior permission.
- (m) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who are allegedly directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each accused VAC.
- (n) **Recording investigation interviews.** OCA interviews are audio-recorded. To maintain information confidentiality provided in an interview, the interviewee and anyone in attendance is not permitted to record the interview. Interview recordings remain with the OCA investigative file.
- (o) **"Plan for Immediate Safety"** means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a vulnerable adult.
- (p) **Allegation presentation for witnesses later identified as accused VACs.** During an investigation, when a witness is identified as a potential accused VAC, the OCA investigator interviews the witness again to inform the witness that he or she is a potential accused VAC. At the time, the witness is informed of the substance of the evidence and provided an opportunity to respond. The OCA investigator informs the facility or provider agency administrator of the new allegation and of the potential additional accused VAC. The OCA investigator advises the accused VAC of the substance of the new information and provides an opportunity to present a response.
- (q) **Interpreter services for persons who are deaf or hard of hearing or have limited English proficiency.** When OCA interviews a person who is deaf or hard of hearing or who has limited English proficiency, OCA provides interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided, per OAC 340:1-11-10.
- (r) **Areas of concern (AOC) notification.** During the investigation, the assigned OCA investigator emails or phones the applicable facility or provider administrator or the administrator's designee and informs him or her of AOCs. When the

investigation is completed, all identified AOCs are provided in writing to the facility or agency provider administrator.

(s) **The written investigative report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written investigative report containing:

- (1) the referral allegation investigated, including date, time, and location of the alleged incident, the date the allegation was reported to OCA, and the assigned OCA case number;
  - (2) a statement of any physical injuries the alleged victim sustained;
  - (3) information regarding involved law enforcement entities;
  - (4) a recommendation for the district attorney to consider further investigation;
  - (5) the applicable definition of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
  - (6) the findings, per (x) of this Section;
  - (7) a list of the involved parties, titles, and roles in the matter, if they were interviewed and, when they were interviewed, whether the interviews were face-to-face by phone, or virtual;
  - (8) the name, address, and phone numbers of any interpreter employed during the investigation;
  - (9) an explanation of the basis for the findings;
  - (10) a summary of relevant information obtained during each interview conducted during the investigation;
  - (11) a list of relevant documents and records reviewed during the investigation;
  - (12) a list of attachments to the report provided upon request; and
  - (13) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section.
- (t) **OCA investigation findings regarding a vulnerable adult.** The OCA investigation of a report of vulnerable adult maltreatment of a vulnerable adult results in a written report with findings within 60-calendar days from the referral date.
- (u) **Identification of the responsible VAC.** When the evidence gathered during the investigation is sufficient to substantiate vulnerable adult maltreatment but the person responsible for the maltreatment cannot be identified, the substantiated finding is made on an unknown VAC. The facility or provider administration may be named as responsible VAC when the policies, procedures, or practices the administration adopted are the primary factor resulting in individual client maltreatment of individual clients.
- (v) **Notice of maltreatment findings to a vulnerable adult.**
- (1) After the OCA investigation is complete a findings letter is mailed to the:
    - (A) accused VAC;
    - (B) legal guardian and next of kin; and
    - (C) facility or provider administrator.
  - (2) When a facility or provider administrator is named as an accused VAC, a findings letter is mailed to the facility's or provider's chair of the board of directors, or to the



director of the state agency operating the facility, as applicable.

(w) **Appeal process for substantiated maltreatment findings.** The appeal process is provided for accused VACs who disagree with a substantiated maltreatment finding, per OAC 340:2-3-39.1.

(x) **Dissemination of OCA investigation reports involving VACs not subject to the CSW Registry.**

(1) Except as provided in (4) of this subsection and consistent with 43A O.S. § 10-110, a summary of the final OCA investigation report involving a vulnerable adult is sent to the administrator of an affected facility or provider agency. The summary is provided within five-business days of the investigation's closure. The administrator is responsible for notifying the accused VAC and the vulnerable adult's legal guardian or next of kin of the OCA finding.

(2) When the referral alleges maltreatment, a copy of the report is sent to the applicable district attorney.

(3) A copy of the report is also sent to the DDS State Office administrator, ODRS director, or ODMHSAS director, as applicable.

(4) When a facility or provider administrator is named as an accused VAC in the allegation, the OCA forwards a summary of the investigative report to the facility or provider agency chair of the board of directors or to the director of the state agency operating the facility.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) when the investigation involves a day treatment program.

(6) When the accused VAC is an OKDHS employee, the relevant state office administrator provides the accused VAC with a letter summarizing the allegation and stating the OCA finding.

(7) When there is a substantiated finding of client maltreatment by a licensed nurse, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation. This includes but is not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry and includes sending OSDH a copy of any report when at least one of the accused VACs is a certified nurse aide.

(9) When there is substantiated maltreatment by a guardian, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(10) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.

(y) **Dissemination of investigation reports involving Hissom Class Members (HCMs) and VACs subject to the CSW Registry.**

(1) All OCA investigations involving a substantiated finding against a CSW or Medicaid personal care assistant employed by a Medicaid personal care services provider,

are processed for the CSW Registry, per OAC 340:2-3-29.1.

(2) A copy of the investigative report is sent to the district attorney in the county where the suspected maltreatment occurred, per 43A O.S. § 10-104.

(3) OCA sends an investigation summary to the facility or provider administrator within five-business days of the investigation's closure. Nothing in this subsection will be construed as an OCA determination that the subject of the investigation report may be placed on the CSW Registry.

(4) The investigation report is sent to the DDS director or designee, the Community Living, Aging, and Protective Services director or designee, or the Oklahoma Health Care Authority director or designee, as applicable.

(5) OCA notifies the vulnerable adult's accused caretaker and legal guardian or next of kin of the investigation finding. When the vulnerable adult is an HCM, the HCM's assigned OCA advocate notifies the HCM and the HCM's guardian or close family member of the investigation finding.

(6) When an investigation involves a vulnerable adult with a legal guardian, a copy of the completed investigation report must be filed with the court the guardian is accountable to, per 43A O.S. § 10-105.

(z) **Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports or summaries regarding a vulnerable adult are bound by the confidentiality provisions of 43A O.S. § 10-110.

(1) All investigative records OKDHS receives that are created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.

(2) Person seeking redacted identifying information, per 43A O.S. § 10-110, contained in the OCA investigative report, in any summary or other information contained in any other reports, records, or working papers used or developed in the investigation, must obtain a court order authorizing the information's release of such information.

(A) All reports, records, working papers, and all information contained therein remain confidential after the OKDHS release; and

(B) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.

(aa) **Substantiated findings involving Greer.** OCA investigation report findings involving vulnerable adult maltreatment at Greer are considered final when the report does not contain a substantiated finding. In cases with a substantiated finding, the report is final upon completion of the review process, per 340:2-3-39. When DDS staff receives a copy of a final OCA investigative report or notice that a review, per OAC 340:2-3-39.1, is concluded, within 30-calendar days, the applicable director notifies the advocate general in writing of:

(1) the personnel action taken or to be taken with regard to each accused VAC name in the report;

(2) the corrective action taken or to be taken regarding AOCs notice in the report; and

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(3) whether, for each worker found to have engaged in maltreatment, there were prior OCA or facility confirmations of the worker's maltreatment of a vulnerable adult. If such confirmations exist, the basis for each such finding, and the personnel action taken in response.

(bb) **Findings involving an HCM.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused VAC named in an OCA investigation report. The DDS director or the director's designee notifies the advocate general in writing:

- (1) when personnel action was or will be taken with regard to each accused VAC named in the report; and
- (2) of corrective action taken or to be taken regarding AOCs noted in the report.

(cc) **Ten-day staffing.** Ten days after the investigation is initiated, the provider has the right to request an investigative status update. The provider makes the request to the the assigned OCA Investigator's programs manager or programs supervisor. The ten-day staffing includes the provider administrator, the programs manager or programs supervisor and the OCA investigator. OCA provides an update as to the progress and there is an information exchange between the provider and OCA to identify any ongoing safety issue to barriers to concluding the investigation.

### 340:2-3-39. Program Review process for substantiated child abuse or neglect findings of child abuse or neglect in Office of Client Advocacy investigations

(a) **Purpose.** The 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires the Oklahoma Department of Human Services (DHS) to provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect. The appeal process The Office of Client Advocacy (OCA) program review process serves the following purposes:

- (1) provides individuals with a substantiated finding of child abuse or neglect an opportunity for due process per the 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, Oklahoma Human Services (OKDHS) is required to provide persons who disagree with a substantiated finding of child abuse or neglect with a procedure for appealing and responding to appeals of those findings;
- (2) serves as a quality assurance mechanism to assess findings compliance with Office of Client Advocacy (OCA) standards, per Oklahoma Administrative Code (OAC) 340:2-3-36; and
- (3) provides substantiated findings review by a team of reviewers as designated by the advocate general a procedure for notice and an opportunity for review to an individual and, if the individual is an employee of a facility licensed, certified, operated, or contracted by or with the Office of Juvenile Affairs (OJA), to the facility prior to recording an individual in the Restricted Registry, per Section 405.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 405.3).

(b) **Eligibility criteria.** An individual may request consideration through the program review process when:

- (1) the person is a ~~person responsible for the child of interest (PRFCI), per OAC 340:2-3-2~~an alleged perpetrator in an investigation involving abuse or neglect allegations; and
- (2) the investigation results in a substantiated finding regarding the ~~PRFCI~~alleged perpetrator; and
- (3) there is no other court action or court order in regard to the alleged child abuse or neglect including pending or completed:
  - (A) protective order hearings;
  - (B) civil actions for monetary compensation; or
  - (C) criminal court proceedings.

(c) **Procedures for the alleged perpetrator program review process.** The procedures for the alleged perpetrator program review process are outlined in (1) through (4) of this subsection.

(1) **Notification to ~~PRFCI~~alleged perpetrator.** Upon ~~substantiation~~—of substantiating abuse, neglect, or both, the OCA social services inspector notifies the ~~PRFCI~~alleged perpetrator of the finding by mailing Forms 04KI077E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI079E, Request for Program Review, provided the criteria in OAC 340:2-3-39 is met. Forms 04KI077E and 04KI079E are:

- (A) mailed by certified mail and regular mail within ~~10-calendar~~10-calendar days of ~~abuse or neglect substantiation of abuse or neglect~~; and
- (B) mailed to the ~~PRFCI's~~alleged perpetrator's last known address.

(i) Form 04KI077E informs the ~~PRFCI~~alleged perpetrator of:

- (I) any substantiated child abuse or neglect finding in the investigation;
- (II) the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party; and
- (III) demographic information.

(ii) Form 04KI079E specifies:

- (I) the ~~PRFCI~~alleged perpetrator may request a program review by mailing a request to the OCA ~~Program Review Committee~~program review committee within ~~45-calendar~~45-calendar days ~~from the date mailed or 15-calendar~~15-calendar days from the ~~date of signature~~postmark on the ~~green card of the certified mailing~~envelope containing Form 04KI079E; ~~Request for Program Review~~; and
- (II) the alleged perpetrator has the right to provide additional information through written statements that must be submitted at the same time the request for program review is made;
- (III) failure to submit the program review request within 15-calendar days from the postmark on the envelope containing Form 04KI079E results in the finding becoming final,

and also specifies that the PRFCI alleged perpetrator waives any right to refute this finding in the future, unless good cause is established; and (IV) that verification of legal representation must be established when the alleged perpetrator requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney.

(2) **Conditions of good cause conditions.** A PRFCI alleged perpetrator is granted a review despite failure to make a timely response, provided good cause is established, including, but not limited to, severe illness or other disabling condition.

(3) **Response to program review request from PRFCI.** When the PRFCI requests a review within the required time, the Program Review Committee chairperson responds to the PRFCI through written notice within 10 calendar days following receipt of the PRFCI's request for review. The Program Review Committee notifies the PRFCI:

(A) of the right to provide additional information through written statements that must be submitted within 30 calendar days from the postmark on the envelope containing the notification that the appeal was accepted for review;

(B) that failure to submit additional information within 30 calendar days results in a waiver of this right, unless good cause is established per OAC 340:3-2-39(e)(2); and

(C) that verification of legal representation must be established when the PRFCI requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney.

(4) **Review Procedure.** Within 60 calendar days following acceptance of the PRFCI's timely request for a review request acceptance, or a late review request for a review when good cause was established per OAC 340:2-3-39, the OCA Program Review Committee program review committee determines whether the substantiated child abuse or neglect finding of abuse or neglect meets substantiation protocol, per OAC 340:2-3-2. No individual with direct decision making authority regarding a case being reviewed will be authorized to vote to ensure that there is no conflict of interest.

(A) The decision to uphold, modify, or reverse the original abuse or neglect finding of abuse or neglect is determined by reviewing:

- (i) Form 04KI003E, Report to District Attorney, including attachments, and relevant OCA information including OCA history, child welfare history, and referrals; and
- (ii) all written documents submitted by the PRFCI to the OCA program review committee.

(B) When the Program Review Committee program review committee determines the finding failed to

meet the substantiation criteria for substantiation per OAC 340:2-3-36, the committee:

(i) determines whether the preliminary decision was based upon a lack of credible evidence to support the child abuse or neglect allegations of child abuse, neglect, or both; or

(ii) determines whether the preliminary decision is based upon the OCA social services inspector's lack of documentation by the OCA social service inspector; and

(I) When a lack of documentation exists, the Program Review Committee program review committee sends notification to the programs administrator, programs manager and OCA social services inspector that information is missing and. The program review committee requests the information be added to the report or scanned into the KIDS file cabinet On Base;

(II) After the program review committee's notification by the Program Review Committee is received, the programs manager reopens and reassigns the investigation;

(III) The assigned OCA social services inspector adds the additional information to the report within 15 calendar days of the reassignment and sends notification to the Program Review Committee program review committee upon completion; and

(IV) The Program Review Committee the program review committee reconsiders the PRFCI appeal review request with the additional information and modifies or upholds the finding as appropriate; and

(iii) modifies the finding, when appropriate, in KIDS.

(I) When the substantiation finding is appropriate, but the allegation in KIDS is incorrect, the program review committee's chairperson of the Program Review Committee ensures the inappropriate allegation is marked as an improper entry and the correct allegation is added along with the substantiated finding; and

(II) Forms 04KI077E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI-079E, Request for Program Review, Form 04KI079E are mailed to the PRFCI with the corrected allegations and findings.

(C) Within 60-calendar days following the acceptance of the review request, the program review committee, provides written notification of the final determination of the finding within 120 calendar days following acceptance of the appellant's request for a review to the:

- (i) appellant alleged perpetrator;
- (ii) advocate general;
- (iii) programs administrator;
- (iv) programs manager;
- (v) OCA social services inspector;

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- (vi) district attorney's office in the county where the finding originated;
- (vii) Specialized Placement and Partnership Unit, when applicable;
- (viii) Child Care Services (CCS), when applicable;
- (vix) Office of Juvenile Affairs (OJA), when applicable; and
- (x) facility or agency provider administrator.

**(4) Notification of Child Care Services (CCS) of a PRFC's substantiated finding of heinous and shocking abuse.**

(A) OCA is responsible for notifying CCS upon completion of a program review when a finding of heinous and shocking abuse is substantiated.

(B) CCS notifies a child care facility owner or operator and the child care resource and referral organization in writing immediately or not later than one-business day after a finding of heinous and shocking abuse is substantiated on a PRFC by DHS, per 10 O.S. § 406.

**(d) Procedures for the OJA facility program review. The procedures for the facility program review process are outlined in (1) and (2) of this subsection.**

(1) **Notification to facility.** Within 10-calendar days of a facility employee's substantiation of abuse, neglect, or both, the facility is notified of the finding. The notification informs the facility:

- (A) of the substantiated finding;
- (B) of the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party;
- (C) of the demographic information;
- (D) that a program review may be requested by notifying the OCA Program Review Committee within 15-calendar days of the date the facility was notified of the substantiated findings;
- (E) that additional information for consideration by the OCA Program Review Committee may be provided with the request for a program review; and
- (F) that failure to request a program review in a timely manner may result in the finding becoming final and waives any right for the facility to request consideration of the finding in the future.

(2) **Review procedure.** The review procedures for a request for program review by an OJA facility follow the procedures found in (c) of this Section.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) 340:2-3-2, 340:2-3-32, and 340:2-3-38 apply to this Part unless the context clearly states otherwise.

(c) **Purpose.** This Section establishes an administrative review committee to review:

(1) ~~findings regarding allegations of abuse, neglect, verbal abuse, and exploitation investigated by the Office of Client Advocacy (OCA) per OAC 340:2-3-32 through 340:2-3-37;~~

(2) ~~findings regarding allegations of discrimination and retaliation brought by foster parents pursuant to O.S. 10A § 1-9-117 and investigated by OCA per OAC 340:2-3-38;~~

(3) ~~unresolved contested grievances of Oklahoma Department of Human Services (DHS) (OKDHS) clients listed in OAC 340:2-3-45(a)(2) and processed per OAC 340:2-3-46 through 340:2-3-49 and 340:2-3-51 through 340:2-3-55;~~

(4) ~~unresolved grievances of foster parents filed per O.S. 10A § 1-9-120 and processed per OAC 340:2-3-50; and~~

(5) ~~an issue affecting the care and treatment of:~~

(A) ~~a client in a DHS operated facility; or~~

(B) ~~a minor in DHS/OKDHS custody placed in a private or public facility, a public facility not operated by DHS/OKDHS, or in a foster home.~~

**(d) GARC composition.**

(1) ~~GARC is composed of at least three voting members appointed by the DHS/OKDHS Director appoints. The DHS/OKDHS Director designates one member to serve as chair and appoints substitute members as needed.~~

(2) ~~The advocate general is an ex officio member of GARC. The advocate general designates a member of his or her staff to attend GARC meetings in the advocate general's absence.~~

(e) **GARC responsibilities.** ~~GARC meets as needed. The advocate general or designee establishes the date and time of each meeting. At least three business days before a meeting, the advocate general provides each GARC member with materials relevant to matters to be considered at the meeting. GARC members review the agenda material prior to the GARC meeting.~~

**(f) GARC meetings.**

(1) ~~The advocate general or designee coordinates GARC meetings. This includes:~~

- (A) ~~arranging the dates for GARC meetings;~~
- (B) ~~establishing the agenda for GARC meetings;~~
- (C) ~~eight-calendar days prior to a GARC meeting, notifying all involved administrators and state office administrators of the GARC meeting date of the GARC meeting;~~
- (D) ~~transmitting agenda material to GARC members three-business days prior to a meeting;~~
- (E) ~~recording the GARC findings and recommendations;~~
- (F) ~~preparing GARC reports in consultation with GARC members;~~
- (G) ~~granting time extensions of time for good cause shown; and~~

## PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

### 340:2-3-61. Grievance and Abuse Review Committee (GARC)

(a) **Legal basis and authority.** The legal basis and authority for the rules in this Part are found in Section 1-9-112 of Title 10A of the Oklahoma Statutes (O.S. 10A § 1-9-112).

- (H) distributing GARC reports.
- (2) The GARC chair conducts a GARC meeting in the manner that in his or her discretion furthers the meeting's purposes of the meeting.
- (3) At the GARC meeting's conclusion of the GARC meeting, the matter is taken under advisement and the GARC chair informs interested parties of the results by means of GARC's in a written report.

**340:2-3-62. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports [REVOKED]**

- (a) **Application.** GARC reviews OCA investigative reports involving allegations of abuse, neglect, verbal abuse, or exploitation, with the exception of cases involving a community services worker processed per Oklahoma Administrative Code (OAC) 340:100-3-39.
- (b) **Requests for GARC review.** Requests for GARC review are submitted in writing to the advocate general within 30 calendar days of receipt of an OCA investigation report. Requests for GARC review include an explanation of the basis of the review and the reasons review is requested. Supporting documentation for the request for review is included with the request.
  - (1) With regard to investigations involving a facility under contract or license with the Office of Juvenile Affairs OJA, with the exception of OJA operated secure facilities, a request for GARC review may be made by the OJA advocate general or the executive director.
  - (2) With regard to investigations involving DHS operated facilities, a request for GARC review can be made by the facility administrator, the applicable state office administrator, or the DHS Director. When a request is made by a facility administrator, he or she sends a copy to the request to the applicable state office administrator.
  - (3) With regard to investigations involving facilities that contract with DHS, a request for GARC review may be made by the applicable state office administrator, or the DHS Director.
  - (4) With regard to investigations involving a Hisson class member that result in a not substantiated finding or in which the accused caretaker is not a community services worker, a request for GARC review can be made by the administrator of the provider agency that employed the accused caretaker at the time of the incident(s) investigated, or by the Developmental Disabilities Services (DDS) director or designee.
  - (5) With regard to investigations involving a facility operated by the Oklahoma Department of Rehabilitation Services (ODRS), a request for GARC review may be made by the ODRS director.
  - (6) With regard to all other investigations conducted per OAC 340:2-3-32, including investigations involving a DHS employee not working at a DHS operated facility, a request is made by the applicable state office administrator or the DHS Director.

- (7) The advocate general also can request GARC review.
- (e) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) at issue in the OCA investigation.
  - (1) GARC does not consider prior unsubstantiated allegations.
  - (2) Involved administrators, state office administrators, the OJA advocate general, if applicable, and heir designees may attend the GARC meeting. The OCA investigator involved in a case being review, and his or her supervisor, may attend the GARC meeting to provide information. The level of participation of attendees is within the discretion of the GARC chair.
  - (3) When an administrator, state office administrator, or OJA representative wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, evidence can be submitted to the advocate general no later than five business days before the GARC meeting.
  - (4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, the OJA advocate general or a state office administrator.
- (d) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes items (1) through (4) in this subsection.
  - (1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm maltreatment has occurred and the basis for GARC's opinion.
  - (2) GARC's recommendation as to any action needed to protect the victim and other clients
  - (3) Any areas of concern identified during GARC's review of the case regarding facility or DHS practices or procedures.
- (e) **DHS Director's review.** The advocate general submits to the DHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.
  - (1) Within 15 business days of receipt of the GARC report, the DHS Director decides whether to:
    - (A) adopt GARC's findings;
    - (B) adopt GARC's findings with modifications;
    - (C) return the matter to GARC for further consideration; or
    - (D) reverse GARC's finding.
  - (2) When the DHS Director does not respond within 15 business days of receipt of the GARC report, the GARC finding becomes final.
  - (3) OCA notifies in writing all interested parties of the result of the DHS Director's review.
- (f) **Routing the results of the DHS Director's review.**
  - (1) In cases involving DHS operated facilities, the advocate general sends a copy of the GARC report and the results of the DHS Director's review to the administrator

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of the facility and the appropriate state office administrator. Within two business days of receipt of the DHS Director's decision, the administrator informs each accused employee of the result of the DHS Director's review.

~~(2) In cases involving private or non-DHS operated public facilities, the advocate general sends a copy of the GARC report, and the results of the DHS Director's review to the administrator and the director of any agency that contracts with or licenses the facility. When the administrator is named as an accused employee in the allegation, the GARC report and results of the DHS Director's review are sent to the chair of the facility's board of directors.~~

~~(g) **Response to results of the DHS Director's review.** After a receipt of the results of the DHS Director's review of an OCA investigation involving a DHS employee, the affected state office administrator determines whether to initiate appropriate disciplinary action per OAC 340:2-3-12. Within 30 calendar days of receipt of the results of the DHS Director's review, the state office administrator informs the advocate general of any disciplinary action taken or to be taken with regard to an employee found to have committed maltreatment and any corrective action taken or to be taken with regard to areas of concern identified by GARC in its report.~~

*[OAR Docket #22-536; filed 7-5-22]*

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

*[OAR Docket #22-535]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

Subchapter 7. Office of Inspector General  
Part 1. Responsibilities and Functions  
340:2-7-9 [REVOKED]  
Part 2. Use of Force  
340:2-7-17 [REVOKED]  
Part 3. Audits of Grant Recipients and Subrecipients  
340:2-7-28 [AMENDED]  
340:2-7-29 through 340:2-7-30 [REVOKED]  
Subchapter 23. Administrative Reviews  
340:2-23-13 [AMENDED]  
340:2-23-14 through 340:2-23-18 [REVOKED]  
340:2-23-19 [AMENDED]  
340:2-23-20 [REVOKED]  
340:2-23-21 through 340:2-23-22 [AMENDED]  
Subchapter 46. Office of Background Investigations  
Part 1. General Provisions  
340:2-46-1 [AMENDED]  
Part 2. Child Care Services  
340:2-46-2 [REVOKED]  
(Reference WF 22-2A)

**AUTHORITY:**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 56 O.S. § 162.4; 70 O.S. § 3311; Chapter 2 Subchapter 7: Part 235.100 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 235.110); 7 C.F.R. § 273.16; and 42 C.F.R. § 455.12-23; 28 C.F.R. § 901; and the National Child Protection Act of 1993, Public Law (P.L.) 103-209, as amended by the Volunteers for Children Act, P.L. 105-251.

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

December 20, 2021

**COMMENT PERIOD:**

January 18, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 23, 2022

**ADOPTION:**

March 23, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION ON:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Chapter 2 Subchapter 7: (1) removes information about commissioned agents because it is a duplication of 56 O.S. Section 162.4; (2) removes information about use of force by commissioned agents (3) adds information about audit report distribution; and (4) adds information about the resolution of audit findings to 340:2-7-28.

The proposed amendments to Chapter 2 Subchapter 23: (1) adds information about the Office of Inspector General (OIG) Administrative Review Unit (ARU) and removes outdated information no longer a function of the ARU.

The proposed amendment to Chapter 2 of Subchapter 46: (1) implement rule changes recommended during the OIG rule review process by combining Sections and (2) making non-substantive changes to improve the clarity of the rules.

**CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

### SUBCHAPTER 7. OFFICE OF INSPECTOR GENERAL

#### PART 1. RESPONSIBILITIES AND FUNCTIONS

##### **340:2-7-9. Commissioned agents [REVOKED]**

~~Section 162.4 of Title 56 of the Oklahoma Statutes (56 O.S. § 162.4) authorizes the Oklahoma Department of Human Services (OKDHS) Director to commission employees within the Office of Inspector General (OIG) as peace officers, hereafter referred to as agents, with the authority to investigate crimes committed against OKDHS or crimes committed in the course of any program administered by OKDHS.~~

~~(1) Agents are authorized to serve and execute process, bench warrants, search warrants, and other court orders in any judicial or administrative proceeding that OKDHS is a party or participant. Agents are authorized to conduct searches without a warrant in situations authorized~~

by state and federal constitutional provisions. Only agents charged with the responsibility of investigating fraud are authorized to possess and use firearms while performing their official duties and in mutual aid situations, and must do so in compliance with applicable state and federal laws.

(2) The OKDHS Director may delegate, in writing, to the inspector general, the responsibility to authorize the carrying of firearms by agents. Authority for any agent to carry firearms may be withdrawn, temporarily or permanently, at any time by the inspector general or the OKDHS Director.

(3) All agents authorized to carry firearms must be certified by the Council on Law Enforcement, Education and Training (CLEET) as peace officers under 70 O.S. § 3311.

**PART 2. USE OF FORCE [REVOKED]**

**340:2-7-17. Use of force [REVOKED]**

(a) **Policy.** It is Office of Inspector General (OIG) policy that an agent only uses the minimum level of force necessary to bring an incident under control while protecting the lives of the agent or others. Only the amount of force essential for the agent to attain the objective is used.

(b) **Definitions.** The following words and terms, when used in this Part, shall have the following meanings, unless the text clearly indicates otherwise:

(1) **"Force"** means any physical action, from agent presence to serious physical injury or death, that compels an action or overcomes resistance.

(2) **"Use of force"** means any application of force beyond that required to properly take an unresisting subject into custody and maintain control of that subject.

(3) **"Deadly force"** means any force capable of causing death or serious physical injury.

(4) **"Less lethal force"** means all force other than deadly force. Less lethal force may still result in serious physical injury, but is not intended to cause death.

(5) **"Serious physical injury"** means injury creating substantial risk of death or causing serious disfigurement, serious impairment of health, or serious loss or impairment of function of a bodily organ.

(6) **"Reasonable belief"** means that given facts and circumstances, including reasonable inferences drawn from them, that are known to the agent at the time force is used, would cause a reasonable agent to conclude the point at issue is probably true. This factor is assessed according to what the agent knew or reasonably believed at the time of the incident and not what appears best with the benefit of hindsight.

(c) **Use of force continuum.** The use of force continuum consists of all degrees of force available for an agent to perform his or her duties. Although the use of force continuum is broken down into levels, all use of force options are available at all times depending on the circumstances. An agent adjusts the level of force used according to the level of resistance encountered. The levels of the use of force continuum are:

- (1) agent presence;
- (2) verbal commands;
- (3) hands on techniques;
- (4) chemical weapons;
- (5) empty hand striking techniques;
- (6) impact weapons; and
- (7) deadly force.

(d) **Use of deadly force.** Deadly force may be used when the agent has a reasonable belief that another person poses a threat of death or serious physical injury to either the agent or others. Firearms are considered deadly force weapons. Carotid restraints or choke holds may only be used as deadly force. The use of equipment such as a baton or automobile may be deadly force depending on the technique of use.

(e) **Use of less lethal force.** Less lethal force may be used to:

- (1) arrest, search, or detain a person;
- (2) recapture a person;
- (3) maintain custody of a person;
- (4) defend oneself or others from a person; and
- (5) prevent a person from committing suicide or self-inflicting other serious physical injury.

**PART 3. AUDITS OF GRANT RECIPIENTS AND SUBRECIPIENTS**

**340:2-7-28. Audit report (report) content**

The audit report ~~must include~~includes all reports required by the standards listed in ~~OAC~~Oklahoma Administrative Code 340:2-7-27(a) and any contractually specified requirements. The grant recipient or subrecipient submits the completed audit report to the Office of Inspector General within 30-calendar days of the report's issuance. The report may be emailed or sent by paper copy to the Internal Audit Administrator. When the grant recipient or subrecipient submits the report by paper copy, two copies of the report are sent to Internal Audit Administrator, Oklahoma Department of Human Services, Office of Inspector General, P.O. Box 25352, Oklahoma City, Oklahoma 73125. When noncompliance with grant agreement terms and conditions or with state and federal laws and regulations is reported, a plan for corrective action accompanies the audit report. The plan ensures corrective measures are completed within six months.

**340:2-7-29. Audit report distribution [REVOKED]**

The grant recipient or subrecipient must submit the completed audit report to the Office of Inspector General within 30-calendar days of the report's issuance. The report may be emailed to the Internal Audit Administrator or sent by paper copy. When the grant recipient or subrecipient submits the report by paper copy, two copies of the report are sent to Internal Audit Administrator, Oklahoma Department of Human Services, Office of Inspector General, P.O. Box 25352, Oklahoma City, Oklahoma 73125.

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## 340:2-7-30. Resolution of audit findings [REVOKED]

When noncompliance with terms and conditions of grant agreements or state and federal laws and regulations is reported, a plan for corrective action must accompany the audit report. The plan must ensure corrective measures are completed within six months.

## SUBCHAPTER 23. ADMINISTRATIVE REVIEWS

### 340:2-23-13. Purpose and legal basis

(a) **Purpose.** The purpose of this Subchapter is to describe the functions, procedures, and practices of the Office of Inspector General (OIG) Administrative Review Unit (ARU).

(b) **Legal basis.** Oklahoma Human Services (OKDHS) federal and state legal authority for providing a systematic quality control (QC) process and administrative operation to assure state accountability is found in Title 56 of the Oklahoma Statutes for the Child Care program and the federal Child Care Development Fund defines program requirements.

(c) **QC reviews for other OKDHS administered programs.** The OIG ARU is mandated to help assure OKDHS accountability for Child Care program funds. ARU reviews a prescribed number of providers and cases annually to help assure statewide conformity to OKDHS rules.

(d) **Datamatch reporting system.** Through a federal and state partnership administered by the United States Department of Health and Human Services and the Administration for Children and Families, OIG ARU reviews data matches semi-annually to improve program integrity and to detect or deter improper payments in administering public assistance programs. State enrollment data for Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program, child care, and health care coverage programs is matched with data from other participating states and from a selected group of federal databases.

(e) **Error reduction program participation.** ARU coordinates with OKDHS Adults and Family Services division for error reduction.

(f) **Survey and project participation.** ARU staff conducts surveys and study projects when requested.

### 340:2-23-14. Definitions [REVOKED]

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

**"ABCDMS"** means the category of case being sampled. Case records are numbered with one of these letters followed by six digits. The categories are:

- (A) A for Aid to the Aged;
- (B) B for Aid to the Blind;
- (C) C for TANF;
- (D) D for Aid to the Disabled;
- (E) M for Medical Assistance; and
- (F) S for Food Stamps.

**"DSD"** means Data Services Division.

**"FSSD"** means Family Support Services Division.

**"FCS"** means Food and Consumer Services.

**"HCEA"** means Health Care Finance Authority.

**"Negative QC case"** means a selected denial or closure action, examined for correctness as of the date the action was taken.

**"NIQCS"** means National Integrated Quality Control System.

**"OFO"** means Office of Field Operations.

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

**"OIG"** means Office of Inspector General.

**"Positive QC case"** means an active case that received program benefits as of the month sampled.

**"QC"** means Quality Control.

**"QC Review Date"** means the point in time for which a sampled case is reviewed. For "positive" cases, this is always either the first day of the sample month, or the date within the sample month on which a certifying action was taken for the sample month. For "negative" cases this is always the date the action was taken.

**"QC Sample Month"** means the month for which a case is selected for review.

**"TANF"** means Temporary Assistance to Needy Families.

**"USDA"** means United States Department of Agriculture.

**"USDHHS"** means United States Department of Health and Human Services.

### 340:2-23-15. Legal base [REVOKED]

(a) **Quality control for federal entitlement and other Agency programs.** The Department's federal and state legal authority for providing a systematic Quality Control process and administrative operation to assure state accountability is vested in:

(1) Article XXV of Oklahoma State Constitution 1-5 and Section 328 of Title 56 of the Oklahoma Statutes for the Medicaid program.

(2) Section 241-244 of Title 56 of the Oklahoma Statutes for the Food Stamp program.

(3) Article XXV of Oklahoma State Constitution, Sections 161 and 319 of Title 56 of the Oklahoma Statutes, and opinions of the State Attorney General 9-11-57 and 10-18-60 for the Temporary Assistance to Needy Families (TANF) program.

(4) Title 56 of the Oklahoma Statutes for the Day Care program.

(b) **Federal QC policies.** Policies issued by USDA and USDHHS define the requirements of the programs identified in (1) and (2) of subsection (a).

### 340:2-23-16. Administrative Review Unit [REVOKED]

(a) **Quality control reviews for federal entitlement programs.** Administered by the Office of Inspector General, ARU's major mandate is to assure the Department's accountability for funds expended in the Medicaid and Food Stamp programs. This responsibility is accomplished by a federally



prescribed QC analysis of a prescribed number of cases annually. The purpose of the process is to validate conformity to the Department's policies and decisions made regarding eligibility and amount of benefits paid. ARU transmits the official QC review findings for all sampled cases through NIQCS, an automated data base from which the federal agencies receive reports. Also, FSSD's quality assurance staff receive the QC findings to use in the Department's quality assurance process.

(b) **Quality control reviews for other Department administered programs.** ARU is also mandated to help assure the Department's accountability for funds expended in the TANF and Day Care programs. This is accomplished by a state prescribed QC analysis of a prescribed number of cases annually. The purpose of the process is to help assure statewide conformity to the Department's policies regarding program eligibility for TANF and TANF Work requirements. For the TANF program both agency processes and client outcomes are measured and reported to help assure the Department's compliance with federal TANF block grant funding requirements. FSSD quality assurance staff receive the QC findings to use in the Department's quality assurance process.

(c) **Error reduction program participation.** ARU coordinates with OFO and FSSD in an error reduction initiative. Upon request, ARU provides reviewer and supervisor expertise by participating in error reduction activities.

(d) **Survey and project participation.** ARU reviewers conduct surveys or study projects when requested by OIG, program, or administrative divisions if time and staffing permit.

(e) **Program needs assessments.** ARU conducts an ongoing program needs assessment, a component of the Department's strategic planning process. Clients are selected for participation in conjunction with the random QC samples, and a questionnaire is completed for each client selected.

**340:2-23-17. Scope of quality control case reviews [REVOKED]**

(a) **Goal of a quality control review goal.** ARU completes its review responsibility through a system of quality control and conducts field investigations on each program. Randomly selected sample cases are studied and analyzed to determine whether errors have occurred through client or Department failure to comply with program policy. All reviews are conducted for a point in time. ARU reviewers analyze sampled cases to determine whether:

- (1) Medicaid recipients are eligible, and if any spend-down computations, claims processing, and third party liability considerations are accurate. The correctness of termination or denied actions on Medicaid cases is assessed by ARU reviewers.
- (2) Food Stamp sampled cases are issued correct benefits as of a point in time. The correctness of termination or denied actions on Food Stamp cases is also assessed by ARU reviewers.
- (3) persons receiving TANF are eligible for assistance and, if so, whether the work requirements and outcomes of that program have been met. Also, a determination

is made as to whether terminated or denied cases were handled in accordance with Department policy.

(4) persons receiving Day Care assistance are eligible and if so, whether the prescribed Department policy and procedure of the Department was correctly applied.

(b) **General parameters of a quality control review.** The USDHHS and USDAACF Federal QC policies mandate acceptable parameters for the QC processes and specify procedures for conducting household interviews, such as who can be interviewed, location of the interview, form of reviewer inquiries, method of verification, and appropriateness of collateral contacts. For the Food Stamp and Medicaid programs, ARU reviewers conduct QC reviews in accordance with these federally prescribed policies. For the TANF and Day Care programs, these policies and procedures are state modified to address the program data and monitoring needs of the Department.

**340:2-23-18. Sampling [REVOKED]**

(a) **Sampling designs and plans.** A plan for the random cases selected for the monthly sample is generated by the Planning and Research Unit in the Office of Finance in compliance with federal guidelines, and selection is made by computer and reported to ARU by DSD. Methodologies are outlined in detail and submitted to USDHHS and USDA for approval. Sampling plans for each program present the arrangement of sampling frames, probabilities of selection, sample designs, and provisions for selection of the sample. Sampling designs and selections are provided for review and verification by federal agency staff when requested.

(b) **Defined sampling frames.** A sampling frame is specifically defined for each separate program.

(1) The Medicaid active case universe includes all ABCD categorically eligible cases, and all M category cases active as of the sample month. Retroactively certified months are excluded from the sampling frame. The monthly Medicaid negative action case universe consists of all denial and closure actions occurring in, or effective for, a given month.

(2) The Food Stamp active case universe, including A, B, C, D, and S category cases, includes all households receiving food stamps during the month via either direct coupon issuance, ATP issuance, or EBT issuance. Each participating household is represented exactly once per sampling frame. The sampling frame for negative case actions is represented by a monthly computerized listing of such actions which were either handled as the preceding month's business, considering the effective date of the action, or were taken in the sample month effective the sample month. The negative action frame is arranged by date of action.

(3) The TANF active case regular roll sampling frame includes each case in which a benefit amount was issued for, or issued in and for, the month sampled, and is represented once. Retroactive benefits are disregarded. Cases representing reissued or canceled benefits are subject to sampling as they originally appear on the TANF register

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according to the date of benefit issuance. The TANF negative action case universe consists of all case closures effective the sample month, based on failure to meet TANF work requirements.

(4) The Day Care sampling frame includes all active day care cases as of the first day of the sample month, excluding TANF, Adult, and Child Welfare involved day care cases. The Day Care negative action case universe consists of all denial actions taken in a given month plus all case closures effective that month.

(e) **Sampling procedures.** Systematic sampling, with random starts, is applied to all frames which are scrambled prior to random selection. Both USDHHS and USDA recognize systematic sampling as unbiased because of the arbitrary file arrangements and because no known cyclical effects exist. For all frames, each month's samples begin with random starts taken in advance of the report period from computer generated random numbers and restricted by the estimated size of the monthly universe. DSD is notified by memo from the Planning and Research Unit at the start of each report period of random starts and intervals. Sampling designs provide for sufficient overpull, or margin, to satisfy USDHHS and USDA requirements for effective sample sizes necessary to meet the specified statistical precision and confidence levels. ARU may drop a sample case in accordance with federal policies. Reasons may include, but are not limited to, improper selection, inability to locate, or unwillingness to cooperate.

(d) **Other uses for the random samples.** The sample selections used for QC purposes are also used for the program needs assessment surveys of clients conducted by ARU and provided to the Planning and Research Unit for tabulation and reporting to FSSD and OFO.

## 340:2-23-19. Quality control (QC) review process

(a) **Case Selection.** The QC process begins when a case is selected from the random sample for review and ends when that case finding and data are entered into the NIQCS, is transmitted, subjected to federal sub-sampling, and federally accepted.

(b) **Client contacts.** Client contacts are described in this subsection.

(1) **Initial contact.** Except in the Medicaid program, clients are notified in writing they have been selected for a QC review. At the initial face to face visit, the ARU reviewer seeks to validate the information provided to the Department at the time of application or recertification.

(2) **Obtaining information from clients.** Any missing or conflicting information between the record and the interview is researched by the ARU reviewer and required to be resolved. The client may be asked to provide written documentation to clarify areas of concern.

(e) **Collateral contacts.** ARU reviewers seek collateral references to substantiate client or case record information.

(1) **Role of collateral contacts in the QC review process.** The client may be asked to sign a release of information so phone, face to face, or written contact can be made with affiliated persons or businesses. Collateral

contacts for QC reviews include, but are not limited to: landlords, utility companies, employers, neighbors, banks, schools, post offices, local businesses, and medical vendors. These sources of collateral contacts are asked to validate information regarding the client and may be asked to assist in locating the household if an ARU reviewer is unable to do so.

(2) **Authority to pursue collateral contacts.** If a household refuses to provide collateral contacts or sign a release of information for collateral contacts, the ARU reviewer has the authority, in accordance with Medicaid, and Food Stamp federal policies and TANF and Day Child Care state policies, to contact any collaterals necessary to verify the correctness of statements made on the application forms for assistance. Application forms denote the Department representative's authority to contact collateral sources necessary to verify the correctness of client statements made at application.

(db) **Quality control/QC review findings.** The ARU reviewer records all verification obtained on the sampled person or household in the QC file. After thorough analysis of the information collected during the QC process, The ARU reviewer makes a preliminary finding on the case as to about the eligibility/accuracy of the eligibility determination and payment, and other information after thorough analysis of the information collected during the QC process.

## 340:2-23-20. ARU participation in Department error reduction activities [REVOKED]

ARU participates with FSSD and OFO in error reduction initiatives. Since ARU reviewers have QC expertise, a different vantage point is available to county staff and administration to aid in efforts to improve accuracy in the entitlement programs.

## 340:2-23-21. Reports

(a) **Federal reports.** Reports Child care reports are filed with Child Care related the federal agencies involved regarding Food Stamps and Medicaid. A Quality Control review findings report and summary is submitted to Adult Family Services Child Care section which then submits a final report to the Child Care Development Fund.

(1) **Reports on Medicaid Child Care.** A statistical report and a summary of the QC review findings in Medicaid are submitted to USDHHS, HCEA no later than the last day of the seventh month following the close of the sample period. A report and summary of the QC review findings are submitted to AFS Child Care section which then submits a final report to CCDF.

(2) **Reports on Food Stamps.** ARU submits to USDA statistical tables showing the number of cases reviewed and the errors found within 95 days of the close of each annual sample period.

(b) **Reporting within the Department.** Copies of the Federal reports identified in (a) (1) and (2) are provided to FSSD. Copies of all Medicaid reports are provided to the Oklahoma Health Care Authority.

(e) **Other State reports.** The Administrative Review Unit ARU provides reports for non-federally mandated reviews, audits, or program evaluation and monitoring projects assigned by ~~the Office of Inspector General~~ as requested or required.

**340:2-23-22. Federal reviews**

~~For the Medicaid and Food Stamp Child Care programs, the USDHHS and the USDA Child Care Development Fund are~~ mandated to subsample the ~~cases~~ reviewed and submitted by ~~ARU Administrative Review Unit~~ cases from the ~~Department's~~ Oklahoma Human Services' random sample. ~~When~~ a difference is noted by a federal agency, ~~ARU~~ the agency is notified in writing and has the opportunity to present more information or to contest the finding. ~~Very stringent time frames for response to federal differences cases are imposed by Federal QC policy. By proceeding according to Federal QC policies, the case can ultimately end up being arbitrated at the regional and national levels. The final decision is fixed by the national level arbitration system of each federal agency.~~

**SUBCHAPTER 46. OFFICE OF BACKGROUND INVESTIGATIONS**

**PART 1. GENERAL PROVISIONS**

**340:2-46-1. Purpose and legal basis**

The purpose of the Oklahoma ~~Department~~ of Human Services (~~DHS~~)(OKDHS) Office of Background Investigations (OBI) is to conduct background checks and searches related to programs and services administered by ~~DHS~~OKDHS. The OKDHS OBI performs background checks for Child Care Services, per:

- (1) Section 901 et seq. of Chapter IX of Title 28 of the Code of Federal Regulations; and
- (2) the National Child Protection Act of 1993, Public Law (P.L.) 103-209, as amended by the Volunteers for Children Act, P.L. 105-251.

**PART 2. CHILD CARE SERVICES**

**340:2-46-2. Authority [REVOKED]**

~~The Oklahoma Department of Human Services Office of Background Investigations performs background checks for Child Care Services, per:~~

- (1) ~~Section 901 et seq. of Chapter IX of Title 28 of the Code of Federal Regulations; and~~
- (2) ~~the National Child Protection Act of 1993 (NCPA), Public Law (P.L.) 103-209, as amended by the Volunteers for Children Act (VCA), P.L. 105-251, (NCPA/VCA).~~

[OAR Docket #22-535; filed 7-5-22]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 2. ADMINISTRATIVE COMPONENTS**

[OAR Docket #22-538]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 11. Financial Services  
Part 9. Travel Reimbursement  
340:2-11-119 through 340:2-11-119.1 [AMENDED]  
(Reference WF 22-2D)

**AUTHORITY:**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Administrative Procedures Act, 75 O.S. §§ 250 et. seq.; and the Oklahoma Central Purchasing Act, 74 O.S. §§ 85.1 et. seq.

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

December 20, 2021

**COMMENT PERIOD:**

January 18, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 23, 2022

**ADOPTION:**

March 23, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION ON:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Chapter 2, Subchapter 11, amend the rules to: (1) update public information regarding Oklahoma Human Services (OKDHS) operating procedures and governing bodies; and (2) remove duplicative rules.

**CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 11. FINANCIAL SERVICES**

**PART 9. TRAVEL REIMBURSEMENT**

**340:2-11-119. Vehicle travel reimbursement**

(a) **Vehicle selection and Trip Optimizer.**

(1) Oklahoma Human Services (OKDHS) employees seek the least expensive travel option when planning work-related travel. OKDHS employees are required to

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seek the use of an OKDHS fleet vehicles as a cost-saving measure when feasible.

(2) When authorized work-related travel requires driving distances greater than 100-Global Positioning System (GPS) miles per day, and a state-owned or employee-assigned vehicle is not used, the employee must use the Trip Optimizer to find the least expensive travel option, such as a leased vehicle, per Section ~~85.451~~85.451 of Title 74 of the Oklahoma Statutes.

(b) **Privately-owned vehicles.**

(1) An employee or non-employee is reimbursed for the use of a privately-owned vehicle at the authorized rate regardless of the number of persons transported.

(2) Privately-owned vehicle travel reimbursement must not exceed the Global Positioning System (GPS) mileage for work-related travel.

~~(A) Vicinity travel claimed on official business is based on actual odometer readings.~~

~~(B) Any non-business mileage is deducted prior to reimbursement.~~

(3) An employee or non-employee traveling on official business using a privately-owned vehicle is reimbursed on the basis of the actual number of miles traveled, from the official duty station to the first official call, subsequent official calls, and return to the official duty station.

(A) An employee or non-employee may claim reimbursement for transportation from his or her home to the first official call, subsequent official calls, and back to his or her home, based on actual miles traveled, not to exceed the mileage as calculated from his or her official duty station.

(B) An employee or non-employee returning to a destination, other than the original starting point, must have supervisory approval and provide justification.

(C) ~~Designated On-call/on-call~~ staff may claim travel reimbursement to and from home, as instead of his or her official duty station, when travelling to any official call and return home on weekends, holidays, or when an occurrence is other than his or her regularly scheduled work hours.

**340:2-11-119.1. Lodging reimbursement**

Reimbursement is made for lodging when an employee or non-employee, authorized to travel, is in overnight travel status. Reimbursement for lodging is ~~based on actual charges, not to exceed~~ limited to the current authorized rate. ~~This includes reimbursement~~ Reimbursement of the actual cost of lodging, is not limited to the maximum standard daily rates being current authorized rate, when the stay lodging occurs at a designated pre-designated lodging facility.

(1) Overnight travel reimbursement requests when the distance traveled is less than 61-Global Positioning System (GPS) miles, but more than 30-GPS miles one way from the claimant's official duty station, must be approved by the appropriate chief officer. Claims for overnight travel, when distance is under 31-GPS miles, one way,

from his or her official duty station must have prior approval from the Director.

~~(2) For convenience, an employee or non-employee may request overnight travel reimbursement using the home location to calculate distance, when the distance from the home is less than the distance from the official duty station.~~

~~(3) Reimbursement for lodging on approved out-of-state trips cannot begin~~ may not extend more than 24 hours before or after the work-related event ~~more than 24 hours before the work related event and cannot continue for more than 24 hours after the event ends, unless additional pre-travel pre- or post-travel time is beneficial to Oklahoma Human Services (OKDHS), as clarified by the Office of Management and Enterprise Services, Statewide Accounting Manual.~~

~~(4) Reimbursement for lodging at one of Oklahoma's state lodges may be billed directly to OKDHS, or an employee or non-employee may pay for the lodging and request reimbursement.~~

~~(5) An employee or non-employee staying with relatives or others while in overnight travel status may be reimbursed \$10 per night in lieu of lodging expenses.~~

[OAR Docket #22-538; filed 7-5-22]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #22-537]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 28. Office of Administrative Hearings: Child Support

340:2-28-2 [AMENDED]

340:2-28-4.2 [AMENDED]

340:2-28-17.2 [AMENDED]

340:2-28-24 [AMENDED]

340:2-28-26 [AMENDED]

340:2-28-29 [REVOKED]

(Reference WF 22-2C and 21-08)

**AUTHORITY:**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 162 and 237). 12 O.S. §§ 32.1, 2101 through 3011, and 3224 through 3237; 12 O.S. §§ 683 through 688; 56 O.S. §§ 237 through 237.9a; and OAC 340:2-28-1, et seq.

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

December 20, 2021

**COMMENT PERIOD:**

January 18, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 23, 2022

**ADOPTION:**

March 23, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded Rules:**

Subchapter 28. Office of Administrative Hearings: Child Support  
340:2-28-4.2 [AMENDED]

(Reference WF 21-08)

**Gubernatorial Approval:**

October 20, 2021

**Register Publication:**

39 Ok Reg 175

**Docket Number:**

21-763

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule revision is necessary to update, streamline, and improve the rules which delineate and provide transparency to certain functional aspects of the Oklahoma Human Services (OKDHS) Office of Administrative Hearings: Child Support (OAH) operations. Oklahoma Administrative Code (OAC) 340:2-28-4.2, is part of OAH's administrative court rules. The requested amendments reflect changes in technology by eliminating fax filing and authorizing filing of portable digital file or \*.pdf formatted documents through email.

**CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 28. OFFICE OF ADMINISTRATIVE HEARINGS: CHILD SUPPORT**

**340:2-28-2. Definitions**

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

"**ALJ**" means an administrative law judge in the Office of Administrative Hearings: Child Support.

"**Authorized representative**" means a person designated under law to act for another person or an entity, such as a guardian of a child or an executor of an estate.

"**Child Support Enforcement Division**" or "**CSED**" means the Child Support Enforcement Division of the Oklahoma Department of Human Services (OKDHS). District offices of CSED may be administered by OKDHS or through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, Native American tribal organizations, and others. As used in this Subchapter, CSED includes all of these district offices and their employees and agents.

"**Custodian**" means the person who has primary physical custody of the child(ren).

"**Electronic filing**" means the submission of documents to the Office of Administrative Hearings: Child Support

through an electronic medium rather than the use of a paper document. ~~The electronic medium must be a secured system that leaves a computer trail so that the document may be traced to the signator and/or person filing the document.~~

"**In camera**" means before the ALJ without spectators.

"**In forma pauperis affidavit**" means a sworn declaration or statement of facts made by an indigent person seeking waiver of transcription costs and fees.

"**IV-D**" means Title IV, Part D, of the Social Security Act generally relating to child support. Title IV appears in the United States Code as Sections 601 through 687, Subchapter IV, Chapter 7, Title 42.

"**IV-D case**" means a child support case receiving IV-D services.

"**Natural person**" means a human being as opposed to an entity created by law.

"**Noncustodial parent**" means a parent who does not have primary physical custody of the child(ren).

"**OAH**" means the Office of Administrative Hearings: Child Support within ~~the OKDHS Legal Division of OKDHS Services.~~ [56 O.S. § 237.7]

"**Obligor**" means the person ~~who is~~ required to make payments under an order for support. [12 O.S. § 1170 and 56 O.S. § 237.7]

"**Payor**" ~~means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.~~ [12 O.S. § 1170 and 56 O.S. § 237.7]

"**Pleading**" means a formal document that contains statements or allegations that constitute a cause of action or defense.

"**Pro se**" means without a lawyer.

"**Writ of mandamus**" means a written order issued by a court to compel a lower court or government officer to perform mandatory or ministerial duties correctly.

**340:2-28-4.2. Terms and location of Office of Administrative Hearings: Child Support**

(a) The Office of Administrative Hearings: Child Support (OAH) is in session whenever there is a regularly- or specially-scheduled docket with participating district child support offices on days designated for administrative hearings. Pleadings, other documents, and orders may be filed ~~with, or presented to, the administrative law judge (ALJ) at the participating district child support offices, if the ALJ is physically present, on administrative hearing docket days.~~ On any business day, pleadings, other documents, and orders may also be filed at OAH located in the Sequoyah Building, 2400 North Lincoln Boulevard, Oklahoma City, Oklahoma. Filing may be accomplished through hand-delivery, postal or parcel delivery, ~~facsimile transmission,~~ and electronic transmission, if the available means are secure and compatible with OAH's docketing and case management software. A document filed through email is a portable digital file or is a \*.pdf formatted file and is submitted to: Legal.OAH.Staff@okdhs.org. Electronic transmission, in this context, does not include ~~electronic messaging for example, email or text messaging.~~ The OAH mailing address is Oklahoma Department of Human Services,

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Attn: OAH, ~~P.O.~~ Box 25352, Oklahoma City, Oklahoma 73125-0352.

(b) Proceedings cannot commence unless and until an administrative case is opened through Oklahoma Department of Human Services Child Support Services.

## 340:2-28-17.2. Pleadings and motion practice

### (a) Document signatures.

(1) **Signing pleadings.** Every pleading and motion filed with the Office of Administrative Hearings: Child Support (OAH) must be signed by an attorney of record, whose Oklahoma Bar Association (OBA) identification number must be stated, or when the party is not represented by an attorney, must be signed by the party. A pleading is any document that contains statements or allegations that constitute a cause of action or defense. Each pleading and motion must include the signer's address and phone number, if any. Pleadings need not be supported by affidavit except as provided for by rule or statute.

(2) **Signing other documents.** Other documents, such as legally-mandated administrative notices issued by Child Support Services (CSS) to notify obligors of proposed enforcement actions, do not require an attorney's signature.

(3) **Signatures submitted through electronic means.** Electronic mediums that attach an electronic signature are acceptable to meet signature requirements. In addition to electronic transmittals of documents and electronic signatures, signatures on any document transmitted by electronic means including, but not limited to, ~~facsimile~~, scan, or email have the same force and effect as an original, physical signature, per Section 237.9a of Title 56 of the Oklahoma Statutes. This provision does not authorize filing documents through ~~email or text~~.

### (b) Practice.

#### (1) Form, filing, and service.

(A) All documents, other than exhibits, are filed in the case, prior to consideration by an administrative law judge (ALJ). OAH retains all originals filed in paper form and maintains electronic submissions, per state record requirements. A pleading or motion ~~must be~~ is filed prior to any administrative proceeding ~~being docketed~~.

(B) ~~Documents~~ Paper form documents filed in OAH, ~~in paper form~~, must be typewritten or legibly hand-written on white paper, size 8½ by 11 inches. All documents, other than exhibits, must contain a case style, which is a document heading containing the name of this administrative court, the parties' names, appropriate roles, and assigned case numbers. The party filing the initial request for action by OAH is generally designated as the petitioner or petitioner/plaintiff. The opposing party is usually named as the respondent or respondent/defendant. The custodian(s) must be listed, when not already included in the style as a party, under the case numbers. The case numbers listed in the style must include the OAH number and the Title IV-D, family group number

(FGN), or CSS number. The associated district court case number is included, when available. Both conventional and "in re" styles are permitted. Parties are encouraged to maintain a consistent style, similar to one that may have been used in prior child support-related actions, between the same parties, provided the information is complete and accurate.

(i) When filed by an attorney, the name, OBA number, address, and preferred phone numbers must be shown on the document's signature page ~~of the document~~.

(ii) When filed by a party not represented by a lawyer, the party is considered a pro se party, and must sign his or her name and type or legibly print his or her name, mailing address, Zip code, and preferred phone numbers on the signature page of the document.

(C) All documents in a proceeding, other than exhibits, must be served on all other parties. Proof of service must be filed with OAH and establish that requirements for service are satisfied. A notice or order setting hearing ~~will provide~~ provides recipients with the hearing date and time ~~of the hearing~~ and when persons are instructed to appear:

(i) at a hearing's physical location ~~for hearing~~, the street address will be included; or

(ii) by video or ~~telephonic means~~ telephone, contact information and options are included.

(D) OAH may limit participation in hearings to video or ~~telephonic means~~ telephone in any notice or order setting hearing. OAH may also limit participation in hearings to video or ~~telephonic means~~ telephone through an order containing instructions in specific cases or through an administration order authorized by the Chief ALJ.

(E) A copy of all documents, other than exhibits, filed in OAH must be provided to all other pro se parties and attorneys of record. A certificate of mailing, delivery, or service must be filed with OAH.

(F) Upon failure to comply with the requirements in this Section, the ALJ may, among other sanctions, continue the cause of action until satisfactory compliance or deny the requested relief.

(G) Requests that do not comply with the requirements of (A) through (E) of this paragraph are considered only at the ALJ's discretion.

(H) Documents submitted through secure electronic means approved by OAH meet the requirement of original documents.

#### (2) Motions.

(A) This paragraph does not prohibit oral motions; however, written motions are preferred.

(B) All motions must state the legal basis supporting the relief or action requested, and ~~when known~~, whether the opposing party objects, when known.

(C) The ALJ determines if a hearing or oral argument is necessary on a motion and, if so, provides pro

se parties and all attorneys of record with notice of the specific hearing date, time, and means.

(D) Initial and response briefs or responses that do not comply with this paragraph are considered only at the ALJ's discretion.

(3) **Briefs.**

(A) Reply and response briefs must be filed three-business days prior to any hearing. Each brief must be clearly styled to show:

- (i) if it is in support of a motion, in opposition of a motion, or a reply brief;
- (ii) the particular application or proceeding to which it relates; and
- (iii) the party or parties on whose behalf it is presented.

(B) Initial and response briefs, when required, must not exceed 20 pages in length without prior ALJ permission.

(C) Reply briefs must be limited to five pages in length, without prior ALJ permission.

(D) No further briefs may be filed without ALJ permission.

(E) Briefs and responses that do not comply with this paragraph are considered only at the ALJ's discretion.

(4) **Time extensions.** Except at the ALJ's discretion, all requests for extensions of time must contain:

- (A) the original due date for the response;
- (B) the amount of additional time requested;
- (C) the reason for the request;
- (D) the current status of the case, including the next hearing date, when a hearing is scheduled; and
- (E) a statement that a good faith effort was made to contact the opposing pro se party or the opposing party's counsel ~~was contacted~~ regarding the extension to which:

- (i) and either opposing party consents;
- (ii) opposing party objects; or to the extension; or in the alternative, a statement that a good faith effort was made to comply but the opposing pro se party or the
- (iii) opposing party's counsel ~~party~~ was unavailable.

(5) **Counsel withdrawal.** When submitting an application to withdraw and a proposed order allowing withdrawal, counsel must comply with the following:

(A) Every application to withdraw as counsel must contain:

- (i) a statement of grounds for withdrawal;
- (ii) the current case status, including the next hearing date, when a hearing is scheduled;
- (iii) if new or substitute counsel was obtained by the client and entered an appearance; and
- (iv) a certificate of mailing, delivery, or service to the client and to all other pro se parties and attorneys of record.

(B) Every proposed order allowing withdrawal must contain a statement of the case's current status,

including the next hearing date, when a hearing is scheduled, and a certificate of mailing, delivery, or service to the movant's client, all other pro se parties, and attorneys of record.

(c) **Rejection for Non-Compliance.** The docketing clerks may reject documents for filing when this Section's requirements are not met or when there is no administrative case open through Oklahoma Human Services Child Support Services.

**340:2-28-24. Case Record Management**

(a) Audio or video recordings of hearings are the property of the Office of Administrative Hearings: Child Support (OAH); and are not available for copying, review, or transcription except as described in Oklahoma Administrative Code 340:2-28-23 or as otherwise authorized by law. OAH is not required to make or maintain ~~Video~~ video recordings of hearings ~~are not required to be made or maintained by OAH,~~ even if hearings are conducted by electronic/digital video conferencing.

(b) OAH manages and disposes of case records according to the Oklahoma Statutes and all applicable Oklahoma Department of Human Services and Archives and Records Commission administrative rules and policy.

**340:2-28-26. Case numbering**

(a) Every case ~~to be heard or otherwise~~ addressed by an administrative law judge (ALJ) with the Office of Administrative Hearings: Child Support (OAH); must be assigned an OAH case number prior to the case being placed on the docket. OAH numbers are generally assigned within one-business day after the request is submitted to OAH by the district child support office. The case is assigned a number starting with the year the case is opened with OAH; and a chronological number of the case for that year within OAH.

~~(1) The office sending the case is responsible for transfers from one child support office to another by filing a Notice of Transfer or a Motion and Order for Transfer signed by an ALJ with OAH. The transfer must indicate both the office transferring the case and the office receiving the case by office name rather than county designation.~~

~~(2) Notices, motions, and orders referred to in this Section may be submitted by paper, or electronically through a secured electronic system approved by OAH.~~

(b) Documents are not accepted for filing by OAH unless the OAH number is clearly written on the document and the case number corresponds to the named parties assigned to ~~that~~ the case according to OAH records.

**340:2-28-29. Dismissals [REVOKED]**

~~All motions for dismissals or partial dismissals must be filed, either on paper or through electronic means approved by the Office of Administrative Hearings: Child Support (OAH) with OAH. The administrative law judge (ALJ) determines~~

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~~whether a dismissal is granted according to relevant statutory and common law.~~

[OAR Docket #22-537; filed 7-5-22]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #22-539]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. General Provisions  
340:10-1-3 [AMENDED]  
340:10-1-4 [REVOKED]  
Subchapter 3. Conditions of Eligibility - Need  
Part 1. Resources  
340:10-3-1 [REVOKED]  
340:10-3-2 [AMENDED]  
340:10-3-10 [REVOKED]  
Part 3. Income  
340:10-3-32 [AMENDED]  
340:10-3-39 through 340:10-3-40 [AMENDED]  
Part 5. Assistance Payments  
340:10-3-56 [AMENDED]  
340:10-3-58 [REVOKED]  
Subchapter 4. Conditions of Eligibility - Mandatory Drug Screening  
340:10-4-1 [AMENDED]  
Subchapter 7. Conditions of Eligibility - Residence  
340:10-7-1 [AMENDED]  
340:10-7-2 [REVOKED]  
Subchapter 15. Conditions of Eligibility - Citizenship and Alienage  
340:10-15-1 [AMENDED]  
Subchapter 19. Eligibility Requirements for Emergency Assistance to Needy Families with Children  
340:10-19-9 [AMENDED]  
(Reference WFs 20-08, 21-14, and 22-10)

**AUTHORITY:**  
Director of Human Services; Section 162 and 230.52 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 162 and 230.52); Sections 602 and 608 of Title 42 of the United States Code, Section 404(a)(2) of Public Law 104-193; the Afghanistan Supplemental Appropriations Act 2022, and TANF-ACF-PI-2021-06, Afghan Parolees Now Eligible for TANF.

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

December 20, 2021

**COMMENT PERIOD:**

January 18, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 23, 2022

**ADOPTION:**

March 23, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION ON:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 1. General Provisions

340:10-1-3 [AMENDED]  
(WF 20-08)

**Gubernatorial Approval:**

January 20, 2021

**Register Publication:**

38 Ok Reg 585

**Docket Number:**

21-102

**Superseded rules:**

Subchapter 15. Conditions of Eligibility - Citizenship and Alienage

340:10-15-1 [AMENDED]

(Reference WF 21-14)

**Gubernatorial Approval:**

December 21, 2021

**Register Publication:**

39 Ok Reg 461

**Docket Number:**

22-2

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Chapter 10, Subchapter 1: (1) amend the rules to revoke a Section as relevant information regarding the 60-month lifetime receipt limit is included in another Section; (2) remove reference to the Temporary Assistance for Needy Families (TANF) State Plan and the components in this Section added specifically for State Plan purposes; (3) add a 60-month time limit; (4) rearrange, update, and simplify information for clarity; (5) update terminology; and (6) add rule citations.

The proposed amendments to Chapter 10, Subchapter 3 amend the rules to: (1) update Section titles; (2) revoke two Sections containing resource information as relevant information is added to another Section within this Subchapter; (3) rearrange resource availability and maximum resources information; (4) revoke the income determination Section and add relevant information regarding verifying and calculating income, benefit changes, including when to close or reopen benefits based on income, to earned and unearned income Sections; (5) add clarifying information regarding contributions, child support, and financial assistance from agencies or organizations; (6) move income from home produce to self-employment income; (7) move income received from the Oklahoma Department of Rehabilitation Services (DRS) to the income disregard Section; (8) add when gifts or financial aid received from agencies and organizations are disregarded; (9) add rule citations; and (10) update terminology.

The proposed amendments to Chapter 10, Subchapter 4 amend the rules to: (1) add the safety reason screening for illegal use of controlled substances is used; and (2) update terminology.

The proposed amendments to Chapter 10, Subchapter 7 amend the rules to: (1) revoke a Section regarding homeless persons and add relevant information to another Section within the same Subchapter; and (2) rearrange information and add taglines for greater clarity. The proposed amendment to Chapter 10 Subchapter 15 amend the rules to add: (1) recently admitted Afghans who are considered humanitarian parolees to qualified aliens eligible for TANF benefits; and (2) legal citations to reference the Afghanistan Supplemental Appropriations Act 2022.

The proposed amendment to Chapter 10, Subchapter 19 amends the rule to cite the federal authority that allows Emergency Family Services to be provided.

**CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

### SUBCHAPTER 1. GENERAL PROVISIONS



**340:10-1-3. State Plan for Temporary Assistance for Needy Families (TANF) General provisions**

The State Plan covering TANF encompasses the requirements listed in paragraphs (1) through (14) of this Section.

(1) **State-wide operation.** The Plan is in effect in all counties of the state as a state administered program.

(2) **Financing.** The Oklahoma State Legislature appropriates funds for financing the TANF program. Federal money is provided by block grant funding per federal laws and regulations relating to the TANF program. These state and federal funds are used for assistance and administration under the Plan.

(3) **Designated state agency.** The state TANF program is administered by the Oklahoma Department of Human Services (DHS), with at least one county office in each county in the state, operating under federal regulations per Sections 261.1 through 261.80 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 261.1 through 261.80), Sections 230.50 through 230.78 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 230.50 through 230.78) and DHS rules, per Oklahoma Administrative Code (OAC) 340:10 and 340:65.

(a) **Right to apply.** A person has the right to:

- (1) apply for Temporary Assistance for Needy Families (TANF);
- (2) expect an eligibility investigation; and
- (3) receive a prompt decision regarding his or her application.

(b4) **Appeal rights.** Individuals applying for, or receiving, TANF cash assistance have the right to appeal any action relating to the application for or taken that was related to receipt of TANF benefits. An applicant may also appeal a delay in processing an application timely, per Oklahoma Administrative Code (OAC) 340:65-3-5. Refer to OAC 340:2-5 for fair hearing procedures.

(5) **Proper and efficient administration.** DHS operates under the State Merit System, which establishes and maintains personnel standards on a merit basis for certain federal grant in aid agencies, including DHS. Employees engaged in TANF State Plan administration are covered by the State Merit System.

- (6) **Required reports.** DHS Financial Services:
- (A) assists in fulfilling the requirements of state and federal laws by making necessary reports;
  - (B) cooperates with various federal agencies by providing current and special reports; and
  - (C) furnishes DHS with necessary data for the operation of its programs.

(c7) **Safeguarding information.** Federal and state laws and DHS Oklahoma Human Services (OKDHS) rules restrict the use or disclosure of information concerning TANF applicants or recipients to purposes directly connected with TANF program administration. Refer to OAC 340:65-3-2 rules regarding safeguarding case information and information that may be disclosed.

- (8) **Right to apply.** An individual has the right to:
- (A) apply for TANF;

- (B) expect an investigation of eligibility; and
- (C) a prompt decision regarding his or her application.

(d9) **Assistance under only one program.** The needs of an eligible person must only be included in one cash assistance program; the State Supplemental Payment (SSP) or TANF.

(e10) **Standards for determining eligibility and amount of payment.** Uniform standards for To promote uniformity and accuracy in determining eligibility, and refer to rules and procedures for such determination are provided in included in this Chapter and OAC 340:65, and this Chapter. As a means of promoting uniformity and accuracy in determining the OKDHS uses a flat grant, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX, to meet families' basic needs, such as for food, clothing, basic drugs/medications, personal items, shelter, utilities, and household equipment of each TANF assistance unit, a flat grant consisting of these requirements is used.

(11) **Income and resources.** The income and resources available to the assistance unit are considered in determining its eligibility for TANF unless they are required to be disregarded by federal or state law or by DHS rules. Income and resources received on behalf of a member of the assistance unit by another individual that include, but are not limited to, a guardian or conservator, is considered available to the assistance unit.

(f) **60-calendar month time limit.** Effective October 1, 1996, TANF cash assistance receipt is restricted to a lifetime limit of 60-calendar months, whether consecutive or not. The time limit may be extended when Adult and Family Services TANF Unit staff approves a hardship extension, per OAC 340:10-3-56(a)(2)(E).

(g12) **Civil rights.** The TANF program is administered, per the provisions of Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1975, as amended; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990; and Title IX of the Education Amendments of 1972, as amended.

(h13) **Electronic benefit transfer (EBT) restrictions.** States are required to maintain policies and practices as necessary to prevent TANF cash assistance from being used in any EBT transaction in certain prohibited businesses, per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)). 56 O.S. § 241.4 also restricts the use of EBT transactions in these businesses and adds one additional prohibited business.

(1A) Prohibited businesses include any:

- (A) liquor store. The term liquor store means any establishment that sells exclusively or primarily intoxicating liquor. The term does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods, per 7 U.S.C. § 2012;
- (B) casino, gambling casino, or gaming establishment except for:
  - (i) a grocery store that sells groceries, including staple foods, per 7 U.S.C. § 2012, and also

offers, or is located within the same building or complex as an establishment offering casino, gambling, or gaming activities; or  
(iiH) any other establishment offering casino, gambling, or gaming activities incidental to the principal purpose of the business;

(Ciii) retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or  
(Div) retail establishment whose principal business is that of selling cigarettes, cigars, or tobacco products. This type of retail establishment is prohibited, per 56 O.S. § 241.4, but not by federal law.

(2B) EBT transaction means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or service.

(3C) ~~DHS~~OKDHS informs applicants and recipients of this prohibition by including information about the prohibition in:

- (Ai) Form 08MP003E, Rights, Responsibilities, and Signature for Benefits, of the application;
- (Bi) posters displayed in county office lobbies;
- (Ciii) the certification notice; and
- (Div) a sign sent to identified prohibited businesses to educate staff and customers that the ~~DHS~~OKDHS-issued debit card is not accepted at their businesses.

(4D) Refer to OAC 340:10-3-57(h) for recipient benefit reduction penalties when ~~DHS~~OKDHS determines a recipient used his or her debit card in a prohibited business.

(5E) Refer to OAC 340:65-3-6 for debit card and direct deposit procedures, including information about accessing benefits, free services, and fees.

(14) ~~Teen Pregnancy.~~ DHS-OKDHS has youth mentoring contracts throughout Oklahoma. These programs provide a safe environment for at risk and low income youth and teens. Teens attending youth mentoring are less likely to become involved in risky behavior as their after school hours are filled with sponsored/monitored activities, life skills, mentoring, nutrition, and programs designed for the teen population to make smart decisions in every area of their lives, including relationship decisions that help the teen population learn how to prevent unwanted teen pregnancies.

(i) TANF State Plan. The TANF State Plan is a separate document completed and submitted to the Administration for Children and Families every two years.

### 340:10-1-4. Conditions of eligibility [REVOKED]

~~Both federal and state laws specify that assistance is available to those persons who meet certain conditions of eligibility. Receipt of Temporary Assistance for Needy Families has been restricted to a lifetime limit of 60 months, whether consecutive or not, effective October 1, 1996. The time limit can be extended when a hardship extension has been approved.~~

## SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

### PART 1. RESOURCES

#### 340:10-3-1. Resources defined [REVOKED]

~~For the purposes of the Temporary Assistance for Needy Families Program, resources is a term defined as any form of real and personal property that has an available monetary value. All available resources, except those required to be disregarded by federal law or rules, per Oklahoma Administrative Code 340:10-3-1 through 340:10-3-10 are considered.~~

#### 340:10-3-2. General resource general provisions regarding resources

(a) Resources defined. For the purposes of the Temporary Assistance for Needy Families Program (TANF), resources means any form of real and personal property that has an available monetary value. All available resources, except those required to be disregarded by federal law or rules, per Oklahoma Administrative Code (OAC) 340:10-3-2 through 340:10-3-9 are considered.

(b) Resource evaluation. The worker evaluates and verifies the value of each the assistance unit's countable resource available to the assistance unit must be evaluated and verified resources at application and renewal. Refer to Oklahoma Department of Human Services (DHS) Appendix C 1, Maximum Income, Resource, and Payment Standards, Schedule IX.C regarding the maximum resource standard.

(1b) Only available in determining eligibility based on resources, only resources available for current use or resources that the client or another assistance unit member owns, wholly or in part, are considered.

(2) A resource is considered unavailable when there is a legal impediment to overcome. When there is a legal impediment, the client must agree to pursue all reasonable steps to overcome the impediment and initiate legal action within 30-calendar days. While the legal action is in process, the resource is considered unavailable. When the cost of making a resource available exceeds the gain, the client is not required to pursue action to make it available.

(3) The assistance unit may change the form of resources as long as the resources do not exceed the maximum resource standard.

(4) When an adult or child receives Supplemental Security Income (SSI), his or her resources are not considered in determining Temporary Assistance for Needy Families (TANF) TANF eligibility.

(5) When both parents are in the home and one parent receives SSI and a State Supplemental Payment (SSP) benefit and the other parent is included in the TANF benefit with the children, both parents' resources are not considered for TANF as they are considered in determining SSI eligibility.

(6) When a natural or adoptive parent or dependent child is not included in the assistance unit because of alien

status, the worker considers his or her resources in determining resource eligibility for the TANF cash assistance members.

(c) Maximum resource standard. Refer to Oklahoma Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX.C for the maximum resources the assistance unit may hold in one or more countable resources and still be considered eligible for TANF based on need. The assistance unit is ineligible for TANF for any month its resources exceed the maximum resource standard, per DHS Appendix C 1, Schedule IX.C. When the assistance unit's resources exceed the resource standard, the worker closes the TANF cash assistance for the next advance notice effective date, per DHSOKDHS Appendix B-2, Deadlines for Case Actions.

(d) The client may change the form of resources as long as the resources are not in excess of the maximum resource standard, per DHS Appendix C 1, Schedule IX.C.

(e) In determining eligibility based on resources, only resources available for current use or resources that the client has the legal ability to convert to cash for current use with no legal impediment involved are considered as countable resources.

(f) A resource is considered unavailable when there is a legal impediment to overcome. When there is a legal impediment, the client must agree to pursue all reasonable steps to overcome the impediment and initiate legal action within 30 calendar days. While the legal action is in process, the resource is considered unavailable. When the cost of making a resource available exceeds the gain, the client is not required to pursue action to make it available.

(d) Relative-payee resources. A relative-payee may only be included in the TANF cash assistance benefit when the natural or adoptive parent is not in the home, the relative-payee meets the definition of a needy caretaker, per OAC 340:10-3-30, and inclusion of his or her resources does not exceed the maximum resource standard. A stepparent may be included in the cash assistance benefit when the natural or adoptive parent is incapacitated or not in the home.

(1) When a relative-payee is not eligible to be included in the TANF assistance unit, or is eligible but does not want to be included, the worker does not consider the relative-payee or his or her spouse's resources in determining a child's eligibility.

(2) Only one needy caretaker may be included in the TANF assistance unit when the child's parent(s) is not in the home. When the needy caretaker has a spouse who is not an SSI recipient, one-half of their combined resources are considered as the needy caretaker's resources. When the needy caretaker's spouse is an SSI recipient, his or her resources are not considered.

**340:10-3-10. Maximum resources [REVOKED]**

Maximum resources is a term used to designate the largest amount an individual can hold in one or more countable resources and still be considered eligible for Temporary Assistance for Needy Families (TANF) from the standpoint of need. Resources may be held in any form or combination of forms of real or personal property.

(1) ~~Maximum TANF resource standard.~~ Refer to Oklahoma Department of Human Services (DHS) Appendix C 1, Maximum Income, Resource, and Payment Standards, Schedule IX.C to determine the maximum resources a family may have and be eligible for TANF. The resources of all members included in the TANF cash assistance benefit are considered in determining the maximum resources for the family. For resources of a needy caretaker refer to paragraph (2) of this Section.

(A) ~~When both parents are in the home and one parent receives Supplemental Security Income (SSI) and is included in a State Supplemental Payment (SSP) benefit and the other parent is included in a TANF benefit with the children, the resources of both parents are evaluated to determine eligibility for SSI and therefore are not considered for the TANF benefit.~~

(B) ~~When a natural or adoptive parent or dependent child is not included in the assistance unit because of alien status, his or her resources are considered with the resources of the eligible children in computing TANF resource eligibility.~~

(2) ~~Consideration of resources of a relative-payee other than a natural or adoptive parent.~~ A relative payee may only be included in the cash assistance benefit when the natural or adoptive parent is not in the home and the relative payee meets the definition of a needy caretaker, per Oklahoma Administrative Code (OAC) 340:10-3-30 and inclusion of his or her resources does not exceed the resource standard, per DHS Appendix C 1, Schedule IX.C. A stepparent may be included in the cash assistance benefit when the natural or adoptive parent is incapacitated or not in the home.

(A) ~~When a relative payee is not eligible to be included in the TANF assistance unit or is eligible but does not want to be included, the relative payee or his or her spouse's resources are not considered in determining the children's eligibility.~~

(B) ~~A relative payee is considered resource eligible as a needy caretaker when his or her resources do not exceed the maximum resource standard.~~

(C) ~~Only one needy caretaker may be included in the TANF assistance unit when the child's parent(s) is not in the home. When the needy caretaker has a spouse who is not an SSI recipient, one half of their combined resources are considered as the needy caretaker's resources. When the spouse of the needy caretaker is an SSI recipient, his or her resources are not considered.~~

**PART 3. INCOME**

**340:10-3-32. Determination of earned income determination**

(a) **Self-employment income determination.** Self-employment income received by a member of the ~~an~~ assistance unit whose income is derived ~~member~~ from a self-employment business enterprise ~~he or she~~ ~~owns~~ ~~owns~~ solely or in

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part by the person; or when the person works for from an employer, but when the assistance unit member is considered self-employed, per Oklahoma Administrative Code (OAC) 340:10-3-31(a), is considered per the procedures listed in (b) of this Section. Other types of self-employment income are listed in (1) through ~~(3)~~(4) of this subsection.

(1) **Room or board.** When a person:

(A) rents a room in the client's home, the worker subtracts 25 percent of the gross earned income amount received as a business expense; or

(B) pays for room and board in the client's home, the worker subtracts 50 percent of the gross earned income as a business expense.

(2) **Rental property.** Income from rental property is considered earned self-employment income when ~~none an outside person or agency does not conduct any~~ of the activities associated with renting the property ~~is conducted by an outside person or agency~~. When the client does not manage the rental property, it is considered unearned self-employment income. When the client incurs business expenses, such as a mortgage payment, the worker subtracts 50 percent of the client's rental property income as a business expense.

(3) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies (LLC), may receive profit sharing that is reported on the household's personal income tax return.

(A) S corporation profit sharing is considered unearned ~~profit sharing~~ profit-sharing income. Refer to (c)(3) of this Section and OAC 340:10-3-39(o) for information regarding S corporations.

(B) Partnerships are unincorporated businesses with two or more partners. When a household an assistance unit member is a partner in a business, he or she is considered self-employed and not an employee of the business. Each partner receives a profit share from the business. When a business is considered a:

(i) general partnership or LLC with a member-manager, each partner's share of the business income is shown as self-employment income on his or her federal income tax form; or

(ii) limited partnership or other LLC member, each partner's share of the business income is shown as self-employment income or unearned ~~profit sharing~~ profit-sharing income on his or her federal income tax form.

(4) **Home produce.** Any home produce from garden, livestock, and poultry utilized by the client and his or her household for their consumption is not considered in determining the Temporary Assistance for Needy Families (TANF) benefit amount. Any home produce sold to others is considered as self-employment income.

(b) **Self-employment income procedures.** Self-employment income that represents the person's assistance unit member's annual support is prorated over a 12-month period, even when the income is received in a shorter time period of ~~time~~. The worker uses the gross self-employment shown on

the person's most recent federal tax return, when filed, or computes the person's member's gross self-employment income from the person's member's business or employer records. When the person member claimed business expenses, the worker subtracts 50 percent of the person's member's gross self-employment income as business expenses and divides the remaining income by the number of months to be averaged to arrive at the person's member's net monthly self-employment income.

(1) **New income source.** When self-employment income ~~was~~ received for less than a year, the income must be averaged over the time period of ~~time~~ received and the monthly income projected for the coming year.

(2) **Averaged over time period of time received.** When there is insufficient data to make a reasonable income projection from this income source, the worker does not consider income from this source until the six-month renewal. At renewal, the worker averages the income over the number of months received until a full year's data information is available.

(3) **Substantial increase or decrease in income.** When the person who would normally have the self-employment income ~~annualized~~ assistance unit member experiences a substantial increase or decrease in income, the worker does not ~~calculate~~ use prior self-employment income ~~on the basis of prior earnings~~, such as income tax returns, to calculate anticipated self-employment income. Instead, the worker ~~calculates the self-employment income using~~ only uses the self-employment income that can reasonably be anticipated to project future earnings.

(c) **Earned income from sources other than self-employment.**

(1) **Earned income from wages, salary, or commission.** When the income is from wages, salary, commission, or contract employment, the earned income is the gross income prior to payroll deductions and withholdings. Money from the sale of whole blood or blood plasma is also considered as earned income.

(2) **Earned income from work and training programs.**

(A) **Workforce Innovation and Opportunity Act (WIOA) of 2014.** Per Section 181 of WIOA, earned income from WIOA is exempt.

(B) **On-the-job training (OJT).** Earned income from OJT is considered as any other earned income.

(3) **S corporations.** When a household an assistance unit member is a shareholder in an S corporation, he or she may receive profits from the business in ~~two~~ three ways; as a salary, ~~and/or~~ as a profit share of the business, ~~or as salary and a profit share of the business~~. ~~Both types of income~~ Salaries and profit share of the business are reported on the household member's personal income tax return. Salary income is considered as earned income and profit share income is considered as unearned income.

(d) **Earned income determination.** TANF cash assistance benefit amount is determined based on actual gross income received in the current or past month, when known, and the best estimate of anticipated gross income for future months.

(1) **Income verification.** When income verification is needed, the worker gives or sends Form 08AD092E, Client Contact and Information Request, to the client specifying the income verification needed and gives the client at least 10-calendar days to provide the verification.

(A) When an application includes a past month, the worker obtains actual income, when available, to determine income eligibility for the application month.

(B) Once the client provides acceptable verification, no further information is required unless a change occurs or the renewal is due.

(C) When the client reports new employment and has not received representative pay yet, the worker determines the best estimate from information provided by the client and the employer.

(2) **Varying income.** When the assistance unit member receives income in varying amounts, the worker averages the most recent 30-calendar days of income to anticipate income for future months unless the:

(A) member starts new employment and paystubs are not available. When pay stubs are not available, the worker contacts the employer to obtain the member's hourly wage, anticipated weekly hours, and pay frequency;

(B) hourly wage changes. The worker obtains a paystub(s) that shows the member's new hourly rate, uses the past 30-calendar days of paystubs to average the member's weekly hours, and multiplies the hours by the new pay rate to anticipate income. When a paystub showing the new hourly rate is not available, the worker contacts the employer to verify the new hourly rate;

(C) member's work hours change. When paystubs are not available, the worker contacts the employer to verify the increase or decrease in hours. The worker multiplies the new hours by the hourly wage to anticipate the member's new earnings;

(D) member obtains a second job. The worker averages the client's first 30-calendar days of paystubs from the second job, when available, or contacts the employer to obtain the member's hourly wage, anticipated weekly hours, and frequency of pay. The worker computes the monthly earnings from each job separately and then adds the earnings together for the total month's gross earnings; or

(E) paystubs are not representative of the normal circumstances. In this instance, the worker only uses the representative paystubs to anticipate future income.

(3) **Income conversion to monthly amount.** When the assistance unit member receives income more often than monthly, the worker converts the income to a monthly amount as described in (A) - (D) of this paragraph. Income received:

(A) on a daily basis is converted to a weekly amount, then multiplied by 4.3;

(B) weekly is multiplied by 4.3;

(C) twice a month is multiplied by 2; or

(D) every two weeks is multiplied by 2.15.

(e) **Benefit changes.** The client is responsible for reporting income changes within 10-calendar days of when the change takes place. The worker is responsible for taking timely action within 10-calendar days of the date the client reports the change. All client notices must include the timely reporting requirement.

(1) The TANF cash assistance benefit may be closed based on actual or anticipated earnings when the assistance unit's net income is over the payment standard, per Oklahoma Human Services Appendix C-1, Schedule IX. To determine net income, the worker subtracts the earned income disregard, when applicable, per OAC 340:10-3-31.1 and the earned income exemptions, per OAC 340:10-3-33, from gross earned income.

(2) The TANF benefit may be reopened due to administrative error, per OAC 340:65-5-6, when the client reports within 30-calendar days of the effective closure date that the anticipated income was not received or was less than expected and did not cause ineligibility.

**340:10-3-39. Income other than earned ~~Unearned~~ income determination**

(a) **Unearned income.** When the client has income from one or more of the income sources listed in (1) through (14) of this subsection, the income source and amount is verified and considered as unearned income.

(1) **Capital investments.** Proceeds from interest or dividends from capital investments that include savings accounts, bonds, other than United States (U.S.) Savings Bonds, notes, and mortgages received ~~subsequent to~~ after certification constitute unearned income.

(2**b**) **Real property held as a resource.** When the client has income from property held as a resource, ~~only the income after deducting~~ the worker deducts actual business expense ~~is considered~~ expenses before considering the remainder as unearned income.

(3**e**) **Life estate and homestead rights.** ~~For~~ When the client receives income from a life estate and homestead rights, ~~refer to~~ it is counted as unearned income, per Oklahoma Administrative Code (OAC) 340:10-3-4(d).

(4**d**) **Minerals.** When the client owns minerals, but not the surface rights, only actual income from minerals, delayed rentals, and production is considered. ~~The worker obtains income verification from documents that the client has in hand, when available.~~ When the client does not have documentary evidence of the income amount, the worker or client obtains income verification from the firm or person who is making the payment.

(e) **Home produce.** Any home produce from garden, live-stock, and poultry utilized by the client and his or her household for their consumption is not considered in determining the Temporary Assistance for Needy Families (TANF) benefit amount.

(5**f**) **Contributions.** Appreciable ~~contributions~~ Contributions the client recurrently ~~received in cash~~ ~~are~~ receives are considered unearned income ~~except when the contribution is not made directly to the recipient.~~

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Payments made to a vendor on the client's behalf are not considered countable contributions.

~~(6g)~~ **Child support.** ~~The Child support assigned and retained by Oklahoma Department of Human Services (DHS)(OKDHS) Child Support Services may send the client child support in excess of the monthly court ordered amount(CSS) is not considered as income to the client, per OAC 340:10-10-7.~~

~~(A)~~ Child support payments an applicant receives prior to certification are considered unearned income for the month received.

~~(B)~~ When ~~CSS sends the client receives this excess amount~~ child support after certification because more is collected than is owed to OKDHS, it is considered as unearned income.

~~(C)~~ When the Temporary Assistance for Needy Families (TANF) payee is a minor parent and lives with an adult relative who receives child support for the minor parent, the child support is considered as unearned income for the minor parent as CSS does not assign or retain it.

~~(7h)~~ **Retirement, disability, and unemployment benefits.** Income received monthly from annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits are considered unearned income. ~~The worker verifies the income by obtaining a copy of the person's award letter or benefit verification statement or by use of data exchange files. Retirement received~~ When the client receives retirement income as a lump sum payment upon retirement, ~~are it~~ is considered as a resource instead of income, per OAC 340:10-3-5(a)(9)(D). Supplemental Security Income (SSI) ~~does not fall under these types of benefits~~ is not considered because the SSI recipient is not part of the TANF cash assistance unit, per OAC 340:10-3-57(b).

~~(8i)~~ **Military benefits.** When the client or his or her spouse is or was in the military, he or she may be eligible to receive life insurance. Military benefits such as pensions, compensation, servicemen dependents' allowances, and similar benefits are considered as countable unearned income. When the client states that any member of the assistance unit, former spouse, or a non-custodial parent is or was in the military, the worker checks with state and federal veterans' agencies to determine if any benefits are available to the assistance unit.

~~(9j)~~ **Income** Financial aid from any agency or organization. Financial aid provided to students or financial aid provided by agencies or organizations that base their payment on the financial need of the household is not only considered in determining the TANF benefit amount provided duplication does not exist between such other as countable unearned income when the purpose of the assistance and that provided by DHS duplicates the purpose of the TANF cash assistance.

~~(A)~~ Financial aid given by other agencies or organizations because of a household's financial need

does not constitute duplication when the financial aid is given:

- ~~(1)~~ for a different purpose than that provided by DHS;
- ~~(2)~~ for goods and services that are not included in the TANF need standard, per OAC 340:10-1-3(10); or,

~~(B)~~ TANF cash assistance's purpose is to provide for the assistance unit's basic needs; such as food, clothing, basic medications, personal items, shelter, utilities, and household equipment, per OAC 340:10-1-3(e).

~~(C)~~ When educational assistance serves the same purpose as TANF cash assistance, such as when the client receives a stipend for living expenses, the stipend is countable income.

~~(D3)~~ is in an amount sufficient for the person to have the amount of money as determined by When the assistance an agency or organization provides duplicates the purpose of TANF and:

~~(i)~~ does not exceed the difference between the TANF payment and need standard by family size, per ~~DHS~~OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX, it is not considered as income; or

~~(ii)~~ In this instance, the non-duplicated amount is the difference between the monthly payment standard and the monthly need standard, per DHS Appendix C-1, Schedule IX. Any amount of financial aid that exceeds that the difference between the payment and need standard, it is considered as unearned income.

~~(k)~~ **Income from the Oklahoma Department of Rehabilitation Services (DRS).** When the client receives assistance or services from DRS that is allocated for items not covered in the TANF standards, it is disregarded in determining the TANF benefit amount. Examples of disregarded assistance or services are car fare to a rehabilitation center, extra clothing, lunches, grooming needed for a training program, and any other such complementary payments.

~~(10l)~~ **Casual and inconsequential gifts.** Monetary gifts, such as Christmas, birthday, or graduation gifts that do not exceed \$30 per calendar quarter for each person, are disregarded as income.

~~(1)~~ Gift amounts are disregarded during the calendar quarter until the total amount reaches \$30. When the amount received exceeds \$30 per quarter, it is counted as unearned income when the gift amounts per person exceed \$30 per calendar quarter.

~~(A2)~~ When a single gift exceeds \$30, the entire amount is counted as unearned lump sum income, per OAC 340:10-3-28.

~~(B3)~~ When the recipient claims that the gift is intended for more than one person in the assistance unit, it can be divided among these persons. Gifts between assistance unit members of the assistance unit are not counted.

~~(11m)~~ **Grants.** Grants that are not based on financial need are considered income to the extent the grant is available for current maintenance.

(A4) Any portion of the grant that is expended, designated, or intended for items not included in current maintenance is excluded provided documentation is provided to justify the exclusion.

(B2) The countable amount of a grant received for a period covering more than one month is prorated over the period it is intended to cover.

~~(12n)~~ **Funds held in trust by Bureau of Indian Affairs (BIA).** The BIA frequently puts a person's trust funds in an Individual Indian Money (IIM) account.

(A4) When the BIA states that the funds are unavailable and are not disbursed, the funds are not considered in determining eligibility. When the BIA disburses any portion of the funds to the client, guardian, or conservator, such funds are considered as available unearned income unless the income is disregarded, per OAC 340:10-3-40. When countable funds are disbursed:

~~(iA) When countable funds are disbursed on a monthly basis, the income is treated as unearned income in the month received;~~

~~(iiB) When countable funds are disbursed on a regular basis, less often than monthly, the income is averaged over the number of months it is intended to cover, per OAC 340:10-3-28(1); or~~

~~(iiiC) When countable funds are disbursed in a one-time payment, the income is considered a nonrecurring lump sum payment in the month received, per OAC 340:10-3-28(2).~~

~~(D) When the BIA states that the funds are unavailable and are not disbursed, the funds are not considered in determining eligibility.~~

(B2) When the BIA states ~~that~~ the account is unavailable and does not have a monthly disbursement plan, but an account review of the account reveals a recent disbursement history of disbursements to the client, guardian, or conservator, this may indicate that all or a portion of the account is available. ~~The availability of the funds must be resolved with the BIA.~~ When this occurs, the funds are considered as unavailable because of a legal impediment until the situation is resolved with the BIA.

~~(C3)~~ When the BIA makes disbursements to a ~~third party~~third-party vendor in payment for goods or services, the disbursements are not considered as countable income.

(13e) **Profit sharing.** When a household member is a shareholder in an S corporation or a partner in a limited partnership or limited liability company, he or she may receive a distribution or profit share of the business. This is considered unearned income.

(b) **Unearned income determination.** Unearned income is determined based on actual income received in the current or past month, when known, and the best estimate of anticipated income for future months. When the client receives unearned income in varying amounts, the worker may average the income over a six-month period to determine anticipated income when averaging income over a longer time period

is more representative. The worker only uses representative income amounts.

(1) **Income conversion to monthly amount.** When the client receives income more often than monthly, the worker converts the income to a monthly amount as described in (A) - (D) of this paragraph. Income received:

(A) on a daily basis is converted to a weekly amount, then multiplied by 4.3;

(B) weekly is multiplied by 4.3;

(C) twice a month is multiplied by 2; or

(D) every two weeks is multiplied by 2.15.

(2) **Benefit changes.** The client is responsible for reporting income changes within 10-calendar days of when the change takes place. The worker is responsible for taking timely action within 10-calendar days of the date the client reports the change.

(A) When the anticipated unearned income change is over the payment standard, per OKDHS Appendix C-1, Schedule IX, the worker closes the TANF cash assistance benefit effective the next advanced notice date, per OKDHS Appendix B-2, Deadlines for Case Actions.

(B) The TANF benefit may be reopened due to administrative error, per OAC 340:65-5-6, when the client reports within 30-calendar days of the effective closure date that the anticipated income was not received or was less than expected and did not cause ineligibility.

**340:10-3-40. Income disregards**

Income that is disregarded in determining eligibility for Temporary Assistance for Needy Families (TANF) ~~is~~includes:

(1) the food benefit allotment under the Food and Nutrition Act of 2008;

(2) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) educational assistance, such as grants, work study, scholarships, fellowships, educational loans ~~on which with deferred payment is deferred,~~ and veterans education benefits. When the educational assistance is serving the same purpose as TANF cash assistance, such as when the client receives a stipend for living expenses, the stipend is countable income. The student's classification as a graduate or undergraduate is not a factor;

(4) loans, regardless of use, when a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from a person or financial institution in the loan business.

(B) When the loan was from a person(s) not in the loan business, the client's acknowledgment of obligation to repay, with or without interest, is required to indicate that the loan is bona fide.

(C) When the loan agreement is not written, the client and lender must complete and sign Form 08AD103E, Loan Verification, or a written statement,

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attesting that the loan is bona fide and verifying the date and amount of loan.

(D) When the client receives loans on a recurrent or regular basis from the same source to meet expenses, the client and lender must sign an affidavit that states the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule;

(5) Indian payments, including judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed by the tribe subject to the Secretary of the Interior's approval by the Secretary of the Interior. For ~~this paragraph's purposes of this paragraph~~, per capita is defined as each tribal member receiving an equal amount.

(A) Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded.

(B) Any income from mineral leases or from tribal business investments is disregarded as long as the payments are paid per capita.

(C) Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) special allowance(s) from the student's trust funds for school expenses made available upon petition in writing ~~from trust funds of the student~~;

(7) income from trusts of a child(ren) included in a TANF benefit when the worker determines that funds are to be used for educational purposes for a child(ren). Any court established trust must be examined to determine if the court restricted the trust for other purposes. The worker must verify at application and renewal if funds were withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it is documented the funds were used for a child(ren)'s educational purposes;

(8) income from accounts, stocks, and bonds held under the control of a third party when the funds are:

(A) designated for educational purposes for a child(ren) in a TANF benefit even when a child(ren)'s name is on the account and the third-party holder is required to access the funds; or

(B) established to pay for non-elective medical expenses or funeral expenses for an assistance unit member, per OAC 340:10-3-5(a)(4)(D);

(9) benefits from state and community programs on aging, per Title III and Title V of the Older Americans Act of 1965 as amended by Public Law (P.L.) 100-175, Older Americans Act Amendments of 1987, and P.L. 114-144, Older Americans Reauthorization Act of 2016. Each state and various organizations receive Title V funds. These organizations include:

(A) Experience Works;

(B) National Council on Aging;

(C) National Council of Senior Citizens;

(D) American Association of Retired Persons ~~(AARP)~~ Foundation;

(E) United States (U.S.) Forest Service;

(F) National Association for Spanish Speaking Elderly;

(G) National Urban League;

(H) National Council on Black Aging;

(I) National Council on Indian Aging;

(J) Asociacio'n Nacional Pro Personas Mayores;

(K) Associates for Training and Development, Inc.;

(L) American Samoa;

(M) Easter Seals Inc.;

(N) Goodwill Industries International, Inc.;

(O) Institute for Indian Development;

(P) National Able Network;

(Q) National Asian Pacific Center on Aging;

(R) National Caucus and Center on Black Aged, Inc.;

(S) National Older Worker Career Center;

(T) Operation A.B.L.E. of Greater Boston, Inc.;

(U) Senior Service America, Inc.;

(V) SER-Jobs for Progress National, Inc.;

(W) Workplace, Inc.; and

(X) VANTAGE Aging;

(10) unearned income received by a child(ren) in a TANF benefit, such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance from a program funded by the Workforce Innovation and Opportunity Act (WIOA) of 2014, including Job Corps income and earned income received as wages;

(11) payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives ~~(SCORE)~~ and Active Corps of Executives ~~(ACE)~~;

(12) payments, allowances, or earnings to persons participating in the AmeriCorps State and National program or the AmeriCorps National Civilian Community Corps authorized by the National and Community Service Act of 1990, 42 U.S.C. § 12637(d); and other payments to volunteers authorized by the National and Community Service Trust Act of 1993, P. L. 103-82, 42 U.S.C. §§ 12571, et seq. and administered by the Corporation for National and Community Service;

(13) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;

(14) any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native that are exempt from taxation under the Settlement Act;

(15) any income of an adult or a child(ren) in the family group living in the home and receiving Supplemental Security Income (SSI) is not considered in determining the TANF benefit. The Social Security Administration considers the individual's income is considered by the Social Security Administration in determining eligibility for SSI and includes any payment made by Developmental Disabilities Services through the Family Support Assistance



Payment Program on behalf of a child(ren) receiving SSI and any other earned or unearned income of the person;

(16) Experimental Housing Allowance Program payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the US Housing Act of 1937, as amended;

(17) earnings of a child(ren) in a TANF benefit who is a full-time student;

(18) government rental or housing subsidies by governmental agencies, such as Housing and Urban Development (~~HUD~~)—received in-kind or in cash for rent, mortgage payments, or utilities;

(19) reimbursements from an employer, the Department of Labor, or the ~~Bureau of Indian Affairs~~ BIA, for out-of-pocket expenditures and allowances for travel, training, meals, or supplies including uniforms, to the extent the funds are used for expenses directly related to such travel, training, meals, or supplies;

(20) Low Income Home Energy Assistance Program (~~LHEAP~~)—payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

(21) ~~refunds of~~ federal or state Earned Income Tax Credit (~~EITC~~) refunds received after December 31, 2009, as a result of filing a federal or state tax return are exempt as income for 12 months following receipt, per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010, P.L. 111-312;

(22) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(23) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(24) federal major disaster and emergency assistance provided, per the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended, 42 U.S.C. § 5155(d) and comparable disaster assistance provided by states, local governments, and disaster assistance organizations;

(25) interests of individual Indians in trust or restricted lands;

(26) individual Indians' income up to \$2,000 per calendar year ~~received by individual Indians~~ derived from leases or other uses of individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered unearned income;

(27) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;

(28) payments made to persons because of their status as victims of Nazi persecution;

(29) interest accrued from deposits made by a person into an Individual Development Account (~~IDA~~)—up to \$2,000;

(30) stipends paid to students participating in the Indian Vocational Education Program (~~IVEP~~)—through the Carl D. Perkins Vocational and Applied Technology Education Act;

(31) payments made from the crime victims compensation program as amended in Section 1403 of the Victims of Crime Act of 1984, 42 U.S.C. § 10602;

(32) reimbursements made to a foster care parent(s) or a potential foster care parent(s);

(33) payments as described in 38 U.S.C. § 1823(c) provided to certain persons who are children of Vietnam War veterans;

(34) allowances, stipends, earnings, compensation in lieu of wages, or other payments made for participation in WIOA or other federally-funded grants and workforce training programs paid to persons of all ages and student status;

(35) child support judgments or arrearage payments received for a ~~child~~ child(ren) no longer age-eligible for the TANF cash benefit;

(36) money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account, or an ABLE account in any other state, owned by the designated account beneficiary ~~of the account and established~~ to pay for qualified disability expenses (QDE), is excluded from income or resource consideration, per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes and the ABLE Act of 2014, 26 U.S.C. § 529A. A person may have only one ABLE account.

(A) The client must provide documents to verify the account meets exemption criteria before the funds are excluded. Once the client verifies that the savings or trust account is a valid ABLE account, no further account information is required.

(B) A contribution to an ABLE account by another individual is excluded unless the contribution exceeds the annual federal gift tax exclusion amount, per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that ~~is in excess of~~ exceeds the annual federal gift tax exclusion amount is considered as a countable resource in the amount deposited.

(C) A distribution from an ABLE account that is retained after the month of receipt is excluded in any month when spent on a QDE. Money withdrawn for reasons other than to pay a QDE is considered as a countable resource for the month of withdrawal.

(D) A QDE is any expense related to the blindness or disability of the individual and made for the benefit of the individual. QDE's include, but are not limited to:

- (i) education;
- (ii) housing;
- (iii) transportation;
- (iv) employment, training, and support;

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- (v) assistive technology;
  - (vi) health;
  - (vii) prevention and wellness;
  - (viii) financial management and administrative services;
  - (ix) legal fees;
  - (x) ABLE account oversight and monitoring;
  - (xi) funeral and burial; and
  - (xii) basic living;
- (37) income received by a member of the U.S. Armed Forces, per 37 U.S.C. Chapter 5 and Section 273.9(c)(20) of Title 7 of the Code of Federal Regulations that is:
- (A) received in addition to the service member's basic pay during combat deployment;
  - (B) received as a result of the service member's deployment or service in an area designated as a combat zone as determined, per Executive Order or P.L.; and
  - (C) not received by the service member prior to the service member's deployment to or service in a federally designated combat zone; ~~and~~
- (38) economic impact payments received as a result of a national or state emergency are considered as a rebate or advance payment of a credit and are excluded as income and from resource consideration for a period of 12 months from receipt date ~~for the purpose of~~ when determining eligibility for benefits or assistance under any federal program or under any state or local program financed in whole or in part with federal funds, per Section 103(d) of the American Taxpayer Relief Act, as amended, 26 U.S.C. § 6409;
- (39) casual and inconsequential gifts, such as Christmas, birthday, or graduation gifts that do not exceed \$30 per calendar quarter for each person in the cash assistance unit. When the recipient claims that the gift is intended for more than one person in the assistance unit, it can be divided among these persons;
- (40) financial aid provided to persons by agencies or organizations when the purpose of the assistance does not duplicate the purpose of the TANF assistance, per OAC 340:10-3-39(9);
- (41) income received from the Oklahoma Department of Rehabilitation Services that is allocated for items not covered in the TANF standards, per OAC 340:10-1-3(e). Examples of disregarded assistance or services are car fare to a rehabilitation center, extra clothing, lunches, grooming needed for a training program, and any other such complementary payments.

## PART 5. ASSISTANCE PAYMENTS

### 340:10-3-56. Household composition

(a) **Household composition.** Household members who must be, may be, and must not be included in the Temporary Assistance for Needy Families (TANF) assistance unit are defined in this Section.

- (1) Persons who **must** be included in the assistance unit, unless otherwise excluded per ~~paragraph~~ (3) of this ~~subsection~~ paragraph, are:
- (A) at least one TANF eligible child;
  - (B) the natural or adoptive parent(s); and
  - (C) all blood-related minor siblings living in the home with the TANF eligible child(ren), including half-brothers and half-sisters, unless:
    - (i) eligibility for the half-brothers and half-sisters does not exist;
    - (ii) a minor parent is the adult in the assistance unit and the minor parent's siblings live in the same home;
    - (iii) a blood-related minor sibling receives Supplemental Security Income (SSI); or
    - (iv) a blood-related minor sibling is an ineligible alien, per Oklahoma Administrative Code (OAC) 340:10-15-1.
- (2) Persons whose needs **may** be included are:
- (A) the stepparent when the natural or adoptive parent is incapacitated, per OAC 340:10-10-2 or absent, per OAC 340:10-10-4;
  - (B) the caretaker relative-payee other than the natural or adoptive parent(s) with meeting the definition of needy, per OAC 340:10-3-30(c), who lives with whom the child(ren), resides takes responsibility for their needs because the natural or adoptive parent is absent from the home, when this person meets the definition of needy and is of the specified degree of relationship, per OAC 340:10-9-1. A caretaker, other than stepparent, may be included in the assistance unit only when the natural or adoptive parent(s) is absent from the home. A stepparent may be included in the assistance unit when the natural or adoptive parent(s) is incapacitated or absent;
  - (C) the natural or adoptive parent or a caretaker relative or the natural or adoptive parent when the only dependent child(ren) residing in the home:
    - (i) receives SSI; or
    - (ii) was removed from the home by a child protection action and the plan for the child(ren) is impending reunification, per OAC 340:10-3-57(i);
  - (D) the caretaker relative when the only child(ren) in the home receives federal or state foster care maintenance payments;
  - (E) the adoptive parent(s) when the only dependent child(ren) receives a Title IV-E or state adoption subsidy;
  - (F) a family that includes any head of household or a spouse of the head of household who received TANF benefits for a total of 60 cumulative months nationwide, whether consecutive or not, and a hardship extension is approved. All other TANF eligibility conditions ~~of TANF eligibility~~ must be met. The hardship extensions are:
    - (i) under-employment. ~~The participant~~ This occurs when the parent or needy caretaker is regularly working works 30 hours or more per

~~week, and earning~~ earns at least minimum wage or its equivalent, ~~but~~ and the net income of the assistance unit's income is insufficient to close the TANF cash assistance;

(ii) ~~chronically under-employed. The participant~~ This occurs when the parent or needy caretaker is under-employed over an extended ~~period of time as a result~~ period because of documented barriers;

(iii) pending SSI or Social Security Administration (SSA) disability application. This extension is granted only when ~~the Oklahoma Department of Human Services (DHS)~~ Adult and Family Services (AFS) TANF Unit staff determines the disability application has merit and the participant pursues all appeals through a decision by the SSA Appeals Council. When ~~an unfavorable decision is received from the SSA Appeals Council during the time period~~ issues an unfavorable decision after the participant parent or needy caretaker is approved for a hardship extension, ~~Adult and Family Services (AFS)~~ the worker notifies AFS TANF Unit staff, is notified and closes the TANF benefit ~~is closed~~ for the next advance notice effective date, per Oklahoma Human Services Appendix B-2, Deadlines for Case Actions;

(iv) care of a disabled child(ren) or spouse. ~~The participant is responsible for the care of a disabled child(ren) or spouse.~~ This extension is granted only when verification is provided to show the participant is needed in the home to care for this disabled person and alternative care is unavailable;

(v) a clinical diagnosis of mental illness. The participant is diagnosed with, and receiving treatment for, a mental disorder listed at Part 404, Subpart P, Appendix 1 of Title 20 of the Code of Federal Regulations. This mental illness must interfere with the participant maintaining or obtaining gainful employment. When appropriate, the participant participates in other work activities in conjunction with receiving treatment;

(vi) a substance abuse treatment plan, per OAC 340:10-2-6. The participant has a treatment plan ~~level of care~~ requiring:

(I) intensive aftercare treatment ~~off~~ for nine hours or more per week in conjunction with other appropriate work activities;

(II) outpatient treatment ~~off~~ for nine hours or more per week in conjunction with other appropriate work activities; or

(III) is in full-time inpatient treatment;

(vii) a continuing training or educational activity. The participant, during the 60th month, is regularly attending an approved training or educational activity that will be completed in less than 12 months;

(F) a ~~child~~ child(ren) of a minor in foster care when the minor's child is not included in a foster care payment;

(G) a child(ren) living with a parent who is ineligible due to a positive screen for the illegal use of a controlled substance or substances, per OAC 340:10-4-1; or

(H) a child(ren) living with a parent permanently deemed ineligible due to a fourth violation of using the TANF cash assistance in a prohibited location, per OAC 340:10-3-57(h)(2).

(3) Persons whose needs **may not** be included are:

(A) a person who received a State Supplemental Payment (SSP) for the same month;

(B) a person who received or is included in an SSI payment for the same month;

(C) the payee's spouse when the payee is not the natural or adoptive parent;

(D) a child(ren) included in a foster care payment;

(E) an adopted child(ren) receiving an adoption subsidy;

(F) an alien who is not legally admitted to the United States for permanent residence or does not meet alienage requirements;

(G) a caretaker other than a stepparent when the natural or adoptive parent is in the home;

(H) a person whose period of ineligibility due to receipt of a lump sum payment has not expired;

(I) a stepparent when the natural or adoptive parent is in the home and not incapacitated;

(J) a person in a household that is eligible to receive benefits under a tribal TANF program;

(K) a fugitive felon;

(L) a probation ~~and/or~~ parole violator;

(M) a person convicted of having fraudulently misrepresented residence in order to obtain assistance in more than one state. The person is ineligible for a 10-year period that begins on the conviction date;

(N) child(ren) in a family that includes any head of household or a spouse of the head of household who received TANF benefits for a total of 60 cumulative months, whether or not consecutive, and a hardship extension is not approved;

(O) a minor unmarried payee who has a dependent child(ren) in the minor's care and does not reside with a parent(s), legal guardian, or other adult relative 18 years of age or older.

(i) For the minor payee to be eligible for TANF benefits, the minor must live:

(I) with the minor's natural or adoptive parent(s);

(II) with a stepparent;

(III) with a legal guardian;

(IV) with another adult relative 18 years of age or older; or

(V) in a foster home, maternity home, or other adult supervised supportive living

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arrangements supervised by an adult. A supportive living arrangement is a privately maintained family setting and an adult assumes the responsibility for the care and control of the minor and the minor's dependent child(ren) or provides supportive services, such as counseling and guidance.

(ii) The minor payee may reside elsewhere and be eligible for TANF if good cause is established because the:

(I) minor has no living parent or legal guardian whose whereabouts are known;

(II) parent(s), legal guardian, or other adult relative does not allow the minor to live in the home;

(III) physical or emotional health or safety of the minor or the minor's dependent child(ren) is jeopardized when the minor or the minor's dependent child(ren) lives in the home with the parent(s), legal guardian, or other adult relative 18 years of age or older;

(IV) minor parent has lived apart from the ~~minor~~ his or her parent(s), legal guardian, or other adult relative 18 years of age or older for at least one year before the birth of ~~of~~ the child or before the minor applies for benefits; or

(V) minor parent is legally emancipated pursuant to ~~per~~ Chapter 4, Title 10 of the Oklahoma Statutes. A minor is legally emancipated when the district court granted the minor authority to act on ~~the minor's~~ his or her own behalf;

(P) an adult parent or needy caretaker who is ineligible as a result of a positive screen for the illegal use of a controlled substance or substances, per OAC 340:10-4-1; or

(Q) an adult parent or needy caretaker permanently deemed ineligible due to a fourth violation of using TANF cash assistance in a prohibited location, per OAC 340:10-3-57(h)(1)(D).

(b) **Temporary absence.** In general, when a person included in a TANF assistance unit is temporarily absent from the home, he or she continues to be included for at least three months unless circumstances unrelated to the temporary absence occurs or a longer period of absence is permitted as indicated in this subsection. Persons temporarily absent from the home and included in the assistance unit are a:

(1) person receiving training or education for employment during the time the training or educational activities take place;

(2) child(ren), during the school term, attending:

(A) boarding school;

(B) the School for the Blind or the School for the Deaf;

(C) school, other than boarding school, when:

(i) the parent or needy caretaker maintains normal ties with the child;

(ii) the child(ren) continues under the payee's control and guidance ~~of the payee~~ during the absence; and

(iii) the payee is responsible for meeting the child(ren)'s expenses;

(3) child(ren) absent from the home to visit the ~~absent~~ non-custodial parent for a maximum of three months. This consideration applies only to visitation and does not apply if the ~~absent~~ non-custodial parent has physical and legal custody of the child(ren) during these three months;

(4) person absent from the home because of entrance into a private facility for treatment, rehabilitation, behavioral problems, or special training for up to four months. When an assessment indicates the person is expected to be absent more than four months, the person's needs are not included in the assistance unit;

(5) person absent from the home for medical services, other than institutionalization for mental illness treatment of ~~mental illness, mental retardation~~ intellectual disability, or tuberculosis, for up to six months. Six-month extensions may be allowed when verification indicates the person may return to the home within the next six months;

(6) person absent from the home to receive substance abuse treatment for up to four months when not subject to requirements, per OAC 340:10-4-1. A four-month extension may be allowed when verification indicates the person will return to the home within the next four months; or

(7) person absent from the home to receive nursing care approved by the Oklahoma Health Care Authority, Level of Care Evaluation Unit. When it appears the person is disabled, an SSP application for ~~State Supplemental Payment~~ is taken, and a referral made to the SSA district office for an SSI application.

### 340:10-3-58. Income determination procedures [REVOKED]

(a) ~~The Temporary Assistance for Needy Families (TANF) cash assistance benefit amount is determined based on actual income received for the current or past month, when known, and the best estimate of the income that can be anticipated for future months.~~

(1) ~~When the client receives income in varying amounts, the past 30 calendar days of income is averaged to determine what income can be anticipated unless:~~

(A) ~~the client starts new employment and paystubs are not available. When pay stubs are not available, the employer's statement regarding the client's hourly wage, number of hours worked, and frequency of pay is obtained;~~

(B) ~~the hourly wage changed. The new hourly wage is verified by a paystub(s) that includes the new hourly wage. When a paystub reflecting the hourly wage change is not available, the employer is contacted for verification;~~

(C) ~~there is a change in the number of hours worked. When paystubs are not available, the increase or decrease in hours is verified with the~~

employer and then multiplied by the hourly wage to anticipate the next paycheck amount;  
(D) the client obtains a second job. The monthly earnings from each job is computed separately and then added together for the total month's gross; or  
(E) paystubs are not representative of the normal circumstances. In this instance, income is anticipated by using only the paystubs that are representative.

(2) Income received more often than monthly must be converted to a monthly amount as described in (A)–(D) of this paragraph.

(A) Income received on a daily basis is converted to a weekly amount, then multiplied by 4.3.

(B) Income received weekly is multiplied by 4.3.

(C) Income received twice a month is multiplied by 2.

(D) Income received every two weeks is multiplied by 2.15.

(b) When income verification is needed, the worker gives or sends Form 08AD092E, Client Contact and Information Request, to the client specifying the income verification needed and gives the client at least 10 calendar days to provide the verification.

(1) When a certification is for a past month, actual income, when known, is used to determine income eligibility for the past month.

(2) Once acceptable verification is provided, no further information is required unless a change occurs or the renewal is due.

(3) When the client reports new employment and representative pay has not been received yet, the best estimate is determined from the information provided by the client and the employer.

(c) The TANF cash assistance benefit may be closed based on actual or anticipated income. When the TANF cash assistance payment is closed based on anticipated income and the client reports within 30 calendar days of the effective closure date that the anticipated income was not received or was received in a lesser amount that does not cause ineligibility, the TANF cash assistance benefit is reopened using the administrative error process, per Oklahoma Administrative Code 340:65-5-6.

(d) A client is responsible for reporting changes within 10 calendar days of when the change takes place. The worker is responsible for taking timely action within 10 calendar days of the date the client reports the change. All client notices must include the timely reporting requirement.

**SUBCHAPTER 4. CONDITIONS OF ELIGIBILITY - MANDATORY DRUG SCREENING**

**340:10-4-1. Mandatory Drug Screening**

(a) Per Section 230.52 of Title 56 of the Oklahoma Statutes, adult parents, or needy caretakers who apply for Temporary Assistance for Needy Families (TANF) cash assistance are required to be screened for illegal use of a controlled substance

or substances. This screening is necessary to ensure that children are safe in their own homes by ensuring their adult parent(s) or needy caretaker is not using or is not under the influence of illegal substances. TANF ~~child-only~~ child-only cases and minor parents under 18 years of age are exempt from the provisions in this Section.

(b) At any point the ~~Oklahoma Department of Human Services (DHS)~~ (OKDHS) has reasonable cause to believe the adult parent or needy caretaker currently receiving TANF cash assistance is engaged in the illegal use of a controlled substance or substances, the adult parent or needy caretaker is required to be screened. ~~DHS~~ OKDHS is authorized to request administration of a chemical drug screen, such as an observed urinalysis (UA). Behaviors observed by ~~DHS~~ OKDHS or observed and reported by community resource partners that might indicate illegal use of a controlled substance or substances include, but are not limited to:

- (1) slurred speech;
- (2) unsteady gait;
- (3) inability to focus;
- (4) lethargy;
- (5) excessive nervousness or agitation;
- (6) showing flat affect or no emotion;
- (7) inappropriate responses to questions;
- (8) inappropriate anger or hostility;
- (9) excessive worry;
- (10) facial tics or muscle spasms;
- (11) erratic attendance in TANF Work activities;
- (12) lack of follow through with agreed upon plans; or
- (13) government or law enforcement documents indicating the person was engaged in the illegal possession or use of a controlled substance or substances within the last 30-calendar days.

(c) The minimum drug screening includes a Substance Abuse Subtle Screening Inventory (SASSI). Additional screening methods may be used that include, but are not limited to, a clinical interview, consideration of the person's history with ~~DHS~~ OKDHS, and an Addictions Severity Index (ASI). An ASI must be completed when the results of the initial SASSI screening are high probability, high defense, invalid, or the client self-declares a substance abuse problem. When the ASI indicates a need for treatment, a UA must be completed.

(d) The TANF application is approved with the adult parent or needy caretaker's needs included when all other eligibility factors of ~~eligibility~~ are met and the:

- (1) drug screening result indicates low probability of illegal use of controlled substance or substances; or
- (2) assessment result is a recommendation for alcohol and/or prescription drug abuse treatment.

(e) The TANF application is denied or benefits are closed when the adult parent or needy caretaker refuses to comply or fails to follow through with the screening.

(f) When the adult parent or needy caretaker applicant screens positive for the illegal use of a controlled substance or substances, the worker denies the TANF application or closes the TANF benefit for the adult parent or needy caretaker. The parent or needy caretaker may choose to receive ~~child-only~~ child-only benefits when all other TANF eligibility factors of ~~eligibility~~

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TANF eligibility are met. When the parent or needy caretaker chooses to receive ~~child-only~~ child-only benefits, the worker approves or continues ~~child-only~~ child-only benefits using the current TANF application. The worker also:

- (1) provides the denied applicant or adult recipient with a list of substance abuse treatment programs available at minimal or no cost to the applicant or recipient;
  - (2) makes a referral to the Child Abuse Hotline at 1-800-522-3511 when there is a positive screen for illegal drug use; and
  - (3) determines eligibility of all household members for other requested program benefits.
- (g) When the adult parent or needy caretaker is ineligible because of a positive screen for illegal use of a controlled substance or substances, he or she is not eligible for TANF benefits until:
- (1) one year after the first ineligibility determination ~~date of the first ineligibility determination~~;
  - (2) six months after the date of the first ineligibility determination ~~date of the first ineligibility determination~~ when the adult parent or needy caretaker complied with a substance abuse treatment plan; or
  - (3) three years after the second or subsequent ineligibility determination ~~date of the second or subsequent ineligibility determination~~.
- (h) At the end of an ineligibility period, a new application is required and all factors of eligibility determined. The steps described at (a) and (c) through (f) are followed.

## SUBCHAPTER 7. CONDITIONS OF ELIGIBILITY - RESIDENCE

### 340:10-7-1. Residence

(a) Residency requirement. ~~To be eligible~~ A person must be an Oklahoma resident to receive Temporary Assistance for Needy Families (TANF), a person must be making his or her home in Oklahoma. A person's statement that he or she is an Oklahoma resident and is not residing in Oklahoma for a temporary purpose is sufficient when consistent with other known facts. When the statement is inconsistent with other known facts, further substantiation is necessary.

(1) Once residency is established, a person does not lose Oklahoma residency status when he or she:

(A) is removed from Oklahoma against his or her will and held in another state, for example, ~~when~~ the person is sent to a federal prison; or

(B) goes out-of-state to look for a job or to attend school.

~~(1) A person's statement that he or she is an Oklahoma resident and is not residing in Oklahoma for a temporary purpose is sufficient when consistent with other known facts. When the statement is inconsistent with other known facts, further substantiation is necessary.~~

(2) When a person ~~an~~ applicant lived in another state or states at any time ~~that he or she lives in another state~~ before applying for TANF in Oklahoma, the worker must contact the other state(s) to determine how many months,

if any, the person ~~applicant~~ received TANF and if cash assistance is currently open.

(A) When TANF is open in the other state, the closure date is coordinated between states to ensure the applicant does not receive TANF cash assistance in Oklahoma and the other state for the same month.

(B) When the person ~~applicant~~ already received 60 months of TANF cash assistance, TANF is not approved in Oklahoma unless a hardship extension is approved, per Oklahoma Administrative Code (OAC) 340:10-3-56(a)(2)(E).

(b) Homeless persons. A TANF applicant or recipient is not required to have a fixed address to be eligible for TANF. A TANF applicant or recipient who lacks a fixed or regular residence or lives in temporary accommodations is considered homeless. When a person is homeless and does not have a mailing address and cannot receive mail at another person's address, the county office address may be used.

~~(c)~~ (3) Continuous residence. Continuous residence is established when the case record and contact with the person show no evidence of absence from Oklahoma.

~~(d)~~ (A) Temporary residence. For TANF eligibility purposes ~~of TANF eligibility~~, a person is considered an Oklahoma resident of Oklahoma when he or she plans to reside in Oklahoma temporarily because of a job commitment or to seek employment, as long as the person does not receive cash assistance from another state. This includes migrant and itinerant workers who maintain a homestead in another state. A person traveling through the state or visiting relatives in this state is not considered a resident.

~~(e)~~ (B) Out-of-state visits. When a ~~member of the~~ TANF assistance unit member(s) temporarily leaves the state for a purpose described in OAC 340:10-3-56(b) and intends to return to Oklahoma when the purpose of the absence is accomplished, it does not interrupt Oklahoma residence. The recipient is responsible for informing the worker which ~~member(s) of the~~ assistance unit member(s) plans to visit out-of-state, for what purpose, and the planned departure and return dates.

(1i) When a person ~~included in a~~ TANF assistance unit member(s) is temporarily absent from the state, he or she may continue to be included in the assistance unit for at least three months unless circumstances unrelated to the temporary absence occur, the purpose of the absence is accomplished, or a longer period of absence is permitted, per OAC 340:10-3-56(b). The person is considered an Oklahoma resident until there is substantial factual evidence he or she ~~chooses~~ chose to establish residence in another state.

(2ii) When the TANF Work participant is the person that temporarily leaves the state and does not participate in TANF Work activities during the absence, he or she may be sanctioned, per OAC 340:10-2-2, unless a good cause reason exists.

(3iii) When the person ~~recipient~~ applies for cash assistance in another state and is determined eligible by that state, the closure effective date in Oklahoma is coordinated with the effective certification ~~date of certification~~ in the other state, to ensure there is no interruption in the assistance payment or duplication of benefits.

**340:10-7-2. Homeless individuals [REVOKED]**

~~Individuals are not required to have a fixed address to be eligible for Temporary Assistance for Needy Families (TANF). Individuals who lack a fixed or regular residence, or who have temporary accommodations, are considered as homeless. When there is no mailing address for the individual and no other option is determined, the county office address can be used.~~

**SUBCHAPTER 15. CONDITIONS OF ELIGIBILITY - CITIZENSHIP AND ALIENAGE**

**340:10-15-1. Citizenship and alien status**

(a) A person eligible to be included in a Temporary Assistance for Needy Families (TANF) benefit, must be:

- (1) a citizen or a national of the United States (U.S.), including the 50 states, District of Columbia, commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa and Northern Mariana Islands. A person may be a citizen of the U.S. by being born in the U.S. or by being born in some other country but moving to the U.S. and being granted U.S. citizenship through the U.S. Citizenship and Immigration Services (USCIS) a bureau of the U.S. Department of Homeland Security; or
- (2) a qualified alien described as:

- (A) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
- (B) an alien who is paroled into the U.S., per Section 212(d)(5) of INA for a period of at least one year;
- (C) an alien who is granted conditional entry, per Section 203(a)(7) of INA as in effect prior to April 1, 1980;
- (D) an alien who is granted asylum, per Section 208 of INA;
- (E) a refugee who is admitted to the U.S., per Section 207 of INA;
- (F) an alien whose deportation is withheld, per Section 241(b)(3) of INA;
- (G) an alien who is a Cuban or Haitian entrant as defined, per Section 501(e) of the Refugee Education Assistance Act of 1980;
- (H) battered aliens and their children or parents as defined, per Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act as amended, Section 1641(c) of Title 8 of the United States Code (8 U.S.C. § 1641(c));
- (I) an alien and his or her eligible relatives who are victims of a severe form of trafficking, per Section 107(b) of the Trafficking Victims Protection Act of 2000 that was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2013;
- (J) an Iraqi admitted in special immigrant status as defined in Section 101(a)(27) of the INA, 8 U.S.C. § 1101(a)(27), and Section 1059, Public Law

(P.L.) 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008, per Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008, Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008, and Section 8120 of P.L. 111-118. The person must be treated as a refugee; ~~or~~

(K) an Afghan admitted in special immigrant status as defined, per Section 101(a)(27) of the INA, 8 U.S.C. § 1101(a)(27) and Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act, 2009, pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act, 2009, and Section 8120 of P.L. 111-118. The person must be treated as a refugee; ~~or~~

(L) an Afghan non-special immigrant parolee, known as a humanitarian parolee, per the Afghanistan Supplemental Appropriations Act 2022 enacted on September 30, 2021, Section 2502 of P.L. 117-43, paroled into the U.S. between July 31, 2021 and September 30, 2022, who meets all other factors of eligibility from October 1, 2021 until March 31, 2023, or the term of parole, whichever is longer.

(b) A qualified alien who enters the U.S. on or after August 22, 1996, is not eligible for TANF benefits for a five year period beginning on the date of the alien's entry into the U.S. with a qualified alien status unless the alien is:

- (1) admitted to the U.S. as a refugee, per (a)(2)(E) of this Section;
- (2) granted asylum, per (a)(2)(D) of this Section;
- (3) one whose deportation is being withheld, per (a)(2)(F) of this Section;
- (4) a Cuban or Haitian entrant, per (a)(2)(G) of this Section;
- (5) admitted to the U.S. as an Amerasian immigrant;
- (6) lawfully residing in the state and is a veteran of the U.S. armed forces, on active duty, or is that person's spouse or unmarried dependent child; ~~or~~
- (7) is a victim of a severe form of trafficking, per (a)(2)(I) of this Section; ~~or~~
- (8) an Afghan citizen or national paroled into the U.S. as a humanitarian parolee between July 31, 2021 and September 30, 2022.

(c) The applicant or recipient is required to declare the citizenship or alien status for all adults and children included in the TANF assistance unit when he or she completes and signs the application or renewal. Refer to Oklahoma Administrative Code 340:65-3-1(g) for additional citizenship requirements for persons 14 years of age and older, per Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes.

(d) Declaration on behalf of a newborn child may be delayed provided the delay does not exceed the date of the assistance unit's next eligibility renewal.

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(e) Persons declaring qualified alien status must provide documentation of their alien status and have their status verified through the Systematic Alien Verification for Entitlements (SAVE) program's Alien Status Verification Index. When secondary verification must be pursued through USCIS, the worker must not delay, deny, close, or reduce benefits to an alien pending a response from USCIS.

(f) All persons born in the U.S. are, with rare exceptions, U.S. citizens. Documents of citizenship or national status of persons from certain U.S. territories or possessions listed in (a)(1) of this Section may not be in their possession nor available. Their status can usually be determined by a birth certificate, passport, or other official document.

## SUBCHAPTER 19. ELIGIBILITY REQUIREMENTS FOR EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH CHILDREN

### 340:10-19-9. Title IV-A/EA Emergency Family Services (EFS)

(a) EFS are services to families provided by the Division of Children and Family Services or the Office of Juvenile Affairs in which immediate action is necessary to avoid placement of a child in out-of-home care or to assist in reuniting a child with his or her family when in an out-of-home placement. These services are allowed under prior law in Section 404(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193). Situations which can determine a need for emergency assistance are:

- (1) abuse, neglect, or abandonment of a child(ren);
- (2) parents' inability to provide adequate care;
- (3) delinquent or In Need of Supervision referral;
- (4) a juvenile petition; or
- (5) reunification. The child(ren) is currently in custody with a case plan to return home within six months.

(b) EFS include:

- (1) home-based services;
- (2) day treatment;
- (3) wrap-around services;
- (4) substance abuse services;
- (5) education and vocational services;
- (6) independent living services;
- (7) information and referral;
- (8) counseling;
- (9) foster care;
- (10) emergency shelter;
- (11) child care;
- (12) legal services;
- (13) parenting education and training, in-home or out-of-home;
- (14) medical services;
- (15) respite care;
- (16) clothing;
- (17) diagnostic and evaluation services; or

(18) cash assistance necessary to meet or prevent the emergency crisis.

[OAR Docket #22-539; filed 7-5-22]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 15. STATE SUPPLEMENTAL PAYMENT AND THE SUPPLEMENTAL SECURITY INCOME-DISABLED CHILDREN'S PROGRAM

[OAR Docket #22-540]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. State Supplemental Payment  
340:15-1-1 through 340:15-1-2 [AMENDED]  
340:15-1-3 [REVOKED]  
340:15-1-4 through 340:15-1-6 [AMENDED]  
340:15-1-7 [REVOKED]  
(Reference WF 22-15)

### AUTHORITY:

Director of Human Services; Sections 161, 162, 164, and 165 of Title 56 of the Oklahoma Statutes; and Section 435.916 of Title 42 of the Code of Federal Regulations.

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

December 20, 2021

### COMMENT PERIOD:

January 18, 2022 through March 18, 2022

### PUBLIC HEARING:

March 23, 2022

### ADOPTION:

March 23, 2022

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

March 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed amendments to Chapter 15, Subchapter 1 amend the rules to: (1) update Section titles; (2) revoke two Sections and add relevant information from these Sections regarding the Chapter's legal basis, and non-conditioning of payments to other Sections within this Subchapter; (3) add a definition for an ineligible child; (4) update when the income and resources of a Supplemental Security Income (SSI) recipient must be verified; (5) add information regarding passively renewing the State Supplemental Payment (SSP) and SoonerCare (Medicaid) benefit for SSI recipients; (6) clarify income deeming; (7) remove worker instruction regarding overpayments; (8) add rule and legal citation; and (9) update terminology.

### CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**



SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

SUBCHAPTER 1. STATE SUPPLEMENTAL PAYMENT

340:15-1-1. Purpose and legal basis

(a) **Purpose.** The purpose of ~~this Chapter~~ the Oklahoma Human Services State Supplemental Payment (SSP) Program is to describe the Oklahoma Department of Human Services (OKDHS) program for assistance to the aged, supplement the income of persons with disabilities, who are blind, and disabled or who are 65 years of age and older based on the eligibility rules contained in this Chapter.

(b) **Legal basis.** The legal basis for the SSP Program is vested in Article XXV of the State of Oklahoma Constitution and Section 161 et seq. of Title 56 of the Oklahoma Statutes.

340:15-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**"Countable income"** means the total unearned income plus the net earned income. The net earned income is gross earned income minus the \$20 general income exclusion, \$65 work exclusion, and one-half of the remainder. For individuals who are blind, refer to Oklahoma Administrative Code (OAC) 317:35-5-42(d)(6)(g)(3)(5), (9), and (10), for additional exemptions.

**"Disabled individual"** means a person who meets the same definition, per Section 1382c(a)(3) of Title 42 of the United States Code that the Social Security Administration uses in determining eligibility for Supplemental Security Income disability benefits.

**"Earned income"** means income the person receives from wages, salaries, commissions, or profits from activities he or she is engaged in, as a self-employed individual or as an employee.

**"Eligible couple"** means two persons married to each other who are both ~~aged 65 years of age and older~~, blind, or disabled and meet the income and resource standard for a money payment, per Oklahoma Department of Human Services (DHS)(OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedules VIII.A and D.

**"Eligible individual"** means a person who is ~~aged 65 years of age and older~~, blind, or disabled and meets the income and resource standard for a ~~money payment~~SSP, per DHS(OKDHS) Appendix C-1, Schedules VIII.A and D.

**"Eligible individual with essential spouse"** means an eligible individual living with a spouse who is not ~~aged 65 years of age and older~~, blind, or disabled but has been continuously included in the case prior to 1974. The couple must meet the income and resource ~~standard~~standards, per DHS—OKDHS Appendix C-1, Schedule VIII.A and D.

**"Eligible individual with ineligible spouse"** means an eligible individual living with a spouse who is not ~~aged 65~~

~~years of age and older~~, blind, or disabled and does not meet the definition of an essential spouse. The couple must meet the income and resource standard, per DHS(OKDHS) Appendix C-1, Schedule VIII.A and D.

**"Eligible individual with ineligible spouse and dependent child(ren)"** means a married couple who meets the definition of an eligible individual with an ineligible spouse that have a ~~child~~child(ren) younger than 18 years of age with the proper degree of relationship residing in the home full-time. The couple must meet the income and resources standard, per DHS(OKDHS) Appendix C-1, Schedule VIII.A and D.

**"Ineligible child"** means a child younger than 18 years of age who is not blind or disabled.

**"Minor eligible child who is blind or disabled individual"** means a child younger than 18 years of age, who is blind or disabled and meets the income and resource ~~standard~~standards for a ~~money payment~~SSP, per DHS(OKDHS) Appendix C-1, Schedules VIII. CA and D.

340:15-1-3. Legal basis for State Supplemental Payment Program [REVOKED]

~~The legal basis for the program is vested in Article XXV of the Constitution of the State of Oklahoma, Title 56, Oklahoma Statutes Sections 161 et seq.~~

340:15-1-4. State Supplemental Payment (SSP) plan

The SSP plan for ~~aged, blind, or disabled persons~~ encompasses the requirements listed in (1) through (11) of this Section.

- (1) **State-wide operation.** The SSP plan is a state-administered program in effect in all Oklahoma counties.
- (2) **Financing.** The State of Oklahoma provides all funding for the SSP Program.
- (3) **Single-state agency.** The SSP Program is administered by the Oklahoma Department of Human Services DHS(OKDHS) Adult and Family Services, in ~~county~~ offices throughout the state.
- (4) **Fair hearings.** An SSP applicant or recipient adversely affected by a ~~DHS~~an OKDHS decision is provided an opportunity for a fair hearing, per Section 168 of Title 56 of the Oklahoma Statutes (56 O.S § 168). Adverse effects may include, when the applicant or recipient:
  - (A) is denied benefits or the application is not acted upon within 30-calendar days for persons categorically related to Aid to the Aged, or 60-calendar days for persons categorically related to Aid to the Blind or Disabled;
  - (B) disagrees with the approved payment amount; or
  - (C) disagrees with any action taken regarding his or her payment.
- (5) **Proper and efficient administration.** DHS(OKDHS) operates under the State Merit System that establishes and maintains personnel standards on a merit basis for certain state agencies, including DHS(OKDHS), per 56 O.S § 26.17.

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(6) **Safeguarding information.** Per 56 O.S. § 183 and Oklahoma Administrative Code (OAC) 340:1-1-20 and 340:65-1-2, ~~DHS~~OKDHS restricts the use or disclosure of information concerning SSP applicants and recipients to purposes directly connected with SSP program administration.

(7) **Right to apply.** A person has the right to:

- (A) apply for SSP and any other benefit he or she chooses;
- (B) expect an eligibility investigation of eligibility; and
- (C) expect a decision regarding the SSP application within 30-calendar days for persons categorically related to Aid to the Aged or 60-calendar days for persons categorically related to Aid to the Blind or Disabled.

(8) **Assistance under only one program.** An eligible person's needs may be included in only one cash assistance benefit, either SSP or Temporary Assistance for Needy Families (~~TANF~~).

(9) **Standards for determining eligibility and payment amount.** Refer to OAC 340 Chapters 15 and 65 for SSP eligibility determination rules and ~~DHS~~OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards for SSP payment amounts.

(A) SSP standards are based on the mandatory "Pass-Along Provision" of Section 1618 of the Social Security Act (Section 1382g of Title 42 of the United States Code) that requires states to pass along cost of living adjustments (COLA) in Supplemental Security Income (SSI) benefits. ~~DHS~~OKDHS adjusts individual payment amounts during the calendar year, as needed, to maintain total SSP expenditures for SSP in a calendar year at the same level as the total expenditures in the previous year.

(B) Maximum income and resource standards for persons who are aged 65 years of age and older, blind, or disabled are based on the federal benefit rates (FBR), ~~shown on DHS~~per OKDHS Appendix C-1, Schedule VIII.

(i) Countable income for SSP must be less than 100 percent of the FBR, plus the maximum SSP amount.

(ii) Countable income must be equal to, or less than 300 percent of the FBR for certain persons who, since December, 1973:

(I) were approved for care and continuously living in a licensed Title XIX nursing care facility, intermediate care facility (ICF), or ICF for individuals with intellectual disabilities (ICF-IID);

(II) have continuously received Home and Community-Based Waiver Services for the intellectually disabled; or

(III) were 65 years of age and older and have continuously resided in a mental hospital.

(iii) Countable deemed income for deeming income to a minor child with disabilities or who is

~~blind or disabled~~ must be less than 100 percent of the FBR.

(iv) Maximum resources must be equal to, or less than 100 percent, of the SSI resource standards.

(10) **Income and resources.** ~~The SSP purpose is to supplement a person's income. DHS, in~~ When determining need for ~~an aged, blind, or disabled person~~ an SSP, OKDHS considers the person's available countable income and resources, per OAC 317:35-5-41 and 317:35-5-42, and federal and state law.

(A) To determine income eligibility at application, the worker calculates the person's actual earned and unearned income received or expected to be received during the application month and compares it to the maximum income standard, per ~~DHS~~OKDHS Appendix C-1, Schedule VIII.A.

(B) ~~When the person receives SSI, the~~ The worker only verifies changes in an SSI recipient's income and resources that occurred since when the recipient reports a change or the worker receives information indicating the person has income or resources not considered by the Social Security Administration (SSA) verified the person's income and resources:

(i) at SSI approval;

(ii) ~~at~~ at the most recent SSI review; ~~or~~

(iii) ~~when questionable information is received indicating the person has income or resources not considered by SSA.~~

(C) ~~The first \$500 of monthly earned income is disregarded for blind persons in addition to the usual earned income disregards, described at OAC 317:35-5-42(d)(1), per 7 O.S. § 15.~~ As an SSI Criteria state, Oklahoma is required to passively or auto renew the SSP and SoonerCare (Medicaid) eligibility of SSI recipients every 12 months without requiring them to provide any information when their case records contain reliable information or more current information is available to OKDHS, per Section 435.916 of Title 42 of the Code of Federal Regulations.

(11) **Civil rights.** The SSP Program is administered, ~~in accordance with the~~ per provisions of Title VI of the Civil Rights Act.

### 340:15-1-5. State Supplemental Payment (SSP)

(a) **Eligibility for payment.** Per Section 164 of Title 56 of the Oklahoma Statutes (O.S. 56 § 164), an individual is eligible for a SSP when he or she is, or would be, eligible for Supplemental Security Income (SSI) because of age or disability, is not ineligible per (b) of this Section, and meets all other eligibility conditions of eligibility.

(1) Required eligibility conditions include:

(A) ~~having~~ having countable income, including SSI, that is less than the SSP need standard, on per Oklahoma Department of Human Services (~~DHS~~)(OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.A;

(2) ~~was, and remains, approved for care in a licensed Title XIX nursing care facility since December, 1973, and retains eligibility for a mandatory SSP. Refer to Appendix C-1, Schedule VIII.B., for the mandatory supplement standard;~~

(3) ~~is a resident in the Oklahoma School for the Blind or the Oklahoma School for the Deaf;~~

(4) ~~is ineligible for SSI based on income; but has income less than the SSP maximum, per DHS Appendix C-1, Schedule VIII.A.; or~~

~~(B5) meets/meeting resource standards, per ~~DHS~~OKDHS Appendix C-1, Schedule D; and~~

~~(C6) take/staking all appropriate steps to obtain other benefits within 30-calendar days after he or she is notified of his or her potential eligibility.~~

(2) The individual may:

(A) be ineligible for SSI based on income; but have income less than the SSP maximum, per OKDHS Appendix C-1, Schedule VIII.A.;

(B) remain approved for care in a licensed Title XIX nursing care facility since December, 1973, and retain eligibility for a mandatory SSP. Refer to Appendix C-1, Schedule VIII.B., for the mandatory supplement standard; or

(C) be a resident in the Oklahoma School for the Blind or the Oklahoma School for the Deaf.

(b) **Ineligible for payment.** An individual is not eligible for SSP when he or she:

(1) is a resident of a public facility operated by a government entity, such as a correctional, mental health, nursing care, or juvenile facility;

(2) is a patient in a psychiatric facility or a psychiatric unit of an acute care hospital for more than 30-calendar days;

(3) has countable income in excess of the SSP need standard, per ~~DHS~~OKDHS Appendix C-1, Schedule VIII.A.;

(4) has countable resources in excess of the SSP resource standard, per ~~DHS~~OKDHS Appendix C-1, Schedule VIII.D.;

(5) does not receive SSI because the applicant or the spouse disposed of resources for less than fair market value within 36 months of the application date, per Section 1382b(c) of Title 42 of the United States Code;

(6) is not an Oklahoma resident;

(7) does not meet citizenship or alien status requirements, per Oklahoma Administrative Code (OAC) 317:35-5-25 and ~~56~~ O.S. ~~74~~ §~~56~~71.1;

(8) does not take all appropriate steps to obtain other benefits with 30-calendar days after being notified of his or her potential eligibility; or

(9) is a child in ~~DHS~~OKDHS custody placed in out-of-home care ~~that is paid for by DHS~~ OKDHS.

(c) **SSP payment amount.** The SSP payment amount varies depending on the amount of other income the individual(s) receives. The maximum payment must not exceed the maximum payment shown on ~~DHS~~OKDHS Appendix

C-1, Schedule VIII.A. for an individual. Payment may be authorized retroactively based on an appeal decision or to correct an administrative error. Payment may not be authorized retroactively when the client fails to ~~timely~~ report information affecting eligibility within 10-calendar days of the date the change occurs. Refer to OAC 340:65-3-6 for payment methods and issuance dates.

(1) **Eligible couple.** Income eligibility is determined by comparing the couple's total countable income with the SSP standard for an eligible couple. When the couple's income is:

(A) equal to or greater than the standard, the worker denies the application or closes the SSP benefit; or

(B) less than the standard, the worker deducts the couple's income from the standard to compute the payment amount. The SSP for each member of the couple is one-half of the remainder. When the SSP cannot be divided equally, one member of the couple receives a higher SSP, subject to the maximum payment, ~~shown on DHS~~ per OKDHS Appendix C-1, Schedule VIII.A.

(2) **Eligible individual.** The worker determines an individual's income eligibility by comparing his or her total countable income with the SSP standard for an eligible individual. When the individual's countable income is:

(A) equal to or greater than the SSP standard, the worker denies the application or closes the SSP benefit; or

(B) less than the SSP standard, the worker deducts the individual's total countable income from the standard to compute the payment amount, subject to the maximum payment, ~~shown on DHS~~ per OKDHS Appendix C-1, Schedule VIII.A.

(3) **Eligible individual with essential spouse.** The worker determines the income eligibility for an individual with an essential spouse by comparing the total countable income of the couple with the SSP standard for the eligible individual with an essential or ineligible spouse. When the couple's countable income is:

(A) equal to or greater than the standard, the worker denies the application or closes the SSP benefit; or

(B) less than the standard, the worker deducts the couple's total countable income from the standard to compute the payment amount, subject to the maximum payment, per ~~DHS~~OKDHS Appendix C-1, Schedule VIII.A.

(4) **Eligible individual with ineligible spouse.** The worker determines income eligibility for an individual with an ineligible spouse by comparing the total countable income of the individual with the SSP standard for the eligible individual. When the individual's countable income is:

(A) equal to or greater than the SSP standard for the eligible individual, the worker denies the application or closes the SSP benefit; or

(B) less than the SSP standard for the individual, the worker compares the total countable income of

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the couple with the SSP standard for an eligible individual with an essential or ineligible spouse. When the couple's total countable income is:

- (i) equal to or greater than the standard, the worker denies the application or closes the SSP benefit; or
- (ii) less than the standard, the worker deducts the total countable income of the couple from the SSP standard for an eligible individual with an essential or ineligible spouse to compute the payment amount, subject to the maximum payment, per ~~DHS~~OKDHS Appendix C-1, Schedule VIII.A. Exception: When the ineligible spouse is included in a Temporary Assistance for Needy Families (TANF) benefit, the worker deducts the individual's countable income from the SSP standard for the eligible individual and does not consider the spouse's income.

(5) **Eligible individual with ineligible spouse and dependent ~~child~~child(ren).** The worker determines income eligibility for an individual with an ineligible spouse and dependent ~~child~~child(ren) by comparing the individual's total countable income with the SSP standard for an eligible individual.

(A) When the individual's countable income is equal to or greater than the standard, the worker denies the application or closes the SSP benefit.

(B) When the individual's countable income is less than the SSP standard for an eligible individual, the worker determines the spouse's countable income by following (i) through (v) of this paragraph.

(i) When the spouse and dependent ~~child~~child(ren) are included in a TANF benefit, their income is considered for the TANF benefit and none is deemed to the eligible individual. The worker deducts the individual's total countable income from the SSP standard to compute the SSP benefit amount, subject to the maximum payment, per ~~DHS~~OKDHS Appendix C-1, Schedule VIII.A.

(ii) When the spouse's needs are not included in the TANF benefit with the ~~child~~child(ren), the portion of the spouse's income considered in determining the ~~child's~~child(ren)'s TANF benefit is not considered for the SSP benefit.

(iii) When the dependent ~~child~~child(ren) does not receive TANF, the worker deducts the ~~child's~~child(ren)'s allocation, minus the ~~child's~~child(ren)'s income, from the spouse's income before determining the amount of the spouse's income to consider for the SSP benefit. Refer to ~~DHS~~OKDHS Appendix C-1, Schedule VIII.C for the ~~child's~~child(ren)'s allocation amount.

(iv) The individual's total countable income and the spouse's countable income after subtracting the amount considered for the dependent ~~child~~child(ren), is compared with the SSP standard

for an eligible individual with an essential or ineligible spouse, per ~~DHS~~OKDHS Appendix C-1, Schedule VIII.A. When the countable income is:

(I) equal to or greater than the SSP standard, the worker denies the application or closes the SSP benefit; or

(II) less than the SSP standard, the worker deducts the countable income from the standard to compute the payment amount, subject to the maximum payment, per ~~DHS~~(OKDHS) Appendix C-1, Schedule VIII.A.

(v) The dependent ~~child~~child(ren)'s income is never deemed to the adult.

(6) **Minor who is blind or disabled.** The worker determines a minor's income eligibility by adding the child's income to the amount deemed from the child's parents and compares the total to the SSP standard for an eligible individual. When the countable income is:

(A) equal to or greater than the standard, the worker denies the application or closes the SSP benefit; or

(B) less than the standard, the worker deducts the total countable income from the SSP standard to compute the payment amount, subject to the maximum payment, per ~~DHS~~OKDHS Appendix C-1, Schedule VIII.A.

(d) **Concurrent receipt of more than one cash assistance payment.** An individual must not be included in more than one SSP or TANF benefit for the same time period.

(1) An individual meeting SSP eligibility requirements may receive SSP and be the payee for a TANF benefit when his or her needs are not included in the TANF cash assistance.

(2) When a TANF recipient is transferred from TANF to SSP or an SSP recipient is transferred from Aid to the Disabled to Aid to the Aged or Blind, the effective date must be the same for the removal from one category and the beginning of payment from the other category.

(e) **Non-conditioning of payment.** OKDHS does not restrict in any way how the client uses the assistance payment.

(f) **Application and renewal processing.** Refer to OAC 340:65-3-1 for application processing rules and OAC 340:65-3-8 for renewal processing rules.

### 340:15-1-6. Special requirements

(a) ~~Solicitation of alms~~Alms solicitation. Per Section 164 of Title 56 of the Oklahoma Statutes, a recipient of a State Supplemental Payment (SSP) for the blind must not solicit alms while receiving SSP. Soliciting alms means collecting donations for one's personal benefit, selling minor articles when selling is merely a subterfuge for collecting donations, and any similar activities. It does not include house-to-house sale of articles carried on as a regular established occupation. The client's statement regarding alms solicitation ~~of alms~~ is sufficient verification when there are no facts to the contrary.

(b) **Minor child who is blind or disabled.** To determine SSP eligibility for a child who is blind or disabled, the income and resources of the parent(s) with whom the child is living ~~are~~is considered unless the parent(s) is included in a SSP or

Temporary Assistance for Needy Families (TANF) application or benefit.

(1) ~~Deeming of income~~**Income deeming.** ~~When determining SSP eligibility for a child younger than 18 years of age who is blind or disabled, a natural or adoptive parent(s)', or step-parent's income must be deemed to a minor the child, who is blind or disabled, and younger than 18 years of age, when determining the child's eligibility for SSP.~~ An ineligible child's income is not deemed to the eligible child who is blind or disabled child. The parent(s)' income is not deemed when the eligible child resides in a nursing care facility. Refer to Oklahoma Administrative Code (OAC) 317:35-5-42(n) and (o) for deeming computation procedures.

(2) ~~Deeming of resources~~**Resource deeming.** When a minor child, who is blind or disabled lives with his or her parent(s), the parent(s)' resources in excess of the resource standard, per Oklahoma ~~Department of Human Services (DHS)~~OKDHS Appendix C-1, Schedule VIII.D, are deemed to the child unless the parent(s) receives Supplemental Security Income (SSI), SSP, or is included in a TANF cash assistance payment or the child resides in a nursing care facility. When there is more than one eligible child in the home, the parent(s)' excess resource amount is prorated between the eligible children.

(3) **When the child is ineligible for SSP.** When a child with intellectual disabilities is ineligible for SSP due to deeming his or her parent(s)' income and/or resources, the child may be approved for SoonerCare (Medicaid) benefits under the Home and Community-Based Waiver (HCBW) Services ~~for persons with intellectual disabilities,~~ per Oklahoma Administrative Code (OAC) OAC 317:35-9. When the child is not eligible for HCBW, the child may be eligible for SoonerCare (Medicaid) benefits under the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248), known as TEFRA, per OAC 317:35-5-4 and 317:35-7-36.

(c) **Age.**

(1) ~~SSP age requirement for the aged. An individual~~**SSP age requirement for the aged.** ~~A person must be 65 years of age and older to meet the age requirement for SSP for the aged.~~Aid to the Aged. Eligibility is verified by the Social Security Administration or other records, such as a birth certificate, insurance policies, family records, or census records.

(2) **SSP age requirement for the blind.** There is no age requirement to receive SSP for the blind. When a child, who is blind is younger than 16 years of age, his or her age must be verified in order to establish the need for designating a parent or guardian as payee. ~~When a recipient receiving SSP for the blind reaches 65 years of age, he or she is transferred to the category for the aged.~~

(3) ~~SSP age requirement for the disabled persons with disabilities.~~**SSP age requirement for the disabled persons with disabilities.** To be eligible for a SSP for the disabled, an applicant or recipient must be younger than 65 years of age. A parent or guardian must be designated as payee when a child who is disabled is younger than 16 years of age. ~~When a recipient receiving SSP for the disabled~~

~~reaches 65 years of age, he or she is transferred to the category for the aged.~~

(d) **Fleeing felon.** A fleeing felon is not eligible for a SSP. Per Section 1382(e)(4) of Title 42 of the United States Code, a fleeing felon is defined as a person who:

(1) is fleeing to avoid prosecution, custody, or confinement, after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or in a jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding one year regardless of the actual sentence imposed;

(2) is violating a condition of probation or parole imposed under federal or state law; or

(3) lost SSI benefits due to being a fleeing felon.

(e) **Overpayments.** A client may incur an SSP overpayment for any month in which he or she receives ~~an~~ SSP after SSI benefits close and the client's income is above the SSP standard, per ~~DHS-OKDHS Appendix C-1, Schedule VIII.A,~~ or the client received a larger SSP than he or she was eligible to receive. ~~The worker documents and computes the overpayment amount that includes any premiums for Health Insurance Benefits paid by the Oklahoma Health Care Authority on behalf of an ineligible client, and sends the overpayment referral to The Adult and Family Services Benefit Integrity and Recovery for establishment and collection.~~Unit establishes and collects overpayment claims, per OAC 340:65-9.

**340:15-1-7. Non-conditioning of assistance payments [REVOKED]**

~~The Oklahoma Department of Human Services (OKDHS) does not restrict in any way the use which the client makes of the assistance payment.~~

[OAR Docket #22-540; filed 7-5-22]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 20. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)**

[OAR Docket #22-541]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Low Income Home Energy Assistance Program
- 340:20-1-1 [AMENDED]
- 340:20-1-2 through 340:20-1-2.1 [REVOKED]
- 340:20-1-3 through 340:20-1-4 [AMENDED]
- 340:20-1-5 through 340:20-1-9 [REVOKED]
- 340:20-1-10 through 340:20-1-12 [AMENDED]
- 340:20-1-17 [AMENDED]
- 340:20-1-19 through 340:20-1-20 [AMENDED]
- (Reference WFs 21-09 and 22-20)

**AUTHORITY:**

Director of Human Services, Section 162 of Title 56 of the Oklahoma Statutes, and Sections 8623 and 8624 of Title 42 of the United States Code.

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

December 20, 2021

## COMMENT PERIOD:

January 18, 2022 through March 18, 2022

## PUBLIC HEARING:

March 23, 2022

## ADOPTION:

March 23, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2022

## APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's Declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 1. Low Income Home Energy Assistance Program (LIHEAP)

340:20-1-12 [AMENDED]

340:20-1-17 [AMENDED]

(Reference WF 21-09)

### Gubernatorial Approval:

November 30, 2021

### Register Publication:

39 Ok Reg 462

### Docket Number:

22-3

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed amendments to Chapter 20, Subchapter 1 amend the rules to: (1) change Section titles; (2) revoke Sections and transfer relevant information to other Sections within the Subchapter; (3) remove the specific months Low Income Home Energy Assistance Program (LIHEAP) winter heating or summer cooling notices are sent; (4) remove the specific months LIHEAP pre-authorizations and winter heating and summer cooling application periods begin; (5) update Energy Crisis Application Program (ECAP) and reasons why an energy crisis may exist; (6) remove reasons the Energy Crisis Assistance Program (ECAP) may be approved from the application rule Section; (7) update the conditions that constitute a verified energy crisis exists; (8) add clarifying information; (9) add and update rule citations; (10) update terminology; and (11) update the conditions that constitute a verified energy crisis exists in the ECAP rule Section.

## CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

### 340:20-1-1. Purpose, legal basis, and nondiscrimination provisions

(a) **Purpose.** The purpose of this Chapter is to outline the rules governing the ~~Oklahoma Department of Human Services (DHS)~~ (OKDHS) Low Income Home Energy Assistance Program (LIHEAP). The ~~intent of the program is to provide~~ provides assistance to low-income households, particularly those with the lowest incomes, that pay a high proportion

of their household income to meet their home energy needs ~~per Section 8621 through 8629 of Title 42 of the United State Code. As administered by DHS, the~~ The households most affected by high energy costs are the elderly, disabled, homebound, children 5 years of age and younger, migrants, and those who are isolated from service programs by geographical conditions or language barriers.

(b) **Legal basis.** The legal base for LIHEAP is vested in Title XXVI of Public Law 97-35, Section 8621 through 8629 of Title 42 of the United States Code (42 U.S.C. §§ 8621 through 8629), and the Omnibus Budget Reconciliation Act. The program is financed from federal funds.

(c) **Non-discrimination provisions.** LIHEAP does not subject persons to discrimination or exclude them from participating in, or deny the benefits of any program or activity funded in whole or in part with LIHEAP funds on the basis of race, color, national origin, or sex, per 42 U.S.C. § 8625. Persons are not subjected to discrimination based on age, per the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) or based on a disability, per 29 U.S.C. § 794.

### 340:20-1-2. Legal base [REVOKED]

~~The legal base for the Low Income Home Energy Assistance Program is vested in Title XXVI of Public Law 97-35, the Omnibus Budget Reconciliation Act, and the designation of the Governor of Oklahoma dated 11-03-83. The program is financed from federal funds.~~

### 340:20-1-2.1. Non-discrimination provisions [REVOKED]

~~Per Section 8625 of Title 42 of the United States Code, no person is excluded from participation in, denied, or subjected to discrimination under any program or activity funded in whole or in part with Low Income Home Energy Assistance Program funds on the grounds of race, color, national origin, or sex. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 also applies to any such program or activity.~~

### 340:20-1-3. ScopeProgram operation, components, and priorities

(a) **Program operation.** The operation of the Low Income Home Energy Assistance Program (LIHEAP) is contingent upon the receipt of federal funds. Delay in federal funding ~~can~~ may cause changes in planned time frames for the program.

(b) **Components.** LIHEAP consists of four components each year federal funds are issued, per Section 8624 of Title 42 of the United States Code (42 U.S.C. § 8624):

- (1) winter heating assistance, which is the benefits paid to vendors and clients beginning in December during the winter heating application period each year as approved;
- (2) Energy Crisis Assistance Program (ECAP), which has intermittent application periods each year and any time there is a medical crisis;

- (3) ~~summer cooling assistance beginning in July each year during the summer cooling application period;~~ and
- (4) ~~weatherization assistance, administered year round by the Oklahoma Department of Commerce (ODOC) with LIHEAP funds allocated to them by the Oklahoma Department of Human Services (OKDHS) from federal LIHEAP funding.~~ ODOC distributes weatherization funds to local Community Action Agencies ~~agencies~~ to provide weatherization services.

(c) **Priorities.** OKDHS prioritizes facilitating the LIHEAP application process for persons who are 60 years of age and older or disabled, per 42 U.S.C. § 8624. During the open enrollment period, persons may complete LIHEAP applications online at [www.okdhslive.org](http://www.okdhslive.org) or by calling an OKDHS county office for assistance in submitting an online application. When a household lacks transportation, is physically or mentally unable to come to an OKDHS office, or does not have phone or Internet access, staff mails Form 08LH002E, Low Income Home Energy Assistance Program (LIHEAP) Application to the home. A spouse, natural guardian, legal guardian, or another person may complete a LIHEAP application on behalf of the household.

**340:20-1-4. Coordination with tribal Low Income Home Energy Assistance Program (LIHEAP) to prevent duplication of assistance and outreach**

(a) **Coordination with Indian tribes.** Some, but not all, Oklahoma Indian tribes receive federal funds to operate their own Low Income Home Energy Assistance Program (LIHEAP), per Section 8623 of Title 42 of the United States Code (42 U.S.C. § 8623). Tribes may choose to use their funds for one assistance payment per household or through multiple application periods throughout the federal fiscal year that runs from October through September each year.

- (1) ~~The Oklahoma Department of Human Services (DHS) (OKDHS)~~ and participating tribes share information regarding tribal member's receipt of LIHEAP to prevent assistance duplication of assistance.
- (2) Tribal members are not eligible to receive energy assistance from their tribe and ~~DHS OKDHS~~ for the same federal fiscal year.
- (3) When a tribal member applies for LIHEAP through ~~DHS OKDHS~~, LIHEAP staff treats the person's eligibility ~~is treated~~ in the same manner as any other household when the person is a member of a tribe that:
  - (A) does not operate its own LIHEAP; or
  - (B) operates its own LIHEAP, but the person has not applied to the tribe for energy assistance.
- (4) When a tribal member applies for ~~DHS OKDHS~~ LIHEAP and it is determined that a household member received energy assistance from a tribal LIHEAP program for the same federal fiscal year, ~~the LIHEAP staff denies the application is denied.~~
- (5) When a tribal member approved for ~~DHS OKDHS~~ LIHEAP later applies for tribal LIHEAP for the same federal fiscal year, the tribe denies its application unless

the tribal member requests ~~DHS that~~ OKDHS cancel its certification before payment is made.

(b) **Coordination with utility suppliers.** OKDHS LIHEAP Unit staff are responsible for familiarizing utility suppliers with LIHEAP regulations, per 42 U.S.C. § 8624. During the Energy Crisis Assistance Program, centralized LIHEAP staff must coordinate with utility suppliers to pledge payment and ensure fuel is delivered in a timely manner to settle the energy crisis.

(c) **Coordination with other OKDHS programs.** LIHEAP payments are disregarded in all OKDHS programs. LIHEAP coordinates with other Adult and Family Services income support programs, such as Temporary Assistance for Needy Families (TANF), TANF flex funds, and State Supplemental Payment. When the household's need is for primary home energy, it is met through LIHEAP when LIHEAP funds are available. TANF flex funds are used for emergency needs that LIHEAP does not cover.

(d) **Outreach.** OKDHS provides information and presentations regarding LIHEAP to interested persons and community agencies, per 42 U.S.C. § 8624. OKDHS collaborates with local Community Action agencies to offer energy efficient workshops and coordinate energy assessments on LIHEAP households' homes to evaluate what may be done to lower energy costs. Some utility suppliers enroll LIHEAP clients in discount rates for their main heating and cooling energy sources.

**340:20-1-5. Coordination with Adult and Family Services (AFS) income support programs [REVOKED]**

~~Low Income Home Energy Assistance Program (LIHEAP) payments are disregarded in all Oklahoma Department of Human Services programs. LIHEAP coordinates with other AFS income support programs, such as Temporary Assistance for Needy Families (TANF), TANF flex funds, and State Supplemental Payment (SSP). When the household's need is for primary home energy, it is met through LIHEAP when LIHEAP funds are available. TANF flex funds are used for emergency needs that LIHEAP does not cover.~~

**340:20-1-6. Coordination with utility suppliers [REVOKED]**

~~It is the responsibility of Low Income Home Energy Assistance Program (LIHEAP) program field representative staff to familiarize utility suppliers with LIHEAP per 8624 of Title 42 of the United States Code. County office staff email Adult and Family Services LIHEAP program field representative staff when a utility supplier or a client reports an account name or number requires a correction. During the Energy Crisis Assistance Program, centralized LIHEAP staff must coordinate with utility suppliers to pledge payment and ensure fuel is delivered in a timely manner to settle the energy crisis.~~

**340:20-1-7. Outreach [REVOKED]**

~~The Oklahoma Department of Human Services (DHS) provides information and presentations regarding the Low Income Home Energy Assistance Program (LIHEAP) to interested individuals and community agencies for the duration~~

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of the program per Section 8624 of Title 42 of the United States Code. DHS collaborates with local Community Action Agencies to offer energy efficient workshops and coordinate energy assessments on clients' homes to evaluate what can be done to lower energy costs. Some utility suppliers enroll LIHEAP clients in discount rates for their main heating and cooling energy sources.

### 340:20-1-8. Citizenship and alien status [REVOKED]

(a) ~~To be eligible for Low Income Home Energy Assistance Program (LIHEAP) benefits an individual must be:~~

- ~~(1) a United States (U.S.) citizen;~~
- ~~(2) a U.S. non citizen national;~~
- ~~(3) an alien who is both qualified and eligible; or~~
- ~~(4) an alien not required to meet qualified alien status.~~

(b) ~~Pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes, all persons 14 years of age and older must declare whether they are residing in the U.S. lawfully and may be required to sign Form 08MP005E, Citizenship Affidavit, in accordance with OAC 340:65-3-1(g).~~

### 340:20-1-9. Priorities [REVOKED]

~~Special consideration is given to facilitating the Low Income Home Energy Assistance Program (LIHEAP) application process on behalf of individuals who are 60 years of age and older, blind, or disabled, per Section 8624 of Title 42 of the United States Code. During the open enrollment period, applications may be completed online at [www.okdhslive.org](http://www.okdhslive.org) or by calling an Oklahoma Human Services county office for assistance in submitting an online application. For individuals who lack transportation; are physically or mentally unable to come to a county office; or have no phone or Internet access; Form 08LH002E, Low Income Home Energy Assistance Program (LIHEAP) Application, is mailed to the home. LIHEAP applications may be completed by the spouse, natural guardian, legal guardian, or someone else on the applicant's behalf.~~

### 340:20-1-10. Program factors

(a) **Home energy.** For the Low Income Home Energy Assistance Program (LIHEAP), home energy means a household's source of energy used to heat or cool a residential dwelling, per Section 8622(6) of Title 42 of the United States Code (42 U.S.C. § 8622(6)).

(b) **Main energy source.**

- (1) The main energy source used to heat the home is approved during the winter heating application period. The main energy source may be electricity, natural gas, propane, kerosene, firewood, coal, butane, or heating oil. When the household uses a generator to heat the home, the generator may use natural gas, propane, or gasoline.
- (2) The main energy source used to cool the home is approved during the summer cooling application period. In most instances, the main cooling source is electricity. When the household uses a generator to cool the home, the generator may use natural gas, propane, or gasoline.

(3) During an Energy Crisis Assistance Program (ECAP) application period, the household must choose the heating or cooling energy source that resolves the energy crisis.

(c) **Household.** Household means any person or group of persons who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent, per 42 U.S.C. § 8622(5).

(1) The income and resources of all household members is considered, per Oklahoma Administrative Code (OAC) 340:20-1-11 procedures, even when one or more household members is not eligible to be included in the benefit, per ~~OAC 340:20-1-8(d)~~ or ~~(g)(5)(h)(5)~~ of this Section.

(2) Refer to OAC 340:20-1-4 when one or more household members is a member of a tribe operating its own LIHEAP.

(3) A roomer is a person who rents a room in another person's house. A boarder is a person who lives in temporary housing, such as halfway house or group home, a commercial boarding house, or with another household who furnishes lodging and meals to the person in exchange for a reasonable monthly payment for board. When the household states there is a roomer or boarder living in the home, the person may be considered as a separate household only when:

- (A) he or she is not related to the household; and
- (B) there is a written lease or roommate agreement that contains a clause stating he or she is responsible for a specific portion of the utility bills.

(4) There is one authorization per household for each heating ~~and/or~~ cooling application assistance period.

(d) **Citizenship and alien status.** Per Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes, all persons 14 years of age and older must declare if they are residing in the United States (U.S.) lawfully and may be required to sign Form 08MP005E, Citizenship Affidavit, per OAC 340:65-3-1(g). To be eligible for LIHEAP benefits, a person must be:

- (1) a U.S. citizen;
- (2) a U.S. non-citizen national;
- (3) an alien who is both qualified and eligible, per OAC 340:50-67; or
- (4) an alien not required to meet qualified alien status.

~~(de)~~ **Vulnerability.** A household is vulnerable when it is totally or partially responsible for ~~the cost of~~ home energy costs. A household whose primary energy source is temporarily discontinued is also considered vulnerable. A roomer or boarder may be considered vulnerable when:

- (1) he or she is not related to a household member with whom he or she lives; and
- (2) there is a written lease or roommate agreement that contains a clause stating he or she is responsible for a specific portion of the utility bills.

~~(ef)~~ **Non-vulnerability.** Non-vulnerable households are those that do not bear any home energy expense. Examples of non-vulnerable living arrangements include:



(1) congregate or domiciliary facilities, such as a nursing facility, assisted living or long term care facility when utilities are paid through a corporate or business account, college or university dormitory, or fraternity or sorority housing;

(2) households whose primary energy source is totally paid by someone other than a household member; or

(3) subsidized households whose heating or cooling costs are included in the rent. Subsidized households assessed an energy surcharge during the operation of LIHEAP may be eligible for assistance when they provide verification of the surcharge. Acceptable surcharge verification may be established by an itemized statement from the landlord, a legally-binding lease agreement showing the surcharge, or a rent receipt designating the fuel cost is separate from the total shelter payment.

(fg) **Subsidized household.** Subsidized households are households that receive a utility allowance to cover all or part of their energy cost or receive assistance in paying their rent or house payment on a regular basis. Subsidized households are not vulnerable when an agency or person pays the entire utility bill every month, even when the utility bill is in the name of a household member or the payment is a loan.

(1) Assistance may be from a government agency, such as a local housing authority, or a private person, usually a relative or friend, who helps the household pay their utility bills, rent or house payment, or allows the household to live rent free.

(2) When apartment rental rates in college or university-owned apartment complexes are set lower than other apartments in the community to help the student, the household is considered a subsidized household.

(3) Eligible subsidized households with out-of-pocket utility expenses receive the same assistance benefit as unsubsidized households.

(gh) **Eligible household criteria.** All eligible households must verify that they meet criteria in (1) through (5) of this subsection, per OAC 340:20-1-13, or the application is denied.

(1) Households must be totally or partially responsible for the cost of home energy and provide accurate utility information.

(2) Households must not exceed the gross income and resource standards, per Oklahoma Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size.

(3) Households must include at least one U.S. citizen or eligible alien, per OAC 340:20-1-8. An undocumented or ineligible alien may be present in the home, but is not included in household size when determining the household's financial eligibility or the benefit amount. The undocumented or ineligible alien's income is considered, per OAC 340:20-1-11(a)(4).

(4) The applicant must provide proof of his or her identity, per OAC 340:20-1-13(4).

(5) Each household member included in household size for income and benefit determination must provide his or her Social Security number (SSN), per OAC

340:20-1-13(3) and 340:65-3-1(f). When the household does not provide a SSN for a household member, the person's income is counted but he or she is not included in household size when determining the household's financial eligibility, per OKDHS Appendix C-7, or benefit amount, per OKDHS Appendix C-7-A, Estimated Low Income Home Energy Assistance Program (LIHEAP) Benefit Level for all Households.

(hi) **Benefit amount.** LIHEAP funding is contingent on the receipt of federal funds and authorized amounts vary from year-to-year. Benefit amounts are estimated and reserved for winter heating, summer cooling, and ECAP on a yearly basis after the funding amount for the federal fiscal year is known. OKDHS Appendix C-7-A provides estimated benefit amounts for each program component. Adjustments may be made to the estimated benefit amount during the federal fiscal year because of changes in available funding or anticipated need. The household benefit amount for:

(1) winter heating is based upon household size, net income, primary energy source, and if the household pays the energy supplier or the utility cost is included in the rent payment;

(2) summer cooling is based upon household size and net income; and

(3) ECAP is based on the amount needed to resolve the energy crisis up to the maximum amount shown, per OKDHS Appendix C-7-A.

**340:20-1-11. Income and liquid resources**

(a) **Income.** All gross earned and unearned income that ~~received by the household~~ receives, except for income exclusions per (b) of this Section, is considered in determining financial eligibility, per Section 8624 of Title 42 of the United States Code (42 U.S.C. § 8624). Income received more than once per month from the same source; is converted to a monthly amount and rounded to the nearest dollar. When a household member's income is reduced due to ~~recoupment of an overpayment~~ recoupment or a garnishment, the gross amount before the recoupment or garnishment is considered.

(1) **Gross income standard.** ~~The income of eligible households~~ Eligible households' income must not exceed the gross income standard, per Oklahoma Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size.

(A) When the household includes one or more ineligible ~~aliens~~ alien(s), part of the ineligible alien(s)' income is considered in determining gross income for the other household members. Refer to (4) of this subsection to determine the ineligible alien(s)' countable income portion of the ~~ineligible alien(s)' income~~. The ineligible alien(s) is not considered in household size when determining the gross income standard for the other household members.

(B) When all household members and their income are included in Supplemental Nutrition Assistance

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Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), ~~or~~ State Supplemental Payment (SSP) cash assistance, or Child Care Subsidy benefits, the gross income used to establish eligibility for the other program is used to determine eligibility for Low Income Home Energy Assistance Program (LIHEAP) benefits unless the household reports new or terminated income. When the household reports income from a new source, or does not report income currently considered for another benefit on the LIHEAP application, the household must verify the income from the new source or verify that previous income is terminated, per (2) and (3) of this subsection.

(C) When some, but not all, household ~~mem-~~  
~~ber~~members are included in other benefits, the gross income of the household member(s) whose income was not verified must be determined for the application month, per (2) and (3) of this subsection.

(D) When the household does not receive other benefits, the household's gross income for the application month is verified and calculated to determine income eligibility, per (2) and (3) of this subsection.

(2) **Earned income.** Earned income is income a household member receives in the form of wages, commission, self-employment, or training allowances, and for which he or she puts forth labor. When all household members' earned income is not established for another program, and a household member works for an employer, gross earned income is calculated for the application month. When a household member is self-employed or a contract employee, the household member's income is averaged over 12 months to determine the average gross monthly income.

(A) When the household member receives an hourly wage, has not received all earned income for the month by the application date, and his or her income fluctuates, the last 30-calendar days of income is used to anticipate income for the pay periods not yet received. When the household member:

- (i) receives an extra paycheck in the application month due to a third or fifth week and the income is ongoing, the last 30-calendar days of income is used to determine countable monthly income instead of counting the extra paycheck; or
- (ii) ~~started~~starts a new job and the amount of the first paycheck is not known, the earnings are not considered.

(B) When the household member's income does not fluctuate, income received during the month prior to the application month may be used.

(C) When the household member derives his or her annual income by contract or self-employment in a time period ~~of time~~ shorter than one year or receives an annual salary, the income is divided over a 12-month period to determine countable monthly income.

(D) To arrive at the monthly gross earned income when the household member is self-employed and:

- (i) filed an income tax return on the self-employment income for the most recent tax year, the gross self-employment income, including capital gains, shown on the income tax return is divided by 12. When the business operated less than 12 months, the self-employment income is divided by the number of months the business operated; or
- (ii) did not file an income tax return for the most recent tax year, the gross self-employment income, including capital gains, shown on the household member's business records is divided by 12 or the number of months the business was in operation when the business operated less than 12 months.

(3) **Unearned income.** Unearned income is income a household receives that is not in the form of wages, self-employment, or training allowances, and for which a person does not put forth labor. Unearned income received or expected to be received during the month of application is considered unless it is excluded per (b) of this Section.

(4) **Income calculation for an ineligible alien.** An ineligible alien is a person who does not meet the eligibility criteria ~~described in~~ per Oklahoma Administrative Code (OAC) ~~340:20-1-8340:20-1-10(d)~~. When an ineligible alien is part of an eligible household, the ineligible alien's earned and unearned gross income ~~of the ineligible alien~~ and that of his or her ineligible dependents is calculated in the same manner as it is for other household members. The ineligible alien's countable income ~~portion of the ineligible alien's income~~ is computed per (A) through (E) of this paragraph and added to household income for the eligible members before determining if the household meets the gross income standard per OKDHS Appendix C-7.

(A) Subtract the earned income deduction, per OKDHS Appendix C-7 for each employed ineligible alien.

(B) Add the ineligible alien's unearned income ~~of the ineligible alien~~.

(C) Subtract the need standard, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards Schedule IX, for the ineligible alien and his or her ineligible alien dependents who:

- (i) are claimable for federal personal income taxes;
- (ii) live in the same household; and
- (iii) are not included in the household size when determining the gross income standard or the LIHEAP benefit level for the eligible household members.

(D) Subtract all applicable deductions per (c) of this Section for the ineligible alien(s).

(E) The remaining amount is added to the countable income of the household members eligible for LIHEAP.

(b) **Income exclusions.** Exclude from countable income any income that is excluded by SNAP, TANF, SSP, or Child Care Subsidy rules that include, but may not be limited to:

- (1) the food benefit amount under the Food and Nutrition Act of 2008;
- (2) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (3) educational assistance including grants, work study, scholarships, fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like;
- (4) loans, regardless of use, when a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan is from a person or financial institution in the loan business.

(B) When the loan is from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay, with or without interest, is required to indicate the loan is bona fide;

(5) Indian per capita payments distributed from judgment awards or trust funds made, per Section 2 of Public Law (P.L.) 98-64, (25 U.S.C. § 117b) and 25 U.S.C. § 1407.

(A) Exclude any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds.

(B) Exclude per capita payments, such as Osage tribe headrights, income from mineral leases, or other tribal business ventures, when they meet the distribution requirements stated in this paragraph.

(C) Consider ~~as income, interest, or income~~ derived from the principal, or income produced by purchases made with the funds after distribution as countable income.

(D) The per capita exclusion applies per person rather than per family;

(6) special allowance for school expenses made available upon written petition ~~in writing~~ from trust funds of the student;

(7) benefits from state and community programs on aging from Title III and Title V. Title III and Title V are under the Older Americans Act (OAA) of 1965, amended by P.L. 100-175 to become the OAA, as amended in 2000. Each state and various organizations receive Title V funds. These organizations include:

- (A) Experience Works;
- (B) National Council on Aging;
- (C) National Council of Senior Citizens;
- (D) American Association of Retired Persons (AARP);
- (E) United States (U.S.) Forest Service;
- (F) National Association for Spanish Speaking Elderly;
- (G) National Urban League;

(H) National Council on Black Aging; and

(I) National Council on Indian Aging;

(8) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in a Workforce Innovation and Opportunity Act program or other federally-funded workforce training program ~~to persons of all ages and student status~~, with the exception of income paid to persons 19 years of age and older for on-the-job training. This income is treated as any other earned income;

(9) payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(10) payments, allowances, or earnings made to persons participating in programs under Titles I and II of the Domestic Volunteer Services Act of 1973, Section 404 of P.L. 93-113 as amended (42 U.S.C. §§ 5044(f)(1) and 5058), such as the:

(A) Senior Companion Program;

(B) AmeriCorps Volunteers in Service to America (VISTA);

(C) Special Volunteer Programs;

(D) ~~the~~ Foster Grandparent Program; and

(E) ~~the~~ Retired and Senior Volunteer Program;

(11) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;

(12) any portion of payments, made under the Alaska Native Claims Settlement Act, Section 21(a) of P.L. 92-203, to an Alaska native, which are exempt from taxation under the Settlement Act;

(13) Experimental Housing Allowance Program payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(14) ~~earnings of a minor dependent child who~~ child's earnings when he or she is a full-time student;

(15) rental or housing subsidies by governmental agencies, such as the U.S. Department of Housing and Urban Development (HUD), received in-kind or in cash for rent, mortgage payments, or utilities;

(16) reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training.

(A) Uniform allowances are excluded when the uniform is uniquely identified with the company name or logo.

(B) Any amount the employer adds to the employee's gross income as a benefit allowance to pay for a reimbursable expense, such as insurance or dependent care, is excluded.

(C) When the monthly benefit allowance exceeds the monthly expense and the employer includes the

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- excess in the employee's pay each month, the worker counts the excess benefit allowance as earned income;
- (17) advance payments of Earned Income Tax Credit (EITC) received as part of a paycheck or EITC refunds as a result of filing a federal income tax return, per P.L. 100-435;
- (18) ~~refunds of~~ state EITC refunds as a result of filing a state income tax return;
- (19) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);
- (20) TANF Work support services payments, such as flexible funds and participant allowances, per OAC 340:10-2-8;
- (21) payments made ~~by a person or organization outside of the household~~ directly to the household's creditors, or to a person or organization providing a service on the household's behalf, when the payment is made by a person or organization outside of the household. When funds owed to the household are diverted to pay a third party for a household expense, they are counted as income;
- (22) in-kind benefits that are not in the form of money directly payable to the household, ~~including~~. This includes meals, clothing, housing, or benefits ~~received by that~~ an employee receives from an employer in lieu of wages or in conjunction with wages;
- (23) payments made under the Radiation Exposure Compensation Act (P.L. 101-426) enacted October 15, 1990;
- (24) funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency and to persons directly affected by the event, per the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended (42 U.S.C. § 5155(d)). This exclusion also applies to all federally-funded disaster assistance and comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the U.S. President;
- (25) interests of individual Native Americans in trust or restricted lands;
- (26) income up to \$2,000 per calendar year received by individual Native Americans that is derived from leases or other uses of an individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as unearned income;
- (27) payments made to persons because of their status as victims of Nazi persecution;
- (28) monetary allowances, per 38 U.S.C. § 1823(c) provided to certain persons who are children of Vietnam War veterans;
- (29) Family Support Assistance Payment Program payments paid to persons by OKDHS Developmental Disabilities Services;
- (30) money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account, or an ABLE account in any other state,

owned by the account's designated beneficiary ~~of the account~~—and established to pay for qualified disability expenses (QDE) is excluded from income or resource consideration, per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes and the ABLE Act of 2014, 26 U.S.C. § 529A. A person may have only one ABLE account. The client must provide documents to verify the account meets exemption criteria before the funds are excluded. Once the client verifies that the savings or trust account is a valid ABLE account, no further account information is required.

- (A) ~~A~~ Another individual's contribution to an ABLE account ~~by another individual~~ is excluded unless the contribution exceeds the annual federal gift tax exclusion amount, per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as a countable resource in the amount deposited.
- (B) A distribution from an ABLE account that is retained after the month of receipt is excluded in any month when spent on a QDE. Money withdrawn for reasons other than to pay a QDE is considered as a countable resource for the withdrawal month ~~of withdrawal~~.
- (C) A QDE is any expense related to the blindness or disability of the individual and made for the benefit of the individual. QDE's include, but are not limited to:
- (i) education;
  - (ii) housing;
  - (iii) transportation;
  - (iv) employment, training, and support;
  - (v) assistive technology and personal support services;
  - (vi) health;
  - (vii) prevention and wellness;
  - (viii) financial management and administrative services;
  - (ix) legal fees;
  - (x) ABLE account oversight and monitoring;
  - (xi) funeral and burial; and
  - (xii) basic living;
- (31) income received by a member of the U.S. Armed Forces, per 37 U.S.C. Chapter 5 and Section 273.9(c)(20) of Title 7 of the Code of Federal Regulations that is:
- (A) received in addition to the service member's basic pay during combat deployment;
- (B) received as a result of the service member's deployment or service in an area designated as a combat zone as determined pursuant to an Executive Order or P.L.; and
- (C) not received by the service member prior to the service member's deployment to or service in a federally-designated combat zone;
- (32) payments, allowances, or earnings to persons participating in the AmeriCorps State and National program or the AmeriCorps National Civilian Community Corps

authorized by the National and Community Service Act of 1990 (42 U.S.C. § 12637(d)) and other payments to volunteers authorized by the National and Community Service Trust Act of 1993, P. L. 103-82 (42 U.S.C. §§ 12571, et seq.) and administered by the Corporation for National and Community Service;

(33) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry whose ancestors were detained in internment camps during World War II;

(34) payments received by a Supplemental Security Income recipient necessary for the fulfillment of a Plan for Achieving Self-Support approved under Title XVI Section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act;

(35) money the household receives and uses for the care and maintenance of a third-party beneficiary who is not a household member;

(36) income that is received too infrequently or irregularly to be reasonably anticipated when it is \$30 or less per quarter;

(37) non-recurring lump sum payments including, but not limited to:

- (A) income tax refunds, rebates, or credits;
- (B) retroactive lump sums from Social Security, SSI, public assistance, Railroad Retirement pensions benefits, or other payments;
- (C) retroactive lump sum insurance settlements; or
- (D) refunds of security deposits on rental property or utilities; and

(38) up to \$2,000 in cash deposited and interest accrued in an individual development account operated under the Assets for Independence Act.

(c) **Income deductions.** The household must meet the gross income standard for its household size, per OKDHS Appendix C-7 before allowing applicable income deductions, per (1) through (5) of this ~~paragraph~~subsection except for self-employment business expenses. After allowing income deductions, the net income is used to determine the benefit amount, per (d) of this Section. Deductible expenses may include:

- (1) verified non-reimbursed medical expenses paid by persons 60 years of age and older or persons considered disabled, per OAC 340:50-5-4;
- (2) legally binding child support paid by a household member to, or for a non-household member when verified, including payments made to a third party on behalf of the non-household member;
- (3) the earned income deduction, per OKDHS Appendix C-7 for each employed household member;
- (4) when self-employed, 50 percent of the household member's gross self-employment income for incurred business expenses. Self-employed business expenses are subtracted before determining if the household meets gross income standards, per OKDHS Appendix C-7. When the household member did not incur business expenses, he or she is not eligible for a business expense deduction. The household member is also eligible

for the earned income deduction per (3) of this ~~paragraph~~subsection when he or she does not take out a salary from the business; and

(5) child care copayment when the household receives Child Care Subsidy benefits through OKDHS.

(d) **Benefit amount.** Refer to OKDHS Appendix C-7-A, Estimated Low Income Home Energy Assistance Program (LIHEAP) Benefit Level for all Households, to determine the LIHEAP benefit amount. The LIHEAP benefit amount is based on household size, excluding ineligible aliens, the household's net income after applicable deductions are subtracted per (c) of this Section, and the main energy source.

(e) **Resources.** Liquid resources, such as, but not limited to, cash on hand, checking or savings accounts, certificates of deposits, stocks or bonds, bitcoin, or other cryptocurrency, cannot exceed the allowable resource level, per OKDHS Appendix C-7. The applicant's statement is accepted as verification unless the information is inconsistent or questionable.

**340:20-1-12. Applications**

Households apply for the Low Income Home Energy Assistance Program (LIHEAP) by submitting an online application at [www.okdhslive.org](http://www.okdhslive.org), calling an Oklahoma Human Services (OKDHS) county office to assist with submitting the online application, or calling the phone number on the [www.okdhslive.org](http://www.okdhslive.org) website to request Form 08LH002E, ~~Application for~~ Low Income Home Energy Assistance Program (LIHEAP) Application, be mailed to them. When Form 08LH002E is mailed to the household with a postage paid envelope, the application ~~must be~~is completed and returned by email, faxed to the number on the form, or mailed to the return address.

(1) Households may be pre-authorized for the LIHEAP winter heating or summer cooling component without filing an application, but ~~must not be~~are not pre-authorized for both in the same federal fiscal year, October through September. Households pre-authorized for LIHEAP are households that received Child Care Subsidy, State Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF), or Supplemental Nutrition Assistance Program (SNAP) benefits all 12 months of the previous federal fiscal year and met criteria in (A) through (D) of this paragraph. The household:

- (A) received LIHEAP winter heating or summer cooling the previous federal fiscal year;
- (B) address remains the same;
- (C) income did not change or exceed eligibility guidelines for household size during the previous federal fiscal year; and
- (D) members remain the same from the previous federal fiscal year.

(2) A computer-generated notice is normally mailed ~~in November for the month before the winter heating and in June for~~or summer cooling ~~each year~~application period starts. The notice is sent to households not selected for preauthorization that receive SNAP benefits, TANF, and ~~or SSP at the time of the mailing~~. The notice informs the household how to apply for LIHEAP.

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(3) When an application is denied, ~~the household~~ households may request a fair hearing when ~~it does not~~ they do not agree with the decision or submit a new application to reapply.

(4) When a household moves after applying for LIHEAP, a new application is not necessary. However, the household must report the change of "service" address to an OKDHS county office within 10-calendar days of moving.

(5) When submitting an application, the household must provide the correct account name, account number, and energy supplier to ensure payments are made to the correct energy supplier. All households applying for the Energy Crisis Assistance Program must have a verified ~~active cut off order, a notice of refusal to provide additional fuel, or a verification of the fee to establish or re-establish service from an energy supplier~~ energy crisis, per Oklahoma Administrative Code 340:20-1-17(f)(2).

### 340:20-1-17. Energy Crisis Assistance Program (ECAP)

(a) **ECAP funds.** Based upon previous years' program experience, Oklahoma Human Services (OKDHS) reserves reasonable funds ~~are reserved~~ each year for ECAP to resolve energy crisis situations, per Section 8623(c) of Title 42 of the United States Code (42 U.S.C. § 8623(c)), to:

(1) prevent disconnect of service when the household has a verified, active cut-off order;

(2) restore or start service;

(3) provide a minimum delivery of propane or other heating fuel, per Section 8623(e) of Title 42 of the United States Code (42 U.S.C. § 8623(e)).

(b) **ECAP components.** ECAP consists of three components:

(1) a regularly scheduled application period in March each year;

(2) year round assistance available ~~on a case-by-case basis~~ for households experiencing an energy crisis that involves a life-threatening medical situation on a case-by-case basis; and

(3) disaster Low Income Home Energy Assistance Program (LIHEAP) when a federally declared disaster occurs and disaster LIHEAP is authorized by the Administration for Children and Families (ACF) Office of Community Services (OCS). When this occurs, ~~Oklahoma Human Services (OKDHS)~~ OKDHS follows ACF OCS program instructions issued for the disaster, ~~which~~ The instructions may differ from what is ECAP requirements contained in this Section.

(c) **Maximum benefit amount.** When the household applies for ECAP more than once in the same fiscal year, the maximum benefit amount approved for all applications combined cannot exceed the amount ~~shown~~ allowed per fiscal year for ECAP on OKDHS Appendix C-7-A, Estimated Low Income Home Energy Assistance Program (LIHEAP) Benefit Level For All Households. An additional benefit amount may be approved when additional funds are authorized during a federally-declared disaster.

(d) **ECAP application methods.** Households apply for ECAP by submitting an online application at [www.okdhslive.org](http://www.okdhslive.org), calling an OKDHS county office to request assistance in submitting an online application, or calling the phone number on the [www.okdhslive.org](http://www.okdhslive.org) website to request Form 08LH002E, Low Income Home Energy Assistance Program (LIHEAP) Application, be mailed to them. Centralized LIHEAP staff includes a postage paid envelope with a mailed Form 08LH002E.

(1) When there is a life-threatening medical situation, centralized LIHEAP staff gathers eligibility information by phone and an application is not required.

(2) When the household chooses to complete Form 08LH002E ~~is mailed to the household with a postage paid envelope, they must complete and return the application must be completed and returned~~ by email, ~~faxed~~ by fax to the number on the form, or ~~mailed~~ by mail to the return address shown on Form 08LH002E and the postage paid envelope.

(3) Centralized LIHEAP staff approve or deny ECAP applications ~~are approved or denied by centralized LIHEAP staff.~~

(e) **Main energy source.** Households may choose heating or cooling as the main energy source for ECAP when the household's main energy source meets criteria per ~~(e)~~ (f)(2) of this Section. When a life-threatening medical situation is involved, the household must choose the energy source that resolves the energy crisis and prevents a life-threatening medical situation. When the household chooses:

(1) heating, the main heating energy source used to heat the home is approved. This may be electricity, natural gas, propane, kerosene, firewood, coal, butane, or heating oil. When the household uses a generator to heat the home, the generator may use natural gas, propane, or gasoline; or

(2) cooling, the main cooling energy source used to cool the home is approved. In most instances, the main cooling source is electricity. When the household uses a generator to cool the home, the generator may use natural gas, propane, or gasoline.

(f) **Eligibility criteria.** ECAP eligibility criteria are detailed in (1) through (5) of this subsection.

(1) Households with an energy crisis must not exceed the income and liquid resource standards, per OKDHS Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size. Households must meet the same income and resource criteria for ECAP as for heating and cooling assistance, per Oklahoma Administrative Code (OAC) 340:20-1-11.

(2) Households must have a verified energy crisis. An energy crisis exists when the household:

(A) service is disconnected by the energy supplier;

(B) ~~household~~ has a verified, active cut-off order.

In the event of limited funding, centralized LIHEAP staff ~~prioritize~~ prioritizes applications with cut-off notices scheduled within 72 hours and applications that contain at least one household member who is

60 years of age and older, blind, disabled, or a child under five years of age;

(C) ~~household received~~receives a refusal notice of refusal to provide additional energy needs by from the energy supplier and the household's fuel tank indicator is at or below 10 percent during the regularly-scheduled ECAP period, or at 25 percent or less for households with a life-threatening medical situation;

(D) ~~household provides information regarding a new connection fee for a new connection; or~~

(E) ~~household has a cash only, cash advance, or pre-paid account and has less than a \$25 minimum balance in his or her the account. The household's utility bill shows that it is a cash only, cash advance, or pre-paid account and the balance amount; or~~

(F) enters into a payment plan with the energy supplier to prevent a service cut-off. When the household enters into a payment plan to prevent service cut-off, centralized LIHEAP staff verifies the payment plan and the minimum amount needed to resolve the energy crisis for at least one month with the energy supplier.

(3) The household must have experienced a precipitating factor that caused the household to choose between paying the energy bill and another vital household need.

(A) Acceptable factors include, but are not limited to, temporary or short-term situations that caused the household to make a choice between paying the energy bill and:

- (i) purchasing sufficient food for the household;
- (ii) paying for emergency situations, such as medical expenses or disaster recovery; or
- (iii) providing clothing for children in the household.

(B) When the household was approved for the maximum ECAP payment during the most recent fiscal year, no further ECAP payments are made during the same fiscal year unless additional funds are authorized during a federally-declared disaster.

(C) Households approved for less than the maximum ECAP payment may be approved for another ECAP payment during the same fiscal year, provided the total approved for all payments does not exceed the maximum ECAP payment, per OKDHS Appendix C-7-A. Per 42 U.S.C. § 8624(b)(16), an additional ECAP payment is not approved for the same fiscal year when the household:

- (i) refuses to participate in budget counseling and home energy conservation workshops provided by Community Action agencies;
- (ii) ~~did~~does not show any progress in improving its situation; or
- (iii) ~~did~~does not make an effort to maintain current utility bills.

(4) The household must explain why the energy crisis need cannot be met by available income and liquid resources, even when income and liquid resources are equal to or below the standard, per OKDHS Appendix C-7.

(5) When the ECAP benefit amount is insufficient to establish, restore, or prevent the cut-off of the household's energy source, ECAP is authorized only when ~~the ECAP payment, combined with other resources that are available or can be developed, combined with the ECAP payment to meet~~resolve the energy crisis. When ~~a feasible plan~~other resources cannot be developed to help resolve the energy crisis, the ECAP application is denied.

**(fg) ECAP payment requirements.** ECAP payment requirements are included in (1) through (4) of this subsection.

(1) The authorized ECAP benefit is limited to the minimum amount necessary to connect, restore, or maintain energy service to the household, up to the established maximum for the program year, per OKDHS Appendix C-7-A. The payment must resolve the energy crisis for at least one month. ECAP funds are not used to pay utility charges carried over from a previous utility account or that is in debt collection, unless the client moved to a new location because of a domestic violence situation and provides proof of the domestic violence, such as a police report.

(2) OKDHS makes payments for crisis assistance directly to energy suppliers unless the energy supplier is not designated to receive direct payments from OKDHS. When direct payment cannot be made to the energy supplier, OKDHS makes the payment to the household by debit card or direct deposit, per ~~Oklahoma Administrative Code~~OAC 340:65-3-6.

(3) The authorized benefit cannot include the ~~cost~~of propane or butane tank delivery cost.

(4) When other utilities are included with the heating or cooling bill, such as water, sewer, or trash, the authorized benefit cannot include the other utility charges. In this situation, the ~~applicant~~client must provide a utility bill that itemizes the charges for each utility, or this information ~~must be~~is obtained from the energy supplier. When the client is unable to pay the other utility costs and the ~~provider~~energy supplier is unwilling to continue heating or cooling service, the application is denied until the ~~applicant~~client provides verification that the other utilities were or can be paid.

**(gh) Timeliness requirement.** Per 42 U.S.C. § 8623(c), an ECAP application is considered timely processed when it is approved or denied within:

(1) 18 hours of the household requesting ECAP when the energy crisis involves a life-threatening medical situation.

(A) To be considered a life-threatening medical situation, the energy crisis must involve the energy source required:

- (i) for life-saving medical equipment to be operational. The medical equipment must be prescribed by a licensed health care professional and require electricity to operate. When the medical equipment has an available battery backup in case

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of an electricity outage, the medical situation is not considered life-threatening. The client must provide a licensed health care professional's statement ~~from a licensed health care professional~~ dated within the last 60-calendar day period or the most recent six months of medical records verifying that the medical equipment is prescribed and a battery backup is not available. Examples of life-saving medical equipment include, but are not limited to:

- (I) a kidney dialysis machine;
- (II) an iron lung;
- (III) an oxygen concentrator or other type of oxygen machine; or
- (IV) a cardiac monitor; or

(ii) ~~to~~ power heating or air conditioning equipment when the temperature is predicted to be hot or cold enough to create a life-threatening medical situation for a person with a pre-existing medical condition if the energy source is not functioning. To be considered a life-threatening medical situation, the temperature on the disconnection date must be predicted to be:

- (I) a heat index of at least 101 degrees in summer months; or
- (II) 32 degrees or lower during ~~day~~ time ~~day-time~~ hours, ~~and/or~~ 20 degrees or lower during night time hours in winter months, or both.

(B) Authority for designating a medical situation as life-threatening is limited to a:

- (i) licensed health care professional; or
- (ii) public health official; and

(2) 48 hours of receipt of a complete application when the energy crisis does not involve a life-threatening medical situation. A complete application means the application is signed and submitted and all verification is provided.

### 340:20-1-19. Winter heating

(a) Selected households approved for other benefits administered by Oklahoma Human Services (OKDHS) Adult and Family Services are normally pre-authorized ~~during October~~ for winter heating each year without filing an application. Households pre-approved for the Low Income Home Energy Assistance Program (LIHEAP) are those who received a Child Care Subsidy, State Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF), or Supplemental Nutrition Assistance Program (SNAP) benefits all 12 months of the previous federal fiscal year and met all the criteria in (1) through (4) of this subsection. The household:

- (1) received LIHEAP winter heating the previous federal fiscal year;
- (2) address remains the same;
- (3) income did not exceed the gross income standard for its household size during the previous federal fiscal year, per OKDHS Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size; and

(4) members remain the same from the previous federal fiscal year.

(b) Households are not ~~preauthorized~~ pre-authorized for winter heating and summer cooling in the same federal fiscal year; October through September. When households were ~~preauthorized~~ pre-authorized for summer cooling for the same federal fiscal year, they must complete an application for winter heating and be approved, per Oklahoma Administrative Code (OAC) 340:20-1-12.

(c) ~~The A designated~~ LIHEAP winter heating ~~component~~ normally begins in December, and applications application period is opened each year federal LIHEAP funds are issued. Applications are taken until allocated funds are expended, per Section 8624 of Title 42 of the United States Code.

(d) Refer to OKDHS Appendix C-7-A, Estimated Low Income Home Energy Assistance Program, for estimated benefit amounts. The benefit amount is based on the household's net income, household size, heating source, and if the heating bill is included in the rent amount or paid separately.

(1) Payments for unsubsidized renters, roomers, and boarders who pay a surcharge for utilities included in their rent are made directly to approved households, per (g) of this Section.

(2) Acceptable verification of the surcharge may be established by an itemized statement from the landlord, a legally-binding lease agreement showing the surcharge, or a rent receipt designating that the fuel cost is separate from the total shelter payment. When a roomer or boarder lives with another household, he or she may only qualify as a separate household when he or she:

- (A) is not related to the household; and
- (B) provides a written lease or roommate agreement that contains a clause stating he or she is responsible for a specific portion of utility bills.

(e) Main home energy sources ~~of home energy~~ for heating include natural gas, electricity, propane, firewood, kerosene, coal, or butane. When the household uses a generator to heat the home, the generator may use natural gas, propane, or gasoline.

(1) LIHEAP payments are made for utility expenses, deposits, and reconnect charges applicable to the household's main source of home energy. When the utility supplier receives payment from the household and OKDHS for reconnect charges or deposits, the utility supplier must reimburse the client for those charges.

(2) When other utilities, such as water, sewer, or trash, are included with the fuel bill, the authorized benefit cannot include the other utility charges. In this situation, the applicant must provide a utility bill that itemizes the charges for each utility or this information must be obtained from the energy supplier.

(f) Payments are not made for:

- (1) blankets;
- (2) emergency home repair;
- (3) new or additional heating equipment or heating appliances;
- (4) propane tank rental, hook-up, inspection, delivery, or other service charges; or



(5) utility charges carried over from a previous utility account or that is in debt collection due to non-payment, unless the client moved to a new location because of a domestic violence situation and provides proof of the domestic violence, such as a police report.

(g) Refer to OAC 340:20-1-14(5) for ways LIHEAP payments are made. When direct payment is made to the household instead of an energy supplier, it is made on a debit card or by direct deposit, per OAC 340:65-3-6 procedures.

**340:20-1-20. Summer cooling**

(a) Selected households already approved for other benefits administered by Oklahoma Human Services (OKDHS) Adult and Family Services are normally pre-authorized ~~during June~~ ~~or for summer cooling~~ each year ~~without filling out an application~~. Households pre-approved for the Low Income Home Energy Assistance Program (LIHEAP) are those who received ~~a Child Care Subsidy, Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF), or Supplemental Nutrition Assistance Program (SNAP) benefits~~ all 12 months of the previous federal fiscal year and met all the criteria in (1) through (4) of this subsection. The household:

- (1) received LIHEAP summer cooling the previous federal fiscal year;
- (2) address remains the same;
- (3) income did not exceed the gross income standard for its household size during the previous federal fiscal year, per OKDHS Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size; and
- (4) members remain the same from the previous federal fiscal year.

(b) Households are not ~~preauthorized~~ pre-authorized for summer cooling and winter heating in the same federal fiscal year; October through September. When households were pre-authorized for winter heating for the same fiscal year, they must complete an application for summer cooling and be approved, per Oklahoma Administrative Code (OAC) 340:20-1-12.

(c) ~~The~~ A designated LIHEAP summer cooling component normally begins in July, and ~~applications~~ application period is opened each year federal LIHEAP funds are issued. Applications are taken until allocated funds are expended, per Section 8624 of Title 42 of the United States Code.

(d) Refer to OKDHS Appendix C-7-A, Estimated Low Income Home Energy Assistance Program, for estimated benefit amounts. The benefit amount is based on the household's net income and household size.

- (1) The same benefit amount is approved for unsubsidized renters, roomers, and boarders with utilities included in their rent as for households that pay their cooling costs to an energy supplier. Payments for unsubsidized renters, roomers, and boarders who pay a utility surcharge included in the rent are made directly to approved households, per (g) of this Section.
- (2) Acceptable verification of the surcharge may be established by an itemized statement from the landlord, a legally-binding lease agreement showing the surcharge, or

a rent receipt designating that the fuel cost is separate from the total shelter payment. When a roomer or boarder lives with another household, he or she may only qualify as a separate household when he or she:

- (A) is not related to the household; and
- (B) provides a written lease or roommate agreement that contains a clause stating he or she is responsible for a specific portion of utility bills.

(e) In most instances, the main home energy source for cooling is electricity. When the household uses a generator to cool the home, the generator may use natural gas, propane, or gasoline.

(1) LIHEAP payments are made for utility expenses, deposits, and reconnect charges applicable to the household's primary home energy source ~~of home energy~~. When the utility supplier receives payment from the client and OKDHS for reconnect charges or deposits, the utility supplier must reimburse the client for those charges.

(2) When other utilities are included with the fuel bill, such as water, sewer, or trash, the authorized benefit cannot include the other utility charges. In this situation, the applicant must provide a utility bill that itemizes the charges for each utility or this information must be obtained from the energy supplier.

(f) Payments may be made to the household to reimburse it for purchasing cooling equipment, such as fans and window air conditioning units, or to repair existing cooling equipment up to the maximum payment allowed, per Appendix C-7-A, Estimated Low Income Home Energy Assistance Program (LIHEAP) Benefit Level for all Households, when the household provides proof that the purchase or repair was made within 30-calendar days of the start of the cooling application period. When the household chooses this option, it is not eligible to receive help paying its energy bill.

(g) Refer to OAC 340:20-1-14(5) for ways LIHEAP payments are made. When direct payment is made to the household instead of an energy supplier, it is made on a debit card or by direct deposit, per OAC 340:65-3-6 procedures.

[OAR Docket #22-541; filed 7-5-22]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 25. CHILD SUPPORT SERVICES**

[OAR Docket #22-542]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Commissioned Peace Officers  
340:25-3-1 through 340:25-3-1.1 [REVOKED]  
340:25-3-3 [REVOKED]  
340:25-3-5 [REVOKED]
- Subchapter 5. Operational Policies  
Part 11. OCSS System Security  
340:25-5-75 [AMENDED]
- Part 15. Case Initiation, Case Management, and Case Closure  
340:25-5-114 [AMENDED]
- Part 17 Past Support

# Permanent Final Adoptions

340:25-5-140 [AMENDED]  
Part 21. Establishment  
340:25-5-178 [AMENDED]  
340:25-5-190 [NEW]  
Part 22 Review and Modification  
340:25-5-198.2 [AMENDED]  
Part 23 Enforcement  
340:25-5-200 [AMENDED]  
Part 33. Intergovernmental Cases  
340:25-5-270 [AMENDED]  
Part 37. Recovery  
340:25-5-305 [AMENDED]  
(Reference WFs 21-7 and 22-25)

## AUTHORITY:

Director of Human Services, Section 162, of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 56 O.S. § 237; 75 O.S. § 253; 43 O.S. §§ 118A, 118B, 118G, 118I; SB 421; Chapter III of Subtitle B of Title 45 of the Code of Federal Regulations (C.F.R.); 45 C.F.R. §§ 302.56, 303.8 and 303.11; and Executive Order 13563: Improving Regulation and Regulatory Review; Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B); 42 U.S.C. § 1396k; Chapter 7, Subchapter IV, Part D; 50A U.S.C. §§ 501 through 596; 3A O.S. § 724.1; 10 O.S. §§ 80, 83, 90.5, 7700-101 through 7800; 12 O.S. §§ 1170, 1171.2 through 1171.4, 2004, and 2005.2; 21 O.S. §§ 566, 566.1, 567, and 852; 36 O.S. § 6058A; 43 O.S. §§ 109.2 through 110, 112, 112A, 112.1A, 114 through 120, 135 through 139.1, 140, 410 through 413, 601-100 through 601-903; 47 O.S. §§ 1-153, 6-201, 6-201.1, 6-211, and 6-212; 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.24; 63 O.S. §§ 1-311, 1-311.2, 1-311.3, and 1-321; 68 O.S. § 205.2; and 70 O.S. §§ 3970.1 through 3970.12.

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

December 20, 2021

## COMMENT PERIOD:

January 18, 2022 through March 18, 2022

## PUBLIC HEARING:

March 23, 2022

## ADOPTION:

March 23, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2022

## APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's Declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded Rules:

Subchapter 5. Operational Policies

Part 17 Past Support

340:25-5-140 [AMENDED]

Part 21. Establishment

340:25-5-178 [AMENDED]

Part 22 Review and Modification

340:25-5-198.1 through 340:25-5-198.2 [AMENDED]

Part 23 Enforcement

340:25-5-200 [AMENDED]

Part 37. Recovery

340:25-5-305 [AMENDED]

[REFERENCE WF 21-07]

## Gubernatorial Approval

October 20, 2021

## Register Publication:

39 Ok Reg 176

## Docket Number:

21-764

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed amendments to Chapter 25 Subchapters 3 and 5 amend the rules to: (1) implement rule changes recommended during the annual Child Support Services (CSS) policy review process; (2) bring CSS process for implementing national background checks into compliance with Internal

Revenue Service (IRS) requirements for employees and contractors that have access to federal tax information (FTI); (3) align CSS process with Senate Bill 421 (SB 421) from the 1st Regular Session of the 58th Oklahoma Legislature as it amends Section 118A through 118I of Title 43 of the Oklahoma Statutes (43 O.S. §§ 118A through 118I) modify the child support guidelines for income computation under certain conditions; (4) amend legal authorities as necessary; and (5) make non-substantive changes to improve rule clarity.

## CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 3. COMMISSIONED PEACE OFFICERS

### 340:25-3-1. Authority and scope [REVOKED]

~~(a) Section 162.2 of Title 56 of the Oklahoma Statutes authorizes the Director of the Oklahoma Department of Human Services (OKDHS) to appoint and commission peace officers to conduct investigations and assist in prosecuting court proceedings related to child support. Peace officers of Oklahoma Child Support Services (OCSS) serve civil process and execute, arrest warrants and other court orders in cases in which OKDHS is a party or participant.~~

~~(b) Peace officers may be authorized to possess and use firearms while performing their official OKDHS duties. Firearms are carried in compliance with applicable state and federal laws.~~

~~(c) This Subchapter does not apply to peace officers employed by entities under contract or agreement with OCSS.~~

### 340:25-3-1.1. Definitions [REVOKED]

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

~~"CLEET" means the Council on Law Enforcement Education and Training.~~

~~"Next friend" means a person who appears in court on behalf of another person who is under disability, a minor, or otherwise unable to maintain a lawsuit on their own behalf as a result of their circumstances. The next friend is not a party to the lawsuit and can be any legally competent person whose interests do not run counter to those of the person on whose behalf they are acting. The next friend is considered an agent of the court whose role is to protect the rights of the person on whose behalf they are acting.~~

~~"Peace officer" means a peace officer commissioned and employed by the Oklahoma Department of Human Services (OKDHS) within Oklahoma Child Support Services under Section 162.2 of Title 56 of the Oklahoma Statutes. It does not include peace officers employed by entities under contract or agreement with OKDHS.~~

"**Service of Process**" means the delivery of a writ or summons to a party for the purpose of obtaining jurisdiction and to notify of a legal proceeding against the party.

**340:25-3-3. Service of process [REVOKED]**

(a) **Authority.** Oklahoma Department of Human Services Child Support Services (CSS) follows the provisions of Section 2004 of Title 12 of the Oklahoma Statutes (12 O.S. § 2004) for service of process. CSS uses the most cost effective and efficient method of service of process depending on what is most appropriate under the facts of the case.

(b) **Service by regular mail to address of record (AOR).** Service to the AOR by regular mail may be appropriate when an AOR is on file with the Central Case Registry for a party in the case per Oklahoma Administrative Code 340:25-5-340. 3 through 5 Service to the AOR is not appropriate when the:

- (1) remedy sought may result in the obligor's incarceration including, but not limited to, indirect civil contempt actions; or
- (2) court may require a higher level of notice to the affected party including, but not limited to, actions to determine paternity.

(c) **Service by acknowledgment.** CSS delivers the documents directly to a party and requests the party accepts and acknowledges service, as appropriate. The Acknowledgment of Service is filed in the court case.

(d) **Service by certified mail.** Service by mail is made by certified mail, return receipt requested, and delivery restricted to the addressee. CSS uses service by certified mail when service to the AOR or by Acknowledgment of Service is not appropriate or successful. CSS staff is not required to attempt service by certified mail before attempting personal service when the case history indicates a low probability of acceptance or the court requires personal service.

(e) **Service by personal delivery.** Service by personal delivery is completed by a sheriff, deputy sheriff, individual licensed to make service of process in civil cases, or an individual specially appointed for that purpose per 12 O.S. § 2004. CSS uses service by personal delivery when:

- (1) an individual has not accepted service by certified mail;
- (2) service to the AOR or by acknowledgment is not available or appropriate;
- (3) case history indicates a low probability of acceptance of service by certified mail; or
- (4) the court requires service by personal delivery.

(f) **Diligent efforts.** When CSS contracts with vendors for service of process, the vendor must make diligent efforts to complete service and provide timely documentation to CSS. Diligent efforts means at least three repeated attempts to serve the individual at different times of day or on different days of the week, before declaring inability to serve. CSS:

- (1) attempts to serve process in the manner, at the time, and place most reasonably calculated to complete service of process in the most efficient and cost effective manner;
- (2) makes diligent efforts to serve process utilizing all information:

- (A) provided by CSS staff;
- (B) documented in the case record; or
- (C) gathered from other locate resources;
- (3) provides address and employer information to the process server;
- (4) attempts to serve the person at:
  - (A) work;
  - (B) home; or
  - (C) other locations based on information gathered on his or her lifestyle; and
- (5) documents all facts about attempts to serve process in the case record.

(g) **Minor noncustodial parent.** CSS serves a minor non-custodial parent (NCP) who is:

- (1) 15 years of age and older per 12 O.S. § 2004; or
- (2) younger than 15 years of age, through a parent, guardian, or other appropriate adult as the next friend of the minor NCP.

(h) **Subsequent Electronic Service.** A Notice of Consent to Electronic Service or recognized substitute must be completed by a party or party's attorney and filed with the court in accordance with 12 O.S. § 2005(B) and applies to an individual court action. Pleadings asserting new or additional claims require a new consent of electronic service.

**340:25-3-5. Use of force [REVOKED]**

Peace officers have the right to use reasonable, necessary force to defend themselves and others against life threatening, violent, and dangerous personal attack. Force may only be used by peace officers within applicable laws and the limits given in (1)–(4) of this subsection.

- (1) The degree of force used must be the minimum necessary to defend oneself or others as described in (2) of this subsection and may include physical apprehension and restraining techniques which result in an application of less than deadly force.
- (2) Deadly force is that which is applied with the intent of causing, or which a reasonable person should know would cause, death or serious bodily harm. Deadly force is only used in:
  - (A) self defense to prevent death or serious injury to oneself; or
  - (B) defense of others to prevent death or commission of a violent offense threatening serious bodily harm to others.
- (3) Firearms may not be used to attempt to stop or disable a vehicle. However, if a vehicle is being used as a weapon, firearms may be used toward the driver of the vehicle, but not after the vehicle is no longer in a position to threaten the peace officer.

**SUBCHAPTER 5. OPERATIONAL POLICIES**

**PART 11. OCSS SYSTEM SECURITY**

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## 340:25-5-75. Computer system Authority authority and responsibility

(a) **Scope and Legal Authority.** Oklahoma Human Services (OKDHS) Child Support Services (~~OCSS~~)(CSS) operates a single statewide automated data processing and information retrieval system that meets the requirements of:

- (1) Sections 652, 654, 654a, and 655 of Title 42 of the United States Code (42 U.S.C. §§ 652, 654, 654a & 655), 26 U.S.C. § 6103; and
- (2) Section 302.85 and Part 307 of Title 45 of the Code of Federal Regulations;
- (3) Section 150.9 and 150.9.1 of Title 74 of the Oklahoma Statutes (74 O.S. §150.9 & 150.9.1); and
- (4) Internal Revenue Service (IRS) Publication 1075.

## (b) **Background Investigations.**

- (1) National criminal history background checks are completed for all employees, contractors, and subcontractors prior to and during employment as required in IRS Publication 1075 and 26 U.S.C. § 6103. An individual seeking employment with CSS, CSS employees, contractors and sub-contractors complete a national criminal history background check, including fingerprinting, per 74 O.S. § 150.9.1. The national criminal history background check is required in order to have access to the OKDHS and CSS networks, that results in having access to federal tax information and data, as defined in IRS Publication 1075 and 26 U.S.C. § 6103.
- (2) Applicants for positions requiring national criminal history background checks are advised any employment offer is conditional upon completion of a background check that reveals no disqualifying history as outlined in the CSS Favorability Standards.
- (3) All employees authorized to access and review national criminal history records check information submit to a national criminal history background check including fingerprinting to obtain access and review status.

## PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

### 340:25-5-114. **Procedures for determining and processing noncooperation on Temporary Assistance for Needy Families (TANF) and non-TANF SoonerCare (Medicaid) cases**

(a) **Cooperation of custodial persons.** The custodial person (CP) must cooperate with ~~the~~ Oklahoma Human Services (OKDHS) Child Support Services (CSS) program in establishing paternity or in establishing, modifying, or enforcing a support order per Section 654 of Title 42 of the United States Code (42 U.S.C. § 654) and Section 264.30 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 264.30). A CP receiving:

- (1) TANF ~~must assign~~assigns rights to support to OKDHS per 42 U.S.C. § 608; and
- (2) non-TANF SoonerCare (Medicaid) benefits for minor child(ren) ~~must assign~~assigns medical support rights

to the Oklahoma Health Care Authority (OHCA) per 42 C.F.R. § 433.146.

(b) **Noncooperation of custodial persons.** When a CP fails to cooperate, CSS reviews the case to determine noncooperation. When CSS determines noncooperation, CSS notifies Adult and Family Services (AFS) staff in the appropriate OKDHS county office. AFS staff updates the computer document for noncooperation with CSS and a computer-generated notice, per Oklahoma Administrative Code (OAC) 340:65-5-1, is sent advising the recipient of any decrease in benefits due to noncooperation.

- (1) For CSS to make a noncooperation determination on a TANF case, the cooperation must be essential for the next step in providing child support services.
- (2) Noncooperation is indicated when the CP:
  - (A) fails to participate in a scheduled CSS conference or meeting.
  - (B) refuses to complete and sign documents necessary to take legal action against the noncustodial parent(s) (~~NCPs~~)(NCP) when requested to do so by CSS;
  - (C) fails to comply with an order to submit ~~one~~self or her self or the child(ren) to genetic testing to determine paternity;
  - (D) fails to appear as a witness at an administrative, district court hearing, or other proceeding;
  - (E) fails to provide information or attest to lack of information under penalty of perjury;
  - (F) fails to forward to CSS all child support payments received from the NCPs or those received from entities other than the Centralized Support Registry;
  - (G) pursues private legal action affecting paternity, child support, medical support, or child care or authorizes payments made other than through the Centralized Support Registry without giving CSS notice, and fails to keep CSS informed of the case status; or
  - (H) engages in ongoing conduct detrimental to CSS enforcement efforts.
- (3) OKDHS AFS staff ~~in the county office~~ determines in TANF cases ~~if when~~ good cause for noncooperation with CSS exists per OAC 340:10-10-6.

(c) **Noncooperation of custodial persons on non-TANF SoonerCare (Medicaid) cases.** When CSS ~~district office staff~~ receives an OHCA referral on a non-TANF or existing case update with a pending good cause indicator, CSS centralized good cause staff determines ~~if when~~ good cause exists for noncooperation per OAC 317:35-5-7.

## PART 17. PAST SUPPORT

### 340:25-5-140. **Past support**

(a) **Legal authority.** Oklahoma ~~Department of Human Services~~, Child Support Services (CSS) takes appropriate action to collect support and secure compliance with support orders.

(1) When a support order does not specify an effective date, a payment is due on the first day of the month following the child support order's entry of ~~the child support order~~ and on the first day of each month thereafter except when another state's law governs the due date.

(2) CSS ~~bases its determination of~~ determines past-due support and support for a prior period based on information in available records from courts, Title IV-D and other public and private agencies, the custodial persons (CPs), the noncustodial parents (NCPs), and others.

(3) CSS may require sworn written statements and supporting documents from CPs, NCPs, and others pertaining to support payments. The primary legal foundations for determination and collection of past-due support and support for a prior period are applicable provisions of:

- (A) Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code;
- (B) Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B);
- (C) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and
- (D) Sections 83 and 7700-636 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 83 and 7700-636), Chapters 3 and 21 of Title 12, Title 43, and 56 O.S. §§ 231 through 240.23.

**(b) Definitions.** The following words and terms, when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) "Abate" means, per 43 O.S. Section 118I, an NCP does not owe the child support obligation when incarcerated for 180-consecutive days. Upon eligibility, child support is no longer owed effective the first day of the month following the entry date into the correctional facility or jail and does not accrue for the duration of the incarceration.

(2) "Incarceration" means, per 43 O.S. Section 118I, an obligor is in custody on a fulltime basis in a local, state or federal correctional facility. Incarceration shall not include probation, parole, work release or any other detention alternative program that allows the obligor to be gainfully employed.

**(bc) Judgment payment.** Per 43 O.S. § 137, the monthly payment schedule on past support may not exceed three years unless specific findings of fact supporting the action are made. CSS considers a three-year payment schedule to be unjust, unreasonable, inequitable, or inappropriate when CSS has evidence that the NCP cannot comply with the payment plan. CSS requests a monthly payment schedule that may exceed three years in accordance with the best evidence available, including the NCP's earning records, past job history, earning ability based on education and training, and mental or physical incapacities. CSS also considers an NCP's other child support obligations and total arrears.

**(ed) Enforcement.**

(1) CSS takes action to enforce past-due support and support for a prior period, per Oklahoma Administrative Code (OAC) 340:25-5, Part 23.

(2) CSS collects amounts from the original child support order ~~date of the original child support order~~,

including any judgments for support for a prior period, and does not limit collection of past-due child support to amounts accruing from the time a case is opened or reopened.

(3) When CSS receives a new case new to CSS with an existing order, or when a previously closed case that was previously closed reopens and has an existing order, CSS does not calculate a past-due support balance, or take action to enforce past-due support, until 30-calendar days from the mailing date of the notice of case letter and affidavit of payments document to the NCP. This does not preclude ~~the initiation of~~ initiating an income assignment to collect current support.

(4) Past-due child support remains due to the CP with whom a child resided during the month the past support was due.

(5) When CSS takes action to enforce past-due support and support for a prior period for a Servicemember's child ~~of an NCP or a CP who is a servicemember~~, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043.

**(de) Settlement of past support.**

(1) Settlements of past support may include:

- (A) an NCPs lump sum partial payment or a series of payments made toward the total amount of past support;
- (B) an agreement for the NCP to pay a specified number of current child support payments in the future; and
- (C) acceptance of in-kind goods or services in exchange for waiving a certain amount of past child support.

(2) Settlements of past support must be memorialized in a court order and the CP must sign the court order when the past support is owed to the CP.

(3) Per 43 O.S. § 112, CSS:

- (A) acknowledges the rights of the CP and NCP to mutually agree to waive with approval of the court, all or a portion of the past child support due to the CP; or
- (B) may negotiate the right to collect all or part of past support owed to Oklahoma.

**(ef) Annual notice.** CSS uses the annual notice to the NCP parent, per 56 O.S. § 237A to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions, per OAC 340:25-5, Part 23.

**(fg) Death of CP.**

(1) When the CP dies, CSS issues child support payments for past due support to:

- (A) the decedent's estate, when ~~notified in writing by the estate's administrator of the estate~~ notifies CSS in writing; or
- (B) any state owed past due support, per OAC 340:25-5-351.

(2) Except as provided in (1) of this subsection, CSS refunds payments to the:

- (A) payor, when the payor's address is known;

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- (B) NCP parent—when the payor's address is unknown, or payments are returned due to the inability to distribute.
- (3) CSS does not file a forced probate court action to determine heirs and distribute past support to heirs.
- (gh) **Jurisdiction.** When an Oklahoma tribunal has personal and subject matter jurisdiction and can obtain service of process on the NCP, CSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting another state's tribunal of ~~another~~ state to enforce the child support orders.
- (i) **Incarcerated NCP.** Per 43 O.S. § 118I, beginning November 1, 2021, there is a rebuttable presumption that an NCP who is incarcerated for a period of 180-consecutive days is unable to pay child support. When a payment is made during incarceration, the presumed ability to pay child support may be rebutted for that payment period. CSS makes a final determination whether the order is abated.

## PART 21. ESTABLISHMENT

### 340:25-5-178. ~~Calculation of~~Calculating new and modified child support obligations

- (a) **Legal authority.** Oklahoma ~~Department of~~ Human Services (~~DHS~~)(OKDHS), Child Support Services (CSS) establishes current child support, per:
- (1) Sections 654, 656, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 654, 656, and 666);
- (2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and
- (3) Section 83 of Title 10 of the Oklahoma Statutes (10 O.S. § 83); Title 43; and 56 O.S. §§ 231 through 240.23.
- (b) **Child support guidelines.** CSS uses the child support guidelines in 43 O.S. §§ 118-118I and 119 to:
- (1) establish current child support amount of ~~current support~~; and
- (2) prepare a child support computation form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network website, per 43 O.S. § 120.
- (c) **Child support computation.** CSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training, with a continued emphasis on setting fair and equitable child support orders, per 43 O.S. §§ 118-118I. When requesting the court enter or modify child support orders in a noncustodial parent's (NCP) multiple cases, CSS may request the court deviate from the child support guidelines amounts, per 43 O.S. § 118H.
- (d) **Gross income.** When determining gross income for the child support computation, CSS uses ~~(1) through (4) of this subsection, per follows~~ 43 O.S. § 118B.
- (1) **Written earning record.** For time periods when a parent has a written earning record, CSS uses the:
- (A) actual monthly gross income; or

- (B) average of the gross monthly income for the ~~time actually employed during the previous three years.~~
- (2) **Ability to work and no written earning record.** For time periods when a parent has an earning ability, but no written earning records, CSS imputes the most equitable of the:
- (A) minimum wage paid for a 40-hour work week; or
- (B) amount of gross income a person with comparable education, training, and experience could reasonably expect to earn.
- (3) **Combination.** For time periods when a parent has a written earning record for some months, but no written earning record for other months, for the months worked CSS uses the actual income and for the months with no written earning record CSS uses the most equitable of either:
- (A) the actual gross income; or
- (B) an imputed amount of either:
- (i) minimum wage paid for a 40-hour work week; or
- (ii) the amount of gross income per person with comparable education, training, and experience could reasonably expect to earn.
- (4) **Reduced earning ability.** CSS uses actual income when a parent has reduced earning ability due to the parent's limited education, physical or mental disability, incarceration, or other obstacle to employment, and there is evidence the parent has income of less than minimum wage for 40 hours per week.
- (e) **Child care.** To establish the current child support amount of current support, CSS considers "actual" child care expenses to be the amount paid the parent(s) or custodial person (CP) pays to the child care provider ~~by the parent(s) or custodial person (CP) except when (f) of this Section applies.~~ CSS considers a child care subsidy recipient's copy to be the actual child care expenses. CSS determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the NCP becomes part of the fixed monthly child support obligation.
- (f) **Child care subsidy.** When the parent(s) or CP is participating in the DHS Child Care Subsidy Program, per 56 O.S. § 230.50, CSS uses DHS Appendix C 4, Child Care Eligibility/Co-payment Chart, to determine the family share co-payment amount considered as actual child care costs on the child support computation form, per 43 O.S. § 118G.
- (1) CSS considers a parent's share of the base monthly obligation for child support and the monthly income amount reflected in the records of the DHS Child Care Subsidy Program as the monthly income when applying Appendix C 4. CSS allocates the family share co-payment amount indicated on Appendix C 4, in the same proportion as base child support. CSS staff performs a separate child support guidelines calculation for each NCP.

~~(2) When a parent has a child(ren) in DHS-subsidized child care other than a child(ren) included in the child support case being established, CSS uses the proportionate share of the family share co-payment for the child(ren) included in the case.~~

~~(g) Juvenile Court cases.~~

~~(1) Deprived cases.~~ When a case is referred, CSS establishes child support orders in deprived court actions, per 10A O.S. § 1-4-702, and prepares the child support order on the standard child support order form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network website.

~~(2) Delinquent cases.~~ When a case is referred, CSS establishes a child support order against each parent of a child in the custody of the Oklahoma Office of Juvenile Affairs, per 43 O.S. §§ 118 through 118I.

~~(hg) Intergovernmental majority age.~~ CSS establishes child support orders for a child(ren) for whom child support is impossible under applicable law.

~~(hh) Minor parents.~~ When a parent is a minor, CSS establishes paternity, per Oklahoma Administrative Code 340:25-5-176, when necessary, and establishes a child support order.

~~(1) When a minor NCP or a CP is younger than 16 years of age, CSS does not impute gross income for the minor parent in the child support computation and only uses actual income.~~

~~(2) When a minor NCP or CP is between 16 and 18 years of age and regularly and continuously attending high school, unless otherwise inappropriate, CSS uses either the minor parent(s) imputed gross income for the minor parent(s) based on minimum wage at 20 hours per week or actual income.~~

~~(i) Minor parents.~~ When the NCP is a minor, CSS establishes paternity, per Oklahoma Administrative Code 340:25-5-176 when necessary and establishes a child support order. When a minor NCP or a CP is younger than 16 years of age, CSS does not impute gross income for the minor parent in the child support computation and only uses actual income. When a minor NCP or CP is between 16 and 18 years of age and regularly and continuously attending high school, unless otherwise inappropriate, CSS uses either the imputed gross income for the minor parent(s) based on minimum wage at 20 hours per week or actual income.

~~(j) Adult disabled child.~~ CSS enforces child support orders for adults with disabilities, per 43 O.S. § 112.1A. CSS establishes or modifies child support orders to continue after the child reaches the age of majority, per 43 O.S. § 112.1A, when the application or referral for Title IV-D services is received during the period when child support is due, per 43 O.S. § 112.

~~(kj) Incarcerated NCP.~~

~~(1) Per 43 O.S. §§ 118B and 118I, when when an NCP is expected to be incarcerated for at least more than six consecutive months 180 consecutive days, from the date the support amount is reviewed or established, CSS requests the court enter a temporary child support and~~

medical support amount order using actual income of \$0, unless:

~~(A) there is evidence of income or assets outside independent of the correctional institution incarceration;~~

~~(B) incarceration is a result of indirect contempt of court for failure to pay child support;~~

~~(C) incarceration is a result of a crime of omission to provide child support; or~~

~~(D) the incarceration is a result of an offense in which the CP dependent child or the CP was a victim.~~

~~(2) Release from incarceration.~~ At the time the order is entered

~~(A) When an existing child support order is abated there is:~~

~~(1) a pre-incarceration child support order, CSS requests the order state that upon release from incarceration, the monthly child support obligation reverts back to the pre-incarceration order amount beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration, per 43 O.S. §§ 118B and 118I. When the NCP within the lapse period, requests in writing a review of the pre-incarceration order, the post-incarceration monthly child support obligation does not begin until the review or modification is complete. When a review is requested and the NCP fails to appear for hearing, the monthly child support obligation reverts back to the pre-incarceration amount to begin the first day of the month following a lapse of 90-calendar days upon release from incarceration; or~~

~~(B2) When there is no existing pre-incarceration child support order, CSS requests the court order state; that upon release from incarceration, the monthly child support amount is set based on 43 O.S. §§ 118B and 118I minimum wage for a 40-hour work week beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration. When the NCP within the lapse period requests in writing a hearing, the post-incarceration monthly child support amount does not begin until the review or modification is complete. When a hearing is requested and the NCP fails to appear for the hearing, the monthly child support obligation reverts back to the support amount set based on minimum wage for a 40-hour work week, to begin 90-calendar days upon release from incarceration.~~

~~(hk) Military.~~ When CSS establishes a child support order for a Servicemember's child of an NCP or a CP who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043.

~~(ml) Disability benefits.~~ CSS does not impute gross income to a person determined the Social Security Administration determines disabled by the Social Security Administration.

~~(nm) Default orders.~~ When a default order for child support is ordered and either party contacts CSS in writing within 30-calendar days of the entry of the default order and provides

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information to calculate an accurate child support obligation, CSS treats the request as a motion to vacate or modify, and requests the court enter a new order consistent with the evidence presented.

## **340:25-5-190. Service of process**

(a) **Authority.** Oklahoma Human Services Child Support Services (CSS) follows the provisions of Section 2004 of Title 12 of the Oklahoma Statutes (12 O.S. § 2004) for service of process. CSS uses the most cost effective and efficient service of process method depending on what is most appropriate considering the case facts.

(b) **Service by regular mail to address of record (AOR).** Service to the AOR by regular mail may be appropriate when an AOR is on file with the central case registry for a party in the case, per Oklahoma Administrative Code 340:25-5-340. Service to the AOR is not appropriate when the:

- (1) remedy sought may result in the affected party's incarceration including, but not limited to, indirect civil contempt actions; or
- (2) court may require a higher level of notice to the affected party including, but not limited to, actions to determine paternity.

(c) **Service by acknowledgment.** CSS delivers the documents directly to a party and requests the party accepts and acknowledges service, as appropriate. The Acknowledgment of Service is filed in the court case.

(d) **Service by certified mail.** Service by mail is made by certified mail, a return receipt is requested, and delivery is restricted to the addressee. CSS uses service by certified mail when service to the AOR or by Acknowledgment of Service is not appropriate or successful. CSS staff is not required to attempt service by certified mail before attempting personal service when the case history indicates a low probability of acceptance or when the court requires personal service.

(e) **Service by personal delivery.** Service by personal delivery is completed by a sheriff, deputy sheriff, individual licensed to make service of process in civil cases, or an individual specially appointed for that purpose, per 12 O.S. § 2004. CSS uses service by personal delivery when:

- (1) an individual has not accepted service by certified mail;
- (2) service to the AOR or by acknowledgment is not available or appropriate;
- (3) case history indicates a low probability of acceptance of service by certified mail; or
- (4) the court requires service by personal delivery.

(f) **Service by electronic means.**

(1) After service of the initial pleadings, CSS serves subsequent documents to the party electronically when:

- (A) the party or party's attorney consents in writing to receive service in a particular case by electronic means; and
- (B) the party or party's attorney designates an email address for sending the electronic service.

(2) The required written consent and electronic service instructions may be made in:

(A) the entry of appearance filed by the party or party's attorney, per 12 O.S. § 2005.2; or

(B) another document filed by the party or party's attorney in the court case.

(3) CSS may consent to electronic service, per 12 O.S. § 2005.2, at the discretion of the state's attorney.

(g) **Diligent efforts.** When CSS contracts with vendors for service of process, the vendor makes diligent efforts to complete service and provide timely documentation to CSS. Diligent efforts means at least three-repeated attempts to serve the individual at different times of day or on different days of the week, before declaring inability to serve. CSS:

(1) attempts to serve process in the manner and at the time and place most reasonably calculated to complete service of process in the most efficient and cost effective manner;

(2) makes diligent efforts to serve process utilizing all information:

- (A) provided by CSS staff;
- (B) documented in the case record; or
- (C) gathered from other locate resources;

(3) provides address and employer information to the process server;

(4) attempts to serve the person at:

- (A) work;
- (B) home; or

(C) other locations based on information gathered on his or her lifestyle; and

(5) documents all facts about attempts to serve process in the case record.

(h) **Minor parent.** CSS serves a minor parent who is:

(1) 15 years of age and older, per 12 O.S. § 2004; or

(2) younger than 15 years of age, through a parent, guardian, or other appropriate adult as the next friend of the minor parent.

(i) **Subsequent Electronic Service.** A Notice of Consent to Electronic Service or recognized substitute is completed by a party or party's attorney and filed with the court, per 12 O.S. § 2005(B), and applies to an individual court action. Pleadings asserting new or additional claims require a new consent of electronic service.

## **PART 22. REVIEW AND MODIFICATION**

### **340:25-5-198.2. Modification**

(a) **Authority for modification.** Oklahoma Department of Human Services (~~DHS~~)(OKDHS) Child Support Services (CSS) may initiate modification of a child support order per Section 303.8 of Title 45 of the Code of Federal Regulations (45 C.F.R. §303.8), Sections 112, 118-118I, 118.1, 119, 601-611, 601-613, and 601-615 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 112, 118-118I, 118.1, 119, 601-611, 601-613, and 601-615), and 56 O.S. § 237. CSS initiates a modification in the appropriate tribunal when facts indicate modification is warranted under applicable state or federal law or regulation.



(b) **Modification of child support order.** CSS seeks a modification when:

- (1) there is a material change in circumstances per 43 O.S. § 118I including, but not limited to:
  - (A) a change in either parent's gross income or changes in child support guideline calculation, such as child care expenses or medical support;
  - (B) a child reaching the age of majority per 43 O.S. § 112;
  - (C) a component of or the new current child support amount is 20 percent higher or lower than the existing order;
  - (D) there is a change in physical custody verified, per Oklahoma Administrative Code (OAC) 340:25-5-201.1;
  - (E) when the noncustodial parent (NCP) is incarcerated for at least more than 180 calendar consecutive days per 45 C.F.R. § 303.8 and OAC 340:25-5-178(k); or
  - (F) one of the parents is determined disabled by the Social Security Administration and the parent is receiving Supplemental Security Income or Social Security Disability Income; or

(2) per 56 O.S. § 237 when the evidence in the case justifies a modification regardless of whether there has been a change of circumstances including, but not limited to, when:

- (A) the original order fails to set child support according to the guidelines;
- (B) an adjustment is needed to maximize a noncustodial parent's ~~(NCP's)~~ available income to meet the current child support obligation in each of the NCP's cases; or
- (C) a parent provides proof the child support obligation is being satisfied in full or in part by an apportionment of the veteran's disability compensation.

(c) **Modification of medical support order.**

- (1) CSS seeks a modification of a medical support order, when:
  - (A) there is no existing order for either parent to provide dependent health care coverage. CSS initiates a modification of a support order to require either or both parents to provide dependent health care coverage when CSS obtains information the child(ren) is not covered under an existing health care plan, regardless if coverage is currently available to either parent;
  - (B) the availability of medical insurance changes;
  - (C) there is an order for the custodial person to provide medical support for the minor child(ren) and enforcement of the order is not appropriate per 43 O.S. § 139.1 or 21 O.S. § 566;
  - (D) an order for the NCP to provide medical insurance and the release of information necessary for enrollment of the child is inappropriate due to family violence and a cash medical order is appropriate per OAC 340:25-5-198; or
  - (E) there is an order for a parent to provide medical insurance, the applicant for child support services

did not request services against that parent, and the ordered parent is not actually providing medical insurance for the child.

- (2) When CSS participates in the modification of a child support order filed by a party, CSS requests the court order contain a provision for medical support consistent with OAC 340:25-5-168.
- (3) When a child support order exists, CSS considers a request to establish a medical support order as a request for modification of the order per 43 O.S. § 118.1. CSS seeks a medical support order in a tribunal with jurisdiction to modify the child support order and follows procedures per OAC 340:25-5-198.1.
- (4) When cash medical support is ordered as part of a modification action, CSS requests a cash medical support order be effective the same date the modified child support amount is effective, unless the parties agree to a different date or the change in health coverage cost or availability occurred on a later date.

**PART 23. ENFORCEMENT**

**340:25-5-200. Enforcement**

(a) **Scope and applicability.** Oklahoma Human Services Child Support Services (CSS) follows Part D of Subchapter IV of Chapter 7 of Title 42 and Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B) Section 303.6 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.6), and Section 240.1 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.1) in initiating enforcement proceedings.

- (1) Orders for current and past child and spousal support, health care coverage, fixed amounts of medical support, judgments, and delinquencies may be enforced through expedited and judicial processes, or through other collection efforts.
- (2) Past-due child support is a judgment by operation of law and may be enforced in the same manner as any other money judgment, per 43 O.S. § 137.
- (3) Post-judgment remedies do not require an adjudicated judgment by a district or administrative court.
- (4) Each missed support payment is a judgment; thus, a judgment increases with each missed payment. This total judgment becomes a lien on the noncustodial parent's (NCP) real and personal property of the noncustodial parent (NCP).

(b) **Non-Oklahoma support order.** CSS registers a support order from another state, Native American tribe, territory, or foreign country, per subsection (b) of the Full Faith and Credit for Child Support Orders Act codified in 28 U.S.C. § 1738B(b) and 43 O.S. § 601-101(21) when enforcement of the order is sought.

(c) **Multiple support orders.** When multiple child support orders are entered in the same or different tribunals involving the same NCP and child, CSS seeks a determination of controlling order, per 43 O.S. §§ 601-207, 601-307, and 601-601 through 601-603 and Oklahoma Administrative Code (OAC) 340:25-5-270.

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(d) **Legal remedies.** CSS determines appropriate enforcement actions and may use any legal remedy to enforce support obligations. CSS chooses remedies designed to obtain compliance with an obligor's support obligations and does not use any remedy for the purpose of punishment. When an NCP is participating in the CSS problem-solving court program or complying with a seek work order, CSS considers the NCP's participation and compliance, per OAC 340:25-5-200.3, when choosing enforcement remedies. Remedies CSS may use include, but are not limited to:

- (1) annual notice to ~~NCPs~~NCP, per 56 O.S. § 237A and OAC 340:25-5-213;
- (2) income assignment, garnishment, and levy, per Chapter 21 of Title 12 Oklahoma Statutes, 43 O.S. §§ 115 and 601-501 through 601-507, 56 O.S. §§ 237, 240.2, and 240.23, and 42 U.S.C. § 666;
- (3) hearing on assets, per 12 O.S. § 842;
- (4) intercept of federal tax refunds, per 42 U.S.C. § 664, 31 C.F.R. § 285.3, and 45 C.F.R. § 303.72, OAC 340:25-5, Part 25;
- (5) Intercept of state tax refunds, per 45 C.F.R. § 303.102, 68 O.S. § 205.2, and OAC 340:25-5, Part 27;
- (6) administrative offsets per 31 U.S.C. § 3716, 31 C.F.R. § 285.1, and Executive Order 13019;
- (7) denial, revocation, or suspension of United States passports, per 56 O.S. § 240.1 and 42 U.S.C. §§ 652 and 654;
- (8) revocation, suspension, non-renewal, and non-issuance of various licenses ~~including, but not limited to, revocations of certificates of motor vehicle titles~~, per 43 O.S. §§ 139 and 139.1, 47 O.S. §§ 1-153, 6-201, and 6-211, and 56 O.S. §§ 237.1 and 240.15 through 240.21A;
- (9) imposing liens and executing and levying on personal and real property, including, but not limited to, workers' compensation benefits, personal injury, wrongful death, and probate actions, per 43 O.S. § 135, 56 O.S. §§ 237B and 240.23, and Titles 12 and 58 of the Oklahoma Statutes;
- (10) registration of foreign support orders and judgments, per the Uniform Interstate Family Support Act per 43 O.S. §§ 601-100 through 601-903 and the Uniform Enforcement of Foreign Judgments Act, 12 O.S. §§ 719 through 726;
- (11) credit bureau referrals, per 42 U.S.C. § 666 and 15 U.S.C. § 1681b, 56 O.S. § 240.7, and OAC 340:25-5, Part 31;
- (12) financial institution data match, per 42 U.S.C. §§ 666 and 669A, 56 O.S. §§ 240.22 through 240.22G, and OAC 340:25-5-212;
- (13) seek work orders, per 56 O.S. § 240.10;
- (14) indirect civil contempt of court, per 21 O.S. §§ 566 and 567, 43 O.S. § 137, and 56 O.S. § 234. CSS does not use contempt as a penal sanction and does not recommend incarceration to the district court at sentencing in an indirect civil contempt proceeding unless there is evidence or information available that the ~~obligor~~ can purge the contempt. CSS asks the court to set a reasonable purge fee, per Rule 8.3 of the Rules of the District Court;

~~(15) when a debtor transfers income or property to avoid child support payments, action to void the transfer or obtain favorable settlement in cases in which a debtor transferred income or property to avoid payment to a child support creditor~~ per the Uniform Fraudulent Transfer Act, 24 O.S. §§ 112 through 123 and 42 U.S.C. § 666;

~~(15) registration of foreign judgments per the Uniform Enforcement of Foreign Judgments Act, 12 O.S. §§ 719 through 726;~~

(16) criminal actions brought per 21 O.S. § 852;

(17) civil actions brought per 42 U.S.C. § 660;

(18) transfer of child support obligation to another custodian, per 56 O.S. § 237;

(19) referral to the United States Attorney for federal prosecution, per 18 U.S.C. § 228;

(20) full collection services by the Secretary of the Treasury, per 6305 of the Internal Revenue Code of 1954; and

(21) attachment of lottery prize winnings from the Oklahoma Lottery Commission, per 3A O.S. § 724.1.

(e) **Servicemember.** When CSS initiates proceedings to enforce a child support order for a child of an NCP or a custodial person who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, per 50 U.S.C. §§ 3901 through 4043.

(f) **Incarcerated NCP.** When an NCP is incarcerated for 180-consecutive days, CSS follows 43 O.S. §118I and OAC 340:25-5-140 regarding abatement of child support orders.

## PART 33. INTERGOVERNMENTAL CASES

### 340:25-5-270. Intergovernmental cases

(a) **Legal basis.** When referring and processing intergovernmental Title IV-D cases, the Oklahoma ~~Department of~~ Human Services Child Support Services (CSS) is governed by:

(1) Section 1738B of Title 28 of the United States Code

(28 U.S.C. § 1738B) and 42 U.S.C. §§ 654, 659A, and 666;

(2) Sections 302.36 and 303.7 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.36 and 303.7); and

(3) the Uniform Interstate Family Support Act, per Sections 601-100 through 601-903 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 601-100 through 601-903) and 56 O.S. § 240.9.

(b) **Definition.** For purposes of this Section, forum state means the state ~~in which~~ where the hearing is held or where the responding court proceeding is filed to establish or enforce a support order.

(c) **Intergovernmental central registry.** CSS operates an intergovernmental central registry, per 45 C.F.R. §§ 302.36 and 303.7.

(d) **Forms.** CSS uses forms issued by the Secretary of the United States Department of Health and Human Services, per 42 U.S.C. § 652 as applicable for processing intergovernmental cases.

(e) **Communication.** When:

(1) Oklahoma is the initiating state, CSS obtains information from the other Title IV-D agency and communicates with the custodial person (CP) in Oklahoma.

- (2) Oklahoma is the responding state, CSS communicates to the initiating state with which CSS has established a case.
- (3) CSS receives written communication from a party or a party's attorney, CSS sends copies to the appropriate agency or person within two-business days of receipt, per 43 O.S. § 601-307.
- (f) **Family violence and nondisclosure.** When Oklahoma is the initiating state and a party claims family violence, CSS does not release the party's physical address ~~of the party~~ without a court order. CSS:
- (1) enters the address of record, when designated, or the district office's address instead of the physical address of the party requesting nondisclosure on the Child Support Enforcement Transmittal # 1, Initial Request, Nondisclosure Finding Affidavit, and on the General Testimony, when applicable;
- (2) does not file the interstate transmittal forms with the tribunal;
- (3) does not release a copy of the interstate transmittal form to the other party, per Oklahoma Administrative Code (OAC) 340:25-5-67; and
- (4) seeks an order from the appropriate tribunal regarding release of the information when the initiating state, responding state, or a party requests release of specific identifying information, per 43 O.S. § 601-312.
- (g) **Services provided.** Except as provided in (1) through (4) of this subsection, CSS processes intergovernmental cases in the same manner as intrastate cases, per OAC 340:25-1-1.2.
- (1) **Evidence.** If one of the parties is a nonresident of the forum state, CSS arranges for ~~telephonic~~ testimony over the phone at the request of the nonresident party or a Title IV-D agency, and requests the court to admit evidence, per 43 O.S. § 601-316.
- (2) **One-state processing.** In the absence of an order to establish paternity or support, CSS uses a one-state process to establish an order if personal and subject matter jurisdiction may be exercised over a nonresident party, per 45 C.F.R. § 303.7 and 43 O.S. § 601-201.
- (3) **Determination of controlling order.** When there are multiple orders for current support for the same child, CSS seeks a determination of controlling order (DCO) or a new order from the appropriate tribunal, per 43 O.S. § 601-207 and 43 O.S. §§ 601-602 through 601-615.
- (A) When making the arrears calculation for the DCO proceeding, CSS applies the law of the respective issuing states in determining the arrears under each order.
- (B) Once the court issues a DCO, CSS applies the law of the controlling order state to the consolidated arrears, even when the support orders of other states contributed a portion to those arrears.
- (4) **Redirection of payments.** Per 43 O.S. §§ 601-307 and 601-319:
- (A) CSS issues a notice to redirect payments to the Title IV-D agency in the state ~~in which~~ where the ~~eus-~~ custodial person ~~CP~~ resides and issues an Order/Notice to

Withhold Income for Child Support to implement the order when:

- (i) Oklahoma is the state that issued the child support or income assignment order;
- (ii) neither the noncustodial parent (NCP), ~~eustodial person~~ CP, or any child lives in Oklahoma; and
- (iii) CSS or another Title IV-D agency makes the request.
- (B) CSS issues a notice to redirect payments to the Title IV-D agency in the state of residence of the ~~eus-~~ custodial person ~~CP~~ when:
- (i) a child support or income assignment order was issued;
- (ii) neither the ~~noncustodial parent~~ NCP, ~~eus-~~ custodial person ~~CP~~, or any child lives in the issuing state; and
- (iii) Oklahoma provides child support services.
- (C) CSS furnishes a certified record of payments to a requesting party or tribunal when CSS receives redirected payments, per 43 O.S. § 601-319.
- (5) **Limited services.** CSS provides limited services only at the request of an initiating interstate Title IV-D agency or an international central authority, per 43 O.S. §§ 601-101 through 901 and 45 C.F.R. § 303.7. CSS provides limited services, when appropriate, even when an individual ~~noncustodial parent~~ NCP or ~~eustodial person~~ CP does not reside in Oklahoma. ~~Request~~ The CSS director or appointed designee approves requests for limited services not listed in 45 C.F.R. § 303.7 ~~must be approved by the CSS director or appointed designee.~~
- (h) **Determination of arrears.** When Oklahoma has personal and subject matter jurisdiction and can obtain service of process on the ~~noncustodial parent~~ NCP, CSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce.
- (i) **Choice of law.** The applicable law for support duration determination of duration of support and other choice of law issues is controlled by subsection (h) of the Full Faith and Credit for Child Support Orders Act, per 28 U.S.C. § 1738B(h) and 43 O.S. §§ 601-604 through 601-611. The law of the initial controlling order state governs the support duration of support even after another state modifies the order ~~is modified by another state.~~
- (j) **Genetic testing.** When genetic testing is required in intergovernmental cases, the responding state is responsible for paying the cost of testing, per 45 C.F.R. § 303.7 and OAC 340:25-5-176.

## PART 37. RECOVERY

### 340:25-5-305. Overpayment and recovery policies

- (a) **Legal authority.** Oklahoma Human Services (OKDHS), Child Support Services (CSS) recovers CSS overpayments per Title IV, Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code; Section 109.5 of Title

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43 of the Oklahoma Statutes (43 O.S. § 109.5); and 56 O.S. §§ 171, 185, and 231 through 244.

(b) **Purpose.** The rules in this Part:

- (1) establish CSS policies and procedures used to recover CSS overpayments to custodial persons (~~(CPs)~~(CP), noncustodial parents (~~(NCPs)~~(NCP), and other entities; and
- (2) resolve payment disputes arising from overpayments.

(c) **Overpayment recipient and categories.** An overpayment means a CSS payment to a CP, NCP, or other entity to which the entity or person is not entitled. The recipient of the overpayment owes the amount to CSS, acting on behalf of the state of Oklahoma. Categories of overpayments are described in (1) through (3) of this subsection.

- (1) Retained support occurs when the CP kept support payment(s) in violation of the assignment of support rights.
- (2) Erroneous payment occurs when CSS incorrectly paid money to a CP, NCP, or other entity, or failed to retain money assigned to Oklahoma because of an administrative error.
- (3) Bad debt occurs when:

- (A) the funding for a payment made by CSS to a CP or NCP is subsequently withdrawn when a tax intercept or other collection is revoked;
- (B) a check or other payment instrument received by CSS from an NCP or other payor on behalf of the NCP is dishonored after a payment ~~was~~is made to the CP; or
- (C) CSS issues a payment to a CP based on an incorrect arrearage balance or an incorrect allocation of a payment.

(d) **Overpayment recovery.**

- (1) CSS may use any legal remedy to recover overpayments including, but not limited to:
  - (A) voluntary payments;
  - (B) state income tax refund intercepts, per 68 O.S. § 205.2; and
  - (C) lottery prize claims, per 3A O.S. § 724.1.
- (2) When an overpayment resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or when fraud is otherwise suspected, CSS reports the information to the OKDHS Office of Inspector General for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.
- (3) In active Temporary Assistance for Needy Families (TANF) cases, when a TANF recipient retains child support receipts, CSS may make a noncooperation referral to Title IV-A staff. CSS recovers overpayments from TANF customers through voluntary payments, state income tax refund intercepts, and lottery prize claims.

(e) **Recovery amount.**

- (1) ~~In order to~~To recover child support overpayments, CSS retains 25 percent of monthly current support payments collected for the recipient and retains the total amount of any arrearage payments collected at any time

until the overpayment is recovered in full. The percent retained can be changed:

- (A) at the CSS director's discretion; or
- (B) when the CSS Center for Finance and Budget determines the overpayment ~~was~~is a result of CP fraud by the CP.

(2) When the CP ~~received~~receives his or her full monthly support payment in the same month as an overpayment, CSS retains the full amount of any subsequent payments for that month up to the overpayment amount of the overpayment. CSS satisfies any remaining overpayment as set forth in (1) of this subsection.

(f) **Notice and administrative review.**

(1) CSS sends ~~an overpayment and recovery notice of overpayment and recovery~~ to the overpayment recipient. The notice includes the overpayment amount, payment withholding and collection remedies, and instructions for requesting an administrative review and hearing, per OAC 340:25-5-200.1.

(2) The administrative review provides an opportunity for the overpayment recipient to offer new or additional information regarding the overpayment amount of the overpayment. After the review, CSS issues a notice of administrative review decision.

(g) **Limits to overpayment recovery.**

(1) CSS Center for Finance and Budget completes a case review on the balances owed to a ~~custodial person~~CP prior to disbursing an overpayment.

(2) CSS is not responsible for creating or recovering overpayments for:

- (A) non-Title IV-D time periods when non-Title IV-D cases convert to Title IV-D cases; or
- (B) time periods when:

- (i) CSS ~~collected~~collects under a court order that was later vacated or after the case ~~was~~is dismissed;
- (ii) the parties ~~failed~~fail to provide CSS with verification of a change in the child's physical custody of the child;
- (iii) CSS ~~collected~~collects under a court order that ~~was~~is later modified; or
- (iv) CSS ~~collected~~collects under a court order and the child ~~was~~is adopted.

(C) time periods when cash medical support ~~was~~is distributed to a CP and the Oklahoma Health Care Authority retroactively certifies medical assistance.

(D) ongoing regular payments during the period an NCP incarcerated.

(3) When a child support modification order is effective back to the date the motion to modify was filed and the modified support amount is less than the amount previously ordered and paid, CSS satisfies the amount due when the NCP owes past-due child support, by offsetting the arrears amount, up to the balances currently owed.

(4) CSS does not charge, collect, or pay interest on overpayments.

(h) ~~Issuance of~~**Issuing refunded amounts.** When an NCP makes an overpayment, amounts less than \$3 are not refunded

unless issued on an Electronic Benefits Transfer (EBT) card. Amounts less than \$3 and not issued on an EBT card are remitted to the ~~DHS~~OKDHS General Revenue Fund Treasury.

- (i) ~~Return of~~**Returning excess support amounts.** When CSS receives a payment ~~in excess of that exceeds~~ the NCP's total arrears balance, CSS returns the excess amount to the payor within 45-calendar days after discovering the over collection;
- (j) **Payments made in error.** When CSS receives ~~an erroneous payment made due to an error on the part of~~from the payor that ~~was~~is not disbursed, CSS returns it to the payor within 45-calendar days after discovery. CSS is not required to correct, redirect, or recover the payment unless it ~~was~~is retained;

- (k) **Payments that cannot be disbursed to a party.**
  - (1) CSS applies support collections to other applicable balances associated with the NCP, such as assigned state balances or balances owed to another CP, when the:
    - (A) CP's address is unknown;
    - (B) CP fails to activate the debit card; or
    - (C) debit card is returned to the vendor;
  - (2) CSS remits a payment to the OKDHS General Revenue Fund Treasury, when the payment cannot be:
    - (A) disbursed to a CP;
    - (B) applied to assigned state balances associated with an NCP;
    - (C) disbursed to the NCP, when the:
      - (i) address is unknown;
      - (ii) debit card is not activated; or
      - (iii) debit card is returned to the vendor; or
    - (D) returned to the payor.

*[OAR Docket #22-542; filed 7-5-22]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM**

*[OAR Docket #22-543]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- Subchapter 1. General Provisions
    - 340:40-1-1 [AMENDED]
    - 340:40-1-2 through 340:40-1-3 [REVOKED]
    - 340:40-1-4 [AMENDED]
    - 340:40-1-5 [REVOKED]
  - Subchapter 3. Initial Application
    - 340:40-3-1 [AMENDED]
  - Subchapter 5. Child Care Plan
    - 340:40-5-1 [AMENDED]
  - Subchapter 7. Eligibility
    - 340:40-7-5 [AMENDED]
    - 340:40-7-7 through 340:40-7-8 [AMENDED]
    - 340:40-7-11 through 340:40-7-12 [AMENDED]
  - Subchapter 9. Procedures Relating to Case Changes
    - 340:40-9-2 [AMENDED]
  - Subchapter 10. Electronic Benefit Transfer (EBT) System for Child Care
    - 340:40-10-1 through 340:40-10-4 [AMENDED]
  - Subchapter 13. Child Care Rates and Provider Issues
    - 340:40-13-5 [AMENDED]

**(Reference WFs-22-40 and WF 21-16)**

**AUTHORITY:**  
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; and Sections 98.11, 98.16, 98.20, 98.21, 98.30, and 98.46 of Title 45 of the Code of Federal Regulations; the Afghanistan Supplemental Appropriations Act 2022, and Policy Letter 22-01, Afghan Humanitarian Parolees and Unaccompanied Afghan Minors Eligible for ORR Benefits and Services.

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

December 20, 2021

**COMMENT PERIOD:**

January 18, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 23, 2022

**ADOPTION:**

March 23, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION ON:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded Rules:**

Subchapter 7. Eligibility  
340:40-7-5 [AMENDED]

**(Reference WF 21-16)**

**Gubernatorial Approval:**

December 21, 2021

**Register Publication:**

39 Ok Reg 465

**Docket Number:**

22-4

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Chapter 40, Subchapter 1 amend the rules to: (1) change two Section titles; (2) revoke four Sections and incorporate relevant information regarding the legal basis, State Plan, and information disclosure into other Sections within the same Subchapter; and (3) update terminology.

The proposed amendments to Chapter 40, Subchapter 3 amend the rules to: (1) clarify language; (2) add the ECC Connect mobile app as a way for clients to record their child's attendance; and (3) update terminology.

The proposed amendments to Chapter 40, Subchapter 5 amend rules to: (1) add Community Hope Centers to provider choices; and (2) update terminology.

The proposed amendments to Chapter 40, Subchapter 7 amend rules to: (1) add job search as an allowable need factor for child care; (2) clarify when job search is not allowed; (3) remove language disallowing a change of providers when child care closes due to failure to participate in Temporary Assistance to Needy Families (TANF) Work activities or Oklahoma Supplemental Nutrition Assistance Program Works (OK SNAP Works) component assignments and activities; (4) exclude the Basic Allowance for Housing (BAH) as countable income for military families; (5) update terminology; (6) exclude the income of post-adoptive families who adopt a child with disabilities through Oklahoma Human Services (OKDHS) until the child's 19th birthday; (7) update and add a rule citation; (8) add recently admitted Afghans who are considered humanitarian parolees to qualified aliens eligible for Child Care Subsidy benefits; and (9) legal citations to reference the Afghanistan Supplemental Appropriations Act 2022.

The proposed amendments to Chapter 40, Subchapter 9 amend rules to: (1) update terminology; (2) add to child care closure reasons when the approval period for job search ends; and (3) add rule citations.

The proposed amendments to Chapter 40, Subchapter 10 amend rules to: (1) add the ECC Connect mobile app as a way to record child care attendance; and (2) update terminology.

The proposed amendments to Chapter 40, Subchapter 13 amend rules to: (1) update terminology; (2) exempt Community Hope Centers from Stars quality rating system requirements; (3) update what documents a child care contract signor must provide; (4) remove the requirement that Adult and Family Services (AFS) approval must be written before a child care provider

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temporarily moves a point-of-service (POS) machine or submits electronic claims from a different location; and (5) add the ECC Connect mobile app as a way to record child care attendance.

## CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 340:40-1-1. Purpose, legal basis, and State Plan

(a) **Purpose.** The purpose of this Chapter is to describe the rules governing the ~~Department's child care subsidy program~~ Oklahoma Human Services (OKDHS) Child Care Subsidy Program.

(b) **Legal basis.** The legal basis for the Child Care Subsidy Program is granted under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (P.L.) 104-193, the Child Care and Development Block Grant Act of 2014, P.L. 113-186, the Balanced Budget Act of 1997, P. L. 105-33, and Parts 98 and 99 of Title 45 of the Code of Federal Regulations. The Child Care Subsidy Program also receives funding from Title XX of the Social Security Act.

(c) **State Plan.** OKDHS administers the Child Care Subsidy State Plan. OKDHS Child Care Services is responsible for directly administering and implementing all programs funded by the Child Care and Development Fund in collaboration with Adult and Family Services, Financial Services, and the Office of the Inspector General.

### 340:40-1-2. Legal basis and authority [REVOKED]

~~The legal basis for the Child Care Subsidy Program is granted under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 Public Law (P.L.) 104 193, Child Care and Development Block Grant Act of 2014 P.L. 113 186, the Balanced Budget Act of 1997 P. L. 105 33, and Parts 98 and 99 of Title 45 of the Code of Federal Regulations. The Child Care Subsidy Program also receives funding per Title XX of the Social Security Act.~~

### 340:40-1-3. State Plan for the Child Care Subsidy Program [REVOKED]

~~The Oklahoma Department of Human Services (DHS) administers the State Plan for the Child Care Subsidy Program. DHS Child Care Services is responsible for directly administering and implementing all programs funded by the Child Care and Development Fund in collaboration with Adult and Family Services, Finance and Administration, and Office of the Inspector General.~~

### 340:40-1-4. Complaints and information disclosure

(a) **Complaints.** ~~All household complaints made by households or complaints made by others on a household's behalf of households about application of program rules application are handled, in accordance with OAC per Oklahoma Administrative Code (OAC) 340:2-5, which outlines describes hearing procedures. Complaints received alleging program abuses are investigated by the~~ The Oklahoma Human Services (OKDHS) Office of the Inspector General, Investigations Unit investigates alleged program abuses using procedures in per OAC 340:2-7. Complaints alleging lack of adequate child care of children by a child care provider are referred to the local licensing representative responsible for the facility in question.

(b) **Information disclosure.** The use or disclosure of information concerning applicants or recipients of Child Care Subsidy program benefits is restricted to purposes directly connected with program administration, per federal and state laws and OKDHS rules and regulations.

### 340:40-1-5. Disclosure of information [REVOKED]

~~Per federal and state laws and Oklahoma Department of Human Services rules and regulations, the use or disclosure of information concerning applicants or recipients of Child Care Subsidy program benefits is restricted to purposes directly connected with program administration.~~

## SUBCHAPTER 3. INITIAL APPLICATION

### 340:40-3-1. Application process

(a) **Application process.** The application process for subsidized child care benefits begins with a request for benefits and ends with an eligibility determination. Application approval is subject to available funding. Subsidized child care benefits ~~must be~~ synchronized with the applicant's food benefits or SoonerCare (Medicaid) benefits, per Oklahoma Administrative Code (OAC) 340:40-9-1(f). Child Welfare Services or Adult and Family Services (AFS) staff processes the application.

(1) **When an application is required.** An application is required when:

(A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;

(B) the client's subsidized child care benefits are closed for more than 30-calendar days;

(C) the payee for the subsidized child care benefits changes; or

(D) the family income was not considered, ~~because per~~ per OAC 340:40-7-12(6), ~~policy applied~~ and one or more of the affected adopted children turns 6 years of age, ~~unless there is already a separate open income eligible case and the child can be added to that an open income eligible case, per OAC 340:40-9-2(d).~~

(2) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child

care benefits. When an authorized representative applies on ~~an applicant's behalf of an applicant~~, he or she must bring a ~~signed~~ Form 08MP008E, Authorized Representative Request or a statement ~~from signed by~~ the applicant giving the ~~person representative~~ permission to act on ~~the applicant's behalf of the applicant or unless~~ the applicant ~~must have designated the designated~~ the person as ~~his or her~~ the authorized representative on the signed application.

(A) When the natural or adoptive parent or stepparent lives with the child, he or she is considered the applicant and eligibility is based on the parent's situation regardless of whether he or she has custody of the child.

(B) When both the natural and adoptive parent of the child live in the same household and the adoption is final, the adoptive parent is considered the applicant and eligibility is based on the adoptive parent's situation.

(C) When the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.

(D) When the child's parent is a minor, either the minor parent or the responsible adult the minor lives with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.

(E) When the natural or adoptive parent lives in the home but is too incapacitated to apply, another person living in the home may apply ~~for the natural or adoptive parent on the parent's behalf. The other~~ when the person ~~must provide~~ provides proof of the parent's inability to apply.

(3) **Application.** An applicant or the applicant's authorized representative completes and signs an application to apply for subsidized child care benefits. When the applicant requests child care for a child with disabilities, the worker gives Form 08AD006E, Certification for Special Needs Rate for Licensed Child Care Homes and Centers, to the applicant.

(4) **Request date.** The request date, known as the application date for other Adult and Family Services programs, is the date the applicant requests subsidized child care benefits verbally or in writing.

(5) **Certification date.** The certification date is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the county office, including the name of the child care provider the client chooses to use.

(A) The provider must have a valid Oklahoma Human Services (OKDHS) child care provider contract.

(B) Refer to OAC 340:40-5-1(7) for reasons an applicant cannot choose certain child care providers.

(C) For applicants choosing an in-home provider, refer to OAC 340:40-13-1 and 340:40-13-2.

(6) **Child care interview.** Child care interviews may be completed face-to-face or over the phone with the applicant or authorized representative.

(7) **Explanation of eligibility factors.** At the time of the initial interview, the worker informs the applicant or authorized representative of:

(A) his or her rights and responsibilities;

(B) all eligibility factors of ~~eligibility~~, including the requirement that the chosen child care provider be contracted with OKDHS;

(C) the child care plan and reason child care may be approved based on the applicant's statements at interview;

(D) the applicant's electronic benefit transfer (EBT) responsibilities including viewing the client training video;

(E) the earliest date child care can be approved;

(F) the requirement to cooperate with the OKDHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and

(G) the requirement to report within 10-calendar days when household income exceeds the income eligibility threshold per OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart. At certification and renewal, a computer-generated notice issues to inform the client of the current income eligibility threshold for his or her family size.

(8) **Timeliness.** To be considered timely, the worker must determine eligibility within two-business days of receiving all necessary verification to certify or deny the application.

(A) When the applicant does not provide requested verification, the worker denies the request within 30-calendar days of the request date.

(B) When eligibility is not determined within 30-calendar days, the worker sends Form 08MP038E, Client Notice of Action Taken, explaining the reason for delay.

(9) **Right to appeal.** The applicant has the right to appeal ~~the untimely an application processing of a child care request delay or the eligibility decision of eligibility or ineligibility~~, per OAC 340:2-5.

(b) **Presumptive eligibility processing.** The worker may presumptively approve a maximum of 30-calendar days of child care prior to making a complete eligibility determination when a reason described in (1) of this subsection applies.

(1) Reasons include when the applicant:

(A) is in danger of losing a job or cannot start a new job unless child care is immediately approved. In this circumstance, it must be out of the applicant's control to provide required verification and the applicant does not have the money to pay toward the cost of child care;

(B) is employed but has not received pay from the job and is not guaranteed a wage because he or she is self-employed or works on a commission-only basis. Further care is not approved until the applicant provides proof he or she received earnings from the job; or

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(C) requests protective or preventive child care, per OAC 340:40-7-8(f).

(2) The worker gives or sends the applicant Form 08AD092E, Client Contact and Information Request, to inform the applicant what he or she needs to provide before further care is approved.

(c) **Eligibility determination.** The worker determines the applicant's eligibility to receive child care subsidy benefits based on eligibility conditions, per OAC 340:40-7. The applicant must meet a need factor within 30-calendar days of the request date. After calculating family income, the worker uses OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart, to determine ~~when~~ if the household meets the income eligibility threshold. Refer to OAC 340:40-5-1(8) and 340:40-7-10 through 340:40-7-13 for information regarding income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant completes the child care interview and provides all necessary verification to determine eligibility. The worker certifies the applicant for a 12-month eligibility period, per Section 98.21 of Title 45 of the Code of Federal Regulations. The applicant is responsible for child care used before the certification date.

(A) The ~~client~~ applicant or recipient records attendance with his or her EBT card through a point-of-service machine or through the ECC Connect mobile app at the child care facility.

(B) OKDHS does not pay for care for any day the child attends child care when the client fails to swipe record attendance, unless extenuating circumstances exist beyond the client's or provider's control of the client or provider.

(C) When the ~~client~~ applicant or recipient fails to swipe record attendance, he or she is responsible for any care provided that day and may be responsible for any missed absent day payment ~~OKDHS pays,~~ when the child care provider would have received if all of the days the child attended were recorded.

(2) **Applicant determined ineligible.** The worker denies the child care request or application when the applicant completes the application process and is determined ineligible, does not provide needed verification, or fails to cooperate in determining eligibility.

(A) When the applicant is determined ineligible after completing the application process and providing necessary verification, a new application is required regardless of the original request date.

(B) When the worker denies the application child care request because the applicant did not provide required verification, including choice of provider, a new application is not needed when the applicant completes the application process and provides necessary verification within 60-calendar days of the original request date.

(C) When the worker denies the application child care request because the applicant fails to cooperate in determining eligibility, a new application is not

required when the applicant cooperates within 30-calendar days of the original request date.

## SUBCHAPTER 5. CHILD CARE PLAN

### 340:40-5-1. Child care plan

Providing child care is part of an overall service plan of ~~service~~ designed to help ~~the parent or caretaker, with whom the child lives,~~ eligible parents or caretakers to achieve ~~his or her~~ their maximum self-support potential ~~for self support.~~ Quality child care services ensure ~~the parent or caretaker each child has that~~ eligible parents or caretakers have access to adequate care that affords their children developmental and learning experiences while ~~the parent or caretaker is~~ they are engaged in self-support activities. The child care plan consists of many components that link to form a goal-directed child care plan as described in (1) through (11) of this Section.

(1) **Child characteristics.** The worker gathers information about the child ~~for whom~~ who needs child care ~~is needed,~~ including his or her name, age, grade level, and if the child has a disability.

(2) **Need for child care.** The worker determines if the parent or caretaker meets a need factor, per Oklahoma Administrative Code (OAC) 340:40-7-7 and 340:40-7-8.

(3) **Plan hours.** ~~The~~ To document the need factor, the worker gathers information from the parent or caretaker about the days and hours he or she qualifies for child care, including travel time, ~~from the parent or caretaker to document the need factor.~~

(A) When there are two parents or caretakers in the home, the worker only approves subsidized child care benefits when both parents or caretakers meet a need factor during the same hours, per OAC 340:40-7-7 and 340:40-7-8.

(B) Based on the days and hours the child requires care, the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, weekly, or a blended unit type.

(C) Refer to OAC 340:40-7-7(e) for plan hours concerning a child attending an Early Head Start-Child Care Partnership (EHS-CCP) grant program or an Oklahoma Early Childhood Program (OECP).

(D) The worker does not decrease the child care plan hours because the client no longer meets a need factor or has a decreased need for child care between renewal periods, per Section 98.21(a) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21) and OAC 340:40-9-2(b).

(4) **Alternative to subsidized child care benefits.** The worker and client explore whether there is an appropriate, feasible alternative to Oklahoma ~~Department of~~ Human Services (~~DHS~~) (~~OKDHS~~) subsidized child care benefits.

(A) When the alternative is a spouse or the child's natural or adoptive parent ~~of the child~~ who lives in the



home, the client must use the alternative rather than subsidized child care benefits.

(B) When the alternative is someone other than a spouse or the child's parent of the child or caretaker, the client may choose whether to use the alternative.

(5) **Plan to increase income.** At each application or renewal, the client and worker explore ways the client may become more self-supporting by increasing household income. Increasing household income may include pursuing a work promotion, searching for a higher paying job, or increasing job skills. The client ~~must~~ is also instructed to pursue any identified potential income, per OAC 340:40-7-9.

(6) **Back up plan.** The worker and client discuss and develop a backup plan for child care when the child cannot go to the usual provider because of illness, school holidays, or other emergencies. The backup plan includes the name and address of a person the client feels he or she can rely on when the normal child care plan of care cannot be used.

(7) **Provider Choice of provider.** The worker documents the provider choice of provider on the application or renewal form.

(A) When the client does not choose a provider at the time of request, the worker provides the client with information to help in making the choice.

(B) The client may choose a family child care home regardless of star ~~level~~ status.

(C) The client may choose a Community Hope Center that is not subject to the Stars quality rating system.

(D) The client may not choose a child care:

(i) facility program that does not have a valid contract with ~~DHS~~ DHSOKDHS;

(ii) facility program in which the client or his or her spouse, including the child's parent or stepparent, has an ownership interest;

(iii) home in which the child resides;

(iv) home in which the client also works during the hours his or her child is in care;

(v) provider who does not allow parental access during the hours the provider is caring for children;

(vi) program receiving state or federal funds, such as Head Start, Early Head Start, or public schools, and not charging all parents for the hours subsidy payment is requested. EHS-CCP grant programs and OECPs are exempt from this rule;

(vii) provider caring for a ~~school-age~~ school-age child during the regular school day when the student could be attending a public or private school during those hours;

(viii) center, when it is a ~~one-star~~ one-star facility, unless there are no centers with a higher star status in the community or special exception criteria are met. Special exception criteria are:

(I) the child was approved for care prior to the provider's star status being reduced to

one star. The child may remain at the facility unless the child stops attending there for more than 30-calendar days. The child may be approved at the same facility again when the only reason the child did not attend for more than 30-calendar days was because of a school break or circumstances beyond the family's control ~~of the family~~, such as the child's illness;

(II) care is requested for a child living in the same home as a child already approved for care, per (7)(C)(viii)(I) of this subsection for the same one star child care provider; or

(III) the parent or guardian caretaker demonstrates there is no other child care option that meets the family's needs; or

(ix) in-home provider who is not related to the child. Per OAC 340:40-13-2, related means an aunt, uncle, grandparent, great grandparent, or sibling not living in the home.

(8) **Income determination.** Per OAC 340:40-7, the worker determines who is considered part of the household for income determination and what income is countable or excluded. The household's countable income must not exceed the income eligibility threshold, per ~~DHS~~ DHSOKDHS Appendix C-4, Child Care Eligibility/Copayment Chart.

(9) **Family share copayment.** The worker refers to ~~DHS~~ DHSOKDHS Appendix C-4 to determine the family share copayment for each family. The family share copayment is applied before ~~DHS~~ DHSOKDHS pays a child care subsidy. 17 The family's copayment cost varies based on family size and income.

(A) The family share copayment is determined at approval and may not be increased until renewal, per 45 C.F.R. § 98.21(a)(3). When the worker anticipates changes in household income at approval, such as when the client ~~started~~ starts a new job and ~~did~~ does not receive a full month's pay for the application month, the worker increases household income and the family share copayment for the next month in the certification action. All family share copayment changes made at certification are included in the approval notice(s).

(B) When household income decreases during the eligibility period, the worker decreases the family share copayment, when applicable, per OAC 340:40-9-2(c). Following a decrease, the copayment is not increased until renewal unless the household income exceeds the income eligibility threshold, per ~~DHS~~ DHSOKDHS Appendix C-4.

(C) At renewal, when the family's income exceeds the income eligibility threshold, per ~~DHS~~ DHSOKDHS Appendix C-4, the worker closes the child care benefits.

(10) **Social services requests.** When a client requests help in meeting the social services needs listed on the application or renewal, the worker provides all available information to aid a client in meeting these needs.

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(11) **Client rights and responsibilities.** The worker informs the client of his or her rights and responsibilities per (A) through (G) of this paragraph.

(A) A child care request is only approved back to the request date when the interview is conducted and verification is provided on the request date.

(B) The client has the right to ask for a fair hearing when the client disagrees with an action taken on his or her case, per OAC 340:2-5.

(C) The provider may charge the client for special fees, such as enrollment or transportation fees, provided these fees are posted and also charged to families attending the facility who do not receive subsidized child care.

(D) The provider may charge the client for care provided in excess of the ~~DHS~~ OKDHS-approved child care plan when the client chooses to leave the child in care longer. When the provider requires all children in the facility to begin care by a certain time of day and the client's child care plan hours start later, the provider must not charge the client for the additional hours. The client ~~swipes records~~ attendance based on the child care plan hours.

(E) The provider may charge the client for any days ~~DHS~~ OKDHS refuses to pay for care because the:

(i) client did not ~~swipe record~~ attendance for the correct days and times his or her child attended child care;

(ii) ~~swipes were~~ payment for attendance was denied and the client did not ~~get them corrected~~ resolve the problem within 10-calendar days; or

(iii) provider lost the absent-day payment for a child approved for a weekly unit type because the client did not ~~swipe record~~ correct attendance for every day the child attended that month.

(F) The provider may not charge the client for days:

(i) and hours covered in the child care plan when all attendance was correctly ~~swiped~~ recorded, even when the hours are more than customary for a full-time day; and

(ii) the child is not in attendance.

(G) The client is required to cooperate with the ~~DHS~~ OKDHS Office of Inspector General in any audit or investigation of possible overpayments by the client or ~~by~~ the client's chosen provider.

(3) certificates of deposit;

(4) stocks;

(5) bonds; and

(6) real property other than home property.

(b) A parent or caretaker's statement that he or she lives in Oklahoma meets the residence requirement for child care.

(c) Only the child for whom child care is requested must meet the citizenship and alienage requirements.

(1) A child eligible to be included in a child care benefit must be a:

(A) citizen or a national of the United States (U.S.), including the 50 states, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and Northern Mariana Islands. The child may be a citizen of the U.S. by being born in the U.S. or by being born in some other country but moving to the U.S. and being granted U.S. citizenship through the U.S. Citizenship and Immigration Services (USCIS), a bureau of the Department of Homeland Security; or

(B) qualified alien:

(i) who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);

(ii) who is paroled into the U.S., per Section 212(d)(5) of INA, 8 United States Code (U.S.C.) 1182, for a period of at least one year;

(iii) who is granted conditional entry, per Section 203(a)(7) of INA, 8 U.S.C. 1153, as in effect prior to April 1, 1980;

(iv) who is granted asylum, per Section 208 of INA;

(v) who is admitted to the U.S. as a refugee, per Section 207 of INA, 8 U.S.C. 1157;

(vi) whose deportation is withheld, per Section 241(b)(3) of INA;

(vii) who is a Cuban or Haitian entrant, per Section 501(e) of the Refugee Education Assistance Act of 1980;

(viii) who was battered or whose parent or caretaker was battered, per Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act as amended, per 8 U.S.C. 1641(c);

~~or~~

(ix) who was a victim or whose parent or caretaker was a victim of a severe form of trafficking, per Section 107(b) of the Trafficking Victims Protection Act of 2000 that was reauthorized and amended, per Trafficking Victim's Protection Reauthorization Act of 2003.

(x) who is an Afghan non-special immigrant parolee, known as a humanitarian parolee, per the Afghanistan Supplemental Appropriations Act 2022 enacted on September 30, 2021, Section 2502 of P.L. 117-43, paroled into the U.S. between July 31, 2021 and September 30, 2022, and meets all other factors of eligibility from October 1,

## SUBCHAPTER 7. ELIGIBILITY

### 340:40-7-5. Resources, residence, and citizenship

(a) Household resources must not exceed \$1,000,000 for subsidized child care, per Section 658P(4) of the Child Care and Development Block Grant Act of 2014, Public Law 113-186. Resources include, but are not limited to:

(1) liquid resources, such as cash;

(2) financial institution account balances;

2021 until March 31, 2023, or the term of parole, whichever is longer.

(2) A declaration of citizenship and alien status is required for all children included in the child care benefit. This requirement is met when an adult member of the household completes and signs the application or renewal attesting to the citizenship and alien status for all children included in the benefit. Refer to Oklahoma Administrative Code (OAC) 340:65-3-1(g) for additional citizenship requirements for persons 14 years of age and older, per Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes.

(3) The worker must verify the alien status of an alien child through the United States Citizenship and Immigration Services (USCIS) Systematic Alien Verification for Entitlements (SAVE). When SAVE indicates that the child's alien status documents must be submitted to the USCIS, the worker must not delay, deny, close, or reduce benefits to an alien pending USCIS verification of submitted documentation.

**340:40-7-7. Establishing the need factor for child care**

(a) **Establishing the need factor.** In order for children to be cared for in a safe environment while the parent or caretaker participates in an approved activity or for protective or preventive reasons, ~~the Oklahoma Department of Human Services (DHS)(OKDHS)~~ provides subsidized child care benefits.

(1) The worker arranges to obtain need factor documentation ~~of the need factor~~ from the client or collateral sources.

(2) The worker and client negotiate the amount of travel time allowed for an activity based on what is a reasonable length of time.

(3) The worker does not approve child care for the hours the child attends public or private school, ~~or~~ Head Start, or an Early Head Start program. An Early Head Start-Child Care Partnership (EHS-CCP) grant program and an Oklahoma Early Childhood Program (OCEP) is exempt from this rule.

(b) **Need factor for single parent or caretaker families.** The need for subsidized child care is met when the:

(1) parent or caretaker is employed, per Oklahoma Administrative Code (OAC) 340:40-7-8(a);

(2) parent or caretaker needs sleep time during the day after working night hours when a feasible alternative is used at no cost to ~~DHS~~OKDHS during the night working hours, per OAC 340:40-7-8(a)(5);

(3) parent or caretaker attends a training or formal education program designed to lead to employment, per OAC 340:40-7-8(b) and (c);

(4) parent or caretaker attends high school, high school equivalency classes, literacy, adult basic education (ABE), or English as a Second Language (ESL) classes, per OAC 340:40-7-8(c);

(5) parent or caretaker participates in Supplemental Nutrition Assistance Program (SNAP) Education and Training (E&T) activities, per OAC 340-7-8(d);

(6) parent or caretaker participates in an approved Temporary Assistance for Needy Families (TANF) Work activity, per OAC 340:10-2-1;

(7) child needs care or supervision for part of the day as a protective or preventive service, per OAC 340:40-7-8(f);

~~or~~  
(8) child receives Supplemental Security Income (SSI) and needs care for enrichment purposes, per OAC 340:40-7-8(g); or

(9) parent or caretaker needs child care to search for employment, per OAC 340:40-7-8(a)(6).

(c) **Need factor for two-parent or two-caretaker families.**

Two-parent or two-caretaker families include two natural or adoptive parents, the natural parent and a stepparent, two grandparents, other relative married couples, or other non-relative married couples. When an unmarried couple applies, only the natural or adoptive parent must meet a need factor. The need for subsidized child care is met when:

(1) both parents or caretakers work during the same hours they request child care, per OAC 340:40-7-8(a);

(2) one or both parents or caretakers need sleep time during the day after working night hours when a feasible alternative is used at no cost to ~~DHS~~OKDHS during the night working hours, per OAC 340:40-7-8(a)(5). When both parents do not work night hours, one parent must work during the other parent's sleep time hours;

(3) one parent or caretaker attends a formal education or training program, per OAC 340:40-7-8(b) or (c) during the same hours the other parent or caretaker works, per OAC 340:40-7-8(a);

(4) both parents or caretakers attend high school, per OAC 340:40-7-8(c);

(5) one parent or caretaker attends high school during the same hours the other parent or caretaker works or attends a formal education or post high school training program, per OAC 340:40-7-8(a) through (c);

(6) one parent or caretaker attends high school equivalency classes, literacy, ABE, or ESL classes, per OAC 340:40-7-8(c)(2) or (3) during the same hours the other parent or caretaker works, per OAC 340:40-7-8(a);

(7) one or both parents or caretakers participates in SNAP E&T activities per OAC 340-7-8(d). When one parent or caretaker is not participating in SNAP E&T activities, he or she must meet a need factor during the same hours, per OAC 340:40-7-8;

(8) one or both parents or caretakers participate in approved TANF Work activities, per OAC 340:10-2-1. When one parent or caretaker is not participating in TANF Work activities, that parent must meet a need factor, per OAC 340:40-7-8 during the same hours;

(9) the child needs care or supervision for part of the day as a protective or preventive service, per OAC 340:40-7-8(f);

(10) the child receives SSI and needs care for enrichment purposes, per OAC 340:40-7-8(g); ~~or~~

(11) one parent or caretaker is incarcerated and the other parent remains in the home. In this instance, the parent remaining in the home is treated as a single parent; or

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(12) one or both parents or caretakers need child care to search for employment, per OAC 340:40-7-8(a)(6).

(d) **Need factor in joint custody cases.** When parents are separated or divorced and share custody of their child, voluntarily or through a court order, each parent's income and need for child care is considered separately.

(e) **Need factor for a child attending an Early Head Start Child Care Partnership (EHS-CCP) — EHS-CCP grant program or an Oklahoma Early Childhood Program (OECF) OECF.** A child attending an EHS-CC Partnership grant program or an OECF may be approved for a weekly unit type when the parent or caretaker qualifies for Child Care Subsidy and meets a need factor, per (b) or (c) of this Section for some of the EHS-CC Partnership grant program or OECF care hours.

(f) **Activities that do not meet the need factor for child care.** The need factor for child care is not met and child care must not be approved for:

(1) job search for parents more than one three-month period every 12 months, per OAC 340:40-7-8(a)(6), unless the parent(s) or caretaker(s) is participating in TANF Work activities, per OAC 340:10-2-1;

(2) online Internet based or televised education or training courses when an instructor is not conducting a live broadcast and attendance is not required while the program is being broadcast, per OAC 340:40-7-8(b) and (c);

(3) undergraduate classes or other training not expected to lead to a degree or certificate of completion, per OAC 340:40-7-8(b) and (c);

(4) post graduate education, such as master's and doctoral programs;

(5) two-parent or two-caretaker families when both attend a formal education or training program during the same days and hours;

(6) transportation only;

(7) volunteer hours or jury duty;

(8) hours a school-age school-age child could attend a public or private school, but the parent or caretaker chooses to home school the child at night; and

(9) children in Child Welfare Services foster care, when one or both foster parents do not meet child care eligibility rules, per OAC 340:75-7-65.

### 340:40-7-8. Defining the need factor for child care benefits

(a) **Employment.** Employment means the parent or caretaker earns wages for work performed or meets criteria, per (5) or (6) of this subsection.

(1) The client must provide proof of his or her work hours. When the client has the flexibility to set his or her own work hours, the client and worker jointly determine if the client can reduce the number of hours the child needs care by rearranging the client's work schedule. This is especially important in two-parent or two-caretaker families.

(2) The worker limits child care approval of child care to the number of days and hours the client is working plus

reasonable travel time. In two-parent or two-caretaker working families, the worker limits child care approval to the days and hours they work the same hours plus reasonable travel time.

(3) ~~The To meet the employment need factor, the client must make at least minimum wage for the number of hours he or she works to meet the employment need factor unless the client qualifies for an exception, per (D) or (E) of this paragraph. Criteria (A) through (C) of this paragraph specifies the criteria for determining minimum wage is specified in (A) through (C) of this paragraph.~~

(A) ~~Minimum~~The federal government determines minimum wage is determined by the federal government.

(B) The worker reviews the pay information provided by the client to determine whether the client makes at least minimum wage.

(i) When the paycheck or employer statement shows the hourly pay rate, the worker compares it to the federal minimum wage.

(ii) When the pay information provided does not show the client's hourly pay rate, the worker divides the number of hours the client works by the gross pay per pay period to determine the client's hourly pay rate.

(iii) When the client is considered self-employed, per Oklahoma Administrative Code (OAC) 340:40-7-11(b)(2)(A), the worker divides the number of hours the client works by the net pay, after applicable business expenses, to determine the client's hourly pay rate. When the client and spouse are self-employed in the same business, the worker combines their work hours and divides the work hours by the net pay to determine their hourly pay rate.

(C) When the client works for an employer ~~paying who pays~~ a set wage that is less than minimum wage, and the employer refuses to begin paying at least minimum wage, the worker denies child care benefits or, when at renewal, does not approve further care.

(D) When the client is self-employed or works for an employer ~~paying who pays~~ wages based on commission or other performance measures instead of a set wage, ~~has received earnings and does not make at least minimum wage, and the client has been performing performed~~ this work:

(i) less than one year, the worker counsels with the client to develop a plan to increase his or her income to at least minimum wage before the renewal is due. When the client is not making at least minimum wage at renewal, further care is not approved.

(ii) at least one year without any substantial change, the worker denies the child care subsidy benefit.

(E) When the client is an adoptive parent who meets criteria, per OAC 340:40-7-12(6), or is a caretaker who is not legally and financially responsible for the child, per OAC 340:40-7-6(a)(~~6~~)(5), he or she is not required to make at least minimum wage for the number of hours worked.

(4) A client employed and working from his or her own home may be approved for subsidized child care benefits in an out-of-home child care home or center when he or she is unable to work while the child is in the home. When the ~~person~~client has flexible work hours and can work while the child is in school, care is not approved. When the ~~person~~client operates a licensed child care home, care is only approved in another licensed child care home or center when the client's own child places him or her over maximum licensed capacity;

(5) Subsidized child care benefits may be approved for sleep time during the day when a parent or caretaker works night hours and a feasible alternative is used during the night working hours at no cost to the Oklahoma Department of Human Services (DHS) ~~during the night working hours~~. Night working hours are defined as the hours between 11:00 p.m. and 7:00 a.m.

(A) The maximum amount of time the worker ~~approves~~may approve child care allows the client eight hours of sleep plus travel time to and from the provider.

(B) In two-parent or two-caretaker families, care may only be approved for this reason when both parents or caretakers have night time jobs or when one parent or caretaker has a ~~night time~~night-time job and the other parent or caretaker works during the day while the other parent or caretaker is sleeping.

(6) Subsidized child care benefits may be approved for the parent(s) or caretaker(s) to job search for one three-month period every 12 months, when needed.

(b) **Training.** A training program is defined as a course of study that, when completed, qualifies a person to meet requirements for a job the client could not obtain without the certificate of completion, accreditation, or licensure. Child care may be approved for one parent or caretaker to attend a training program. In two-parent or two-caretaker families, the other parent or caretaker must work during the same hours.

(1) The training program must qualify to receive federal financial aid from the United States Department of Education (USDE) or other federal or state education funds.

(2) Prior to initial approval for child care and at renewal, the client must provide proof of enrollment, the days and hours the client will be attending, and when he or she is expected to complete the program.

(3) The program must require classroom attendance on a school campus with an instructor present. ~~Care~~Child care is only approved for an online Internet based course or televised course when it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. When the program is self-paced and

the client may choose his or her own school hours, care is not approved.

(4) The client must provide proof of progress at renewal. When the client is not making satisfactory progress, the worker does not approve further child care for this reason.

(5) Once the client completes a training program, further child care is not approved for training or education. The client is expected to look for jobs that require his or her training credentials.

(6) In certain circumstances, the worker may approve child care benefits for a client to attend a second training program. The client must have been employed in a job requiring the training credentials he or she has for at least 12 months. Possible circumstances include when:

(A) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional verifying the reason. The professional must also state that after completing the second training program, the client is capable of performing the job tasks after completion of the jobs related to that training program;

(B) there is no longer a demand for the type of work the client is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a Workforce Innovation and Opportunity Act (WIOA) contracted entity, the Oklahoma Employment Security Commission (OESC), or the Oklahoma Department of Rehabilitation Services (DRS); or

(C) the client can establish receipt of the additional training will increase his or her earning potential. The client must provide proof the training credentials the client wants to obtain will result in a starting salary with the training credentials the client wants to obtain is higher than what he or she is currently earning earns.

(c) **Education program.** An education program may include:

(1) **High school.** Child care may be approved for one or both parents or caretakers to attend high school. It is not approved for a parent or caretaker to receive homebound instruction. Prior to approval, the client must provide proof that he or she is enrolled, the days and hours he or she attends, and when he or she is expected to graduate.

(2) **High school equivalency, literacy, or adult basic education (ABE) classes.** The program must require classroom attendance with an instructor present. Child care may be approved for one parent or caretaker to attend high school equivalency, literacy, or ABE classes. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

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- (A) The client must provide proof of enrollment, the days and hours the client is attending, and the end date of the class prior to care approval. When the class has open enrollment and no established end date, the client must provide proof of progress and how it is measured.
- (B) The worker reviews the client's progress at renewal prior to approving further child care for this reason. At renewal, the client must provide a statement from the school that includes:
- (i) whether the client attends regularly;
  - (ii) whether the client is making satisfactory progress;
  - (iii) an estimated end date to complete the program; and
  - (iv) the days and hours the client currently attends classes.
- (C) When the client is not attending regularly or making satisfactory progress, further child care for this reason is not approved at renewal.
- (3) **English as a Second Language (ESL) classes.** The program must require classroom attendance with an instructor present. Child care may be approved for one parent or caretaker to attend ESL classes when the client lacks proficiency in understanding, speaking, reading, or writing the English language. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.
- (A) The client must provide proof of enrollment, the days and hours the client attends, and the end date of the class prior to care being approved. When the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.
- (B) The worker reviews the client's progress at renewal ~~prior to approval for~~before approving further care for this reason. At renewal, the client must provide a statement from the school that includes:
- (i) whether the client attends regularly;
  - (ii) whether the client is making satisfactory progress;
  - (iii) an estimated length of time needed to complete the program; and
  - (iv) the days and hours the client currently attends.
- (C) When the client is not attending regularly or making satisfactory progress at renewal, the worker does not approve further child care for this reason.
- (4) **Formal education program.** A formal education program is defined as a course of study ~~leading that leads to the attainment of~~attaining an associate or bachelor's degree. Child care may be approved for one parent or caretaker to attend a formal education program and participate in activities required to maintain a scholarship. Only required scholarship activities for scholarships disbursed through the school's financial aid office qualify for child care. In two-parent or two-caretaker families, the other parent or caretaker must work during the same hours.

- (A) The formal education program must qualify to receive federal financial aid from USDE or other federal or state education funds.
- (B) Prior to initial approval for child care and at renewal, the client must provide:
- (i) proof of enrollment;
  - (ii) the days and hours the client attends school or participates in activities required to maintain a scholarship; and
  - (iii) when the client expects to complete the degree.
- (C) The degree program must require classroom attendance on the school campus with an instructor present. ~~Care~~Child care is only approved for an online Internet based course or a televised course when it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. When the program is self-paced and may be completed whenever the client chooses, child care is not approved.
- (D) The worker must request proof of progress at renewal when the class schedule does not show the client is progressing from freshman level classes to sophomore, junior, and senior level classes. When the client is not making satisfactory progress at renewal, the worker does not approve further child care for this reason.
- (E) Once the client completes a bachelor's degree, further care is not approved for training or education. The client is expected to look for jobs that require a degree.
- (F) In certain circumstances, the worker may approve subsidized child care benefits for a client to obtain a different bachelor's degree. The client must first have been employed in a job that required the degree he or she already has for at least 12 months. Possible circumstances include when:
- (i) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that after completing the second degree program, the client is capable of performing ~~the job tasks of the jobs related to that degree program~~in which the client wants to enroll;
  - (ii) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a WIOA contracted entity, OESC, or DRS; or
  - (iii) the client can establish receipt of the second degree ~~may will~~increase the person's his or her earning potential. The client must provide proof that the second degree the client wants to obtain

~~will result in a starting salary for a person with the degree the client wants to obtain is higher than what he or she is currently earning earns.~~

(d) **Oklahoma Supplemental Nutrition Assistance Program (SNAP) Education and Training (E&T) Works (OK SNAP Works) related child care.** Subsidized child care benefits may be provided for OK SNAP E&T program related assigned Works component assignments and activities, per OAC 340:50-5-106.

(1) Prior to approval, the OK SNAP E&T Works coordinator confirms with the contracted service provider the:

- (A) component assignment or activity is part of OK SNAP E&T Works;
- (B) assigned start date; and
- (C) the activity's scheduled days and hours of the activity.

(2) When a parent or caretaker stops participating in OK SNAP E&T Works component assignments or activities for reasons other than employment, child care is continued for an additional 90-calendar days from the date the client stops participating as long as the client continues to use at the same child care provider. When the client wishes to change child care providers during the 90-calendar day period, care by a different provider is not approved.

(e) **Temporary Assistance for Needy Families (TANF) related child care.**

(1) TANF related subsidized child care benefits may be provided for:

- (A) any TANF Work activity outlined on the client's Form 08TW002E, TANF Work/Personal Responsibility Agreement, per OAC 340:10-2-1, including when the person is sanctioned, per OAC 340:10-2-2, and participating in TANF Work activities;
- (B) substance abuse treatment when the parent of a child receiving TANF is ineligible for TANF due to the illegal use of a controlled substance or substances, per OAC 340:10-4-1. Prior to approval, the parent must provide proof of the substance abuse treatment plan from the treatment provider; or
- (C) a child receiving a child only TANF benefit when the parent or caretaker relative meets a need factor included in this Section.

(2) When the parent or caretaker relative receiving ~~TANF related~~ TANF-related subsidized child care stops meeting a need factor, the worker continues subsidized child care benefits for 90-calendar days ~~at the same child care provider. When the client wishes to change child care providers during the 90-calendar day period, care by a different provider is not approved.~~

(f) **Protective or preventive child care.** Subsidized protective or preventive child care benefits may be used as an early intervention strategy in certain critical situations to help prevent a child's neglect, abuse, or exploitation ~~of a child.~~ The worker may approve child care in these situations to help stabilize the family or enhance family functioning. In most instances, Child Welfare Services (CWS) staff completes protective or preventive child care requests when they are working

with the family and recommending protective or preventive child care. Subsidized protective or preventive child care benefits are approved on a temporary basis. The worker helps the family develop a plan to reduce or eliminate the need for such child care beginning with the initial contact.

(1) Reasons protective or preventive child care may be approved include, but are not limited to, when:

- (A) an outside agency contracting with CWS to provide Comprehensive Home-Based Services (CHBS) for a non-court involved family recommends child care be provided on a temporary basis;
- (B) the parent or caretaker requests child care because of a medical condition that prevents the parent or caretaker from properly caring for the child;
- (C) a homeless family requests child care while working to stabilize the family. Homeless means the family lacks a fixed, regular, and adequate night time residence, and includes families who:
  - (i) temporarily share housing with other persons due to loss of housing, economic hardship, or a similar reason;
  - (ii) temporarily live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations;
  - (iii) live in emergency or transitional shelters; or
  - (iv) live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings not designed for, or ordinarily used, as a regular sleeping accommodation for human beings; or
- (D) a family affected by a natural disaster requests child care to deal with the natural disaster's effects ~~of the natural disaster~~, such as home damage or loss ~~of the home~~ following a fire, flood, or tornado.

(2) The worker may approve subsidized protective or preventive child care benefits for a maximum of 30-calendar days.

(3) When the family requests more than 30-calendar days of subsidized protective or preventive child care benefits, the worker must obtain approval from Adult and Family Services Child Care Subsidy Unit staff before authorizing more care. Prior to requesting an extension, the client must provide a written recommendation from a professional working with the family stating:

- (A) the names and ages of the children for whom child care is recommended;
- (B) the reason child care is recommended;
- (C) the days and hours child care is needed;
- (D) how placing the child in a child care facility helps to prevent neglect, abuse, or exploitation of the child; and
- (E) the length of time the professional expects care to be needed.

(4) ~~When the~~ A family ~~receives~~ receiving CHBS services, ~~the family~~ is not responsible for paying a copayment. In Depending on other ~~protective or preventive situations~~ families' unique circumstances, the ~~family~~ worker

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mayor may not be expected to help pay the cost of the subsidized child care benefits depending on the unique circumstances of the family.

(5) In certain circumstances, families who are financially ineligible for subsidized child care benefits may be approved for protective or preventive child care benefits when the child is in danger of neglect, abuse, or exploitation. The client must provide evidence the family is so burdened by debt the additional financial pressure of paying for child care may result in further deterioration of family stability and functioning. The client must also provide a plan for reducing his or her debt.

(g) **Enrichment.** The purpose of subsidized enrichment child care benefits is to assist a child receiving Supplemental Security Income (SSI) to develop socialization skills and transition into a group setting, such as a classroom. ~~When a child is not receiving~~ Children who do not receive SSI benefits, ~~the child is not approved~~ are not eligible for subsidized enrichment child care benefits.

(1) The need for subsidized enrichment child care benefits is based solely on the ~~needs of the child's condition of delay or disability~~ needs instead of the ~~parent's or caretaker's~~ activities of the parent or caretaker.

(2) Enrichment child care is limited to a maximum of two days per week not to exceed 10 full-time or part-time days per month.

(3) The parent or caretaker must provide a written recommendation from a professional working directly with the child that states how child care would be beneficial to the child. The professional could be the child's doctor, occupational therapist, physical therapist, or special education teacher.

(4) Enrichment child care is only approved for a child who has not started school, ~~or~~ Head Start, Early Head Start, or an Oklahoma Early Childhood Program unless, due to the child's disabilities, the child receives teacher instruction from a teacher in his or her home.

(5) When subsidized enrichment child care benefits are approved, care must be provided outside of the child's home and at least one other child must attend during the same hours.

(6) The worker obtains approval from ~~staff in~~ AFS Child Care Subsidy Unit staff prior to authorizing care for this need factor.

### 340:40-7-11. ~~Sources of income~~ Income sources considered

(a) ~~Sources of income~~ Income sources considered. Income may be received periodically or at irregular intervals. All income, unless specifically excluded, per Oklahoma Administrative Code (OAC) 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income.

(b) **Earned income.** Earned income ~~means~~ is the total money ~~earned by a person through the receipt of~~ receives from wages, salary, commission, or profit from activities ~~in which the person is engaged~~ he or she engages in as a self-employed person or as an employee.

(1) **Wages.** Wages include total money earned for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before deductions, such as taxes, bonds, pensions, union dues, credit union payments, or cafeteria plans are subtracted.

(A) ~~Countable military personnel~~ wages for ~~military personnel~~ include any allowance included on the earnings statement, ~~such as except~~ the Basic Allowance for Housing (BAH) ~~or Basic Allowance for Subsistence (BAS).~~

(B) Only the portion of the cafeteria plan the client controls, including any excess benefit allowance payments, is counted as income.

(C) Reimbursements for expenses, such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from the gross income.

(D) Payments made for annual leave, sick leave, or severance pay are considered earned income during the month such income is received, whether paid during employment or at employment termination ~~of employment.~~

(E) Wages that are garnished or diverted and paid to a third party are also counted as income.

(2) **S corporations.** When a household member is a shareholder in an S corporation, he or she may receive profits from the business in ~~two~~ three ways; as a salary ~~and/or~~ as a profit share of the business, or both. Both types of income are reported on the household member's personal income tax return. Salary income is considered as earned income and profit share income is considered as unearned income, per (c)(11) of this Section.

(3) **Self-employment.** Self-employment income is calculated based on procedures listed in (A) through (H) of this subsection.

(A) **Persons considered self-employed.** A person is considered self-employed when:

(i) he or she declares himself or herself to be self-employed;

(ii) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act ~~(FICA),~~ even when required to do so by law; or

(iii) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(B) **Records used and income calculation.** The worker uses the records described in (i) through (iii) of this subparagraph to calculate income. When the person reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) When the person filed a federal income tax return for self-employment income for the most recent year, whether the person's income is derived from his or her own business or from working for an employer, the worker uses the gross



self-employment income shown on the person's federal income tax return. ~~The worker~~ subtracts 50 percent of the income for claimed business expenses, and divides the income by 12 or, when the self-employment income was received for less than the full calendar year, by the number of months the business has existed or the number of months since the person started working for the employer, ~~when less than 12 months~~. The worker verifies the person's start date with the employer when the person states he or she has not worked for the employer for at least 12 months.

(ii) When the person did not file an income tax return for the most recent tax year for his or her own business, the worker calculates self-employment income by using the person's business records for the last 12 months or the number of months the business has existed when less than 12 months. When the client declares business expenses, the worker subtracts 50 percent of the gross self-employment income to arrive at the net profit.

(iii) When the person works for an employer, did not file a federal tax return as self-employed, and receives earnings from an employer, the person must provide proof of the last 12 months of income from the employer. The worker divides the gross income by 12 or the number of months the person worked for the employer to determine monthly income. When the person declares business expenses, the worker subtracts 50 percent of the gross self-employment income before dividing the income by the applicable number of months to determine monthly income.

(C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies (LLC) may receive profit sharing that is reported on the household's personal income tax return.

(i) S corporation profit sharing is considered unearned ~~profit sharing~~profit-sharing income. Refer to ~~Oklahoma Administrative Code (OAC)~~ 340:40-7-11(b)(2) and (c)(11) for information regarding S corporations.

(ii) Partnerships are unincorporated businesses with two or more partners. When a household member is a partner in a business, he or she is considered self-employed and not ~~an employee~~one of the business's employees. Each partner receives a profit share from the business. When a business is considered a:

- (I) general partnership or LLC with a member-manager, each partner's share of the business income is shown as self-employment income on his or her federal income tax form; or
- (II) limited partnership or other LLC member, each partner's share of the business income

is shown as self-employment income or unearned ~~profit sharing~~profit-sharing income on his or her federal income tax form.

(D) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. When the averaged amount does not accurately reflect the household's actual monthly circumstances because the household experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(E) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the time period of time it is intended to cover.

(F) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged and annualized over a 12-month period, even when the income is received in a short time period.

(i) When the average annualized amount does not accurately reflect the person's actual monthly circumstances because the person experienced a substantial increase or decrease in income, the worker calculates the self-employment income on anticipated earnings.

(ii) The worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns, when an increase or decrease of business has occurred.

(iii) When the person received the self-employment income for less than 12 months, the worker averages the income over the applicable number of months and projects the monthly amount for the coming year.

(G) **Rental property income.** Rental property is considered self-employment income.

(H) **Room and board income.** Payments from roomers or boarders are considered self-employment when the roomer or boarder pays a reasonable amount.

(4) **On-the-job (OJT) training (OJT).** ~~Earned OJT~~ income from regular employment ~~for OJT~~ is considered earned income. This includes OJT provided, per Section 3(44) of the Workforce Innovation and Opportunity Act (WIOA), for persons 19 years of age and older. This does not include classroom or institutional training or WIOA-sponsored intern assignments, even when an hourly amount is paid for such training, per OAC 340:40-7-12(25)(G).

(5) **Title I payments of Domestic Volunteer Services Act (DVSA).** Payments under Title I of the DVSA of 1973 as amended, per Public Law 93-113, are considered earned income unless excluded, per OAC 340:40-7-12.

(6) **Children's earnings.** A minor parent's earned income is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the an

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~~adult household member's parental control of an adult household member~~ are excluded, per OAC 340:40-7-12.

(7) **Sale of whole blood or plasma.** The sale of whole blood or blood plasma is considered as earned income.

(8) **Training allowances.** Training allowances from vocational or rehabilitative programs recognized by federal, state, or local governments, such as the work incentive program, are considered as earned income to the extent they are not a reimbursement. Training allowances received under WIOA are excluded.

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in (1) through (11) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means-tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Resettlement Program (RRP) cash assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.

(A) When a minor child receiving Social Security benefits no longer lives with the payee receiving the Social Security benefits, only the portion of the child's Social Security benefit used to meet the minor child's needs is considered income. This may include cash given directly to the minor child or money paid to a third party for the minor child's room and board~~for the minor child~~.

(B) The parent or caretaker or, when appropriate, the minor child must take action to become the payee within the ~~12-month~~12-month eligibility period, per OAC 340:40-7-9(d). When the parent, caretaker, or minor child does not take action by renewal, the worker counts the total Social Security benefit as income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, made directly to the household from non-household members are counted as unearned income.

(A) ~~When a child~~Child care payment is payments paid directly to the child care provider, ~~it is~~are not considered countable child support income~~for the client~~.

(B) When the ~~absent non-custodial~~ parent reports he or she ~~is paying~~pays a portion of the client's family share copayment to the child care provider, ~~the only action taken by the worker is to record this in the case~~

record it is not considered countable child support income.

(C) When the ~~absent non-custodial~~ parent or another third party, such as an employer, ~~is making~~makes a payment to the child care provider in addition to the client's copayment, it is considered an additional copayment, ~~that must be met before~~ Oklahoma Human Services (OKDHS) ~~makes a~~subtracts the additional copayment from the subsidy payment OKDHS owes to the child care provider.

(D) Any other payment made to a third party for a household expense ~~must be~~is considered as countable child support income when a court order directs the payment be made to the household. Payments for medical support are excluded.

(6) **Veterans' compensation, pensions, or military allotments.** Disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable cash contributions recurrently received ~~in cash~~ are considered unearned income except when the contribution is not made directly to the client. To be appreciable, a contribution must exceed \$30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(10) **Irregular income.** Income received irregularly ~~but in excess of that~~ exceeds \$30 per calendar quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

(11) **Profit sharing.** When a household member is a shareholder in an S corporation or a partner in a limited partnership or an LLC, he or she may receive a distribution or profit share of the business. This is considered as unearned income.

### 340:40-7-12. ~~Sources of excluded~~Excluded income sources

Only the income listed in this Section is excluded in determining a household's eligibility for a child care benefit. No other income is excluded.

(1) **Lump sum payments.** One-time lump sum payments are excluded as income. Recurring lump sum payments are excluded as a countable income source unless specifically mentioned, per Oklahoma Administrative Code (OAC) 340:40-7-11.

(2) **In-kind income.** In-kind income is excluded as income. In-kind income is defined as any gain or benefit that is not in the form of money paid directly to the household.

This includes non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(3) **Money received from the sale of property.** Money received from the sale of property, such as stocks, bonds, or a house or car is excluded. This exclusion does not apply when the person is engaged in the business of selling such property.

(4) **Bank or trust account withdrawals.** Money withdrawn from a bank or trust account is excluded as income even when used to meet current living expenses.

(5) **Capital gains.** The proceeds from the sale of capital goods or equipment are excluded.

(6) **Household income for certain children adopted through Oklahoma Human Services (OKDHS).** ~~The All household member's income of all household members is exempt for the adopted child only when conditions in (A) through (E) of this paragraph are met. The:~~

(A) ~~parent applying for benefits adopted the child was adopted through OKDHS or a federally-recognized Indian tribe, as defined by the Federal and Oklahoma Indian Child Welfare Acts, by the parent applying for benefits;~~

(B) adoptive parent applying for benefits must provide:

- (i) a fully executed Form 04AN002E, Adoption Assistance Agreement, listing child care as an adoption assistance benefit for the child;
- (ii) Form 04AN033E, Post Adoption Child Care Referral;
- (iii) the Final Decree of Adoption; and
- (iv) a form of identity;

(C) adoptive parent and child are Oklahoma residents;

(D) child is 5 years of age and younger. When a child turns 6 years of age during the 12-month eligibility period, household income remains exempt until the next renewal; ~~and~~

(E) child is 6 years of age and older and meets the definition of a child with disabilities, per OAC 340:40-7.3.1. When the child continues to require child care after he or she turns 13 years of age, the client must provide a statement from a licensed health care professional verifying the child is physically or mentally incapable of self-care, as age appropriate, before further care is approved, per OAC 340:40-7-3. An updated medical statement is required annually at renewal. When a child with disabilities turns 19 years of age during an eligibility period, the child remains eligible until the next renewal date; and

(F) adoptive parent meets an allowable need factor and provides proof, per OAC 340:40-7-7 and OAC 340:40-7-8. In a two-parent family, both parents must meet an allowable need factor.

(7) **Household income when at least one child attends an Early Head Start-Child Care Partnership (EHS-CCP) grant program or an Oklahoma Early Childhood Program (OECF).** The household income is exempt for all children in child care when at least one

child attends an EHS-CCP grant program or an OECF and the household meets the income threshold, per OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart.

(8) ~~Earnings of children~~**Children's earnings.** The earnings of a person 17 years of age and younger who is considered a child in the case are excluded as long as the child attends school regularly. The exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break. When the child is a minor parent and the payee, the minor parent's earnings are treated as adult income.

(9) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted unless it is ~~in excess of~~exceeds \$30 per calendar quarter.

(10) **Reimbursements.** Reimbursements for past or future expenses not exceeding actual expenses are excluded.

(11) **Tax refunds.** Exclude federal or state income tax refunds including Earned Income Tax Credit (EITC) payments.

(12) **Money received for third parties.** Money received and used for the care and maintenance of a third party who is not a household member is excluded.

(13) **Loans.** All loans, including loans from private as well as and commercial institutions, are excluded as income. When the household states someone is loaning the household money to meet expenses, ~~a statement signed by both parties is~~are required to sign a statement indicating the payment is a loan and must be repaid. When the household states it receives loans on a recurrent or regular basis from the same source, the lender must sign an affidavit stating the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule.

(14) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs are excluded.

(15) **Educational assistance.** Educational assistance is excluded as income and includes, but is not limited to:

- (A) work study;
- (B) scholarships;
- (C) fellowships;
- (D) educational loans when payment is deferred; and
- (E) veterans' education benefits.

(16) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl D. Perkins Vocational and Applied Technology Education Act are excluded as income.

(17) **Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).** Payment for supportive services or reimbursement ~~off~~or out-of-pocket expenses made to volunteers serving as foster grandparents, senior health aides, senior companions, and to persons serving in SCORE and ACE is excluded as income.

(18) **Government rent or housing subsidies.** ~~Gov-~~ernment ~~rent~~Rent or housing subsidies provided by

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government agencies that are received in-kind or in cash for rent, mortgage payments, or utilities are excluded as income.

(19) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(20) **Title IV E of the Social Security Act or State Adoption Subsidy.** Federal- or state-funded adoption subsidy payments made to adoptive parents are excluded as income.

(21) **Victims of Crime Act of 1984.** Payments made from the crime victims' compensation program as amended in Section 1402 of the Victims of Crime Act of 1984 and Section 10602 of Title 42 of the United States Code (42 U.S.C. § 10602) are excluded as income.

(22) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to persons by OKDHS Developmental Disabilities Services are excluded as income.

(23) **Vendor payments.** Vendor payments made directly to the household's creditors, a person, or an organization providing a service to the household, are excluded as income unless a court order or other legally binding agreement specifies the money is to be paid directly to the client.

(24) **Money received by another household for a household member.**

(A) When a child with countable income spends part of the month in two separate households ~~and receives countable income~~, the worker only considers the portion of the child's income received by the household applying for or receiving a child care benefit as countable income and excludes the remainder.

(B) When a minor parent is the payee and lives with a parent or caretaker, child support received for the minor parent is considered income for the parent or caretaker and not considered for the minor parent's child care benefit.

(25) **Money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account.** Money deposited into or withdrawn from a qualified ABLE Program account, in Oklahoma or an ABLE account in any other state, owned by the account's designated beneficiary ~~of the account~~ and established to pay for qualified disability expenses (QDE), is excluded from income or resource consideration, per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes and the ABLE Act of 2014 (26 U.S.C. § 529A). A person may have only one ABLE account.

(A) The client must provide documents to verify the account meets exemption criteria before the funds are excluded. Once the client verifies that the savings or trust account is a valid ABLE account, no further account information is required.

(B) ~~A~~ Another individual's contribution to an ABLE account ~~by another individual~~ is excluded unless the contribution exceeds the annual federal gift tax exclusion amount, per 26 U.S.C. § 2503(b). Any

money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as a countable resource in the amount deposited.

(C) ~~A~~ An ABLE account distribution ~~from an ABLE account that is~~ retained after the month of receipt is excluded in any month when spent on a QDE. Money withdrawn for reasons other than to pay a QDE is considered as a countable resource for the withdrawal month of withdrawal.

(D) A QDE is any expense related to the individual's blindness or disability and made for his or her benefit. ~~QDEs include~~ A QDE includes, but ~~are~~ is not limited to:

- (i) education;
- (ii) housing;
- (iii) transportation;
- (iv) employment, training, and support;
- (v) assistive technology;
- (vi) health;
- (vii) prevention and wellness;
- (viii) financial management and administrative services;
- (ix) legal fees;
- (x) ABLE account oversight and monitoring;
- (xi) funeral and burial; and
- (xii) basic living.

(26) **Income excluded by federal law.** Income excluded by federal law is defined as:

(A) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) payments received:

- (i) under the Alaska Native Claims Settlement Act, Public Law (P. L.) 92-203, § 21(a);
- (ii) under the Sac and Fox Indian Claims Agreement, P.L. 94-189;
- (iii) from the disposition of funds to the Grand River Band of Ottawa Indians, per P.L. 94-540;
- (iv) from the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation, per P.L. 95-433;
- (v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation, P.L. 96-420;
- (vi) by an individual as a lump sum or a periodic payment via the Cobell Settlement, per the Claims Resolution Act of 2010, P.L. 111-291; or
- (vii) by members of the Navajo and Hopi Tribes for relocation assistance, per P.L. 93-531;

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program, Foster Grandparents and others, of the Domestic Volunteer Services Act of 1973, P.L. 93-113 as amended. Payments under Title I of that Act, Volunteers in Service To America, University Year for Action, and Urban

Crime Prevention Program, to volunteers are excluded only when the monthly amount, converted to an hourly rate, is less than the Oklahoma minimum wage;

(D) income derived from submarginal land of the United States held in trust for certain Indian tribes, per P.L. 94-114, Section 6;

(E) Indian per capita payments distributed from judgment awards and trust funds made, per Section 2 of P.L. 98-64, 25 U.S.C. §§ 117b and 1407. For ~~this paragraph's purposes of this paragraph~~, per capita is defined as each tribal member receiving an equal amount. Interest or investment income accrued on such funds while held in trust, or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds, is excluded. Any per capita payments, headrights of the Osage tribe, income from mineral leases, or other tribal business ventures are excluded as long as the payments are paid per capita. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family;

(F) income individual Indians receive up to \$2,000 per year ~~received by individual Indians that~~ is derived from leases or other uses of individually-owned trust or restricted lands, is not counted as income. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered income;

(G) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in the Workforce Innovation and Opportunity Act (WIOA) or other federally-funded workforce training program to persons of all ages and student status, ~~with the exception of On-the-job training~~ income paid to persons 19 years of age and older ~~for on the job training. This income is treated considered as any other countable~~ earned income, per OAC 340:40-7-11(b)(4);

(H) payments, allowances, or earnings to persons participating in the AmeriCorps State and National program, ~~or~~ the AmeriCorps National Civilian Community Corps program authorized under the National and Community Service Act, 1990 42 U.S.C. § 12637(d), and other payments to volunteers authorized by the National and Community Service Trust Act of 1993, P.L. 103-82, 42 U.S.C. §§ 12571, et seq., and administered by the Corporation for National and Community Service;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP), and utility payments and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) ~~the amount of the~~ mandatory salary reduction ~~of amount for~~ military service personnel used to fund the G.I. Bill;

(K) benefits from State and Community Programs on Aging, per Title III and Title V of the Older Americans Act of 1965 as amended by P.L. 114-144, Older Americans Act Reauthorization Act of 2016. Each state and various organizations receive Title V funds. These organizations include:

- (i) Experience Works;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons Foundation;
- (v) United States (U.S.) Forest Service;
- (vi) National Association for Spanish Speaking Elderly;
- (vii) National Urban League;
- (viii) National Council on Black Aging; and
- (ix) National Council on Indian Aging;
- (x) Asociación Nacional Pro Personas Mayores;
- (xi) Associates for Training and Development, Inc.;
- (xii) American Samoa;
- (xiii) Easter Seals, Inc.;
- (xiv) Goodwill Industries International, Inc.;
- (xv) Institute for Indian Development;
- (xvi) National Able Network;
- (xvii) National Asian Pacific Center on Aging;
- (xviii) National Caucus and Center on Black Aged, Inc.;
- (xix) National Older Worker Career Center;
- (xx) Operation A.B.L.E. of Greater Boston, Inc.;
- (xxi) Senior Service America, Inc.;
- (xxii) SER-Jobs for Progress National, Inc.;
- (xxiii) Workplace, Inc.; and
- (xxiv) VANTAGE Aging;

(L) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(M) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;

(N) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from exposure to radiation from nuclear testing and uranium mining;

(O) payments ~~received by~~ a Supplemental Security Income recipient receives that are necessary for the fulfillment of a Plan for Achieving Self-Support approved under Section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act;

(P) payments made to persons because of their status as victims of Nazi persecution under P.L. 103-286;

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(Q) payments made for the Experimental Housing Allowance Program under Annual Contributions Contracts entered into prior to January 1, 1975, per Section 23 of the U.S. Housing Act of 1937 as amended;

(R) monetary allowances provided to certain children of Vietnam War veterans, per Chapter 18 of Title 38 of the United States Code;

(S) federal funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to persons directly affected by the event, per the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended, 42 U.S.C. § 5155(d). This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

(T) the ~~value of the~~ food benefit allotment value under the Food and Nutrition Act of 2008;

(U) the ~~value of~~ supplemental food assistance value under the Child Nutrition Act of 1966 and the special food services program for children under the National School Lunch Act of 1970, both as amended, per Omnibus Budget Reconciliation Act of 1981; and

(V) income ~~received by~~ a member of the United States Armed Forces receives, per 37 U.S.C. Chapter 5 and, per 273.9(c)(20) of Title 7 of the Code of Federal Regulations that is:

- (i) received in addition to the service member's basic pay during combat deployment;
- (ii) received as a result of the service member's deployment or service in an area designated as a combat zone as determined per Executive Order or P.L.; and
- (iii) not received by the service member prior to the service member's deployment to or service in a federally designated combat zone.

## SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

### 340:40-9-2. Case changes

(a) **Change reporting.** ~~Between eligibility determinations, per Section 98.21(e)(1) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21(e)(1)), the~~ The household must report within 10 calendar days of the change occurring, when the household's gross income exceeds changes that exceed the income eligibility threshold for the family size, per Oklahoma Department of Human Services (DHS)(OKDHS) Appendix C-4, Child Care Eligibility/Copayment Chart, within 10-calendar days of the change occurring, per Section 98.21(e)(1) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21(e)(1)).

- (1) A computer-generated notice issues at certification and renewal ~~informing to~~ inform the client of the current

income eligibility threshold for his or her family size and instructs the client to report when the household income exceeds this amount.

(2) When the client fails to report an income increase timely that, if reported, would have resulted in benefit closure, the worker makes an overpayment referral to Adult and Family Services Benefit Integrity and Recovery Unit, per Oklahoma Administrative Code (OAC) 340:40-15-1.

(b) **Action taken on reported changes.** The worker must act on all changes ~~reported by~~ the household reports between renewal periods. Benefits do not decrease unless the client requests a decrease to avoid or reduce an overpayment or the reported change results in ~~closure of~~ the child care benefit closing, per (f) of this Section.

(c) **Changes that increase subsidized child care benefits.** When the client reports a change within 10-calendar days of the change that increases the amount of child care approved or decreases the family share copayment, the client and the worker jointly plan the change's effective date ~~of the change~~. When the client does not report the change within 10-calendar days of the change, the earliest date the worker increases the subsidized child care benefits is the first day of the month in which the client reports the change.

(d) **Additional child request.** When an additional child requires subsidized child care benefits, the worker completes the request within two-business days of the client providing all necessary verification to determine eligibility. When eligible, the child may be approved for subsidized child care benefits beginning with the request date ~~of request~~.

(e) **Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether the client reports the change timely. The worker completes provider changes within two-business days of the date the client reports the change.

(f) ~~Closure of subsidized child care~~ **Child care benefits closure.** When the client is no longer eligible for subsidized child care benefits, the closure date varies depending on circumstances. Refer to ~~DHS~~OKDHS Appendix B-2, Deadlines for Case Actions, for advance-notice deadline dates.

(1) The worker closes the subsidized child care benefits effective 10-calendar days from the date action is taken, when the:

- (A) payee for the child care benefit changes. When this occurs, a new application is needed, per OAC 340:40-3-1(a)(1)(C);
- (B) only child(ren) approved for subsidized child care leaves the home;
- (C) client already received income in excess of the income threshold, per ~~DHS~~OKDHS Appendix C-4;
- (D) client moves child care; or
- (E) client was approved for child care in error.

(2) The worker closes the child care benefit effective the last day of the current calendar month when the client's anticipated income for the next month is expected to exceed the income eligibility threshold, per 45 C.F.R. § 98.21(e)(1) and ~~DHS~~OKDHS Appendix C-4.

(3) The worker closes the child care benefit effective the last calendar day of the renewal month when:

- (A) the client does not meet a need factor;
- (B) the client is not pursuing ~~child support or other~~ potential income, per OAC 340:40-7-9;
- (C) the child reached the maximum age limit, per OAC 340:40-7-3; or
- (D) an adopted child ~~turned~~ returns 6 years of age and the family income must now be considered, per OAC 340:40-7-12. In this circumstance, a new application is required, per OAC 340:40-3-1(a)(1)(D).

(4) The worker closes the child care benefit effective three months from the approval date for job search child care, per OAC 340:40-7-8(a)(6).

(5) When the client receives Temporary Assistance for Needy Families (TANF) related subsidized child care, per OAC 340:40-7-8(e) and stops meeting a need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

~~(5)~~ When a client stops participating in Oklahoma Supplemental Nutrition Assistance Program Employment and Training Works (OK SNAP Works) component assignments and activities, per OAC 340:40-7-8(d) and does not meet another need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

~~(6)~~ When the client requests ~~closure of~~ the child care benefit be closed, the earliest date the worker closes the child care is the date action is taken.

~~(7)~~ When the client does not complete the benefit renewal timely, the system closes the child care benefit effective the last day of the renewal month.

(g) **Reopen action.** When a client's subsidized child care benefits close, benefits may be reopened within 30-calendar days of the closure effective date using current eligibility information unless the client must complete a new application, per OAC 340:40-3-1(a)(1). Child care benefits are not decreased unless the renewal is due, per 45 C.F.R. § 98.21(a).

**SUBCHAPTER 10. ELECTRONIC BENEFIT TRANSFER (EBT) SYSTEM FOR CHILD CARE**

**340:40-10-1. Electronic benefit transfer (EBT) system for child care**

(a) The EBT system used for child care tracks time and attendance for a child receiving subsidized child care and processes child care provider child care payments. This system involves use of a client or authorized representative using an EBT card by a client or authorized representative to document attendance by swiping the card through a point-of-service (POS) machine or recording attendance using the ECC Connect mobile app at the child care facility. The client swipes or authorized representative records real-time attendance or enters previous in and out times for up to 10-calendar days, the current day and nine previous days. The system works best when all or most of the client's swipes are completed client or authorized representative records attendance real time.

(b) The county EBT specialist issues an EBT card to a child care applicant at the time he or she applies for a child care benefit and views an EBT training video.

(c) Only two EBT cards are issued per Adult and Family Services child care case; one card for the parent or caretaker and one for an authorized representative. The authorized representative can be the other parent or someone else who helps the client take the child to, or pick the child up from, the child care facility. The client is responsible for all ~~swipes made~~ attendance by the authorized representative records. ~~The authorized representative must never be~~ client is prohibited from choosing the child care provider or anyone who is employed by the child care provider employs as the authorized representative.

(d) Two EBT cards can be issued per child in a Child Welfare case when each child in the case is residing ~~resides~~ with different foster parents.

**340:40-10-2. Client, worker, and provider electronic benefit transfer (EBT) responsibilities**

(a) **Client EBT responsibilities.** Client EBT responsibilities include:

- (1) viewing the client training video;
- (2) ~~swiping~~ recording correct attendance days and times with his or her EBT card through the provider's point-of-service (POS) machine or using the ECC Connect mobile app within 10-calendar days, current day and previous nine days;
- (3) checking the message on the POS machine or the ECC Connect mobile app after each ~~swipe~~ attendance entry to see if it is approved, denied, pending, or pending different provider. When the message shows denied or pending different provider, the client is responsible ~~to report~~ for reporting the problem to the worker right away;
- (4) not ~~swiping~~ recording attendance for any day the child does not attend child care;
- (5) not giving the EBT card or personal identification number (PIN) to anyone else, including the child care provider; and
- (6) paying for care ~~the Oklahoma Department of Human Services (DHS)~~ (OKDHS) does not pay because:

- (A) the client did not ~~swipe~~ record attendance timely for days and times his or her child attended child care;
- (B) ~~swipes~~ attendance entries were denied and the client did not ~~get them corrected~~ correct attendance within 10-calendar days; or
- (C) the provider loses the absent day payment for a weekly authorization because the client did not ~~swipe~~ record correct attendance for every day that the child attended care for a given month.

(b) **Worker EBT responsibilities.** Worker EBT responsibilities include:

- (1) ensuring that clients read and state they understand the EBT responsibilities shown on the application;
- (2) arranging for clients to receive their EBT cards and view the training video as soon as possible after the child care request is submitted;

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- (3) arranging for authorized representatives to receive their EBT cards and view the training video as soon as possible;
- (4) acting on ~~swipe attendance errors reported by clients~~ as soon as ~~they are reported~~ the client reports them;
- (5) acting on ~~EBT card misuse reports of misuse of the EBT card~~ as soon as they are reported, per Oklahoma Administrative Code 340:40-10-3.

(c) **Provider Child care provider EBT responsibilities.** ~~Provider~~ Child care provider responsibilities include:

- (1) never possessing or ~~swiping~~ a client's EBT card ~~through~~ or recording a child's attendance using the POS machine or the ECC Connect mobile app;
- (2) never moving the POS machine to another location or submitting electronic child care claims from another location without receiving prior ~~written~~ approval from ~~DHS~~ OKDHS Adult and Family Services Child Care Subsidy Unit staff;
- (3) requiring clients to ~~swipe~~ record attendance as child care is used;
- (4) never asking or requiring a client to ~~swipe~~ record attendance for a day the child does not attend; and
- (5) ensuring claimed attendance submitted via the EBT system is correct and voiding any incorrect transactions within the 10-calendar day swipe limit, current day and previous nine days.

### 340:40-10-3. Misuse of the electronic benefit transfer (EBT) card

- (a) When the worker becomes aware that the client or the authorized representative of the client is misusing his or her EBT card, the worker cancels that EBT card.
- (b) Misuse can occur when the client or authorized representative gives his or her EBT card to another person, such as the child care provider, to ~~swipe~~ record attendance or when the client knowingly ~~swipes~~ records incorrect attendance dates and times.
- (c) Before the EBT specialist issues a new EBT card, the client or authorized representative must view the EBT training video regarding proper use of the EBT card again.

### 340:40-10-4. Child care electronic benefit transfer (EBT) payment process

- (a) **Child care payments.** ~~The~~ Oklahoma Department of Human Services (~~DHS~~) (OKDHS) makes payments for child care services to providers electronically using the electronic benefit transfer (EBT) system unless the provider is an in-home child care provider. In-home child care providers are paid manually via the EBT system after submitting Form 10AD121E, Child Care Claim.
- (b) **Point-of-service (POS) machines.** Contracted child care providers are issued a POS machine within 10-calendar days of the date the ~~worker~~ authorizes care for a child and ~~the~~ child care provider notifies the ~~DHS~~ OKDHS contractor that he or she started caring for a child ~~eligible~~ authorized for ~~DHS~~ OKDHS subsidized child care and submits all necessary forms to the contractor.

- (c) **Attendance ~~swiping~~ Recording attendance.** Clients and authorized representatives use the POS machine or the ECC Connect mobile app to record actual times their child attends child care by ~~swiping an EBT card through the POS machine.~~ Providers Child care providers may charge clients for care provided on days they fail to ~~bring their EBT card~~ record attendance or when ~~the machine message shows care is denied~~ error message is received. When the client pays for child care that is later approved for that date(s), the child care provider must reimburse the client for any care paid above the family share copayment amount.

- (1) ~~Providers~~ Child care providers monitor the POS machine or ECC Connect mobile app to ensure correct attendance times are recorded. When incorrect times are recorded, the provider can void the incorrect transaction and ask the client to start over.
- (2) When clients or authorized representatives forget to ~~swipe their EBT card~~ record attendance for a day their child attends care, record incorrect times that ~~are voided by the provider~~ voids, or receive a denied error message, the system allows the client or authorized representative to ~~swipe~~ record previous in and out times for the current day and the previous nine days.
- (3) Based on attendance recorded and the level of care authorized, electronic settlements to child care providers are made weekly.

- (d) **EBT payment week.** The EBT payment week begins every Sunday at 12:01 a.m. and ends every Saturday at midnight. Electronic settlements are made each week in the child care provider's designated financial institution account on Tuesday morning for services provided two weeks prior to the current week. When the financial institution is closed on Monday or Tuesday or Monday is a holiday, the electronic settlement is deposited on Wednesday morning.

- (e) **Manual claims process.** When the child care provider reports he or she was not paid correctly, the provider may submit Form 10AD121E to the DHS Financial Services Electronic Payment Services (EPS) Unit for a manual adjustment. Manual claims must be submitted within 90-calendar days of the error. EPS staff evaluates whether to adjust the payment to the provider based on the reason care was not paid electronically.

- (1) When the client or authorized representative ~~did~~ does not attempt to record attendance electronically, ~~DHS~~ OKDHS does not pay the child care provider for those days unless extenuating circumstances beyond the client's, authorized representative's, or provider's control exist. These extenuating circumstances must be documented on Form 10AD121E.
- (2) EPS staff makes manual adjustments when the:
  - (A) client ~~swiped~~ records correct attendance times; ~~but swipes that were~~ are denied in error;
  - (B) EBT system applies an incorrect family share copayment ~~applied by the EBT system was incorrect;~~ or
  - (C) provider ~~was~~ is paid the wrong rate because:
    - (i) the child care plan ~~was~~ is incorrectly coded;
    - (ii) an incorrect birth date ~~was~~ is entered for a child; or



- (iii) an incorrect star status ~~was~~ is paid.
- (f) **Absent-day payments.** ~~Providers~~ Child care providers can be paid an absent-day payment for a child who misses some scheduled attendance days of scheduled attendance and is authorized for a weekly unit type. An absent-day payment is electronically deposited in the provider's account in their weekly settlement received after the 10th day of the month following the month care was given. To be eligible to receive this additional payment, the child must be approved for a weekly unit type and attend the minimum number of full-time days, ~~shown on DHS~~ OKDHS Appendix C-4-B, Child Care Provider Rate Schedule, for that month. The provider is not eligible for an absent-day payment when the child did not attend the minimum number of full-time days for that calendar month or attended the maximum days paid, ~~as shown on DHS~~ per OKDHS Appendix C-4-B.

**SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES**

**340:40-13-5. Child care provider contracts**

(a) **Criteria.** A child care ~~facility~~ program owner and the Oklahoma ~~Department of Human Services (DHS)~~ OKDHS ~~director~~ Director or his or her designee must sign Form 08CC001E, Child Care Provider Contract, before ~~DHS~~ OKDHS pays for out-of-home child care services. By signing the contract, the child care provider agrees to not take into account a person's race, color, religion, sex, national origin, or disability in deciding which children to accept in the child care program or in how services are provided to them. Age may be a factor only to the extent that certain services are designed for a particular age group.

- (1) Written complaints of ~~noncompliance with the assurance that a child care provider is not complying with assurances~~ in (a) of this Section ~~may be~~ made to the ~~DHS~~ OKDHS Director or to the Secretary of Health and Human Services, Washington, D.C., 20201.
- (2) Local Child Care Services (CCS) licensing staff provides initial contract information for child care ~~facilities~~ programs. The child care provider contacts Adult and Family Services (AFS), Child Care Subsidy Unit staff to request a contract.
- (3) Child care contracts are valid for a maximum of one year. Contracts may be renewed at the sole option of ~~DHS~~ OKDHS for successive one year terms per (g) of this Section.

(b) **License and star status for child care centers and homes.** ~~DHS~~ OKDHS does not contract with out-of-state child care providers ~~located out of state~~. Child care providers ~~may~~ only obtain a ~~DHS~~ OKDHS contract after they are licensed or permitted.

- (1) A child care center provider requesting a contract ~~must~~ is required to have a license or permit and a one plus or higher star status. Community Hope Centers are exempt from participation in the Stars quality rating system.
- (2) A child care home provider requesting a contract ~~must~~ is required to have a license or a permit.

- (A) When licensed, the child care home provider ~~must~~ may have a one star or higher status ~~of one star or higher~~.
- (B) When on permit, the child care home provider must have a one star status ~~of one star plus or higher status~~.
- (c) **Procedure for obtaining child care contracts.** The procedures in (1) through (5) of this subsection are used to obtain child care contracts.

(1) CSS licensing staff gives the child care provider ~~DHS~~ OKDHS Publication 07-12, "Obtaining a Contract with OKDHS for Child Care Subsidy Payments" and instructs the provider to contact AFS Child Care Subsidy Unit staff to obtain a ~~DHS~~ OKDHS child care contract.

(2) When ~~contacted by the~~ a child care program owner of a child care facility, or another person authorized to sign the contract contacts AFS Child Care Subsidy Unit staff, ~~staff explains to the owner responsible person authorized to sign the contract~~ that he or she must provide documents listed in (A) through (D) of this paragraph before signing a contract. Documents include a copy of:

- (A) ~~the owner's Social Security card~~ a document that verifies the identity of the owner or responsible person authorized to sign the contract;
- (B) a document from the Internal Revenue Service verifying the employer identification number ~~for a child care center provider and a~~ A home child care provider who is not a sole proprietor may provide a copy of his or her Social Security card in lieu of the employer identification number;
- (C) the certificate of completion ~~off~~ for the required online "Orientation to Child Care Subsidy Contracts" training; and
- (D) ownership verification.

(3) Once the owner provides the required documents, AFS Child Care Subsidy Unit staff sends Form 08CC001E to the child care provider and explains that the earliest date a contract is valid is the date of ~~approval by the~~ ~~DHS~~ OKDHS Director or designee approves the contract.

(4) The owner or person authorized to sign the contract signs and returns the contract to the AFS Child Care Subsidy Unit.

(5) AFS Child Care Subsidy Unit staff processes the contract request for approval or denial.

- (A) When approved, AFS Child Care Subsidy Unit staff assigns a contract number and sends a copy of the signed contract to the child care provider.
- (B) When denied, AFS Child Care Subsidy Unit staff sends a letter to the child care provider.

(d) **Changes the provider must report.** Form 08CC001E informs child care providers of changes they must report to the AFS Child Care Subsidy Unit no less than 30-calendar days prior to the effective date of any changes. When the provider fails to report the anticipated change timely and a new contract is needed, a gap may occur in the child care subsidy payment to the provider. Changes that must be reported include:

- (1) collaborations or agreements;
- (2) ~~change of ownership~~ change;

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- (3) ~~change of legal business entity change;~~
  - (4) change in facility status;
  - (5) legal name change of the business;
  - (6) plan to stop caring for children;
  - (7) ~~reduction of star status reduction;~~
  - (8) changes in the responsible person authorized to sign the contract or in that person's legal name~~change of that person;~~
  - (9) disqualification, suspension, or debarment from the Child and Adult Food Care Program or any other federal program;
  - (10) when a person who has an ownership or ~~an~~ employment relationship with the child care provider is convicted of a criminal offense; and
  - (11) provider address ~~change of address~~.
- (e) **Changes that require a new contract.** A new contract is required when changes listed in (1) through (3) of this subsection occur.
- (1) **Change in ownership.** ~~AAn ownership change in ownership~~ occurs when the owner of a child care center or child care home~~child care program~~ changes.
  - (2) **Change of legal business entity.** A change of legal business entity is a change from one legal business entity type to another. Refer to OKDHS Appendix L-7, Ownership Proof Chart, for a list of legal business entity types.
  - (3) **Change in facility status.** A change in facility status occurs when a child care home changes to a child care center or a child care center changes to a child care home.
- (f) **Providing care at a different site than is authorized.** When the child care provider signs the child care contract, he or she agrees to provide care only at the physical address designated in the contract.
- (1) After obtaining prior ~~written~~ approval from AFS Child Care Subsidy Unit staff, a child care center provider owning more than one child care center may be authorized to move children receiving subsidized child care benefits ~~and the point of service (POS) machine~~ to an alternate center for a designated time period of time. A child care center provider should not move a point-of-service (POS) machine or submit electronic claims for care at another location until the provider receives approval from AFS Child Care Subsidy Unit staff.
  - (2) AFS Child Care Subsidy Unit staff may provide written approval when (A) through (E) of this paragraph are met.
    - (A) The same owner or legal business entity operates the alternate site.
    - (B) The alternate site is licensed and contracted at the same star level and the child care provider has adequate licensed capacity at the alternate site.
    - (C) There is a legitimate business reason for providing care in another location.
    - (D) The provider advises AFS Child Care Subsidy Unit staff how he or she is ensuring parents are aware their children are being cared for at a different location.
    - (E) The provider advises AFS Child Care Subsidy Unit staff of the date of expected return to the contracted site.
- (g) **Child care contract renewal.** Child care contracts may be renewed at the sole option of ~~DHS-OKDHS~~ DHSOKDHS for successive one-year terms, under the same terms and conditions, unless ~~DHSOKDHS~~ DHSOKDHS makes changes to Form 08CC001E. The child care contract is not renewed when:
- (1) the child care provider or ~~DHSOKDHS~~ DHSOKDHS gives written notice of its intent not to renew to the other party at least 30-calendar days prior to the previous contract term's expiration of the ~~previous contract term~~;
  - (2) during the contract renewal period, the provider fails to:
    - (A) complete all required contract training; or
    - (B) provide any other information or documents requested.
- (h) **Contract violations.** By signing the child care provider contract, Form 08CC001E, the child care provider agrees to abide by the contract's terms of the contract. When ~~local~~ county staff becomes aware a child care provider is violating ~~the contract terms of the contract~~, he or she emails the circumstances to AFS Child Care Subsidy Unit staff. ~~Local~~ County staff may also complete Form 19MP001E, Referral Form, to report the violation to the Office of Inspector General. Examples of contract violations include, but are not limited to:
- (1) discriminating against persons seeking services by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, or the Americans with Disabilities Act of 1990, as amended;
  - (2) failing to maintain a drug-free workplace;
  - (3) operating over licensed capacity;
  - (4) possessing ~~or swiping~~ a client's electronic benefit transfer (EBT) card or recording attendance for a child using the POS machine or the ECC Connect mobile app;
  - (5) knowing a client's EBT personal identification number (PIN);
  - (6) refusing ~~unlimited access by a parent or caretaker~~ unlimited access to the facility areas of the ~~facility~~ used for child care during ~~the hours of operation~~ hours;
  - (7) failing to ensure the parent or caretaker records accurate time and attendance information ~~on using the POS machine or the ECC Connect mobile app~~. During the school year when ~~When~~ a child is approved for a blended unit type or ~~any time~~ part-time care is approved, the parent or caretaker is only required to ~~enter one swipe per day~~ to record attendance one time per day because the number or hours the child attends does not affect the child care provider payment amount;
  - (8) charging a client receiving subsidized child care more than the ~~DHSOKDHS~~ DHSOKDHS rate for days and hours ~~authorized by DHSOKDHS~~ authorized by DHSOKDHS;
  - (9) charging a client receiving subsidized child care an allowable fee when not charged to ~~non-DHS non-OKDHS~~ participants;
  - (10) failing to post all of the facility's rates and fees;

(11) charging or requiring a client to ~~swipe~~record attendance for days and hours outside of client's child care plan when those days and hours are a requirement ~~of the imposed by the child provider, and not at the client's choice of the client;~~

(12) failing to advise and provide ~~DHSOKDHS~~ a completed copy of any collaboration or agreement the child care provider enters into within 30-calendar days of signing the collaboration or agreement. This includes agreements with Head Start, Early Head Start, public schools, or other programs receiving federal or state funding;

(13) claiming or receiving payment from ~~DHSOKDHS~~ for any care hours of care the provider is not charging all parents ~~for care~~ because the provider receives federal or state funds for those hours. Refer to Oklahoma Administrative Code (OAC) 340:40-5-1(7) regarding collaborations;

(14) claiming child care payment for care given for any hours in an unlicensed collaborative classroom;

(15) moving the children from the agreed upon location shown in the contract and claiming for services at the other location without prior, ~~written~~ approval from AFS Child Care Subsidy Unit staff;

(16) moving the POS machine or submitting electronic claims without receiving prior, ~~written~~ approval from AFS Child Care Subsidy Unit staff, per subsection (f) of this Section;

(17) failing to inform ~~DHSOKDHS~~ of a change in facility status, legal business entity, business ownership ~~of the business~~, or the responsible person at least 30-calendar days in advance of the change;

(18) failing to inform ~~DHSOKDHS~~ in writing within 10-calendar days of any person who has an ownership or controlling interest in, or is an agent or managing employee of, the child care business, who was convicted of a criminal offense related to such person's involvement under Titles XVIII, XIX, or XX of the Social Security Act;

(19) failing to allow full access to the facility's premises and personnel to investigate a complaint;

(20) failing to report the ~~income from the new~~ child care business income within 10-calendar days of first receipt to ~~his or her~~ the child care provider's AFS worker when ~~receiving~~ he or she receives benefits;

(21) a home child care provider claiming payment for child care given by a home provider provided for an employee's child. Refer to OAC 340:40-5-1(7);

(22) subcontracting services to another provider; or

(23) breaching the contract ~~signed by the child care provider signs~~ with the ~~DHSOKDHS~~ EBT contractor.

(i) ~~Cancellation of child care~~Child care provider contracts contract cancellation. AFS Child Care Subsidy Unit staff ~~initiates the cancellation by issuing~~issues a notice to the child care provider to initiate child care contract cancellation. When AFS cancels a contract, all open child care authorizations for ~~the that~~ provider close automatically. Contracts may be cancelled:

(1) with cause. The effective cancellation date ~~of cancellation~~ is 13-calendar days after AFS Child Care Subsidy Unit staff mails the notice. This allows three-calendar days for mailing time. The notice ~~must contain~~contains a reference to the grounds for cancellation including the specific contract provision(s) violated; or

(2) without cause. The effective cancellation date ~~of cancellation~~ is 33-calendar days after AFS Child Care Subsidy Unit staff mails the notice. This allows three-calendar days for mailing time.

[OAR Docket #22-543; filed 7-5-22]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM**

[OAR Docket #22-544]

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- Subchapter 1. General Provisions
  - 340:50-1-3 [AMENDED]
  - Subchapter 5. Non-Financial Eligibility Criteria
  - Part 1. Household Definition
  - 340:50-5-1 [AMENDED]
  - 340:50-5-2 through 340:50-5-3 [REVOKED]
  - 340:50-5-5 [AMENDED]
  - 340:50-5-6 [REVOKED]
  - Part 3. Special Households
  - 340:50-5-30 [REVOKED]
  - Part 9. Work Registration
  - 340:50-5-87 [AMENDED]
  - 340:50-5-92 [AMENDED]
  - Part 10. Able-bodied Adults without Dependents
  - 340:50-5-100 [AMENDED]
  - Part 11. Oklahoma Supplemental Nutrition Assistance Program Works (OK SNAP Works)
  - 340:50-5-106 [AMENDED]
  - Subchapter 9. Eligibility and Benefit Determination Procedures
  - 340:50-9-5 [AMENDED]
  - Subchapter 10. Electronic Benefit Transfer (EBT)
  - 340:50-10-1 [AMENDED]
  - 340:50-10-9 [AMENDED]
  - 340:50-10-11 [REVOKED]
  - Subchapter 11. Special Procedures
  - Part 1. Households Entitled to Expedited Service
  - 340:50-11-5 [AMENDED]
  - 340:50-11-6 [REVOKED]
  - Part 3. Simplified Supplemental Nutrition Assistance Program (SSNAP) for Temporary Assistance for Needy Families (TANF) and Companion State Supplemental Payment (SSP) Recipient(s)
  - 340:50-11-20 [AMENDED]
  - 340:50-11-21 through 340:50-11-22 [REVOKED]
  - 340:50-11-23 [AMENDED]
  - 340:50-11-24 through 340:50-11-25 [REVOKED]
  - Subchapter 15 Overpayments and Fraud
  - Part 1. Overpayments
  - 340:50-15-1 [AMENDED]
  - 340:50-15-2 [REVOKED]
  - 340:50-15-5 [REVOKED]
  - 340:50-15-7 [AMENDED]
  - 340:50-15-9 [REVOKED]
  - Part 3. Intentional Program Violation
  - 340:50-15-25 [AMENDED]
  - (Reference WFs 21-03 and 22-50)

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## **AUTHORITY:**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162) and Sections 271.2, 272.9, 273.1, 273.7, 273.16, 273.18, 273.23, 273.24, 273.25, 274.2, 274.7, and 278.1 of Title 7 of the Code of Federal Regulations (C.F.R.); Volume 85 FR, page 52025 (Aug. 24, 2020); and Volume 86 FR, page 358 (Jan. 5, 2021).

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

December 20, 2021

## **COMMENT PERIOD:**

January 18, 2022 through March 18, 2022

## **PUBLIC HEARING:**

March 23, 2022

## **ADOPTION:**

March 23, 2022

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

March 24, 2022

## **APPROVED BY GOVERNOR'S DECLARATION ON:**

Approved by Governor's Declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 15, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

### **Superseded Rules:**

Subchapter 5. Non-Financial Eligibility Criteria

Part 9. Work Registration

340:50-5-87 [AMENDED]

Part 10. Able-bodied Adults without Dependents

340: 50-5-100 [AMENDED]

Part 11. Oklahoma Supplemental Nutrition Assistance Program Works (OK SNAP Works)

340: 50-5-106 [AMENDED]

Subchapter 10. Electronic Benefit Transfer (EBT)

340: 50-10-9 [AMENDED]

(Reference WF 21-03)

### **Gubernatorial Approval:**

July 19, 2021

### **Register Publication:**

39 Ok Reg 95

### **Docket Number:**

21-732

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

The proposed amendments to Chapter 50, Subchapter 1 amend the rules to: (1) add who may use Supplemental Nutrition Assistance Program (SNAP) food benefits for the household; (2) incorporate and update information revoked from another Section in a different Subchapter regarding homeless meal provider requirements and add examples of such public or private, non-profit organizations; (3) add prior payment prohibition; (4) add information regarding container deposit fees; (5) update the definition of a communal dining facility; (6) add meals served by contracted restaurants to homeless persons at low or reduced prices to eligible food SNAP benefits that may be purchased and explain how restaurants must contract with Oklahoma Human Services (OKDHS); (7) add legal citations; (8) add clarifying language regarding meal delivery services, social services provision, and volunteers; and (9) update terminology.

The proposed amendments to Chapter 50, Subchapter 5 amend the rules to: (1) revoke Sections and incorporate relevant information into other Sections within the same Subchapter regarding: (a) persons who may not be considered separate households; (b) persons temporarily absent from the home; (c) non-household members' income and deductible expenses; and (d) homeless meal providers; (2) add and update legal and rule citations; (3) add clarifying language; (4) add information regarding persons ineligible to receive SNAP benefits; (5) remove the implementation deadline for provider determinations; (6) comply with new federal regulations to: (a) add supervised job search to types of job search activities; (b) add employment and training programs that serve veterans to acceptable work programs for able bodied adults without dependents (ABAWD); (c) add circumstances when Adult and Family Services (AFS) staff must determine the ABAWD status of adult household members; (d) add a written and oral communication requirement when the household adds a household member or a household member loses

an exemption; (e) remove the requirement that an ABAWD retain his or her job to show good cause for failing to meet the ABAWD work requirement; (f) add and define case management services; (g) replace job search with supervised job search as an Oklahoma Supplemental Nutrition Assistance Program Works (OK SNAP Works) component; (h) update definitions for supervised job search, job search training, work experience, and job retention; (i) require that job retention last for at least 30-calendar days; (j) add the requirement that contracted providers must inform the OK SNAP Works coordinator when a referred person is determined unsuitable for the assigned component and the reason for the provider determination; and (k) update OK SNAP Works coordinator responsibilities; (7) clarify what rights and responsibilities AFS staff must address with applicants or recipients; (8) remove the requirement that an ABAWD retain his or her job to show good cause for failing to meet the ABAWD work requirement; (9) update terminology; (10) clarify who may participate in OK SNAP Works; and (10) make non-substantive changes to improve rule clarity.

The proposed amendments to Chapter 50, Subchapter 9 amend the rules to: (1) remove the income reporting threshold amount for change reporters and refer to an appendix instead; (2) correct a policy citation; and (3) update terminology.

The proposed amendments to Chapter 50, Subchapter 10 amend the rules to: (1) revoke a Section and incorporate relevant information regarding benefit expungement and how to redeem SNAP food benefits after moving to another state into another Section within the same Subchapter; (2) add clarifying information; (3) update when OKDHS expunges SNAP EBT benefits from 12 months to 274 calendar days; (4) define inactivity; and (5) add an expungement notice requirement.

The proposed amendments to Chapter 50, Subchapter 11 amend the rules to: (1) change Section titles; (2) revoke Sections and incorporate relevant information into other Sections within this Subchapter regarding: (a) the expedited certification period; (b) household definition for the Simplified Supplemental Nutrition Assistance Program (SSNAP); (c) when SSNAP rules do not apply to Temporary Assistance for Needy Families (TANF) applicants; (d) food benefit allotments; and (e) SNAP benefit proration; (3) add legal citations and a rule citation; (4) clarify multiple expedited services certifications information and the income determination process for SSNAP households who receive TANF cash assistance; (5) add resource and non-financial criteria to SSNAP rules; and (6) update a rule citation.

The proposed amendments to Chapter 50, Subchapter 15 amend the rules to: (1) change a Section title; (2) revoke Sections and incorporate relevant information into other Sections of this Subchapter regarding: (a) when an overpayment claim is not established; (b) fair hearing rights; and (c) overpayment claims termination; (3) add an intentional program violation (IPV) definition; (4) clarify how an IPV is determined; (5) add OKDHS imposes an appropriate IPV disqualification period when a court fails to impose a disqualification period and the court order does not prohibit it; (6) add legal citations; and (7) update terminology.

### **CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **340:50-1-3. Utilization of benefits**

(a) **Scope and applicability.** Under the Supplemental Nutrition Assistance Program (SNAP), households receive food benefits based on their level of need. Participating households may use their benefits to purchase eligible food at retail stores ~~which are that Food and Nutrition Services (FNS) has authorized by Food and Nutrition Services (FNS) to accept SNAP food benefits.~~ State ~~and/or~~ local sales tax cannot be charged

on eligible food purchases paid for with benefits. In specified instances, persons may use their benefits to purchase prepared meals. Benefits may be used only by the household, or other persons the household selects to purchase eligible food for the household, per Section 274.7 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 274.7).

(b) **Eligible food.** Per 7 C.F.R. § 271.2, eligible food means:

- (1) any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods, and hot food products prepared for immediate consumption;
- (2) seeds and plants to grow foods for ~~the~~eligible households' personal consumption of eligible households;
- (3) meals prepared and delivered by an authorized meal delivery service to households eligible to use SNAP food benefits to purchase delivered meals;
- (4) meals served by an authorized communal dining facility for the elderly or Supplemental Security Income (SSI) recipients to households eligible to use SNAP food benefits for communal dining;
- (5) meals prepared and served by a drug addiction or alcoholic treatment ~~or~~and rehabilitation center to eligible residents and children of residents who live with their parents ~~in the treatment center;~~
- (6) meals prepared and served by a group living arrangement facility to residents who are blind or disabled ~~as defined in OAC~~per Oklahoma Administrative Code 340:50-5-4;
- (7) meals prepared and served by a shelter for battered women and children to its eligible residents; ~~and~~
- (8) meals prepared for and served by an authorized public or private, non-profit establishment, such as a soup kitchen or temporary shelter, approved by an appropriate state or local agency that feeds homeless meal provider to eligible homeless households persons; ~~and~~
- (9) meals prepared by a restaurant that contracts with an appropriate state agency to serve meals to homeless persons at low or reduced prices.

(c) **Prior payment prohibition.** Participating households must not use their SNAP food benefits to pay for any eligible food purchased prior to the time they present their electronic benefit (EBT) cards to authorized retailers or meal services, per 7 C.F.R. § 274.7. Households must also not use their SNAP food benefits to pay for any eligible food before receiving the food, except when prior payment is made to purchase food from a nonprofit cooperative food purchasing venture.

(d) **Container deposit fees.** SNAP food benefits may not be used to pay for deposit fees in excess of the amount of the State fee reimbursement required to purchase any food or food product contained in a returnable bottle or can, regardless of whether the fee is included in the shelf price posted for item, per 7 C.F.R. § 274.7. The returnable container type and fee must be included in State law in order for participating households to pay for the upfront deposit with their SNAP benefits. When a SNAP eligible product has a State deposit fee associated with it, the product remains eligible for purchase with SNAP benefits, and the State deposit fee may be paid with SNAP as well;

however, any fee in excess of the State deposit fee must be paid in cash or other payment form other than with SNAP benefits.

(e) **Communal dining and meal delivery services.** The criteria in (1) through (2) of this subsection is used to determine ~~whether if~~ household members ~~can~~ qualify to use their food benefits at communal dining facilities or for meal delivery services.

(1) **Communal dining facility.** ~~A person 60 years of age or over or a person receiving Supplemental Security Income (SSI) and his or her spouse, regardless of the spouse's age, may use benefits to purchase meals especially prepared at a communal dining facility authorized by FNS to accept food benefits. A communal dining facility may accept SNAP food benefits only after authorization by FNS approval. Communal dining facility means a facility such as a:~~

- (A) senior citizens centers;
- ~~(B) apartment buildings occupied primarily by elderly persons;~~
- ~~(C) any public or non-profit private school which prepares establishments that prepare and serve meals especially for elderly persons, during special hours or Supplemental Security Income (SSI) recipients, and their spouses. Elderly persons are persons 60 years of age and older; and~~
- ~~(B) certain other public or non-profit establishments that prepare and serve meals for the feed elderly persons, SSI recipients, and their spouses;~~
- ~~(C) federally subsidized housing for the elderly where meals are prepared for and serviced to the residents; and~~
- ~~(D) a private establishment establishments under contract with for the a state or local agency to offer at concessional prices, meals prepared especially for the at low or reduced prices to elderly persons, or disabled SSI recipients, and their spouses.~~

(2) **Meal delivery service.** A person 60 years of age or older or a person under age 60 who is meal delivery service means a political subdivision, a private non-profit organization, or a private establishment that contracts with a state or local agency to prepare and deliver meals at low or reduced prices to elderly persons and their spouses, and to physically, mentally, or otherwise disabled persons, and their spouses to the extent that the person is they are unable to adequately prepare all his or her of their meals is eligible to purchase meals with benefits. If the household member lives with a spouse, the spouse may also purchase meals from a non-profit meal delivery service regardless of age or disability.

(f) **Homeless meal providers.** FNS authorizes homeless meal providers as retail food stores after they apply and qualify to accept food benefits from homeless SNAP food benefit recipients, per 7 C.F.R. § 278.1.

- (1) **Homeless meal providers must:**
  - (A) be public or private, non-profit organizations as defined by the Internal Revenue Service, per Section 501(c)(3) of Title 26 of the United States Code;

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(B) serve meals that include food purchased by the provider;

(C) meet requirements, per 7 C.F.R. § 278.1(a) and (b); and

(D) provide evidence to Oklahoma Human Services (OKDHS) that they serve meals to the homeless to obtain OKDHS approval prior to seeking FNS approval.

(2) Homeless meal providers may not act as authorized representatives for homeless SNAP food benefit recipients, per C.F.R. § 272.3(n)(4).

(g) **Homeless restaurant meals.** FNS may approve as retail food stores, restaurants that contract with OKDHS to sell meals to homeless SNAP households in exchange for SNAP food benefits, per 7 C.F.R. § 272.9 and 7 C.F.R. § 278.1(i). The restaurant must provide a copy of the contract to FNS when it applies for approval to accept SNAP food benefits. The contract requires the restaurant to offer the meals at low or reduced prices and specify the approximate price or the amount and type of price reduction. Examples of reduced prices include, but are not limited to:

(1) a percentage reduction;

(2) a set dollar amount reduction;

(3) a daily special meal; or

(4) an offer of a free food item or beverage, excluding alcoholic beverages.

(h) **Social services.** The worker is responsible for providing those or referring families for social services, within Oklahoma Department of Human Services (OKDHS) policy, that the family needs and desires and for making appropriate referrals as indicated requests, when available. It is OKDHS staff are required to make mandatory that referrals be made to the Children and Family Services Division, Child Protective to OKDHS Child Welfare Services, on all situations involving suspected when child abuse of children is suspected.

(ei) **Volunteers.** Volunteers or persons other than workers may be used to assist in program informational activities, such as outreach, prescreening, assisting the client helping clients with complete and submit SNAP food benefit applications, and transportation, but securing needed verification. Only authorized OKDHS staff may not interview the client clients to determine SNAP food benefit eligibility or and certify households, per 7 C.F.R. § 272.4.

## SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

### PART 1. HOUSEHOLD DEFINITION

#### 340:50-5-1. Food benefit household composition

(a) **Household definition.** A food benefit household may be composed of anyone of the persons or groups of persons listed in paragraphs (1) - (5)(3) of this subsection, provided that such persons or groups are not residents of an institution or boarding house unless otherwise specified in this Section.

A-Per Section 273.1 of Title 7 of the Code of Federal Regulations, a food benefit household is a:

(1) a person who lives alone;

(2) a person or group of persons who lives with others, but who customarily purchases food and prepares meals for home consumption separate and apart from the others; or

(3) a group of persons who live together and customarily purchases food and prepares meals for home consumption;

(4) a group of persons who live with others but who customarily purchase food and prepare meals for home consumption separate and apart from the others; or

(b) **Required household combinations.** Separate food benefit household status may not be granted to persons described in (1) through (4) of this subsection even if they customarily purchase food and prepare meals for home consumption separate and apart from the others. Persons living together that must be included in the food benefit household include:

(1) a spouse, ceremonial or common law, of a household member;

(2) children, 21 years of age and younger, who live with their natural or adoptive parent(s) or stepparent(s);

(3) children who are 17 years of age and younger and live with, and are under the parental control of, a household member other than their natural or adoptive parent(s) or stepparent(s).

(A) To be considered under parental control for the purposes of this provision, a child must be financially or otherwise dependent on a food benefit household member and not be defined as an adult. A minor may be considered emancipated when the district court confers upon the minor the rights of majority, per Chapter 4 of Title 10 of the Oklahoma Statutes.

(B) For this provision's purposes, the worker considers the child to be under parental control when he or she is financially or otherwise dependent on a household member.

(C) This provision does not apply to foster children or children placed in the home by Developmental Disabilities Services; or

(4) persons who live together and customarily purchase and prepare meals together except, per (c) of this Section.

(c5) **Elderly and disabled persons.** a person age An otherwise eligible household member who is 60 or years of age and older and his or her spouse living and eating with others who is unable to purchase and prepare meals because the person he or she suffers from a disability considered permanent under the Social Security Act or a non-disease related, severe, permanent disability may be considered, together with his or her spouse, a separate household from the rest of the household.

(1A) The Separate household status must not be granted under this provision when the gross income of the others with whom the person and his or her spouse are living, is first determined as if they were applying for participation as a separate household. The other persons' gross income, cannot exceed live exceeds 165% percent of the

federal poverty level, as shown in per Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, Table III in order for the applicant or recipient to participate as a separate household.

(2B) When it is not obvious that a person suffers from a non-disease related, severe, permanent disability, or that the person is unable to purchase and prepare meals, the worker requests a physician's statement of the disability or inability to purchase and prepare meals.

(3C) See OAC Refer to Oklahoma Administrative Code (OAC) 340:50-5-4 regarding how to determine if a person is considered disabled under the Social Security Act when a payment is not received.

(d) **Periods of absence.** A person who is away from the home for extended time periods during the month may be considered a food benefit household member when he or she returns to the home for part of each month. This includes persons who are away working, attending school, and similar situations.

(1) A person who attends a boarding school, including the state schools for the deaf and blind, is not considered institutionalized as long as he or she returns home on weekends and holidays.

(2) A child who lives with a parent on weekends and occasionally at other times may be claimed as part of the parent's food benefit household as long as the child is not included in another active food benefit household. In instances where both the father and mother of the child participate in the Supplemental Nutrition Assistance Program (SNAP) during the same month, the parent who has the child the majority of the time is authorized to include the child in his or her SNAP household.

(e) **Persons ineligible for SNAP food benefits.** Persons who are ineligible to receive SNAP food benefits as separate households or as a member of any household include:

(1) certain non-household members as specified, per OAC 340:50-5-5;

(2) households or household members participating in a food distribution program operated by Indian tribal organizations, per OAC 340:50-5-7;

(3) residents of institutions, per OAC 340:50-5-7.1; and

(4) persons considered disqualified or ineligible, per OAC 340:50-5-10.1.

**340:50-5-2. Periods of absence [REVOKED]**

A person who is away from the home for extended periods during the month, but who returns to the home for part of each month, may be considered a member of the food benefit household. This would include persons who are away working, attending school, and similar situations.

(1) A person who attends a boarding school, including the state schools for the deaf and blind, is not considered institutionalized as long as he or she returns home on weekends and holidays.

(2) A child who lives with a parent on weekends and occasionally at other times may be claimed as part of the

parent's food benefit household as long as the child is not included in another active food benefit household. In instances where both the father and mother of the child participate in the Supplemental Nutrition Assistance Program (SNAP) during the same month, the parent who has the child the majority of the time would be authorized to include the child in his or her SNAP household.

**340:50-5-3. Persons who cannot be separate food benefit households [REVOKED]**

Separate food benefit household status may not be granted to persons living together, as described in (1) through (4), even if they customarily purchase food and prepare meals for home consumption separate and apart from the others, except as otherwise specified in this Section. Separate status may not be granted to:

(1) a spouse, ceremonial or common law, of a household member;

(2) children, 21 years of age and younger, living with their natural or adoptive parent(s) or stepparent(s);

(3) children, 17 years of age and younger who live with and are under the parental control of an adult who is someone other than their natural or adoptive parent(s) or stepparent(s).

(A) Per Chapter 4 of Title 10 of the Oklahoma Statutes, a minor may be considered emancipated if the district court confers upon the minor the rights of majority.

(B) The worker considers the child to be under parental control for purposes of this provision when he or she is financially or otherwise dependent on a member of the household.

(C) This provision does not apply to foster children or children placed in the home by the Developmental Disabilities Services Division (DDSD); or

(4) persons who live together and customarily purchase and prepare meals together except per OAC 340:50-5-4(5).

**340:50-5-5. Non-household members**

(a) **Non-household members.** Persons residing in with a household who cannot be considered household members of the food benefit household are termed non-household members, and are Oklahoma Human Services (OKDHS) does not consider inconsider non-household members when determining the household's eligibility or food benefit allotment. Non-household members are described in (1) through (6) of this Section subsection. Except for ineligible students, persons who cannot be a separate food benefit household, per Section 273.1(b)(1) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.1(b)(1)) and Oklahoma Administrative Code (OAC) 340:50-5-3340:50-5-1(b), are not considered non-household members.

(1) **Roomers.** Roomers are persons to whom the household furnishes provides lodging for compensation, but not meals. They may participate in the Supplemental

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Nutrition Assistance Program (SNAP) as separate households.

(2) **Boarders.** ~~Per Section 273.1(b)(3) of Title 7 of the Code of Federal Regulations, 7 C.F.R. § 273.1(b)(3), boarders~~ Boarders are residents of a commercial boarding house ~~and~~ persons to whom the household ~~furnishes~~ provides lodging and meals and who pay a reasonable monthly payment for board, ~~per 7 C.F.R. § 273.1(b)(3).~~

(A) A commercial boarding house is ~~defined~~ as an establishment that offers meals and lodging for compensation with the intention of making a profit, regardless of the number of residents. ~~The number of boarders residing in a boarding house cannot be used to determine if a boarding house is a commercial enterprise.~~ Boarders who live in a commercial boarding house are not eligible to participate in SNAP.

(B) ~~Households containing a boarder or the proprietor of a commercial boarding house may participate in the program, separate and apart from the boarders or residents of the boarding house, when the household meets all of the eligibility requirements for participation.~~ All other persons or groups of persons that pay a reasonable amount for meals or meals and lodging are considered boarders and are only eligible to participate in SNAP when included in the same food benefit household that provides the board. The household providing the board has the option of applying and receiving SNAP food benefits, when eligible, independent of the boarder(s), or the household providing the board may choose to include the boarder(s) in its food benefit household.

(C) To be considered a reasonable monthly payment for board, a boarder whose arrangement is for:

- (i) more than two meals per day must pay an amount that equals or exceeds the maximum food benefit allotment amount for the appropriate boarder household size as shown on ~~Oklahoma Department of Human Services (DHS)~~ OKDHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions; or
- (ii) two meals or less per day must pay an amount that equals or exceeds two-thirds of the food benefit allotment for the appropriate boarder household size as shown on ~~DHS~~(OKDHS) Appendix C-3.

(D) ~~Boarder status cannot be extended to persons~~ A person(s) paying less than a reasonable monthly payment for meals board as described in this paragraph is not considered a boarder and must be included as a member of the household providing the board. ~~Persons furnished both meals and lodging by a household but paying less than a reasonable monthly payment are considered members of the household which provides the meals and lodging.~~

(3) **Children in foster care or children placed by OKDHS Developmental Disabilities Services (DDS).**

Children in foster care or children placed by DDS with extended family care providers must be considered boarders unless the household providing foster care services requests the children be included as food benefit household members. The children cannot participate in ~~the Supplemental Nutrition Assistance Program~~ SNAP independently of the household providing the foster care or DDS services.

(A) Foster care payments and DDS room and board reimbursements are considered as income to the children and are:

- (i) not included as income to the household caring for the children when the children are not included in the food benefit household; and
- (ii) counted as income to the household when the host household chooses to include the children as members of the food benefit household.

(B) The income paid to the extended family care provider by DDS for care rendered is counted as earned income to the provider, ~~per OAC 340:50-7-29(b)(8).~~

(4) **Live-in attendants.** Live-in attendants are persons who reside in a household to provide medical, house-keeping, child care, or other similar services. ~~They may participate as a separate household in SNAP unless OAC 340:50-5-1(b) applies.~~

(5) **Students.** Students are persons enrolled in an institution of higher education who are ineligible because they fail to meet the eligibility criteria, ~~in~~per OAC 340:50-5-45(a).

(6) **Others.** Others are persons who share living quarters with the household but who do not customarily purchase food or prepare meals with the household.

(b) **Non-household members' income.** ~~Non-household members' income is not counted in determining the food benefit household's income eligibility, per 7 § C.F.R. 273.11(d). Refer to OAC 340:50-7-29(d) to determine how to consider disqualified or ineligible household members' income. When an eligible household member's earned income and a non-household member's earned income is combined into one wage, the worker determines the income for the eligible household members by:~~

- (1) ~~counting the portion due to eligible household members, when it is possible to identify the household's share; or~~
- (2) ~~prorating the earned income equally among the persons the earnings are intended to cover and counting the prorated portion due to the eligible household members, when it is not possible to identify the household's share.~~

(c) **Deductible expenses.** ~~When the household shares deductible expenses with a non-household member, except for utility expenses per (1) of this subsection, the worker only deducts the amount the food benefit household actually paid or contributed as a household expense, per 7 § C.F.R. 273.11(d)(1).~~

(1) ~~When the food benefit household pays part of the utility expenses, the household is allowed the full utility~~



standard deduction that it qualifies for based on criteria, per 7 § C.F.R. 273.9(d)(6)(iii)(F) and OAC 340:50-7-31.

(2) When the payments or contributions cannot be differentiated, the worker prorates the expenses evenly among persons actually paying or contributing to the expenses and deducts only the household's pro rata share.

**340:50-5-6. Households with non-household members [REVOKED]**

(a) ~~The worker does not count the income of non-household members who are not disqualified, such as ineligible students, per Section 273.11(d) of Title 7 of the Code of Federal Regulations (C.F.R.) (7 § C.F.R. 273.11(d)).~~

(b) ~~When the earned income of one or more household members and the earned income of a non-household member are combined into one wage, the worker determines the income for the household members by:~~

- (1) ~~counting the portion due to the household when it is possible to identify the household's share; or~~
- (2) ~~prorating the earned income equally and counting the household member's pro rata share when it is not possible to identify the household's share.~~

(c) ~~When the household shares deductible expenses with the non-household member, the worker only deducts the amount the household actually paid or contributed as a household expense with the exception of utility expenses.~~

(1) ~~Per 7 § C.F.R. 273.9(d)(6)(iii)(F), when the household pays part of the utility expenses, the household is allowed the full utility standard deduction for which it qualifies based on criteria per Oklahoma Administrative Code 340:50-7-31.~~

(2) ~~When the payments or contributions cannot be differentiated, the worker prorates the expenses evenly among persons actually paying or contributing to the expenses and deducts only the household's pro rata share with the exception of the utility expenses per (1) of this subsection.~~

**PART 3. SPECIAL HOUSEHOLDS**

**340:50-5-30. Providers of meals for the homeless [REVOKED]**

~~Food and Nutrition Service (FNS) authorizes as retail food stores, those providers of meals for the homeless which apply and qualify for authorization to accept food benefits from homeless food benefit recipients. Such meal providers must be public or private, non-profit organizations as defined by the Internal Revenue Service.~~

- (1) ~~Providers of meals for the homeless are approved by the Oklahoma Department of Human Services as meal providers prior to application for authorization by FNS for acceptance of food benefits.~~
- (2) ~~Meals served by the providers must include food purchased by the providers.~~
- (3) ~~Persons who are employed by or act as volunteers for organizations that provide meals for the homeless may~~

~~not act as authorized representatives for homeless food benefit recipients.~~

**PART 9. WORK REGISTRATION**

**340:50-5-87. Work registration procedures**

When changes occur in a person's work registration status after certification, the worker must determine if the person failed or refused to comply with work registration requirements without good cause per Oklahoma Administrative Code (OAC) 340:50-5-85 or meets exemption criteria per OAC 340:50-5-86.

(1) ~~Loss of exemption~~Exemption status loss. Per Section 273.7(b)(2) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.7(b)(2)):

- (A) Persons who lose their work registration exemption due to a change in circumstances that is:
  - (i) not subject to the reporting requirements, per OAC 340:50-9-5(g), must register for employmentwork registration at the next certification renewal; or
  - (ii) subject to the reporting requirements, per OAC 340:50-9-5(g), must register when the change is reported; and

(B) ~~When~~when a household member is exempt from work registration because he or she is subject to, and ~~complying in compliance~~complying in compliance with unemployment compensation or ~~TANF~~Temporary Assistance for Needy Families work requirements, and stops complying without good cause, the household member is ~~considered a disqualified household member unless he or she meets another exemption criteria.~~

(2) Communication requirement. Per 7 C.F.R. § 273.7(c)(ii), a written notice is generated by the system and the worker must attempt to contact the household to orally explain the work registration responsibilities, per OAC 340:50-5-85 when:

- (A) a new household member joins the household; or
- (B) a household member who is exempt from work registration loses the exemption.

(3) Failure to comply. A registered household member who ~~refuses or fails to~~refuses or fails to comply with work registration requirements without good cause, per OAC 340:50-5-85, is ~~considered a disqualified household member, per Section 273.7(f) of Title 7 of the Code of Federal Regulations~~7 C.F.R. § 273.7(f) and OAC 340:50-5-10.1.

(34) Disqualification period. When a household member is disqualified because he or she ~~refused or failed to~~refused or failed to comply with work registration requirements, the disqualification period is:

- (A) one month for the first violation;
- (B) three months for the second ~~disqualification~~disqualification violation; or
- (C) six months for the third or subsequent violation.

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(45) **Shortening the disqualification period.** The disqualification period may be shortened when the household member becomes exempt from work registration per 7 C.F.R. § 273.7(g).

### 340:50-5-92. ~~Determination of good~~ **Good cause determination for voluntary quit or reduction in work effort**

When the worker determines a non-exempt adult household member voluntarily quit his or her employment or reduced his or her work effort, the worker must determine if he or she had good cause for doing so. The worker uses information provided by the household member and the employer to determine if the voluntary quit or reduction in work effort is with good cause. Per Section 273.7(i) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.7(i)), good cause for leaving employment or reducing work effort includes:

- (1) discrimination by an employer based on age, race, sex, color, disability, religious  ~~creed~~ beliefs, national origin, or political beliefs, ~~or reprisal or retaliation for prior civil rights activity;~~
- (2) work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;
- (3) ~~acceptance by~~ an adult household ~~member's~~ acceptance of other employment or enrollment at least half-time in any recognized school, training program, or institution of higher education, ~~requiring that~~ requires the household member to leave employment;
- (4) ~~acceptance by an adult~~ any other household ~~member's~~ acceptance of other employment or enrollment at least half-time in any recognized school, training program, or institution of higher education in another county or area ~~requiring that~~ requires the household to move and thereby ~~requiring~~ requires another adult household member to leave employment;
- (5) resignations by persons under 60 years of age that are recognized by the employer as retirement;
- (6) employment that becomes unsuitable after the acceptance of such employment because it no longer meets the criteria of suitable employment per 7 C.F.R. § 273.7(h) and Oklahoma Administrative Code 340:50-5-85(c);
- (7) leaving employment after accepting a bona fide employment offer of ~~employment~~ of more than 30 hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by 30 hours because the agreed upon work hours or weekly earnings do not materialize;
- (8) leaving a job in connection with employment patterns of ~~employment~~ in which workers frequently move from one employer to another, such as migrant farm labor or construction work. There may be some circumstances where households apply for food benefits between jobs, particularly in cases where work may not yet be available at the new job site. When employment at the new job site has not started, the voluntary quit is considered with good cause when it is part of ~~the~~ this employment pattern of ~~that~~ type of employment; or

(9) circumstances beyond the person's control, such as, but not limited to:

- (A) illness;
- (B) illness of another household member ~~sufficiently serious to require the~~ requiring the registrant's presence of the registrant;
- (C) unavailability of transportation;
- (D) lack of adequate child care for children who are between 6 and 12 years of age; or
- (E) ~~an unanticipated~~ a household emergency.

## PART 10. ABLE-BODIED ADULTS WITHOUT DEPENDENTS

### 340:50-5-100. **Able-bodied adults without dependents (ABAWD) work requirements and time limits**

(a) **ABAWD work requirements.** Per Section 273.24(a) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.24(a)), an ABAWD meets work requirements when he or she:

- (1) works continuously 20 hours or more per week, averaged monthly. Averaged monthly means 80 hours per month. The employment may be paid, in-kind, unpaid, or volunteer work with religious or community organizations;
- (2) participates in and complies with the requirements of a work program 20 hours or more per week, averaged monthly. Work programs include:

- (A) a program assignment under Title 1 of the Workforce Innovation and Opportunity Act (WIOA), Public Law (P.L.) 113-128;
- (B) a program under ~~the Section 236 of the Trade Adjustment Assistance Reauthorization Act of 2015~~ 1974, P.L. 114-27 Sections 401 through 407 Section 2296 of Title 19 of the United States Code (19 U.S.C. § 2296); ~~or~~
- (C) an Oklahoma Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Program Works (OK SNAP Works) assignment, not including job search, supervised job search, or job search training activities. However, job search, supervised job search, or job search training activities, when offered as part of other E&T program components, are acceptable ~~as long as~~ if those activities comprise less than half the total required time spent in the components; or
- (D) any employment and training program that serves veterans operated by the Department of Labor or the Department of Veterans Affairs;

- (3) works and participates in a work program for a total of 20 or more hours per week, averaged monthly; or
  - (4) meets an exemption from the work requirements per ~~(e)~~ (d) of this Section.
- (b) **General rule.** An ABAWD who is a member of an eligible household receiving SNAP food benefits must comply with work requirements per (a) of this Section or be exempt

from work requirements per (d) of this Section to be eligible to participate as a member of any food benefit household for more than three countable months, consecutive or otherwise, during any 36-month or three-year period. When the ABAWD meets work requirements per (a) or an exemption per (d) of this Section, he or she is eligible to participate with no time limits. An ABAWD subject to the three-month time limit may also regain eligibility per ~~(f)(e)~~ of this Section.

(1) **Countable months.** Countable months are months when an ABAWD receives SNAP benefits for the full benefit month while not:

- (A) exempt from ABAWD work requirements per (d) of this Section;
- (B) fulfilling the work requirement per (a) of this Section; or
- (C) receiving benefits that are prorated.

(2) **Countable months in another state.** When there is an indication an ABAWD subject to the time limits received SNAP food benefits in another state in the last 12 months, the worker must verify the number of countable months the person used in the other state per 7 C.F.R. § 273.2(f)(1)(xiv)(B).

(3) **Measuring the three-year or 36-month time period.** Per 7 C.F.R. § 273.24(b)(3), ~~the Oklahoma Department of Human Services (DHS)~~ (OKDHS) uses a 'fixed- individual clock' for each ABAWD subject to time limits. This means the ABAWD clock starts at the initial application for SNAP benefits when the person is not meeting ABAWD work requirements per (a) of this Section. When the person meets ABAWD work requirements at initial application, the clock starts the month the person uses the first countable month per (b)(1) of this Section.

(4) **Worker responsibilities.** It is the worker's responsibility to:

(A) determine the ABAWD status of each ~~adult~~ household member;

- (i) at application, mid-certification renewal, and certification renewal;
- (ii) when a new person joins the household during the certification period; and (iii) when reported information indicates a household member lost an exemption or no longer meets the work requirement;

(B) orally explain the ABAWD rights and responsibilities of each ~~non-exempt~~ household member to the person completing during the SNAP application and certification renewal interview including, when a new person joins the household during the certification period, and when a household member loses an exemption. The system also generates a written notice to the household. The explanation includes:

- (i) ABAWD work requirements, the household members subject to these requirements, and the ways to fulfill these requirements;
- (ii) exemption and good cause criteria and how to claim an exemption or good cause;

(iii) the ABAWD's limited benefit eligibility when he or she does not fulfill work requirements; ~~and~~

(iv) how to maintain eligibility under the ABAWD work requirements, including what the household needs to provide at certification and renewal and what happens when an household member loses an exemption or a person joins the household; and

(v) how to regain eligibility, after losing benefits per (e) of this Section; and

(C) update the ABAWD status of an adult household member any time he or she loses an exemption or no longer meets the work requirement. The worker must 'look-back' to determine when the ABAWD lost the exemption or stopped meeting the work requirement. The worker closes food benefits for the person when he or she already used his or her countable months for the 36-month period or corrects the ABAWD status to start the ABAWD's clock per (3) of this ~~paragraph~~ subsection.

(5) **ABAWD responsibilities.** It is the ABAWD's responsibility to:

(A) verify his or her work ~~and/or~~ participation hours, a combination of work and participation hours, or exemption status at application, mid-certification renewal, and certification renewal per 7 C.F.R. § 273.2(f)(1) and (f)(8); and

(B) report when his or her work ~~and/or~~ participation hours or a combination of work and participation hours drop below 20 hours per week or 80 hours per month within 10-calendar days of the month the hours dropped.

(i) When the ABAWD reports his or her work ~~and/or~~ participation hours or a combination of work and participation hours dropped below 20 hours per week, the worker determines if the ABAWD is eligible for three countable months. When the ABAWD is:

- (I) eligible for three countable months, the worker tracks the months to determine when to close benefits for the ABAWD if he or she does not regain eligibility per ~~(f)(e)~~ of this Section; or
- (II) not eligible because he or she received three countable months within the three-year period, the worker closes food benefits for the ABAWD.

(ii) When an ABAWD subject to time limits received SNAP food benefits in error within the most recent three-year period, the benefits are considered as countable months unless the ABAWD pays the benefits back in full per 7 C.F.R. § 273.24(b)(5).

(c) **Good cause for failure to meet the ABAWD work requirement.** When an ABAWD ~~has would have fulfilled the work requirement, per (a) of this Section, but missed some hours for good cause for failure to meet the required number of work or participation hours in a given month per (a) of~~

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~~this Section, the ABAWD is considered to have not~~meets the work requirement if the absence is temporary. Per 7 C.F.R. § 273.24(b)(2), good cause ~~applies to situations in which the ABAWD's absence from work is temporary, he or she retains his or her job, and the~~includes circumstances ~~are~~beyond the person's control, such as, but not limited to:

- (1) illness;
- (2) illness of another household member ~~sufficiently serious to require~~requiring the presence of the ABAWD;
- (3) unavailability of transportation; or
- (4) ~~an unanticipated~~a household emergency.

(d) **Exemptions from the ABAWD work requirement.** Per 7 C.F.R. § 273.24(c), a person is exempt from the ABAWD work requirement and eligible to participate without time limits, when the person is:

- (1) younger than 18 years of age or 50 years of age and older;
- (2) medically-certified as physically or mentally unfit for employment. A person is medically-certified as physically or mentally unfit for employment when he or she:
  - (A) receives permanent or temporary disability benefits issued by governmental or private sources;
  - (B) is obviously mentally or physically unfit for employment. When it is not obvious that he or she is unfit, the person must provide documented evidence from medically-qualified sources to substantiate the medical exemption.

(i) Medically-qualified sources may include, but are not limited to, a:

- (I) licensed or certified psychologist, therapist, counselor, or social worker;
- (II) physician or physician's assistant;
- (III) nurse or nurse practitioner; or
- (IV) designated representatives of a physician's office.

(ii) The documented evidence must indicate the person has a physical or mental condition that limits the person's ability to work.

(iii) When the medical exemption is temporary, the person is required to comply with work requirements when released by a medically qualified source to return to work; or

(C) is chronically homeless;

- (3) pregnant;
- (4) a parent, natural, adoptive, or step, of a household member younger than 18 years of age, even when the minor child is not eligible for food benefits;
- (5) an adult residing in a household with a household member younger than 18 years of age and included in the food benefit household, even when the minor child is not eligible for food benefits; or
- (6) otherwise exempt from work requirements per 7 C.F.R. § 273.7(b) and Oklahoma Administrative Code ~~(OAC)~~340:50-5-86.

(e) **Persons who regain eligibility.** Persons whose food benefits were denied or closed because they received three countable months of food benefits may regain eligibility by

meeting work requirements per (a) of this Section for 30-consecutive days.

(1) **Regained eligibility by meeting work requirements.** When a person regains eligibility, he or she maintains food benefit eligibility without time limits provided he or she continues to meet work requirements per (a) of this Section. Per 7 C.F.R. § 273.24(d)(3), there is no limit to how many times a person may regain eligibility by meeting work requirements. The person's food benefits are prorated from the application date. When the person applies before meeting work requirements for 30-consecutive days, the application is denied.

(2) **Regained eligibility and then stopped meeting work requirements.** When a person regains eligibility and then stops meeting work requirements, he or she is eligible for SNAP food benefits for three-consecutive countable months only. The person may only receive the additional three-countable months once, during the 36-month period. After receiving these three-consecutive months, the person is not eligible for SNAP food benefits in his or her 36-month time period unless he or she regains eligibility by meeting the work rule or becomes exempt per (d) of this Section.

(f) **ABAWD work requirement waiver prohibition.** Per 7 C.F.R. § 273.24(f), states are allowed to request an ABAWD work requirement waiver in certain instances. Effective October 1, 2013, Section 241.3 of Title 56 of the Oklahoma Statutes prohibits ~~DHS~~OKDHS from requesting an ABAWD work requirement waiver from the United States Department of Agriculture.

### PART 11. OKLAHOMA SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM WORKS (OK SNAP WORKS)

#### 340:50-5-106. Oklahoma Supplemental Nutrition Assistance Program Works (OK SNAP WORKS)

~~The~~Oklahoma Department of Human Services ~~(DHS)~~(OKDHS) operates a voluntary employment and training program, OK SNAP Works, ~~through a contracted service provider for adults receiving SNAP food benefits,~~ per Section ~~273.7(e)(4)(5)~~273.7(e)(5) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.7(e)(5)). OK SNAP Works intends to help food benefit recipients, especially able-bodied adults without dependents (ABAWD), become involved in meaningful, work-related activities that lead to paid employment and enable them to achieve or maintain economic self-support.

(1) **Participant Information.** OK SNAP Works is available to adults who receive SNAP benefits and live in an area served by an OKDHS contracted service provider.

(2) **Worker responsibilities.** It is the worker's responsibility to:

(A) inform the applicant or recipient that:

- (i) participation in OK SNAP Works is voluntary; and

(ii) any non-exempt, ABAWD in the household who is not complying with ABAWD work requirements, per Oklahoma Administrative Code (OAC) 340:50-5-100 is automatically referred to OK SNAP Works;

(B) ask if any exempt adult household member wants to voluntarily participate in OK SNAP Works; and

~~(C) give the applicant or recipient contact information for the contracted service provider to schedule an intake appointment, when an adult household member wants to participate in OK SNAP Works; and~~

~~(D) send a referral to the contracted service provider.~~ Adult and Family Services OK SNAP Works coordinator for:

(i) non-exempt ABAWDs who are not complying with ABAWD work requirements, per OAC 340:50-5-100; and

(ii) ~~non-ABAWDs~~ other SNAP recipients who express an interest in participating in OK SNAP Works.

~~(23) Referral and assessment~~ Intake and case management services. The ~~worker~~ OK SNAP Works coordinator sends a referral to the contracted service provider to initiate the intake process and case management services. Case management services and activities must be provided to all participants and must directly support their participation in OK SNAP Works. Case management services may include, but are not limited to, comprehensive intake assessments, individualized service plans, progress monitoring, and coordination with service providers.

(A) After receiving a referral ~~from the worker, contracted service~~ the provider's staff schedules referred work registrants for an orientation and comprehensive assessment.

(B) Following orientation and assessment, each participant has an assessment interview ~~with contracted staff~~ to explore the participant's employment and training needs and barriers, communication and employment-related skills, education and employment history, and career interests.

~~(C) Participants are then enrolled~~ The provider enrolls participants in at least one component that addresses and continues to provide case management services to address their employment barriers.

~~(34) OK SNAP Works component assignments.~~ Once OK SNAP Works participants complete the intake process, they are enrolled in a component. OK SNAP Works components include supervised job search, job search training, educational services, vocational training, Workfare for non-exempt ABAWDs only, work experience, and job retention services.

(A) ~~Job~~ Supervised job search component. Job Supervised job search is a component that provides structured activities to help participants seek and obtain suitable employment. These activities occur at approved locations where the participant is

supervised and timeliness is tracked, per 7 C.F.R. § 273.7(e)(2)(i).

(B) **Job search training component.** Job search training is a component that enhances the job readiness of participants ~~by teaching them job seeking techniques, increasing job search motivation, and boosting self confidence.~~ may include employability assessments, training in techniques to increase employability, job placement services, or other direct training or support activities, per 7 C.F.R. § 273.7(e)(2)(ii).

(C) **Educational services component.** Participants are placed in an educational services component when they do not have a high school diploma or equivalency certificate, have literacy issues, or need to learn or improve English language skills.

(D) **Vocational training component.** Participants may receive vocational training when assessments indicate training is needed to enhance employability or industry-specific training is needed as part of a job placement program.

(E) **Workfare component.** Workfare is a work component only available to non-exempt ABAWDs. Participants ~~are assigned to~~ work in a public service or a private, non-profit agency to obtain skills necessary to enhance employability or develop skills required for job placement.

(F) **Work experience.** The work experience component is designed to improve the employability of participants through actual work experience and/or training. The goal of work experience is to enable participants to move into regular employment. Work experience is a planned, structured learning experience that takes place in a workplace for a limited time period. A work experience program may include a work activity or a work-based learning program.

(i) A work activity gives the participant the opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment.

(ii) A work-based learning program may include internships, pre-apprenticeships, apprenticeships, customized training, transitional jobs, incumbent worker training, and on-the job training as defined by the Workforce Innovation and Opportunity Act.

(G) ~~Job retention~~ Job retention component. The job retention component helps participants who secured employment after or while receiving OK SNAP Works services to achieve satisfactory performance, retain employment, and increase earnings over time. A participant is ~~assigned to job retention classes when assessments indicate case management services, coaching, and peer support could help maintain employment and success in the workplace.~~ may receive case management, job coaching, dependent care assistance, and transportation assistance, per 7 C.F.R. § 273.7(e)(2)(vi). This component is ~~only~~

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~~allowed for~~ must last for at least 30-calendar days but no more than 90-calendar days. There is no limit to the number of times a person may receive job retention services as long as the person re-engages with OK SNAP Works prior to obtaining new employment.

(45) **Supportive services.** Supportive services are provided to participants when necessary and directly related to their ability to participate in the OK SNAP Works component. ~~DHS-OKDHS~~ authorizes payments for supportive services that may include, but are not limited to, covering the cost of:

- (A) child care under special circumstances. When child care is needed after assessment, the contracted service provider assists the client in completing a child care application. The application is sent to the OK SNAP Works coordinator to determine eligibility, per OAC 340:40;
- (B) clothing;
- (C) uniforms;
- (D) tools;
- (E) personal safety items;
- (F) books or training manuals;
- (G) transportation, such as bus tickets, public transportation passes, taxi cabs, sharing rides, or gas vouchers; or
- (H) other equipment deemed necessary for participation.

(56) **Contractor responsibility.** The contracted service provider is ~~responsible for tracking~~ tracks participation and ~~informing~~ informs the OK SNAP Works coordinator of ~~the all referred persons'~~ participation status, and ~~outcome performance measures for all referred persons and when the provider determines that a referred person is ill-suited for an assigned component.~~

~~(A)~~ When a referred person fails to participate in OK SNAP Works following a referral or the provider determines that a referred person is ill-suited for a component, contracted staff notifies the ~~Adult and Family Services (AFS)-~~ OK SNAP Works coordinator within 10-calendar days, of the non-participation ~~or the provider determination. In a provider determination notification, the contracted provider must include the reason for the provider determination and may give input on the most appropriate next step for the participant.~~

~~(B)~~ When the non-participant is an ABAWD who reached his or her food benefit receipt time limit, per OAC 340:50-5-100, the OK SNAP Works coordinator notifies the worker to close food benefits for the ABAWD effective the next advance notice deadline date, per DHS Appendix B-2, Deadlines for Case Actions.

(67) **OK SNAP Works monitoring responsibilities.** The AFS OK SNAP Works coordinator ~~provides oversight and~~ monitors the contracted service provider's performance in operating the OK SNAP Works Program,

initiates provider referrals, responds to provider determinations, and determines participants' child care subsidy eligibility.

(A) The OK SNAP coordinator provides verification of a participant's monthly hours spent in the program when the household or the worker requests this verification.

(B) When the OK SNAP Works coordinator receives a provider determination that a participant is ill-suited for a component and recommends another component, the OK SNAP Works coordinator may allow the provider to enroll the participant in another component that better aligns with the participant's employment barriers or needs. When the participant is enrolled in another component, no further action is needed regarding the provider determination.

(C) When the OK SNAP Works coordinator receives a provider determination and decides not to allow the provider to reassign the participant or the provider does not offer a suitable component, the OK SNAP Works coordinator must notify the participant within 10-calendar days of the provider's determination.

(i) When the participant is an ABAWD, per OAC 340:50-5-100, the SNAP Works coordinator informs the participant that he or she will start accruing countable months toward the three-month participation time limit. The countable months begin with the next full month following the notification month, unless the participant:

- (I) fulfills the work requirement, per (OAC) 340:50-5-100(a);
- (II) has good cause; or
- (III) is otherwise exempt from the ABAWD requirements.

(ii) No later than the next certification renewal after receiving a provider determination or at the participant request, as soon as possible, the OK SNAP Works coordinator must:

- (I) reassess whether the participant is physically and mentally capable of participating, per OAC 340: 50-5-86(4);
- (II) refer the person to an appropriate component with another OK SNAP Works provider; or
- (III) coordinate with other federal, state, and local workforce or assistance programs to identify work opportunities or assistance for the person.

## SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

### 340:50-9-5. Changes after application and during the certification period

(a) **Change reporting requirements.** Section 273.12 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.12)

contains change reporting requirements after application and during the certification period described in (a) through (j) of this Section.

(b) **Applicant households.** Applicant households must report all changes related to their food benefit eligibility and benefit amount. Households must report changes that occur after the interview but before the date of the notice of eligibility, within 10-calendar days of the date of the notice.

(c) **Annual reporting households.** Annual reporting households are households in which all adult members are elderly or disabled with no earned income.

(1) **Certification period.** A 24-month certification period is automatically assigned to annual reporting households. Annual reporting households must complete a mid-certification renewal between certification periods to report current household circumstances.

(2) **Change reporting between renewal periods.** Between the mid-certification renewal and certification renewal reporting months, the household must report gross income changes when the household's income exceeds the maximum gross income scale for household size shown on Form 08MP006E, Information for Benefit Renewal, and when the household wins substantial lottery or gambling winnings as defined, per 7 C.F.R. § 273.11(r) and Oklahoma Administrative Code (OAC) 340:50-7-1, within 10-calendar days of receipt of the first payment attributable to the change. The maximum gross income scale is based on 130 percent of the monthly poverty income guidelines.

(3) **Action taken on reported changes.** The worker must act on all changes reported by households.

(A) The computer system determines if the change results in an increase, decrease, or no change in benefits.

(B) Between the mid-certification renewal and certification renewal months, the changes the worker makes do not decrease or close benefits until the mid-certification renewal is due unless the:

(i) household's income increase exceeds the maximum gross income scale for household size shown on Form 08MP006E;

(ii) household requested benefit closure;

(iii) worker has information about the household's circumstances considered verified upon receipt, per ~~(g)~~(h) of this Section;

(iv) a household member is identified as a disqualified or ineligible person, per 7 C.F.R. § 273.12(a)(5)(vi) and OAC 340:50-5-10.1; or

(v) the worker verifies the household won substantial lottery or gambling winnings as defined, per 7 C.F.R. § 273.11(r) and OAC 340:50-7-1(b). When this occurs, refer to (j) of this Section, and OAC 340:50-7-1(b) and 340:50-7-6, for information regarding actions that are taken.

(C) The computer system applies all changes that increase benefits. Before entering a change that increases benefits, verification supporting the change must be provided, when required.

(d) **Mid-certification renewal for annual reporting households.** Annual reporting households are sent notification in the 11th month of certification that the mid-certification renewal is due. The notice explains methods the household may choose to complete the renewal and required verification needed. An interview is not required.

(1) **When the mid-certification renewal is due.** The household must complete the benefit renewal and provide required verification by the last day of the 12th month of certification.

(2) **Completion of mid-certification renewal.** The worker reviews benefit renewal information and verification provided to determine completeness and continued eligibility.

(A) When the renewal is complete and the household remains eligible, the worker acts on all reported changes and the computer system applies any increase or decrease in benefits.

(i) When the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the mid-certification renewal without regard to the deduction.

(ii) When benefits are decreased, an advance notice is sent, per Oklahoma Human Services (OKDHS) Appendix B-2, Deadlines for Case Actions.

(B) When the household is no longer eligible, the worker closes food benefits effective the next advance-notice deadline date, per (OKDHS) Appendix B-2.

(C) When the renewal is incomplete, the computer system closes food benefits effective the next advance-notice deadline date, per (OKDHS) Appendix B-2.

(3) **When benefits may be reopened.** Food benefits may be reopened following closure when criteria is met per (k) of this Section.

(e) **Semi-annual reporting households.** Food benefit households are considered semi-annual reporting households unless they meet criteria per (b) or (g) of this Section.

(1) **Certification period.** A 12-month certification period is automatically assigned to semi-annual reporting households.

(2) **Change reporting between renewal periods.** Between the mid-certification renewal and certification renewal reporting months, the household must report when:

(A) the household's gross income exceeds the maximum gross income scale for household size shown on Form 08MP006E and when the household wins substantial lottery or gambling winnings as defined, per 7 C.F.R. § 273.11(r) and OAC 340:50-7-1, within 10-calendar days of receiving the first payment attributable to the change. The maximum gross income scale is based on 130 percent of the monthly poverty income guidelines; and

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- (B) a decrease in work hours below an average of 20 hours per week or 80 hours per month occurs for any household member meeting the able-bodied adults without dependents (ABAWD) work rules, per OAC 340:50-5-100, by the 10th of the following month.
- (3) **Action taken on reported changes.** The worker must act on all changes reported by households.
- (A) The computer system determines if the change results in an increase, decrease, or in no change in benefits.
- (B) Between mid-certification renewal and certification renewal months, the changes the worker makes do not decrease or close food benefits until the mid-certification renewal is due unless:
- the household's income increase exceeds the maximum gross income scale for household size shown on Form 08MP006E;
  - the household requested benefit closure;
  - the worker has information about the household's circumstances considered verified upon receipt, per (h) of this Section;
  - an ABAWD must be removed from the food benefit household because he or she does not meet the ABAWD work rule, per OAC 340:50-5-100;
  - a household member is identified as a disqualified or ineligible person, per 7 C.F.R. § 27312(a)(5)(vi) and OAC 340:50-5-10.1;
  - a household member is identified as failing to meet work registration requirements, per OAC 340:50-5-85 through OAC 340:50-5-87; or
  - the worker verifies the household won substantial lottery or gambling winnings as defined, per 7 C.F.R. § 273.11(r) and OAC 340:50-7-1(b). When this occurs, refer to (j) of this Section, and OAC 340:50-7-1(b) and 340:50-7-6, for information regarding actions that are taken.
- (C) The computer system applies all changes that increase benefits. Before entering a change that increases benefits, verification supporting the change must be provided, when required.
- (f) **Mid-certification renewal for semi-annual reporting households.** Semi-annual reporting households are sent notification in the fifth month of certification that the mid-certification renewal is due. An interview is not required.
- When the mid-certification renewal is due.** The household must complete the benefit renewal and provide required verification by the last day of the sixth month of certification.
  - Completion of mid-certification renewal.** The worker reviews benefit renewal information and verification provided to determine completeness and continued eligibility.
    - When the renewal is complete and the household remains eligible, the worker acts on all reported changes and the computer system applies any increase or decrease in benefits.
      - When the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the mid-certification renewal without regard to the deduction.
      - When benefits are decreased, the worker sends an advance notice, per OKDHS Appendix B-2, Deadlines for Case Actions, deadline dates.
    - When the household is no longer eligible, the worker closes food benefits effective the next advance-notice deadline date, per OKDHS Appendix B-2.
    - When the renewal is incomplete, the computer system closes food benefits effective the next advance-notice deadline date, per OKDHS Appendix B-2.
- (3) **When benefits may be reopened.** Food benefits may be reopened following closure when criteria is met, per (k) of this Section.
- (g) **Change reporting households.** Change reporting households are assigned a certification period other than 12 or 24 months. These households are required to report changes within 10-calendar days of when the change occurred.
- Household characteristics.** Households not approved for a 12- or 24-month certification period include households approved for:
    - expedited services for one or two months because ~~the interview and/or verification were~~was postponed, per OAC 340:50-3-2; and
    - a three- or four-month certification period because the household includes one or more ABAWDs that do not meet the work rule, per OAC 340:50-5-100.
  - Required change reporting.** These households must report changes in:
    - sources of income;
    - unearned and earned income of \$100 per month ~~or more~~ the income reporting threshold, per Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions;
    - earned income of more than \$100 per month;
    - ~~(D)~~ household composition, such as an addition or loss of a household member;
    - ~~(E)~~ residence and shelter costs;
    - ~~(F)~~ the legal obligation to pay child support;
    - ~~(G)~~ the work hours of an ABAWD subject to benefit time limits, per OAC 340:50-5-100 when they fall below 20 hours per week; and
    - ~~(H)~~ (G) resources when the household wins substantial lottery or gambling winnings as defined, per 7 C.F.R. § 273.11(r) and OAC 340:50-7-1(b). When this occurs, refer to (j) of this Section, and OAC 340:50-7-1(b) and 340:50-7-6, for information regarding actions that are taken.
  - Action taken on case changes.** The worker must act on changes reported by the household within 10-calendar days of the date the household reported the change and provided necessary verification.



(A) When the household fails to report a change within the 10-calendar day period and, as a result, receives benefits to which it is not entitled, an overpayment claim is referred to Adult and Family Services (AFS) Benefit Integrity and Recovery, per OAC 340:50-15.

(B) When the worker fails to take timely action on a reported change and benefits are lost, the worker supplements the household's food benefits.

(4) **Changes that increase benefits.** When the household reports a change that increases benefits the household must verify the information before the worker makes the change. The worker gives the household 10-calendar days to verify the information.

(5) **Changes that decrease or close benefits.** When the household reports a change in household circumstances that decreases or closes food benefits, the worker gives or sends the household Form 08AD092E, Client Contact and Information Request, giving the household 10-calendar days to provide verification of the change. When the household provides required verification, the worker reduces or closes food benefits based on the verification provided. When the household does not provide required verification, the worker closes the food benefits based on the household's failure or refusal to provide verification.

(A) When a household's benefit decreases or closes, an advance notice of adverse action is required unless exempt from such notice for a reason listed in (i) or (ii) of this subparagraph. Per 7 C.F.R. § 273.13, advance notice of adverse action is considered timely when the notice is mailed at least 10-calendar days before the action becomes effective. The household retains its right to a fair hearing and continuation of benefits when a fair hearing is requested within 10-calendar days of the change notice. An adverse action notice may be mailed just prior to the date the household receives or would have received benefits when the:

(i) OKDHS receives a clear written statement signed by a responsible household member:

(I) stating the household no longer wishes to receive food benefits; or

(II) giving information that requires closure or reduction of food benefits and stating that the household understands the food benefit will be reduced or closed; or

(ii) worker closes or reduces food benefits per notice requirements at (1)(3)(A) of this Section.

(B) When an advance notice is required, the benefit decrease or closure is effective the next advance notice deadline date, per OKDHS Appendix B-2. When the household reports a change:

(i) 10-calendar days or more before the advance-notice deadline, per OKDHS Appendix B-2, the worker decreases or closes the food benefit effective the first of the following month; or

(ii) less than 10-calendar days before the advance-notice deadline, per OKDHS Appendix B-2, the worker must take action before the advance-notice deadline the following month.

(C) When a reported change increases food benefits, the worker makes the change by the non-advance-notice deadline date, per OKDHS Appendix B-2.

(h) **Changes considered verified upon receipt.** Verified upon receipt means the information is not questionable and the provider is the primary source of the information. For example, when OKDHS receives Social Security and Supplemental Security Income verification through data exchange with the Social Security Administration (SSA), it is considered verified upon receipt because SSA is the primary source. When the worker receives information considered verified upon receipt, he or she makes the change within 10-calendar days of notification using OKDHS Appendix B-2 deadline dates.

(i) **Required action on unclear information.** During the certification period, the worker may obtain unclear information about a household's circumstances that may affect the household's continued eligibility or benefit amounts. The worker may receive the unclear information from a third party, such as a data exchange discrepancy, an employer, or a person claiming knowledge of the household's circumstances. Unclear information is information that is not verified or is verified but the worker needs additional information before acting on the change.

(1) Per 7 C.F.R. § 273.12(c)(3)(i), when the worker receives unclear information in a non-report month for semi-annual or annual reporting households or any month for change reporters, he or she sends Form 08AD092E to the household to verify its circumstances within 10-calendar days only when the unclear information:

(A) significantly conflicts with the information used at the time of the certification, indicating the household may have failed to report eligibility information at application; or

(B) is fewer than 60-calendar days old, relative to the current participation month and when true, must be reported under the household's reporting responsibilities.

(2) When the household provides the requested verification in a non-report month, the worker determines ~~whether what~~ what action to take ~~action~~—per requirements at (c)(3) and (e)(3) of this Section.

(3) When the worker sends Form 08AD092E, per (i)(1)(A) or (B) of this Section, and the household does not respond or responds but refuses to provide sufficient information to clarify its circumstances, the worker closes the household's food benefits effective the next advance-notice deadline date, per OKDHS Appendix B-2;

(4) Per 7 C.F. R. § 273.12(c)(3)(iii), when the worker receives a data match that indicates a household member may have died or may be incarcerated for more than 30-calendar days, the worker sends Form 08AD092E to the household notifying it of the discrepancy and requesting information regarding the household member.

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- (A) When the household is a change reporting household and:
- (i) fails to respond to Form 08AD092E or responds but refuses to provide sufficient information to clarify the person's household status, the worker closes the household's food benefits;
  - (ii) responds and verifies the person is not dead or incarcerated, no action is taken; or
  - (iii) responds and confirms the accuracy of the data exchange information, the worker removes the person from the food benefit and determines if an overpayment referral is needed, per OAC 340:50-15.
- (B) When the household is an annual or semi-annual reporting household and:
- (i) fails to respond to Form 08AD092E or responds but refuses to provide sufficient information to clarify the person's household status, the worker removes the person and his or her income from the household and adjusts the food benefits;
  - (ii) responds and verifies that the person did not die or is not incarcerated, no action is taken; or
  - (iii) responds and confirms the accuracy of the data exchange information, the worker removes the person and his or her income from the household, adjusts the food benefits, and determines if an overpayment referral is needed, per OAC 340:50-15.
- (j) **Required action on substantial lottery or gambling winnings.** The worker must take prompt action to verify receipt of substantial lottery or gambling winnings and begin closure procedures when the household or a third party reports the household received substantial lottery or gambling winnings, per OAC 340:50-7-1(b), for all types of reporting households.
- (1) When the household reports substantial winnings, verification of the winnings is required. The worker closes the SNAP food benefit for the entire household once verification is received even when the household states all of the winnings were spent, per 7 C.F. R. § 273.11(r). The worker also closes the SNAP food benefit when the household fails to provide verification after being given 10-calendar days to do so.
  - (2) When the worker receives information from a data match or other third party regarding the household's receipt of substantial lottery or gambling winnings, the action required depends on whether the information is unclear, per (i) of this Section.
    - (A) When the worker receives a direct match from a lottery or gambling entity and there is no question regarding which client received the winnings, the worker closes the SNAP food benefit effective the next advance notice deadline date, per OKDHS Appendix B-2.
    - (B) When the worker receives the information from a third party data match or another third party, the worker follows unclear information procedures per (i) of this Section.
      - (3) When the worker closes the SNAP food benefit due to substantial lottery or gambling winnings, the household must reapply and cannot be considered categorically eligible the first time it reapplies, per 7 C.F. R. § 273.11(r), OAC 340:50-7-1(a)(2) and 340:50-11-111(d). To regain eligibility, the household must meet non-categorical resource requirements, per 7 § C.F.R. 273.8 and OAC 340:50-7-6, and verify how the winnings were spent down below the appropriate resource standard, per OKDHS Appendix C-3, ~~Maximum Food Benefit Allotments and Standards for Income and Deductions~~. This applies to all households, including households receiving Supplemental Security Income or Temporary Assistance for Needy Families. Once the household meets non-categorical resource requirements and is certified, it regains categorical eligibility for future applications and renewals unless the household contains a sponsored alien or cannot be considered categorically eligible, per OAC 340:50-7-1(a)(2) and 340:50-11-111(d).
- (k) **When benefits may be reopened following closure.** The food benefit may be reopened following closure using current eligibility information, when:
- (1) ~~DHS~~OKDHS did not administer policy and procedures correctly. The food benefit is reopened effective the first day of the month of closure;
  - (2) the household fails to complete the mid-certification renewal timely, but provides all required verification by the first day of the month of closure. The food benefit is reopened effective the first day of the month of closure; or
  - (3) the household fails to complete the mid-certification renewal timely, but provides all required verification by the last day of the month of closure. The food benefit is reopened and prorated from the date the household completes the mid-certification renewal and provides all required verification.
- (l) **Notice requirements.** OKDHS is required to send a notice to the household when food benefits increase, reduce, or close.
- (1) **Advance notice of adverse action required.** Prior to reducing or closing food benefits during the certification period, per 7 C.F.R. § 273.13, the worker must provide timely advance notice unless circumstances described in (1)(2) or (3) of this Section occur.
    - (A) Advance notice of adverse action is considered timely when the notice is mailed at least 10-calendar days before the action becomes effective. Refer to OKDHS Appendix B-2 for advance notice processing deadlines.
    - (B) When the household reports a change:
      - (i) 10-calendar days or more before the advance notice of adverse action deadline, the worker decreases or closes the food benefit effective the first of the following month. For example, when the household reports a change on May 18th, the effective date of the change is June 1st; or
      - (ii) less than 10-calendar days before the advance notice of adverse action deadline, per OKDHS Appendix B-2, the worker decreases or

closes the food benefit effective the first of the month after the following month. For example, when the household reports a change on May 25th, the effective date of the change action is July 1st.

(2) **Notice requirement when benefits increase.** When a reported change increases food benefits, the worker makes the change by the non-advance notice deadline date, per OKDHS Appendix B-2. When the change is reported after the non-advance notice deadline, the worker supplements food benefits.

(3) **Advance notice of adverse action not required.** Advance notice of adverse action is not required for actions (A) through (H) of this paragraph, per 7 C.F.R. § 273.12(e) and 7 C.F.R. § 273.13(b).

(A) **Mass changes.** When OKDHS initiates mass changes because of changes or requirements in federal or state law, the computer system closes benefits by the non-advance-notice deadline, per OKDHS Appendix B-2. In these situations, the individual notification requirement is waived and AFS mails generic notices to the affected households informing them of the changes that are about to be made.

(B) **Deceased household members.** When the worker determines, based on reliable information, that all members of the household are deceased, the worker closes benefits by the non-advance-notice deadline, per OKDHS Appendix B-2.

(C) **Moved out of state.** When the worker determines, based on reliable information, the household moved out of state, the worker closes benefits by the non-advance-notice deadline, per OKDHS Appendix B-2.

(D) **Unfinished issuance certification.** When the unfinished issuance process is used at certification, the worker adjusts the benefit to ~~take into~~ account for changes anticipated at the time of certification. The certification notice informs the household of all benefit changes included in this process.

(E) **Disqualified household member.** When the only household member is disqualified for an intentional program violation or fraud, per OAC 340:50-15-25, food benefits are closed by the non-advance-notice deadline, per OKDHS Appendix B-2. When there is more than one person in the household, the remaining household members' benefits are reduced or closed because of that household member's disqualification by the non-advance-notice deadline, per OKDHS Appendix B-2.

(F) **Facility loses approval.** When a household's food benefit closes because the drug or alcohol treatment center or group home facility where the household resides is no longer approved, the worker closes benefits by the non-advance-notice deadline, per OKDHS Appendix B-2.

(G) **Household provides written statement.** The worker closes or reduces benefits by the non-advance-notice deadline, per OKDHS Appendix B-2, when the household provides a written statement:

(i) stating the household no longer wants to receive food benefits; or

(ii) requesting closure or reduction in food benefits to avoid or repay an overpayment.

(H) **Case transfer.** When ~~the worker closes~~ closing and transferring food benefits ~~in from~~ one case ~~in order to transfer the food benefits to~~ another case without a decrease or disruption in benefits, the worker closes food benefits by the non-advance-notice deadline, per OKDHS Appendix B-2.

(m) **Action on changes when fair hearings are requested.** When a household requests a fair hearing within 10-calendar days of the date shown on an adverse action notice, the worker must reopen or restore food benefits to the previous level pending the outcome of the hearing unless the household specifically waives continuation of benefits, per 7 C.F.R. 273.15(k). Refer to OAC 340:2-5 for fair hearing procedures.

## SUBCHAPTER 10. ELECTRONIC BENEFIT TRANSFER (EBT)

### 340:50-10-1. Scope and applicability

(a) **Benefit delivery and access.** Oklahoma Human Services (OKDHS) uses an online electronic benefit transfer (EBT) system to deliver Supplemental Nutrition Assistance Program (SNAP) food benefits. ~~are delivered by an on-line electronic benefit transfer (EBT) system where the SNAP food~~ benefits are stored in a central computer database and electronically accessed by eligible households at the point of sale via plastic EBT cards, called Access Oklahoma, and personal identification numbers (PIN).

(1) Upon initial certification, OKDHS issues a notice to eligible households ~~are issued a notice indicating an availability informing them of the date to they can~~ access their SNAP food benefits.

(2) ~~Each month a client is approved for SNAP food benefits, the~~ The EBT system credits food benefits to the ~~eligible households'~~ eligible households' food benefit account each month they are certified.

(3) ~~The client uses the~~ Households use their Access Oklahoma card and ~~his or her~~ enter their PIN to purchase food from a business approved by the United States Department of Agriculture to accept food benefits, ~~by the United States Department of Agriculture.~~

(b) **Benefit expungement.** OKDHS expunges SNAP food benefits after 274-calendar days of inactivity, per Section 274.2(i) of Title 7 of the Code of Federal Regulations. Inactivity occurs when the household does not take an action that affects the balance of the household's SNAP EBT account within this time period, such as making a purchase or a return. OKDHS provides an expungement notice to the household at least 30-calendar days before expunging the benefit.

(c) **Moved to another state.** When a household moves to another state and has food benefits remaining in their account, the household must use the food benefits in Oklahoma prior to leaving the state or find a retailer in another state that accepts the Access Oklahoma card. The Access Oklahoma card can be

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used in most states as most major retailers accept the Access Oklahoma card.

## **340:50-10-9. Expungement of benefits**

(a) The Oklahoma Department of Human Services (OKDHS) expunges Supplemental Nutrition Assistance Program (SNAP) food benefits that were not accessed by the household after a period of one year:

- (1) 12 months of inactivity until September 22, 2021; or
- (2) 274-calendar days of inactivity beginning September 22, 2021.

(b) Inactivity occurs when the household does not take action that affects the balance of the household's SNAP electronic benefit transfer account, such as making a purchase or return.

(c) Beginning September 22, 2021, OKDHS must provide an expungement notice to the household at least 30-calendar days before expunging the benefit.

## **340:50-10-11. Food benefit household leaves the state [REVOKED]**

~~When a household moves to another state and has food benefits remaining in their account, the household must either use the food benefits in Oklahoma prior to leaving or find a retailer in another state that accepts the Access Oklahoma card. The Access Oklahoma card can be used in most states as most major retailers accept the Access Oklahoma card.~~

## **SUBCHAPTER 11. SPECIAL PROCEDURES**

### **PART 1. HOUSEHOLDS ENTITLED TO EXPEDITED SERVICE**

#### **340:50-11-5. ~~Procedures for expediting~~ Expedited services ~~procedures and benefit issuance~~**

To expedite the certification process, the worker must verify the applicant's identity and conduct the household's interview as soon as possible to ensure the household, when eligible, receives timely expedited service ~~timely~~.

- (1) Reasonable verification pursuit ~~of verification~~.** The worker makes reasonable efforts to verify, within the seven-calendar day expedited processing standard, the household's residency, income statement, and all other eligibility factors before certification, per Section 273.2(i) of Title 7 of the Code of Federal Regulations, ~~before certification~~. This effort includes evaluating the household's explanation of how the household meets its needs when declared expenses exceed reported income or when the household reports no household income.

(A) The worker verifies eligibility factors through documentary evidence or, when documentary evidence is not readily available, through a collateral contact.

(B) The worker may postpone verifying eligibility factors other than identity that could not be verified

within the expedited service processing time limit. In most instances, it is expected that the applicant verify at least residence and income, within the time limit.

(C) The worker must not delay certification up to, or beyond the time limit, solely because factors other than identity were not verified. When the household is unlikely to be able to provide the required verification within the expedited service timeframe, the worker must postpone verification.

- (2) Postponed verification.** When verification is postponed, the worker gives or sends the household Form 08AD092E, Client Contact and Information Request, to request the postponed verification before further benefits are approved.

(A) When a household member, who is not a newborn, needs to provide a Social Security number (SSN) that was postponed, the household must furnish the SSN or proof that an application was filed with the Social Security Administration before the second full month of participation.

(B) When verification is postponed, the worker certifies the household for a one- or two-month expedited certification period, per Oklahoma Administrative Code (OAC) 340:50-11-6(3) of this Section. To avoid a break in benefits, when the household is certified for:

- (i) one month, the household must furnish the postponed verification within 30-calendar days of the application date; or
- (ii) two months, the household must furnish the postponed verification by the last day of the expedited certification period.

(C) When the household does not provide the verification within 30-calendar days of the application date for a one month certification, or by the last day of the expedited certification period for a two month certification, but does provide it within 60-calendar days of the application date, benefits are prorated from the date the verification is provided. The household must complete a new application ~~in order~~ to receive further benefits when the verification is not received within 60-calendar days of the application date.

(D) When the household provides postponed verification timely, the worker approves the household, when eligible, for a normal certification period within seven-calendar days of ~~receipt of the verification~~ receiving the verification.

- (3) Expedited certification period.** When the household is eligible for expedited services and verification is postponed, the worker certifies the household for a one- or two-month expedited certification period.

(A) When the household applies between the:

- (i) first and 15th of the month, the worker certifies the household for one month; or
- (ii) 16th and 31st of the month, the worker certifies the household for two months.

(B) The worker prorates the initial month's benefits when the household applies later than the first day of the month.

(C) When proration causes the household to be ineligible for the application month, the worker denies the application for the application month and certifies the household for expedited food benefits for the following month.

(D) The initial month's food benefits issue immediately. When the household is assigned a two-month certification period, the second month's benefits issue on the first day of the second month.

(4) Normal certification period. When the household is eligible for expedited services and verification is not postponed, the worker certifies the household for a normal certification period.

(4) Multiple expedited services certifications. There is no limit to the number of times a household may be certified using expedited procedures, as long as prior to each expedited certification when the household completes the interview requirement, and provides the postponed verification from the last expedited certification or is certified before reapplying for food benefits. When the household does not provide the postponed verification, it is not eligible for expedited processing until it is certified using normal processing standards, per OAC Oklahoma Administrative Code 340:50-3-1 between expedited certifications.

**340:50-11-6. Issuance for households entitled to expedited services [REVOKED]**

~~When the household is determined eligible for expedited services and the required verification was postponed, the household is certified for a one or two month certification period.~~

- ~~(1) When the household applies between the:
 
  - ~~(A) first and 15th of the month, the worker certifies the household for one month; or~~
  - ~~(B) 16th and 31st of the month, the worker certifies the household for two months.~~~~
- ~~(2) The worker prorates the initial month's benefits when the household applies later than the first day of the month.~~
- ~~(3) When proration causes the household to be ineligible for the month of application, the application is denied for the month of application and approved for expedited issuance for the following month.~~
- ~~(4) The initial month's food benefits issue immediately when the household is eligible for expedited services. When the initial month's benefits are prorated and the household is assigned a two month certification period, the second month's benefits issue on the first day of the second month.~~

**PART 3. SIMPLIFIED SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SSNAP) FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND COMPANION STATE SUPPLEMENTAL PAYMENT (SSP) RECIPIENT(S)**

**340:50-11-20. Scope and application processing**

(a) Simplified Supplemental Nutrition Assistance Program (SSNAP). ~~The Simplified Supplemental Nutrition Assistance Program (SSNAP) Per Section 273.25 of Title 7 of the Code of Federal Regulations, SSNAP rules in this Subchapter are used apply when ALL food benefit household members are included in:~~

- ~~(1) Temporary Assistance for Needy Families (TANF) cash assistance; or~~
- ~~(2) TANF cash assistance and a companion State Supplemental Payment (SSP) case.~~

(b) When SSNAP procedures do not apply. SSNAP procedures do not apply when:

- ~~(1) no household member receives TANF cash assistance;~~
- ~~(2) all household members receive SSP; or~~
- ~~(3) any household member is a disqualified or ineligible food benefit household member, per Oklahoma Administrative Code 340:50-5-10.1.~~

(c) Household definition. Food benefit household members are determined using Part 1 of Subchapter 5 of this Chapter.

(d) TANF applicants. When the household applies for TANF, the worker determines if the applicant wants to receive or is currently receiving food benefits.

(1) When the household currently receives non-public assistance (non-PA) food benefits, the food benefits remain non-PA until TANF is certified.

(2) When the household does not receive food benefits and applies for TANF and food benefits at the same time, SSNAP rules are not used to determine food benefit eligibility when the:

- (A) household qualifies for expedited service and the TANF application will not be certified within seven-calendar days;
- (B) TANF application eligibility determination process will take longer than 30-calendar days;
- (C) TANF application will not be certified for the application month and food benefits must be issued for the initial month; or
- (D) worker denies the TANF application and the food benefit application is pending.

**340:50-11-21. Household definition [REVOKED]**

~~Food benefit household members are determined using Part 1 of Subchapter 5 of this Chapter.~~

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## 340:50-11-22. Application processing [REVOKED]

At the time of application for Temporary Assistance for Needy Families (TANF), the worker determines if the applicant wants to receive or is currently receiving food benefits and if the household is eligible for the Simplified Supplemental Nutrition Assistance Program (SSNAP). If the household is receiving non public assistance (non PA) food benefits at the time of the TANF application, the food benefits remain as non PA until TANF is certified.

- (1) **Households within SSNAP scope.** If the household has applied for TANF, non PA Supplemental Nutrition Assistance Program (SNAP) rules are used to determine eligibility when the:
  - (A) household qualifies for expedited service and the TANF application will not be certified within seven calendar days;
  - (B) TANF application will take longer than 30 calendar days to determine eligibility; or
  - (C) TANF application will not be completed and certified for the month of application and food benefits must be issued for the initial month.
- (2) **Denial of TANF.** When the TANF application is denied and the food benefit application is pending, the worker must determine the household's food benefit eligibility using non PA SNAP rules.

## 340:50-11-23. Eligibility determination for households within the Simplified Supplemental Nutrition Assistance Program (SSNAP)

(a) **SSNAP eligibility determination.** All households within Simplified Supplemental Nutrition Assistance Program (SSNAP) the SSNAP scope meet applicable Supplemental Nutrition Assistance Program (SNAP) eligibility rules, per Sections 273.23 and 273.25 of Title 7 of the Code of Federal Regulations and Oklahoma Administrative Code (OAC) 340:50-11-20. Benefit amount is determined by the computer.

- (1) **Income determination.** Food benefit income is based upon Temporary Assistance for Needy Families (TANF) SSNAP uses TANF income definitions to determine food benefit income. If/When there is a TANF case and a companion State Supplemental Payment (SSP) case for the aged, blind, or disabled ease, income definitions for TANF and SSP apply. Income amounts converted from the TANF and SSP cases that are converted to food benefit income, must be are classified as food benefit unearned income. Food benefit unearned income is computed for:
  - (A) **TANF cash assistance only.** The total household requirement, plus the exempt earned income amount less worker subtracts the non-fraud related recoupment from the exempt earned income and adds the remaining exempt earned income to the payment standard for the household size, per Oklahoma Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX; or
  - (B) **TANF with companion SSP case(s).** The companion case's total countable income of the companion case(s) is added to the primary food benefit

case's countable income of the primary food benefit case.

- (2) **Resource determination.** SSNAP households are considered resource eligible when they meet resource requirements for TANF and, when applicable, SSP.
- (3) **Non-financial eligibility criteria.** SSNAP households must fulfill all applicable SNAP nonfinancial eligibility requirements, per Subchapter 5 of this Chapter.
- (4) **Deduction determination.** The allowable deductions for SSNAP, when applicable, are shelter, utilities, and medical expense expenses, and dependent care as determined and verified, according to SNAP rules in per OAC 340:50-7-31. Medical expense must be expenses are verified only when the food benefit would be increased by allowing the medical expense deduction increases the food benefit amount. The dependent care deduction is automatically allowed, when applicable.
  - (b) **Food benefit allotments.** Food benefit allotments are determined, per Sections 2012 and 2017 of Title 7 of the United States Code. Refer to OKDHS Appendix C-3, Maximum Food Benefit Allotments and Standards, for Income and Deductions for food benefit allotment amounts.
  - (c) **Food benefit proration.** Food benefit allotments for an initial month are prorated from the date of application. Initial month means the first month the household is certified for food benefits following any time period during which the household was not certified. Food benefits are not prorated when benefits change from non-PA to SSNAP if there is no break in service.

## 340:50-11-24. Food benefit allotments [REVOKED]

Food benefit allotments are determined by the computer in accordance with rules found in Sections 2012, 2017, and 2030 of Title 7 of the United States (U.S.) Code and are shown on the Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions.

## 340:50-11-25. Proration of food benefits [REVOKED]

Initial month food benefits are prorated. The initial month means the first month the household is certified for food benefits following any period of time during which the household was not certified. If the household's benefits are continuous, the food benefits are not prorated even when there is a change from non public assistance (non PA) Supplemental Nutrition Assistance Program (SNAP) to the Simplified Supplemental Nutrition Assistance Program (SSNAP) or SSNAP to SNAP.

## SUBCHAPTER 15. OVERPAYMENTS AND FRAUD

### PART 1. OVERPAYMENTS

#### 340:50-15-1. Scope and applicability

- (a) **Scope and applicability.** The scope and applicability of overpayment procedures contained in this Subchapter apply to

Supplemental Nutrition Assistance Program (SNAP) food benefit issuance. Section 273.16 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.16) contains federal requirements regarding disqualification for intentional program violations and 7 C.F.R. § 273.18 contains federal requirements regarding overpayment claims against households.

(b) **Overpayment claim definition.** A SNAP food benefit overpayment occurs when a household receives more food benefits than it is entitled to receive or when benefits are trafficked.

(c) **Persons responsible for repaying an established overpayment claim.** Refer to Oklahoma Administrative Code (OAC) 340:50-15-6 for repayment procedures. Persons responsible for repaying an established overpayment claim include:

- (1) every adult included in the food benefit allotment, when the overpayment or benefit trafficking occurred; and
- (2) a person connected to the household, such as an authorized representative or other individual, when the person trafficked benefits or caused the overpayment.

(d) **Overpayment referral.** When the worker determines an overpayment occurred, the worker sends an overpayment referral to Adult and Family Services (AFS) Benefit Integrity and Recovery (BIR) Unit for overpayment classification and establishment. The overpayment referral consists of a completed Form 08OP005E, Report of Food Benefit (FB) Overissuance, and supporting documents. Reasons to submit an overpayment referral to AFS BIR Unit include, but are not limited to, when:

- (1) the household:
  - (A) failed to provide the Oklahoma Department of Human Services (OKDHS) with correct or complete information;
  - (B) failed to report changes in household circumstances, per OAC 340:50-9-5;
  - (C) chose to continue to receive benefits pending a fair hearing decision and the:
    - (i) fair hearing decision finds the household ineligible or eligible for fewer benefits; or
    - (ii) household withdraws the fair hearing request after food benefits were reopened or increased, pending the outcome of the hearing; or
  - (D) trafficked SNAP food benefits, per OAC 340:50-15-25;
- (2) the worker:
  - (A) incorrectly computed the household's income or deductions or otherwise issued an excess benefit allotment;
  - (B) failed to take prompt action on a change reported by the household resulting in an over-issuance;
  - (C) incorrectly applied rules that resulted in an over-issuance or issuing benefits to an ineligible household;
  - (D) incorrectly issued or renewed food benefits to an ineligible household; or
  - (E) failed to reduce food benefits because the household's public assistance benefits changed;
- (3) the computer system incorrectly issued benefits to a household;

- (4) an AFS SNAP Quality Control staff discovered the over-issuance during a quality control review; or
- (5) the Oklahoma Inspector General (OIG) Investigative Unit discovered an over-issuance.

(e) **Overpayment classification and claim establishment.** ~~Per OAC 340:50-15-4, AFS BIR Unit staff classifies an overpayment as an inadvertent household error, intentional program violation, or agency error, per OAC 340:50-15-4, and establishes the overpayment claim, per OAC 340:50-15-3. Refer to OAC 340:50-15-2 for instances when an overpayment claim is not required. Per 7 C.F.R. § 273.18(e)(2)(ii), AFS BIR Unit staff does not establish an overpayment claim when the error causing the overpayment is classified as inadvertent client error or agency error and the:~~

- (1) overpayment is less than \$250;
- (2) household is not participating in SNAP when the overpayment is discovered; and
- (3) overpayment was not discovered in an AFS Quality Control Review Unit review.

~~(f) **Development of repayment** Repayment plan development. After AFS BIR Unit staff verifies and calculates the overpayment claim, staff and establishes the claim by notifying the debtor household of the overpayment debt. Once established, AFS BIR Unit staff develops a repayment plan with the household, per OAC 340:50-15-6.~~

(g) **Disqualification penalty.** When a person commits an intentional program violation, in addition to being responsible for repaying the overpayment debt, the person is disqualified from receiving food benefits for a time period of time per OAC 340:50-15-25, ~~in addition to being responsible for repaying the overpayment debt.~~

(h) **Fair hearing rights.** When the household disagrees with the overpayment decision, the household may request a fair hearing within 90-calendar days of the date on the Notification of Food Benefit Overpayment notice, per 7 C.F.R. § 273.15(g). When OKDHS Legal Services Appeals Unit or county staff notifies AFS BIR Unit staff that the household requested a timely fair hearing, AFS BIR Unit staff ceases all collection efforts, including allotment reduction, pending the hearing decision. An item mailed by OKDHS is presumed to be received on the second day mail is delivered, following the date on the notice, per OAC 340:2-5-63.

**340:50-15-2. Instances when overpayment claim is not required [REVOKED]**

~~Per Section 273.18(e)(2)(ii) of Title 7 of the Code of Federal Regulations, the worker does not establish an overpayment claim when the error causing the overpayment is classified as inadvertent client error or agency error and all of the conditions included in (1) through (3) exist.~~

- ~~(1) The overpayment is less than \$250.~~
- ~~(2) The household is not participating in the Supplemental Nutrition Assistance Program at the time of discovery of the overpayment.~~
- ~~(3) The overpayment was not discovered in an Office of Inspector General Administrative Review Unit review.~~

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## 340:50-15-5. Right to appeal [REVOKED]

When the household disagrees with the overpayment decision, the household may request a fair hearing within 90 calendar days of the date on the Notification of Food Benefit Overpayment notice per Section 273.15(g) of Title 7 of the Code of Federal Regulations. Upon notification from the Oklahoma Department of Human Services (DHS) Legal Services Appeals Unit or local county staff that the household requested a timely fair hearing, Adult and Family Services Benefit Integrity and Recovery staff ceases all collection efforts, including allotment reduction, pending the hearing decision. Per Oklahoma Administrative Code 340:2-5-63, an item mailed by DHS, is presumed to be received on the second day mail is delivered, following the date on the notice.

## 340:50-15-7. Suspension of collection effort suspension or termination of collection efforts

(a) Collection effort suspension. The Adult and Family Services (AFS) Benefit Integrity and Recovery Section (BIRS) (BIR) Unit:

(1) suspends collection action on cases no longer receiving Supplemental Nutrition Assistance Program (SNAP) food benefits when the:

(A) primary responsible household member is deceased and there are no remaining adult household members responsible for the overpayment;

(B) household cannot be located; or

(C) cost of further collection action is likely to exceed the amount that can be recovered.

(2) AFS BIR Unit may:

(A) reopen debts held in suspension based on changes in household circumstances; or

(B) initiate food benefit reduction in the food benefit if the client reapplies and becomes eligible in the future.

(b) Termination of overpayment claims. Per Section 273.18(e)(8) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.18(e)(8)):

(1) a terminated overpayment claim is a claim in which all collection action has ceased;

(2) a written-off claim is a claim no longer considered a receivable subject to continued federal and state collection and reporting requirements;

(3) when an overpayment claim is paid in full, the household is notified the debt was satisfied.

(4) AFS BIR Unit staff may terminate and write off SNAP overpayment claim(s) when:

(A) all adult household members die;

(B) the claim balance is \$25 or less and the claim has been delinquent for 90-calendar days or more unless other claims exist against this household resulting in an aggregate claim total of greater than \$25;

(C) the claim is delinquent for three years or more unless AFS BIR Unit is pursuing the claim through the Treasury Offset Program, per 7 C.F.R. § 273.18(n) and Oklahoma Administrative Code 340:50-15-6(h);

(D) the household cannot be located for three or more years;

(E) the claim is determined invalid unless it is appropriate to pursue a different claim type; or

(F) it is not cost effective to pursue the claim any further, per FNS approved cost-effectiveness criteria.

(5) AFS BIR may reinstate a terminated and written-off claim when a new collection method or specific event, such as lottery winnings, substantially increases the likelihood of further collections.

## 340:50-15-9. Terminating and writing-off Supplemental Nutrition Assistance Program (SNAP) overpayment claims [REVOKED]

(a) Per Section 273.18(e)(8) of Title 7 of the Code of Federal Regulations (CFR), a:

(1) terminated overpayment claim is a claim in which all collection action has ceased; and

(2) written-off claim is a claim no longer considered a receivable subject to continued federal and state collection and reporting requirements.

(b) When an overpayment claim is paid in full, the household is notified the debt was satisfied.

(c) Adult and Family Services (AFS) Benefit Integrity and Recovery Section (BIRS) staff terminate and write off Supplemental Nutrition Assistance Program (SNAP) overpayment claim(s) when:

(1) all adult household members die;

(2) the claim balance is \$25 or less and the claim has been delinquent for 90 calendar days or more UNLESS other claims exist against this household resulting in an aggregate claim total of greater than \$25;

(3) the claim is delinquent for three years or more; or

(4) the household cannot be located for three years or more.

## PART 3. INTENTIONAL PROGRAM VIOLATION

### 340:50-15-25. Cases referred for intentional program violation (IPV) determination

(a) IPV definition. Per Section 273.16(c) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.16(c)), an IPV is defined as intentionally:

(1) making a false or misleading statement, or misrepresenting, concealing, or withholding facts; or

(2) committing any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or of any Oklahoma State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or electronic benefit transfer (EBT) cards.

(b) Cases referred for an administrative disqualification hearing (ADH). Oklahoma Department of Human Services (DHS) (OKDHS) Office of Inspector General (OIG) staff refers cases to the DHS—OKDHS Legal Services Appeals Unit to conduct an ADH to determine if when the client committed an intentional program violation (IPV). The referred cases referred



contain documentary evidence of ~~intentional program violation~~ IPV, but do not warrant civil or criminal prosecution.

(bc) **Waiving ADH.** OIG staff gives a client suspected of an ~~intentional program violation~~ IPV the option to waive his or her rights to an ADH. The client must complete and sign Form 08OP016E, Administrative Disqualification Hearing Waiver, to request a waiver. A hearing waiver of the hearing subjects the client to the same penalties as if the hearing process determined ~~intentional program violation~~ the client committed an IPV.

(ed) **Penalties for ~~intentional program violation~~ an IPV.** Persons found to have committed an IPV through an ADH, a federal, state, or local court, an ADH waiver, or, when referred for prosecution, a disqualification agreement, are ineligible to participate in SNAP, per 7 C.F.R. § 273.16(b).

(1) **Cases determined by ADH or ADH waiver.**

When the ADH results in an ~~intentional program violation~~ IPV determination or the client waives his or her right to the hearing process, Adult and Family Services (AFS) Benefit Integrity and Recovery ~~BIR~~ (BIR) Unit staff imposes a disqualification penalty.

(A4) AFS BIR Unit staff sends Form 08AD019E, Program Penalty/Disqualification Notice, to the disqualified member. Form 08AD019E includes information regarding the remaining household members' eligibility.

(B2) ~~The~~ Unless (ii) of this subparagraph applies, the disqualification period for a person is one year for the first violation, two years for the second violation, and permanently for the third violation.

(iA) Any person disqualified for ~~intentional program violation~~ an IPV prior to April 1, 1983, is considered to have one previous disqualification, regardless of the number of previous disqualifications.

(iiB) A person found to have made a fraudulent statement or representation with respect to the person's identity or place of residence in order to receive multiple SNAP benefits simultaneously is disqualified for a period of 10 years ~~when an ADH decision finds the person made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple, simultaneous Supplemental Nutrition Assistance Program (SNAP) food benefits~~ or permanently for a third violation.

(iiiC) The disqualification period begins the first possible effective month following the date AFS BIR Unit staff mails Form 08AD019E. Once the disqualification period begins, it runs continuously until the end of the period imposed, regardless of whether the household remains eligible for food benefits during the person's disqualification period.

(ivD) AFS BIR Unit staff removes the disqualified person from the household size or, for a one-person household, closes the SNAP food

benefit based on an ~~intentional program violation~~ when it is a one person household IPV. Per ~~Oklahoma Administrative Code (OAC) 340:50-7-29(d)(1)~~, When determining the remaining household members' SNAP eligibility, the worker counts the disqualified person's total gross income ~~of the disqualified person in determining the remaining household members eligibility~~ and allows all applicable deductions, for the remaining household members per Oklahoma Administrative Code (OAC) 340:50-7-29(d)(1).

(vE) A ~~client~~ household must repay the SNAP ~~food benefit~~ overpayment claim regardless of any disqualification penalty imposed. AFS BIR Unit staff sends Form 08OP118E, Food Benefit Repayment Agreement, to notify the household of the need to make a repayment plan and the repayment options available to the client, per OAC 340:50-15-6.

(2d) **Cases determined by a court.** AFS BIR Unit staff refers all cases suspected of ~~intentional program violation~~ an IPV to OIG to determine if court action is feasible.

(A4) When OIG staff refers the person for court action, AFS BIR Unit staff must not discuss the overpayment claim with the household until court action is complete or AFS BIR Unit staff notifies the worker of needed action. ~~Local county~~ County staff forwards further information or directs client inquiries regarding the overpayment to AFS BIR Unit staff.

(B2) A court of appropriate jurisdiction may find one or more persons in the household guilty of obtaining food benefits by fraudulent means. The court may charge the person with either a misdemeanor or a felony.

(C3) Disqualification penalty procedures for court and ADH determined cases are the same, except for ~~(A)(i) through (D)(iii)~~ of this paragraph ~~subparagraph.~~

(iA) The court may specify the length of the disqualification. Court-specified periods of disqualification may supersede (c)(2) of this Section.

(iiB) A person ~~determined by~~ subject to disqualification when a federal, state, or local court ~~to have~~ determines the person committed ~~intentional program violation~~ an IPV of trading SNAP food benefits for firearms, ammunition, explosives, or controlled substances ~~is subject to disqualification:~~

(i) for two years for the first offense and permanently for the second offense involving the sale of a controlled substance for SNAP food benefits; and

(ii) permanently for the first offense involving the sale of firearms, ammunition, or explosives for SNAP food benefits.

(iiiC) A person ~~convicted in~~ is permanently disqualified from SNAP participation when a federal, state, or local court convicts the person of trafficking SNAP food benefits for an aggregate amount of \$500 or more ~~is permanently disqualified from~~

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~~SNAP participation. Per Section 271.2 of Title 7 of the Code of Federal Regulations 7 C.F.R. § 271.2 and Section 243 of Title 56 of the Oklahoma Statutes (56 O.S. § 243), the definition of trafficking means:~~

~~(i) the buying, selling, stealing, or otherwise effecting an exchange of exchanging SNAP benefits issued and accessed via electronic benefit transfer (EBT) EBT cards, card numbers, and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;~~

~~(ii) the exchange of firearms, ammunition, explosives, or controlled substances, per Section 802 of Title 21 of the United States Code, for SNAP benefits;~~

~~(iii) purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;~~

~~(iv) purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits, in exchange for cash or consideration other than eligible food;~~

~~(v) intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food;~~

~~(vi) attempting to buy, sell, steal, or otherwise affect an exchange of exchanging SNAP benefits issued and accessed via EBT cards, card numbers, PINs, or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; or~~

~~(vii) the possession of stolen SNAP EBT cards.~~

~~(D) A person is disqualified from participation in SNAP for a 10 year period when the person is found to have made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple benefits simultaneously under SNAP.~~

(4) The court may also stipulate a repayment plan. The repayment plan cannot be renegotiated. AFS BIR Unit staff may refer the case back to the district attorney's office when the client fails to comply with the repayment plan.

(E) If a court fails to impose a disqualification or a disqualification period for an IPV, OKDHS must

impose the appropriate disqualification penalty specified in this Section unless it is contrary to the court order.

(5) Disqualification consent agreement. Per 56 O.S. § 243(B)(5), any district attorney who enters into a deferred adjudication or who negotiates for a deferred sentence with a defendant charged with fraud must present the defendant with a disqualification consent agreement as part of the deferred adjudication or sentence.

[OAR Docket #22-544; filed 7-5-22]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 60. REFUGEE RESETTLEMENT PROGRAM

[OAR Docket #22-545]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

340:60-1-1 through 340:60-1-2 [REVOKED]

340:60-1-3 [AMENDED]

340:60-1-5 [REVOKED]

340:60-1-6 [AMENDED]

(WFs 22-60, 21-04, and 21-13)

### AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; and Sections 400.1, 400.23, 400.50, 400.56 through 400.59, and 400.102 of Title 45 of the Code of Federal Regulations; Section 1392(b)(2) of the Social Security Act; the Afghanistan Supplemental Appropriations Act, 2022, Policy Letter 22-01, Afghan Humanitarian Parolees and Unaccompanied Afghan Minors Eligible for Office of Refugee Resettlement (ORR) Benefits and Services, and Policy Letter 22-02, Additional ORR-Eligible Statuses and Categories and Acceptable Documentation Requirements for Afghan Nationals.

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

December 20, 2021

### COMMENT PERIOD:

January 18, 2022 through March 18, 2022

### PUBLIC HEARING:

March 23, 2022

### ADOPTION:

March 23, 2022

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

March 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded Rules:

340:60-1-6 [AMENDED]

(Reference WF 21-04)

#### Gubernatorial Approval:

July 19, 2021

#### Register Publication:

39 Ok Reg 100

#### Docket Number:

21-733

#### Superseded Rules:

340:60-1-3 [AMENDED]

(Reference WF 21-13)

**Gubernatorial Approval:**

December 21, 2021

**Register Publication:**

39Ok Reg 466

**Docket Number:**

22-5

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Chapter 60 amends the rule to: (1) revoke three Sections and consolidate relevant information regarding the purpose, legal basis, and funding availability into another Section within the Chapter; (2) add clarifying language and a legal citation; (3) update terminology; (4) remove Oklahoma Human Services (OKDHS) as an agency that determines Refugee Cash Assistance (RCA) as the contracted provider agency recently agreed to determine RCA eligibility statewide; (5) refer to an appendix for the resource standard instead of listing an amount; (6) add the resource standard for refugee medical assistance (RMA); (7) consolidate relevant information regarding the purpose, legal basis, and funding availability being revoked from Oklahoma Administrative Code (OAC) 340:60-1-1 and 340:60-1-2; (8) add recently admitted Afghans who receive special immigrant (SI) conditional permanent residence, SI/SQ parole, or who are considered humanitarian parolees to be eligible for RCA and RMA benefits for a designated time period; and (9) add clarifying language and a legal citation.

**CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**340:60-1-1. Purpose [REVOKED]**

~~The purpose of this Chapter is to describe the rules governing the Oklahoma Department of Human Services (OKDHS) Refugee Resettlement Program (RRP).~~

**340:60-1-2. Legal base and availability of funds [REVOKED]**

~~The Refugee Act of 1980 [Public Law 96-212] provides for assistance to refugees, regardless of national origin, to be administered by the states, with up to 100% reimbursement to be claimed from federal funds. Provision of the Refugee Resettlement Program (RRP) benefits described in this Chapter is based on the availability of federal funds. Should federal administrative or congressional action occur which reduces or terminates federal funding of RRP, benefits provided by the Oklahoma Department of Human Services (OKDHS) are reduced or terminated accordingly.~~

**340:60-1-3. Refugee Resettlement Program (RRP)**

(a) ~~**The Refugee Act of 1980 Purpose.** The RRP purpose is to provide for effective refugee resettlement and to assist them to achieve economic self-sufficiency as quickly as possible, per Section 400.1 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 400.1).~~ The Oklahoma Department of Human Services (OKDHS) RRP uses the international definition of refugee adopted under the Refugee Act of 1980.

(b) **Legal basis and funding availability.** The Refugee Act of 1980 [Public Law 96-212] provides assistance to refugees,

regardless of national origin, to be administered by the states, with up to 100 percent reimbursement from federal funds. Provision of RRP benefits is based on federal fund availability. If federal funding is reduced or terminated, RRP benefits are reduced or terminated accordingly.

(c) **Refugee documentation.** ~~An applicant for assistance under the~~ A refugee applying for RRP must provide documentation issued by the United States Citizenship and Immigration Services (USCIS) to verify his or her refugee status. Acceptable documentation includes, but is not limited to:

- (1) Form I-94, Departure Record;
- (2) Form I-551, Legal Permanent Resident Card;
- (3) a passport stamped with the classification status;
- (4) a T-Visa; or
- (5) a letter or order from ~~the~~ USCIS or court granting asylum.

(ed) **Refugee status.** ~~Documentation from The~~ USCIS ~~provided by documentation~~ the applicant provides must show the applicant's status is:

- (1) paroled as a refugee or asylee under Section 212(d)(5) of the Immigration and Nationality Act (INA);
- (2) admitted as a refugee under Section 207 of the INA;
- (3) granted asylum under Section 208 of the INA;
- (4) admitted as an Amerasian immigrant from Vietnam under Section 584 of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1989, as amended;
- (5) admitted for permanent residence, provided the person previously held one of the statuses identified in this Section;
- (6) a Cuban or Haitian entrant, per requirements in 45 CFR Part 401;
- (7) an alien and his or her eligible relatives who are victims of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000 which was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003;
- (8) an Iraqi admitted in special immigrant status as defined in Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)], and per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008 pursuant to Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008, and Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008; or
- (9) an Afghan admitted in special immigrant status as defined in Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)] and per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act, 2009, pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act, 2009.
- (10) an Afghan who receives special immigrant (SI) conditional permanent residence, SI/SQ parole, or who is a humanitarian parolee admitted to the United States

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(U.S.) due to urgent humanitarian reasons or significant public benefit, per the Afghanistan Supplemental Appropriations Act, 2022, P. L. 117-43. Humanitarian parolees paroled into the U.S. between July 31, 2021 through September 30, 2022 are eligible for refugee cash assistance (RCA) and refugee medical assistance (RMA) benefits for eight months beginning October 1, 2021, or the date the parolee "enters the community" in the U.S., such as when they leave a military base, whichever is later. The latest date humanitarian parolees may receive RCA and RMA benefits is March 31, 2023 or the end of their parole term, whichever is later.

(de) **Verification of alien status declaration.** A declaration of alien status is required at application for all persons applying for RRP.

(1) Under penalty of perjury, the applicant declares the alien status of all persons applying for RRP benefits on the application form and signs the application. ~~After~~Before adding an additional person to the benefit after certification, this declaration is made on Form 08MP022E, Declaration of Citizenship Status, ~~before additional persons are added to the benefit.~~

(2) The Systematic Alien Verification for Entitlement (SAVE) process is used to verify alien status, per OAC 340:65-3-4(5).

(ef) **Exclusions from RRP.** Persons excluded from participation in RRP are:

(1) resident aliens who did not previously have ~~the~~refugee or asylee status of refugee or asylee; or

(2) any asylum applicant ~~for asylum~~ who has not been granted asylum status.

### 340:60-1-5. Sponsorship [REVOKED]

~~Most refugees who reach a community have been resettled by one of the national voluntary agencies or a state or local government working with the federal government and some also have a local sponsor. The sponsor may be an individual, a church, a civic organization, a state or local government, or other local group or organization. As part of the process for determining eligibility the worker must contact the sponsor or the resettlement agency to verify if they are providing cash benefits or other services to the refugee.~~

### 340:60-1-6. Program eligibility and procedures

(a) **Refugee Resettlement Program components.** The federal Office of Refugee Resettlement (ORR) provides funding to states for time-limited cash and medical assistance and resettlement case management and ~~social~~support services for new arrivals to the United States (U.S.) who meet refugee status, per Oklahoma Administrative Code (OAC) 340:60-1-3(e).

(1) A contracted service provider is responsible for providing resettlement case management and ~~social~~support services to newly-arriving refugees and asylees in Oklahoma.

(2) ~~The Oklahoma Department of Human Services (DHS)(OKDHS)~~ is responsible for determining financial eligibility for refugee medical benefits (RMA), and a

contracted provider determines financial eligibility for refugee cash assistance (RCA) throughout Oklahoma and refugee cash assistance (RCA) for the eastern part of Oklahoma. A contracted provider determines eligibility for RCA in the western part of the state. Refer to Appendix C-9, Refugee Resettlement Program Benefit and Service Providers, to determine ~~if DHS or a~~which contracted provider serves a specific county.

(b) **SocialRefugee support services.** ~~Social~~Refugee support services are provided for up to five-calendar years ~~of~~after the arrival date by ~~DHS contracted~~OKDHS contracted providers, per Sections 400.147 through 155 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 400.147 through 155). SocialSupport services are provided to promote economic self-sufficiency through employability services, English language instruction, and social adjustment services.

(c) **Cash assistance.** Refugees and asylees must be afforded an opportunity to apply for cash assistance, per 45 C.F.R. § 400.50. Eligibility is determined according to Temporary Assistance for Needy Families (TANF) or State Supplement Payment (SSP) program rules. When the refugee or asylee does not meet TANF or SSP cash assistance eligibility requirements, an RCA application is made. When the refugee or asylee is 65 years of age and older, blind, or disabled, the refugee is referred to the Social Security Administration to apply for Supplemental Security Income (SSI).

(1) **Eligibility requirements for RCA.** RCA eligibility requirements are included in (A) through (H) of this paragraph per 45 C.F.R. §§ 400.25, 400.53, 400.54, 400.59, 400.75 through 400.79, and 400.81 through 400.83.

(A) **Limited eligibility period.** RCA is limited to the first ~~eight~~eight-calendar months the refugee resides in the U.S.

(B) **Refugee documentation and status requirements.** Refugees and asylees must meet documentation and status requirements, per OAC 340:60-1-3.

(C) **Residence requirement.** The refugee or asylee must be an Oklahoma resident and not receiving cash assistance in another state. There is no durational requirement and the refugee's or asylee's statement that he or she is residing in Oklahoma is sufficient unless it is inconsistent with other known facts.

(D) **Student status.** A refugee or asylee must not be a full-time student in ~~an~~a higher education institution ~~of higher education.~~

(E) **Household composition.** Household composition may consist of a family unit that includes:

(i) a single adult. Adults living alone or with other adults are considered as single or separate family units; or

(ii) an adult and his or her spouse and all minor children 17 years of age and younger ~~at~~ for whom the family assumes financial responsibility. Spouses living together must be considered in the same family unit.

(F) **Income requirements.** Maximum countable earned and unearned income for all family unit members must be less than the payment standard for the number of eligible members per Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule XIV.A. When income is reduced due to ~~overpayment or garnishment~~ recoupment of an ~~overpayment or garnishment~~, the gross income before recoupment or garnishment is counted.

(i) **Reporting requirements.** Family unit members are responsible for reporting all income at application and within 10-calendar days of when a family unit member:

- (I) begins employment or starts receiving unearned income; or
- (II) the income source, amount, or dates received changes.

(ii) **Earned income.** Earned income is income a family unit member receives in the form of wages, salary, commission, in-kind benefits received in lieu of wages or in conjunction with wages from an employer, or self-employment for which a person puts forth physical labor. In-kind benefits are considered as earned income only when an employee and employer relationship is established.

(I) Earned income is not counted against the payment standard for the first four months of the eight-month eligibility period.

(II) When the person works for an employer, gross earnings for the fifth-calendar month are determined by averaging gross earnings for the most recent 30-calendar day period and converting the earnings to a monthly amount. Gross earnings from an employer are counted dollar-for-dollar against the payment standard.

(III) When the person is self-employed, gross earnings for the fifth-calendar month are determined by averaging income over the number of months the business was in operation and subtracting verified business expenses.

(iii) **Unearned income.** Income other than earned income is considered unearned income. All unearned income received during a month is counted dollar-for-dollar against the payment standard unless disregarded per (iv) of this subparagraph. Unearned income includes, but is not limited to:

- (I) dividends and interest;
- (II) cash contributions;
- (III) retirement, disability, or unemployment benefits;
- (IV) worker's compensation;
- (V) child support or alimony; and
- (VI) rental income.

(iv) **Income disregards.** Income disregarded when determining income eligibility includes:

(I) earnings received during the first ~~four~~four-calendar months of the refugee's arrival in the U.S.;

(II) benefits received through a cooperative agreement, such as U.S. Department of Justice or U.S. Department of State - Reception and Placement benefits;

(III) loans;

(IV) money received from the sale of personal property, unless it is self-employment income;

(V) income received by someone living in the home, who is not included in the family unit;

(VI) tax refunds;

(VII) gifts;

(VIII) lump sum inheritances or insurance payments;

(IX) Supplemental Nutrition Assistance Program (~~SNAP~~) food benefits;

(X) ~~earnings of a child~~child's earnings, provided he or she is younger than 18 years of age ~~who~~and is a full-time student;

(XI) housing and utility assistance;

(XII) income or resources remaining in the country of origin; or

(XIII) matching grant benefits from a resettlement agency.

(v) **Verification requirements.** Income is verified at application, when a family unit member begins employment or starts receiving unearned income, and as changes occur. The verification process must be explained to the refugee or asylee at application and as new verification is needed, including what verification must be submitted, by ~~what a certain date,~~and offering assistance ~~Assistance in obtaining the required verification must be offered,~~ when needed.

(I) Earned income may be verified by paystubs, an employer statement, or, when self-employed, business records. Self-employed persons must provide expense receipts before business expenses are subtracted from earnings. ~~The cash value of in-kind benefits~~In-kind benefits' cash value is verified by a ~~statement from the~~an employer statement.

(II) Unearned income may be verified by an award letter, a written letter from or verbal contact with the person or agency providing the income, a check stub or a copy of a check, a court order, financial institution statements, or data exchange screens, per OAC 340:65-3-4.

(III) When the family unit fails to provide required verification or ~~fails to ask~~ for assistance to obtain verification, the application may be denied or cash assistance closed.

(G) **Resource requirements.** ~~The~~Refer to Appendix C-1, Schedule XIV.A(B) for the maximum

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allowable resource amount is ~~\$1,000~~ per family unit. Countable resources refer to real and personal property that have a monetary value and are available or can be converted to cash for current use. Home property and personal items essential to day-to-day living, such as clothing, furniture, and other similar items of limited value are excluded as resources. Countable resources include, but are not limited to:

- (i) cash on hand;
- (ii) savings in a financial institution;
- (iii) stocks and bonds; and
- (iv) equity in an automobile or other vehicles that exceeds \$5,000.

(H) **Requirement to complete and participate in an employment plan.** Non-exempt household members must complete and participate in an employment plan developed by the refugee and the refugee ~~social~~ support service provider. The employment plan lists an employment goal, barriers to be addressed, and a plan to remove the barriers in order ~~for to meet~~ to meet the employment goal ~~to be met~~.

(i) Participation in an employment plan includes:

- (I) registering with the refugee ~~social~~ support service provider providing employment services;
- (II) going to a job interview arranged by the refugee ~~social~~ support service provider;
- (III) accepting at any time, from any source, an offer of employment, ~~as determined that the refugee support service provider determines to be appropriate by the refugee social service provider~~; and
- (IV) participating in any employability service program that provides job or language training in the area where the refugee resides.

(ii) Household members that meet criteria in (I) through (VIII) of this unit are exempt from the requirement to complete and participate in an employment plan. To be exempt, the household member must be:

- (I) younger than 16 years of age or 65 years of age and older;
- (II) younger than 18 years of age and a full-time student;
- (III) 18 years of age ~~and older~~ and a full-time student in secondary school or in ~~an equivalent level of~~ a technical or trade school at an equivalent level with reasonable expectations to complete the program before the person turns 19 years of age;
- (IV) mentally or physically incapacitated. The refugee must provide medical documentation verifying that the incapacity is serious enough to prevent participation in employment services;
- (V) caring for another household member with a mental or physical impairment that

requires care in the home on a substantially continuous basis and no other appropriate household member is available;

(VI) a parent or relative caretaker of a child younger than one year of age when the person provides full-time care of the child. Only one parent or caretaker relative may be exempt in a household for this reason;

(VII) working 30 hours per week in unsubsidized employment; or

(VIII) pregnant and the baby is due within the next ~~six~~ six-calendar months. The pregnancy must be medically verified.

(iii) The refugee support service provider follows criteria in (I) through (IX) of this unit when assisting a refugee with a job placement.

(I) The assignment must be within the scope of the person's employment plan.

(II) The refugee or asylee must be able to meet the job requirements.

(III) Commuting time to and from work may not exceed a total of two hours.

(IV) The assigned work site must not be in violation of applicable federal, state, or local health and safety standards.

(V) Work assignments must not be made on a discriminatory basis.

(VI) Work assignments may be temporary, part-time, full-time, or seasonal.

(VII) The earned wage must meet federal or state minimum wage laws or not be substantially less than the wage normally paid for similar work.

(VIII) The total number of days and hours the person is expected to work must not exceed those customary to the occupation.

(IX) The refugee or asylee is not required to accept work when the position is available due to a strike, lockout, or other bona fide labor dispute or when the work is contrary to his or her union membership.

(iv) RCA is closed for the entire household when a non-exempt household member without good cause:

(I) refuses to complete an employment plan;

(II) refuses or fails to participate in assigned activities included in the employment plan;

(III) refuses or fails to accept appropriate employment; or

(IV) voluntarily terminates employment.

(v) Examples of good cause may include, but are not limited to:

(I) when appropriate child care ~~for the child(ren)~~ is not available;

(II) the illness or incapacity of the participant or any household member who cannot give

- self-care and for whom special care is unavailable;
- (III) a court-required appearance or incarceration of the participant;
- (IV) the participant's attendance at parent and teacher conferences;
- (V) a family crisis or markedly changed individual or family circumstances;
- (VI) the unavailability of planned transportation when needed or the inability to arrange for transportation;
- (VII) ~~the occurrence of~~ inclement weather that prevented the participant, and other persons similarly situated, from traveling to, or participating in, the prescribed activity;
- (VIII) the lack of necessary social services or work activity;
- (IX) when the assignment or job referral does not meet the appropriate work activity;
- (X) racial, ethnic, religious, sexual, physical or mental disability, or age discrimination or harassment by an employer or other employees; or
- (XI) crisis intervention needed due to domestic violence issues.

(2) **Incentive bonuses.** Incentive bonuses are available to eligible individuals; however, the maximum total benefit amount, RCA plus incentive bonuses, that any family unit may receive is the payment standard amount times the eight-month eligibility period as established by the ORR Director. Once the maximum benefit amount is reached, the family unit is no longer eligible for RCA or incentive bonuses even when the family unit has been in the U.S. less than eight-calendar months.

(A) **Early job acceptance bonus.** When the refugee or asylee obtains employment within the first 90-calendar days of his or her arrival date in the U.S., the refugee or asylee may be eligible to receive an early job acceptance bonus of up to \$750 to assist the refugee with work-related expenses. To receive the bonus, the refugee or asylee must:

- (i) request the bonus within 60-calendar days of the employment start date; and
- (ii) submit proof of employment and a list of employment-related expenses necessary to successfully perform and maintain employment. Expenses may include, but are not limited to:
  - (I) a vehicle down payment;
  - (II) tools;
  - (III) uniforms;
  - (IV) driving lessons; or
  - (V) automobile insurance.

(B) **Job retention bonus.** A refugee or asylee may be eligible for a job retention bonus of up to \$100 per person in the family unit when he or she obtains employment within the first 90-calendar days of his or her arrival date in the U.S., and retains the employment through the end of the eighth-calendar

month following arrival. To qualify for the bonus, the refugee or asylee must:

- (i) not have received an RCA cash assistance payment for every month of the eight-month eligibility period;
- (ii) submit proof he or she retained employment through the end of the eighth-calendar month;
- (iii) not re-apply for RCA following benefit closure based on earnings; and
- (iv) request the job retention bonus within 60-calendar days from the end of the eight-month eligibility period.

(3) ~~**Payment method.** DHS issues RCA benefits and bonuses on a debit card or by direct deposit. Refer to OAC 340:65-3-6 for debit card and direct deposit procedures.~~

(4) **Benefit denial or closure.** The family unit's application may be denied or benefits closed when the family unit does not:

- (A) meet eligibility requirements per (c)(1) of this Section; or
- (B) abide by ~~the program~~ terms ~~of the program~~, such as failing to:
  - (i) provide required verification;
  - (ii) keep scheduled appointments; or
  - (iii) follow employment plans.

(5) **Notice requirement.** Written notice is sent or provided to a recipient at least 10-calendar days before the date RCA is reduced, suspended, or closed. The contracted provider sends or provides notices to refugees ~~in the western part of the state and DHS sends computer generated notices to refugees in the eastern part of the state.~~

(6) **Fair hearing requirement.** All RCA applicants ~~for and recipients of RCA~~ are provided an opportunity to request a fair hearing when they disagree with an adverse action. The contracted provider conducts the fair hearings in the western part of the state and DHS Legal Services conducts hearings in the eastern part of the state statewide.

(d) **Medical assistance.** Refugees and asylees must be afforded an opportunity to apply for medical assistance, per 45 C.F.R. § 400.93.

(1) The refugee's eligibility for SoonerCare (Medicaid) must be determined before approving a refugee or asylee for ~~Refugee Medical Assistance (RMA)~~ RMA. SoonerCare (Medicaid) eligibility is determined per OAC 317:35 rules.

(2) When the refugee or asylee is not eligible for SoonerCare (Medicaid), RMA eligibility ~~for RMA~~ is determined per ~~(d)~~ (e) of this Section.

(3) When a refugee or asylee receiving SoonerCare (Medicaid) becomes ineligible because of earnings and has resided in the U.S. for less than eight-calendar months, the refugee or asylee is transferred to RMA for the remaining months.

(e) **RMA.** A refugee or asylee is not required to meet categorical relationship rules per OAC 317:35 for the first ~~eight~~ eight-calendar months from the date of entry into the U.S. Per 45 C.F.R. §§ 400.100 through 400.104, RMA eligibility

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requirements for ~~RMA~~ are listed in (1) through (5) of this subsection.

- (1) **Limited eligibility period.** RMA is limited to the first ~~eight~~eight-calendar months the refugee or asylee resides in the U.S. After the first ~~eight~~eight-calendar months, the refugee or asylee is referred to the Oklahoma Health Care Authority's on-line enrollment process to apply for SoonerCare (Medicaid), and Medicaid rules, per OAC 317:35 apply.
- (2) **Refugee documentation and status requirements.** Refugees and asylees must meet documentation and status requirements, per OAC 340:60-1-3.
- (3) **Student status.** A refugee or asylee must not be a full-time student in ~~an~~ a higher education institution of higher education unless enrollment is approved by ~~DHS~~OKDHS as part of the refugee's employability plan.
- (4) **RCA eligibility.** All ~~RCA~~ recipients of ~~RCA~~ are eligible for RMA when not eligible for SoonerCare (Medicaid). However, the refugee or asylee is not required to apply for or receive RCA in order to qualify for RMA.
- (5) **Income and resource requirements.** For RMA, only income and resources available on the ~~application date of application~~ is considered. Refer to ~~DHS~~OKDHS Appendix C-1, ~~Maximum Income, Resource, and Payment Standards~~, Schedule XIV for income standards per household size and the resource standard per family unit. No consideration is given to:
  - (A) in-kind services and shelter provided by a sponsor or a local resettlement agency;
  - (B) cash assistance payments; or
  - (C) earnings that start after RMA approval.
- (f) **Application processing time limit.** RCA and RMA applications must be processed within 30-calendar days of the application date to be considered timely. When the application cannot be processed timely, the applicant is notified in writing of the reason for the delay and the right to request a fair hearing, per OAC 340:2-5.
- (g) **Food benefits.** A food benefit application is completed at the same time as the RCA and RMA application and processed using food benefit eligibility rules, per OAC 340:50.

[OAR Docket #22-545; filed 7-5-22]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 61. REPATRIATION PROGRAM

[OAR Docket #22-546]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

340:61-1-1 [REVOKED]  
340:61-1-2 through 340:61-1-4 [AMENDED]  
(Reference WF 22-61)

### AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; and Section 1113 of Title 42 of the United States Code.

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

December 20, 2021

### COMMENT PERIOD:

January 18, 2022 through March 18, 2022

### PUBLIC HEARING:

March 23, 2022

### ADOPTION:

March 23, 2022

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

March 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed amendments to Chapter 61 amend the rules to: (1) update a Section title; (2) revoke one Section and add relevant information regarding the Chapter's purpose to another Section within this Chapter; (3) update the federal agency responsible for the Repatriation Program (RP); (4) add staff from an agency other than Oklahoma Human Services (OKDHS) staff may meet a repatriate to provide RP documents, explain program rules, offer services, and obtain necessary signatures; (5) update referral information packet documents; and (6) update terminology.

### CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

#### 340:61-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to describe the rules governing the Oklahoma Department of Human Services (OKDHS) Repatriation Program.~~

#### 340:61-1-2. Legal base Purpose, legal basis, and fund availability of funds

(a) **Purpose.** The purpose of this Chapter is to describe the rules governing the Oklahoma Human Services (OKDHS) Repatriation Program (RP).

(b) **Legal basis.** The legal basis of the United States (U.S.) Repatriation Program (RP) was established in 1935 by Section 1113 of Title XI of the Social Security Act (~~Assistance for U.S. Citizens Returned from Foreign Countries~~ Section 1113 of Title 42 of the United States Code) to provide temporary assistance to U.S. citizens and their dependents who ~~have been identified by the U.S. Department of State~~ identifies as having returned, or been brought from a foreign country to the U.S. because of destitution, illness, war, threat of war, or a similar crisis, and are without available resources to meet their needs. The total amount of temporary assistance provided under this Section ~~shall~~ must not exceed \$1,000,000 during any fiscal year except fiscal year 2010.



(bc) **Program management and funding.** The Department of Health and Human Services (DHHS), Office of ~~Refugee Resettlement (ORR)~~ Human Services Emergency Preparedness and Response (OHSEPR) manages this program. The RP is administered by the state in which the repatriated citizen chooses to relocate, with up to 100 percent reimbursement claimed from federal funds.

(ed) **Non-emergency repatriation.** Non-emergency repatriation for individuals and their dependents is coordinated by ~~the Oklahoma Department of Human Services—OKDHS~~ per agreement dated October 9, 1980 with the DHHS Social Security Administration Office of Family Assistance.

**340:61-1-3. Program eligibility and responsibilities**

(a) **Applicant eligibility.** The Office of ~~Refugee Resettlement (ORR)~~ Human Services Emergency Preparedness and Response (OHSEPR) or contracted agency staff determines the repatriated individual's eligibility for the Repatriation Program (RP). ~~Assessment of To determine RP eligibility, it is necessary to assess the repatriate's available resources, including identification of and to identify the services or assistance the repatriate is receiving receives or is able to receive is necessary to determine eligibility for the RP.~~

- (1) Temporary assistance is not an entitlement.
- (2) The RP is voluntary and the repatriate may refuse to accept services.
- (3) The repatriate may be eligible for temporary assistance ~~in the form of a loan~~ for up to ~~90 calendar~~ 90-calendar days from the date the repatriate re-enters the United States (U.S.) ~~if~~. The temporary assistance is considered a loan and the repatriate signs must sign a repayment agreement before receiving the assistance.
- (4) Minors and adults found not competent to make decisions are not obligated to sign a repayment agreement.
- (5) ~~To determine whether the~~ The repatriate is not eligible for repatriation assistance, it must be established that when he or she has access to necessary services or assistance are unavailable to the repatriate via any through alternative resources.
- (6) Certain temporary assistance may be furnished after the ~~90 calendar~~ 90-calendar day period ends ~~if~~ when the:
  - (A) repatriate submits an extension request with supporting documentation included prior to the end of the ~~90 calendar~~ 90-calendar day eligibility period; and
  - (B) ~~ORROHSEPR~~ finds that the circumstances involved necessitate or justify ~~the~~ the furnishing of such assistance beyond the ~~90~~ 90-calendar day limit.
- (7) The repatriate must notify the ~~refugee repatriation~~ coordinator of address changes during the time period of ~~time~~ the repatriation case is open. ~~He or she~~ The repatriate is expected to continue to notify ~~ORROHSEPR~~ of address changes after case closure until the repatriation loan is paid in full.
- (8) The repatriate's case may be closed before the ~~90 calendar~~ 90-calendar day period expires when the:
  - (A) repatriate's case contains an unaccompanied child and the child enters foster care upon arrival in

the U.S. or is released to a parent or relative not requesting services;

- (B) repatriate becomes self-sufficient and has access to necessary benefits, housing, and other services and no longer needs the temporary assistance;
- (C) ~~ORROHSEPR~~ discovers the repatriate has access to other income sources ~~of income~~;
- (D) repatriate dies upon arrival in the U.S.; or
- (E) repatriate, who was destitute or without available resources in the foreign country, is able to regain access to financial resources such as Social Security or Supplemental Security Income benefits or is staying in a hospital or nursing facility.

(b) **Referral information packet.** ~~ORR—mails~~ OHSEPR emails a referral information packet to the Oklahoma ~~Department of Human Services (OKDHS), Adult and Family Services (AFS) Temporary Assistance for Needy Families (TANF) Section~~ Unit for processing. The referral information packet contains documents for the repatriate and OKDHS. Items in the packet include:

- (1) a welcome letter ~~for that~~ informs the repatriate ~~explaining that~~:
  - (A) any funds issued are ~~in the form of~~ considered a loan that must be repaid by the repatriate;
  - (B) upon request, ~~the~~ OKDHS or other appropriate agency staff person will explain explains the documents included in the welcome packet;
  - (C) OKDHS or other appropriate agency staff refers the repatriate for services available within the community or gives the repatriate information about available services; and
  - (D) ~~if~~ when needed and requested, the ~~refugee repatriation~~ coordinator coordinates other service requests for the repatriate;
- (2) a welcome letter for the State;
- (3) the repatriate's rights and obligations;
- (4) a repatriation brochure;
- (5) documents requiring the repatriate's signature prior to funds being issued;
- (6) an International Social Services-USA contact list;
- (7) assessment information regarding the repatriate and his or her service needs; and
- (8) procedural information and sample letters for OKDHS staff.

(c) **OKDHS responsibilities regarding the RP.** Upon receipt of the referral information packet, the ~~refugee repatriation~~ coordinator in the OKDHS AFS TANF ~~Section~~ Unit is responsible for:

- (1) confirming the repatriate's arrival date and time and arranging for ~~an~~ OKDHS or other appropriate agency staff person to meet the repatriate at the airport;
- (2) being the contact person for the repatriate and ~~ORROHSEPR~~ or its contracted agency staff;
- (3) coordinating services for the repatriate during the ~~90 calendar~~ 90-calendar day temporary assistance period;
- (4) coordinating form and document completion ~~of forms and documents~~ necessary to issue funds and receive

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reimbursement from the ~~ORR~~OHSEPR or its contracted agency;

(5) monitoring the repatriate's case at different intervals to ensure ~~he or she~~the repatriate continues to meet eligibility requirements and determine if further assistance is needed;

(6) providing periodic updates regarding the repatriate to ~~ORR~~OHSEPR or its contracted agency staff;

(7) submitting extension requests as quickly as possible;

(8) maintaining all records concerning the repatriate for at least three years from the date the final expenditure report is submitted; and

(9) upon case closure, completing a survey and submitting a closing summary to ~~ORR~~OHSEPR that includes information about the funds expended and services provided to the repatriate and the repatriate's current address.

## 340:61-1-4. Repatriation Program (RP) services provisions

(a) **Temporary assistance.** The RP defines temporary assistance as cash payments, medical care (~~including that includes~~ counseling), temporary or permanent housing, transportation, and other goods and services necessary for the repatriate's health or welfare of the repatriate.

(1) All funds are issued ~~in the form of~~ a loan ~~and that~~ must be repaid to the United States Government.

(2) The repatriate may request a waiver or repayment deferral of ~~repayment~~ of funds expended on his or her behalf within 30-calendar days of receiving a demand for payment letter from the Office of ~~Refugee Resettlement (ORR)~~Human Services Emergency Preparedness and Response (OHSEPR) or its contracted agency. The letter advises the repatriate who to contact to request the waiver or repayment deferral of payment.

(b) **Cash assistance.** The repatriate is eligible to receive a cash assistance loan equivalent to three months of Temporary Assistance for Needy Families (TANF) for the same family size as shown on ~~Schedule IX of Oklahoma Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX.~~ The cash assistance is issued after the repatriate signs the repayment agreement.

(c) **Social services.** Upon receipt of the information referral packet, the Adult and Family Services (AFS) ~~refugee repatriation~~ coordinator reviews the assessment information provided regarding the repatriate and his or her dependents to determine the repatriate's identified social service needs.

(1) In addition to or instead of cash assistance, the assessment information may indicate the repatriate needs other types of temporary assistance.

(2) The ~~refugee repatriation~~ coordinator and local county staff develop a tentative plan to meet the repatriate's social service needs prior to the repatriate's arrival. This plan is presented to the repatriate at the airport. The repatriate is free to accept or reject any part of the service plan. Refer to ~~OAC~~Oklahoma Administrative Code

340:61-1-3 regarding minors and mentally incompetent adults.

(3) The service plan includes helping the repatriate apply for all public assistance he or she appears eligible to receive including programs administered by ~~the Oklahoma Department of Human Services (OKDHS)~~OKDHS and other local agencies. RP funds are not expended when the services are available free of charge.

(A) Public assistance benefit programs administered by AFS include TANF, Supplemental Nutrition Assistance Program food benefits, Child Care Subsidy Program, and SoonerCare (Medicaid) medical benefits.

(B) Depending on the repatriate's circumstances, he or she may also be eligible for services administered by other divisions within OKDHS including the ~~Developmental Disability Services Division, Aging Services Division~~Community Living, Aging and Protective Services, and ~~Oklahoma~~ Child Support Services.

(C) Public assistance available through other local agencies may include housing assistance, benefits from the Social Security Administration, food banks, help finding a job, transportation, clothing closets, or medical clinics.

(4) ~~The~~ OKDHS or other appropriate agency staff person meeting the repatriate at the airport presents all available options to the repatriate prior to signing a repayment agreement. This allows the repatriate to make an informed decision about accepting an RP loan.

(d) **Medical assistance.** When the repatriate needs immediate medical attention, the ~~refugee repatriation~~ coordinator locates a medical provider willing to treat the repatriate upon arrival. ~~ORR~~ OHSEPR reimburses the medical provider reasonable, allowable, and allocable expenses that are not covered by an outside source such as insurance or SoonerCare (Medicaid).

[OAR Docket #22-546; filed 7-5-22]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES

[OAR Docket #22-547]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

340:65-1-1 [REVOKED]

340:65-1-2 [AMENDED]

340:65-1-5 [AMENDED]

340:65-1-6 [REVOKED]

Subchapter 3. Eligibility for Benefits

340:65-3-1 [AMENDED]

340:65-3-5 [AMENDED]

340:65-3-8 [AMENDED]

Subchapter 5. Procedures Relating to Case Changes

Part 1. General Provisions

340:65-5-1 [AMENDED]  
 340:65-5-2 [REVOKED]  
 340:65-5-3 [AMENDED]  
 340:65-5-4 through 340:65-5-5 [REVOKED]  
 340:65-5-6 [AMENDED]  
 Part 7. Guardianships, Conservatorships, and Substitute Payees  
 340:65-5-60 [AMENDED]  
 340:65-5-61 through 340:65-5-66 [REVOKED]  
 Subchapter 9. Overpayment Claims and Fraud in Temporary Assistance for Needy Families and State Supplemental Payment Benefits  
 340:65-9-1 [AMENDED]  
 340:65-9-5 [REVOKED]  
 340:65-9-7 [AMENDED]  
 340:65-9-8 [REVOKED]  
 Subchapter 11. Voter Registration  
 340:65-11-1 [AMENDED]  
 340:65-11-2 [REVOKED]  
 340:65-11-3 [AMENDED]  
 340:65-11-4 [REVOKED]  
**(Reference WF 22-65)**

**AUTHORITY:**

Director of Human Services; Section 4-109.2 of Title 26 of the Oklahoma Statutes (26 O.S. § 4-109.2); 30 O.S. §§ 1-103 through 1-106, 1-108 through 1-112, 2-103 through 2-104, 3-102, 3-211, and 3-214 through 3-215; 43 O.S. § 112-5; 56 O.S. §§ 162, 166, 172, 182 through 183, and 192; and Section 435.916 of Title 42 of the United States Code.

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

December 20, 2021

**COMMENT PERIOD:**

January 18, 2022 through March 23, 2022

**PUBLIC HEARING:**

March 23, 2022

**ADOPTION:**

March 23, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION ON:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Chapter 65, Subchapter 1 amend the rules to: (1) update Section titles; (2) revoke two Sections and add relevant information from these Sections regarding the Chapter's purpose and information and referral information to other Sections within this Subchapter; (3) add an additional information safeguarding practice; (4) add how often background investigations are completed; (5) remove obsolete language regarding warrants; (6) add a legal citation; and (7) update terminology.

The proposed amendments to Chapter 65, Subchapter 3 amend the rules to: (1) change a Section title; (2) add an embedded work location as a place applicants may apply for benefits; (3) add information regarding passive renewals completed for the State Supplemental Payment (SSP) Program and SoonerCare (Medicaid) recipients; (4) update benefit renewal notification for SoonerCare (Medicaid) and SSP recipients; (5) add clarifying language; and (6) update a rule citation.

The proposed amendments to Chapter 65, Subchapter 5 amend the rules to: (1) revoke nine Sections and add relevant information from these Sections to other Sections in this Subchapter regarding: (a) how changes that increase or reduce cash benefits are handled; (b) when benefits are closed; (c) how suspensions are resolved; and (d) guardians and conservators; (2) update two Section titles; (3) update and clarify language regarding correcting administrative actions and issuing retroactive SSP or Temporary Assistance for Needy Families (TANF) benefits; (4) add definitions for: (a) incapacitated adults; (b) partially incapacitated persons, (c) natural guardians; (d) guardians; (e) conservators; (f) managing financial resources; and (g) meeting the

essential requirements for physical health or safety; (5) update terminology; and (6) add rule and legal citations.

The proposed amendments to Chapter 65, Subchapter 9 amend the rules to: (1) revoke two Sections and add relevant information from these Sections regarding appeal rights and Oklahoma Human Services (OKDHS) action when an overpayment debt is satisfied to other Sections within this Subchapter; (2) change a Section title; and (3) update terminology.

The proposed amendments to Chapter 65, Subchapter 11 amend the rules to: (1) revoke two Sections and add relevant information from these Sections regarding legal authority and criminal penalties to another Section within this Subchapter; (2) update a Section title; and (3) update a rule citation and terminology.

**CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**340:65-1-1. Purpose [REVOKED]**

~~The purpose of this Chapter is to describe rules for the comprehensive management of public assistance cases.~~

**340:65-1-2. Confidential Purpose, legal basis, and confidential nature of case material**

(a) **Purpose.** The purpose of this Chapter is to describe rules for the comprehensive management of Adult and Family Services (AFS) cases.

(b) **Legal basis.** The Oklahoma Department of Human Services (DHS) (OKDHS) maintains the confidentiality of all applications, information, and records concerning ~~any applicant or recipient~~ applicants and recipients, per the Oklahoma Social Security Act located in Sections 161-260 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 161-260) and the Federal Social Security Act.

~~(c) Custody of records.~~ All case information including electronic data procured by, or available to, any DHSOKDHS employee is the OKDHS property of DHS and is used only in accordance with the provisions of the law federal laws, Oklahoma Statutes, and DHSOKDHS rules.

(1) **Authority to disclose information.** The county director is responsible for the custody of records in the county office and for their proper use. All requests for information from a DHS an OKDHS record are referred to the county director, ~~except when~~ unless the request originates within DHSOKDHS in carrying out its regular functions. Employees of each DHS OKDHS division may exchange necessary information when working with the same family or a related case to provide benefits and services.

(2) **Safeguarding of case information.** CaseOKDHS employees safeguard case information must be safeguarded, per Oklahoma Administrative Code (OAC) 340:1-1-20, DHSOKDHS:2-41-15, DHSOKDHS:2-45,

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~~DHS:65-3-6340:65-3-6~~, and as provided in (A) through (D) of this subsection.

- (A) The county director ~~or field manager~~ is:
- (i) the custodian of client records assigned to and, located in a county office ~~or support center~~ or processed at an alternate work location; and
  - (ii) responsible for:
    - (I) taking reasonable precautions to ensure ~~the client case information confidentiality and proper use of client case information~~; and
    - (II) ensuring employees know ~~DHSOKDHS~~ rules regarding safeguarding of client case information and when and to whom information may be released.
- (B) Per ~~DHS:2-1-301~~OKDHS:2-1-301, alternate work locations must be capable of safeguarding case information. When an alternate work location does not meet safeguarding standards, case information ~~must~~is not be received, stored, or processed at that location.
- (C) Practices for safeguarding information include:
- (i) secure ~~physical records storage of records~~ storage of records in locked buildings, rooms, and containers;
  - (ii) ~~secure storage and care of DHS-owned~~securely storing OKDHS-owned electronic equipment;
  - (iii) ~~controlled~~controlling or ~~restricted~~restricting access to areas containing case information;
  - (iv) case information is:
    - (I) ~~must be~~ secured in a storage area ~~when an employee is not present~~, such as in a desk or file cabinet, when an employee is not present;
    - (II) ~~may not be~~ stored on any electronic device or storage media that is not ~~the~~OKDHS property of ~~DHS~~; and
    - (III) ~~may not be~~ emailed outside of the agency unless it is encrypted; and
    - (IV) destroyed in secure destruction bins when in paper form, after it is not longer needed or required; and
  - (v) providing reasonable privacy or restricted viewing of electronic data visible on computer screens or mobile devices.
- (D) Information that must be safeguarded includes:
- (i) names and addresses, including lists;
  - (ii) information contained in an application;
  - (iii) investigation reports of investigations;
  - (iv) medical data including, but not limited to, diagnosis and past history of disease and disability;
  - (v) correspondence and other records concerning the condition or circumstances of any person from whom or about whom information is obtained, ~~regardless of whether it is recorded~~;
  - (vi) evaluations of such information contained in (i) through (v); and
  - (vii) ~~warrant registers; and~~

(viii) all data items available on computer screens. Disclosure to any unauthorized person is a federal and state regulation violation of ~~federal and state regulations~~. ~~Persons considered to be authorized~~ Authorized persons are:

- (I) the client;
- (II) the client's authorized representative;
- (III) ~~DHSOKDHS~~ employees;
- (IV) authorized volunteers; and
- (V) ~~employees of outside agencies~~other agencies' employees with a contract or agreement allowing that allows access to specific data.

(3) **Safeguarding of federal tax information (FTI).** Per Section 6103 of Title 26 of the United States Code (26 U.S.C. § 6103), ~~DHSOKDHS~~ must safeguard and restrict access to FTI only to persons whose duties or responsibilities require access.

(A) FTI information that must be safeguarded includes:

- (i) the client's name;
- (ii) the client's Social Security number;
- (iii) Internal Revenue Service (IRS) reporting firm, company, and political subdivision;
- (iv) state agency account number;
- (v) ~~type of income type~~; and
- (vi) the amount of income or resources.

(B) ~~Adult and Family Services (AFS)~~AFS restricts FTI access to ~~FTI~~ to designated AFS FTI specialists who complete a favorably adjudicated suitability or security background investigation prior to handling FTI and annually thereafter. At a minimum, the background investigation must be at a tier-two level as designated by federal investigative standards and include:

- (i) the results of a Federal Bureau of Investigation (FBI) fingerprint check using Form FD-258, FBI Applicant Fingerprint Card, from the state identification bureau. In Oklahoma, the Oklahoma State Bureau of Investigation Criminal Identification Section of ~~the Oklahoma State Bureau of Investigation~~ is the agency authorized to conduct FBI fingerprinting. The fingerprint results check the employee's criminal history in all 50 states;
- (ii) a check of local law enforcement agencies where the employee lived, worked, ~~and/or~~ attended school within the last five years to identify trends of misbehavior and, ~~when applicable, of the appropriate agency for any identified arrests; and~~
- (iii) ~~validation~~ of validating the employee's identity and eligibility to legally work in the United States (U.S.). New employees must complete the U.S. Citizenship and Immigration Services Form I-9, Employment Eligibility Verification, and ~~within three days of completing the form~~, be processed through E-Verify within three days of completing the form to assist with verifying the

employee's employment status and the documents provided with Form I-9; and  
 (iv) completing another background investigation every 10 years following the previous background investigation's completion.

(C) ~~Practices for Information~~ safeguarding information practices include:

- (i) securing FTI, such as any written, typed, photocopied, or ~~printout of printed~~ information from the Income Eligibility Verification System-Internal Revenue Service (IEVS-IRS), and Beneficiary and Earnings Data Exchange System (BENDEX), and ~~Beneficiary Earnings Exchange Record (BEER)~~ in a storage area, such as in a locked desk or file cabinet;
- (ii) not viewing or storing FTI on any electronic device that is not ~~DHS-OKDHS~~ or the State of Oklahoma property;
- (iii) not printing or maintaining FTI in a non-electronic format;
- (iv) not emailing FTI; and
- (v) not faxing FTI.

(D) ~~Disclosure of FTI~~ disclosure in violation of the guidelines specified in IRS Publication 1075, is considered a felony punishable by a fine in any amount not exceeding \$5,000 or imprisonment of not more than five years, or both, together with the prosecution costs. Further, an AFS FTI specialist may lose access to FTI and be subject to disciplinary action, per ~~DHS:2-1-7OKDHS:2-1-7~~ when he or she:

- (i) does not properly safeguard FTI;
- (ii) does not complete or pass the annual favorably adjudicated suitability or security background investigation; or
- (iii) releases FTI to an unauthorized person(s), per 26 U.S.C. § 7213.

(4) **Nature of information to be made available.** General information not identified with any particular person or group of persons, such as total expenditures made, number of recipients, and other statistical information and social data contained in reports or surveys do not fall within the ~~type of~~ material to be safeguarded.

(A) Requested information is released to representatives of other agencies that are authorized by federal law or Oklahoma Statutes to have the information. Information may be released to other agencies only when they give assurance that the:

- (i) confidential character of the information will be preserved;
- (ii) information will be used only for purposes related to ~~the administration of administering~~ the assistance program and the ~~functioning of the~~ inquiring ~~agency~~ agency's functionality; and
- (iii) protection standards established by ~~the their~~ agency to which information is disclosed are equal to those established by ~~DHSOKDHS~~, both in regard to ~~the use of the information by how~~

their employees will use the information and the provision of their protective procedures provisions.

(B) Client addresses may be disclosed to federal, state, and local law enforcement officers who furnish the client's name, Social Security number, and notify ~~DHS-OKDHS~~ that the location or apprehension of the client is within their official duties and that the client is:

- (i) a fugitive felon who is fleeing to avoid prosecution, custody, or confinement after conviction; or
- (ii) violating a ~~condition of~~ probation or parole condition.

(C) The days and hours a child is approved for the Child Care Subsidy Program may be disclosed to a child care provider.

(D) Upon written request, information used to establish eligibility that is not otherwise legally protected by ~~law~~ is made available to the client or the client's representative during normal business hours. Confidential information, including the names of persons who have disclosed information about the client without the client's knowledge, and the nature or status of pending criminal prosecutions, is withheld.

(E) Information ~~obtained by~~ the employee obtains from collateral sources, other than public records or the employee's written evaluation of the client's situation, ~~mustis~~ not be made available to the client or to any other person without the consent of the person who gave the information.

(F) Prior to a fair hearing, the designated county ~~or support center~~ employee is responsible for providing the client with a copy of the completed hearing summary and documents or other records the employee plans to present at the hearing.

(5) ~~Release of information~~ **Information release at client request.** Upon the client's, or the client representative's, written request, ~~DHSOKDHS~~ may release client provided information provided to DHS by the client to the client or to other persons, courts, or agencies when the ~~written release designates the person and the material to be made available~~ the authorized representative.

(A) When a ~~DHSan OKDHS~~ employee receives a written inquiry ~~requesting client information~~ from an interested person, ~~accompanied by another agency, or the courts and~~ the client's written permission accompanies the inquiry, the employee may furnish the information when the written release specifies what client provided information to release and to whom it may be released.

(B) ~~When the written inquiry does not conclusively show that the person was asked to obtain the information on the client's behalf, the employee determines the client's wishes before releasing the information.~~

(6) ~~Release of information~~ **Information release to courts.** ~~DHSOKDHS~~ employees may only release case information about the client in court proceedings upon subpoena, except upon a court official's request by court

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~~officials~~ in cases of child abandonment and desertion, child neglect of children, or restitution when OKDHS referred such cases were referred to the court by DHS. In these situations, ~~DHS~~OKDHS employees' testimony is limited to material affecting the administration of ~~the~~ public assistance law except when participating in a case requested by the client or the client's representative in which ~~his or her~~ the client's personal interests are at stake.

(A) ~~When a DHS court subpoenas an OKDHS employee is subpoenaed by the court for the purpose of giving to give testimony based upon DHSOKDHS records, the county director confers with the DHSOKDHS Legal Services (LS) regarding recognition by the proper way to convey to the court of the confidential character of information made available to OKDHS in the process of administering assistance and the OKDHS's right of DHS under the law, per 43A O.S. § 10-110, to protect its records, and of the confidential character of information made available to DHS in the process of administering assistance.~~

(B) When there is reason to believe ~~that~~ the court will not respect the confidential character of ~~DHS~~OKDHS records, the county director communicates immediately with ~~DHS~~OKDHS LS regarding to determine the steps best course of action to be taken.

(7) ~~Release of information~~Information release to the District Attorney (DA). ~~DHS~~OKDHS employees may release information to the DA as necessary, to carry out ~~DHS policy~~OKDHS rules regarding child support pursuit from a non-custodial parent. When child support pursuit is required in order for a client to receive Temporary Assistance for Needy Families benefits, ~~such as Temporary Assistance for Needy Families (TANF), Child Care Subsidy or SoonerCare (Medicaid), AFS employees inform the client of this requirement.~~

(8) ~~Release of medical~~Medical information release. Medical information ~~paid for by DHSOKDHS or the Oklahoma Health Care Authority pays for~~ is not released, even at the request of the person to whom it pertains, except to another agency to which the person applied for services with the objective to protect or advance the person's welfare. There is nothing in ~~Oklahoma law or federal law or Oklahoma Statutes~~ to prevent a physician from releasing medical information to his or her patient or a patient's authorized representative. ~~The physician, in~~ In such instances, ~~is governed by the physician-patient relationship governs the physician.~~

(A) ~~DHS~~OKDHS LS is responsible for determining if the requested medical information may be released under federal regulations and ~~DHS~~OKDHS rules.

(B) AFS employees do not release information obtained from the U. S. Department of Veterans Administration Affairs or from the Social Security Administration to anyone outside of ~~DHS~~OKDHS.

(C) When a client requests a fair hearing on a medical decision, all medical records or reports considered in establishing a medical decision are provided to the client or the client's authorized representative at a reasonable time before the hearing except for psychological and psychiatric records. Copies of psychological and psychiatric records are only released with the treating physician's or practitioner's consent ~~of the treating physician or practitioner~~ or when ~~ordered a court of competent jurisdiction orders~~ it released by a court of competent jurisdiction upon a finding that it is in the patient's best interest ~~of a patient.~~

## 340:65-1-5. Authorization to destroy numbered closed case records or information and referral only material

(a) Record destruction. Quarterly, the Oklahoma Department of Human Services (OKDHS) Records Management Coordinator sends an administrative memorandum ~~and a list of records~~ authorizing county offices to pull cases that have been inactive for three years and send them to the ~~OKDHS Records Center~~Supply Warehouse for destruction. ~~The~~ Before sending the memorandum, the OKDHS Records Center ~~destroys the case records after receiving~~ receives destruction authorization from the State Records Administrator, per Section 204 of Title 67 of the Oklahoma Statutes (67 O.S. § 204), and notification from the appropriate federal agency that the audit for that year ~~has been~~ was completed. ~~[67 O.S. § 204]~~

(b) Information and referral only destruction. The county office may destroy Information and referral only material concerning a particular person when there has been no activity regarding the person for three calendar years. Special authorization from the OKDHS Records Management Coordinator is not required prior to destroying this material, per 67 O.S. § 211.

## 340:65-1-6. Authorization to destroy Information and Referral Only material [REVOKED]

~~Information and Referral only material concerning a particular individual is destroyed by the county office when there has been no activity regarding this particular individual for a period of three years. Special authorization from the State Office is not required for destruction of this material. [67 O.S. § 211].~~

## SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

### 340:65-3-1. Eligibility determination

(a) Eligibility determination. The eligibility determination process includes the applicant filing a signed application, the worker certifying or denying benefits, and all subsequent activities required to receive continuous benefits. The applicant has the right and responsibility to participate in the eligibility determination process and is relied on as the first source of information.

(1) Someone acting on the applicant's behalf, such as an authorized representative or a person with power-of-attorney, may complete the application for all programs except for Temporary Assistance for Needy Families (TANF). The applicant must complete and sign a TANF application.

(2) For another person to apply on the applicant's behalf, the applicant must designate the person as the authorized representative on the signed application or the person must provide a completed Form 08MP008E, Authorized Representative Request, or a statement signed by the applicant giving the person permission to act on his or her behalf. The SoonerCare (Medicaid) programs allow others to apply for the applicant without a written designation.

(b) **Filing an application.** A household must complete an application to apply for the Child Care Subsidy Program, Low Income Home Energy Assistance Program (LIHEAP), SoonerCare (Medicaid) Program, Supplemental Nutrition Assistance Program (SNAP), State Supplemental Payment (SSP), TANF, Diversion Assistance (DA), or Family Violence Emergency Assistance (FVEA). The applicant may request one or more benefits on the same application ~~with the exception of~~ except for LIHEAP because it is not an ongoing benefit.

(1) The applicant may apply for benefits online via [okdhslive.org](http://okdhslive.org), with a worker in an Oklahoma Human Services (OKDHS) office or an embedded work location, or by downloading a paper application and bringing or mailing it to an OKDHS office or an embedded work location. DA and FVEA applications may not be submitted online.

(2) When someone applies on behalf of the applicant and lives in a different county, the person may apply in his or her county of residence or in the applicant's county of residence.

(3) When the applicant applies for TANF cash assistance in a county in which he or she does not live, the applicant's TANF Work activities are assigned in the county offering more participation opportunities for him or her.

(4) When the applicant applies online via [okdhslive.org](http://okdhslive.org), the system auto-assigns the application based on the applicant's ZIP code.

(c) **Signature requirements.** The applicant, guardian, or someone acting on the applicant's behalf, such as an authorized representative or a person with power of attorney must sign the application, prior to benefit approval.

(1) TANF, DA, and FVEA applications must be signed by the applicant. When the TANF applicant lives with his or her spouse, they must both sign the application.

(2) The applicant may voluntarily withdraw the request for benefits or services before or after signing the application.

(3) An applicant who is:

(A) eligible for Medicare signs the application using the name on his or her Medicare Health Insurance Benefits (HIB) card; or

(B) not eligible for Medicare signs the application using the name shown on his or her Social Security card.

(d) **Interview requirements.** Interview requirements vary by program.

(1) For TANF, DA, and FVEA, a face-to-face interview is required prior to benefit approval, renewal, and when reviewing a TANF Work plan. The face-to-face interview may be conducted in the OKDHS office, at a home visit, or through a virtual video conference. When none of these options are feasible due to a hospitalization or other extenuating circumstance and prior approval from Adult and Family Services (AFS) TANF staff is obtained, a phone interview may be conducted at application or renewal. All TANF Work reviews must be completed face-to-face.

(2) The applicant must complete a phone or face-to-face interview that may be a virtual video conference interview, for the:

(A) Child Care Subsidy Program;

(B) SSP Program;

(C) SoonerCare (Medicaid) long-term care programs, such as ADvantage Waiver, nursing home care, or personal care;

(D) SoonerCare (Medicaid) programs that categorically relate to the aged, blind, and disabled population, such as Qualified Medicare Beneficiary Plus (QMBP), Specified Low-Income Medicare Beneficiary (SLMB), or Qualified Disabled and Working Individuals (QDWI);

(E) SNAP; or

(F) Supplemental Security Income-Disabled Children's Program.

(3) An interview is not required when a person applies for:

(A) LIHEAP; or

(B) SoonerCare (Medicaid), when the Oklahoma Health Care Authority (OHCA) is responsible for determining eligibility, per Oklahoma Administrative Code (OAC) 317:35-5-63.

(e) **Worker responsibilities.** During the eligibility determination process, the worker is responsible for:

(1) informing the applicant of the:

(A) OKDHS responsibility for reaching a decision and notifying the applicant of eligibility or ineligibility within the appropriate time limits, per OAC 340:65-3-5;

(B) applicant's right to request a fair hearing and be represented at the hearing by any person the applicant chooses, per OAC 340:2-5. The applicant may request a fair hearing when there is a:

(i) delay beyond the established time limits for determining eligibility, per OAC 340:65-3-5; or

(ii) disagreement with any action taken on the case;

(C) applicant's legal responsibility ~~for reporting to~~ report all facts pertinent to eligibility;

(D) types of changes the applicant must report within 10-calendar days;

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- (E) penalty for failing to report changes;
  - (F) program requirements and information needed to establish eligibility for each program for which the applicant applied. The worker uses Form 08AD092E, Client Contact and Information Request, to request an interview or verification and gives the applicant at least 10-calendar days to comply, per OAC 340:65-3-2.1;
  - (G) type of assistance OKDHS provides in establishing eligibility;
  - (H) permission the applicant gives OKDHS to obtain information from sources other than the applicant by signing the application; and
  - (I) applicant's responsibility to cooperate with federal and state officials when his or her case is selected for a Quality Control review;
- (2) collecting information necessary for determining the applicant's initial and continuing eligibility. Information is considered verified when not questionable or inconsistent with known facts, and the information provider is the primary source of the information. Unless questionable, the worker accepts, without further verification, the:
- (A) applicant's statement concerning:
    - (i) residency;
    - (ii) relationship;
    - (iii) age;
    - (iv) living in the home of a relative payee;
    - (v) a minor parent living in the home of a relative;
    - (vi) Social Security number (SSN);
    - (vii) household members; and
    - (viii) third party insurance;
  - (B) unearned income information obtained through:
    - (i) Beneficiary and Earnings Data Exchange System (~~BENDEX~~), from the Social Security Administration (SSA);
    - (ii) Supplemental Security Income (~~SSI~~)/State Data Exchange System (~~SDX~~), from SSA;
    - (iii) Unemployment Insurance Benefits (UIB), from the Oklahoma Employment Security Commission (~~OESC~~); and
    - (iv) workers' compensation documents from the Workers' Compensation Commission; and
  - (C) alien status information obtained through Systematic Alien Verification for Entitlements (SAVE), from the United States Citizenship and Immigration Services (USCIS);
- (3) contacting other persons who may be able to help establish eligibility when the applicant is unable to participate in the eligibility determination because of a physical or mental disability, inability to speak English, or other difficulties;
- (4) determining if the applicant currently receives benefits from another state, when he or she resided in Oklahoma for less than 12 months;
- (5) recognizing expressed or implied needs that include:
- (A) determining if there is a need for crisis intervention;
  - (B) addressing the applicant's social services needs; and
  - (C) making appropriate referrals; and
- (6) denying the application when sufficient facts are available to substantiate ineligibility or the applicant fails to cooperate in determining eligibility.
- (f) **SSN requirement.** The applicant must provide a verifiable SSN or a pending SSN application for every person requesting food benefits, SSP, SSI-DCP, LIHEAP, or TANF benefits. The requirement for a verifiable SSN also applies to all persons whose needs are included for SoonerCare (Medicaid) benefits, except newborn children deemed eligible, per OAC 317:35-6-60, and undocumented aliens requesting emergency medical services, per OAC 317:35-5-25.
- (1) The applicant's statement regarding each household member's SSN is sufficient unless the information is inconsistent or other facts or observations cause the worker to question the statement.
- (A) Persons for whom a SSN is required, but not available must be referred to the appropriate SSA office for SSN enumeration using Form 08AD101E, SSN Enumeration Referral. The return of Form 08AD101E to OKDHS validates the application(s) or indicates which persons have not provided SSA-appropriate original evidence of age, identity, and citizenship.
  - (B) Parents of newborns who participate in Enumeration at Birth (~~EAB~~) receive Form SSA-2853-OP3, Message From Social Security, from hospital personnel. This receipt form is verification the newborn was enumerated at birth.
- (2) When the person fails or refuses to furnish or to apply for a SSN, the worker takes action per (A) and (B) of this paragraph.
- (A) For TANF purposes, the person's needs are included; however, the worker imposes a 25 percent payment standard reduction penalty until an application for or a SSN is provided.
  - (B) For food benefit, LIHEAP, and SoonerCare (Medicaid) purposes, only the needs of the person for whom a SSN is not provided or applied for are not included.
- (g) **Citizenship requirement.** All persons applying for federal or state public assistance benefits, such as Child Care Subsidy, SNAP food benefits, LIHEAP, SoonerCare (Medicaid), SSP, or TANF must declare the citizenship or alien status for each household member applying for such benefits on the application or benefit renewal. When the payee requests benefits for additional household members between application and benefit renewal, the payee completes and signs Form 08MP022E, Declaration of Citizenship Status, to declare the citizenship or alien status of the additional household members. Refer to OAC 317:35-5-25 for citizenship and



alien status requirements for persons applying for SoonerCare (Medicaid) benefits.

(1) When the applicant declares that some or all of the household members applying for benefits are aliens, the worker must follow SAVE procedures, per OAC 340:65-3-4, to determine the validity of documents provided to verify legal alien status.

(2) The worker must follow each program's rules regarding citizenship and alien status requirements to determine benefit eligibility, per:

- (A) OAC 340:40-7-5 for Child Care Subsidy benefits;
- (B) OAC 340:50-5-67 for SNAP food benefits;
- (C) OAC 340:20-1-8, 340:20-1-10, and 340:50-5-67 for LIHEAP;
- (D) OAC 317:35-5-25 for SSP; and
- (E) OAC 340:10-15-1 for TANF.

(3) The citizenship requirements per (g)(3)(A) through (C) and (g)(4) of this Section are pursuant to Section 71 of Title 56 of the Oklahoma Statutes (56 O.S. § 71) and 74 O.S. § 20j.

(A) Lawful status in the United States (U.S.) is considered verified when:

- (i) the person applying for benefits provides a SSN or SSA completed Form 08AD101E indicating SSA accepted the person's SSN application; and
- (ii) OKDHS, through the automated SSN enumeration data exchange transaction with SSA, is able to verify the person's SSN.

(B) Prior to receiving benefits, when OKDHS is unable to verify the SSN with SSA for a person 14 years of age or older, the person must provide a:

- (i) signed and notarized Form 08MP005E, Citizenship Affidavit, attesting to his or her U.S. citizenship or alien status; or
- (ii) U.S. birth certificate, U.S. passport, a Certificate of Naturalization or other acceptable document, per OAC 317:35-5-25 to verify lawful status.

(C) When the person fails or refuses to provide a signed and notarized Form 08MP005E or one of the documents per (g)(3)B(ii) of this Section, the worker denies or closes benefits for that person.

(4) The application, benefit renewal, and Form 08MP022E contain a statement informing the applicant that OKDHS reports fraudulent claims of citizenship or lawful alien status to the U.S. Attorney and, when a fraudulent claim is made, the person may be subject to criminal prosecution.

(5) When the worker discovers a person who signed Form 08MP005E attesting to U.S. citizenship or legal alien status made a false claim:

(A) the worker sends a memo and supporting documentation to the appropriate AFS Program. The memo must include:

- (i) the time frame, benefit type, and amount the person fraudulently applied for or obtained; and

(ii) how the worker discovered the claim was false;

(B) AFS Program staff in consultation with Legal Services (LS) staff, review the memo and supporting documentation to determine if the person made a false claim. LS staff files a complaint with the U.S. Attorney for the applicable district based upon the venue in which the affidavit was executed when appropriate.

(h) **Eligibility determination.** The worker determines eligibility after the applicant or other authorized person signs the application, completes an interview, when required, and provides required proof.

**340:65-3-5. Application process**

The worker certifies or denies an ~~application~~ applications received online or in the ~~local county office~~ offices within time limits specified in (1) of this Section.

(1) **Application processing time limits.** ~~An application~~ Applications must be processed within program specific time limits. Refer to Oklahoma Administrative Code (OAC) 340:65-3-2.1, when the time limit's last day ~~of the time limit falls~~ occurs on a day Oklahoma Human Services (OKDHS) is not open for business. The time limits are:

- (A) Temporary Assistance for Needy Families (TANF) - 30-calendar days;
- (B) Title IV-E Foster Care - 30-calendar days;
- (C) Supplemental Nutrition Assistance Program (SNAP) - 30-calendar days unless the household is eligible for expedited service. When the household is eligible for expedited service, the application must be completed within seven-calendar days, per OAC ~~340:50-11-4~~ 340:50-11-1;
- (D) State Supplemental Payment (SSP) for persons:
  - (i) categorically related to Aid to the Aged - 30-calendar days; and
  - (ii) categorically related to Aid to the Blind or Disabled - 60-calendar days;
- (E) SoonerCare (Medicaid) benefits for:
  - (i) persons categorically related to Aid to the Aged - 30-calendar days;
  - (ii) persons categorically related to Aid to the Blind or Disabled - 60-calendar days;
  - (iii) Optional Tuberculosis (TB) Coverage group - 45-calendar days; and
  - (iv) persons requesting long-term care services - 45-calendar days;
- (F) TANF Emergency Assistance - five working days;
- (G) Low Income Home Energy Assistance Program (LIHEAP), per OAC 340:20-1-14:
  - (i) 60-calendar days of the application date for winter heating and summer cooling; or
  - (ii) no later than 18 hours of the application date for an Energy Crisis Assistance Program (ECAP) application involving a life-threatening

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medical situation or 48 hours for all other ECAP applications;

(H) Refugee Medical Assistance - 30-calendar days;

(I) Child Care subsidy benefits - two-business days from the date the interview is completed and required proof is provided or, when not provided, within 30-calendar days;

(J) Diversion Assistance - seven working days; and

(K) Family Violence Emergency Assistance - 30-calendar days.

(2) **Delayed applications.** When it is not possible to process the application timely, the worker sends the applicant Form 08MP038E, Client Notice of Action Taken, to inform the ~~client~~applicant of the reason for the delay and the applicant's hearing rights. An application is not denied when it cannot be processed timely due to:

(A) the applicant's failure or delay in providing needed information because of circumstances beyond the applicant's control;

(B) an examining physician's failure or delay in supplying needed information;

(C) the Social Security Administration's failure or delay in making a disability decision; or

(D) the worker's failure to take timely action.

(3) **Certification for cash assistance.** When TANF eligibility is established for the application month, certification is effective from the application date and benefits are prorated per (5) of this Section. When SSP eligibility is established for the application month, certification is effective from the first day of the month and the SSP is not prorated.

(A) When a TANF applicant requests benefits for an additional person after the application date, but before certification, the worker approves benefits for the additional person effective on the same date as the rest of the assistance unit.

(B) When a TANF recipient requests benefits for an additional person after certification, the recipient must complete a new application before the additional person is added to the TANF benefit. When eligible, the worker prorates benefits for the additional person from the application date per (5) of this Section.

(C) A retroactive payment may be authorized for any month the worker establishes eligibility prior to the current month. An application denied in error must have payment authorized for the period eligibility is established.

(D) A certification is valid even when a month of ineligibility is determined between application and the date the certification action is taken. An applicant who is ineligible for the month of application and eligible for a subsequent month, is certified effective the first day of the subsequent month.

(4) **Notice of ineligibility.** When an applicant is ineligible, a computer-generated denial notice is sent to the applicant explaining the reason. The applicant may

request a fair hearing within the time period ~~of time~~ specified in the notice.

(5) **Proration of TANF benefits.** When eligible, the worker certifies a TANF application from the application date and prorates the initial month's benefit, unless the applicant applied on the first day of the month or received a TANF benefit for the previous month and is eligible to be reopened, per OAC 340:65-5-6. Proration also applies for the first month the worker adds an additional person to an open TANF cash assistance benefit. The family is eligible for the full TANF benefit effective the following month, when applicable.

(A) The worker refers to OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX to determine the full monthly TANF benefit before computing the prorated benefit.

(B) The worker uses Appendix B, Prorated TANF and Food Benefit Payment, to compute the prorated benefit amount or the formula: 31 - application date x full monthly TANF benefit ÷ 30 = the prorated payment. The prorated payment is rounded down to the lower dollar amount.

(i) When the prorated benefit is less than \$10, the family is not eligible for a money payment, but is eligible for SoonerCare (Medicaid) benefits for the entire month.

(ii) When the worker certifies food benefits ~~are certified in the TANF case~~ at the same time or after the TANF certification ~~in the TANF case~~ for the month the TANF payment is prorated, the food benefit unearned income ~~is automatically updated to show~~shows the TANF benefit before proration.

(iii) The computer-generated client notice shows the benefit amount for the initial month and following month.

### **340:65-3-8. ~~Determination of continuing~~Continuing eligibility determination**

(a) ~~Determination of continuing~~Continuing eligibility determination. The worker determines continued eligibility at appropriate intervals, per (b) of this Section. The worker is responsible for:

(1) informing the recipient ~~at each contact~~ of his or her change reporting responsibilities, per Oklahoma Administrative Code (OAC) 340:65-5-1, at each contact;

(2) contacting the recipient when possible changes are indicated to ensure continuing eligibility;

(3) synchronizing ~~the~~ renewal dates for all benefits received by the household when possible; and

(4) determining continuing eligibility.

(b) **Benefit renewal time frames.** The periodic renewal time frame varies depending on the program.

(1) A benefit renewal ~~must be~~is completed at six-month intervals with a:

(A) Temporary Assistance for Needy Families (TANF) recipient due to:

(i) pending required immunizations, per OAC340:10-14-1;

- (ii) payment standard reductions because of program violations, per OAC 340:10-3-57(g) or (h);
  - (iii) hardship extension approvals, per OAC 340:10-3-56(a)(2)(E);
  - (iv) earned income, per OAC 340:10-3-31 through 340:10-3-40; or
  - (v) ~~the a work eligible person's exemption of a work eligible person~~ from TANF Work activities because of his or her incapacity or to care for a disabled family member living in the household, per OAC 340:10-2-1; or
- (B) food benefit recipient subject to a mid-certification renewal, per OAC 340:50-9-5(d) and (e).
- (2) A benefit renewal ~~must be~~ completed at 12-month intervals, unless an earlier renewal date is warranted, with a:
- (A) TANF recipient unless (b)(1)(A) of this Section applies;
  - (B) SSP recipient who does not receive Supplemental Security Income (SSI). When the recipient receives SSI, the system passively renews the SSP and SoonerCare (Medicaid) benefit;
  - (C) Child Care Subsidy recipient, per OAC 340:40-9-1;
  - (D) food benefit household subject to an annual mid-certification renewal, per OAC 340:50-9-5(b) and (c);
  - (E) food benefit household whose Supplemental Nutrition Assistance Program (SNAP) certification renewal ~~must be~~ completed at 12-month intervals, per OAC 340:50-9-6; or
  - (F) SoonerCare (Medicaid) recipient, per OAC 317:35, when the recipient does not receive SSI. When the recipient receives SSI, the system passively renews the SoonerCare (Medicaid) benefit.
- (3) The worker completes a SNAP certification renewal at 24-month intervals for households subject to an annual mid-certification renewal, per OAC 340:50-9-5(b) and (c).
- (c) **Benefit renewal notification.** The recipient receives a notice when the benefit renewal is due, informing the recipient he or she must complete the benefit renewal within a specified time frame ~~in order~~ to continue receiving benefits.
- (1) The worker sends Form 08AD092E, Client Contact and Information Request, to:
    - (A) ~~SoonerCare (Medicaid) recipients for whom Oklahoma Human Services determines eligibility, per OAC 317:35 5-63 when they are not eligible to submit their renewals through okdhslive.org;~~
    - (B) SSP recipients; and
    - (C) TANF recipients.
  - (2) A computer-generated notice is sent to:
    - (A) child care recipients; ~~and~~
    - (B) food benefit recipients due for mid-certification renewal and certification renewal; ~~and~~
    - (C) SSP and SoonerCare (Medicaid) recipients who do not receive SSI.
  - (3) Since SoonerCare (Medicaid) and SSP recipients who receive SSI are passively renewed, they receive a notice informing them that their benefits were renewed. The renewal notice includes the income used to renew their benefit(s). Recipients are asked to sign and return the renewal notice if the income shown on the notice is incorrect. When the notice is signed and returned, the worker contacts the recipient to obtain current information.
    - (d) **Signature requirements.** The recipient, guardian, or a person acting on the recipient's behalf, such as an authorized representative or a person with power-of-attorney, ~~must sign~~ signs the benefit renewal for all programs except TANF. TANF renewals must be signed by the recipient. When the recipient lives with his or her spouse, both must sign the TANF renewal.
    - (e) **Interview requirements.** Benefit renewal interview requirements vary depending on the program.
      - (1) ~~A The TANF program requires a face-to-face interview is required for the TANF program.~~ The face-to-face interview may be conducted in the OKDHS office, at a home visit, or through a virtual video conference. When none of these options are feasible due to a hospitalization or other extenuating circumstance and the worker obtains prior approval from Adult and Family Services (AFS) TANF Unit staff, a phone interview may be conducted at application or renewal.
      - (2) A phone or face-to-face interview is required for a:
        - (A) SNAP certification renewal, except for (e)(3)(C) of this Section, per OAC 340:50-3-1; or
        - (B) Supplemental Security Income-Disabled Children's Program (~~SSI-DCP~~) service plan renewal, per OAC 340:15-3-1.
      - (3) An interview is not required for:
        - (A) any of the SoonerCare (Medicaid) programs ~~as long as when~~ the client ~~signed~~ signs and ~~completed~~ completes the renewal, ~~provided~~ provides all required proof, and none of the information is questionable. When necessary, the worker contacts the recipient to complete the renewal;
        - (B) passive renewals completed for SoonerCare (Medicaid) or SSP recipients;
        - (C) Child Care Subsidy program renewals; or
        - (~~D~~) food benefit households completing a:
          - (i) mid-certification renewal, at six- or 12-month intervals; or
          - (ii) SNAP certification renewal when all household members are elderly or disabled and there is no earned income in the household, per OAC 340:50-3-2(a)(2).
    - (f) **Eligibility determination.** The worker determines eligibility after the benefit renewal is signed, all required proof is provided, an interview, if required, is conducted, and all information evaluated.
      - (1) The worker may:
        - (A) complete the benefit renewal without changes;
        - (B) complete the benefit renewal with changes; or
        - (C) close the benefit or benefits.

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(2) When benefits close and the recipient provides required proof by the last day of the closure month of ~~closure~~, benefits may be reopened.

## SUBCHAPTER 5. PROCEDURES RELATING TO CASE CHANGES

### PART 1. GENERAL PROVISIONS

#### 340:65-5-1. Case changes

(a) **Change reporting requirement for Temporary Assistance for Needy Families (TANF), State Supplemental Payment (SSP), and SoonerCare (Medicaid).** Recipients of TANF, SSP, and SoonerCare (Medicaid) for the aged, blind, and disabled must report ~~within 10-calendar days~~ any changes in circumstances that increases, reduces, or closes benefits within 10-calendar days.

- (1) The worker:
  - (A) gives the client 10-calendar days to provide proof to verify the reported change; ~~and~~
  - (B) acts on changes that increase, reduce, or close benefits within 10-calendar days of the date the change is reported and required proof is received, per (d) of this Section.
- (2) Failure to report changes timely may result in a client error overpayment.
- (3) Examples of changes the client must report include:
  - (A) household income;
  - (B) household resources;
  - (C) household composition;
  - (D) the client's address or phone number;
  - (E) legal alien status of non-citizens;
  - (F) insurance coverage, per Oklahoma Administrative Code (OAC) 317:35-5-43; and
  - (G) in addition, for TANF program:
    - (i) deprivation of parental support, per OAC 340:10-10-1 through 340:10-10-4;
    - (ii) when a TANF Work activity stops or starts, per OAC 340:10-2-1 through 340:10-2-8; and
    - (iii) when a child in the assistance unit stops attending school, per OAC 340:10-13-1.

(b) **Change reporting for the Supplemental Nutrition Assistance Program (SNAP).** SNAP has three household categories of ~~households~~ with different change reporting responsibilities; annual reporters, semi-annual reporters, and change reporters. Refer to OAC 340:50-9-5 for change reporting requirements.

(c) **Change reporting for the Child Care Subsidy Program.** Child Care Subsidy recipients must report income changes within 10-calendar days when the household's gross income exceeds federal income eligibility threshold for the household size, per OAC 340:40-9-2(a) and Oklahoma Human Services (OKDHS) Appendix C-4, Child Care Eligibility/Co-payment Chart.

(d) **Change processing deadline Changes in cash benefits.** ~~After~~ When a change of circumstances occurs after

certification that requires an increase or a reduction in the SSP or TANF cash benefit amount, all reported changes must be processed the worker processes the change, per OKDHS Appendix B-2, Deadlines for Case Actions, to be effective the first day of the month following the next advance notice or non-advance notice deadline date, per OKDHS Appendix B-2, Deadlines for Case Actions. When the change:

(1) increases the cash benefit, the worker makes the change by the next non-advance deadline date. The worker also determines if a supplement is due for the current month. When one is due, the worker issues the supplement within 10-calendar days of the date the change is reported and required proof is received; or

(2) reduces the cash benefit, the worker makes the change within 10-calendar days of the date the change is reported and verified to be effective by the next advance notice deadline date. The worker also evaluates whether prior benefits were properly issued. When more benefits were issued than the household was entitled to, the worker completes an overpayment, per each program's overpayment rules.

(e) **Notices.** A computer-generated notice is sent to the client when the action taken increases, reduces, suspends, or closes benefits. A computer-generated notice is not sent when the action taken does not affect the benefit level.

(1) Advance notice is required when the action taken reduces, closes, or suspends benefits for a reason other than those listed per (2) of this subsection. ~~When advance notice is required, refer~~ Refer to OKDHS Appendix B-2 for advance notice deadline dates.

(2) When advance notice is not required, refer to OKDHS Appendix B-2 non-advance notice deadline dates. Advance notice is not required when the action taken does not suspend, close, or reduce benefits, or when:

- (A) all members included in the benefit die;
- (B) the TANF payee dies and there is not a relative available to serve as a new payee;
- (C) benefits are transferred from one assistance category of ~~assistance~~ to another without a resulting reduction or interruption in benefits, ~~such as changing from disability to aged benefits;~~
- (D) care is approved in a skilled nursing facility or an intermediate nursing care facility that requires closure of the person's SSP benefit or the SoonerCare (Medicaid) Qualifying Individuals - group 1 (~~QI-1s~~) benefit;
- (E) the household moves ~~out of state~~ out-of-state;
- (F) an automatic increase in income occurs because of federal legislation, such as a cost-of-living increase to all ~~beneficiaries~~ of Social Security, Supplemental Security Income, Railroad Retirement, or Veterans' benefits beneficiaries;
- (G) the client is admitted to a public institution where his or her needs are fully supplied;
- (H) the client provides a signed, written statement:
  - (i) stating he or she no longer chooses to receive assistance; or

- (ii) requesting benefit closure or reduction of ~~benefits~~ to avoid or repay an overpayment;
  - (I) the client's whereabouts are unknown. This may occur when the post office returns the client's OKDHS mail directed to the client is returned by the post office indicating and indicates no known forwarding address. SNAP and Child Care Subsidy benefits are not closed for this reason. Refer to OAC 317:35-5-67 to review the SoonerCare (Medicaid) return mail rule;
  - (J) a TANF child is removed from the home because of a judicial determination or ~~voluntary~~ because the legal guardian voluntarily placed the child in foster care placement by the legal guardian for more than 30-calendar days;
  - (K) a change occurs in federal or state law;
  - (L) SSP benefits must be are reduced to comply with federal law pertaining to maintenance of effort or a state mandate; or
  - (M) the client requests a reduction in or closure of the child care benefit or a change in child care provider for the Child Care Subsidy program, per OAC 340:40-9-2 and 340:40-9-3.
- (f) **Closing benefits.** The worker closes a Child Care Subsidy, SoonerCare (Medicaid), SSP, SNAP, or TANF benefit only at the household's request or after ineligibility is established, per each program's eligibility rules.
- (g) **Reinstating or reopening benefits.** Within 30-calendar days of notice issuance, the client may request reduced benefits be reinstated or closed benefits be reopened at the previous benefit level due to an incorrect action or a change in circumstances.
- (1) When benefits were reduced and the worker determines the client remains eligible at:
    - (A) the previous benefit level, the worker restores benefits to the previous benefit level for all Adult and Family Services (AFS) programs;
    - (B) an increased benefit level, benefits are increased based on specific program rules; or
    - (C) a reduced level than the last action taken, the worker reduces benefits further:
      - (i) effective the next advance notice deadline date for TANF, SSP, and SoonerCare (Medicaid);
      - (ii) when the renewal is due for Child Care Subsidy and SNAP. When the renewal is not due, benefits are:
        - (I) ~~benefits are~~ not reduced for Child Care Subsidy, per OAC 340:40-9-2(a); or
        - (II) reduced in limited circumstances for SNAP. Refer to OAC 340:50-9-5 for appropriate circumstances.
  - (2) For TANF, SSP, and SoonerCare (Medicaid), when benefits were closed or suspended and the client remains eligible, but at a reduced benefit level, benefits are reopened using current eligibility information.
  - (3) When Child Care Subsidy benefits are reopened and the renewal is not due, benefits are not reduced below

the benefit level at closure. Child care benefits may only be reduced at renewal, per OAC 340:40-9-2(a).

(4) When SNAP benefits are reopened and the benefit renewal is not due, benefits may only be reduced in limited circumstances. Refer to OAC 340:50-9-5 for appropriate circumstances.

(gh) **Fair hearing information.** When the client requests a fair hearing within 90-calendar days of the date action is taken for SNAP, or 30-calendar days for all other AFS programs, the worker follows fair hearing procedures, per OAC 340:2-5.

(1) When the client requests a fair hearing within 10-calendar days following the notice issuance date and requests, pending the hearing's outcome, that benefits be continued at the same benefit level as authorized immediately prior to the adverse action notice, the worker reopens or reinstates benefits to the previous benefit level.

(A) For SNAP, the client is not required to request benefits be continued at the same level when he or she requests a fair hearing within 10-calendar ~~day~~ days. Benefits are continued at the previous level unless the client waives benefit continuation of ~~benefits~~.

(B) For all AFS programs, the worker explains to the client when benefits are continued at the previous level and the appeal is not decided in the client's favor, he or she is expected to repay the benefits.

(C) Benefits remain open at the previous level unless another change occurs before a hearing decision is made that requires benefits be reduced or closed.

(2) When the client does not request the fair hearing within 10-calendar days of the notice date, the worker does not restore benefits unless the client provides information verifying the client remains eligible at the previous benefit level, the worker determines an incorrect action was taken, or the hearing is decided in the client's favor.

(3) Per OAC 340:2-5, the OKDHS Legal Services Appeals Unit makes a decision regarding the fair hearing and sends a decision letter to the client and the OKDHS office.

(A) The worker is responsible for taking the action needed to carry out the hearing decision and, when appropriate, sending an overpayment referral to the AFS Benefit Integrity Unit.

(B) When benefits were reinstated or reopened and the hearing decision is not in the client's favor, the worker reduces or closes benefits are continued through the end of the month in which effective the first of the month following the month the final hearing decision on the fair hearing is reached and an overpayment referral is sent to AFS Benefit Integrity and Recovery, when appropriate.

**340:65-5-2. Change of cash benefits [REVOKED]**

~~When a change occurs in the recipient's situation that increases or decreases the cash benefit, the worker makes the change for the next possible effective date shown on Oklahoma Department of Human Services (OKDHS) Appendix B-2, Deadlines for Case Actions.~~

~~(1) When the change increases the cash benefit, the worker determines whether a supplemental benefit is due.~~

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If one is due, the worker issues the supplement within ten calendar days of the date the change was reported.

(2) When the change decreases the cash benefit, the worker evaluates whether prior benefits have been properly issued. When benefits were issued in error, the worker completes an overpayment in accordance with rules at OAC 340:65-9.

### 340:65-5-3. ~~Suspension of benefits~~ **Benefit suspension and resolution**

(a) State Supplemental Payment (SSP) ~~or~~ and SoonerCare (Medicaid) benefits may be temporarily discontinued by suspension. Suspensions cannot exceed one month. Benefits are not issued on cases in suspended status. Suspensions are appropriate suspended when the Social Security Administration (SSA) suspends the recipient's Supplemental Security Income (SSI) until the SSI benefit is reinstated or closed.

(b) Sooner Care (Medicaid) may be suspended when:

(1) the recipient is ineligible as there are resources available to meet needs for a brief time. If the amount of resources indicates that the recipient will be ineligible for a longer period, the benefit is terminated SSA suspends the recipient's SSI until the SSI benefit is reinstated or closed;

(2) the facts indicate a change or discontinuance of an assistance payment but sufficient evidence for a determination of proper action cannot be obtained in time to change the next month's benefit the recipient is incarcerated, for the duration of the incarceration period, per Oklahoma Administrative Code (OAC) 317:35-6-45; or

(3) the Oklahoma Health Care Authority initiates an administrative sanction until the sanction is removed, per OAC 317:35-13-7; or

(4) Form 08TA018E, Continued Medical Benefit Reply Form, is not received timely per OAC 340:10-3-75 for households whose TANF who are eligible for a continued medical benefit (CMB) following a Temporary Assistance for Needy Families benefit has been closed and SoonerCare (Medicaid) continues closure due to earnings. When the worker does not reinstate CMB by the suspension month's advance notice deadline, per OKDHS Appendix B-2, Deadlines for Case Actions, CMB automatically closes effective the next month, per OAC 340:10-3-75.

(c) Following suspension, when the recipient is determined:

(1) eligible, the worker reinstates the benefit effective the month the benefit was suspended;

(2) eligible for the month following the suspension month, the worker recertifies the benefit effective the next month; or

(3) ineligible for the benefit, the worker closes the benefit effective the next month.

### 340:65-5-4. **Resolution of suspensions [REVOKED]**

A suspension is resolved by reinstatement or by termination of the benefit. Reinstatement refers to resuming benefits after a suspension. When it is determined the client is eligible for reinstatement, the computer system is updated to show current information.

### 340:65-5-5. **Termination of benefit [REVOKED]**

A benefit is terminated only at the recipient's request or after ineligibility has been established.

### 340:65-5-6. **Reconsideration of administrative Administrative action reconsideration**

(a) **Administrative action reconsideration.** ~~Corrective~~ An administrative action reconsideration is required on any administrative action which results in withholding of benefits, an underpayment for which the client was later determined eligible, or an overpayment of benefits the client was not eligible to receive when Temporary Assistance for Needy Families (TANF) or State Supplemental Payment (SSP) benefits are denied or closed in error or the benefit amount received by the client was incorrect. A reconsideration of the ~~The worker reconsiders an administrative action is required when:~~

(1) computer down time or procedure issues prevents timely action being taken timely;

(2) policy and procedures were not administered correctly; or

(3) new or additional information is received within 30 calendar days of the that shows:

(A) the applicant is eligible for benefits within 30-calendar days of the application denial date action was taken to deny the application; or

(B) the recipient is eligible for benefits within 30-calendar days of the closure effective date benefits were terminated; or

(C) recipient was underpaid.

(b) **Administrative action decision.** ~~A retroactive payment is authorized to correct an administrative action which resulted in a payment being discontinued, an application denied, or an underpayment.~~

(+) ~~**Payments discontinued for Temporary Assistance for Needy Families (TANF) and State Supplemental Payment (SSP).** When the local human services center (HSC) worker reconsiders its previous action and a TANF or SSP:~~

(1) closure and finds the payment benefit was discontinued closed in error, a payment is made for the worker reopens the benefit for the current month and any prior months, provided the amount authorized was improperly discontinued in these months and does not exceed the standard on Oklahoma Department of Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards when applicable. The worker issues a retroactive payment when the benefit is reopened farther back than the immediate prior month;

(2) ~~**Application denied for TANF and SSP.** When an application is denied denial and local HSC staff subsequently reconsiders its previous action and finds the applicant is eligible application was denied in error, a benefit is issued the worker certifies the application for whatever the time period the client applicant is determined eligible but no earlier than from the application date of application. The worker issues a retroactive payment to~~

certify the applicant for any months farther back than the immediate prior month;

(3) ~~Underpayments determined for TANF and SSP.~~ When a benefit was issued for less than the amount for which the client was eligible, the worker authorizes an underpayment for whatever period of time that underpayment was made. benefit reduction and finds that the benefit was reduced in error, the worker issues a supplement for each month the benefit was reduced in error; or  
(4) benefit action and finds that the client received a higher benefit that he or she was eligible, the worker completes an overpayment referral for the overpaid months, per Oklahoma Administrative Code 340:65-9.

**PART 7. GUARDIANSHIPS,  
CONSERVATORSHIPS, AND SUBSTITUTE  
PAYEES**

**340:65-5-60. Circumstances under which when a guardian or conservator may be needed**

(a) **Definitions.** The following words and terms, when used in this Section, have the following meanings unless the context clearly indicates otherwise.

(1) **"Incapacitated adult"** means, per Section 1-111 of Title 30 of the Oklahoma Statutes (30 O.S. § 1-111), a person 18 years of age or older:

- (A) who is impaired by reason of:
  - (i) mental illness as defined, per 43A O.S. § 1-103;
  - (ii) intellectual or developmental disability as defined, per 10 O.S. § 1430.2;
  - (iii) physical illness or disability;
  - (iv) drug or alcohol dependency as defined, per 43A O.S. § 3-403; or
  - (v) another similar cause, and
- (B) whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent the person:
  - (i) lacks the capacity to meet essential requirements for his or her physical health or safety, or
  - (ii) is unable to manage his or her financial resources.

(2) **"Partially incapacitated person"** means, per 30 O.S. § 1-111, a person:

- (A) whose impairment is such that without a limited guardian's assistance the person is unable to:
  - (i) meet the essential requirements for his or her physical health or safety; or
  - (ii) manage or engage in all of the activities necessary to effectively manage his or her financial resources; or
- (B) who is considered to be legally competent in all areas not specified by a court in its dispositional or subsequent orders. The person retains all legal rights and abilities other than those expressly limited or curtailed in the orders.

(3) **"Natural guardian"** Parents are natural guardians of their minor child(ren) regardless of whether they live in the same household, unless a legal guardianship or custody transfer supersedes natural guardianship. Persons other than the parents may be considered natural guardians when they have, over a continuing period, had custody of the child(ren) and have held themselves responsible for care, support, and maintenance.

(4) **"Guardian"** means, per 30 O.S. § 1-111, a guardian may be general, limited, or special.

(A) A general guardian is a court appointed person who serves as the incapacitated person's guardian to ensure that the essential requirements for the person's health and safety are met, to manage the person's estate, or both.

(B) A limited guardian is a court appointed person who serves as the partially incapacitated person's guardian and who is court authorized to exercise only certain guardianship powers over the person, his or her or estate or financial resources, or both.

(C) A special guardian is a court appointed person who exercises certain specified powers to alleviate a situation threatening serious impairment to the incapacitated or partially incapacitated person's health or safety, or a situation when the person's financial resources will be seriously damaged or dissipated unless immediate action is taken.

(5) **"Conservator"** means a conservator has the same powers and duties as a guardian or limited guardian of an incapacitated or partially incapacitated person's property, per 30 O.S. § 3-215. This includes the investment, management, sale or mortgage of the person's property and his or her debt payment. The conservator is not responsible for ensuring that the essential requirements for the incapacitated or partially incapacitated person's health and safety are met.

(6) **"Manage financial resources"** means to manage financial resources or the estate means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs, per 30 O.S. § 1-111.

(7) **"Meet the essential requirements for physical health or safety"** means to meet the essential requirements for physical health or safety means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury is more likely than not to occur, per 30 O.S. § 1-111.

(b) **When a guardian or conservator may be needed.** An applicant or recipient who is physically or mentally incompetent meets the definition of an incapacitated or partially incapacitated adult, per (a) of this Section, may need the protection afforded by a guardian or conservator. When the social services specialist becomes aware assistance is needed to select a guardian or conservator is needed, assistance is offered in helping the family to select a person if the client

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has not selected a person and a person is not immediately available a referral may be made to Adult Protective Services.

(1) For State Supplemental Payment (SSP) recipients agewho are:

(A) blind or 65 or years of age and older, legal guardianship or conservatorship is the only method by which the SSP payment can may be made to a person other than the recipient, per 56 O.S. § 172.;

(B) If the SSP recipient is under age 65 years of age, OKDHS may make the SSP payment to the incapacitated or partially incapacitated person's legal guardianship—guardian or conservatorship—may be used for the conservator when needed for his or her protection of an incompetent adult.; or

(C) under 16 years of age, SSP payment is made to a natural guardian, when available, per Oklahoma Administrative Code 340:15-1-6(c)(3) unless he or she is not competent to transact his or her own business or is otherwise unsuitable or legally disqualified to serve as the natural guardian, per 30 O.S. § 2-106. When the minor reaches 14 years of age, the minor may nominate his or her own guardian, when court approved, per 30 O.S. § 2-103.

(2) For Temporary Assistance for Needy Families (TANF) benefits, when the child does not live with his or her parent(s), the relative payee of—who lives with the dependent child need not be appointed as guardian to receive benefits on the child's behalf of the child. If a child has a guardian, the payment can be made only to the eligible relative in whose home the child resides. If When the eligible relative with whom the child resides with has a guardian or conservator, the payment is made to the eligible relative's guardian of this relative.

(c) Guardian or conservator responsibilities. The guardian or conservator is responsible for managing the applicant or recipient's financial matters. This includes signing the SSP or TANF application or renewal and any other necessary forms and providing required verification to determine the person's SSP or TANF eligibility, per 56 O.S. § 166. When a guardian or conservator is appointed after an application is made, but before the application is approved or denied, the guardian or conservator signs and completes a new application using the same application date as the original application.

(d) Court costs. The court clerk and the associate or district judge may not charge court costs in cases involving the guardianship of persons who are applicants for or who are receiving Social Security benefits or assistance or veterans disability compensation of pension, per 56 O.S. § 192.

### 340:65-5-61. Responsibilities of guardians or conservators [REVOKED]

It is the responsibility of the guardian or conservator to manage financial matters which are beyond the competence of the applicant or recipient to manage. Procedures for applicants and recipients who have guardians or conservators are the same as for other individuals except that all necessary forms, including warrants, are signed by the guardian or conservator.

### 340:65-5-62. Change in name [REVOKED]

If the client is a recipient, the change of name and other indicated changes are updated and recorded in the case record. If a person applying for assistance has a guardian or conservator, the application is made by the guardian or conservator and signed as indicated in OAC 340:65-5-61. If a guardian or conservator is appointed for an applicant prior to the disposition of the application, a new application form must be completed using the same application date as the original application.

### 340:65-5-63. Natural guardianships [REVOKED]

Parents are natural guardians of their minor child(ren) regardless of whether they are occupying the same household, unless the natural guardianship is superseded by a legal guardianship or a transfer of custody. Persons other than the parents may be considered natural guardians when they have, over a continuing period, had custody of the child(ren) and have held themselves responsible for care, support, and maintenance.

### 340:65-5-64. Legal guardianships [REVOKED]

State law provides that payment to any recipient of a State Supplemental Payment may be made to a guardian appointed by a court of competent jurisdiction. [56 O.S. § 161 et seq.] The court clerk and the associate or district judge may not charge court costs in cases involving the guardianship of persons who are applicants for or who are receiving assistance under the Social Security laws of this state. [56 O.S. § 192] When a guardian is appointed by the court or when a court appointed guardian is dismissed, a certified copy of the order must be secured and filed in the client's case record in the county office.

### 340:65-5-65. Conservatorships [REVOKED]

Sections 3-211 to 3-220 of Title 30 of the Oklahoma Statutes, provides for the appointment of a conservator to manage the estate of a person who by reason of physical disability is unable to manage his or her property. The conservator has the same powers and duties, except as to the custody of the person, as a guardian of a mentally ill, disabled, or incompetent person. The procedure for the appointment of a conservator is the same as the procedure for appointing a guardian.

### 340:65-5-66. Substitute payee for the TANF Program [REVOKED]

When the head of the household is a minor, the Temporary Assistance for Needy Families (TANF) benefit may be issued to a substitute payee rather than the minor.

## SUBCHAPTER 9. OVERPAYMENT CLAIMS AND FRAUD IN TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND STATE SUPPLEMENTAL PAYMENT BENEFITS



**340:65-9-1. Scope and applicability**

(a) **Scope and applicability.** The scope and applicability of overpayment procedures contained in this Subchapter apply to Temporary Assistance for Needy Families (TANF) and State Supplemental Payment (SSP) recipients.

(b) **Overpayment claim definition.** An overpayment claim occurs when a household receives more benefits than it is entitled to receive. Overpayments may be classified as inadvertent household errors (IHE), agency error (AE), willful misrepresentation, intentional program violation (IPV), or fraud.

(c) **Overpayment referral.** When Oklahoma Department of Human Services (~~DHS~~OKDHS) staff suspects an overpayment occurred, he or she sends an overpayment referral to the Adult and Family Services (AFS) Benefit Integrity and Recovery (BIR) Unit for an overpayment determination and claim establishment.

(1) Reasons ~~DHS~~OKDHS staff may send an overpayment referral to the AFS BIR Unit for an overpayment determination include, but are not limited to, when the:

- (A) household:
  - (i) failed to provide ~~DHS~~OKDHS with correct or complete information;
  - (ii) failed to report changes in its circumstances; or
  - (iii) elected to receive benefits pending a fair hearing decision that subsequently found the family ineligible or eligible for fewer benefits;
- (B) worker:
  - (i) failed to take prompt action on a change reported by the household;
  - (ii) incorrectly computed the household's income, ~~and/or~~ deductions, ~~or both~~; or
  - (iii) incorrectly authorized benefit issuance of ~~benefits~~ to a household; or

(C) ~~over-issuance~~overpayment is discovered as a result of ~~during~~ an audit or ~~review~~ benefit renewal.

(2) The worker includes in the overpayment referral, the circumstances leading to the overpayment, if the overpayment occurred because of household or agency error, and how he or she computed the overpayment amount. When applicable, the overpayment referral may cover up to six years prior to the date the worker discovers the over-issuance.

(A) For TANF, when an ~~over-issuance~~overpayment occurs because the client does not report earned income within 10-calendar days, per Oklahoma Administrative Code (OAC) 340:65-5-1, the worker calculates the overpayment based on the client's gross earned income without the earned income deduction, per OAC 340:10-3-33.

(B) For SSP, the client is allowed the earned income deduction, per OAC 317:35-5-42(d) even when the earned income is reported untimely.

(d) **Overpayment claim establishment.** AFS BIR Unit staff is ~~responsible for evaluating~~evaluates overpayment referrals, ~~establishing~~establishes overpayment claims, and

~~referring~~refers overpayment claims to the OKDHS Office of the Inspector General (OIG) when appropriate, per OAC 340:65-9-2 and OAC 340:65-9-4. An overpayment claim is considered established on the date AFS BIR Unit staff sends the overpayment notice to the household.

(1) When AFS BIR Unit staff determines an OIG referral is not appropriate, AFS BIR Unit staff:

- (A) establishes the overpayment claim;
- (B) classifies the overpayment claim as an IHE, AE, or willful misrepresentation, per OAC 340:65-9-2;
- (C) sends the:

(i) Notification of Overpayment, Form 08OP011E, Repayment Agreement and, when appropriate, Form 08OP025E, Chart of Temporary Assistance for Needy Families and State Supplemental Payment Overpayments, to the debtor(s); and

(ii) Notification of Overpayment with supporting documentation to the ~~DHS~~OKDHS county office ~~or support center~~; and

(D) assigns overpayment recoupment of ~~the overpayment~~, per OAC 340:65-9-6.

(2) When the worker suspects fraudulent intent, but has insufficient information to complete an overpayment referral, he or she sends Form 19MP001E, Referral Form, to OIG.

(A) When OIG staff suspects an overpayment occurred, but a fraud determination is not needed, OIG staff sends the findings to the AFS BIR Unit to calculate and establish the claim.

(B) When OIG staff determines fraud occurred, OIG staff may:

(i) refer a TANF or SSP overpayment claim for a court decision regarding fraud, per OAC 340:65-9-4;

(ii) for TANF overpayment claims, make a referral to the Legal Services Appeals Unit for an administrative disqualification hearing instead of a court referral; or

(iii) for SSP, send the findings to the AFS BIR Unit calculate and establish the overpayment based on willful misrepresentation.

(e) **Right to appeal.** When the household disagrees with the overpayment decision, the household may request a fair hearing within 30-calendar days of the date on the Notification of Overpayment. An OKDHS mailed item is presumed received on the second day mail is delivered following the date on the notice, per OAC 340:2-5-63.

(ef) **Case record retention.** ~~DHS~~OKDHS is mandated to retain case records containing overpayments for three years from the date:

- (1) the overpayment debt is paid in full; or
- (2) AFS BIR Unit staff determines the debt to be uncollectable. This may occur when the debtor(s) dies or files bankruptcy and discharges the debt.

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## 340:65-9-5. Right to appeal [REVOKED]

~~When the household disagrees with the overpayment decision, the household may request a fair hearing within 30 calendar days of the date on the Notification of Overpayment. Per Oklahoma Administrative Code 340:2-5-63, an item mailed by the Oklahoma Department of Human Services is presumed received on the second day mail is delivered following the date on the notice.~~

## 340:65-9-7. ~~Suspension of collection efforts~~ Collection effort suspension or termination

(a) The Adult and Family Services (AFS) Benefit Integrity and Recovery (BIR) Unit staff suspends collection efforts on cases no longer receiving benefits, when the:

- (1) head of household is deceased and there are no remaining debtors responsible for the overpayment;
- (2) household cannot be located;
- (3) cost of further collection action is likely to exceed the amount that can be recovered;
- (4) debtor(s) provides verification to the AFS BIR Unit, that bankruptcy proceedings initiated; or
- (5) debtor(s) requests a fair hearing.

(b) AFS BIR Unit staff may begin collection actions held in suspension when changes in household circumstances occur, such as:

- (1) AFS BIR Unit staff locates the household when the client reapplies and becomes eligible in the future;
- (2) the court dismisses instead of discharging the debt through bankruptcy; or
- (3) the fair hearing decision is not in the debtor(s)' favor.

(c) When the household pays an overpayment in full, AFS BIR Unit staff sends the household the monthly overpayment account statement showing a zero balance to notify the household that the debt is satisfied.

## 340:65-9-8. Termination of collection of debt [REVOKED]

~~In the case of repayment in full, the household is notified that the debt has been satisfied by a monthly overpayment account statement showing a zero balance owed.~~

## SUBCHAPTER 11. VOTER REGISTRATION

### 340:65-11-1. Purpose, legal authority, and criminal penalties

(a) Purpose. The purpose of this Subchapter is to ~~provide~~ describe voter registration rules for voter registration as ~~the Oklahoma Department of Human Services (OKDHS) is a designated voter registration agency.~~

(b) Legal authority. The National Voter Registration Act of 1993 [Public Law 103-31] and Section 109.2 of Title 26 of the Oklahoma Statutes requires state agencies providing public assistance, such as Child Care Subsidy, SoonerCare (Medicaid), State Supplemental Payment, Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, or

state-funded programs primarily engaged in providing services to persons with disabilities to offer voter registration services. Voter registration procedures comply with procedures issued by the Oklahoma State Election Board.

(c) Criminal penalties. Criminal penalties for improper voter registration are included in Section 1973gg-10 of Title 42 of the United States Code and the cautions portion of the State Election Board's Procedure for Voter Registration.

### 340:65-11-2. Legal authority [REVOKED]

~~The National Voter Registration Act of 1993 [Public Law 103-31] requires state agencies providing public assistance such as SoonerCare (Medicaid), Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program, or state funded programs primarily engaged in providing services to persons with disabilities to offer voter registration services.~~

### 340:65-11-3. Voter registration services

(a) Voter registration offer. Oklahoma Human Services (OKDHS) Adult and Family Services (AFS) staff is federally mandated to offer voter registration services to applicants and recipients for qualifying events included in (1) through (3) of this subsection. Qualifying events include when persons:

- (1) apply for AFS benefits, such as Child Care Subsidy, Low Income Home Energy Assistance Program, SoonerCare (Medicaid), State Supplemental Payment, Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families;
- (2) complete a mid-certification benefit renewal, annual benefit renewal, or SNAP certification renewal; or
- (3) report an address or name change.

(b) Voter registration forms. Voter registration forms include Form 08MP007E, Voter Registration Statement, and the Oklahoma State Election Board's, Oklahoma Voter Registration Application.

(1) The applicant, recipient, or the worker records the applicant's or recipient's decision to apply or decline to register to vote.

(2) When the applicant or recipient wants to apply to register to vote or does not want to answer the question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?" on Form 08MP007E, Voter Registration Statement, AFS staff gives or mails the Oklahoma Voter Registration Application is given or mailed to the applicant or recipient.

(3) When the applicant or recipient declines to apply to register to vote in writing, AFS staff does not give or mail an Oklahoma Voter Registration Application is not given or mailed to the applicant or recipient.

(c) Assistance completing the Oklahoma Voter Registration Application. AFS staff offers the same degree of assistance ~~into applicants and recipients~~ completing the Oklahoma Voter Registration Application as ~~is provided~~ staff provides when completing ~~the an~~ AFS application and renewal ~~forms~~.

(d) **Confidentiality.** AFS staff keeps the applicant's or recipient's decision to register or not to register to vote and all voter registration materials confidential.

(e) **Prohibitions.** AFS staff must not:

- (1) seek to influence an applicant's or recipient's political preference or party registration;
- (2) display political preference or party allegiance;
- (3) make statements or take action that has the purpose or effect of discouraging the applicant or recipient from registering to vote; or
- (4) make statements or take action that has the purpose or effect of leading the applicant or recipient to believe that a decision to apply to register or a decision not to register to vote has any bearing on ~~the service or benefit~~ availability of services or benefits.

(f) **Record retention.** AFS staff images and files a completed Form 08MP007E in the applicant's or recipient's case record. ~~Completed~~ Form 08MP007Es, ~~when completed,~~ are retained until the case record is destroyed, per Oklahoma Administrative Code ~~340:65-1-6~~ 340:65-1-5.

(g) **Training.** AFS staff are required to view voter registration training within 30 calendar days of ~~his or her~~ their enter on duty date and annually thereafter.

(h) ~~Local voter registration site coordinator~~ **Local voter registration site coordinator**. Each county director and field manager is responsible for assigning a ~~local~~ voter registration site ~~coordinator~~ coordinators for the counties they manage. Site coordinator duties include:

- (1) maintaining a sufficient supply of Oklahoma Voter Registration Application forms;
- (2) ~~the daily compilation of all~~ compiling completed and partially completed Oklahoma Voter Registration Application forms daily and mailing them to the Oklahoma State Election Board at the close of each business week in the preaddressed, prepaid, postage envelopes provided by the Oklahoma State Election Board ~~provides;~~
- (3) maintaining a weekly count of Oklahoma Voter Registration Application forms mailed to the Oklahoma State Election Board and sending a monthly total to the AFS regional office.
- (4) being the ~~local office~~ contact person for applicants, recipients, the public, or staff inquiries regarding the voter registration process for the counties they serve;
- (5) maintaining all voter registration posters as required;
- (6) monitoring staff compliance with standard voter registration procedures included in this Section; and
- (7) monitoring the staff's completion of annual voter registration training.

(i) **Data collection.** ~~DHS~~ OKDHS produces a statewide monthly report regarding voter registration activity based on weekly data collection.

**340:65-11-4. Criminal penalties [REVOKED]**

~~(a) The Oklahoma Department of Human Services (OKDHS) offers persons applying for and receiving benefits or services provided by OKDHS the opportunity to register to vote in compliance with the:~~

- (1) National Voter Registration Act of 1993; and
- (2) Procedure for Voter Registration issued by the Oklahoma State Election Board.

~~(b) Criminal penalties for improper voter registration are included in:~~

- (1) Section 1973gg-10 of Title 42 of the United States Code (U.S.C.); and
- (2) ~~the cautions portion of the State Election Board's Procedure for Voter Registration.~~

*[OAR Docket #22-547; filed 7-5-22]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 75. CHILD WELFARE SERVICES**

*[OAR Docket #22-548]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions of Child Welfare Services
  - Part 10. Oklahoma Children's Services
    - 340:75-1-150 [AMENDED]
    - 340:75-1-151.3 [NEW]
    - 340:75-1-152 [AMENDED]
    - 340:75-1-152.3 [AMENDED]
    - 340:75-1-152.5 [AMENDED]
    - 340:75-1-152.6 [AMENDED]
    - 340:75-1-152.7 [AMENDED]
    - 340:75-1-152.9 [AMENDED]
    - 340:75-1-155 [REVOKED]
  - Subchapter 3. Child Protective Services
    - Part 1. Purpose, Definitions, and Child Abuse and Neglect Hotline Protocol
      - 340:75-3-120 [AMENDED]
    - Part 2. Investigative Protocols
      - 340:75-3-200 [AMENDED]
    - Part 3. Child Safety Evaluation Criteria and Procedure
      - 340:75-3-300 [AMENDED]
    - Part 4. Specialized Investigative Protocols, Child Death or Near-Death Reporting Protocols
      - 340:75-3-400 [AMENDED]
    - Part 5. Investigative Findings and Appeals
      - 340:75-3-520 [AMENDED]
      - 340:75-3-530 [AMENDED]
  - Subchapter 4. Family-Centered and Community Services
    - Part 1. Family-Centered Services
      - 340:75-4-9 [AMENDED]
      - 340:75-4-12.1 [AMENDED]
  - Subchapter 6. Permanency Planning
    - Part 5. Permanency Planning Services
      - 340:75-6-31.4 [AMENDED]
    - Part 7. Family and Child Individualized Service Planning Components
      - 340:75-6-40.8 [AMENDED]
      - 340:75-6-40.9 [AMENDED]
  - Subchapter 7. Foster Home Care
    - Part 1. General Provisions
      - 340:75-7-2 [AMENDED]
    - Part 2. Development of Resource Families
      - 340:75-7-15 [AMENDED]
      - 340:75-7-18 [AMENDED]
      - 340:75-7-24 [AMENDED]
    - Part 5. Eligibility and Payments
      - 340:75-7-52.1 [AMENDED]
  - Part 27. Oklahoma Department of Human Services (~~DHS~~) (OKDHS) Resource Family Partner (RFP) Foster Care Program
    - 340:75-7-280 [AMENDED]

# Permanent Final Adoptions

Part 28. Foster Parent Helpline, Mediation, and Reports about the Oklahoma Department of Human Services (DHS) (OKDHS) or Child-Placing Agency Employees

340:75-7-290 [AMENDED]

Part 30. Enhanced Foster Care [NEW]

340:75-7-301 [NEW]

340:75-7-303 [NEW]

Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services

Part 1. Therapeutic Foster Care

340:75-8-1 [AMENDED]

340:75-8-4 [AMENDED]

340:75-8-6 [AMENDED]

340:75-8-8 [AMENDED]

340:75-8-9 [AMENDED]

340:75-8-11 [AMENDED]

340:75-8-11.1 [AMENDED]

Subchapter 11. Child Welfare Community-Based Residential Care

Part 17. Contracted Community-Based Residential Care Providers

340:75-11-230 [AMENDED]

340:75-11-237 [AMENDED]

340:75-11-240 [AMENDED]

Part 21. Residential Intensive Treatment Services

340:75-11-265 [AMENDED]

Part 25. Family-Style Living Programs and Non-Funded and Funded Contracted Level B Placements

340:75-11-300 [AMENDED]

340:75-11-301 [AMENDED]

Part 29. Contracted Level C Placements Qualified Residential Treatment Programs (Q RTP)

340:75-11-330 [AMENDED]

Part 33. Contracted Level D Plus and Level E Placements Qualified Residential Treatment Programs (Q RTP)

340:75-11-360 [AMENDED]

340:75-11-364 [NEW]

Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care

Part 2. Title IV-E Eligibility and Reimbursement

340:75-13-16 [AMENDED]

Subchapter 15. Adoptions

Part 2. Adoption Services Program Legal Authority and Scope

340:75-15-5 [AMENDED]

340:75-15-7 [AMENDED]

340:75-15-8 [AMENDED]

Part 6. Adoption Process

340:75-15-41.3 [AMENDED]

340:75-15-41.4 [AMENDED]

Part 10. Family Assessment and Preparation Process

340:75-15-84 [AMENDED]

340:75-15-84.1 [AMENDED]

340:75-15-87 [AMENDED]

Part 12. Adoption Placement Services

340:75-15-103 [AMENDED]

Part 14. Post-Adoption Services

340:75-15-128 [AMENDED]

340:75-15-128.1 [AMENDED]

340:75-15-128.2 [AMENDED]

340:75-15-128.4 [AMENDED]

340:75-15-128.5 [AMENDED]

Subchapter 19. Working with Indian Children

340:75-19-26 [AMENDED]

340:75-19-26.1 [AMENDED]

340:75-19-28 [AMENDED]

340:75-19-29 [AMENDED]

340:75-19-31 [AMENDED]

340:75-19-32 [AMENDED]

340:75-19-33 [AMENDED]

340:75-19-34 [NEW]

(Reference WFs 21-1, 21-11, and 22-75)

## AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 10A O.S. §§ 1-1-102, 1-1-105, 1-7-112, 1-9-110; 56 O.S. § 162; Titles IV-A, IV-B, and IV-E of the Social Security Act, as amended by the Family First Prevention Services Act (FFPSA), Public Law 115-123,

Section 472 of the Social Security Act (42 United States Code (U.S.C.) § 672), 42 U.S.C. § 675.

Chapter 75 Subchapter 3: 10 O.S. §§ 175.20, 402, and 406; 10A O.S. §§ 1-1-102, 1-1-105, 1-2-101, 1-2-102, 1-2-105 through 1-2-107, 1-2-109, 1-3-102, 1-3-104, 1-4-102, 1-4-201, 1-4-203, 1-4-204, 1-4-208, 1-4-806, 1-4-902, 1-6-102, 1-6-103, 1-6-105, and 1-9-102; 21 O.S. §§ 748, 748.2; and 1040.13a; 22 O.S. §§ 20 and 60.14; 47 O.S. § 11-1119; 57 O.S. §§ 581 et seq; 70 O.S. § 10-106; Section 671 of Title 42 of the United States Code (42 U.S.C. § 671) and § 5101.

Chapter 75 Subchapter 4: 10A O.S. §§ 1-7-112 and 1-9-110.

Chapter 75 Subchapter 6: 10A O.S. §§ 1-4-101, 1-4-705, 1-4-709, 1-4-710, 1-4-901, 1-4-902, 1-4-904, and 1-4-906 through 1-4-909; 43 O.S. § 118 and 119; Title IV-E of the Social Security Act; 43 O.S. § 118 and 119; and 63 O.S. § 1-227.10.

Chapter 75 Subchapter 7: Oklahoma Indian Child Welfare Act, 10 O.S. §§ 40 et seq. and 405.3; Oklahoma Child Care Facilities Licensing Act, 10 O.S. 401 et seq.; 10A O.S. §§ 1-1-102, 1-1-105, 1-4-204, 1-7-109, 1-7-111, 1-7-115, 1-9-106, 1-9-117, 1-9-119, and 1-9-120; Oklahoma Self-Defense Act, 21 O.S. §§ 1290.1 et seq. and §§ 692 and 1290.2; 47 O.S. § 11-1112; Federal Indian Child Welfare Act, per Section 1901 et seq. of Title 25 of the United States Code (25 U.S.C. §§ 1901 et seq.), Titles IV-B and IV-E of the Social Security Act, per 42 U.S.C. §§ 621 through 629i, 670 through 679B amended by Multiethnic Placement Act of 1994, as amended by the Interethnic Provisions of 1996 (MEPA/IEP) and Family First Prevention Services Act, Public Law (P.L.) 115-123; 57 O.S. § 582; 18 U.S.C. § 16.

Chapter 75 Subchapter 8: 10A O.S. §§ 1-1-105, 1-2-101, 1-3-102, 1-6-102, 1-7-103, 1-7-105, 1-9-110, 1-9-119, and 1-9-119.1; 74 O.S. § 85.

Chapter 75 Subchapter 11: 10A O.S. §§ 1-1-105, 1-2-101, 1-3-102, 1-6-107, 1-7-103, 1-7-105, 1-9-110, and 1-9-123; 70 O.S. § 1-113; Title IV-E and Title XIX of the Social Security Act.

Chapter 75 Subchapter 15: 10 O.S. §§ 40 et seq., 7501-1.1 et seq., 7700-102, 7700-204; 10A O.S. § 1-4-706; 18 U.S.C. § 16; 25 U.S.C. 1901 et seq., Adoption and Safe Families Act, P.L. 105-89, Multiethnic Placement Act of 1994, as amended by the Interethnic Provisions of 1996 (MEPA/IEP), P.L. 96-272, Titles IV-E and XX of the Social Security Act; Section 1355.20 of Title 45 Chapter XIII of the Code of Federal Regulations (45 C.F.R. § 1355.20), 45 C.F.R. § 1356.

Chapter 75 Subchapter 19: Oklahoma Indian Child Welfare Act 10 O.S. §§ 40 et seq.,

Federal Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq., Titles IV-E and XIX of the Social Security Act.

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

December 20, 2021

## COMMENT PERIOD:

January 18, 2022 through March 18, 2022

## PUBLIC HEARING:

March 23, 2022

## ADOPTION:

March 23, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2022

## APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's Declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded Rules:

Subchapter 1. General Provisions of Child Welfare Services

Part 10. Oklahoma Children's Services

340:75-1-150 [AMENDED]

340:75-1-151.3 [NEW]

340:75-1-152 [AMENDED]

340:75-1-152.3 [AMENDED]

340:75-1-152.5 [AMENDED]

340:75-1-152.6 [AMENDED]

340:75-1-152.7 [AMENDED]

340:75-1-152.9 [AMENDED]

340:75-1-155 [REVOKED]

Subchapter 4. Family-Centered and Community Services

Part 1. Family-Centered Services

340:75-4-9 [AMENDED]  
 340:75-4-12.1 [AMENDED]  
 Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care  
 Part 2. Title IV-E Eligibility and Reimbursement  
 340:75-13-16 [AMENDED]

(Reference WF 21-01)

**Gubernatorial Approval:**

July 19, 2021

**Register Publication:**

39 Ok Reg 105

**Docket Number:**

21-734

**Superseded Rules:**

Subchapter 3. Child Protective Services  
 Part 1. Purpose, Definitions, and Child Abuse and Neglect Hotline Protocol  
 340:75-3-120 [AMENDED]  
 Part 2. Investigative Protocols  
 340:75-3-200 [AMENDED]  
 Part 3. Child Safety Evaluation Criteria and Procedure  
 340:75-3-300 [AMENDED]  
 Part 4. Specialized Investigative Protocols, Child Death or Near-Death Reporting Protocols  
 340:75-3-400 [AMENDED]  
 Part 5. Investigative Findings and Appeals  
 340:75-3-520 [AMENDED]  
 340:75-3-530 [AMENDED]  
 Subchapter 4. Family-Centered and Community Services  
 Part 1. Family-Centered Services  
 340:75-4-12.1 [AMENDED]  
 Subchapter 6. Permanency Planning  
 Part 7. Family and Child Individualized Service Planning Components  
 340:75-6-40.9 [AMENDED]  
 Subchapter 7. Foster Home Care  
 Part 2. Development of Resource Families  
 340:75-7-15 [AMENDED]  
 340:75-7-18 [AMENDED]  
 Subchapter 11. Community-Based Residential Care  
 Part 17. Contracted Community-Based Residential Care Providers  
 340:75-11-230 [AMENDED]  
 Part 29. Contracted Level C Placements Qualified Residential Treatment Programs (QRTP)  
 340:75-11-330 [AMENDED]  
 Part 33. Contracted Level D Plus and Level E Placements Qualified Residential Treatment Programs (QRTP)  
 340:75-11-360 [AMENDED]  
 340:75-11-364 [NEW]

(Reference WF 21-11)

**Gubernatorial Approval:**

December 21, 2021

**Register Publication:**

39 Ok Reg 468

**Docket Number:**

22-6

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Chapter 75 Subchapter 1: (1) update Oklahoma Children's Services (OCS) to utilize Title IV-E prevention services to prevent a child from entering foster care; (2) expand the OCS program to include Title IV-E prevention services; (3) establish a process for requesting 12-month extensions for Title IV-E prevention services; and (4) clarify responsibilities of the OCS contract liaison.

The proposed amendments to Chapter 75 Subchapter 3: (1) revise "neglect" definition, per House Bill (HB) 2565 (2021); (2) authorize court-ordered transport of child to an examination or interview, per Senate Bill (SB) 987 (2021); (3) permit a Safety Plan monitor to authorize medical or dental treatment or examinations when necessary, per HB 1902 (2021); (4) revise a newborn's age for relinquishment, per SB 960 (2021); (5) establish a process to notify Child Care Services (CCS) about a person responsible for the child's (PRFC) substantiated heinous and shocking abuse finding, per HB 1797 (2021); and (6) revise appeals notification process as a result of organizational changes due to the COVID-19 pandemic.

The proposed amendments to Chapter 75 Subchapter 4: (1) update the legal base and authority for establishing preventive and pre-placement services to include the Family First Prevention Services Act, Title IV-E; (2) clarify the authorization of community-based contracted services; and (3) acknowledge a change to the Safety Plan monitor's authority regarding medical or dental treatment for a child, per HB 1902 (2021).

The proposed amendment to Chapter 75 Subchapter 6: (1) lowers the age to 14 for a child to request reinstatement of a parent's previously terminated rights by the court under specific requirements, per House Bill (HB) 1273 (2019); and (2) expands the criteria for the court to terminate parental rights (TPR), per HB 1902 (2021). The proposed amendments to Chapter 75 Subchapter 7: (1) establish enhanced foster care (EFC) that provides additional services to a child in Oklahoma Human Services (OKDHS) custody placed, or needing placement, in a family-based setting and address a child's complex behavioral, medical, developmental and mental health needs that may exceed the capacity of traditional foster care; (2) set the timeframe for completing fingerprint verification for emergency kinship placements, per SB 27 (2021); (3) and revise the rule to agree with federal State Plan requirements about exceeding the maximum number of children residing in a resource home.

The proposed amendments to Chapter 75 Subchapter 8 include: (1) providing additional services through intensive treatment foster care (ITFC) to therapeutic foster care (TFC) children who meet targeted criteria; and (2) the related internal restructuring of the TFC Unit.

The proposed amendments to Chapter 75 Subchapter 11 include: (1) deleting outdated contracted care requirements in community-based residential care (CBRC); (2) removing references to funded Level B placements; and (3) state the care options available for youth needing placement in community-based residential care (CBRC) and address placement issues OKDHS is confronting with courts and attorneys in Tulsa County.

The proposed amendment to Chapter 75 Subchapter 13 update the legal base and authority for claiming foster care maintenance payment (FCMP) for a child in qualified residential treatment program (QRTP), per the Family First Prevention Services Act, Title IV-E.

The proposed amendments to Chapter 75 Subchapter 15 reflect internal restructuring of the Adoptions program with a greater emphasis on the child's needs when seeking permanent placement through adoption.

The proposed amendments to Chapter 75 Subchapter 19 update policy to clarify the distinctions between OKDHS tribal program and Child Welfare Services (CWS) tribal IV-E program and address HB 2352 (2021) regarding jurisdiction over child custody proceedings.

**CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217. **DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655-10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA DEPARTMENT OF HUMAN SERVICES, SEQUOYAH MEMORIAL OFFICE BUILDING, 2400 N. LINCOLN BLVD., OKLAHOMA CITY, OKLAHOMA 73125-0352 AND AT <https://oklahoma.gov/okdhs/library/policy/proposed.html> AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

**CHAPTER 75. CHILD WELFARE SERVICES**

Subchapter 1. General Provisions of Child Welfare Services

Part 10. Oklahoma Children's Services

Oklahoma Administrative Code (OAC) 340:75-1-150 is amended to expand community-based contracted services to include services that address a child's, parent's, or kin caregiver's needs to prevent a child from entering foster care, per Section 473 of the Social Security Act.

OAC 340:75-1-151.3 is created to establish the role of the OCS contract liaison.

OAC 340:75-1-152 is amended to note OCS consists of Comprehensive Home-Based Services (CHBS), Parent Aide Services, and Title IV-E prevention services.

OAC 340:75-1-152.3 is amended to clarify that OCS includes Title IV-E prevention services.

OAC 340:75-1-152.5 is amended to update the requirements and timeframe for an extension of OCS services.

OAC 340:75-1-152.6 is amended to clarify who arranges for additional CHBS visits.

OAC 340:75-1-152.7 is amended to specify the conditions under which early termination of OCS may be recommended by the contractor.

# Permanent Final Adoptions

OAC 340:75-1-152.9 is amended to clarify who is responsible for submitting a Critical Incident Report to Child Welfare Services.

OAC 340:75-1-155 is revoked to move information to earlier in the Part, specifically to OAC 340:75-1-151.3.

## Subchapter 4. Family-Centered Services

OAC 340:75-4-9 is amended to add the FFPSA, Title IV-E, to the list of federal statutes that mandate preventive and pre-placement services to children and families.

OAC 340:75-4-12.1 is amended to update the OCS description of community-based contracted services, per Section 1-9-110 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-110).

## Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care

### Part 2. Title IV-E Eligibility and Reimbursability

OAC 340:75-13-16 is amended to update requirements for receiving FCMP when a child is placed in a QRTP.

### Subchapter 3. Child Protective Services

#### Part 1. Purpose, Definitions, and Child Abuse and Neglect Hotline Protocol

Oklahoma Administrative Code (OAC) 340:75-3-120 is amended to revise the definition of "neglect," per HB 2565 (2021).

#### Part 2. Investigative Protocols

OAC 340:75-3-200 is amended to authorize the court to order select individuals to transport a child to a court-approved location for interview or examination, per SB 987 (2021).

#### Part 3. Child Safety Evaluation Criteria and Procedure

OAC 340:75-3-300 is amended to permit Safety Plan monitors to seek medical and dental care for a child when the child's parent or guardian is unavailable, per HB 1902 (2021).

#### Part 4. Specialized Investigative Protocols, Child Death or Near-Death Reporting Protocols

OAC 340:75-3-400 is amended to increase a newborn's age for relinquishment to OKDHS from seven-calendar days to 30-calendar days, per SB 960 (2021).

#### Part 5. Investigative Findings and Appeals

OAC 340:75-3-520 is amended to establish a notification process with CCS for findings of PRFC heinous and shocking abuse, per HB 1797 (2021).

OAC 340:75-3-530 is amended to permit secure email notification to a PRFC regarding child abuse and neglect finding(s) and how to appeal substantiated finding(s).

## Subchapter 4. Family-Centered and Community Services

### Part 1. Family-Centered Services

OAC 340:75-4-12.1 is amended to grant a Safety Plan monitor the authority to seek necessary medical or dental care for a child when the child's parent or guardian is unavailable, per HB 1902 (2021).

### Subchapter 6. Permanency Planning

#### Part 2. Development of Resource Families

OAC 340:75-7-15 is amended to state kinship fingerprint verification must be completed within five-business days immediately after a child entered emergency placement, per SB 27 (2021).

OAC 340:75-7-18 is amended to align language about maximum number of children residing in a resource home and variance of kinship home assessment with Title IV-E State Plan requirements.

#### Part 5. Permanency Planning Services

OAC 340:75-6-31.4 is amended to correct a deletion error regarding requirements for guardianship with Temporary Assistance to Needy Families (TANF) Supported Permanency Program.

#### Part 7. Family and Child Individualized Service Planning Components

OAC 340:75-6-40.9 is amended to enhance the court's TPR criteria to include when a parent or guardian abused or neglected any child or failed to protect any child from heinous or shocking abuse or neglect, per HB 2318 (2021).

### Subchapter 7. Foster Home Care

#### Part 17. Family and Child Individualized Service Planning Components

OAC 340:75-6-40.8 is amended to lower the age for a child to request reinstatement of parental rights to 14 years of age along with additional procedural requirements, per HB 1273 (2019).

### Subchapter 7. Foster Home Care

#### Part 1. General Provisions

OAC 340:75-7-2 is amended to add EFC to the types of foster care OKDHS provides.

#### Part 2. Development of Resource Families

OAC 340:75-7-18 is amended to revise a form's name.

OAC 340:75-7-24 is amended to change the length of time a child must reside continuously with kin when opting to receive a money payment that the child is eligible for instead of the foster care maintenance payment.

#### Part 5. Eligibility and Payments

OAC 340:75-7-52.1 is amended to change the length of time a child must live continuously with a resource parent before the resource parent can become the payee to receive the child's Supplemental Security Income or Social Security Administration benefits.

#### Part 27. Oklahoma Human Services (OKDHS) Resource Family Partner (RFP) Foster Care Program

OAC 340:75-7-280 is amended to reflect process changes when discharging a child in OKDHS custody from an RFP home.

#### Part 28. Foster Parent Helpline, Mediation and Reports about Oklahoma Human Services (OKDHS) or Child-Placing Agency Employees

OAC 340:75-7-290 is amended to update contact information for the foster care and adoption support center and a child's child welfare specialist.

#### Part 30. Enhanced Foster Care

OAC 340:75-7-301 is created to establish the purpose, eligibility, and training requirements for EFC homes.

OAC 340:75-7-303 is created to detail an EFC initial consultation, service and support plan, treatment, and approval processes.

#### Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services

##### Part 1. Therapeutic Foster Care

OAC 340:75-8-1 is amended to incorporate ITFC as part of TFC.

OAC 340:75-8-4, 340:75-8-6, and 340:75-8-8 are amended to reflect changes in job titles and responsibilities due to TFC restructuring.

OAC 340:75-8-9 is amended to include the criteria and necessary conditions for a child in OKDHS custody to receive ITFC.

OAC 340:75-8-11 and 340:75-8-11.1 are amended to reflect changes in job titles and responsibilities due to TFC restructuring.

##### Subchapter 11. Child Welfare Community-Based Residential Care

###### Part 17. Contracted Community-Based Residential Care Providers

OAC 340:75-11-237 is amended to delete outdated reference to facilities operated by OKDHS.

OAC 340:75-11-240 is amended to remove reporting and licensing requirements that no longer apply.

###### Part 21. Residential Intensive Treatment Services

OAC 340:75-11-265 is amended to delete reference to centers that are no longer utilized.

###### Part 25. Family-Style Living Programs and Non-Funded Contracted Level B Placements

OAC 340:75-11-300 and OAC 340:75-11-301 are amended to remove references and requirements for funded Level B residential care which is no longer offered.

##### Subchapter 11. Community-Based Residential Care

###### Part 17. Contracted Community-Based Residential Care Providers

OAC 340:75-11-230 is amended to add QRTP to the CBRC placement types.

###### Part 29. Contracted Level C Qualified Residential Treatment Programs (QRTP)

OAC 340:75-11-330 is amended to change placement references to QRTP.

###### Part 33. Contracted Level D Plus and Level E Qualified Residential Treatment Programs (QRTP)

OAC 340:75-11-360 is amended to update the list of services provided in a Level D+ QRTP and clarify the criteria for a youth to qualify for a Level D+ QRTP.

OAC 340:75-11-364 is created to establish a separate rule for Level E QRTPs that delineates the services provided in Level E QRTPs, the qualifying criteria for services, and additional services available.

##### Subchapter 15. Adoptions

###### Part 2. Adoption Services Program Legal Authority and Scope

OAC 340:75-15-5 is amended to reflect a change in job titles and responsibilities due to Foster Care and Adoptions restructuring.

OAC 340:75-15-7 is amended to delete master adoptive parent and revise the process described in statewide adoption staffing from family-specific to child-specific.

OAC 340:75-15-8 is amended to update job titles to reflect changes to adoption transition process.

###### Part 6. Adoption Process

OAC 340:75-15-41.3 is amended to delete statewide adoption staffing from the criteria for an adoption staffing.

OAC 340:75-15-41.4 is amended to update job title to reflect changes to adoption transition process.

Part 10. Family Assessment and Preparation Process  
 OAC 340:75-15-84 is amended to clarify Interstate Compact on the Placement of Children Unit is responsible for coordinating placement and supervision of children in OKDHS custody with out-of-state adoption applicants.

OAC 340:75-15-84.1 is amended to update the position which is responsible for requesting a child abuse and neglect information system (CANIS) search from a state that does not maintain a CANIS registry.

OAC 340:75-15-87 is amended to delete duplicative language about assessing an adoptive applicant by referencing the process used for a foster care applicant.

**Part 12. Adoption Placement Services**

OAC 340:75-15-103 is amended to establish different timeframes for completing a written service place based on the child's length of time in foster care.

**Part 14. Post-Adoption Services**

OAC 340:75-15-128 is amended to clarify which adoptive family may be eligible for adoption assistance

OAC 340:75-15-128.1 is amended to state when adoption assistance may be extended and when it terminates.

OAC 340:75-15-128.2 is amended to update the Title IV-E adoption assistance eligibility schedule.

OAC 340:75-15-128.4 is amended to clarify when an adopted child that was ineligible for Title IV-E adoption assistance may become eligible based upon a sibling relationship.

OAC 340:75-15-128.5 is amended to address the required process for adoption disruption.

**Subchapter 19. Working with Indian Children**

OAC 340:75-19-26 is amended to distinguish between responsibilities assigned to OKDHS tribal program staff and CWS tribal IV-E program staff.

OAC 340:75-19-26.1 is amended to update TFC request process for a child in tribal custody.

OAC 340:75-19-28 is amended to clarify CWS tribal IV-E program staff responsibility for difficulty of care payments for a child in tribal custody.

OAC 340:75-19-29 is amended to update the length of time an Indian child may be placed in voluntary foster care within the tribe in a tribal foster care home.

OAC 340:75-19-31 is amended to update successful adulthood program title and contact information.

OAC 340:75-19-32 is amended to: (1) distinguish between responsibilities assigned to OKDHS tribal program staff and CWS tribal IV-E program staff; and (2) include language regarding jurisdiction over child custody proceedings, per HB 2352 (2021).

OAC 340:75-19-33 is amended to clarify the role of OKDHS tribal program staff.

OAC 340:75-19-34 is created to detail the responsibilities assigned to CWS tribal IV-E program staff.

**FULL TEXT OF THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA DEPARTMENT OF HUMAN SERVICES, SEQUOYAH MEMORIAL OFFICE BUILDING, 2400 N. LINCOLN BLVD., OKLAHOMA CITY, OKLAHOMA 73125-0352 AND AT <https://oklahoma.gov/okdhs/library/policy/proposed.html> AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES.**

*[OAR Docket #22-548; filed 7-5-22]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
 CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES**

*[OAR Docket #22-549]*

**RULEMAKING ACTION:**  
 PERMANENT final adoption

**RULES:**  
 Subchapter 1. General Provisions  
 340:100-1-2 [AMENDED]  
 Subchapter 3. Administration

**Part 1. General Administration**

340:100-3-8 [REVOKED]

**Part 3. Administration**

340:100-3-27 [AMENDED]

340:100-3-40 [AMENDED]

340:100-3-40.1 [REVOKED]

340:100-3-41 [NEW]

**Subchapter 5. Client Services**

**Part 1. Admission and Safeguards**

340:100-5-2 [REVOKED]

**Part 3. Service Provisions**

340:100-5-22.7 [NEW]

**Part 5. Individual Planning**

340:100-5-57.1 [REVOKED]

**Subchapter 11. Admissions to Robert M. Greer Center**

340:100-11-1 [REVOKED]

340:100-11-2 [AMENDED]

340:100-11-3 through 340:100-11-7 [REVOKED]

**Subchapter 17. Employment Services**

**Part 4. Community Integrated Employment Services**

340:100-17-25 [AMENDED]

**(Reference WFs 20-09 and 22-100)**

**AUTHORITY:**

Director of Human Services; 56 O.S. §§ 162 and 1025 et seq., and the 21st Century Cares Act; and 1915(c) of the Social Security Act.

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

December 20, 2021

**COMMENT PERIOD:**

January 18, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 23, 2022

**ADOPTION:**

March 23, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION ON:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded Rules:**

Subchapter 5. Client Services

Part 3. Service Provisions

340:100-5-22.7 [NEW]

**(WF 20-09)**

**Gubernatorial Approval:**

January 20, 2021

**Register Publication:**

38 Ok Reg 586

**Docket Number:**

21-103

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Chapter 100, Subchapters 1, 3, 5, 11 and 17 amend rules to implement changes recommended during the annual Developmental Disabilities Services (DDS) rule review process. The proposed rule adds provisions for Developmental Disabilities Services (DDS) to supplement room and board costs for individuals with exceptionally low income. These new provisions ensure that provider agencies are not paying room and board costs with Medicaid funding.

**CONTACT PERSON:**

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

# Permanent Final Adoptions

SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

## SUBCHAPTER 1. GENERAL PROVISIONS

### 340:100-1-2. Definitions

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

**"Active treatment"** means aggressive and consistent implementation of a program of specialized and generic training, treatment, and health services directed toward the service recipient's acquisition of skills necessary, in order to function as independently as possible.

**"Advisory Committee on Services to Persons with Developmental Disabilities"** means the committee appointed by the Director of Human Services (Director) to review and make recommendations on Developmental Disabilities Services (DDS) rules and programs of Developmental Disabilities Services (DDS).

**"Advocate"** means a person who speaks for or on behalf of a service recipient, especially when individual rights or interests are at risk.

**"Alternative appropriate setting"** means a setting, other than a nursing facility, ~~in which~~ where needed habilitation services are provided, including an intermediate care facility for individuals with intellectual disabilities (ICF/IID) or Home and Community-Based Services (HCBS).

**"Assessment"** means one or more processes used to obtain information about a service recipient, including his or her condition, personal goals and preferences, functional limitations, health status, or other factors relevant to the service authorization or provision of services. Assessment information supports the determination that an individual requires services as well as the development of and is used to develop the Individual Plan (Plan).

**"Back-up-plan"** means provision for alternative service delivery arrangements for the delivery of services critical to the service recipient's well-being in the event the service provider responsible for furnishing the service fails, is unable to deliver the services, or the home where the person lives is no longer available.

**"Capacity to give informed consent"** means the individual's ability to make and express voluntary decisions, given correct and sufficient information about the nature, purpose, risks, and benefits of a proposed service or action, and was when the individual is not adjudicated incapacitated by a court for purposes of the decision.

**"Case manager"** means an Oklahoma Department of Human Services (~~DHS~~) (OKDHS) DDS professional who is responsible for assisting a service recipient in gaining access to needed medical, social, educational, or other services per Oklahoma Administrative Code (OAC) 317:30-5-1010.1. Case management activities may include assessment, plan development, plan implementation and monitoring, as well as assistance in accessing services and other resources.

**"Challenging behavior"** means a behavior that, by its frequency or degree of intensity:

- (A) places a service recipient's physical safety, environment, relationships, or participation in the community at risk; or
- (B) creates a risk of involvement in civil or criminal processes.

**"Client Contact Manager (CCM)"** means a computer software system used by DDS case managers to collect and monitor case management data for service recipients.

**"Community Integrated Employment (CIE)"** means a service program that provides placement, job training, and short-term or long-term supports to assist service recipients in achieving and maintaining employment within the community.

**"Confidential information"** means:

- (A) information related to a service recipient generated by DHSOKDHS or contract providers; and
- (B) observations of and discussions concerning service recipients, their families, guardians, or friends.

**"Consumer"** means a person who is a direct recipient or beneficiary of service planning and delivery and is synonymous with client, service recipient, individual, and member in Oklahoma Health Care Authority (OHCA) policy.

**"Contract provider or agency"** means an agency rendering services to persons with developmental disabilities under a contractual agreement with DHSOKDHS or OHCA.

**"Convalescent care"** means nursing facility care:

- (A) following a person's release from an acute care hospital that is part of a medically prescribed recovery period of recovery; and
- (B) not expected to exceed an established number of days.

**"DDS"** means DHSOKDHS Developmental Disabilities Services.

**"Developmental disability"** means a person's severe chronic disability of a person that:

- (A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (B) is manifested before the person attains 22 years of age;
- (C) is likely to continue indefinitely;
- (D) results in substantial functional limitations in three or more of the major life activity areas of major life activity that are:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.



**"Enabling technology"** means equipment, product systems, engineered solutions, devices, or items that support a service recipient's increased independence in the home, employment site, or the community. These items address a service recipient's needs and outcomes identified in his or her Plan.

**"Family homes"** means residences maintained by persons biologically related by biology, adoption, marriage or common law, to a person receiving services service recipient.

**"Family training"** means activities designed to equip family members, significant others, and persons with developmental disabilities with knowledge and skills; that allow a family member with developmental disabilities to remain in, or return to, his or her home.

**"Goals"** means long-term categorical statements that describe what the service recipient is expected to achieve in a given time frame and are used synonymously with outcomes.

**"Guardian"** means a person appointed by a court as general or limited guardian of the person, general or limited guardian of property, special guardian, or temporary guardian as provided by state statutes to ensure. A guardian ensures the essential requirements for the ward's health and safety of the ward are met, to manage and manages the ward's estate, financial resources of the ward, or both.

**"Guardian ad litem"** means a person appointed by a court to represent the interests of a person in a legal action.

**"Habilitation services"** means goal-directed services and therapy activities:

- (A) designed to assist a service recipient acquire in acquiring a variety of skills, including self-help, socialization, adaptive skills, and prevention of loss of skills; and
- (B) based on the service recipient's capacity to increase the his or her own level of physical, mental, and social functioning.

**"Human Rights Committee"** means the committee charged with the responsibility for external monitoring and advocacy to address protection of individual rights.

**"ICF/IID"** means an intermediate care facility for individuals with intellectual disabilities (ID) that is:

- (A) a residential facility licensed in accordance with Oklahoma law; and
- (B) certified by the federal government as a Medicaid services provider of Medicaid services to persons who have intellectual disabilities (ID) or related conditions.

**"Incapacitated"** means a court determination made by the court that a person is unable to provide for and make decisions for the person's his or her own needs and safety.

**"Individual Plan (Plan)"** means a written document developed by the Personal Support Team (Team) based upon a need assessment of need. The Plan:

- (A) specifies outcomes pursued on the service recipient's behalf of the service recipient, steps taken to achieve outcomes; and
- (B) is a single, comprehensive plan that encompasses all relevant components of the service recipient's life. Various aspects of the Plan are assigned to

those persons or agencies designated by the Team to provide services.

**"Individual provider"** means a person rendering services to persons with ID under a contractual agreement with DHSOKDHS or OHCA.

**"Intake"** means the process by which a person gains goes through to gain access to DDS services. Intake staff:

- (A) provides answers to specific service inquiries;
- (B) assists in the identification of needs in times of crisis;
- (C) supplies information regarding the range and means of accessing available services;
- (D) provides assistance as necessary in service application; and
- (E) facilitates eligibility determination.

**"Intellectual Disability (ID)"** means a person, per Section 1408 of Title 10 of the Oklahoma Statutes who:

- (A) has significantly sub average functioning, an intelligence quotient (IQ) of less than 70 that manifests before 18 years of age; and
- (B) exists concurrently with related limitations in two or more of the applicable adaptive skill areas that are:
  - (i) communication;
  - (ii) self-care;
  - (iii) home living;
  - (iv) social skills;
  - (v) use of community resources;
  - (vi) self-direction;
  - (vii) health and safety;
  - (viii) functional academics;
  - (ix) leisure; and
  - (x) work.

**"Integrated employment site"** means a location or activity that provides service recipients with regular interaction for service recipients with persons without disabilities, excluding service providers, to the same extent that a worker without disabilities, in a comparable position, interacts with others.

**"Intrusive procedure"** means a procedure that impinges upon the service recipient's bodily integrity of the service recipient, per OAC 340:100-5-57 and OAC 340:100-5-58.

Intrusive procedures include, but are not limited to:

- (A) p.r.n. psychotropic medications used for behavioral control;
- (B) physical management or physical restraint; and
- (C) mechanical restraints for behavioral reasons.

**"Job coach"** means a person who holds a DHSan OKDHS approved job coach certification and provides ongoing support services to service recipients in supported employment placements. Services directly support the service recipient's work activity, including:

- (A) marketing and job development;
- (B) job and work site assessment;
- (C) training and assessment;
- (D) job matching procedures;
- (E) developing co-worker supports; and
- (F) teaching job skills.

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**"Least restrictive"** means services and supports that maximize the service recipient's independence and freedom and are provided in a manner that is the least restrictive and intrusive possible to meet the service recipient's needs.

**"Long-term resident"** means a nursing facility resident ~~of a nursing facility~~ with ID or related conditions who has continuously resided in a nursing facility for at least 30-consecutive months prior to the date of the first preadmission screening and resident review (PASRR) disposition.

**"Mechanical restraint"** means any device used to hinder, forcibly confine, or control an individual's freedom of bodily movement.

**"Monitoring"** means the ongoing service provision observation and analysis ~~of the provision of services~~ to determine whether the services are furnished per the Plan and effectively meet the service recipient's needs, including whether services adequately protect his or her health and welfare. Monitoring activities may include, but are not limited to, telephone contact, observations, and interviewing the service recipient, family, or service provider.

**"Natural supports"** means assistance provided by a person, such as a service recipient's family, friend, co-worker, neighbor, or member of a service recipient's club, church, or interest group, or others in the service recipient's community, who:

- (A) are not paid specifically to provide assistance to the service recipient; and
- (B) provide voluntary assistance.

**"Non-prescription medication"** means a pharmacological drug sold without a prescription, prepackaged for the service recipient's use by the service recipient, and labeled per state and federal statutes and regulations.

**"Nursing facility"** means an Oklahoma Medicaid-certified institution providing skilled nursing and related services, excluding a facility certified as ICF/IID.

**"Personal Support Team (Team)"** means the participants in the service recipient's assessment and planning process and includes:

- (A) the service recipient; and
- (B) service recipient's:
  - (i) case manager;
  - (ii) legal guardian; and
  - (iii) when applicable, advocate, who may be a parent, family member, friend, or other person who knows the service recipient well; and
- (C) others, including service providers, whose participation is necessary to achieve the service recipient's desired outcomes.

**"Physical management"** means an intrusive procedure involving any physical guidance of a service recipient to overcome his or her resistance, or a brief upper body hold to ensure safety per OAC 340:100-5-57.

**"Physical restraint"** means an intrusive procedure ~~in which~~ where the service recipient is physically held to restrict movement.

**"Plan of Care (POC)"** means a summary listing of services requested as a result of needs identified within the Plan

that indicates the amount, duration, and cost of each service recommended for funding through DDS HCBS Waivers.

**"Preadmission screening and resident review (PASRR)"** means the process of evaluating, reviewing, and establishing the need for nursing facility services in contrast to other services for persons with ID and related conditions.

**"Prescription medication"** means any drug ordered by a ~~practitioner of medicine, such as dentistry, osteopathy, optometry, or podiatry~~ health care provider, who is licensed by law to prescribe a drug, intended to be filled, compounded, or dispensed by a pharmacist.

**"p.r.n."** means to take or administer a medication as needed.

**"Program coordinator"** means a person employed by a DDS residential or group home contract provider agency ~~responsible for the supervision, coordination, and monitoring of services provided by who supervises, coordinates, and monitors~~ the contract ~~agency~~ agency's service provision to a service recipient.

**"Program manager"** means a person employed by a DDS employment contract provider agency ~~responsible for the supervision, coordination, and monitoring of services provided by who supervises, coordinates, and monitors~~ the contract ~~agency~~ agency's service provision to a service recipient.

**"Psychotropic medication"** means a pharmacological drug used to treat a mental disorder, or any drug prescribed to stabilize or improve mood, mental status, or behavior.

**"Punishment"** means the intentional application of something undesirable or unpleasant, or the removal of something desirable or pleasant, in response to a behavior deemed unacceptable.

**"Punitive"** means inflicting or involving punishment.

**"QIDP"** means a qualified ID professional who meets ICF/IID regulations per Section 483.430 of Title 42 of the Code of Federal Regulations (42 C.F.R. § 483.430). A QIDP must have a baccalaureate degree in a human services field, in addition to one year of experience serving persons with ID.

**"Related condition"** means a severe chronic disability, per 42 C.F.R. § 435.1010 that:

- (A) is attributable to:
  - (i) cerebral palsy;
  - (ii) epilepsy; or
  - (iii) other condition except mental illness (MI) that is closely related to ID as it results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with ID and requires treatment or services similar to those required for persons with ID;
- (B) is manifested before the person reaches 22 years of age;
- (C) is likely to continue indefinitely; and
- (D) results in substantial functional limitations in three or more major life activity areas of ~~major life activity~~, including:
  - (i) self-care;
  - (ii) understanding and use of language;
  - (iii) learning;

- (iv) mobility;
- (v) self-direction; and
- (vi) independent living.

**"Response cost procedure"** means the removal of a reinforcer the individual values as a consequence of a behavior with the intent of reducing the frequency of the behavior.

**"Restrictive procedure"** or **"restriction"** means a procedure that results in the limitation of limiting the service recipient's rights, per OAC 340:100-5-57 and OAC 340:100-5-58 and includes:

- (A) limiting communication or association with others;
- (B) any limitation of access to:
  - (i) leisure activities;
  - (ii) the service recipient's own money, personal property, or items purchased with the individual's money; and
  - (iii) food or beverages;
- (C) any movement limitation of movement at home or in the community;
- (D) visual or electronic supervision during times or places that would otherwise be considered private; or
- (E) the use of a response cost procedure that is the removal of a reinforcer valued by the individual as a consequence of a behavior with the intent of reducing the frequency of the behavior.

**"Sheltered employment"** means a service that:

- (A) assists service recipients toward achieving their vocational potential through a controlled work environment;
- (B) provides worker reimbursement in accordance with individual production and Fair Labor Standards Act (FLSA); and
- (C) includes assessment, training, and transitional programming leading to community job placements.

**"Sheltered workshop"** means a facility that contracts with DDS to provide employment training and sheltered employment services for workers with disabilities.

**"Short-term resident"** means any resident with ID or related conditions who resided in a nursing facility for less than 30 months prior to the first PASRR disposition date of the first PASRR disposition.

**"Specialized services"** means individualized services specified in PASRR evaluations completed by DDS completes that, combined with services provided by the nursing facility or other service providers provide, results in a treatment regimen leading to the continued and ongoing independence enhancement of independence.

**"Supplemental Security Income (SSI)"** means a federal income subsidy program administered by the Social Security Administration.

**"Supported employment"** means competitive work in an integrated work setting with ongoing support services for service recipients with severe disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of severe disabilities.

**"Terminal illness"** means, as certified by a physician, a person with a medical prognosis of life expectancy of six months or less, when the illness runs its natural course.

**"Transition"** means the service recipient's planned movement of a service recipient from one service setting to another, occurring as a result of a Team recommendation and the service recipient's informed consent of the service recipient.

**"Treatment team for specialized services"** means the team whose purpose is to develop a prescribed plan of specialized services for each service recipient. The team:

- (A) is composed of the service recipient, guardian or advocate, nursing home representative, and other professionals and paraprofessionals as needed to develop a comprehensive service plan of services; and
- (B) may include a psychologist, physical therapist, speech pathologist, physician, and nurse's aide among others.

**"Vocational assessment"** means the employment service evaluation, whether standardized procedures are employed, that:

- (A) identifies the service recipient's unique preferences, strengths, and needs of the service recipient;
- (B) evaluates work skills and work behaviors;
- (C) is supplemented by personal interviews and behavioral observations; and
- (D) incorporates information that addresses the service recipient's:
  - (i) medical;
  - (ii) physical;
  - (iii) psychological;
  - (iv) social;
  - (v) cultural;
  - (vi) educational goals and objectives; and
  - (vii) present and future employment options.

**"Volunteer guardian"** means a person unrelated to the service recipient who:

- (A) serves as guardian for the service recipient and is trained and certified by the volunteer guardianship agency; and
- (B) is appointed by and responsible to the court to ensure essential requirements for the health and safety of the service recipient are met.

**"Ward"** means a person for whom who has a court-appointed guardian is appointed by the court.

### SUBCHAPTER 3. ADMINISTRATION

#### PART 1. GENERAL ADMINISTRATION

##### 340:100-3-8. Client work [REVOKED]

~~Clients who perform work are compensated according to provisions of the Fair Labor Standards Act (FLSA) as amended.~~

- ~~(1) No client will be required to perform labor which involves the operation and maintenance of a facility without proper compensation except as it relates to the client's~~

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habilitation plan. When appropriate, residential staff shall be responsible for training programs designed to teach residents to clean and maintain their own living areas. Other household duties (chores) may be assigned to the residents on a rotational basis, provided the duties shall be in keeping with normal routines of daily living and not for the convenience of staff or as work for the residence. Regular participation in activities such as meal planning, food purchase, dishwashing, laundry, housekeeping, etc., that leads to the resident's greater functional ability (independence) is not considered work for the residence.

(2) All client work will be performed as an integral part of or is incorporated within the client's habilitation plan.

## PART 3. ADMINISTRATION

### 340:100-3-27. Quality assurance

(a) **Purpose.** Developmental Disabilities Services (DDS) quality assurance (QA) activities assess and encourage delivery of supports consistent with:

- (1) the service recipient's preferences and needs of service recipients;
- (2) Oklahoma Department of Human Services (~~DHS~~)(OKDHS) rules;
- (3) applicable Oklahoma Health Care Authority (OHCA) rules;
- (4) ~~DHS~~OKDHS and OHCA contract requirements for Home and Community-Based Services (HCBS);
- (5) regulatory standards applicable to services; and
- (6) federal and state laws.

(b) **Case manager monitoring.** DDS case managers assess services rendered to each service recipient to ensure service effectiveness of ~~services~~ in meeting the service recipient's needs. The case manager periodically observes service provision to assess implementation of the service recipient's Individual Plan (Plan). The requirements per this Section are minimum expectations for face-to-face visits with service recipients. Case management may require additional visits to ensure the service recipient's health and welfare.

(1) The DDS case manager conducts face-to-face visits to monitor the service recipient's health and welfare and service effectiveness in meeting his or her needs.

(A) Face-to-face visits must include observation of, and talking with, the service recipient regarding ~~the service recipient's~~ his or her health and welfare and satisfaction with services.

(B) The case manager may:

- (i) observe service provision and related documentation in any location where services are provided; and
- (ii) talk with family members and providers regarding service provision and the service recipient's health and welfare.

(C) For service recipients receiving services through an In-Home Supports Waiver (~~IHSW~~):

- (i) a face-to-face visit must be completed at least semi-annually with one visit occurring

between January and June and one between July and December; and

- (ii) at least one of the two visits must occur at the site where the majority of services are provided.

(D) For service recipients receiving services through the HCBS Community Waiver:

(i) a face-to-face visit must occur during each calendar month in the person's home who receives residential services service recipient's home, per OAC 340:100-5-22.1, or the group home service service recipient's home, per OAC 317:40-5-152. Case managers must certify home visits on Form 06MP070E, Access to Record and Verification of Monitoring Requirements, located per OAC 340:100-3-40;

(ii) a face-to-face visit must be completed each calendar-year quarter, coinciding with the quarters established per OAC 340:100-5-52 for a quarterly summary of progress reports, for service recipients who do not receive residential services or group home services, with at least two of these visits occurring at the site where the majority of services are provided; and

(iii) the case manager visits the employment or day services site at least semi-annually, with one visit occurring between January and June, and one between July and December, when services are funded through the HCBS Community Waiver unless the Personal Support Team (Team) requests a DDS area manager or designee approved exception.

(E) For service recipients receiving services through the Homeward Bound Waiver:

(i) a face-to-face visit must occur in the home during each calendar month. Case managers must certify home visits on Form 06MP070E located within the home record per OAC 340:100-3-40; and

(ii) the case manager must visit the employment site each calendar-year quarter, coinciding with the quarters established, per OAC 340:100-5-52, for quarterly summary of progress reports, unless the Team requests a DDS area manager or designee approved exception.

(F) For Homeward Bound class members of the Homeward Bound class who reside in an intermediate care facility for individuals with intellectual disabilities (~~ICF/IID~~), the case manager visits monthly.

(2) The DDS case manager may also conduct virtual visits in addition to the required minimum face-to-face visits utilizing HIPAA compliant phone calls or video conferencing

(23) DDS case managers review and ensure Plan implementation. The case manager completes a quarterly review for service recipients receiving services through ~~the Home and Community Based Services (HCBS)~~

Waivers, documenting the review in Client Contact Manager (CCM).

(34) When the DDS case manager believes the service recipient is at risk of harm, the case manager takes immediate steps to protect the service recipient and notifies the DDS case management supervisor and other appropriate authorities.

(45) When the DDS case manager determines ~~the provider is not effectively addressing a service recipient's needs are not effectively addressed by a provider or meeting contractual responsibilities or policies are not met by the provider~~, steps in (A) through (C) of this paragraph are followed.

(A) The case manager consults with the relevant provider to secure a commitment for necessary service changes within an agreed time frame.

(B) When necessary changes are not accomplished within the specified time frame, the case management supervisor intervenes to secure commitments from the provider.

(C) When the service deficiency is not resolved as a result of the case management supervisor's intervention ~~of the case management supervisor, an administrative inquiry referral for administrative inquiry~~ is initiated, per OAC 340:100-3-27.1.

(56) If, during a contract survey, administrative inquiry, ~~specialized foster care (SFC) monitoring~~, or area survey, DDS QA staff discovers a situation that requires correction by DDS staff, a system administrative inquiry is initiated.

(A) DDS QA staff emails notification to DDS staff to correct the situation, establishing a reasonable time frame for correction.

(B) When the identified staff is unable to correct the situation within the established time frame, DDS QA staff emails notification to the DDS staff supervisor, establishing a reasonable time frame for correction.

(C) When the staff supervisor is unable to correct the situation within the established time frame, DDS QA staff notifies his or her supervisor, who notifies the DDS area manager, establishing a reasonable time frame for correction.

(D) When the area manager is unable to correct the situation within the established time frame, he or she notifies the DDS State Office QA unit, to resolve the situation with the community services unit deputy director.

(c) **SFC monitoring.** DDS QA staff monitors the SFC program in each area for DDS and OHCA policy compliance. Monitoring is based on a proportionate, representative sample of individuals receiving SFC supports identified for the fiscal year for each area. Monitoring includes a visit to the service recipient's SFC home. A home visit can be conducted virtually if the home has electronic equipment that allows for face-to-face communication unless health and safety issues are reported that require on-site review.

(d) **Consumer Service Evaluation.** At least annually, service recipients and families receiving supports are provided the

opportunity to complete a service evaluation per ~~DHSOKDHS~~ Publication No. 89-10, Consumer Service Evaluation.

(1) Confidentiality is maintained unless the respondent authorizes ~~DHSOKDHS~~ to reveal his or her name to those responsible for service delivery. ~~DHSOKDHS~~ Publication No. 89-10 may be completed anonymously.

(2) DDS QA staff distributes ~~DHSOKDHS~~ Publication No. 89-10 to service recipients or his or her legal guardians at least annually.

(3) ~~DHSOKDHS~~ Publication No. 89-10, when completed is returned to the DDS State Office QA Unit.

(4) Results are forwarded to the respective DDS area office when authorized by the service recipient or legal guardian for resolution of concerns or staff recognition.

(5) ~~An~~ A response analysis of ~~responses~~ is completed and distributed to DDS area offices, DDS State Office, or ~~DHSOKDHS~~ for action. Data is available upon request.

(e) **Oklahoma - Advocates Involved in Monitoring (OK AIM).** Service recipients and families receiving supports participate in contact providers' formal assessments ~~of contract providers~~ to promote service enhancement, consistent with service recipient expectations.

(1) OK AIM operates under direction of the Oklahomans for Quality Services Committee (OQSC).

(A) OQSC is composed of 15 persons who receive or have a family member receiving DDS services. All areas of Oklahoma are represented.

(i) OQSC members may be nominated by the public at large, current OQSC members, or DDS representatives.

(ii) Appointment of OQSC members occurs as a result of joint consensus by the OQSC chair and DDS director or designee following a determination of the nominee's:

- (I) commitment to promote the interests of persons with developmental disabilities; and
- (II) capacity to dedicate the necessary time to fulfill his or her responsibilities.

(iii) OQSC members have the authority to elect officers based on a simple majority vote and establish by-laws governing the conduct of business.

(B) OQSC:

(i) develops and refines procedures and the survey instrument used, based ~~upon~~ on feedback ~~received~~ from service recipients and their families, providers, and other key constituents;

(ii) participates in the selection of agencies submitting proposals to conduct OK AIM activities; and

(iii) serves as a resource for education and coordination of agencies conducting OK AIM monitoring activities.

(2) ~~DHSOKDHS~~ issues an invitation to bid (ITB) and awards a Request for Proposal (RFP) in accordance with state law and ~~DHS rules~~ the Oklahoma Central Purchasing

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Act, Sections 85.1 through 85.44 of Title 74 of the Oklahoma Statutes (74 O.S. §§ 85.1 through 85.44) and the approved OKDHS Internal Purchasing Procedures, and solicits proposals from qualified organizations to participate in the OK AIM initiative. Qualified organizations include agencies that:

- (A) are incorporated non-profit agencies dedicated to ~~the representation of~~ representing persons with developmental disabilities and their family members;
  - (B) are not involved in service delivery funded through DDS or HCBS Waivers; and
  - (C) meet additional requirements set forth by federal and state laws as indicated in the ~~ITB RFP~~.
- (3) OQSC is consulted regarding bids submitted in response to an ~~ITB RFP~~. ~~Selection of a qualified organization to conduct OK AIM monitoring and reporting activities occurs per state law and DHS rules.~~
- (4) Agencies selected to conduct OK AIM monitoring and reporting activities are responsible for:
- (A) soliciting, screening, and training volunteers to conduct OK AIM site visits;
  - (B) scheduling site visits with all service providers referenced in the ITB within counties for which the agency assumed responsibility;
  - (C) ensuring consistency of volunteer and staff activities with:
    - (i) OQSC-approved procedures and protocols;
    - (ii) federal and state laws; and
    - (iii) ~~DHS~~OKDHS and OHCA rules;
  - (D) accurately recording OK AIM monitoring activities findings;
  - (E) ensuring provision of findings to provider agencies and DDS; and
  - (F) immediately notifying the DDS area office of any issue identified during OK AIM monitoring activities that presents risk to the service recipient's health or welfare.
- (5) DDS area managers identify ~~DHS~~OKDHS staff responsible for resolving concerns identified during OK AIM monitoring activities and notify the agencies responsible on how to contact staff during business, evening, and weekend hours.
- (6) OQSC with DDS State Office, DDS area offices, and agencies conducting OK AIM activities participation, identifies conditions determined to present significant risks to service recipients.
- (A) Conditions determined to present imminent risks to service recipients are reported immediately to the:
    - (i) statutory investigatory authority;
    - (ii) DDS area office; and
    - (iii) provider agency chief executive officer (CEO) or designee.
  - (B) Issues determined to pose potential risks to service recipients are reported to DDS area office staff, who notify the provider agency CEO or designee, no

later than at the close of the first business-day following observation.

(C) OK AIM monitors report any other significant issues to designated DDS area office staff within time frames ~~determined~~OK AIM determines appropriate by OK AIM.

(7) DDS staff immediately identifies DDS area office staff to assume responsibility for verification and correction of problems posing imminent or potential risks.

(A) ~~Time~~The DDS area manager approves resolution time frames for resolution of validated concerns are approved by the DDS area manager based on the degree of risk.

(B) All identified concerns are resolved within 30-calendar days from initial notification to the DDS area office, unless the DDS area manager authorizes an extension is authorized by the area manager in circumstances that pose no jeopardy to any service recipient.

(C) Concerns presenting immediate and significant risk to service recipients are corrected immediately.

(8) Each DDS area manager designates staff to:

- (A) track resolution of each identified concern; and
- (B) advise agencies conducting OK AIM monitoring activities of the steps taken to resolve each concern.

(9) OK AIM staff summarizes findings of each home visit ~~conducted by~~ volunteers conduct, noting and staff notes performance in regards to the context of established OQSC expectations established by OQSC, and as published in the OK AIM training manual.

(A) Recommendations for service enhancement are presented to the relevant DDS area office for review within 30-calendar days of a home visit.

(B) DDS area office staff shares this information with the provider and collaborates on recommendations as well as other alternatives to achieve targeted service enhancement. Plans developed as a result are shared with OK AIM staff during the next meeting. Provider comments or action plans are maintained with the OK AIM report in area office files.

(10) ~~The~~OQSC re-assesses the OK AIM survey process is re-assessed at least annually by OQSC and does so based on feedback solicited from service recipients, DDS area office staff, providers, and other constituencies affected by or involved in the process.

(f) **Independent assessments.** An independent authority annually assesses service outcomes for a sample of service recipients receiving residential services funded or administered through DDS or HCBS Waivers.

- (1) Assessments employ standardized measures, facilitating individual as well as congregate data analysis over time.

- (2) Assessment protocols provide for identification and resolution of circumstances posing immediate risks to service recipients.

(g) **Failure to cooperate.** Provider agencies failing to cooperate with provisions, or providing false information in

response to inquiries per this Section, are subject to identified sanctions including contract termination.

(h) **Findings of non-compliance.** Findings of significant non-compliance with human rights, laws, or rules are immediately reported to the DDS director and other relevant authorities for appropriate action, including disciplinary action of ~~DHS~~OKDHS employees or ~~the sanction~~ imposition of ~~sanctions~~, including suspension or contract termination with provider agencies, per OAC 340:100-3-27.2.

(i) **Retaliation.** Provider agencies and ~~DHS~~OKDHS employees are prohibited from any form of retaliation against any service recipient, employee, or agency for reporting or discussing possible performance deficiencies with any authorized ~~DHS~~OKDHS agent. Authorized agents are ~~DHS-OKDHS~~ staff whose responsibilities include administration, supervision, or oversight of DDS services, including all DDS and Office of Client Advocacy staff.

(j) **QA functions.** Additional DDS QA program components of ~~the DDS QA program~~ are found in OAC 340:100-3-27.1 through OAC 340:100-3-27.5.

### 340:100-3-40. Community records

(a) **Purpose.** Oklahoma Administrative Code (OAC) 340:100-3-40 sets forth requirements for:

- (1) ~~contract provider records~~ maintenance of records by contract providers;
- (2) ~~document~~ transfer of ~~documents~~ to a history file for service recipient records ~~maintained by~~ the contract provider maintains; and
- (3) ~~information~~ transfer of ~~information~~ when a service recipient changes contract providers.

(b) **General requirements.** Records, electronic or paper, ~~maintained by~~ the contract provider maintains are indexed, orderly, well-maintained, readily accessible, and current. Records ~~must~~ contain adequate documentation of services rendered. Electronic records ~~must~~ meet the requirements, ~~in~~ per OAC 317:30-3-4.1.

- (1) All service recipient records are available for the service recipient, his or her legal guardian, contract provider staff, and Oklahoma Human Services (OKDHS) authorized agents to review, upon request, ~~by the service recipient, his or her legal guardian, contract provider staff, and Oklahoma Department of Human Services (DHS) authorized agents.~~

- (2) The service recipient record is maintained with:
  - (A) an index;
  - (B) the service recipient's name on the record and on each page;
  - (C) discernable section tabs; and
  - (D) documents secured in the record.

- (3) All entries in the record:
  - (A) are made per OAC 317:30-3-15;
  - (B) are in chronological order;
  - (C) are legible;
  - (D) include the date and time of each entry, with legible identification of the person making the entry; and
  - (E) include, when the entry is health-related:

- (i) a description of the concern; and
- (ii) action taken.

(4) The provider ensures compliance with per OAC 340:2-8-1 through OAC 340:2-8-13 and OAC 340:100-3-2, pertaining to personal information protection, use, and release of ~~personal information~~. The provider holds personal information regarding service recipients, including names, addresses, photographs, evaluation records of ~~evaluation~~, and all other records confidential. Information is not disclosed, directly or indirectly, unless the adult service recipient or legal guardian consent is obtained in writing from an adult service recipient or the legal guardian.

(c) **Home record for service recipients receiving community residential supports, group home services, or non-residential habilitation training specialist (HTS) services.** ~~The in-home contract provider maintains a current service record of services is maintained by the contract provider in the home~~ for each service recipient receiving community residential supports, per OAC 340:100-5-22.1; group home service, per OAC 340:100-6; or non-residential HTS services, per OAC 340:100-5-35.

(1) Documents contained in each home record are not removed and; include:

- (A) guardianship documents and other legal documents;
- (B) current Individual Plan (~~Plan~~) packet and addendum copies;
- (C) applicable health-related documents including, but not limited to:

(i) ~~Form 06HM039E, Continuous Medical Record, per OAC 340:100-3-40.1;~~

(ii) Form 06HM005E, Referral Form for Examination or Treatment, physician orders, discharge summaries, and emergency room reports;

(iii) ~~Form 06HM006E, Health Status and Medication Review;~~

(iv) ~~special instructions,~~ or the Health Care Plan;

(v) ~~individually-identified data forms relevant to the service recipient's current health status;~~

(vi) ~~a Dyskinesia Identification System: Condensed User Scale (DISCUS) or Abnormal Involuntary Movement Scale (AIMS), when required, per OAC 340:100-5-29;~~

(vii) ~~current immunization record;~~

(viii) ~~current medication administration records;~~

(ix) ~~the most recent lab, x-ray, and consultation reports, and pharmacological evaluation, when applicable;~~

(x) ~~miscellaneous health-related consultations and correspondence; and~~

(xi) ~~Form 06HM073E, Referral Form for Psychiatric Treatment or Examination;~~

(D) miscellaneous documents relating to the service recipient including, but not limited to:

- (i) observation notes;

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- (ii) Form 06CB035E, Site Visit Report, completed by all professional contract providers;
  - (iii) standing medical orders and protocols;
  - (iv) applicable data collection sheets; and
  - (v) documentation of program coordination staff home visits;
- (E) quarterly residential progress reports ~~on progress~~; and
- (F) Form 06MP070E, Access to Home Record and Verification of Monitoring Requirement, certifying that all authorized persons accessing the service recipient information contained within the home record were informed and understand the penalties for misuse of confidential and protected information, per Section 1533.1 of Title 21 of the Oklahoma Statutes.
- (2) In unusual circumstances, at the Team's request, and with Developmental Disabilities Services field administrator's written approval, a service recipient's home record or specified document types of ~~documents~~ from the record may be maintained at a location other than the service recipient's home, ~~when requested by the Team and approved in writing by the Developmental Disabilities Services field administrator.~~
- (d) **Retention.** Each contract provider retains a record for each service recipient receiving services from the provider.
- (1) ~~Transfer~~ There is a yearly transfer of all documents more than three months old from the provider agency's records to a history file ~~occurs yearly~~, unless otherwise specified, per OAC 340:10-3-40.
- (2) The provider agency retains original records for a six-year period ~~of six years~~ or until any pending litigation involving the service recipient is completed, whichever occurs last.
- (e) **Transfers between agencies.** When a service recipient changes provider agencies, within seven-calendar days of the transfer, the agency provides the new agency with a paper or electronic copy of the current home record and any health documents ~~requested by the Team requests~~ within seven-calendar days of the transfer.
- (f) **Other provider records.** The provider ~~must maintain~~ maintains service records that substantiate ~~the service provision of services, service recipient eligibility of service recipients, and outcome of services~~ service outcomes.
- (1) Records are maintained for a six-year period ~~of six years~~ after ~~DHS~~ OKDHS makes the final payment and all pending matters are closed.
- (2) The provider maintains copies of all claims, substantiating documents, and records regarding agency fiscal status within corporate offices in Oklahoma.

### 340:100-3-40.1. Continuous medical record [REVOKED]

~~The continuous medical record provides an overview of the medical history and current medical problems of the service recipient.~~

- (1) ~~Form 06HM039E, Continuous Medical Record, is:~~
- (A) ~~initiated by the contract provider;~~
  - (B) ~~maintained in the home record per OAC 340:100-3-40; and~~

- (C) ~~required for service recipients who receive:~~
  - (i) ~~community residential supports per OAC 340:100-5-22.1; or~~
  - (ii) ~~group home services per OAC 340:100-6-~~
- (2) ~~Form 06HM039E includes, but is not limited to:~~
  - (A) ~~physician's current diagnosis from Form 06HM005E, Referral Form for Examination and Treatment; and~~
  - (B) ~~information regarding:~~
    - (i) ~~medical allergies;~~
    - (ii) ~~serious diseases and major illnesses;~~
    - (iii) ~~surgeries;~~
    - (iv) ~~fractures;~~
    - (v) ~~sutured lacerations;~~
    - (vi) ~~chronic medical conditions, such as seizures or diabetes; and~~
    - (vii) ~~reasons for emergency room visits or hospitalizations and diagnosis within the past year.~~
- (3) ~~The health care coordinator:~~
  - (A) ~~or back up as described in OAC 340:100-5-26, is responsible for making accurate entries on Form 06HM039E within 24 hours of occurrence by recording the information identified in OAC 340:100-3-40.1(2) from Form 06HM005E or other medical records; and~~
  - (B) ~~obtains the relevant historical information.~~

### 340:100-3-41. Telehealth

(a) **Applicability and scope.** Telehealth services do not expand services covered through Developmental Disabilities Services (DDS) Home and Community-Based Services (HCBS) waivers. Telehealth services are a delivery option for certain covered services. Telehealth services apply to contract professional services, including speech therapy, physical therapy, occupational therapy, audiology, psychology, nutrition, family training, family counseling, nursing, and dental care.

- (1) When there are technological difficulties in performing an objective or a thorough assessment, or there are problems in the service recipient's understanding of telehealth, hands-on-assessment, in-person care, or both is provided for the service recipient.
- (2) Any service delivered using telehealth technology is appropriate for telehealth delivery and meets the same quality level and is otherwise on par with the same service delivered in person.
- (3) A telehealth encounter maintains the confidentiality and security of protected health information in accordance with applicable state and federal law, including, but not limited to, Section 1-109 of Title 43A of the Oklahoma Statutes, Part 2 of Title 42 of the Code of Federal Regulations (42 C.F.R., Part 2), and 45 C.F.R., Parts 160 and 164.
- (4) For purposes of DDS HCBS waiver reimbursement, telehealth is the use of interactive audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment that occurs in real-time and when the service recipient is actively participating during the transmission.



(b) **Definitions.** The following words and terms when used in this Section shall have the following meaning, unless the context clearly indicates otherwise.

(1) **"Remote patient monitoring"** means using digital technologies to collect medical and other forms of health data, such as vital signs, weight, blood pressure, and blood sugar, from individuals in one location, and electronically transmitting that information securely to health care providers in a different location for assessment and recommendations.

(2) **"Store and forward"** means transmitting a service recipient's medical information from an originating site to the health care provider at a distant site. Photographs provided through a telecommunications system are specific to the service recipient's medical condition and adequate for furnishing or confirming a diagnosis or treatment plan. Store and forward technologies do not include:

- (A) consultations provided by telephone audio-only communication;
- (B) electronic mail;
- (C) text message or instant messaging conversation;
- (D) website questionnaire;
- (E) non-secure video conference; or
- (F) facsimile transmission.

(3) **"Telehealth"** means the practice of health care delivery, diagnosis, consultation, evaluation and treatment, transfer of medical data or exchange of medical education information through two-way, real-time interactive communication. This definition does not exclude store and forward technologies. Telehealth occurs between a service recipient and a health care provider with access to the service recipient's relevant clinical information prior to the telemedicine visit. Telehealth does not include website questionnaires, non-secure video conference, or facsimile transmission.

(c) **Requirements.** The following requirements apply to all services rendered via telehealth.

(1) Audio and video telecommunications are compliant with the Interactive Health Insurance Portability and Accountability Act (HIPAA), permitting encryption. The telecommunication service is secure and adequate to protect the confidentiality and integrity of the telehealth information transmitted. As a payment condition, the service recipient is an active participant in the telehealth visit.

(2) The telehealth equipment and transmission speed and image is technologically sufficient to support the service billed. Contract providers involved in the telehealth visit are trained in the use of the telehealth equipment and are competent in its operation.

(3) The medical or behavioral health related service is provided at an appropriate site for telehealth service delivery.

- (A) An appropriate telehealth site is one that has the proper security measures in place and appropriate administrative, physical, and technological safeguards to ensure the confidentiality, integrity, and security of electronic protected health information.

(B) The room location for the encounter ensures comfort, privacy, and confidentiality on both ends.

There is both visual and audio privacy, and the room's placement and selection takes this into consideration.

(C) Appropriate telehealth equipment and networks are used considering factors such as appropriate screen size, resolution, and security.

(D) Providers, service recipients, or both, may provide or receive telehealth services outside of Oklahoma when medically necessary; however, prior authorization may be required, per Oklahoma Administrative Code 317:30-3-89 through 317:30-3-91.

(4) The provider is contracted with DDS and SoonerCare when required, appropriately licensed or certified, and in good standing. Services provided are within the scope of the provider's license or certification. If the provider is outside of Oklahoma, the provider complies with all laws and regulations of the provider's location, including health care and telehealth requirements.

(5) The service recipient retains the right to withdraw from telehealth services at any time.

(6) All telehealth activities comply with Oklahoma Health Care Authority policy, and all other applicable state and federal laws and regulations, including, but not limited to, 59 O.S § 478.1.

(7) The service recipient has access to all transmitted information, with the exception of live interactive video as there is often no stored data in such encounters.

(8) The service recipient's image and personal information is not disseminated to other entities without written consent from the service recipient or legal guardian, or a minor service recipient's parent or legal guardian.

(9) A telehealth service is subject to the same DDS HCBS waiver program restrictions, limitations, and coverage that exist for the service when not provided through telehealth, as only certain telehealth codes are reimbursable through a DDS HCBS waiver.

(e) **Reimbursement.** Telehealth services are billed with the appropriate modifier.

(f) **Documentation.**

(1) The service provider maintains documentation to substantiate the services rendered.

(2) Documentation indicates the services were rendered via telehealth and the location of the services.

(3) All other DDS documentation guidelines apply to the services rendered via telehealth. Examples include but are not limited to:

- (A) chart notes;
- (B) start and stop times;
- (C) service provider credentials; and
- (D) service provider signature.

(g) **Final authority.** DDS has discretion and the final authority to approve or deny any telehealth services based on DDS's or the service recipient's needs.

## SUBCHAPTER 5. CLIENT SERVICES

# Permanent Final Adoptions

## PART 1. ADMISSION AND SAFEGUARDS

### 340:100-5-2. Service safeguards [REVOKED]

(a) **Client transition.** Consumers are assured the delivery of services compatible with need during movements from one service environment to another.

(1) ~~DDSD staff and contract providers are responsible for assuring that client needs are met in the least restrictive and most normalized setting possible, and evaluate residential status at least annually as part of the Individual Habilitation Plan.~~

(2) ~~Client movement to another setting requires the informed consent of the client and/or his/her legal representative. Consumers are advised of the advantages and disadvantages associated with residence in their current and prospective environment(s).~~

(3) ~~Staff/providers of the sending and receiving programs, as well as the client/family/guardian, meet as an interdisciplinary team to identify client needs and develop specific action strategies for meeting needs prior to a client's movement.~~

(4) ~~Local administrators develop procedures which assure client/family/guardian familiarity with proposed service environments prior to movement.~~

(5) ~~Clients are not moved from one service setting to another until the interdisciplinary team confirms that all essential needs will be met in the new service environment.~~

(6) ~~The client's Individual Habilitation Plan is reviewed within 30 days of admission/transition to a new service environment.~~

(b) **Client discharge.** The Department recognizes that most clients will require services for life, however, DDSD shall plan for each client's discharge from the time of eligibility determination and arrange for discharge when it is determined that the individual no longer requires or desires specialized services.

(1) ~~Each client's interdisciplinary team considers circumstances resulting in the need for specialized services and incorporates strategies within the IHP aimed at facilitating the eventual discontinuation of services through skill achievement and/or integration into non-specialized services.~~

(2) ~~Supervisory staff conduct a review annually to assess client progress toward meeting conditions facilitating discharge.~~

(3) ~~Discharge planning is authorized with the informed consent of the consumer and/or legal representative.~~

(4) ~~A discharge Individual Habilitation Plan is developed within 30 days of the discharge date which identifies the conditions for discharge, individuals responsible for the delivery of on-going, non-specialized services to the individuals and mechanisms which will allow the client to re-access services in the event of need.~~

(5) ~~A signed statement confirming agreement with discharge provisions is secured from the consumer and/or legal representative prior to discharge.~~

## PART 3. SERVICE PROVISIONS

### 340:100-5-22.7. Supplemental room and board funding for persons receiving Home and Community-Based Services (HCBS) Waivers

(a) **Applicability.** This Section applies to services funded through Medicaid HCBS Waivers, per Oklahoma Administrative Code (OAC) 317:35-9-5, and Section 1915(c) of the Social Security Act. Specific Waivers include service recipients who receive:

- (1) daily living supports, per OAC 317:40-5-150; or
- (2) group home services, per OAC 317:40-5-152.

(b) **General Information.** In an effort to support participation in community life, Oklahoma Human Services (OKDHS) Developmental Disabilities Services (DDS) may supplement room and board costs for service recipients with income insufficient to meet the costs of the items listed in (1) of this subsection. Room and board costs are not a reimbursable Waiver expense, per the HCBS service regulations. Room and board expenses in a residential setting may leave a service recipient with insufficient personal funds. DDS State Fund supplemental payments permit a provider to be reimbursed for room and board costs beyond a service recipient's ability to pay with personal benefits income.

(1) Allowable room and board costs are actual monthly expenses that include:

- (A) rent;
- (B) food;
- (C) housing supplies;
- (D) utilities;
- (E) basic cable or television;
- (F) telephone;
- (G) repair and maintenance that are not an obligation of another entity; and
- (H) insurance.

(2) Room and board reimbursement is authorized, per OAC 340:100-3-33.1. When the need for a supplemental payment is expected to continue, cost effective community living arrangements are considered and documented in the Individual Plan. The supplemental room and board payment meets all of the requirements in (A) through (E) of this paragraph.

(A) Funding to meet the service recipient's needs is not available through another source.

(B) The service recipient's room and board expenses are consistent with fair market values for properties in the general area.

(C) The supplemental payment is necessary to support community living and is required for reasons other than the preference of the service recipient, family, or provider.

(D) The provider provides detailed expenses, including but not limited to, mortgage detail and status. The mortgage cannot be a loan with business debt that is greater than the property's fair market value or non-routine costs for non-physical plant excluding the normal escrow items such as taxes and insurance.

(E) The provider discloses common ownership interests between the provider and mortgage holder or lessor.

(3) The service recipient's Personal Support Team (Team) ensures the individual has a minimum of \$100 of personal spending money each month unless the DDS director or designee approves a lesser amount.

(4) When possible, the Team develops a plan to resolve the room and board deficiency by identifying lower cost housing options or seeking roommates when there are additional bedrooms available.

(c) **Room and board payment.** Each service recipient contributes an amount the provider determines, not to exceed actual expenses. The service recipient contributes employment income to meet his or her room and board costs.

(1) To ensure Waiver funding is not used for room and board costs when the service recipient has exceptionally low income, a room and board supplement is provided. The supplement is provided when he or she:

(A) does not have adequate income to meet room and board expenses;

(B) is awaiting a medical decision from the Social Security Administration for Supplemental Security income eligibility; or

(C) is unable to achieve sustained employment resulting in a room and board income deficit.

(2) Each month the provider submits OKDHS Form 06CL001E, Room and Board Supplement Claim Form, for reimbursement within three-months of the last date of service.

(3) Proof of payment for all claim expenditures is included with the initial claim. When the supplement extends beyond six months the provider submits proof of payment in six month intervals. For subsequent claims, DDS may request additional claim expenditures when a significant change occurs.

(d) **Provider requirements.** The provider establishes a written financial agreement with the service recipient or legal guardian that defines the provider and service recipient's responsibilities, per OAC 340:100-5-22.1. When requested, the provider submits a written budget to DDS.

(1) The provider ensures:

(A) service recipient expenses accrue on a monthly basis and are actual expenses;

(B) the Social Security Administration is contacted to review the service recipient's benefits when his or her personal benefits are low; and

(C) the service recipient is employed an average of 30 hours per week. When the service recipient does not participate in 30 hours per week of employment services, the Team develops a plan to address the situation, per OAC 317:40-7-15.

(2) The provider notifies DDS when the service recipient's room and board, income, or expenditures change significantly.

(e) **Service recipient requirements.** DDS may request that the service recipient reimburse OKDHS for the approved room

and board expenses when he or she receives a Social Security Disability Benefits back payment. DDS may request reimbursement when:

(1) making the requested reimbursement does not cause the service recipient to be in debt; and

(2) the service recipient or his or her legal guardian completes OKDHS Form 06AD010E, Service Recipient Room and Board Reimbursement.

**PART 5. INDIVIDUAL PLANNING**

**340:100-5-57.1. Reporting and monitoring use of restrictive or intrusive procedures or emergency interventions [REVOKED]**

(a) ~~The service recipient's Personal Support Team (Team) and Human Rights Committee (HRC) review any use of an intrusive procedure, other than medication previously approved per OAC 340:100-5-26.1, or an emergency intervention to ensure the use was reasonable, necessary, and consistent with the protective intervention plan or in accordance with OAC 340:100-5-57(f).~~

~~(1) Form 06MP046E, Incident Report, is completed by the provider when an intrusive procedure or emergency intervention is used.~~

~~(2) The provider agency program coordination staff:~~

~~(A) reviews Form 06MP046E;~~

~~(B) completes a written evaluation that:~~

~~(i) indicates whether the:~~

~~(I) intrusive procedure was implemented according to the protective intervention plan; or~~

~~(II) emergency intervention complied with requirements per OAC 340:100-5-57(f);~~

~~(ii) indicates whether the use of intrusive procedure or emergency intervention was reasonable and necessary; and~~

~~(iii) includes recommendations and a description of actions taken; and~~

~~(C) in addition to the requirements of OAC 340:100-3-34, sends the evaluation and copy of Form 06MP046E to the service recipient's HRC, Developmental Disabilities Services Division (DDSD) case manager, and positive support field specialist within 72 hours following the incident.~~

~~(b) The DDSD case manager:~~

~~(1) reviews each Form 06MP046E and program coordinator evaluation received for service recipients in his or her caseload;~~

~~(2) ensures the service recipient's Team meets within five days of receipt of Form 06MP046E documenting use of an intrusive procedure or emergency intervention to ensure the use was reasonable and the least restrictive alternative available;~~

~~(3) completes Form 06CB055E, Monthly Summary of Restrictive/Intrusive Procedure Usage, for all restrictive or intrusive procedures or emergency interventions used for~~

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- service recipients in his or her caseload, that describes systems concerns, recommendations, and planned interventions;
- (4) takes necessary action to address identified issues; and
- (5) sends Form 06CB055E to the DDS director of psychological and behavioral supports.
- (e) The DDS director of psychological and behavioral supports and positive support field specialist:
- (1) review and maintain copy of Form 06CB055E; and
- (2) take further action as needed to ensure requirements per OAC 340:100-5 are followed.
- (A) The positive support field specialist may be assigned to provide assistance to the Team.
- (B) If problems are noted, an administrative inquiry per OAC 340:100-3-27.1 may be requested.
- (C) If it appears use of restrictive or intrusive procedures or emergency intervention has occurred in violation of policy requirements, approval for use of physical management or emergency intervention may be suspended by the DDS director of psychological and behavioral supports pending review by the Statewide Behavior Review Committee (SBRC) per OAC 340:100-3-14.
- (D) If it appears abuse or neglect has occurred, the authorities charged by law with the investigation of alleged abuse are notified.
- (E) The DDS director of psychological and behavioral supports may require additional staff training or supports.

## SUBCHAPTER 11. ADMISSION TO ROBERT M. GREER CENTER

### 340:100-11-1. Purpose [REVOKED]

The Robert M. Greer Center is an ICF/MR facility developed to provide appropriate programming for a dual diagnosis, Mentally Retarded/Mentally Ill (MR/MI), population. Admissions are generally by transfer from an Oklahoma Mental Health Facility or State School, however, direct admissions from the community may be accepted. All admissions shall be to the Diagnostic and Evaluation (D&E) Unit of the Greer Center. No person shall be denied access to services solely on the basis of a handicapping condition.

### 340:100-11-2. Intake, Diagnosis and Evaluation Process

(a) Eight beds in the East Building will be designated for diagnostic and evaluation purposes. The Greer Diagnostic and Evaluation (D&E) Team will be composed of a Qualified Mental Retardation Professional (QMRP), psychological assistant, physician, psychiatrist, nurse, direct care staff, speech pathologist, recreation therapist, vocational staff, and Independent Living Skills Instructor (ILSI). Additional team members and/or referrals will be added to the team if the initial screening indicates the need. **Legal basis.** Section 1414.1 of Title 10 of the Oklahoma Statutes (10 O.S. §

1414.1) requires Oklahoma Human Services (OKDHS) Developmental Disabilities Services (DDS) to provide care for individuals with a primary intellectual disability diagnosis and a secondary mental illness diagnosis. The Robert M. Greer Center (Greer) was established for this purpose and serves individuals through a contract with OKDHS.

(b) Referral sources are expected to be the Department of Human Services Divisions of Developmental Disabilities Community Services Unit(s), and/or the Department of Mental Health. All referrals should be via the appropriate Community Services Unit to insure continuity and appropriate referral. **Admission criteria.** All admissions are consistent with Part 483.440(b) of Title 42 of the Code of Federal Regulations, regarding intermediate care facility admissions, transfers, and discharges.

(1) Admission criteria for an individual served through Greer includes:

(A) clinical evidence the applicant has challenging behaviors placing his or her physical safety, environment, relationships, and community participation at risk, or creates a risk of involvement in civil or criminal processes; and

(B) clear evidence documenting why the applicant cannot receive appropriate treatment in his or her current environment or through less restrictive community supports. The DDS director or designee approves Greer admissions.

(2) A referral packet is submitted to the DDS director or designee and contains, when available:

(A) a physical examination within one-calendar year of referral;

(B) a list of current prescribed medications;

(C) information regarding hospitalizations in the last two-calendar years, including the reason for admission and prognosis;

(D) physician orders and progress notes up to one-calendar year;

(E) nursing notes up to one-calendar year;

(F) medical records up to one-calendar year;

(G) guardianship or legal papers;

(H) social history and recent social evaluation;

(I) psychological evaluation conducted at 16 years of age or older, by a licensed psychologist, which includes:

(i) intellectual disability diagnosis based on testing that yields a full scale intelligence quotient;

(ii) functional and or adaptive assessment; and

(iii) a statement noting the age of onset of the disability;

(J) dental records;

(K) immunization record;

(L) multi-disciplinary progress notes or assessments up to one-calendar year for:

(i) physical therapy;

(ii) occupational therapy;

(iii) speech therapy and hearing services;

(iv) nutritional services;

(v) vocational; and

- (vi) educational records for enrolled students; and
  - (M) behavioral incident reports;
  - (N) direct care notes; and
  - (O) current Individual Plan or treatment plan to include behavioral support plans.
- (c) When referral information is received by the Director of the Greer Center, he/she shall meet with the QMRP within 24 hours, or on the first working day if the packet is received on a Friday or the day preceding a holiday, to review the referral packet to determine Admission. Individuals considered for Greer admission are 18 years of age and older. When an applicant is 17 and a half and in need of treatment, the DDS director or designee may grant an exception to the age limit Former Greer residents are eligible for re-admission on the same basis as individuals initially seeking services. Admission is based on a referral packet review that includes:
- (1) if adequate information is contained in the packet, and clinical evidence of mental illness, behavioral, or emotional problems, per the current edition of the Diagnostic and Statistical Manual of Mental Disorders, revised and published by the American Psychiatric Association;
  - (2) if the packet contains any clinical evidence that would clearly contraindicate admission to the D & E Unit documented attempts, and reasons for failure, of techniques and supports applied in the applicant's current environment; and
  - (3) consideration of other available and appropriate community or Wavier services. Placement at Greer constitutes the least restrictive alternative to provide effective treatment to meet the applicant's needs when compared to other available options.
- (d) If no clinical evidence contraindicates D & E admission, the Center Director will recommend an admission date at the earliest possible time (within 72 hours). If the situation is critical (i.e., immediate danger exists to the client or others), admission will be recommended within 24 hours if an available bed exists. Admission must be accompanied with guardian/parent approval, or other legally valid form of consent for treatment at Greer (e.g. court or guardian ad litem). All applicable DHS forms will be used. The Superintendent or his/her designee shall be the admitting authority. Discharge. Greer is a short-term treatment facility and residents are transitioned out of the facility when they meet criteria to safely live in a less restrictive placement. When Greer determines a resident is stable and no longer meets criteria to remain, a discharge referral is provided to the DDS director or designee. Discharge planning includes:
- (1) a review of pertinent Greer information, including data to support progress made;
  - (2) discussion with facility staff regarding community supports needed to maintain the resident's stability; and
  - (3) a referral to the area DDS transition coordinators to initiate the search for potential homes in the community with necessary supports.
- (e) If no bed is available, the person may be admitted to a facility designated by the Department of Mental Health with

transfer occurring per the Inter Agency Agreement at the earliest possible time. Post discharge activities. Greer staff is available after discharge to consult with the individual's community personal support team.

(f) During the D & E process, individuals with an existing IHP will have those implemented as appropriate during the periods when formal evaluations are not occurring. When not in structured evaluations or IHP activities, individuals will be involved in a range of activities planned to enhance the evaluation process. Individuals will not attend programming with the Enid State School population unless clinically appropriate. Structured programming shall consist of a minimum of eight hours per day with replication of situational environments which caused problematic behaviors for assessment purposes. Overall active treatment occurs 24 hours daily.

(g) A preliminary medical assessment must be completed within 24 hours of admission to the D & E Unit. The initial screening for all other areas will be completed within 14 days. Based on the results of this screening, additional in depth evaluation and further observations may be recommended. All referrals and additional evaluations will be completed within 20 days of admission. The D & E team will convene to make a recommendation within 48 hours after the evaluations are completed, and this recommendation will be forwarded to the Greer Center admission committee within 48 hours. The initial D & E team will gather assessment information including but not limited to the following areas:

- (1) Intellectual and adaptive functioning levels;
- (2) Mental/Emotional disorders and Behavioral Severity Assessment;
- (3) Complete medical assessment; medication history update;
- (4) Communication assessment;
- (5) Social and leisure skills assessment;
- (6) Social history update;
- (7) Vocational assessment;
- (8) Nursing assessment; and
- (9) Psychiatric assessment.

**340:100-11-3. Criteria [REVOKED]**

The following criteria will apply for all admissions to the D&E Unit.

- (1) Diagnosis of mental retardation by a psychologist, physician or psychiatrist. The diagnosis must be based on:
  - (A) intellectual evaluation;
  - (B) adaptive behavior evaluation;
  - (C) evidence that retardation occurred within the developmental period;
  - (D) statutory requirements (AAMR standards); and
  - (E) preference will be given to individuals whose retardation levels are moderate and above.
- (2) Clinical evidence of behavioral/emotional problems, defined in the Diagnostic and Statistical Manual of Mental Disorders, as revised and published by the American Psychiatric Association, current edition, which establish a diagnosis of mental illness/behavioral or emotional disturbance.

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- (3) Documented attempts and reasons for failure of treatment techniques applied in the person's current environment.
- (4) Persons with pending criminal charges shall not be considered for voluntary admission into the Greer Center unless it can be clinically demonstrated that the behavior of the person does not pose an immediate danger to self or others.
- (5) Persons considered for admission must not be considered by a psychologist, psychiatrist, or physician as homicidal or suicidal and have exhibited no suicidal or homicidal tendencies for six months prior to application for admission.
- (6) If an applicant has any existing medical or surgical condition that is correctable, it must be remedied by the referring agency (facility) before admission is considered.
- (7) If the person is currently a resident of a Department of Mental Health or Department of Human Services facility, a referral packet containing the following must be sent to the Director of the Greer Center for review:
- (A) Current physical exam (within one year),
  - (B) Recent physician orders and progress notes (up to one year, if available),
  - (C) Recent nursing notes (up to one year, if available),
  - (D) Face sheet (medical records),
  - (E) Legal papers (legal status),
  - (F) Social history and recent social evaluation or update,
  - (G) Psychological administered or updated within 90 days of referral,
  - (H) Dental records,
  - (I) Immunization record,
  - (J) Multi-disciplinary progress notes (up to one year, if available) for example: P.T., O.T., Speech & Hearing, Vocational and Educational Services, Dietary, Direct Care notes,
  - (K) Individual Community Assessment Profile, if available, and
  - (L) Individual Habilitation Plan (if available).
- (8) If the referral is for a person who does not currently reside in a Department of Mental Health or Department of Human Services facility, the following procedures must be followed:
- (A) Referral must be made through the appropriate Division of Developmental Disabilities Division Community Services Unit,
  - (B) A determination must be made by the Community Services Unit that all other services are not appropriate and that the Greer Center is the most appropriate service.
- (9) Persons formerly served by the Greer Center shall be eligible for readmission services on the same basis as an individual initially seeking services.

### 340:100-11-4. Admission to the Greer Center [REVOKED]

The D & E team will recommend admission to the Greer Center only if all of the following criteria are met.

- (1) The existence of a diagnosis of mental retardation which qualifies the individual for Title XIX funding.
  - (A) This includes:
    - (i) an Intelligence Quotient estimate of 69 or lower with evidence that this intellectual deficit occurred during the developmental period; and
    - (ii) a deficit in adaptive functioning.
  - (B) A preference will be given to persons whose retardation falls in the mild to moderate range.
- (2) Clinical evidence of behavioral or emotional problems defined in the DSM which establish a diagnosis of mental illness/behavioral or emotional disturbance.
- (3) There are documented attempts and reasons for failure of treatment techniques applied in the person's current environment.
- (4) The Greer Center must constitute the least restrictive alternative to provide effective treatment to meet the needs of the applicant when compared with other available options.
- (5) It is a reasonable expectation that treatment objectives for the individual can be met with Greer Center resources within a maximum of one calendar year. (Since the Greer Center's mission is for short term treatment of an acute condition, i.e., to return persons to a less restrictive setting as soon as possible, persons requiring chronic, long term treatment are not appropriate for admission.)
- (6) All admissions will be reviewed monthly and the IHP time limited to 90 days with a recommendation for continued placement. The maximum length of stay is one year.

### 340:100-11-5. Admission and post-admission activities [REVOKED]

- (a) Composition of the Greer Center Admission Committee shall be the Greer Center Director, a representative selected by the Department of Mental Health, and an independent psychologist/psychiatrist on contract to the Department of Human Services.
- (b) The admissions committee will receive D & E recommendations no later than the 21st day after D & E admission. They will consider all available information, records and recommendations, and render an admissions decision. The committee will meet or be polled regarding their admissions decisions no later than the 25th day after D & E admission.
- (c) The Greer Center Director or designee will serve as the recorder for that meeting and will take all necessary steps to implement the committee decision.
- (d) If admission is denied, the individual will be returned to their place of origin within 48 hours. Any referring facility/agency must agree to meet these time requirements for return, in writing, prior to admission to the D & E process. If an applicant is not admitted to the Greer Center after undergoing the diagnostic and evaluation process, the referring

agency shall reimburse the Department of Human Services for the number of bed days used at the medicaid rate for that unit.

~~(e) If admission is granted, the Greer Center Interdisciplinary Team will convene the initial IHP meeting no later than the 30th day following D & E admission. The applicant shall be certified for medicaid reimbursement from the initial date of admission.~~

**340:100-11-6. Discharge procedures [REVOKED]**

~~(a) Discharge planning will follow normal Developmental Disabilities Services Division discharge procedures. The DHS/DDSD Transition Plan will be followed and is attached for reference.~~

~~(b) If the individual's mental or physical condition requires treatment unavailable at the Greer Center, he/she will be immediately referred for appropriate intervention.~~

**340:100-11-7. Waiting list procedures [REVOKED]**

~~If a bed is not available when the referral is received, the individual's name will be placed on a waiting list. The order of admission to the D & E unit will be determined by the chronological order of receipt of the complete referral packet. If the referral packet is incomplete, notification of additional information needs will be given. The individual will not be placed on the waiting list until the referral packet is complete.~~

**SUBCHAPTER 17. EMPLOYMENT SERVICES**

**PART 4. COMMUNITY INTEGRATED EMPLOYMENT SERVICES**

**340:100-17-25. Community integrated employment services**

(a) Community integrated employment (CIE) services promote independence through paid work and training activities. CIE services allow service recipients to engage in gainful integrated employment. CIE services are:

- (1) delivered in integrated settings in the community by contract providers;
- (2) provided to eligible service recipients 16 years of age and older who are not:
  - (A) eligible for reimbursement by Oklahoma Health Care Authority through Home and Community-Based Services Waiver employment services; or
  - (B) residing in a private intermediate care facility for individuals with intellectual disabilities; and
- (3) available to service recipients 16 to 21 years of age who have not completed eligibility for services provided through Individuals with Disabilities Education Act. The service recipient may receive CIE services when school is not in session, when he or she is not participating in an Individual Education Program (~~IHP~~) that includes extended school year services through his or her school.

(b) Access to CIE services is contingent upon sufficient Oklahoma Human Services (OKDHS) resources and written eligibility determination of eligibility, per OAC 340:100-3-1.

(c) The provider agency:

- (1) may use, prior to placement, up to 20 hours for assessment and up to 40 hours for job development;
- (2) after placement, provides, as needed, job site training, technical assistance to the employer, job adaptation, participation in Personal Support Team meetings, benefits planning, and transportation to and from the work site. These services are reimbursed when the job coach is with the service recipient;
- (3) ensures the service recipient is paid per United States Department of Labor (USDOL) wage and hour regulations for work performed;
- (4) ensures the service recipient's employment plan includes specific employment outcomes and action steps;
- (5) ensures all CIE services are provided by job coaches who complete required training, per OAC 340:100-3-38;
- (6) may bill for CIE services rendered prior to eligibility determination of eligibility when CIE services are authorized in an employment plan and the service recipient is ultimately determined eligible; and
- (7) receives reimbursement for providing CIE services to only one service recipient at a given time. This does not preclude CIE services from being provided to service recipients in group settings, such as one job coach simultaneously providing CIE services to three service recipients for three hours, in this case, the job coach may only claim three reimbursement units of reimbursement, not nine.

(d) CIE services include reimbursement for securing individual gainful employment, individual follow-along, and group placements.

- (1) The provider agency ~~must secure~~ secures gainful employment in a job paying at least minimum wage for service recipients, in accordance with the current contract for CIE services.
- (2) Follow-along services are available to service recipients who ~~were~~ successfully placed in CIE services or who completed stabilization in Oklahoma Department of Rehabilitation Services supported employment program during the prior contract year. Reimbursement for follow-along services cannot exceed amounts specified in the contract for CIE services.
- (3) The provider agency may provide integrated group placements of two or more service recipients in gainful integrated group employment and claim per the contract for CIE services. Group placements:
  - (A) may pay at or more than minimum wage or commensurate wages per USDOL wage and hour regulations; and
  - (B) cannot exceed eight service recipients.

(e) Payment for CIE services is only disbursed following the delivery of authorized CIE service to eligible service recipients.

- (1) To receive payment, the provider agency submits ~~to the DDS state office~~ a claim for CIE services rendered

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~~and, along with~~ any supporting documentation required by OKDHS, to the Developmental Disabilities Services State Office. Claims may be submitted on the provider agency's invoice or on Form 10AD012E, Claim Form, and ~~must~~ include the:

- (A) service recipient's:
    - (i) legal name;
    - (ii) case number;
    - (iii) date of birth; and
    - (iv) Social Security number; and
  - (B) category, amount, rate, and date of CIE service delivered to the service recipient.
- (2) The provider agency maintains documentation available for review that documents the:
- (A) service recipient's:
    - (i) legal name;
    - (ii) case number or Social Security number;
    - (iii) date of birth;
    - (iv) progress toward outcomes;
    - (v) wages earned; and
    - (vi) hours worked; and
  - (B) type and date of CIE service delivered to the service recipient.
- (3) Claims for CIE service reimbursement of CIE services ~~must be~~ submitted within 90-calendar days of service provision. Supporting encumbrances may be cancelled upon a lapse of six months from the actual provision of CIE services.

[OAR Docket #22-549; filed 7-5-22]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 105. AGING SERVICES

[OAR Docket #22-550]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended  
Part 5. Area Agencies on Aging  
340:105-10-36 [AMENDED]  
Part 7. Program Standards for Services Funded Under Title III of the Older Americans Act of 1965, as Amended  
340:105-10-50.1 [AMENDED]  
340:105-10-51 [AMENDED]  
340:105-10-57 through 340:105-10-59 [AMENDED]  
340:105-10-61 [AMENDED]  
340:105-10-70 through 340:105-10-72 [AMENDED]  
340:105-10-75 [AMENDED]  
340:105-10-79 [AMENDED]  
340:105-10-80 [AMENDED]  
340:105-10-82 through 340:105-10-83 [AMENDED]  
340:105-10-90.1 [AMENDED]  
340:105-10-91 through 340:105-10-93 [AMENDED]  
Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects  
340:105-10-101 [AMENDED]  
(Reference WF 22-105)

### AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes.

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

December 20, 2021

### COMMENT PERIOD:

January 18, 2022 through March 18, 2022

### PUBLIC HEARING:

March 23, 2022

### ADOPTION:

March 23, 2022

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

March 24, 2022

### APPROVED BY GOVERNOR'S DECLARATION ON:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Proposed amendments to Chapter 105 Subchapter 10: (1) remove outdated, restrictive requirements, processes, and language; (2) add and adjust language for consistency with federal standards; (3) simplify current process requirements; and (4) cleanup language for improved clarity and readability.

### CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

### PART 5. AREA AGENCIES ON AGING

#### 340:105-10-36. Area Plan administration

- (a) **Policy.** The Area Agency on Aging (AAA) ~~has responsibility for carrying~~ carries out all activities under the Area Plan on Aging.
- (b) **Authority.** The authority for this Section is Section 306 and Section 212(b)(1) of the Older Americans Act, as amended, and Parts 1321.61 and 1321.53 of Title 45 of the Code of Federal Regulations.
- (c) **Procedures.** The AAA:
  - (1) develops and monitors a management plan for the Area Plan on Aging which includes:
    - (A) overall plan goals;
    - (B) measurable objectives ~~which outline what will be done~~ outlining the plan to reach the ~~goal~~ goals;
    - (C) action steps that describe how each objective ~~will be~~ is accomplished, such as specific tasks;



- (D) staff assignments of responsibility for each objective; and
  - (E) target completion dates for ~~the completion of~~ action steps; and
  - (2) submits all required program and fiscal reports related to Area Plan activities to ~~the State Agency~~Oklahoma Human Services Community Living, Aging and Protective Services;
  - (3) develops a Title III request for proposal (RFP) package and ~~provide~~provides technical assistance on the applications to prospective grantees;
  - (4) reviews and approves Title III RFPs, ~~except for profit applications that must be reviewed and approved by the State Agency~~;
  - (5) monitors ~~the program~~Title III project programs and fiscal reports of ~~Title III projects~~ in the planning and service area (PSA);
  - (6) conducts on-site or virtual quarterly assessments with each Title III project and forwards follow-up written reports to each project;
  - (7) provides technical assistance to the Title III projects as appropriate; and
  - (8) develops a policy and procedures manual for Title III projects in the PSA.
- (d) **Cross references.** See ~~OAC~~Oklahoma Administrative Code 340:105-10-31(a)(3), 340:105-10-33, and 340:105-10-34.

**PART 7. PROGRAM STANDARDS FOR SERVICES FUNDED UNDER TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED**

**340:105-10-50.1. Title III services taxonomy**

- (a) **Rule.** Parts B, C, D, and E of Title III of the Older Americans Act (OAA) of 1965, as amended, authorize the development of a variety of services to meet the needs of qualified older participant persons. A comprehensive ~~listing~~list of services that may be funded, service definitions, and service units are included in (1) through ~~(15)~~(18) of this subsection.
- (1) Personal care - one hour; provides personal assistance, stand-by assistance, supervision, or cues.
  - (2) Homemaker - one hour, or partial hours may be reported to two decimal places, for example 0.25 hours; ~~provides assistance preparing meals, shopping for personal items, using the phone, or doing light housework~~light housekeeping tasks in a qualified older participant's home and possibly other community settings. Tasks may also include preparing meals, shopping for personal items, or using the phone.
  - (3) Chore - one hour, or partial hours may be reported to two decimal places, for example 0.25 hours; ~~provides assistance with heavy housework tasks in a qualified older participant's home and possibly other community settings. Tasks may also include, yard work, or sidewalk maintenance.~~

- (4) Home delivered meal - one meal; ~~provides~~provided to a qualified person participant by a qualified nutrition project provider at his or her residence, served by a program administered by the State Unit on Aging or Area Agency on Aging (AAA), and meeting all OAA and legal requirements. ~~a~~Each meal that:
  - (A) complies with the most recent Dietary Guidelines for Americans published by the ~~Assistant Secretary for Aging and the Secretary~~Secretaries of the Department of Health and Human Services and the United States Department of Agriculture;
  - (B) provides, when one meal is served, a minimum of 33 and 1/3 percent of the current dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences;
  - (C) provides, when two meals are served together, a minimum of 66 and 2/3 percent of the DRI allowances; and
  - (D) provides, when three meals are served together, 100 percent of the DRI allowances.
- (5) Adult day care or adult day health - one hour; provides personal care for dependent adults in a supervised, protective, and congregate setting during some portion of a day. Services offered in conjunction with adult day care or adult day health typically include social and recreational activities, training, counseling, and services, such as rehabilitation, medication assistance, and home health aide services for adult day health.
- (6) Case management - one hour; provides assistance either in the form of access or care coordination in circumstances where the ~~older person~~participant is experiencing diminished functioning capacities, personal conditions, or other characteristics requiring ~~the service~~ provision of services by formal service from formal providers or family caregivers. Case management activities include:
  - (A) assessing needs;
  - (B) developing care plans;
  - (C) authorizing and coordinating services among providers; and
  - (D) providing follow-up and reassessment, as required.
- (7) Congregate meal - one meal; ~~provides~~provided to a qualified person participant by a qualified nutrition project provider in a congregate or group setting, served by a program administered by the State Unit on Aging or Area Agency on Aging (AAA), and meeting all OAA and legal requirements. ~~a~~Each meal that:
  - (A) complies with the most recent Dietary Guidelines for Americans, published by the ~~Assistant Secretary for Aging and the Secretary~~Secretaries of the Department of Health and Human Services and the United States Department of Agriculture;
  - (B) provides, when one meal is served, a minimum of 33 and 1/3 percent of the DRI as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences;

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- (C) provides, when two meals are served together, a minimum of 66 and 2/3 percent of the DRI allowances; and
- (D) provides, when three meals are served together, 100 percent of the DRI allowances.
- (8) Nutrition counseling - ~~one session per participant per hour, or partial hours may be reported to two decimal places, for example 0.25 hours;~~ provides individualized guidance as defined by the Academy of Nutrition and Dietetics (AND) to a person participant who, or to his or her caregiver, when the qualified person is at nutritional risk because of health or nutrition history, dietary intake, medication use, or chronic illnesses, or to caregivers. Counseling is provided A registered dietician provides one-on-one by a registered dietician counseling and addresses the options and methods for improving nutrition status with a measurable goal.
- (9) Assisted transportation - ~~one one-way trip; provides assistance and transportation, including services or activities that provide or arrange for travel, including travel costs for individuals from one location to another. This service includes escort or other appropriate assistance to for a person~~ qualified older participant who has difficulties, physical or cognitive, using regular vehicular transportation.
- (10) Transportation - ~~one one-way trip; provides transportation using a vehicle for a person who requires help in going~~ participants with services or activities that provide or arrange for travel, including travel costs, from one location to another and does not include any other activity.
- (11) Legal assistance - ~~one hour, or partial hours may be reported to two decimal places, for example 0.25 hours; an attorney provides legal advice and representation to qualified older participants with economic or social needs. Includes, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under a lawyer's direct supervision, and a non-lawyer's representation or counseling by an attorney or other person acting under the supervision of an attorney where permitted by law.~~
- (12) Nutrition education - ~~one session per participant; a dietician or an individual with comparable experience oversees a targeted program promoting that promotes better health by providing accurate and culturally sensitive nutrition, physical fitness, or health information, as it relates to nutrition, information consistent with the current Dietary Guidelines for Americans, and provides instruction to participants, caregivers, or both in a group or individual setting overseen by a dietitian or person of comparable expertise. This service:~~
- (A) is approved by a registered dietician who answers participant questions related to nutrition education;
- (B) occurs at least once per month;
- (C) is provided to congregate and home delivered meal participants; and
- (D) is documented on the Dietary Consultant's Report.
- (13) Information and assistance - ~~one contact; a one-on-one contact between a service provider and an~~

~~older client participant, or caregiver or person on behalf of participant or caregiver.~~ Activities involving contact with multiple current or potential ~~clients~~ participants or caregivers, such as publications, publicity campaigns, and other mass media activities are not counted as a unit of service. Internet website hits are counted only when information is requested and supplied. This service for older Oklahomans:

- (A) provides current information on opportunities and services available within their communities, including information relating to assistive technology;
- (B) assesses the participant's problems and capacities;
- (C) links them with to available opportunities and services available within their communities; and
- (~~C~~) establishes ensures, to the maximum extent practicable, qualified older participants receive the services they need, and are aware of the opportunities available to them, by establishing adequate follow-up procedures, to the maximum extent practicable; and
- (E) serves the entire community of older individuals, particularly those
- (i) with greatest social need;
- (ii) with greatest economic need; and
- (iii) at risk for institutional placement.
- (14) Outreach - ~~one contact; provides person participant with intervention initiated by an agency or organization for the purpose of identifying potential clients~~ qualified older participants or their caregivers and encouraging their use of existing services and benefits. Outreach is a one-on-one contact between a service provider and an older client a participant or caregiver. Activities involving contact with multiple current or potential clients participants or caregivers, such as publications, publicity campaigns, and other mass media activities, are not counted as a unit of service.
- (15) Health promotion - Evidence Based - ~~one event; Title III-D programs or services are Community Living, Aging and Protective Services (CAP) approved prior to implementation. Title III-D Evidence Based programs and activities meet highest-level criteria and include activities related to:~~
- (A) preventing and mitigating the effects of chronic disease, including:
- (i) osteoporosis;
- (ii) hypertension;
- (iii) obesity;
- (iv) diabetes, and
- (v) cardiovascular disease; and
- (B) alcohol and substance abuse reduction;
- (C) smoking cessation;
- (D) weight loss and control;
- (E) stress management;
- (F) falls prevention;
- (G) physical activity; and
- (H) improved nutrition.

(16) Health promotion non-evidence based one event; activities related to health promotion and disease prevention that do not meet the Administration on Aging or Administration for Community Living definition for an evidence based program. Activities may include:

- (A) health risk assessments;
- (B) routine health screening;
- (C) nutritional counseling;
- (D) programs regarding physical fitness and therapy;
- (E) home injury control services;
- (F) screening for mental and behavioral health issue prevention;
- (G) educational programs on preventive health services;
- (H) medication management screening and education;
- (I) information concerning age-related diseases and chronic disabling conditions;
- (J) gerontological counseling; and
- (K) counseling.

(17) National Family Caregiver Support Program service categories are listed in (A) through (H) of this paragraph:

(A) Assistance: case management - one hour, or partial hours may be reported to two decimal places, for example 0.25 hours; a service provided to a caregiver, and at his or her direction. Service is provided by a qualified case manager who delivers and coordinates the services. Caregiver case management includes:

- (i) a comprehensive assessment of the caregiver's physical, psychological, and social needs;
- (ii) the development and implementation of a service plan to mobilize and monitor the caregiver's formal and informal resources and services to meet the caregiver's identified needs. Caregiver case managers:

- (I) coordinate caregiver resources and services with any other plans existing for various formal services;
- (II) coordinate caregiver resources and services with the information and assistance services provided under the OAA;
- (III) periodically reassess the caregiver's status and revises his or her plan; and
- (V) advocates on the caregiver's behalf, according to his or her wishes, for needed services or resources.

(B) Assistance: information and assistance - one contact - this service:

- (i) provides the individuals with current information about opportunities and services available to the individuals within their communities, including information relating to assistive technology;
- (ii) assesses the problems and capacities of the individuals;

(iii) links the individuals to the available opportunities and services;

(iv) ensures, to the maximum extent practicable, individuals receive needed services and are aware of available opportunities by establishing adequate follow-up procedures; and

(v) serves the entire community of older individuals.

(vi) refers to individual, one-on-one contacts between a caregiver provider and an older client or caregiver. An activity that involves a contact with several current or potential clients or caregivers is not counted as a unit of information and assistance. Internet website hits are counted only when information is requested and supplied.

(C) Counseling - one hour, or partial hours may be reported to two decimal places, for example 0.25 hours; a service designed to support caregivers and assist them in their decision-making and problem solving. Counselors are service providers with degrees or credentials as required by state policy. Counselors are trained to work with older adults and families understanding and addressing complex physical, behavioral, and emotional problems related to caregiver roles. Counseling is a separate function apart from support group activities or training and includes counseling in individual or group sessions.

(D) Information services - per activity - a public and media activity that conveys information to caregivers about available services and can include in-person interactive presentations to the public; a booth or exhibit at a fair, conference, or other public event; and radio, TV, or website events. Information services are activities directed to large audiences of current or potential caregivers, such as disseminating publications, conducting media campaigns, and other similar activities.

(E) Respite care - one hour, or partial hours may be reported to two decimal places, for example 0.25 hours; this service provides temporary, substitute supports or living arrangements for qualified older participants to provide a brief period of caregiver relief or rest. When the specific service units purchased via a direct payment, such as cash or voucher can be tracked or estimated, the service unit is reported by hour or partial hour. Types of respite care include:

- (i) in-home respite service provided in the caregiver's or care receiver's home and allows the caregiver time away to do other activities;
- (ii) out of home respite service provided in settings other than the caregiver's or care receiver's home, such as in adult day care, a senior center or in other non-residential settings where an overnight stay does not occur; and
- (iii) out of home overnight respite service provided in facilities such as nursing homes, assisted living facilities, and adult foster homes;

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(F) Supplemental services - units and service in this category are determined by CAP and provides goods and services on a limited basis to complement the care provided by caregivers. The AAA contacts CAP prior to this category's use.

(G) Support groups - per session - a service that is led by a trained individual, moderator, or professional, as required by state policy, to facilitate caregivers to discuss their common experiences and concerns and to develop a mutual support system. Support groups are typically held on a regularly scheduled basis and may be conducted in person, over the telephone, or online.

(H) Training - one hour , or partial hours may be reported to two decimal places, for example 0.25 hours - a service that provides family caregivers with instruction to improve knowledge and performance of specific skills relating to their caregiving roles and responsibilities. Skills may include activities related to health, nutrition, and financial management; providing personal care; and communicating with health care providers and other family members. Training may include using evidence-based programs and is conducted in-person or online in individual or group settings.

(18) Funded "Other" category - unit varies per service - a service provided using OAA funds under Title III-B in whole or in part, that do not fall into previously defined service categories and may include assistive technology, durable equipment, emergency response, consumable supplies, home modifications or repairs, elder abuse prevention, elder rights, health, outreach, public education, socialization, access not reported elsewhere, and others.

(A) Advocacy or representation - one hour; provides action taken on behalf of ~~ana~~ older person participant to secure the person's rights or benefits. Advocacy or representation includes receiving, investigating, and working to resolve disputes or complaints. It does not include services provided by an attorney or person under the supervision of an attorney.

(B) Education or training - one session; provides formal and informal opportunities for ~~older~~ persons participants to acquire knowledge, experience, or skills. ~~Includes individual~~ individually or in group events designed to increase awareness.

(C) Health promotion — one event; provides Administration for Community Living approved evidence based health promotion or disease prevention programs and activities to participants, caregivers, or both, in a group or individual setting. Wellness checks - one contact; individualized contact between two people via phone, text, email, webinar, video chat, or other means to provide a well-being check, reassurance, or socialization to a qualified older participant or family caregiver. The provider successfully converses with the older adult is spoken to

in order for the contact to be counted, regardless of the length of contact.

(D) Home repair - one job; provides minor repairs, modifications, or maintenance on a home owned and occupied by an eligible participant, up to \$250 annually, per participant.

(E) Coordination of services - unit to be determined by ~~Aging Services (AS)~~ CAP; provides for the administration or delivery of a service ~~for which direct cost is not directly~~ funded by Title III. The Area Agency on Aging ~~(AAA)~~ AAA contacts ~~AS~~ CAP regarding use of this category.

(F) National Family Caregiver Support Program service categories are:

(i) information services — one activity; provides caregivers information on resources and services available to the public or persons within their communities. Information services are for activities directed to large audiences of current or potential caregivers, such as disseminating publications, conducting media campaigns, and other similar activities;

(ii) access assistance — one contact; assists caregivers in obtaining access to the services and resources available within their communities. To the maximum extent practicable, access assistance ensures persons receive the services needed by establishing adequate follow up procedures. Internet website hits are counted only when information is requested and supplied;

(iii) counseling — one session per participant; assists caregivers in the areas of health, nutrition, and financial literacy, and in making decisions and solving problems relating to their caregiver roles. This includes counseling to persons, support groups, and caregiver training of individual caregivers and families;

(iv) respite care — one hour; provides temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers. When the specific service units purchased via a direct payment, such as cash or voucher can be tracked or estimated, the service unit is reported by hour; otherwise, the unit of service is one payment. Respite care is:

(I) in-home respite, such as personal care, homemaker, and other in-home respite;

(II) respite provided by attendance of the care recipient at a senior center or other non-residential program; or

(III) institution respite provided by placing the care recipient in an institutional setting, such as a nursing home for a short period of time as a respite to the caregiver or summer camp as a respite for grandparents caring for children; and

(v) supplemental services — provides services on a limited basis to complement the care provided

by caregivers. The unit and service are determined by AS. The AAA contacts AS regarding use of this category.

(b) **Authority.** The authority for this Section is the Office of Management and Budget Notice of Action 0985-0008 and Sections 339 and 371 through 373 of the Older Americans Act.

(c) **Procedures.** The AAA:

- (1) incorporates ~~rule provisions of the rule~~ into its AAA policies and procedures manual;
- (2) provides technical assistance to prospective service project applicants regarding the rule in the development of services; and
- (3) utilizes the rule as an indicator in the service project proposal evaluation of service project proposals.

(d) **Cross references.** Refer to Oklahoma Administrative Code 340:105-10-40 and 340:105-10-51.

**340:105-10-51. General Title III service standards**

(a) **Policy.** Parts B, C, D, and E of Title III of the Older Americans Act of 1965, as Amended, (OAA), provide funding for a variety of services to meet the needs of older persons. All services meet service specific standards and the general standards in this subsection.

(1) ~~Project sponsors~~ Projects, who are the recipients of grant awards, serve all eligible persons in the project service area (PSA) and do not limit participation to their own membership or residents, such as church memberships or residents of a day care program. Project sponsors demonstrate to the Area Agency on Aging (AAA) a capacity for effective delivery of nutrition, supportive services, or both through the PSA. Projects may be:

- (A) public;
- (B) private for-profit, or nonprofit agencies or organizations;
- (C) institutions;
- (D) political subdivisions of the state; or
- (E) Indian tribal organizations ~~demonstrating to the Area Agency on Aging (AAA) a capacity for the effective delivery of nutrition, supportive services, or both, throughout the project service area (PSA). Project sponsors serve all eligible persons in the PSA and do not limit participation to their own membership or residents, such as church memberships or residents of a day care program.~~

(2) Project services are provided to persons 60 years of age and older unless otherwise allowed for in the eligibility requirements of a specific service.

(3) Project services are located in communities with the greatest occurrence of older persons in greatest economic and social need with particular attention to those who are low income minority persons and older persons ~~those~~ residing in rural or isolated areas. The project sponsor documents in the written grant agreement with the AAA:

- (A) assurance that, to the extent possible, the project serves low income minority persons and older persons residing in rural or isolated areas ~~in accordance with~~ according to their service needs ~~need for services;~~

(B) specific objectives outlining how the project satisfies ~~the~~ qualified older participants' service needs of low income minority persons and older persons residing in rural or isolated areas served by the project. These objectives reflect the Area Plan objectives for targeting these persons;

(C) information on the extent the project met its objectives for serving low income minority persons and older persons residing in rural or isolated areas during the previous fiscal year, if previously funded; and

(D) other targeting activities required for specific funded services, as appropriate, such as targeting activities for outreach services.

(4) Projects provide ~~recipients~~ qualified older participants with the opportunity to contribute to ~~service cost~~ the cost of services, with the ~~restrictions~~ guidelines in (A) through (G) of this paragraph.

(A) Contributions are voluntary, and no otherwise eligible person is denied service because he or she chooses not to or cannot contribute to the service cost ~~cost of services.~~

(B) Participants are advised of the opportunity to contribute to the program cost ~~of programs~~ through:

- (i) individual consultation ~~when they enter the program~~ upon program entry, to include including a written suggested contribution schedule;
- (ii) written brochures about the program and written schedules of program activities ~~of the program;~~ and
- (iii) signs posted at the project site.

(C) ~~The participant's~~ Participants' privacy regarding contributions is protected at all times.

(D) The project advisory council develops a suggested contribution schedule for funded services ~~and takes~~ taking into consideration ~~the~~ income ranges of older persons in the community and the project's other income means of income. Means testing is not used to determine suggested contributions.

(E) Congregate and home delivered ~~meals~~ meal participants are allowed to use United States (U.S.) Department of Agriculture food benefits to contribute toward ~~the cost of their meals~~ meal costs.

(F) The project uses appropriate procedures to safeguard and account for all contributions.

(G) The project uses the participant contributions to expand ~~the funded services~~ respective service for which the participant contributed to. For example, if a congregate site (C1) contribution was made, funds are used to expand that service.

(5) Projects conform to ~~the~~ Title III fiscal accounting and program reporting systems as implemented by Aging Services (AS) Community Living, Aging and Protective Services (CAP) and AAAs. All records are managed according to the guidelines in (A) through (E) of this paragraph. OAA grantees:

- (A) maintain adequate and separate accounting and fiscal records, and account for all funds provided

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- by any source to pay the cost of the for OAA funded project costs;
- (B) permit audit, examination, or both, of all such records, procedures, and accounts at any reasonable time by authorized personnel of the U.S. Department of Health and Human Services, the Oklahoma Department of Human Services (DHS)(OKDHS), the State Auditor and Inspector, and other appropriate state entities;
- (C) allow authorized personnel open and complete access to the grantees' accounting records and practices, and to any other service provider items of the service provider pertinent to the grant performance or payment of the grant in order to audit, examine, and make excerpts of records;
- (D) retain for at least threeseven years all financial and program records, supporting documents, statistical records, and other records pertaining to the Title III services.
- (i) In the case of litigation, claim negotiation, audit, or other pending action before the end of the threeseven year period, the records are retained until such action is completed, and until all issues ~~arising from it~~ have been resolved, or until the end of the regular threeseven year period, whichever is later.
- (ii) Permanent records are maintained at the project office; and
- (E) provide the appropriate security, confidentiality, and accommodations for the proper maintenance and organization of program records and reports.
- (6) Where feasible and appropriate, projects make arrangements for ~~the service~~ availability of services to older persons in weather related emergencies and other local and national emergencies, including terrorist acts and ~~flu~~ pandemics.
- (7) Projects assist participants ~~in taking to take~~ advantage of benefits or services under other programs.
- (8) Project staff reports to ~~the appropriate officials~~ any situation that places the participant, participant's household, or both, in imminent danger to the appropriate officials.
- (9) Project staff ensures ~~that~~ signage is posted appropriately informing all persons ~~that, with the exception of except~~ law enforcement, no firearms are to be permitted within the project office, maintenance buildings, and all nutrition site-dining areas.
- (10) Projects coordinate Title III services with other appropriate services in the community, including Title VI Native American nutrition programs. Appropriate coordination efforts include:
- (A) joint planning;
- (B) information sharing; and
- (C) written agreement negotiation of ~~written agreements~~.
- (11) Projects establish and maintain an advisory council to advise the projects on all matters relating to ~~the project~~

~~services delivery of project services~~, per Oklahoma Administrative Code (OAC) 340:105-10-52.

(12) Projects ensure appropriate intake information to provide the appropriate Title III service(s) and ensures participant safety and well-being is gathered on each participant.

- (A) ~~Participants~~ For participants receiving Title III:
- (i) personal care, homemaker, chore, home repair, home delivered meals, adult day health or adult day care, outreach or case management services, information is gathered on ~~Form 02AG002E, Older Americans Act Assessment, Part I, and Form 02AG003E, Older Americans Act Assessment, Part II, Title III Program Registration~~ and includes at a minimum the participant's:
- (I) ~~identifying information;~~ name, address, and phone number;
- (II) ~~household composition;~~ age, sex, race, ethnicity, minority status, and date of birth with signature verification;
- (III) ~~ability to perform activities of daily living (ADLs);~~ emergency contact's name, address, and phone number;
- (IV) household status, including whether the participant lives alone or lives with others;
- (V) special dietary needs when requesting home delivered meals;
- (VI) ability to perform activities of daily living (ADL) and instrumental activities of daily living (IADL)ADLs;
- (VII) Nutrition Screening Checklist;
- ~~(VIII)~~ support system;
- ~~(VIII)~~ participant signature or witness signature when the participant is unable to sign;
- ~~(VIII)~~ explanation of donation system;
- ~~(VIII)~~ information release of information authorization; and
- ~~(IX)~~ status related to poverty level;
- (ii) congregate meals, nutrition counseling, or assisted transportation, outreach, or information and assistance, information is gathered on ~~Form 02AG002E, Part I, Title III Program Registration~~ and includes at a minimum the participant's:
- (I) ~~identifying information;~~ name, address, and phone number;
- (II) ~~household composition;~~ age, sex, race, ethnicity, minority status, and date of birth with signature verification;
- (III) emergency contact's name, address, and phone number;
- (IV) household status including whether the participant lives alone or lives with others;
- (V) special dietary needs when requesting congregate meals;
- (VII) Nutrition Screening Checklist;
- ~~(VIII)~~ participant signature or witness signature when the participant is unable to sign;
- ~~(VIII)~~ explanation of donation system;

- (~~ix~~) ~~information release of information~~ authorization; and
- (~~x~~) status related to poverty level;
- (iii) ~~home delivered meals, congregate meals, case management, or nutrition counseling, project staff ensures Form 02AG002E, Part I, Determine your nutritional health, is completed; and~~
- (iv) National Family Caregiver Support Program (NFCSP) services;—information is gathered on an approved intake form Title III Program Registration for both caregiver and care recipient, and includes at a minimum:
  - (I) the family caregiver's identifying information;
  - (II) the caregiver's relationship to the care receiver;
  - (III) the care receiver's identifying information; and
  - (IV) a written description of the caregiver's current situation, including the care receiver's need for assistance due to inability to perform specific ADLs or the need for supervision due to Alzheimer's disease or other dementia.
- (B) Project staff:
  - (i) ~~obtains from participants of other Title III services not given in (A) of this paragraph, or their informants, only information necessary to provide the appropriate Title III service(s) and ensures the safety and well being of participants;~~
  - (ii) ensures assessment procedures are conducted in a confidential manner, with only the intake person, the participant, and other persons approved by the participant in attendance; and
  - (iii) conducts an assessment of each participant upon the participant's entry into a Title III service with, at a minimum, annual reassessments; and
  - (iv) ~~at a minimum, conducts a reassessment of in home service participants every six months.~~
- (C) Income source information is not required to receive Title III services and may only be used to assist the participant in determining eligibility for programs with income guidelines.
- (13) Projects have procedures, approved by AAA, to ensure strict confidentiality is maintained regarding all participant information. Projects ensure identifying participant information is disclosed only when staff obtains the informed consent of the participant or the participant's legal representative. Exceptions to the rules in this paragraph include court orders, reporting possible neglect, abuse, or both, and monitoring project records by federal, state, and AAA officials.
- (14) Project staff posts grievance procedures in a public area ~~of~~ in the project facility and complies with AAA grievance procedures for Title III participants.
- (15) Projects comply with the Americans with Disabilities Act, Section 504 of The Rehabilitation Act of 1973, and Title VI of The Civil Rights Act of 1964. A public

notice of civil rights compliance is posted in a public area in all project facilities and offices.

(16) Projects comply with the Oklahoma Open Meetings Act when conducting public meetings. Public meetings are held in handicap accessible facilities with provisions for interpreters, as needed.

(17) Project staff conducts ongoing public information activities to ensure the general public is aware of each project and the services it provides. All materials produced by, or for the project include a statement that:

- (A) the project makes no distinctions on the grounds of race, color, sex, age, ancestry, national origin, religion, or disability; and
- (B) a portion of the project costs are met by state and federal OAA funds from AAA and DHS ASOKDHS CAP.

(18) Project staff provides or arranges for orientation and ongoing training for all staff engaged in ~~the project implementation of the project~~. Training is designed to enhance staff performance as related to each staff person's specific job responsibilities ~~of each staff person~~. Projects authorize staff time to attend AAA and ASCAP sponsored training as funds permit. Minimum orientation or training topics include:

- (A) the OAA, as amended, and related regulations;
- (B) the DHSOKDHS Policies and Procedures Manual for Title III of the OAA, as amended;
- (C) the AAA Title III policies and procedures manual;
- (D) all program and fiscal reports, as appropriate;
- (E) assessment procedures;
- (F) the aging network; and
- (G) specific job duties.

(19) Project staff participates in regularly scheduled AAA assessments and evaluations ~~by the AAA~~.

- (A) The AAA schedules assessments at least 30-calendar days in advance at a time mutually convenient for the AAA and the project.
- (B) The AAA informs the project director of areas covered during the assessment.
- (C) The project director makes arrangements for site visits as ~~requested by the AAA~~ requests.

(20) The project allows AAA to make unscheduled or unannounced visits ~~by the AAA~~ for the purposes of:

- (A) investigating alleged problems;
- (B) monitoring corrective action; or
- (C) evaluating the projects normal daily activity ~~of the project~~.

(b) **Authority.** The authority for this Section is Sections 1321.11, 1321.51, 1321.63(b), 1321.65, ~~and~~—1321.67 and 75.307 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The AAA is required to:

- (1) incorporate the standards into the AAA policies and procedures manual;
- (2) provide training on the standards to Title III project directors and other appropriate staff;
- (3) monitor the compliance of Title III projects with the standards; and

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(4) provide ongoing technical assistance to Title III projects regarding the standards.

(d) **Cross references.** Refer to ~~Oklahoma Administrative Code~~(OAC) 340:105-10-40, 340:105-10-50.1, and 340:105-10-52.

### 340:105-10-57. Outreach service standards

(a) **Policy.** ~~The outreach service includes~~Outreach services ~~that seek out and identify older individuals and assist them in gaining access to needed services~~eligible for assistance under the Older Americans Act and other programs, both public and private, and informs them of assistance availability. All outreach service providers of ~~outreach service~~ must comply with standards outlined in this Section and in Oklahoma Administrative Code (OAC) 340:105-10-51, 340:105-10-58 and 340:105-10-60.

(b) **Authority.** The authority for this Section is Section 306(4)(B) and Title 45 of the Code of Federal Regulations, Part 1321.17.

(c) **Procedures.** This Section is implemented by the Area Agency on Aging. The AAA is required to:

- (1) ~~incorporating~~incorporate the policy into its Title III policy and procedures manual;
- (2) ~~providing~~provide orientation to outreach staff on the policy;
- (3) ~~monitoring~~monitor compliance with the policy; and
- (4) ~~providing~~provide ongoing technical assistance to Title III projects regarding the policy.

(d) **Cross references.** See OAC 340:105-10-50.1(a)(14), 340:105-10-51, 340:105-10-54(a)(3), 340:105-10-58, 340:105-10-59, and 340:105-10-60.

### 340:105-10-58. Outreach service eligibility

(a) **Policy.** All individuals age 60 years of age and older are eligible to receive outreach services. Special targeting objectives are developed to reach individuals:

- (1) residing in rural areas or isolated;
- (2) with greatest economic need, with particular attention to low income minority individuals;
- (3) with greatest social need, with particular attention to low income minority individuals;
- (4) with severe disabilities;
- (5) with limited English speaking ability;
- (6) with Alzheimer's disease or related disorders with neurological and organic brain dysfunction and the care-takers of such individuals;
- (7) at risk for institutional placement, such as unable to perform at least two activities of daily living without substantial assistance including verbal reminding, physical cuing, or supervision, specifically including Holocaust survivors;
- (8) living alone; and
- (89) with impairments in activities of daily living(ADLs), instrumental activities of daily living(IADLs), or both.

(b) **Authority.** The authority for this Section is Section 306(a)(4) of the Older Americans Act of 1965, as amended.

(c) **Cross references.** See OAC 340:105-10-50.1(a)(14), 340:105-10-51, 340:105-10-54(a)(3), 340:105-10-57, 340:105-10-59, and 340:105-10-60.

### 340:105-10-59. Outreach service assessment

(a) **Policy.** Outreach services are defined as a one contact intervention the agency or organization initiates with individuals for the purpose of identifying potential participants or their caregivers and encouraging their use of existing services and benefits. Each person/potential participant who desires/wants to receive outreach service/Older Americans Act services completes Form 02AG002E, Older Americans Act Assessment, Part I, Form 02AG002E/Title III Program Registration. The outreach specialist provides information about public and private non-Title III services, available assistance, provides the person information about the outreach services/services, and other Title III of the Older Americans Act (OAA) of 1965 services, and allows staff to obtain. The outreach specialist obtains necessary information to better serve the potential participant's needs/of the person as a service participant.

(b) **Procedures.** At the initial interview, the outreach specialist:

(1) ~~At the initial interview, the outreach worker~~ discusses all aspects of program participation, including the opportunity to contribute to ~~the cost of~~ outreach costs and other Title III services, as appropriate;

(2) ~~The outreach worker does not require written verification of any assessment information gathered to complete Form 02AG002E. Participant obtains the potential participant's assessment information~~includes:

- (A) name, address, and ~~telephone~~phone number;
- (B) age, sex, race, ethnicity, minority status, and date of birth with signature verification;
- (C) emergency contact's name, address, and ~~telephone~~phone number of emergency contact(s);
- (D) name, address, and telephone number of physician/household status, including whether the potential participant lives alone or with others;
- (E) special dietary needs, only when the potential participant is applying for congregate meals or home delivered meals services;
- (F) diagnosed medical conditions;
- (G) ~~current~~ medications;
- (H) accommodations required for disabilities;
- (I) transportation resources;
- (J) Title III services requested or needed;
- (K) reasons for requesting outreach or other Title III services;
- (L) need for additional community resources;
- (M) income sources. Income source information is not required to receive Older Americans Act Title III services and may only be used to assist the potential participant in determining eligibility for non-Title III programs with income guidelines; and
- (N) status related to poverty level.

(3) ~~The outreach worker or other appropriate project staff~~specialist conducts a face-to-face, person-centered re-



~~assessment~~ assessment interview with the potential participant. ~~Re assessments are required every six months for some Title III services, such as home delivered meals.~~

(c) **Authority.** The authority for this Section is Section 1321.11(a) of Title 45 of the Code of Federal Regulations.

(d) **Cross references.** See ~~OAC~~ Oklahoma Administrative Code 340:105-10-50.1(a)(14), 340:105-10-51, 340:105-10-54(a)(3), 340:105-10-57, 340:105-10-58, and 340:105-10-60.

**340:105-10-61. Information and assistance services**

(a) **Policy.** All ~~providers~~ providers of information and assistance (I & A) ~~services~~ providers comply with standards listed in Oklahoma Administrative Code (OAC) 340:105-10-50.1(a)(13), 340:105-10-51 and 340:105-10-61 through 340:105-10-63. I & A services for ~~older persons~~ older persons includes ~~services:~~

- (1) providing participants with current information on opportunities and services available within their communities, including information relating to assistive technology;
- (2) assessing the participant's problems and capacities;
- (3) linking ~~older persons~~ the participant to the available opportunities and services available within their communities; and
- (34) establishing adequate follow-up procedures, to the maximum extent practicable, ensuring participants receive the services needed and are aware of opportunities available; and
- (5) servicing the entire community of older individuals, particularly those:
  - (A) with greatest social need;
  - (B) with greatest economic need; and
  - (C) at risk for institutional placement.

(b) **Authority.** The authority for this Section is the Office of Management and Budget Notice of Action 0985-0008 and Section 102(29) of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The Area Agency on Aging implements this Section by:

- (1) incorporating the provisions in this Section into its Title III policies and procedures manual;
- (2) providing technical assistance to prospective service project applicants regarding the policy in ~~the~~ service development of services; and
- (3) utilizing the policy as an indicator in the evaluation of service project proposals.

(d) **Cross references.** See OAC 340:105-10-50.1(a)(13), 340:105-10-51, 340:105-10-54(a)(3), 340:105-10-62, and 340:105-10-63.

**340:105-10-70. Congregate meals service assessment**

(a) **Policy.** Each person who desires to participate in the congregate meals service must complete and sign ~~Form 02AG002E, Older Americans Act Assessment, Part I~~ Title III Program Registration, Form 02AG002E Title III Program Registration provides the ~~person~~ potential participant with service information about the service and allows staff to obtain

necessary information to better serve the potential participant's needs of the person as a service participant.

(b) **Procedure.**

(1) At the initial interview, the outreach ~~workers~~ specialist or site manager discusses all aspects of program participation, including the opportunity to contribute to ~~the~~ meal cost of meals and possible eligibility for home delivered meals.

(2) The outreach ~~workers~~ specialist or site manager assists the potential participant in completing ~~Form 02AG002E~~ Title III Program Registration. The project does not require ~~written~~ legal or formal verification of age eligibility unless project management has reasonable cause to question the accuracy of the potential participant's reported age ~~provided by the participant or the participant's representative on Form 02AG002E.~~ Participant Potential participant assessment information includes:

- (A) name, address, and ~~telephone~~ phone number;
- (B) age, sex, race, ethnicity, minority status, and date of birth, ~~and with~~ signature verification of date of birth;
- (C) emergency contact's name, address, and ~~telephone~~ phone number of emergency contact(s);
- (D) name, address, and telephone number of physician; the potential participant's household status, including whether he or she lives alone or lives with others;
- (E) special dietary needs;
- (F) ~~diagnosed medical conditions;~~
- (G) ~~current medications;~~
- (H) accommodations required for disabilities;
- (I) reasons for requesting congregate meals service;
- (J) transportation resources;
- (K) need for additional community resources;
- (L) income sources. Income source information is not required to receive Older Americans Act Title III services and may only be used to assist the potential participant in determining eligibility for programs with income guidelines; and
- (M) status related to poverty level.

(3) The project conducts a face-to-face ~~re-assessment~~ annual assessment interview with the participant. ~~Re assessments are required every six months for some Title III services, such as home delivered meals.~~

(c) **Authority.** The authority for this Section is Section 1321.11(a) of Title 45 of the Code of Federal Regulations.

(d) **Cross references.** See ~~OAC~~ Oklahoma Administrative Code 340:105-10-50.1(a)(7), 340:105-10-51, 340:105-10-68, 340:105-10-69, 340:105-10-71 through 340:105-10-80, and 340:105-10-86.

**340:105-10-71. Congregate meals service facilities**

(a) **Policy.** Each congregate meals service provider secures and maintains adequate facilities for the preparation and delivery of the meals service, nutrition education, and funded supportive services.

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(b) **Authority.** The authority for this Section is Section 307 and 331 of the Older Americans Act, Part 1321.11(a) of Title 45 of the Code of Federal Regulations, and Section 1247 of Title 21 of the Oklahoma Statutes, as amended (21 O.S. § 1247), and 21 O.S. § 1247 with 56 O.S. §163.1.

(c) **Procedures.**

(1) The grantee agency locates congregate meals service sites in areas accessible to the target group of eligible persons in a community and, where possible, within walking distance ~~for concentrations offrom where~~ such persons congregate.

(A) There is a minimum of at least one Title III congregate nutrition site per county at all times.

(B) When there is one Title III congregate nutrition site in a county, good-faith efforts are made to provide transportation assistance to potential participants from other parts of the county to that site, when feasible.

(2) The grantee agency arranges for all applicable health, fire, safety, and sanitation inspections for project offices and congregate meals sites in the manner described in (A) through (F) of this paragraph.

(A) The fire and safety inspections are conducted annually by local fire officials or ~~other—another~~ designated local official in the absence of a local fire marshal using established local standards.

(B) In the absence of local standards, standards developed and adopted by Oklahoma Human Services (~~OKDHS~~), with the cooperation of the ~~State Fire Marshal~~ state fire marshal and the Oklahoma State Department of Health, are applicable.

(C) Standards are based ~~upon the on the site's~~ use and occupancy ~~of the site~~ by Title III funded projects and are adequate to protect the health and safety of participants.

(D) County health department sanitation inspections are completed at least annually.

(E) All inspection reports are on file with the grantee agency.

(F) The grantee agency responds, as directed by the inspecting agency, to all cited deficiencies.

(3) The Area Agency on Aging annually conducts evaluations for Americans with Disabilities Act (~~ADA~~) compliance at all project offices and congregate meals sites. The grantee agency ensures that project facilities comply with 21 O.S. § 1247, as amended, that mandates all public facilities be smoke free and posts such designation as required by law.

(4) The project ~~arranges for the separation of~~ separates dining and food preparation areas at sites where food is prepared and served in the same facility.

(5) Where feasible, the project provides ample space and time for the provision of supportive services, per Oklahoma Administrative Code (OAC) 340:105-10-54.

(6) The project provides appropriate furnishings for older persons, including sturdy tables and chairs, and arranges the furnishings to provide adequate aisle space for

persons using mobility aids, such as walkers and wheelchairs.

(7) The project provides table settings that are approved by the project advisory council. When disposable dinnerware is used, it is sturdy to prevent spillage, leakage, and breakage.

(8) The project posts, in conspicuous locations, information regarding:

(A) ~~the participants' rights of eligible persons~~ right to equal opportunity and equal access to services;

(B) ~~the meal's full cost of the meal to be paid by~~ ineligible persons pay, such as visitors younger than 60 years of age, who are served meals;

(C) ~~the suggested participant contribution for eligible participants toward the meal's cost of the meal,~~ as ~~determined by~~ the project or site advisory council determines. All participant contributions are for the meal cost of the meal and are not solicited for other items, such as utilities and coffee;

(D) menus for a minimum of one week in advance;

(E) participant grievance procedures ~~for participants~~;

(F) an evacuation plan;

(G) a toll free information and assistance phone number;

(H) a current health inspection certificate from the local health department;

(I) a Smoke Free Facility sign;

(J) a summary of the site or project, if applicable; and

(K) an emergency management plan including at minimum, the location of the nearest emergency shelter(s) available to participants.

(d) **Cross references.** Refer to OAC 340:105-10-50.1(a)(7), 340:105-10-51, 340:105-10-54, 340:105-10-68 through 340:105-10-70, 340:105-10-72 through 340:105-10-80, and 340:105-10-86.

### **340:105-10-72. Congregate meals project staffing requirements**

(a) **Policy.** Each congregate meals project maintains sufficient staff to carry out the required service activities.

(b) **Authority.** The authority for this Section is Section 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The congregate meals project ~~is required to comply with~~ guidelines in (1) through (4) of this subsection.

(1) ~~employ a~~ A full-time director is employed who is empowered with authority to conduct the project's daily management and administrative functions ~~of the project~~;

(2) ~~obtain the~~ The project obtains nutrition consultation services ~~offrom~~ a licensed registered dietitian (RD) as either an employee or independent consultant, unless provided by the ~~area agency on aging~~ Area Agency on Aging (AAA) or through a statewide contract.

(A) A paid caterer or certified dietary manager is not acceptable in this position. If obtaining the

services of a licensed RD consultant exceeds three months, the nutrition project or AAA:

- (i) provides documentation of hiring efforts in the form of newspaper advertisements and job announcements to Aging Services Division (ASD) Community Living, Aging and Protective Services (CAP);
  - (ii) requests in writing a temporary waiver for an additional time period ~~of time~~, not to exceed three months; and
  - (iii) submits a revised budget reflecting the re-allocation of funds not used while the position was vacant.
- (B) ~~The AAA shall notify~~notifies ~~ASDCAP~~ contract monitor(s) within 72 hours following the loss of RD services by project or AAA.
- (C) The state RD ~~shall be~~ is contacted to approve menu substitutions in the absence of an RD.
- (D) The RD verifies by signature on ~~Form 02AG025E~~the Dietary Consultant's Report, performance of ~~the~~ required consultation activities, including:
- (i) limiting site visits to one per day per RD;
  - (ii) visiting each site at least every other month for a minimum total of six site visits per year;
  - (iii) monitoring food service to include, including food temperature and portion measurement of food temperatures and portion sizes, and assessment of assessing food quality and adherence to contract specifications;
  - (iv) training staff and volunteers in areas of food service management, nutrition, food safety, and sanitation;
  - (v) assessing participant satisfaction and preferences;
  - (vi) reviewing menu and commodity utilization;
  - (vii) approving and coordinating monthly nutrition education programs;
  - (viii) monitoring perpetual inventory;
  - (ix) documenting site recommendations for improvement;
  - (x) documenting on the ~~date of the~~ site visit date the number of:
    - (I) reservations;
    - (II) meals prepared;
    - (III) meals served;
    - (IV) ~~leftovers~~full meals leftover; and
    - (V) menu substitutions; and
  - (xi) providing individual consultation, nutrition counseling for participants whose nutritional total nutrition score on Form 02AG002E, Part I, Older Americans Act Assessment, page 4, Determine your nutritional health, the Title III Program Registration form is six or more to:
    - (I) Counseling for congregate meals participants, ~~upon~~ is provided with the participant's

approval, and may be provided for home delivered meals participants where feasible.

- (II) Counseling~~homebound meal participants~~may be provided upon participant request where feasible, ~~and upon participant's approval.~~
  - (3) ~~providing a~~ nutrition project consultation is provided at least quarterly that includes:
    - (A) assessing food preferences;
    - (B) preparing menus and documenting nutrition analysis to meet one third recommended dietary allowance for each meal; ~~and.~~
  - (4) ~~determining~~Determine appropriate staffing patterns for each meal site in the project service area. AAAs are the final authority on appropriate staffing patterns in the Title III projects.
  - (d) **Cross references.** See Oklahoma Administrative Code OAC 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-71, 340:105-10-73 through 340:105-10-80, and 340:105-10-86.
- 340:105-10-75. Congregate meals planning**
- (a) **Policy.** The congregate meals project conducts appropriate meal planning for the congregate meals service and consults with ~~the consultation of~~ persons competent in the fields of nutrition, food service, and the needs of older persons.
  - (b) **Authority.** The authority for this Section is Section 339 of the Older Americans Act of 1965, as Amended and Section 1321.11 of Title 45 of the Code of Federal Regulations.
  - (c) **Procedures. Menus:**
    - (1) ~~are prepared or approved by a~~ registered dietitian (RD) prepares and approves congregate meals project menus who and considers the project participants' special needs ~~of older persons when doing so~~. The RD ensures each meal served contains at least:
      - (A) one-third of the dietary reference intakes as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences; and
      - (B) 600 or more calories. The recommended level is 750 to 850 calories;.
    - (2) Menus are planned on a three or six month basis with a minimum four-week cycle with seasonal changes based on either meal pattern plan portions or weekly average nutritional analysis. ~~Nutritional adequacy is documented with computer analysis and meal pattern by the~~ The RD reviews menus for minimum nutrient or meal pattern standards, depending on the chosen menu plan option. Only one method of meal plan option is accepted per three or six-month period.
      - (A) Maintenance of Project participants' optimal nutritional status is maintained through menu planning is reflected in menus that have moderate in fat, salt, and simple sugars—sugar levels and are high in fiber.
      - (B) ~~Form 02AG018E, The Project Menu Plan - Nutrition Program for the Elderly,~~ is submitted quarterly to the ~~area agency on aging~~Area Agency on Aging

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- (AAA) and is available to the Community Living, Aging and Protective Services (AS)(CAP) RD for ~~random~~ review upon request;
- (3) ~~are signed by the~~ The RD signs menus and posts them at the nutrition site;
- (4) Menus reflect:
- (A) ~~to the maximum extent practicable,~~ special diets to meet the participants' medical needs of ~~eligible participants.~~ When special diets are provided to meet ~~the medical needs of eligible participants:~~
- (i) a valid written physician's order is on file for each participant receiving a special diet. The physician's order indicates whether the participant is restricted to the special diet and the duration of the special diet. If the participant is consuming a liquid supplement in addition to a meal, the supplement is not reimbursed through the Nutrition Services Incentive Program as a separate meal; and
- (ii) special diets are planned and prepared under ~~the RD supervision of the RD;~~ and
- (B) where feasible, religious, ethnic, cultural, or regional dietary requirements or preferences of a major portion of the group of participants at a congregate meals site;
- (5) Meals are served as per the planned menu unless the RD reviews and approves an appropriate substitution before meals are served. A complete menu move from one day to another in the same calendar week does not constitute a substitution. When substitutions are made, the project maintains and submits to ASCAP at the end of each month the:
- (A) substitution date of substitution;
- (B) original menu item(s); ~~and~~
- (C) substituted menu item(s); and
- (D) method of RD confirmation. Confirmation is accepted by phone, in-person signature, or email.
- (6) Menus are based on accurate production forecasting that does not include a margin for oversized portions or second servings/helpings. Leftover Staff, participants, and volunteers do not take leftover foods are not taken from the kitchen by staff, participants, or volunteers; however, food already on the line or steam table is offered as second helpings to participants on clean trays. Participants may take the remainder of their non-meals from the dining site in their own containers;
- (7) Servings of milk are included on menus and the serving size is one-half pint equivalent of fortified whole, skim, or low fat milk or buttermilk. A variety of milks are provided where feasible.
- (8) Menus may include, where feasible, provisions for the celebration of to celebrate special occasions for participants, such as birthdays and holidays; and.
- (8) ~~allow for food~~ Food items within the meat, vegetable and fruit, bread, and dessert groups are allowed to vary for the same days of the week, from week-to-week, ~~in order~~ to provide a variety of foods and nutrients.
- (d) **Cross references.** Refer to Oklahoma Administrative Code 340:105-10-50.1(a)(4) and (7), 340:105-10-51,

340:105-10-68 through 340:105-10-74, 340:105-10-76 through 340:105-10-80, and 340:105-10-86.

### 340:105-10-79. Nutrition Services Incentive Program (NSIP)

- (a) **Policy.** NSIP rewards, through cash or commodities, ~~the effective performance of Title III-C nutrition projects in the efficient delivery of~~ efficiently delivering nutritious meals to ~~older persons participants.~~ Title III-C nutrition projects maintain certification of eligible participants for NSIP.
- (b) **Authority.** The authority for this Section is Section 311 of the Older Americans Act of 1965, as amended.
- (c) **Procedures.** The requirements for implementing this Section are outlined in this subsection. ~~Projects:~~
- (1) Projects and their respective vendors apply to the appropriate state distributing agency for certification as eligible participants in NSIP;
- (2) ~~and vendors~~ Vendors and projects accept, store, and use donated food commodities as supplied to them. Donated commodities, and cash in lieu of commodities, ~~may be~~ are only be used in the meal preparation of meals funded through Title III-C.
- (A) Vendors allow credit for the amount of commodities used during each billing period.
- (B) ~~The amount of credit per pound is determined by~~ Community Living, Aging and Protective Services Division (ASD)(CAP) and Support Services Division Commodity Distribution Unit (CDU) of the Oklahoma Department of Human Services (OKDHS) determines the amount of credit per pound;
- (3) ~~develop~~ Projects develop management procedures pertaining to handling food commodities;
- (4) ~~document~~ Documenting recruitments include:
- (A) NSIP foods utilized in each day's menu;
- (B) participant eligibility, on required State Agency OKDHS forms, to obtain NSIP support for eligible meals. Eligible meals are those meals served to eligible participants ~~in accordance with,~~ per Oklahoma Administrative Code (OAC) 340:105-10-69(a)(1) and 340:105-10-83(a). The participant's eligibility and meal reimbursement documentation is recorded on:
- (i) Title III Program Registration Form 02AG002E, Older Americans Act Assessment, Part I;
- (ii) Form 02AG016E, Nutrition Project Attendance Form; or comparable ASD-CAP pre-approved form; and
- (iii) Activity Roster activity roster generated by the Advanced Information Manager (AIM) program current nutritional participants in the database;
- (C) the number of meals served at nutrition sites entered into the database:
- (i) The number of meals served is reported on Form 02AG019E, Number of Meals Served.
- (ii) Form 02AG019E, and with all required documentation, ~~is submitted to ASD~~ no later than

the ~~tenth~~<sup>fifteenth</sup> day of the month following the report month; and

(D) age eligibility, only when project management has reasonable cause to question the accuracy of age ~~provided by~~ the participant or the participant's representative provides on Title III Program Registration Form 02AG002E; and

(5) ~~receive~~<sup>CAP provides</sup> projects with NSIP cash or cash and commodity allocations of food commodities ~~from ASD~~ based on the number of eligible meals actually served in the previous year in relationship to the total number of meals actually served by all Title III-C projects. ~~Commodities are distributed~~<sup>OKDHS CDU distributes commodities to the projects by OKDHS CDU.</sup>

(d) **Cross references.** See OAC 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-78, and 340:105-10-80.

**340:105-10-80. Supportive social services for nutrition projects**

(a) **Policy.** Each nutrition project provides all supportive services feasible within the project's resources but must include, at a minimum, ~~outreach services and~~ nutrition education for each nutrition site. Other services that may be provided are transportation, health screenings, consumer education, benefits counseling, recreation, and similar services. The project refers participants to other community services, as appropriate.

(b) **Authority.** The authority for this Section is Sections 305(2)(F), 307(a)(16), and 321(a), of the Older Americans Act of 1965, as amended.

(c) **Cross references.** See ~~OAC~~<sup>Oklahoma Administrative Code</sup> 340:105-10-50.1(a)(4) and (7), 340:105-10-51, and 340:105-10-68 through 340:105-10-79.

**340:105-10-82. Home delivered meals service standards**

(a) **Policy.** The home delivered meals service includes ~~the provision of providing~~ at least one hot or other appropriate meal to eligible homebound persons in their own home five or more days per week. ~~except~~<sup>Possible exceptions in rural areas where such frequency is not feasible, as are defined by the Assistant Secretary for Aging of the Administration for Community Living on Aging by regulation, and Oklahoma Human Services approves a lesser frequency is approved by the State Agency.</sup> All home delivered meals service providers of home delivered meals service must comply with applicable standards outlined in Oklahoma Administrative Code (OAC) 340:105-10-51, 340:105-10-68, and 340:105-10-74 through 340:105-10-79.

(b) **Authority.** The authority for this Section is Section 336 of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The procedures for implementing this Section include the Area Agency on Aging:

- (1) incorporating the provisions in this Section into the Title III policies and procedures manual;
- (2) providing orientation on the policy to home delivered meals service staff;
- (3) monitoring compliance with the policy; and

(4) providing ongoing technical assistance to Title III projects regarding the policy.

(d) **Cross references.** See OAC 340:105-10-50.1(a)(4), 340:105-10-51, 340:105-10-68, 340:105-10-70, 340:105-10-74 through 340:105-10-79, and 340:105-10-83 through 340:105-10-86.

**340:105-10-83. Home delivered meals service eligibility**

(a) **Policy.** The Area Agency on Aging (AAA) establishes eligibility requirements for home delivered meals participants which include, at a minimum:

(1) persons age 60 years or older who ~~are disabled~~<sup>have a disability, are homebound, and who have no one available to provide meal preparation assistance with meal preparation.</sup> Homebound means a person is unable to leave home without ~~the~~<sup>another person's</sup> assistance ~~of another person;~~

(2) ~~disabled~~<sup>persons with a disability who are</sup> under age 60 years of age who and reside with eligible participants; and

(3) spouses of home delivered meals participants ~~if when,~~ according to AAA criteria, receipt of the meals is in the best interest of ~~the~~ participants.

(b) **Authority.** The authority for this Section is Title 45 of the Code of Federal Regulations, Part 1321.11.

(c) **Cross references.** See ~~OAC~~<sup>Oklahoma Administrative Code</sup> 340:105-10-50.1(a)(4), 340:105-10-51, 340:105-10-68, 340:105-10-70, 340:105-10-74 through 340:105-10-79, 340:105-10-82, and 340:105-10-84 through 340:105-10-86.

**340:105-10-90.1. National Family Caregiver Support Program**

(a) **Policy.** The Area Agency on Aging (AAA) awards grants to entities to provide support services, including information and assistance, counseling, support groups, respite, and other home—and community—based services to families caring for their frail older members. The National Family Caregiver Support Program (NFCSP) also recognizes the needs of a grandparent ~~or,~~ step-grandparent, or other older person who is a relative caregiver of a child or ~~other older person who is a relative caregiver of a child who is not more than 18 years of age or who is a person with a disability.~~ NFCSP services include:

- (1) ~~information to caregivers about available services;~~<sup>caregiver assistance: case management;</sup>
- (2) ~~assistance to caregivers in gaining access to services;~~<sup>caregiver assistance: information and assistance;</sup>
- (3) ~~individual counseling, organization of support groups, and training to assist caregivers in areas related to their caregiver roles of;~~<sup>counseling;</sup>

- (A) health;
- (B) nutrition;
- (C) financial literacy;
- (D) decision making; and
- (E) problem solving;

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- (4) ~~respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and information services;~~
- (5) ~~supplemental services, on a limited basis, to complement the care provided by caregivers. respite care, including:~~
- (A) ~~in-home respite;~~
  - (B) ~~out-of-home respite; and~~
  - (C) ~~out-of-home overnight respite;~~
- (6) ~~supplemental services;~~
- (7) ~~support groups; and~~
- (8) ~~training.~~
- (b) **Authority.** ~~The authority for this Section is the Office of Management and Budget Notice of Action 0985 0008 and Public Law 109 365, Grants for State and Community Programs on Aging Sections 371 through 374 of the Older Americans Act of 1965, as amended.~~
- (c) **Procedures.** ~~The AAA requirements for implementing this Section are outlined in (1) through (9) of this subsection. The AAA:~~
- (1) ~~incorporates the provisions~~ Provisions of this Section are incorporated into the Title III policies and procedures manual;₂
  - (2) ~~provides technical~~ Technical assistance is provided to prospective and funded Title III projects regarding this rule;₂
  - (3) AAA monitors Title III project compliance according to Oklahoma Administrative Code (OAC) 340:105-10-43, except on specific projects where ~~the State Agency~~ Oklahoma Human Services has agreed with the AAA to provide a direct service or a direct service waiver and in that case monitoring the AAA is not required to monitor compliance. The project:
    - (A) gathers information on an approved intake form, including, at a minimum:
      - (i) the family caregiver's identifying information;
      - (ii) the caregiver's relationship to the care receiver;
      - (iii) the care receiver's identifying information; and
      - (iv) a written description of the caregiver's current situation, including the care receiver's need for assistance due to inability to perform specific activities of daily living (ADLs) or need for supervision due to Alzheimer's disease or other neurological and organic brain dysfunction or disability;
    - (B) conducts a reassessment of NFCSP service recipients annually, at a minimum, to evaluate service provision and update participant status;
    - (C) ensures ~~the participant~~ participant safety and protection ~~of the participants;~~ and
    - (D) receives in-service training each fiscal year specifically designed to increase the project's knowledge and understanding of the programs and participants served;₂

- (4) ~~targets services~~ Services are targeted to caregivers who are older persons in greatest social and economic need, giving priority is given to:
- (A) family caregivers providing care for persons with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and
  - (B) grandparents or older persons who are relative caregivers providing care for a person or child with a severe disability;₂
- (5) ~~may provide support~~ Support services may be provided to caregivers providing care for frail older family members who are 60 years or older and unable to perform at least two ADLs without substantial human assistance or require substantial supervision due to a cognitive or other mental impairment. ADLs include:
- (A) dressing;
  - (B) bathing;
  - (C) eating;
  - (D) transferring;
  - (E) toileting; and
  - (F) walking;₂
- (6) ~~may provide support~~ Support services may be provided on a limited basis to grandparents and older persons who are relative caregivers of a child who is 18 years of age or younger.
- (A) Child means a person who is not older than 18 years of age or who is a person with a disability.
  - (B) Grandparent or older person who is a relative caregiver means a grandparent or step-grandparent of a child, or a relative of a child by blood, marriage, or adoption who is 55 years of age or older and:
    - (i) lives with the child;
    - (ii) is the child's primary caregiver ~~of the child~~ because the biological or adoptive parents are unable or unwilling to serve as the child's primary caregiver ~~of the child;~~ and
    - (iii) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally;₂
- (7) AAA ensures the cost of carrying out the program meets the requirement of a minimum non-federal share of 25 percent. The non-federal share is provided from state and local sources;₂
- (8) ~~may not use funds~~ Funds are not used to supplant, replace, or ~~in substitution for~~ substitute, any funds expended under any federal, state, or local law for the same purposes, such as Medicaid ADvantage program, Lifespan Respite, DDS respite program; and
- (9) AAA considers awarding funds to expand successful caregiver activities currently in communities, such as respite providers, support groups, outreach, information and assistance, adult day services, counseling, and case management.
- (d) **Cross references.** See ~~OAC~~ Oklahoma Administrative Code 340:105-10-37, 340:105-10-38, 340:105-10-40, 340:105-10-41, 340:105-10-43, 340:105-10-44, and ~~340:105-10-50.1(a)(15)(F)~~ 340:105-10-50.1(a)(17).

**340:105-10-91. Homemaker service standards**

(a) **Policy.** The homemaker service provides assistance to persons 60 years of age or older with:

- (1) preparing a meal;
- (2) shopping for personal items;
- (3) ~~managing money;~~
- (4) using the telephone; or
- (5) doing light housework, which is limited to:
  - (A) dusting;
  - (B) vacuuming;
  - (C) mopping floors;
  - (D) cleaning bathroom and kitchen;
  - (E) making beds; and
  - (F) maintaining safe environment.

(b) **Authority.** The authority for this Section is the Federal Register Office of Management and Budget Notice of Action 0985-0008 and Section 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing the homemaker service standards are outlined in this subsection.

- (1) The Area Agency on Aging (AAA):
  - (A) incorporates the homemaker service standards into the Title III policies and procedures manual;
  - (B) provides technical assistance to homemaker service providers regarding the standards; and
  - (C) utilizes the standards as an indicator in ~~the service provider proposal evaluation of service provider proposals~~ and in the assessment of funded projects.
- (2) The service provider:
  - (A) verifies, by completing ~~Forms 02AG002E and 02AG003E, Older Americans Act Assessment, Parts I and II~~ Title III Program Registration, participants who receive homemaker services have:
    - (i) functional, physical, or mental impairments, or limitations preventing them from providing the service for themselves; and
    - (ii) an unavailable or insufficient informal support network, for example, family, friends, or neighbors, capable of meeting their needs;
  - (B) initiates a written service plan for each participant based on ~~the~~ Title III Program Registration result of ~~Form 02AG002E~~;
  - (C) ensures all staff ~~persons receive~~ receives in-service training at least twice each fiscal year specifically designed to increase their knowledge and understanding of the program and participants and to improve their skills at service provision tasks performed in the provision of service. Comprehensive records identifying dates of training and topics covered are maintained in each employee's personnel file. An individualized in-service training plan is developed for each staff ~~person~~, when performance evaluations indicate a need;
  - (D) conducts home visits to each participant at least twice each fiscal year to evaluate service provision; and
  - (E) checks references on all homemakers.

(d) **Cross references.** See ~~OAC~~ Oklahoma Administrative Code 340:105-10-50.1(a)(2), and 340:105-10-51.

**340:105-10-92. Chore service standards**

(a) **Policy.** The chore service provides assistance to persons 60 years of age or older who have difficulty with one or more of the instrumental activities of daily living (IADL), which are: heavy housework, yard work, or sidewalk maintenance.

(b) **Authority.** The authority for this Section is Section 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.**

- (1) **Service provider.** The service provider:
  - (A) verifies ~~that~~ the participant receiving chore service has a functional, physical, or mental impairment that prevents the participant from providing the ~~service~~ IADL for his or her self, and that an informal support network, for example, family, friends, or neighbors capable of meeting the participant's needs, is unavailable or insufficient. This information is verified by ~~the completion of Forms 02AG002E and 02AG003E, Older Americans Act Assessment, Parts I and II~~ completing Title III Program Registration;
  - (B) initiates a written service plan for each participant based on the results of ~~Form 02AG002E~~ Title III Program Registration;
  - (C) conducts home visits to each participant at least twice each fiscal year to evaluate service provision;
  - (D) ensures ~~the participant~~ participant safety and protection ~~of the participant~~ at all times in the chore service provision of chore services, for example, not spraying chemicals around a participant who has breathing problems;
  - (E) may use up to \$150 per participant annually from funds awarded for the chore service program to purchase materials and disposable supplies for completion of chore tasks;
  - (F) ensures all staff ~~persons receive~~ receives in-service training at least twice each fiscal year ~~that is~~ specifically designed to increase their knowledge and understanding of the program and participants and improve their skills at service provision tasks performed in the provision of service.
    - (i) Comprehensive records identifying dates of training and topics covered are maintained in each staff person's personnel file.
    - (ii) An individualized in-service training plan is developed for each staff ~~person~~—when performance evaluations indicate a need; and
  - (G) checks references on all chore service staff ~~persons~~.
- (2) **Area Agency on Aging (AAA).** The AAA:
  - (A) incorporates the chore service standards into the AAA Title III policies and procedures manual;
  - (B) provides technical assistance to chore service providers regarding the standards; and
  - (C) uses the standards as an indicator in the service provider proposal evaluation of ~~service provider proposals~~ and in the assessment of funded projects.

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(d) **Cross references.** See ~~OAC~~Oklahoma Administrative Code 340:105-10-50.1(a)(3) and 340:105-10-51.

## 340:105-10-93. Personal care service standards

(a) **Policy.** The personal care service provides hands on assistance, stand by assistance, supervision, or cues for persons 60 years of age or older who have difficulties with one or more ~~of the~~ activities of daily living, which ~~are~~include eating, dressing, grooming, bathing, toileting, and mobility, including walking, using a wheelchair, or transferring from one place to another. Personal care services may only be provided by licensed home health care agencies or otherwise licensed or certified health agencies.

(b) **Authority.** The authority for this Section is Section 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.**

(1) **Personal care service provider.** The personal care service provider:

(A) verifies that the participant receiving personal care service has a functional, physical, or mental impairment ~~that prevents~~preventing the participant from providing the service for his or her self, and that an informal support network, for example, family, friends, or neighbors capable of meeting the participant's needs, is unavailable or insufficient. This information is verified by ~~the completion of Forms 02AG002E and 02AG003E, Older Americans Act Assessment, Parts I and II~~completing Title III Program Registration; and

(B) initiates a written service plan for each participant based on the results of ~~Form 02AG002E~~Title III Program Registration.

(2) **Area agency on aging (AAA).** The AAA:

(A) incorporates the personal care standards into the AAA Title III policies and procedures manual;

(B) provides technical assistance to personal care service providers regarding the standards; and

(C) uses the standards as an indicator in the service provider proposal evaluation of service provider proposals and in the funded projects assessment of funded projects.

(d) **Cross references.** See ~~OAC~~Oklahoma Administrative Code 340:105-10-50.1(a)(1) and 340:105-10-51.

## PART 9. FISCAL AND ADMINISTRATIVE POLICIES FOR AREA AGENCIES ON AGING AND TITLE III PROJECTS

### 340:105-10-101. Request for proposal procedures

(a) **Policy.** All Older Americans Act pass through funds are awarded in an open, competitive, and fair manner via the request for proposal (RFP) process. Awards are made to applicants whose proposals include all components of the service(s) outlined in the RFP and who best meet ~~the~~RFP specifications of ~~the RFP~~.

(1) The Area Agency on Aging (AAA) board of directors:

(A) is directly responsible for reviewing proposals and awarding funds. This responsibility may not be delegated;

(B) may not award funds to the AAA or to another subdivision of the sponsoring agency under the auspices of the same board of directors; and

(C) may not award funds to board members or ~~the~~ agencies or organizations they represent.

(2) Awarding funds through the RFP process during the plan year is required when:

(A) funds are allocated to the AAA at the beginning of the fiscal year;

(B) there is significant expansion of a service(s) already funded;

(C) funding a new service(s); or

(D) funding of an existing service is transferred from a defunct or terminated grantee.

(b) **Authority.** The authority for this Section is Section 1321.11 of Title 45 of the Code of Federal Regulations and Section 212(b)(1) of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection.

(1) To initiate RFP, the AAA:

(A) develops specifications for each service to be procured ~~that~~ clearly definedefining the service and how units of service are measured. The specifications include the minimum units of services to be provided, the minimum unduplicated number to be served, if required, and geographic service areas as appropriate;

(B) develops an RFP guide and grant application package;

(C) announces ~~the funding~~ availability of ~~funds~~ and documents the announcement in newspapers or approved electronic formats in the planning and service area (PSA), and concurrently sends a news release to the editor of at least three newspapers and to existing and potential service providers known to the AAA in the PSA.

(i) The announcement runs at least two times in daily papers or two weeks in weekly papers prior to ~~the closing of~~ the application period and in a sufficient number of papers to ensure complete coverage within the PSA.

(ii) The announcement begins at least 21-calendar days prior to ~~the closing of~~ the application period and is repeated at least once no less than five-calendar days prior to the date of the proposers' conference.

(iii) All announcements include:

(I) a listing of services funding is available for ~~which funding is available~~ and the geographic areas that ~~must be~~are covered for each service;

(II) the address ~~at which~~where service specifications and the proposal guide may be obtained;



- (III) the closing date and time for application submittal;
  - (IV) the name and ~~telephone~~ number of a person to contact for additional information; and
  - (V) the date, time, and location of the proposers' conference, and notification that attendance at the conference is required ~~in order~~ to be considered for funding; and
  - (D) mails copies of the RFP guide upon request;
  - (E) conducts a conference for proposers prior to the deadline for submitting applications and requires applicants to attend the conference ~~in order~~ to be considered for funding. At a minimum, the information discussed during the conference includes:
    - (i) the RFP guide and all requirements pertaining to submitting an application; and
    - (ii) all responsibilities associated with ~~the acceptance of~~ accepting Title III funds, including applicable federal and state statute, policy, certifications, and assurances;
  - (F) provides other reasonable technical assistance to applicants who request assistance, in writing, no later than seven calendar days prior to the application period closing ~~of the application period~~;
  - (G) informs ~~the State Agency~~ Oklahoma Human Services Aging Services (OKDHS) Community Living, Aging and Protective Services (CAP) following ~~the close of the proposers' conference if~~ closing when there are no applicants for a service; and
  - (H) at the close of the application period, evaluates and rates all proposals according to standard criteria based on requirements of the RFP guide. The AAA disqualifies incomplete proposals from evaluation and funding.
- (2) The AAA advisory council reviews the proposals and makes recommendations on funding to the AAA board of directors. All decisions related to funding recommendations are conducted in accordance with applicable state and federal conflict of interest laws. The advisory council review is conducted during a scheduled meeting with a quorum present.
- (3) The AAA board of directors:
- (A) or a subcommittee of the board, reviews all proposals and the recommendations of the AAA staff and advisory council;
  - (B) approves funding of ~~not for profit~~ proposals that best meet or exceed the service specifications and the requirements of the RFP guide. ~~The State Agency shall review and approve all profit making proposals.~~ All decisions related to granting awards are made in accordance with applicable state and federal conflict of interest laws, and documented through signed resolutions and meeting minutes ~~of meetings~~. All decisions are acted on as a board with at least a quorum present at a meeting. The AAA board of directors may not delegate its responsibilities related to granting awards;

- (C) issues notification of grant awards (NGAs) to ~~not for profit~~ applicants who are approved for funding ~~and to profit making applicants with State Agency approval~~; and
  - (D) provides an opportunity for ~~appeal to~~ applicants ~~whose to appeal denied~~ proposals for funding ~~are denied~~, per Oklahoma Administrative Code (OAC) 340:105-10-102.
- (4) ~~If~~ When no complete proposals are submitted for a service(s) or ~~if~~ when the AAA board of directors determines that no proposals for a service(s) meet the specifications of the RFP, the AAA, with ~~State Agency~~ OKDHS CAP approval, has the option of:
- (A) reprogramming the funds and issuing a new RFP for a different service(s); or
  - (B) requesting authority to provide a direct service as provided in OAC 340:105-10-41; or
  - (C) revising the initial specifications for the same service(s) and reissuing a new RFP; and
  - (D) initiating community development activities to create a potential service provider of the service(s) as specified in the RFP and, in the interim, requesting approval from ~~the State Agency~~ OKDHS CAP to temporarily provide the service as a direct service.
- (5) When an Older Americans Act Title III funded project elects to voluntarily terminate the contract before the end of a grant year, procedures must be followed as outlined on ~~Form 02AG006E~~, the Voluntary Withdrawal of Title III Project. ~~Form 02AG006E~~ The Voluntary Withdrawal of Title III Project must be acknowledged, signed, and included as part of the original grant application.
- (d) **Cross references.** See OAC 340:105-10-40, 340:105-10-102, and 340:105-10-104(c)(7).

*[OAR Docket #22-550; filed 7-5-22]*

**TITLE 365. INSURANCE DEPARTMENT  
CHAPTER 1. ADMINISTRATIVE  
OPERATIONS**

*[OAR Docket #22-497]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 365:1-1-2. Office of the Insurance Commissioner [AMENDED]
- 365:1-1-3. Duties of Insurance Commissioner [AMENDED]
- 365-1-1-4. Requests for information [AMENDED]

**AUTHORITY:**

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. § 358

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

November 8, 2021

**COMMENT PERIOD:**

December 2, 2021 through January 5, 2022

**PUBLIC HEARING:**

January 5, 2022

**ADOPTION:**

March 3, 2022

# Permanent Final Adoptions

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 7, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The adopted rule changes are updates that reflect relevant statutes falling under the jurisdiction of the Commissioner and the Department. They also update the Department's process for open records requests and remove unnecessary regulations in accordance with the Governors EO 2020-03.

## CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, OID, 400 NE 50<sup>th</sup> Street, Oklahoma City, OK 73105, (405) 521-6616, Ashley.Scott@oid.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 365:1-1-2. ~~Office of the Oklahoma Insurance Commissioner~~ Department

The office ~~of the Oklahoma Insurance Commissioner~~ Department is composed of the Insurance Commissioner and such employees as are required and provided for by law. The Insurance Commissioner exercises executive and administrative supervision over the ~~Office of the Oklahoma Insurance Commissioner~~ Department.

(1) ~~General description of organization.~~ The office ~~of the Oklahoma Insurance Commissioner~~ Department is divided and organized into divisions as established by law or by the Insurance Commissioner to achieve the mission of the Oklahoma Insurance Department. Information regarding the organization of the Oklahoma Insurance Department and its divisions and services to the State is available on the Department's website.

(2) ~~Administrative Services Division.~~ The Administrative Services Division is responsible for various administrative services as directed by the Insurance Commissioner including personnel, mail, and file maintenance.

(3) ~~Licensing Division.~~ The Licensing Division is responsible for determining whether applicants for bail bond licenses, insurance producers, limited lines producers, insurance adjusters, life, accident and health insurance brokers and insurance consultants licenses meet the qualifications set forth in the statutes of the State of Oklahoma and is also responsible for administering the examinations given as required to applicants and for issuing renewal licenses. The Licensing Division is also responsible for monitoring continuing education requirements.

(4) ~~Bail Bond Division.~~ The Bail Bond Division is responsible for processing of monthly reports for each type of license held by bondsmen, collection of 2/10 of 1% fee of new liability written monthly, enforce statutory deposit requirements of professional bondsmen and initial investigation of complaints regarding possible violation of statutes.

(5) ~~Consumer Assistance and Claims Division.~~ The Consumer Assistance and Claims Division processes and investigates all complaints lodged against insurance companies and other persons/entities by the public. Further, this division answers all routine requests for information concerning insurance companies and insurance policies.

(6) ~~Comptroller Division.~~ The Comptroller Division is composed of the Comptroller and necessary assistants and is responsible for the internal fiscal affairs of the office, including preparation of payroll, purchase of equipment, approval of all travel claims made by staff and keeping of all fiscal records required by law.

(7) ~~Communications.~~ The Communications Division is responsible for maintaining and furthering internal and external communications. Among the duties performed in this division are development and management of the Insurance Department website, writing and facilitating news releases, responding to media inquiries, assembling materials to be distributed during public events, production of consumer assistance and awareness events, designing publications for producers and consumers, and any other communications related duties as needed.

(8) ~~Executive Division.~~ The Executive Division, composed of the Insurance Commissioner and necessary assistants, is charged with general supervision of all activities of the office including personnel and internal organization.

(9) ~~Financial and Examination Division.~~ The Financial and Examination Division is responsible for determining whether insurance companies and other persons/entities applying for admission to do business in the State of Oklahoma meet the qualifications for admittance as set forth in the statutes of the State of Oklahoma. This division, through outside contract examiners, is responsible for conducting the statutory examination of all domestic and foreign insurance companies and other persons/entities and collects all premium taxes and statutory fees due the State. This division is also responsible for the review and analysis of all annual and quarterly financial statements of insurance companies as required by the statutes of the State of Oklahoma.

(10) ~~Information Technology Division.~~ The Information Technology Division is responsible for providing all internal data processing services to the other divisions of the Insurance Department. Further, this division provides the public with both summaries and detailed information on many of the records maintained by the Insurance Department.

(11) ~~Legal and Investigation Division.~~

(A) The Legal Division is composed of the General Counsel and Assistant General Counsels who are the chief attorneys for the Insurance Commissioner

and the other divisions within the Oklahoma Insurance Department on legal matters. The Legal Division defends and prosecutes all proceedings held before the Insurance Commissioner. The Legal Division is charged with the duty of representing the Insurance Commissioner in the courts in matters which are a part of his/her official duties.

(B) The Investigation Division is responsible for investigating complaints against licensed insurance entities and if evidence is found of wrongdoing or non-compliance with the insurance laws of the State of Oklahoma forwarding its findings to the Legal Division.

(C) The Anti-Fraud Unit is within the Legal and Investigation Division. Its investigators are commissioned by the Insurance Commissioner to serve as peace officers who are responsible for investigating violations of statute or administrative rules of this state pertaining to insurance fraud.

(12) **Rate and Form Compliance Division.** The Rate and Form Compliance Division is responsible for the receipt of life, annuity, accident and health policy forms and property and casualty policy forms, manual rules and rates. The Division determines whether such documents conform to the statutes of the State of Oklahoma. The Division is also responsible for determining whether advisory organizations applying for admission to do business in the State of Oklahoma meet the qualifications for admittance as set forth in the statutes of the State of Oklahoma. All references to Life, Accident and Health Division or Property and Casualty Division shall mean Rate and Form Compliance Division.

(13) **Real Estate Appraisers Division.** The Real Estate Appraisers Division is responsible for determining whether applicants for real estate appraiser licensure/certification meet the qualifications set forth in the statutes of the State of Oklahoma and for administering the examinations given to all real estate appraisers.

(14) **Senior Health Care Programs Division.** The Senior Health Care Programs Division is composed of two federal grant programs, SHICP and SUMMIT. The Senior Health Insurance Counseling Program (SHICP) is responsible for providing information, counseling and assistance to Medicare and Medicaid beneficiaries so they may understand and access their health care benefits. SUMMIT Medicare/Medicaid Fraud, Abuse and Waste Program focuses on reducing Medicare/Medicaid fraud, abuse and waste by enhancing public awareness through community presentations and public education. Both programs train volunteers to assist with the programs' mission.

(15) **Utilization Review Division.** The Utilization Review Division is responsible for determining whether applicants for Utilization Review Certificates of Registration meet the qualifications set forth in the statutes of the State of Oklahoma.

**365:1-1-3. Duties of Insurance Commissioner**

The Insurance Commissioner, as chief officer of the Insurance Department, is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code (Title 36, Oklahoma Statutes), the Oklahoma Bail Bond Code (59 O.S. §§1301 et seq.), and the Certified Real Estate Appraisers Act (59 O.S. §§858-700 et seq.), the Pharmacy Benefit Plans (59 O.S., §§ 357-360 et seq.), and the Service Warranty Act (15 O.S. §§ 141.2-150 et seq.).

**365:1-1-4. Requests for information**

(a) The public may obtain information relating to insurance and regulation thereof by completing and submitting the Oklahoma Insurance Department Open Records Request form writing to: [oidopenrecords@oid.ok.gov](mailto:oidopenrecords@oid.ok.gov), by fax to (405) 522-0125, or by mail to the Insurance Commissioner, 400 N.E. 50<sup>th</sup> Street, Oklahoma City, Oklahoma 73105 or by calling (405) 521-2828. Physical copies of the form are available at the Insurance Department at the address provided above.

(b) Where the request is for materials of which copies are not available and photocopying or reproduction by other means is required, such service will be provided upon payment of the costs involved.

(c) Annually, subsequent to the end of the fiscal year, the Commissioner makes a report to the Governor summarizing his/her work during the year. Such reports are available for inspection and copies thereof may be obtained from the Commissioner. The Commissioner's rules of practice and procedure and a description of its organization and policy are published in the Oklahoma Register. Copies thereof may be obtained from the Commissioner upon request. The decisions of the Commissioner in adjudicative proceedings may be obtained upon request. Requests submitted to the agency will not be deemed to have been received unless and until the request has been properly submitted in accordance with these rules.

(d) A request shall be deemed abandoned if the requester fails to pay any fees lawfully assessed within thirty (30) days of notice by the Insurance Department of the fee amount or if requester fails to respond within thirty (30) days to any request by the Department for additional information the Department has determined is reasonably necessary to identify the records sought or to accurately process the request.

[OAR Docket #22-497; filed 6-28-22]

**TITLE 365. INSURANCE DEPARTMENT  
CHAPTER 10. LIFE, ACCIDENT AND  
HEALTH**

[OAR Docket #22-498]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

Part 1. General Provisions

365:10-1-17. Life, Accident, and health form filings [AMENDED]

Appendix PP. Notice of Appeal Rights [REVOKED]

Appendix PP. Notice of Appeal Rights [NEW]

# Permanent Final Adoptions

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**AUTHORITY:**

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. § 358

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

November 8, 2021

**COMMENT PERIOD:**

December 2, 2021 through January 5, 2022

**PUBLIC HEARING:**

January 5, 2022

**ADOPTION:**

March 3, 2022

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

March 7, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The adopted rule changes are updates to the Department's address.

**CONTACT PERSON:**

Ashley Scott, Government and Community Affairs Director, OID, 400 NE 50<sup>th</sup> Street, Oklahoma City, OK 73105, (405) 521-6616, Ashley.Scott@oid.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### PART 1. GENERAL PROVISIONS

**365:10-1-17. Life, accident, and health form filings**

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting form filings to the Insurance Commissioner as required by Sections 3610 and 4402 of the Insurance Code.

(b) **Procedures.** Policy forms, endorsements, and revisions thereto, by insurance companies licensed in Oklahoma, shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, Sections 3610 and 4402, requires that each insurer shall make its form filings by line of business directly with the Insurance Commissioner.

(2) **Filing fees.**

(A) Form filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction, regardless of the number of members or subscribers.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, ~~3625 NW 56<sup>th</sup> Street, Suite 100~~ 400 NE 50<sup>th</sup> Street, Oklahoma City, Oklahoma ~~73112~~ 73105.

(4) **Submission.** All filings except those exempted shall be submitted through the System for Electronic Rate and Form Filing (SERFF) pursuant to the SERFF General Instructions, and shall include a description of the filing(s), all exhibits, forms, and additional information required by the Commissioner.

(5) **Effective date of filings.** The effective date of form filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken through the System for Electronic Rate and Form Filing (SERFF). Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Property and casualty insurance.** This section does not apply to Property and Casualty filings and such filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Filing form and content.** All filings shall contain the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A brief description of the content and context of the filing.

(C) A list or index of the forms filed or attached thereto including the form numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including the reasoning therefore; illustrative examples, including "John Doe" specimen form; and a comparison of currently approved and proposed materials (side by side comparison or marked copy).

(E) A concise statement to identify the form to be replaced by the filing including the approval date in this jurisdiction and the identifying filing number of the filing containing the form to be replaced as assigned by the Insurance Department.

(F) If a form is being withdrawn or amended due to court decisions in any jurisdiction, the filing entity shall furnish the legal citation, and if from another jurisdiction, a copy of such decision or opinion with its filing.

(G) If a form is being withdrawn or amended due to a federal law or regulation of a federal agency,

the filing entity shall furnish the legal citation of the pertinent provisions.

(9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.

(10) **Duration of filings.** All filings are in effect until withdrawn or amended by the insurer, with approval of the Insurance Commissioner or until abrogated by the Insurance Commissioner.

(11) **Group filings.** Where filings are made on behalf of more than one insurer, the filing shall list the insurer or insurers by individual name and not by Company group.

(12) **Resubmittal of filings.** All resubmissions of disapproved or rejected filings shall be presented to the Insurance Commissioner in the same manner as required by this section for an original filing. In addition the cover letter or completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for disapproval or rejection, and the factors which distinguish the resubmittal so it warrants reconsideration.

(13) **Retroactive filings.** The Insurance Commissioner has no authority to and shall not approve filings proposing

a retroactive effective date except in cases of a filing correcting an error in a previously approved filing and in cases where required or necessitated by Statute or regulation of a federal or state agency.

(14) **Delivery of policy to insured.** In any instance whereby a policy of insurance is effected the insured shall be furnished with either:

(A) The original policy;

(B) A copy of the original policy or a duplicate policy with ten point or larger type, which, at the insured's election, may be delivered to the insured electronically; or

(C) A certificate including provisions and conditions of the original policy printed with ten point or larger type.

(15) **Coverage elimination after policy issuance.** Any endorsement which eliminates or restricts coverage and which is issued during the policy term shall be identified as accepted by the policy holder, by the signature of the policy holder thereon, and a signed copy (original, computer generated or microfilm) of such endorsement shall be retained in the files of the insurer for one year after the expiration of the policy. Evidence of policyholder acceptance is not required if the change effected by the endorsement is mandated by applicable law.

## APPENDIX PP. NOTICE OF APPEAL RIGHTS [REVOKED]

## APPENDIX PP. NOTICE OF APPEAL RIGHTS [NEW]

### NOTICE OF APPEAL RIGHTS

**You have a right to appeal any decision we make that denies payment on your claim or your request for coverage of a health care service or treatment.**

**You may request more explanation when your claim or request for coverage of a health care service or treatment is denied or the health care service or treatment you received was not fully covered.**

Contact<sup>1</sup> us when you:

- Do not understand the reason for the denial;
- Do not understand why the health care service or treatment was not fully covered;
- Do not understand why a request for coverage of a health care service or treatment was denied;
- Cannot find the applicable provision in your Benefit Plan Document;
- Want a copy (free of charge) of the guideline, criteria or clinical rationale that we used to make our decision; or
- Disagree with the denial or the amount not covered and you want to appeal.

If your claim was denied due to missing or incomplete information, you or your health care provider may resubmit the claim to us with the necessary information to complete the claim.<sup>1</sup>

**Appeals:** All appeals for claim denials (or any decision that does not cover expenses you believe should have been covered) must be sent to [INSERT ADDRESS OF WHERE APPEALS SHOULD BE SENT TO THE HEALTH CARRIER] within **180 days** of the date you receive our denial.<sup>2</sup> We will provide a full and fair review of your claim by individuals associated with us, but who were not involved in making the initial denial of your claim. You may provide us with additional information that relates to your claim and you may request copies of information that we have that pertains to your claims. We will notify you of our decision in writing. Once our internal appeal process is exhausted (or waived by us), you may be entitled to file a request for external review.<sup>3</sup>

**External Review<sup>3</sup>:** We have denied your request for the provision of or payment for a health care service or course of treatment. You may have a right to have our decision reviewed by independent health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you request by submitting a request for external review within **4 months** after receipt of this notice to the Oklahoma Insurance Department, which can be contacted by mail at 400 NE 50<sup>th</sup> Street, Oklahoma City, OK, 73105, or by phone at 800-522-0071 or 405-521-2828. For standard external review, a decision will be made within **45 days** of receiving your request. If you have a medical condition that would

seriously jeopardize your life or health or would jeopardize your ability to regain maximum function if treatment is delayed, you may be entitled to request an **expedited external review** of our denial. If our denial to provide or pay for health care service or course of treatment is based on a determination that the service or treatment is experimental or investigational, you also may be entitled to file a request for external review of our denial. For details, please review your Benefit Plan Document, contact us or contact your state insurance department.<sup>1</sup>

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<sup>1</sup> See address and telephone number on the enclosed Explanation of Benefits if you have questions about this notice.

<sup>2</sup> Unless your plan or any applicable state law allows you additional time.

<sup>3</sup> See your Benefit Plan Document for your state's appeal process and to determine if you're eligible to request an external review in your state (e.g. some state appeal processes require you to complete your insurer's appeal process before filing an external review request unless waived by your insurer; while some states do not have such a requirement).

*[OAR Docket #22-498; filed 6-28-22]*

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# Permanent Final Adoptions

## TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #22-499]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

365:15-1-3. Property and casualty form filings [AMENDED]

Subchapter 7. Property and Casualty Competitive Loss Cost Rating Regulation

365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]

### AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. § 358

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

November 8, 2021

### COMMENT PERIOD:

December 2, 2021 through January 5, 2022

### PUBLIC HEARING:

January 5, 2022

### ADOPTION:

March 3, 2022

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

March 7, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The adopted rule changes are updates to the Department's address.

### CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, OID, 400 NE 50<sup>th</sup> Street, Oklahoma City, OK 73105, (405) 521-6616, Ashley.Scott@oid.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 365:15-1-3. Property and casualty form filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting form filings to the Insurance Commissioner as required by Article 36 of the Insurance Code.

(b) **Procedures.** Policy forms, endorsements and revisions thereto, by insurance companies and advisory organizations licensed in Oklahoma, shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, Article 36, requires that each insurer shall make its form filings by

line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed advisory organization that makes such filings.

#### (2) **Filing fees.**

(A) Form filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction, regardless of the number of members or subscribers.

(C) Filings by advisory organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, ~~3625 NW 56<sup>th</sup>~~ 400 NE 50<sup>th</sup> Street, Suite 100, Oklahoma City, Oklahoma ~~73112~~ 73105.

(4) **Number of copies.** All filings except those exempted shall be submitted through the System for Electronic Rate and Form Filing (SERFF) pursuant to the SERFF General Instructions. All filings including the cover letter, all exhibits, forms and additional information submitted to the Insurance Commissioner shall be typewritten or printed and submitted with one (1) legible copy of all material. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting one (1) typewritten or printed legible copy of all material.

(5) **Effective date of filings.** The effective date of form filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken through the System for Electronic Rate and Form Filing (SERFF). Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to Life, Accident and Health. Life, Accident and Health filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted which arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Filing form and content.** All filings shall contain the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.



(C) A list or index of the forms filed in the filing letter or attached thereto including the form numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefore, illustrative examples, including "John Doe" specimen form, and a comparison of currently approved and proposed materials (side by side comparison or marked copy).

(E) A concise statement to identify the form to be replaced by the filing including the approval date in this jurisdiction and the identifying filing number of the filing containing the form to be replaced as assigned by the Insurance Department.

(F) If a form is being withdrawn or amended due to court decisions in any jurisdiction, the filing entity shall furnish the legal citation, and if from another jurisdiction, a copy of such decision or opinion with its filing.

(G) If a form filing is due to a federal law or regulation of a federal agency, the filing entity shall furnish the legal citation and a copy of the pertinent provisions.

(H) Completed transmittal forms and exhibits.

(10) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.

(11) **Duration of filings.** All filings are in effect until withdrawn or amended by the insurer or rating organization, with approval of the Insurance Commissioner or until abrogated by the Insurance Commissioner.

(12) **Advisory organization deviations.** Every member of, or subscriber to, a licensed rating organization may adhere to any filings made on its behalf by its Advisory Organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the Advisory Organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn or replaced by the insurer with approval of the Insurance Commissioner.

(13) **Group filings.** Where filings are made on behalf of more than one insurer, the filing shall list the insurer or insurers by individual name and not by Company group.

(14) **Members of or subscribers to a licensed advisory organization.**

(A) **Filings.** A licensed advisory organization may make filings on behalf of its members and subscribers except deviation filings.

(B) **Adherence to filings.** Every member of or subscriber to a licensed advisory organization may adhere to any filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings upon compliance with

this section and approval of the Insurance Commissioner

(C) **Individual company filings.** Members and subscribers shall not file individual forms that have been filed on their behalf by the appropriate advisory organization. Declaration pages, policy "jackets" and other forms not normally filed by the rating organization shall be filed by the insurer directly with the Insurance Commissioner.

(D) **Filing requirements; advisory organization form deviation.** If form deviations are proposed, the insurer shall file the form including supporting documentation with the Insurance Commissioner and furnish copies to the appropriate rating organization.

(E) **Agency filings.** "Agency Filings" by a Rating Organization on behalf of its members or subscribers shall be accepted by the Insurance Commissioner in instances where the rating organization does not have a filing in effect for the coverage involved.

(15) **Independent filings.** If the insurer is filing an independently developed form, the filing shall comply with the following:

(A) File Policy Forms, Endorsements, and other materials, with the Insurance Commissioner and designate them as "Independent Filings".

(B) File support of each filing in accordance with this section.

(C) For revisions, file form with the Insurance Commissioner.

(16) **Reference filings.**

(A) **Advisory Organization Filings.**

(i) **Filings permitted without reference filing agreement.** Advisory Organization forms used in whole or in part may be adopted by participating insurers of a licensed advisory organization by "Reference Filings" subject to the approval of the Insurance Commissioner. When making such type filing submit a filing memorandum identifying the forms used. Departures and exceptions, if any, shall be accompanied by the necessary supporting data. Such adoption shall apply only to current filings and shall have no automatic effect as to future filings. Each advisory organization filing shall be separately and specifically adopted.

(ii) **Filings permitted with reference filing agreement.** Approved Advisory Organization material may be adopted by participating insurers of a licensed advisory organization by filing a REFERENCE FILING AGREEMENT with the Insurance Commissioner identifying the forms and material to be used. Such adoption shall apply from the date it is approved by the Insurance Commissioner to filings in effect on that date and to all applicable future filings. It shall remain in effect until such time as the agreement is withdrawn with the approval of the Commissioner.

(iii) **Reference filing.** If filing by "Reference Filing" DO NOT file forms.

**(B) Other than Advisory Organization filings.**

An insurer may adopt another insurer's filing by filing forms on the filing insurer's format and by advising the Insurance Commissioner of the names(s) of the insurer whose program is being copied, the Oklahoma filing number, and the date(s) the program was filed for that insurer. Unless an exception is granted by the Insurance Commissioner, this procedure applies only to the filing of the initial program for the adopting insurer and is subject to the review of the Insurance Commissioner.

(17) **Resubmittal of filings.** All resubmissions of disapproved or rejected filings shall be presented to the Insurance Commissioner in the same manner as required by this section for an original filing. In addition the cover letter or completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for disapproval or rejection, and the factors which distinguish the resubmittal so it warrants reconsideration.

(18) **Retroactive filings.** The Insurance Commissioner has no authority to and shall not approve filings proposing a retroactive effective date except in cases of a filing correcting an error in a previously approved filing and in cases where required or necessitated by Statute.

(19) **Delivery of policy to insured.** In any instance whereby a policy of insurance is effected the insured shall be furnished with either:

- (A) The original policy;
- (B) A copy of the original policy or a duplicate policy printed with ten point or larger type; or
- (C) A certificate including provisions and conditions of the original policy printed with ten point or larger type.

(20) **Coverage elimination after policy issuance.** Any endorsement which eliminates or restricts coverage and which is issued during the policy term shall be identified as accepted by the insured, by the signature of the insured thereon, and a signed copy (original, computer generated or microfilm) of such endorsement shall be retained in the files of the insurer for one year after the expiration of the policy.

(21) **Uniform standard mortgage clause.** The mortgage clause to be used by Insurance Companies in Oklahoma shall be uniform Standard Form Number 127B September 1934 Edition or subsequent editions, except upon written application by an insurer or rating organization, a clause providing broader coverage may be approved by the Insurance Commissioner.

**(22) Claims-made policies.**

(A) The policy application and the Declarations page of each claims-made policy shall include a conspicuous notice indicating that the contract is a claims-made policy and advising the policyholder to read its provisions.

(B) The policy shall provide for extended reporting period options based on rules, rates or rating plans approved by or filed with the Insurance Commissioner.

If so stated in the policy, the extended reporting period options shall not be required to be offered if a policy is cancelled for nonpayment of premium or a material representation or fraud.

**(23) New forms, reductions in coverage.**

(A) Form filings that may result in the elimination of claims (losses) shall be considered as a relevant factor to be given due consideration by the Insurance Commissioner as respects rates in effect or proposed for the coverage involved.

(B) The filer shall fully disclose the rate consideration so that Commissioner can be notified of the form filing. The form filing may be disapproved if the rate-effect has not been considered in rules, rates or rating plans approved by or filed with the Commissioner.

### SUBCHAPTER 7. PROPERTY AND CASUALTY COMPETITIVE LOSS COST RATING REGULATION

#### 365:15-7-3. Property and casualty rate, loss cost and manual rule filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting rate, loss cost and manual rule filings to the Insurance Commissioner as required by 36 O.S. § 981 et seq.

(b) **Procedures.** Rate, loss cost and manual rules and revisions thereto by insurance companies and advisory organizations licensed in Oklahoma shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, 36 O.S. § 981 et seq., requires that each insurer shall make its rate, loss cost and manual rule filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed advisory organization which makes such filings.

**(2) Filing fees.**

(A) Rate, loss cost and manual rule filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(C) Filings by advisory organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, ~~3625 NW 56<sup>th</sup>~~ 400 NE 50<sup>TH</sup> Street, Suite 400, Oklahoma City, Oklahoma ~~73142~~ 73105.

(4) **Number of copies.** All filings except those exempted shall be submitted through the System for Electronic Rate and Form Filing (SERFF) pursuant to the SERFF General Instructions. All filings including the

cover letter, all exhibits, rate sheets and additional information submitted to the Insurance Commissioner shall be typewritten or printed and submitted with one (1) legible copy of all material. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting one (1) typewritten or printed legible copy of all material.

(5) **Effective date of filings.** The effective date of rate, loss cost and manual rule filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken through the System for Electronic Rate and Form Filing (SERFF). Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to life, accident and health insurance. Life, accident and health insurance filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted that arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.

(10) **Filing form and content.** All filings shall include the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the manual pages filed in the filing letter or attached thereto including the page numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefore, illustrative examples, including "John Doe" specimen examples, and a comparison of currently approved and proposed materials (side by side comparison or marked copy).

(E) A concise statement to identify the manual pages (rate and/or rule) to be replaced by the filing including the approval date in this jurisdiction and the identifying Oklahoma Insurance Department's assigned filing number of the filing containing the documents to be replaced.

(F) Completed transmittal forms and exhibits.

(11) **Advisory organization deviations.** Every member of, or subscriber to, a licensed advisory organization may adhere to any filings made on its behalf by its advisory

organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the advisory organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn by the insurer with approval of the Insurance Commissioner.

*[OAR Docket #22-499; filed 6-28-22]*

## TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. OTHER LICENSEES

*[OAR Docket #22-500]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Producers, Brokers, Limited Lines Producers and Vehicle Protection Product Warrantors

365:25-3-15. Variable product licensing [AMENDED]

Subchapter 7. Companies

Part 5. Oklahoma Insurance Holding Company System Regulatory Act

365:25-7-23. Forms: general requirements [AMENDED]

Subchapter 9. Prepaid Funeral Benefits

365:25-9-3. Forms [AMENDED]

Subchapter 15. Captive Insurance Companies Regulation

365:25-15-23. Dormant captive insurance companies [AMENDED]

Subchapter 23. Cemetery Merchandise Trusts

365:25-23-2. Permit required [AMENDED]

365:25-23-5. Trust fund and trustee [AMENDED]

365:25-23-6. Surety bond [AMENDED]

Subchapter 29. Pharmacy Benefit Managers

365:25-29-8. PBM to file certain financial statements with the Commissioner [AMENDED]

Subchapter 31. Reduced Premium Tax Rate for Key Persons [NEW]

365:25-31-1. Purpose [NEW]

365:25-31-2. General requirements [NEW]

Appendix C. Prepaid Funeral Benefits Permit Original Application [REVOKED]

Appendix D. Fidelity Bond [REVOKED]

Appendix M. Application for Renewal of Prepaid Funeral Benefits Permit [REVOKED]

Appendix R. Conversion from Pre-Paid Funeral Trust to Insurance Funded Contracts [REVOKED]

Appendix X. Sellers Notice to the Insurance Commissioner [REVOKED]

Appendix Y. Assumption Affidavit [REVOKED]

**AUTHORITY:**

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. § 358

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

November 8, 2021

**COMMENT PERIOD:**

December 2, 2021 through January 5, 2022

**PUBLIC HEARING:**

January 5, 2022

**ADOPTION:**

March 3, 2022

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

March 7, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

# Permanent Final Adoptions

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The adopted rule changes do the following: update the exams required for Variable product licenses, update the Departments address, update the requirements for prepaid funeral benefits permits, update Captive insurance company regulations to match requirements from statute, update the application process for cemetery merchandise trusts and adds language to match the statutory fee requirements, require changes to a trust agreement to be submitted to the Commissioner prior to making the change, set bond form and notice requirements for surety bonds, ensure that PBM financial statements are audited by an independent CPA and allow for those statements to be submitted by May 1<sup>st</sup>, set forth guidance on reduced premium tax rate of key persons pursuant to statute and set requirements for eligibility. Finally, we revoke forms that will be updated and placed on the Department's website.

## CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, OID, 400 NE 50<sup>th</sup> Street, Oklahoma City, OK 73105, (405) 521-6616, Ashley.Scott@oid.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **SUBCHAPTER 3. PRODUCERS, BROKERS, LIMITED LINES PRODUCERS AND VEHICLE PROTECTION PRODUCT WARRANTORS**

#### **365:25-3-15. Variable product licensing**

(a) Producers who wish to sell a variable life product shall have passed successfully the Oklahoma Life Insurance examination and shall provide proof of current FINRA registration with series 6 or 7 and series 63 or 66, or any other exam FINRA deems to be substantially equivalent that is approved by the Commissioner in his or her discretion.

(b) No test shall be required of an applicant for a variable annuity license if:

(1) The applicant provides proof of current FINRA registration with series 6 or 7 and series 63 or 66, or any other exam FINRA deems to be substantially equivalent that is approved by the Commissioner in his or her discretion, and

(2) The applicant shall pay an additional license fee as required by 36 O.S. § 1435.23(A)(4)(b) with the submission of an application as prescribed by the Insurance Commissioner.

### **SUBCHAPTER 7. COMPANIES**

#### **PART 5. OKLAHOMA INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT**

#### **365:25-7-23. Forms: general requirements**

(a) **Forms A, B, C, D, E, and F.** Forms A, B, C, D, E, and F as set forth in Appendices A, B, N, O, Q, and AA of this

Chapter, are intended to be guides in the preparation of the statements required by Sections 1633, 1635 and 1636 of the Act. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable, or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) **Filing statements.** Two (2) complete copies of each statement, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery to the ~~Office of the Oklahoma Insurance Department Commissioner~~ in Oklahoma City, Oklahoma, or by mail addressed to the Insurance Commissioner of the State of Oklahoma, ~~3625 NW 56<sup>th</sup> Street, Suite 100, Oklahoma City, Oklahoma 73112400 N.E. 50<sup>th</sup> Street, Oklahoma City, OK 73105.~~ A copy of a Form C shall be filed in each state in which an insurer is authorized to do business, if the Commissioner of that state has notified the insurer of its request in writing, in which case the insurer has thirty (30) days from receipt of the notice to file such form. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(c) **Format of statements.** Statements should be prepared on paper 8 1/2" x 11" in size and preferably bound at the top or the top left hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language, and monetary values shall be stated in United States Currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States Currency.

### **SUBCHAPTER 9. PREPAID FUNERAL BENEFITS**

#### **365:25-9-3. Forms**

(a) **General requirements.**

(1) **Application for prepaid funeral benefits permit form.** An application for Prepaid Funeral Benefits ~~form~~ shall be submitted to the Insurance Department in the form and manner prescribed by the Insurance Commissioner ~~filed using the Prepaid Funeral Benefits Permit Original Application as set forth in Appendix C of this~~

~~chapter.~~ The application must be filed with and approved by the Insurance Commissioner before any contracts covered by this act may be marketed. The statutory fee of \$50.00 must accompany this application. An NAIC UCAA Biographical Affidavit must be submitted for each owner(s) of the organization and each designated agent as defined by Section 6126 of the Act.

(2) **Bond form requirements.** ~~Appendix D of this chapter is a sample~~ A bond to be used in connection with "The Act" shall be filed in the form and manner prescribed by the Insurance Commissioner. Any variance from this form must have the prior written approval of the Insurance Commissioner. If any bond required by "The Act" is canceled for any reason, a thirty (30) day written notice must be given by the insurer to the Insurance Commissioner.

(3) **Conversion Forms.** Applications for Conversion from a trust funded prepaid funeral benefit to an insurance-funded prepaid funeral benefit shall be filed with and approved by the Insurance Commissioner before any contracts covered by "The Act" may be converted. Applications for Conversion shall be submitted to the Insurance Department in the form and manner prescribed by the Insurance Commissioner~~filed using the Application for Conversion form as set forth in Appendix R of this chapter.~~ Any variance from this form must have prior written approval by the Insurance Commissioner.

(4) **Notice of Sale.** The seller of a prepaid funeral benefits permit holding funeral home must ~~make~~ submit an application to the Insurance Department in the form and manner prescribed by the Insurance Commissioner at least forty-five (45) days prior to the transfer of ownership using the Sellers Notice to the Insurance Commissioner (PFSN 2009) form as set forth in Appendix X of this chapter. In addition to the notice, the seller must also submit a listing of unrealized prepaid funeral contracts. Insurance funded contracts should be listed independently from trust funded contracts. The listing will, at minimum, reflect the contract holder's name, contract number, contract value, the name of the insurer and the policy's face value (when applicable), and the trust value at the time of notice (when applicable).

(5) **Assumption Affidavit.** The buyer of a prepaid funeral benefits permit holding funeral home must notify the Commissioner, in the form and manner prescribed by the Insurance Commissioner, ~~of their~~ the buyer's intent to purchase thirty (30) days prior to transfer of ownership ~~using the Assumption Affidavit (PFAA 2009) form as set forth in Appendix Y of this chapter.~~

(6) **Application for Renewal.** The application for renewal of a prepaid funeral benefits permit must be filed with the Commissioner in the form and manner prescribed by the Commissioner no later than December 31 of each year, ~~using the Application for Renewal (PFBR 2009) form as set forth in Appendix M of this chapter,~~ in order to renew the permit for the succeeding calendar year. The statutory fee of \$50.00 must accompany the application.

(b) **Additional general requirements.**

(1) **Annual reports.**

(A) Annual reports must be filed in accordance with Section 6128 of "The Act". Such reports should be submitted in columnar form in alphabetical order according to the last name of the contract holder. A complete annual report shall be composed of the following items arranged in the order shown below:

- (i) PF-1-a
- (ii) PF-1-b
- (iii) PF-1-c
- (iv) PF-1-d
- (v) PF-2-a
- (vi) PF-2-b
- (vii) PF-2-c
- (viii) PF-3

(B) Computer print-outs may be submitted in lieu of the reports listed above so long as each legibly provides no less information than shown in the Insurance Commissioner's sample forms. Not less than one page of each annual report form shown above, other than the PF-2-b, shall be submitted. However, where a particular form is not relevant to the operations of a given permitholder, it may be submitted clearly marked, "Not Applicable".

(2) **Annual statement of financial condition.** An Annual Statement of Financial Condition-Reconciliation of Trust Accounts (form PF-3) must be filed in accordance with Section 6129 of "The Act".

**SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION**

**365:25-15-23. Dormant captive insurance companies**

(a) As used in this Section, unless the context requires otherwise, "dormant captive insurance company" means a captive insurance company which has:

- (1) ceased transacting the business of insurance, including the issuance of insurance policies;
- (2) no remaining liabilities associated with insurance business transactions; and
- (3) no unpaid premium taxes.

(b) A captive insurance company domiciled in Oklahoma which meets the criteria of paragraph (a) of this Section may apply to the Commissioner for a certificate of dormancy. If, after a period of five (5) years from the date of the written notice being sent to the Commissioner, a dormant captive insurance company has not resumed transacting the business of insurance by assuming risk through the issuance of insurance policies, reinsurance contracts, or both, and accepting premium, whether direct, assumed via reinsurance, or both, the nonrefundable license ~~renewal~~ fee payable under 36 O.S. §6470.3(D)-6470.35(C)(3), of this title and the The minimum Five Thousand Dollars (\$5,000.00) payable under 36 O.S. § 6470.19(D) shall become applicable for the sixth year of dormancy and for every year of dormancy thereafter.

(c) A dormant captive insurance company which has been issued a certificate of dormancy shall:

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- (1) possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than Twenty-five thousand dollars (\$25,000.00);
  - (2) prior to March 1 of each year, submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers, in a form as may be prescribed by the Commissioner; and
  - (3) pay a license renewal fee as provided in 36 O.S. § 6470.3.
- (d) A dormant captive insurance company shall not be subject to or liable for the payment of any premium tax for the initial five (5) year period of dormancy.
- (e) A dormant captive insurance company shall apply to the Commissioner for approval to surrender its certificate of dormancy and resume conducting the business of insurance prior to issuing any insurance policies.
- (f) A certificate of dormancy shall be revoked if a dormant captive insurance company no longer meets the criteria of paragraph (a) of this Section.
- (g) The Commissioner may establish guidelines and procedures as necessary to carry out the provisions of this section.

### SUBCHAPTER 23. CEMETERY MERCHANDISE TRUSTS

#### 365:25-23-2. Permit required

(a) Pursuant to the Cemetery Merchandise Trust Act, any organization which shall accept money or anything of value for prepaid cemetery merchandise pursuant to a prepaid cemetery merchandise contract shall obtain a permit from the Oklahoma Insurance Department authorizing the transaction of this type of business prior to the commencement of this type of business. The Commissioner may deny the issuance of a permit if the organization or any of its owners or officers:

- (1) Makes a material misstatement or misrepresentation in an application or permit;
- (2) Has been sentenced, convicted, pled guilty or nolo contendere to a crime involving fraud, dishonesty or moral turpitude; or
- (3) Fraudulently or deceptively obtains or attempts to obtain a permit for another.

(b) An application for cemetery merchandise permit shall be submitted to the Insurance Department in a manner and form prescribed by the Insurance Commissioner. The application shall contain the name of the organization, physical address, mailing address, and any other information the Insurance Commissioner may request. A copy of the trust agreement must be submitted with the application. The application must be filed with and approved by the Insurance Commissioner before money or anything of value for prepaid cemetery merchandise can be accepted. The statutory fee of \$200.00 must accompany this application. An NAIC UCAA Biographical Affidavit must be submitted for each owner or officer of the organization.

#### 365:25-23-5. Trust fund and trustee

A holder of a Cemetery Merchandise Permit with funds in trust shall keep the Insurance Department informed of the identity of the trustee at all times and at all times shall comply with the provisions of 36 O.S. § 7126. Prior to changing the trustee, trust agreement or trust location, a permit holder shall notify the Commissioner at least thirty (30) days prior to any transfer or change stating the reason for the proposed change.

#### 365:25-23-6. Surety bond

(a) A permit holder posting a surety bond in lieu of making remittances to a trust fund, shall file a quarterly report no later than the thirtieth day after the close of each quarter. The bond shall be in an amount not less than the minimum funding requirement for cemetery merchandise trusts pursuant to the provisions of 36 O.S. § 7126. If at any time the Quarterly Report shows that the bond posted does not meet the minimum funding requirements, the permit holder shall be notified by the Insurance Department and shall post an additional or amended bond within ten (10) days following notification. The additional or amended bond shall be sufficient in size to satisfy the provisions of 36 O.S. §§ 7126 and 7127.

(b) A bond posted in connection with Cemetery Merchandise Trust Act shall be filed in the form and manner prescribed by the Insurance Commissioner. Any variance from this form must have the prior written approval of the Insurance Commissioner. An insurer shall provide thirty (30) day's written notice to the Insurance Commissioner prior to cancelling any bond required by the Cemetery Merchandise Trust Act.

### SUBCHAPTER 29. PHARMACY BENEFIT MANAGERS

#### 365:25-29-8. PBM to file certain financial statements with the Commissioner

(a) Before ~~March~~ May 1 of each year, every PBM providing pharmacy benefits management shall submit to the Insurance Commissioner a report, which includes the most recently concluded fiscal year-end financial statements for the PBM and report of covered lives, signed by an Executive Officer of the PBM attesting to the accuracy of the information contained in the report form prescribed by the Commissioner ~~a report of its financial condition verified by the oath of an executive officer.~~ The report shall be audited by an independent certified public accountant (CPA) and prepared using generally accepted accounting principles (GAAP) ~~and consist of a balance sheet, income statement, and statement of cash flows.~~ The report may be supplemented by any additional information required by the Insurance Commissioner.

(b) The Commissioner may extend the time prescribed for filing annual or other reports or exhibits of any kind for good cause shown. However, the Commissioner shall not extend the time for filing annual statements beyond ~~sixty (60)~~ ninety (90) days after the time prescribed by this Section.

**SUBCHAPTER 31. REDUCED PREMIUM TAX RATE FOR KEY PERSON**

**365:25-31-1. Purpose**

The purpose of this Subchapter is to set forth standards and requirements for a reduced premium tax rate for "Key Person" life insurance policies purchased by an employer on the life of an owner, top executive or other employee in accordance with 36 O.S. § 624(A)(2)(a) and (b).

**365:25-31-2. General requirements**

(a) Only the employer, or a trust sponsored by the employer and purchased for the benefit of the employees of the employer, shall purchase a Key Person life insurance policy and pay for the life insurance policy premiums.

(b) Only the employer, or a trust sponsored by the employer and purchased for the benefit of the employees of the employer, shall be named the beneficiary or receive proceeds of the death benefit of a Key Person life insurance policy.

(c) Only the life of one individual shall be named on a Key Person policy. The named Key Person shall not be transferrable.

(d) In order to be eligible for the reduced premium tax rate, an insurer shall submit with its annual premium tax return a report in the manner and format prescribed by the Commissioner.

(e) Upon request by the Commissioner, an insurer shall provide copies of Key Person life insurance policies and other documentation for review as deemed necessary.

(f) Group benefit plans, enhanced compensation packages, or split-dollar shared contribution policies are not eligible for Key Person reduced premium tax rates.

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## APPENDIX C. PREPAID FUNERAL BENEFITS PERMIT ORIGINAL APPLICATION [REVOKED]

### General Information

Name of Organization: \_\_\_\_\_

include True name and if applicable Doing Business As name)

Type of Organization: \_\_\_\_\_ Sole Proprietor\* \_\_\_\_\_ Partnership\* \_\_\_\_\_  
Corporation\*

State Tax ID: \_\_\_\_\_ Federal Tax ID: \_\_\_\_\_

\*Each Proprietor or member of the Partnership/Corporation must submit a Biographical Affidavit

Physical Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Alt Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_  
(if applicable)

Email Address: \_\_\_\_\_ Web Address: \_\_\_\_\_

Funeral Director in Charge: \_\_\_\_\_

### General Interrogatories

1. Has the owner or any principal employees of the organization been admonished, censured, suspended or fined within the last year by the Oklahoma Funeral Board for violations involving funeral home activities?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please attach statement of explanation.

2. Have any of the principals (owner[s], manager, employees with fiduciary duties, etc.) ever been convicted of a felony or misdemeanor involving moral turpitude?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, explain: \_\_\_\_\_

3. Have you or your organization ever applied for a permit from this Department?

Yes \_\_\_\_\_ No \_\_\_\_\_

Were you approved or denied?

Approved \_\_\_\_\_ Denied \_\_\_\_\_

If denied, please attach statement of explanation.

If approved, did your permit lapse, was it sold or other \_\_\_\_\_?

Please attach statement of explanation.





**APPENDIX D. FIDELITY BOND [REVOKED]**

Know All Men by These Presents: That we \_\_\_\_\_, of \_\_\_\_\_, Oklahoma, as Principal, and \_\_\_\_\_ a surety company duly authorized to do business in the State of Oklahoma, as Surety, are held and firmly bound unto the State of Oklahoma in the penal sum of \$ \_\_\_\_\_, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The condition of the above obligation is such that, whereas, the Principal has applied for a permit from the Insurance Commissioner of the State of Oklahoma, to enter into contracts and receive payments thereon for prepaid funeral services and/or merchandise, in accordance with the terms and provisions of Title 36 Oklahoma Statutes 1981, Section 6121 et seq., and the issuance of such permit is conditional upon the Principal filing a bond in the amount above set forth in the office of such Insurance Commissioner, said bond and the surety thereon to be subject to approval by said Insurance Commissioner.

Now, if the above bounden Principal shall faithfully perform any and all such contracts, and shall faithfully account for and promptly pay over to those entitled thereto and all amounts or sums of money due under the terms of any and all such contracts, according to law, then this obligation shall be void, otherwise to remain in full force and effect.

Provided, however, that the liability of the Surety hereunder may be terminated by giving thirty days written notice thereof, by registered mail, to the Principal and the Insurance Commissioner; and the Surety shall be discharged from all liability for any act or omission of the Principal occurring after the expiration of thirty days from the date of service of such notice.

This obligation shall be effective from noon on \_\_\_\_\_, (Month,Day,Year)

to noon on the date of cancellation or termination of this bond, standard time, at the Principal address as to each of said dates.

In witness whereof, the said Principal and Surety above named have subscribed this bond at \_\_\_\_\_, Oklahoma, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal  
By \_\_\_\_\_

\_\_\_\_\_  
Surety  
By \_\_\_\_\_

APPENDIX M. APPLICATION FOR RENEWAL OF PREPAID FUNERAL BENEFITS PERMIT [REVOKED]

Application for Renewal of Prepaid Funeral Benefits Permit - Renewal

Year \_\_\_\_\_

Permit Number: \_\_\_\_\_

Name of Organization: \_\_\_\_\_ (include True name and if applicable Doing Business As name)

hereby makes application for a renewal of permit from the Oklahoma Insurance Commissioner as authorized by Title 36 § 6121 et seq.

Physical Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Alt Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_ Web Address: \_\_\_\_\_

Funeral Director in Charge: \_\_\_\_\_

The organization also agrees to comply with all requirements of the Prepaid Funeral Benefits Act (§ 6121 et seq.) which in part includes notification of those acting as designated agents (§6126). Please create a listing of the organizations designated agents and attach the listing to this application for renewal.

Does the establishment offer an in-house insurance agent? \_\_\_\_\_ If yes, please provide:

Agent's Name and License Number: \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn, state that I have read the within and foregoing application for renewal and that the answers supplied by me therein are true and correct to the best of my knowledge and belief and further that I will comply with the Prepaid Funeral Benefit laws of Oklahoma and the Rules of the State Insurance Commissioner in all my conduct under the permit.

STATE OF \_\_\_\_\_ )
) ss.
COUNTY OF \_\_\_\_\_ )

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

Applicant's Printed Name and Title \_\_\_\_\_

Notary Public \_\_\_\_\_ My Commission Expires \_\_\_\_\_ (notary seal)

\*A Fifty Dollar (\$50.00) renewal fee, payable to the Oklahoma Insurance Department, must accompany application.

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## APPENDIX R. CONVERSION FROM PRE-PAID FUNERAL TRUST TO INSURANCE FUNDED CONTRACTS [REVOKED]

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\_\_\_\_\_ Name of Applicant Permit #

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\_\_\_\_\_ Name of Insurer Oklahoma Certificate of Authority #

FILED WITH THE INSURANCE COMMISSIONER FOR  
THE STATE OF OKLAHOMA

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ITEM 1. Copy of Letter from Insurer to Applicant.

Furnish a letter to the applicant from an insurer authorized to do business in Oklahoma evidencing the policy form number and setting out the insurer's agreement to issue insurance policies to convert the prepaid funeral contracts from trust funded benefits to insurance funded benefits.

ITEM 2. Copy of Written Commitment to Commissioner.

Furnish a copy of the written commitment to the Commissioner containing the agreement between or among the insurer, the applicant, and the post-conversion administrator regarding the transfer, receipt, and the application of trust funds upon conversion, which commitment must require a copy of each insurance policy issued be furnished to the owner of the insurance policy and that a copy be made available to the respective prepaid funeral contract purchasers upon request, in the event they are not the owners of the policies.

ITEM 3. Pre-conversion Summary.

Furnish a pre-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of a date within thirty (30) days of the date of application), as well as aggregated totals for each category of information, if appropriate:

- (A) individual prepaid funeral benefits contract purchaser's name and/or the owner;
- (B) date of execution of pre-converted prepaid funeral contract;
- (C) face amount of the contract;
- (D) amount paid in and the unpaid balance;
- (E) accumulated earnings;
- (F) amount due the prepaid funeral contract purchaser upon cancellation and the amount due the application upon death of the prepaid funeral contract owner, assuming death or cancellation were to occur on or about the date of application;
- (G) amount retained by the applicant under the Title 36 O.S. §6125; and
- (H) whether the pre-converted contract is or was a contract pursuant to Sections 6125(B)(1) or 6125(B)(2).

**ITEM 4. Post-conversion Summary.**

Furnish a post-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of the same date of the pre-conversion summary), as well as aggregated totals for each category of information, if appropriate:

- (A) annuitant's name;
- (B) original prepaid funeral contract amount;
- (C) amount paid in and the unpaid balance;
- (D) amount applied to the purchase of the insurance policy;
- (E) initial cash surrender value and initial death benefit under the insurance policy; and
- (F) amount retained by the applicant under the Title 36 O.S. §6125.

**ITEM 6. Actuarial Certification.**

Furnish an actuarial certification certifying that the reserves to be held by the insurance company with respect to the conversion will be adequate to pay claims as they become due (dated no more than six (6) months prior to the date of the application).

**ITEM 8. Form of Assignment.**

Furnish a copy of the form of assignment, if any, to be used in assigning insurance policy rights or proceeds to the post-conversion administrator.

**ITEM 7. Signature and Certification.**

Signature and certification required as follows:

I, \_\_\_\_\_, being first duly sworn, state that I have read the within and foregoing application and that the answers supplied by me therein are true and correct to the best of my knowledge and belief.



APPENDIX X. SELLERS NOTICE TO THE INSURANCE COMMISSIONER [REVOKED]

Sellers Notice to the Insurance Commissioner

Permit Number

KNOW ALL BY THESE PRESENTS that I, \_\_\_\_\_, (Seller) current owner of \_\_\_\_\_ doing business as a Prepaid Funeral Benefits organization in the State of Oklahoma and required by OKLA. STAT. TIT. 36 § 6124.1 to provide notice of Transfer in Ownership hereby submit to you the following;

- a) Name of Acquiring Organization \_\_\_\_\_
b) Date Acquiring Organization Assumes Control \_\_\_\_\_
c) Attached and made part of this Notice is the required listing of outstanding Prepaid Funeral Contracts

The Seller, now obligates the acquiring organization to apply for and receive a permit of sameness from the Insurance Commissioner of the State of Oklahoma, prior to acting as the Prepaid Funeral Benefits organization for all prepaid funeral contracts included in the transfer of ownership.

Seller further agrees that all monies paid into Trust as part of the prepaid funeral contract remain under the control of Seller until the Insurance Commissioner, in order to safeguard the rights and interests of the individual prepaid funeral contract holder, expressly authorizes the transfer of said Trust monies to the Buyer.

I, \_\_\_\_\_ hereby affirm that all information provided in this notice and inscribed on the attached listing of outstanding Prepaid Funeral Contracts is true and correct. I further affirm that I have disclosed any adverse change foreseen due to the transfer in Ownership.

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and affirmed before me on \_\_\_\_\_ by \_\_\_\_\_

(Signature of Notarial Officer)

(seal)

(Title)

(Commission Expiration)

PFSN 2009

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## APPENDIX Y. ASSUMPTION AFFIDAVIT [REVOKED]

### Assumption Affidavit

KNOW ALL BY THESE PRESENTS that I, \_\_\_\_\_, (Acquirer), acting  
*Acquirer of Funeral Establishment*

in accordance with OKLA. STAT. TIT. 36 §6124.1, now make notice of intent to purchase \_\_\_\_\_, a provider of prepaid funeral services and/or merchandise.  
*(Name of Funeral Establishment)*

Application has been made to the Insurance Commissioner of the State of Oklahoma to enter into contracts and receive payments thereon for prepaid funeral services and/or merchandise, in accordance with OKLA. STAT. TIT. 36 §6121 et seq.

As the Acquirer, I have been made aware of existing insurance funded and trust funded contracts for prepaid funeral services and/or merchandise underwritten by the Seller and accept the Sellers identification and itemization of said contracts.

Acquirer further agrees that all monies accrued in the Seller's Trust remain under the Sellers control until the Insurance Commissioner, as means of safeguarding the rights and interests of the individual prepaid funeral contract holder, expressly authorizes transfer of said Trust monies to the Acquirer.

I, \_\_\_\_\_ hereby affirm that all information provided in this  
*(Acquirer of Funeral Establishment)*  
affidavit is true and correct. I further affirm that I have disclosed any adverse change foreseen due to the transfer in Ownership.

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and affirmed before me on \_\_\_\_\_ by \_\_\_\_\_  
*(Date) (Buyer)*

\_\_\_\_\_  
*(Signature of Notarial Officer)*

(seal)

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Commission Expiration)*

PFAA 2009

*[OAR Docket #22-500; filed 6-28-22]*

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TITLE 380. DEPARTMENT OF LABOR
CHAPTER 10. PERSONNEL EMPLOYMENT AGENCIES

[OAR Docket #22-585]

RULEMAKING ACTION:
PERMANENT final adoption

- RULES:
380:10-1-1 [REVOKED]
380:10-1-2 [REVOKED]
380:10-1-3 [REVOKED]
380:10-1-4 [REVOKED]
380:10-1-5 [REVOKED]
380:10-1-6 [REVOKED]
380:10-1-7 [REVOKED]
380:10-1-8 [REVOKED]
380:10-1-9 [REVOKED]
380:10-1-10 [REVOKED]

AUTHORITY:
Department of Labor; HB1233 (56th Legislature); Executive Order 2020-03

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 20, 2022

COMMENT PERIOD:
February 15, 2022 through March 21, 2022

PUBLIC HEARING:
March 21, 2022

ADOPTION:
March 23, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2022

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:
June 21, 2022

EFFECTIVE:
September 15, 2022

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
On November 1, 2017, HB1233 became effective, amending 40 O.S. §§ 46, 52, 54, 55, and 57 and repealing 40 O.S. §§ 35, 38, and 53. This removed the Oklahoma Department of Labor's ("ODOL") authority to regulate Private/Personnel Employment Agencies. As such, the rules contained in OAC 380:10 are outdated and unnecessary. Pursuant to Executive Order 2020-03, ODOL is revoking these rules.

CONTACT PERSON:
Daniel A. Mares, Assistant General Counsel, (405) 521-6186 or daniel.mares@labor.ok.gov or Don Schooler, Chief of Staff and General Counsel, (405) 521-6181 or don.schooler@labor.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

380:10-1-1. Purpose [REVOKED]
The purpose of the rules of the Department of Labor found in Chapter 10 is to provide guidance to Personnel Employment Agencies in the regulations and requirements for licensing their operations in the State of Oklahoma as mandated by State law.

380:10-1-2. Definition [REVOKED]
The following words or terms, when used in this Chapter, shall have the following meaning, unless the context already indicates otherwise:

"Employment" means the date the employee is placed on the payroll.

380:10-1-3. Prospective employers [REVOKED]
If anywhere within the confines of an employment contract, any mention is made wherein the applicant is asked to disclose to the agency a list of prospective employers to whom he shall previously have been referred by other agencies, the clause must also contain language to the effect that it is optional on the part of the applicant to disclose said information.

380:10-1-4. Required clauses [REVOKED]
All employment contracts shall contain the following clauses:

- (1) CLAUSE #1: Employment agency laws are administered by the State Department of Labor.
(2) CLAUSE #2: All contracts shall contain a clause regarding refunds as follows: "in all instances wherein employment is terminated within sixty (60) days, if a refund is requested by the employee, the agency shall have ten (10) days to request verification of the inclusive dates of employment and the total gross earnings of the employee and shall make all refunds within ten (10) days of verification."

380:10-1-5. Percent service fee [REVOKED]
If anywhere within the confines of an employment contract a mention is made to the effect that the Department of Labor administers the law with regard to the percent to be charged as a service fee, the agency shall also publish a sentence within the contract regarding the limits of the earning and percentages not regulated by this Department; and in no way shall any be misleading in regard to the portion or upper limits of earning not regulated by this Department.

380:10-1-6. Interest on credit [REVOKED]
When an employment agency procures employment for a client and extends individual credit for the payment of the fee, the employment agency may not charge interest on the credit so extended.

380:10-1-7. Corporate residency [REVOKED]
Under the provisions of Title 40, Oklahoma Statutes, Section 53(b), which requires in the case of corporate applicants, that at least one of the incorporators and one of the principle officers thereof, together with the person who is to be responsible for the general management of the office, meet the requirements as to residence and experience, it is possible for one individual to meet all the requirements of the statute.

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## 380:10-1-8. General manager [REVOKED]

~~Under the provision of Title 40, Oklahoma Statutes, Section 53(i), the same person is not prohibited from being the general manager of a number of separate employment agency offices.~~

## 380:10-1-9. Attorney General's opinion [REVOKED]

~~The Department of Labor was asked to request an Attorney General's Opinion clarifying certain portions of the Private Employment Agency law. In answer to this request, the Attorney General has issued Opinion No. 79-300, dated October 22, 1979, which basically states the following:~~

- ~~(1) Agencies operating on an employer paid fee basis only are included within the definition of a private employment agency and are required to obtain a state license.~~
- ~~(2) Where the employment procured pays \$500.00 or more per month, the statute requires the fee to be determined by written agreement between all parties concerned. This includes the employer, the employment agency and the applicant.~~
- ~~(3) Any employer who pays a fee is entitled to a refund as provided in the statutes.~~

## 380:10-1-10. Application for license [REVOKED]

~~In order to expedite an application for a private employment agency license, the following materials should be included with the application:~~

- ~~(1) A license fee of \$100.00.~~
- ~~(2) Surety Bond.~~
- ~~(3) Notarized statement from the licensee of the agency or agencies where applicant has been employed, containing inclusive dates of employment and job title.~~
- ~~(4) On the last page of the application, applicant is required to list three personal references. Submit NOTARIZED reference letters with the application, or the Department will request the reference letters by mail upon receipt of the application.~~
- ~~(5) If submitting a corporate application, include a copy of the Articles of Incorporation and Organizational Minutes. The Minutes should reflect that the applicant is an incorporator, an officer of the corporation and General Manager of the agency.~~
- ~~(6) Please direct all inquiries to the Employment Standards Division. The number to call in Oklahoma City is (405) 528-1500. The number in Tulsa is (918) 581-2400.~~

*[OAR Docket #22-585; filed 7-12-22]*

# TITLE 380. DEPARTMENT OF LABOR CHAPTER 60. WORKERS' COMPENSATION ENFORCEMENT RULES

*[OAR Docket #22-586]*

## RULEMAKING ACTION:

PERMANENT final adoption

## RULES:

- 380:60-1-1 [REVOKED]
- 380:60-1-2 [REVOKED]
- 380:60-1-4 [REVOKED]
- 380:60-1-5 [REVOKED]
- 380:60-1-6 [REVOKED]
- 380:60-1-8 [REVOKED]

## AUTHORITY:

Department of Labor; SB1062 (54th Legislature); Executive Order 2020-03

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

January 20, 2022

## COMMENT PERIOD:

February 15, 2022 through March 21, 2022

## PUBLIC HEARING:

March 21, 2022

## ADOPTION:

March 23, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

On February 1, 2014, SB1062 became effective, creating the Administrative Workers' Compensation Act and removing the Oklahoma Department of Labor's ("ODOL") authority to enforce the Workers' Compensation laws in Oklahoma. As such, the rules contained in OAC 380:60 are outdated and unnecessary. Pursuant to Executive Order 2020-03, ODOL is revoking these rules.

## CONTACT PERSON:

Daniel A. Mares, Assistant General Counsel, (405) 521-6186 or daniel.mares@labor.ok.gov or Don Schooler, Chief of Staff and General Counsel, (405) 521-6181 or don.schooler@labor.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## 380:60-1-1. Purpose [REVOKED]

~~The rules contained in Chapter 60 implement the workers' compensation enforcement procedures for the fair enforcement of the Workers' Compensation Law as mandated by Statute.~~

## 380:60-1-2. Visitation of businesses [REVOKED]

~~The visitation of businesses by the Department of Labor for violations shall be set by the following priorities:~~

- (1) whistle blower report,
- (2) a form WC3 provided by the Workers' Compensation Court,
- (3) reported suspected non-compliance by another division or government agency,
- (4) hazardous industries as recognized by the Occupational Safety and Health Administration (OSHA),
- (5) special operations for a time certain that has a pre-determined target for cause or random selection both having been approved previously by the division director.

**380:60-1-4. Proof of insurance [REVOKED]**

The providing of a valid Certificate of Insurance will normally be accepted as proof of workers' compensation insurance. However, should a question arise as to the validity of coverage or the correct number of employees, then a compliance officer may seek other evidentiary documents, including but not limited to the following:

- (1) ES3 (Oklahoma Employment Securities) State Tax Report for the quarter ending that would encompass the time period of the visit.
- (2) Form 941 (Employer's Federal Tax Return) for the quarter ending that would contain the time period of the visit.
- (3) Complete payroll journal records for the months that would have an integral part of the time period of the visit.
- (4) Statements of employment or severance from employees of questionable status.
- (5) Complete copy of general ledger for time periods beginning and ending wherein the visitation date is included.
- (6) Copy of the state tax return for the previous year of the visitation date.
- (7) Copy of federal tax return for the previous year of the visitation date.
- (8) Certified copy of the last prepared profit loss statement.
- (9) Copies of signed contract with any and/or all independent contractors/contract labor.
- (10) Identification of the independent contractor status:
  - (A) Name,
  - (B) Address,
  - (C) Telephone number.
  - (D) Social Security number.
  - (E) Independent contractor's federal, state, or municipal I.D. number.
  - (F) Independent contractor's copy of application for license or permit.
  - (G) A copy of independent contractor's form of advertising showing that the entity is in business.
  - (H) A written order by a federal, state or municipality that shows the independent contractor has been determined a business and/or an independent contractor.
  - (I) A license that would show independent contractor.

- (J) Business relationship in correlation with the business being investigated meets an independent contractor status.
- (K) Is the independent contractor currently working for any other business excluding the business under investigation.
- (L) Workers' compensation insurance carrier.
- (M) Copy of independent contractor's insurance policy naming the business that is currently under investigation, i.e.:
  - (i) General liability policy
  - (ii) Specific performance bond.
- (N) If the business being interviewed declares a formation of business as a partnership, proof of the relationship will be required.

**380:60-1-5. Authority to enter [REVOKED]**

Compliance officers have the authority to enter any business during regular business hours and verify whether that business has valid workers' compensation coverage.

**380:60-1-6. Interference of duty [REVOKED]**

No person shall interfere with, obstruct or hinder by force or otherwise the Commissioner of Labor, his assistants or compliance officers while in the performance of their duties, or refuse to properly answer questions asked by such officers pertaining to the laws over which he has supervision under the provision of this Chapter.

**380:60-1-8. Citation of employer [REVOKED]**

After verification that, within one (1) year prior to a Workers' Compensation Compliance Officer's visitation date, an employer failed to provide continuous workers' compensation insurance coverage as required by law, the employer shall be cited and the maximum allowable civil penalty under the law will be assessed unless the employer can prove that the lapse in coverage that occurred was not the employer's fault.

[OAR Docket #22-586; filed 7-12-22]

**TITLE 380. DEPARTMENT OF LABOR  
CHAPTER 70. ELEVATOR SAFETY ACT**

[OAR Docket #22-587]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Administration
- 380:70-3-8 [AMENDED]
- 380:70-3-9 [AMENDED]
- Subchapter 11. General Requirements
- 380:70-11-1 [AMENDED]

**AUTHORITY:**

Department of Labor; 59 O.S. §§ 3023 and 3024, Elevator Safety Act

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

January 20, 2022

# Permanent Final Adoptions

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**COMMENT PERIOD:**

February 15, 2022 through March 21, 2022

**PUBLIC HEARING:**

March 21, 2022

**ADOPTION:**

March 23, 2022

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

March 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule amendments provide specific location requirements for display of certificates of operation so that certificates of operation are conspicuously displayed for viewing by the general public. The proposed amendments change the use of the word "safety" to "safeties" to accurately reflect personnel hoist or transport platform nomenclature. The proposed amendments reduce the time allowed to submit an inspection report to the owner/operator of a conveyance and to the Department of Labor.

**CONTACT PERSON:**

Daniel A. Mares, Assistant General Counsel, (405) 521-6186 or daniel.mares@labor.ok.gov or Don Schooler, Chief of Staff and General Counsel, (405) 521-6181 or don.schooler@labor.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 3. ADMINISTRATION

**380:70-3-8. Certificates of Operation**

(a) Any conveyance inspected in accordance with the provisions of this Act and found to be, in the opinion of the inspector, safe for continued operation and in compliance with the requirements of this Act, and upon payment of the required fee to the Department, shall be issued a Certificate of Operation by the Department.

(b) All Certificates of Operation issued by the Department shall be maintained in a suitable frame under transparent cover.

(c) All Certificates of Operation issued by the Department shall contain at a minimum the name and complete mailing address of the structure where the conveyance is installed or erected, the state identification number assigned to the conveyance, the date of the most recent inspection and the expiration date of the Certificate of Operation.

(d) The required Certificates of Operation shall be posted conspicuously as follows:

(1) inside elevator cars or in the main lobby (landing) adjacent to elevator call station, or

~~(2) inside escalator and moving walkway machinery rooms, or~~

~~(3) in some other location acceptable to the Department for escalators, at the base of the balustrade at the lower level of the escalator.~~

(e) ~~If the Certificate of Operation is not conspicuously displayed in, upon, or adjacent to the conveyance for viewing by the general public, the conveyance must be equipped with a sign, placard, or other device informing those persons utilizing the conveyance of the location of the valid Certificate of Operation. The Certificate of Operation shall be conspicuously displayed in, upon, or adjacent to the conveyances for viewing by the general public.~~

(f) When an elevator or conveyance with a valid Certificate of Operation undergoes an alteration or is remodeled, the Certificate of Operation becomes invalid. To release the altered or remodeled elevator for use by the general public, the elevator must pass an inspection conducted by the Department.

## **380:70-3-9. Temporary Certificates of Operation**

(a) Temporary Certificates of Operation may be issued for established elevators or conveyances after the required inspection to renew a Certificate of Operation subject to the following conditions:

(1) When a routine inspection is performed and the inspector finds that the elevator or conveyance does not comply with the provisions of the Act, the inspector will explain what the violations are, what repairs are required, and shall also document them on an inspection report and/or checkoff list. Upon agreement of a reinspection date between the inspector and the owner or lessee of not more than 60 days, the inspector may issue a Temporary Certificate of Operation for the elevator or conveyance.

(2) Elevators or conveyances granted a Temporary Certificate of Operation shall be re-inspected prior to the expiration date of the Temporary Certificate of Operation. If any of the conditions that caused the issuance of a Temporary Certificate of Operation are found to have not been corrected, no further Certificates shall be issued and the Chief Elevator Inspector shall be consulted about future operations of the unit including but not limited to extensions of time, restricted operations or up to being Red Tagged.

(3) The issuance of a Temporary Certificate of Operation shall be reported to the Department by the inspector within 24 hours or the first working day after its issuance.

(b) Temporary Certificates of Operation may be issued for new elevators or conveyances at the request of a licensed elevator contractor for elevators or conveyances and personnel hoists in accordance with the following requirements:

(1) **Issuance for Elevators.** The Chief Elevator Inspector or a Special or Certificate Inspector may allow the temporary use of any elevator for passenger or freight service, not for use by the general public, during its new installation or alteration under the authority of a Temporary Certificate of Operation, issued for each class of service. Such limited certificates shall not be issued for elevators until the elevator has been tested, electric elevators with a capacity of 125% load test of the brake holding and stopping, and rated load test of the car safeties, hydraulic

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

[OAR Docket #22-392]

elevators test with the rated load, working and relief pressure, hoistway door interlocks, car door switch, and terminal stopping devices have been tested to determine the safety of the equipment for the specified construction purposes. These test reports shall be kept on site for the inspector to review.

(2) **Issuance for Personnel Hoists and Transport Platforms.** The Chief Elevator Inspector may allow the temporary use of any personnel hoist or transport platform under the authority of a Temporary Certificate of Operation. Such limited certificate shall not be issued until the personnel hoist or transport platform has been tested with a rated load, and the car ~~safetysafeties~~ hoistway door interlocks, car door switch, and terminal stopping devices, as applicable, have been tested to determine the safety of the equipment.

(3) **Expiration.** Temporary Certificates of Operation issued in accordance with Subsections (b)(1) and (b)(2) shall expire pursuant to the following:

(A) Temporary Certificates of Operation for new elevators or conveyances may be issued for a period not to exceed ninety (90) days.

(B) Temporary Certificates of Operation for personnel hoists and transport platforms may be issued for a period not to exceed ninety (90) days.

(C) Such certificates may be renewed at the discretion of the Chief Elevator Inspector upon receiving a written request showing justifiable cause for renewal.

(c) In addition to any other fee provided for in the Act, a fee for the issuance of a Temporary Certificate of Operation shall be assessed and paid to the Department.

**SUBCHAPTER 11. GENERAL REQUIREMENTS**

**380:70-11-1. Report of inspection**

(a) A report of inspection shall be completed and submitted to the Department for every inspection conducted as required by the provisions of the Act and this Chapter. Reports of inspection shall be on forms acceptable to the Department.

(b) Special Inspectors and Certificate Inspectors shall submit reports of inspection to the Department within ~~thirty (30)~~ seven (7) days of the completion of the inspection.

(c) Reports of inspection shall be provided to the owner/operator, contractor or his/her authorized agent at the time of the inspection or soon thereafter, but in no instance more than ~~thirty (30)~~ seven (7) days following the completion of the inspection.

[OAR Docket #22-587; filed 7-12-22]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
390:1-1-1 [AMENDED]  
390:1-1-4 [AMENDED]  
390:1-1-6 [AMENDED]  
390:1-1-8 [AMENDED]  
390:1-1-9 [AMENDED]  
390:1-1-10 [AMENDED]  
390:1-1-12 [AMENDED]

**AUTHORITY:**  
Council on Law Enforcement Education and Training; 20 O.S., § 1313.2; 21 O.S., §§ 1289.8 and 1290.1; 51 O.S., §§ 24-A et seq.; 59 O.S., §§ 1350.1 et seq.; 59 O.S., §§ 1750.1 through 1750.14 and 1451 through 1476; 70 O.S., § 3311 et seq., § 3311.2 through 3311.13; 74 O.S., §§ 4111 et seq.; 75 O.S., §§ 250 et seq. and 250.3.

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

December 22, 2021

**COMMENT PERIOD:**  
January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**  
February 22, 2022

**ADOPTION:**  
March 10, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
Amendments to 390:1-1-1. Adding et seq.  
Amendments to 390:1-1-4. To amend Advisory Council members, terms, annual meeting dates, and new & reactivated LE agencies. Remove (J) (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (K) (L)  
Amendments to 390:1-1-6. (e) (1) Adding verbiage for submissions through CLEET's online portal.  
Amendments to 390:1-1-8. (b) Adding verbiage for submissions through CLEET's online portal.  
Amendments to 390:1-1-9. (b) Changing normal business hours will be 8:00 a.m. to 4:30 p.m.  
Amendments to 390:1-1-10. (b) Adding verbiage for submissions through CLEET's online portal.  
Amendments to 390:1-1-12. (a) (1) changing the word cost to costs.

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

# Permanent Final Adoptions

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## 390:1-1-1. Purpose

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

## 390:1-1-4. Objectives of the Council

The objectives of the Council are:

(1) To raise the level of professional competence and integrity of law enforcement by:

(A) Establishing and administering minimum standards for the training and certification of law enforcement officers, to include physical, mental, and moral standards.

(B) Establishing and administering minimum curriculum and instructional standards for law enforcement training at a variety of levels.

(C) Providing these and other services to law enforcement officers as directed by law.

(D) Recommending legislation necessary to upgrade Oklahoma law enforcement to professional status.

(E) Appointing a larger Advisory Council.

(i) The Advisory Council shall be composed of ~~seventeen (17)~~ fifteen (15) members who are certified full-time peace officers employed by a campus, city, county, state or federal law enforcement agency. ~~At least one member shall be appointed from each of the ten (10) geographic CLEET training regions.~~ At least two members shall be from law enforcement agencies in each of the four quadrants of the state (Northwest, Southwest, Northeast, and Southeast) as defined by CLEET. One member shall be the training coordinator or designee for Oklahoma City Police Department, one member shall be the training coordinator or designee for Tulsa Police Department, and one member shall be appointed by the Chief of the Highway Patrol.

(ii) Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council. A term of service will begin upon a member's official appointment to the Advisory Council.

(iii) An Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(iv) When a vacancy occurs on the Advisory Council, the Advisory Council shall recommend an individual to the Council for the vacant position.

(v) ~~Annual quarterly meetings.~~ The Advisory Council shall meet as often as is necessary to attend to business but not less than at least one time

annually. Any Advisory Council member with more than two (2) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the Advisory Council by the Council.

(F) Appointing a Drug Dog Advisory Council.

(i) The Drug Dog Advisory Council shall be composed of members as provided in 70 O.S. Section 3311(K) (2).

(ii) Drug Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Drug Dog Advisory Council shall meet as the business of the Drug Dog Advisory Council demands.

(iv) A Drug Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Drug Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect controlled dangerous substances to the Council for action.

(vi) When a vacancy occurs on the Drug Dog Advisory Council, the Drug Dog Advisory Council shall recommend an individual to the Council for the vacant position.

(vii) ~~Annual quarterly meetings.~~ Any DDAC member with more than two (2) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the DDAC by the Council.

(G) Appointing a Bomb Dog Advisory Council

(i) The Bomb Dog Advisory Council shall be composed of members as provided in 70 O.S. Section 3311(L) (2).

(ii) Bomb Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Bomb Dog Advisory Council shall meet as the business of the Bomb Dog Advisory Council demands.

(iv) A Bomb Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Bomb Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect explosives, explosive materials, explosive devices, and materials which could be used to construct an explosive device to the Council for action.

(vi) When a vacancy occurs on the Bomb Dog Advisory Council, the Bomb Dog Advisory Council shall recommend an individual to the Council for the vacant position.

(vii) ~~Annual quarterly meetings.~~ Any BDAC member with more than two (2) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the BDAC by the Council.

(H) Appointing a Curriculum Review Board as provided in 70 O.S., Section 3311(B)(16). ~~Six Annual meetings.~~ The CRB shall meet as often as is expedient to accomplish its obligations but not less than at least one time annually. Any CRB member with more than three (3) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the CRB by the Council.

(I) Approve New and Reactivated Law Enforcement Agencies and Police Departments as provided in 70 O.S., Section 3311.

(J) ~~Entities must submit the following information 60 days prior to the creation of a law enforcement agency:~~

- ~~(i) the need for the agency in the community,~~
- ~~(ii) the funding sources and proof that no more than fifty percent (50%) of the funding of the entity will be derived from ticket revenue and/or fines,~~
- ~~(iii) the physical resources available to officers,~~
- ~~(iv) the physical facilities that the law enforcement agency or police department will operate, including descriptions of the evidence room, dispatch area, restroom facilities, and public area,~~
- ~~(v) law enforcement policies of the law enforcement agency or police department, including published policies on the use of force, vehicle pursuit, mental health, professional conduct of officers, domestic abuse, response to missing persons, supervision of part time officers, and impartial policing,~~
- ~~(vi) the administrative structure of the law enforcement agency or police department,~~
- ~~(vii) liability insurance, and~~
- ~~(viii) any other information CLEET requires by rule.~~

~~(K) CLEET will respond within sixty (60) days of receiving the request and will forward to the entity by certified mail, return receipt requested, a letter of authorization or denial.~~

~~(L) If denied, the entity may appeal the decision of the director or the director's designee to the full CLEET Council.~~

(2) To raise the level of professional competence and integrity of the private security industry by:

(A) Establishing and administering minimum standards for the employment of security guards and private investigators, and the establishment of private

security and investigative agencies, through a licensing program based on physical, mental, and moral standards.

(B) Establishing and supervising a validated training program for security guards and private investigators.

(C) Enforcing the provisions for the Oklahoma Security Guard and Private Investigator Act (Title 59, Sections 1750.1 *et seq.*).

(D) Appointing an Advisory Committee comprised of representatives from security guard and investigative agencies.

(i) The Committee shall be comprised of seven (7) representatives from licensed security guard and private investigative agencies as follows: One (1) from each quadrant of the state, one (1) at large, one (1) selected by the American Society for Industrial Security (ASIS) and one (1) selected by the Oklahoma Private Investigators Association (OPIA).

(ii) Committee representatives shall serve for a term of three years and may be reappointed for one additional term unless removed by the Council.

(iii) A Committee representative may be removed and that position declared vacant by the Council for any reason including but not limited to the following:

- (I) Failure to be in good standing with their license;
- (II) Use of their appointment on the Committee for threats or perceived personal gain; or
- (III) ~~Annual quarterly meetings.~~ Any PSAC member with more than two (2) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the PSAC by the Council.

(iv) When a vacancy occurs on the Advisory Committee, the Advisory Committee shall recommend an individual to the Council for the vacant position.

(v) Committee representatives shall meet at least quarterly or more often as the business of the Committee demands but not less than at least one time annually.

(vi) The Committee shall report research, recommendations and other matters related to licensure of security guards, security agencies, private investigators and private investigative agencies to the ~~Advisory Council for review prior to submission to the Council~~ for final action.

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

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

## Permanent Final Adoptions

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- (b) Copies of public information may be obtained from the Council office during regular business hours upon receipt of a written request and payment of a fee to cover the cost of providing copies of the requested.
- (c) There may be a charge of Twenty-Five Cents (\$.25) per page for copies of records of the Council.
- (d) In the event a request for copies is for a commercial purpose or would cause disruption of the performance of the regular duties of the Council or Council staff, there may be an additional charge computed and assessed for locating and copying the requested materials based upon the cost of the lowest paid employee necessary to accomplish the copying request.
- (e) Pursuant to 51 O.S., Section 24A.8:
- (1) Individual requests for records will only be accepted if received by U.S. Mail or through CLEET's online portal or a designated email address, if any facsimile.
  - (2) Agency requests for records will be accepted if on agency letterhead and received by U.S. Mail with original signature. If the Agency requesting the records has an email address ending in .org, .gov, state, or .us then an email request is sufficient.
  - (3) If documents requested are not submitted by the individual or a law enforcement agency for investigative purposes, an *Order to Compel and Protective Order for Materials Produced by CLEET* must be received. This Order must be certified by the issuing Court.
  - (4) A subpoena without an *Order to Compel and Protective Order for Materials Produced by CLEET* is not sufficient.
- (f) All social security numbers except for the last four digits will be redacted from any documents supplied by CLEET.
- (g) All residential addresses will be redacted from any documents supplied by CLEET.

### 390:1-1-8. Forms

- (a) In order to maintain efficiency and uniformity in the administration of CLEET's duties, CLEET will devise and maintain forms for use by any party. The forms may be revised periodically to insure uniformity, efficiency, and expediency. The prescribed forms must be used by affected party unless another form is approved by CLEET prior to its submission. Forms may be acquired from the CLEET website, electronically, or by writing CLEET.
- (b) CLEET may use an online portal to conduct business with the public and various forms may be accessed, filled, and submitted through such portal. Any time a writing is required in these rules, if such writing can be accomplished through the online portal it will be considered as complying with the rules. Logging into and submitting any information through the online portal with an individual user identification and password will constitute submission with an original signature as that term is used in these rules.

### 390:1-1-9. Official office and location for information

- (a) Unless otherwise specified in this Title, the address for CLEET is: CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.
- (b) ~~The normal business hours of CLEET are 8:00 a.m. to 5:00 p.m.~~ Normal public hours will be 8:00 a.m. to 4:30 p.m. Central Time, Monday through Friday, except legal holidays.

### 390:1-1-10. Electronic signatures, photographs and records

- (a) CLEET may issue and receive electronic signatures, photographs, and records as defined in this Chapter.
- (b) All applications for a license or certification must be ~~original and contain original signatures completed through CLEET's online application portal unless otherwise allowed by CLEET.~~
- (c) CLEET reserves the right to request signatures, photographs and records in a particular format.
- (d) Name changes in the CLEET database will only be made when certified documents are received.

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

- (a) Events and courses identified by the Director, or the director's designee, shall be subject to fees authorized in 70 O.S. 3311(B)(13). Costs will be advertised at the time the event or course is announced.
- (1) Courses may be offered at a per student rate. CLEET shall establish this rate based on the anticipated course costs. These ~~costs~~ costs may include items such as instructor fees (if any), training materials, travel costs (motel, per diem and transportation), facility rental (if any) and any other incidental costs incurred.
  - (2) Courses may be offered at an agency rate. CLEET shall establish this rate based on the anticipated course costs associated with CLEET providing an instructor or instructors for a course hosted by an agency. These costs may include items such as training materials, travel costs (motel, per diem and transportation), facility rental fees (if any) and any other incidental costs incurred.
- (b) Payment of fees shall be submitted with an application form at least five working days prior to the event.
- (c) Forms of payment accepted by CLEET are found in Rule 390:1-1-13.
- (d) Cancellations for an event or course must be made two working days in advance of the scheduled training date. Applications not cancelled shall be charged the full fee amount.
- (e) The full fee amount for an event or course will be refunded in the event of a cancellation by CLEET due to unforeseen circumstances or at the request of the Director or the director's designee.
- (f) Failure to pay any assessed fee shall result in an action against a certification or license pursuant to OAR Chapter 2. Administrative Procedures.

[OAR Docket #22-392; filed 6-22-22]



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

*[OAR Docket #22-393]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

390:2-1-2 [AMENDED]

390:2-1-4 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 11 O.S., § 34-101 and § 34-102; 20 O.S., § 1313.2; 21 O.S., §§ 1289.8, 1290.1, and §§ 1290.14 through 1290.15; 59 O.S., §§ 1350.1 et seq.; 59 O.S., §§ 1750.1 through 1750.14 and 1451 through 1476; 70 O.S., § 3311 et seq.; 75 O.S., § 250 et seq., and § 250.3.

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

December 22, 2021

**COMMENT PERIOD:**

January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**

February 22, 2022

**ADOPTION:**

March 10, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendments to 390:2-1-2. (c) (3) (D) adding verbiage that notices provided in accordance with the Administrative Procedures Act.

Amendments to 390:2-1-4. This change will modify CLEET's rule to match the rules of civil procedure as it pertains to Oklahoma Discovery Code.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**390:2-1-2. Denials, reprimands, suspensions, revocations, disciplinary penalties, fines**

(a) **Persons affected by individual actions.** Under the authority of 70 O.S., Section 3311 et seq.; 59 O.S., Section 1750.1 et seq.; 59 O.S., Sections 1451-1476; 20 O.S., Section 1313.2, 21 O.S., Section 1289.9 and 21 O.S. Section 1290.1 et seq., and 59 O.S. 1350.1 et seq., CLEET may take Administrative Actions against the following parties for violations of said statutes and the Rules and Regulations of CLEET:

- (1) Certified peace officers and applicants;

- (2) Basic Peace Officer Academy students and applicants;
- (3) Private security training schools and applicants;
- (4) Armed and unarmed security guards, private investigators, security agencies, investigative agencies and applicants;
- (5) Certified drug detector dogs, handlers and applicants;
- (6) Certified bomb dogs, handlers and applicants;
- (7) CLEET certified instructors for Law Enforcement;
- (8) Counties, cities and towns involved in the penalty assessment program;
- (9) Private security training instructors and applicants;
- (10) Approved SDA Firearms Instructors;
- (11) Retired municipal, county, state and federal peace officers;
- (12) Certified Reserve Peace Officers and applicants;
- (13) Bail Enforcement training schools and applicants;
- (14) Bail Enforcement training instructors and applicants;
- (15) Bail Enforcement persons and applicants; and
- (16) Any other parties for which CLEET has statutory authority.

(b) **Type of sanctions.** CLEET may take the following actions against the parties mentioned in (a) of this section:

- (1) Oral Reprimand
- (2) Written Reprimand
- (3) Denial
- (4) Suspensions
- (5) Revocation and/or
- (6) Disciplinary penalty or fine.

(c) **Disciplinary procedures.** In the event CLEET, or its designated agent, has determined that an action will be taken, the following procedures shall apply in accordance with the Administrative Procedures Act, Section 250, et. seq. Title 75 of the Oklahoma Statutes.

- (1) The issuance or denial of a new license or new certification is not an individual proceeding, and is not subject to review by the administrative hearing process set forth below.
- (2) CLEET or its designated agent shall serve by certified mail, return receipt requested, or by personal delivery by an individual authorized by CLEET, a "Notice of Council Action" containing information required by 75 O.S. Section 309 et. seq., to the party at his last known residential address as reflected by the records of CLEET or current employing department or agency address if the personal address is unknown. If said letter is returned and notation of U.S. Postal Service indicates "unclaimed," "moved," "refused" or any non-delivery markings and the Council's records indicate no change of address as required by rule 390:35-5-13, and 70 O.S., §3311 the notice and any subsequent order shall be deemed served. Any order issued shall be deemed valid as if said individual or agency had been served.
- (3) The notice shall provide that CLEET action shall commence and become effective fifteen (15) days after receipt of said notice by the party, unless the party timely

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files a written request for a hearing with CLEET except as follows:

- (A) When CLEET determines that an allegation warrants immediate action, the commencement and effective date of fifteen (15) days will be waived and the action will be effective upon receipt of said notice.
  - (B) A request for hearing will be timely filed if said request is in writing and received by CLEET, its Director, or designated agent within ten (10) days of the date the party received notice.
  - (C) If a timely written request for a hearing is not received by CLEET, the allegations shall be deemed confessed by the party and the action will become final.
  - (D) If the written request for hearings is timely received by CLEET, such hearings shall be scheduled and notice provided in accordance with the Administrative Procedures Act within sixty (60) days from the date said request is received to be heard at the date to be determined.
- (4) The timely filing of a written request for a hearing will stay CLEET's action pending disposition of the hearing, unless the notice and allegations fall within (3)(A) of this subsection.
  - (5) The hearings will be held at a location designated by the Council.
  - (6) The hearing officer will be designated by CLEET or the Director thereof, and each party shall be afforded an opportunity to be heard and present evidence.
  - (7) The hearing will be electronically recorded and the ~~recording tapes~~ of said hearing will be preserved until all avenues of appeal have expired or been exhausted. If a party desires a court reporter, or certified stenographer, it shall be the party's burden to provide and bear the cost of said services and subsequent transcription.
  - (8) If a party fails to appear at the scheduled hearings without prior notification or good cause, the hearing officer shall default the party, and enter an order sustaining the allegations set forth in the notice and imposing the sanctions set forth therein; or if the State sustains its burden, the hearing examiner shall rule accordingly.
  - (9) If the complaining party fails to show or the state otherwise fails to prove the allegations by clear and convincing evidence, the action against the party shall be dismissed without sanctions.
  - (10) The designated hearing officer shall render a decision based upon the law and the evidence presented at the hearing.
  - (11) Each party shall be notified, in written order form, of the findings of fact and conclusions of law relating to the action.
  - (12) A party may appeal the hearing officer's decision as set forth in 75 O.S. Section 250 et. seq. of the Administrative Procedures Act.

### 390:2-1-4. Discovery

(a) **Purpose.** Discovery is designed to enable a party to obtain relevant information needed for presentation of the

party's case. These Rules are intended to provide a simple method of discovery. Discovery rules and time limitations will be pursuant to Oklahoma Discovery Code 12 O.S., Section 3224-3237 except as otherwise provided herein.

(b) **Explanation.** Discovery is a process apart from the hearing whereby a party may obtain relevant information from another person which has not otherwise been provided. Relevant information means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the information. This information is obtained for the purpose of assisting the parties in developing, preparing and presenting their cases.

(c) **Methods.** Discovery may be obtained by written interrogatories or oral interrogatories reduced in writing, depositions, requests for production of documents for inspection or copying and things and entry upon land for inspection and other purposes, requests for physical and mental examination of persons, and requests for admissions.

#### (1) Depositions.

(A) Deposition of a witness for use at a hearing may be taken only when ordered upon motion by CLEET or on application of a party. The order may direct that the deposition of a witness be taken inside or outside the State of Oklahoma.

(B) The order shall state the time and place the deposition shall be taken, and the party taking the deposition shall serve a copy of the order by regular mail on each party of record at least five days prior to the date scheduled for taking the deposition.

(C) The manner of taking depositions and the attendance of witnesses shall be governed by the laws relating to taking the depositions for use in the District Courts, except that the attendance of a witness for deposition shall be required only in the county of his residence.

(D) A deposition may be offered in evidence at the hearing by any party.

#### (2) Production of documents ~~All others.~~ All other forms of discovery may be obtained by following the applicable provisions of the Oklahoma Discovery Code.

~~(A) Upon application of a party, or upon motion of CLEET, with or without notice, CLEET may make an order requiring a party to produce designated documents or tangible objects for inspection by parties to the proceeding, or for copying at the expense of the applicant, or to be offered into evidence. The order shall direct production thereof at the hearing, and production shall be at the principal office of CLEET, unless some other place is stated in the order.~~

~~(B) The party applying therefore shall serve a copy of the order by regular mail on each party of record at least five days prior to the date upon which production is required.~~

~~(C) An order pursuant to this section may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the proceeding, or may reasonably~~

lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the proceeding.

(D) The order shall identify the documents or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the party ordered to make production.

(E) An exact photographic copy of a document may be substituted for the original, at the expense of the person producing the instrument.

(3) ~~Admission of facts and genuineness of documents.~~ CLEET may order any party to respond to requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(4) ~~Stipulations.~~ The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

(d) **Witnesses.**

(1) **Lists.** All parties to a proceeding shall file a list of witnesses expected to be called during the proceeding. Such list shall include a brief statement describing the testimony to be offered. Witness lists will be made available for inspection and copying to all parties of record. The witness list shall be made available at least five days prior to the hearing.

(2) **Exclusion.** The Hearing Examiner may exclude the testimony of any witness when said testimony is deemed irrelevant, unduly repetitious or cumulative.

(3) **Testimony.** A witness present at a hearing pursuant to subpoena may be called to testify by the Hearing Examiner or by any party.

(4) **Protective orders.** CLEET may make any orders with respect to subpoenas and attendance of a witness with or without application or notice, as may be appropriate for the protection of parties and witnesses, including an order excusing attendance, or limiting documents to be produced.

(e) **Subpoenas.**

(1) **Duces Tecum.** CLEET may, upon request of a party, issue a subpoena in the name of CLEET in any pending proceeding requiring attendance of a witness from any place in the state to the place of hearing. A Subpoena Duces Tecum may require a witness to produce at or before the hearing, books, records, accounts, papers and other instruments and tangible objects, which shall be described with reasonable particularity in the subpoena. A subpoena duces tecum directed to an entity ~~a party~~, not an individual, may direct that the records be produced by an officer or employee responsible therefore.

(2) **Request for subpoena.** A request for subpoena shall be submitted to CLEET not less than ten days prior to the hearing. Such requests shall be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven.

(f) **Role of Hearing Examiner Interrogatories.** A hearing examiner may enter any orders, including scheduling orders, deemed necessary to facilitate the discovery process. Such orders may be entered upon request of a party or on the hearing examiner's own motion.

(1) Upon application of a party, or upon the motion of CLEET, with or without notice, an order may be entered requiring a party to answer in writing under oath of the party or a person authorized to make an answer, certain written interrogatories attached to the order. Unless otherwise ordered, the answers shall be submitted at the hearing, or at a pre-hearing conference.

(2) The party applying for the order shall serve a copy thereof, with interrogatories attached, by regular mail, upon each party of record at least ten days prior to the date upon which answer is required.

[OAR Docket #22-393; filed 6-22-22]

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

[OAR Docket #22-394]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 390:10-1-2 [AMENDED]
- 390:10-1-3 [AMENDED]
- 390:10-1-4 [AMENDED]
- 390:10-1-6 [AMENDED]
- 390:10-1-7 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O.S., § 3311.2 through 3311.13.

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

December 22, 2021

**COMMENT PERIOD:**

January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**

February 22, 2022

**ADOPTION:**

March 10, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendment to 10-1-2. (c) Verbiage added to clarify circumstances in granting an extension.

Amendment to 10-1-3. Removed (b).

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Amendment to 10-1-4. (c) (d) removed verbiage - notices will not be accepted over the phone, by fax, or by email. Added submission through CLEET's online portal.

Amendment to 10-1-6. (3) added the consecutive. (3) (6) amended verbiage to clarify reciprocity training and certification.

Amendment 10-1-7. (e) added (5) CLEET may require an applicant for reinstatement to successfully complete certain refresher training either before granting reinstatement or within a specific time frame.

## CONTACT PERSON:

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## PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

### 390:10-1-2. Minimum certification and employment standards

(a) For the purposes of the rules of this Chapter and 70 O.S. Section 3311, a peace officer is defined as a duly appointed or elected law enforcement officer who is paid for working more than twenty-five (25) hours per week and whose duties minimally include all of the following on a fulltime basis:

- (1) Preserving the public peace;
- (2) Preventing crime;
- (3) Protecting life and property;
- (4) Enforcing laws and ordinances of this state and its political subdivisions; and
- (5) Executing arrest warrants and search warrants.

(b) All persons hired or elected as peace officers shall meet the employment and training standards set forth in this chapter as set forth in Section 3311 of Title 70 of the Oklahoma Statutes. Calculation of said employment shall be based on cumulative periods of employment.

(c) The Council, or its designee, may grant an extension of the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes, upon written application by the employing agency, and when good cause is shown, as determined by the Council or its designee. Peace officers granted an extension of time to attend and complete a training academy normally are not permitted to work in the capacity of a peace officer during the extension period. If an applicant has timely complied with all notice and application procedures but because of CLEET's training capacity cannot enter an academy within the six-month time frame, the Director or designee may grant an extension that allows the person to work. Failure of an applicant or agency to timely comply with notice and application procedures, short staffing at a law enforcement agency, or other matters will not be considered good cause to grant an extension to work.

(d) In the event any officer so appointed or elected fails to comply with the employment and training standards and an extension of time is not granted, the employing agency shall comply with 70 O.S., Section 3311(E) (4) at the first opportunity made available by CLEET. Individuals who fail to comply with employment and/or training standards may reapply for certification two (2) years from the date of final ineligibility.

Individuals who reapply will be required to start the academy over again without regard to previous classwork completed.

(e) Students are expected to complete the first basic academy in which they are enrolled. In the event a student cannot complete their initial academy, the student can complete the course work in another academy if such work can be completed in the next subsequent academy and within a one year period from the date of hiring or appointment as a peace officer. If reentry exceeds one year, students will be required to start the academy over again without regard to previous classwork completed unless reentry was delayed by a documented medical condition or military orders prohibiting participation. Exceptions may be made by the Director, or Director designee, for students who have been granted extensions of time as authorized by 70 O.S., Section 3311 (E) (4).

(f) The Council may provide options for remedial or make-up training for students attending approved academy or CLEET basic academy programs pursuant to academy rules.

### 390:10-1-3. Employment status reporting

~~(a)~~ All state, county, and local law enforcement agencies affected by the rules of this chapter and 70 O.S. Section 3311, shall report to CLEET the employment and termination of any appointed or elected peace officer within ten (10) days of the date of employment or termination of employment of said officer. Such notification shall be in a format accepted by CLEET. Termination reports shall include resignations, discharges or dismissals, retirements, and deaths of officers covered under the rules of this chapter and laws. Failure to do so may disqualify a law enforcement agency from participating in training programs sponsored by the Council.

~~(b) Pursuant to 70 O.S., Section 3311(H)(1) every law enforcement agency employing police, peace or tribal officers shall be required to submit on or before October 1 of each calendar year, a complete list of all commissioned employees, with a current mailing address and phone number for each such employee in a format acceptable by CLEET.~~

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

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

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

(c) All peace officers, reserve officers and tribal officers are required to maintain with CLEET, their current mailing address. Notice of change of address or telephone number must be made within ten (10) days of the effective change through CLEET's online portal or in writing, with an original signature. Notices will not be accepted over the phone, by fax, or by email.

(d) All peace officers, reserve officers, and tribal officers shall notify, in writing, with an original signature, CLEET of any change of name through CLEET's online portal. Notification of change of name shall include certified copies of any

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

**390:10-1-6. Certification by reciprocity**

Any officer seeking Oklahoma Peace Officer Certification, who has been certified by a state peace officer standards and training agency as a peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain certification by reciprocity, under the following conditions:

- (1) The officer must meet the minimum peace officer employment standards set forth by law, military service is generally not recognized as federal law enforcement employment.
- (2) The officer must have been employed as a full-time peace officer for at least three (3) consecutive months within the two (2) year period immediately preceding the request for Oklahoma certification.
- (3) ~~The officer must attend the legal block and training as specified by CLEET~~The officer must attend and successfully complete approved reciprocity training within six months of their hire date in Oklahoma.
- (4) The officer must successfully pass a certification examination.
- (5) Officers may have one retest for the certification examination. Any retest would follow the guidelines listed in OAC 390:15-1-13.
- (6) The director or the director's designee may, in the exercise of discretion, award a certificate to any person who has been duly certified under the laws of another state if, in the opinion of the director, the education, training and experience of that officer equal or exceed the qualifications required to complete satisfactorily the basic course of instruction required for Oklahoma certification. Any person who is awarded reciprocity under this subsection shall attend and successfully complete approved reciprocity training within six months of their hire date in Oklahoma. In his or her discretion, the director or the director's designee may require a person who has been duly certified under the laws of another state to attend and successfully complete a bridge academy in this state within six months of their hire date in Oklahoma in order to receive reciprocity certification.~~In any event, each officer must attend the legal refresher block of instruction as specified by CLEET.~~

**390:10-1-7. Withdrawal, voluntary withdraw, suspension, revocation and reinstatement of certification**

(a) **"Withdrawal" defined.** A withdrawal of certification is the voluntary surrender of peace officer certification by an officer that has been certified pursuant to the provisions of 70

O.S. 3311 et seq and who is the subject of an investigation into, or a pending or concluded proceeding involving, allegations of violation of any of the provisions of 70 O.S. 3311 et seq or CLEET rules. "Withdrawal" does not include the voluntary surrender of peace officer certification by an officer who is in good standing with CLEET and is not the subject of such an investigation or proceeding.

- (1) An officer requesting a withdrawal of certification must notify CLEET of his or her intent in writing to voluntarily surrender peace officer certification and have his name withdrawn from the list of Oklahoma certified peace officers.
- (2) If an officer is requesting withdrawal by voluntary surrender of peace officer certification based upon completed, pending or contemplated criminal proceedings, the officer must include in the notice to withdraw certification, a certified copy of the charges, sentencing agreement or other information to support the action. This would include any deferred sentencing agreement.
- (3) When a request for withdrawal of certification has been received by CLEET, the supporting documents will be verified and an investigation conducted to determine the facts for the stated underlying purpose of the withdrawal of certification.
- (4) CLEET will enter a Final Order of Withdrawal which will include the peace officer's request to voluntarily surrender pending investigation or proceeding and documentation requiring the voluntary surrender of a certification. The Final Order must be signed by the Director and must include:
  - (A) A statement by the officer that the withdrawal and surrender of peace officer certification is voluntary; and/or is ordered by the court.
  - (B) A statement of the underlying facts for the withdrawal.
  - (C) A statement that the information gathered during the investigation of the request for withdrawal or surrender may be submitted as evidence at a hearing upon the request of the officer for reinstatement of certification;
  - (D) A statement that the officer cannot file a request for reinstatement for a minimum of five (5) years from the date of the entry of the Final Order of Withdrawal.

(b) **Voluntary surrender.** A peace officer who is in good standing with CLEET and who is not the subject of an investigation into, or a pending or concluded proceeding involving, allegations of violation of any of the provisions of 70 O.S. 3311 et seq. or CLEET rules, may voluntarily surrender such officer's peace officer certification.

- (1) An officer wishing to voluntarily surrender certification must notify CLEET of his or her intent in writing to voluntarily surrender peace officer certification and have his or her name removed from the list of Oklahoma certified peace officers, provide a signed and notarized statement that such request is not made to avoid investigation or the outcome of a pending or concluded proceeding involving allegations of violation of any of the provisions

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of 70 O.S. 3311 et seq. or CLEET rules, and return to CLEET his or her CLEET card.

(2) Upon receipt of the officer's written intent to voluntarily surrender and the officer's CLEET card, CLEET will enter a Final Order of Voluntary Surrender which will include the peace officer's request and statement described in subparagraph (1) above and will be signed by the Director.

(3) An officer who voluntarily surrendered his or her certification pursuant to this subsection may apply for reinstatement without regard to any particular time restriction.

(c) **Suspension.** The certification of a peace officer may be suspended pursuant to the provisions of 70 O.S. Section 3311 et seq. and CLEET rules.

(1) If any action against a peace officer results in the suspension of peace officer certification, the suspended officer shall not engage in law enforcement activities of any type during the period of suspension. Any peace officer found to be engaging in law enforcement activities of any kind during the period of suspension shall be subject to revocation of peace officer certification without prior notice but otherwise subject to administrative proceedings.

(2) When permitted by law, the officer and CLEET may enter an agreement for the suspension of peace officer certification. The Agreed Final Order of Suspension must include the length of the suspension.

(3) Administrative actions involving actions against a peace officer in which suspension of peace officer certification is provided by law, shall be conducted in accordance 70 O.S. 3311, the Administrative Procedures Act, OAC 390:2-1 et. seq and this chapter.

(4) A suspension ordered after administrative hearing shall state the term of the suspension. Unless otherwise provided by law, the Hearing Examiner may establish a reasonable length of suspension.

(d) **Revocation.** The certification of a peace officer may be revoked pursuant to the provisions of 70 O.S. Section 3311 et seq. and CLEET rules.

(1) If any action against a peace officer results in the revocation of peace officer certification, the revoked officer shall immediately cease to engage in law enforcement activities of any type. Any peace officer found to be engaging in law enforcement activities of any kind may be subject to additional administrative or criminal actions.

(2) Administrative actions involving actions against a peace officer in which revocation of peace officer certification is provided by law, shall be conducted in accordance 70 O.S. 3311, the Administrative Procedures Act, OAC 390:2-1 et. seq and this chapter.

(e) **Reinstatement.**

(1) An officer who has had peace officer certification withdrawn, suspended or revoked, who has voluntarily surrendered his or her certification, may have peace officer certification reinstated through the following procedures:

(A) The officer shall file a request for reinstatement in writing, under oath.

(B) The request shall require the applicant to furnish information reasonably required to enable the Council to determine the fitness of the applicant for certification.

(2) The request for reinstatement shall be referred to the Assistant Director for processing of the request.

(3) The request will be reviewed by the Assistant Director and General Counsel to approve or deny the request. The following factors will be considered during the review:

(A) Circumstances surrounding the withdrawal, suspension, revocation or voluntary surrender of certification;

(B) Successful completion of any terms of suspension.

(C) Any pending charges or actions in this state or any other state; any convictions, including verdicts of guilt or entry of pleas of guilty or nolo contendere or an "Alford" plea or any plea other than not guilty to any felony, crime of domestic violence, or crime of moral turpitude in this state or any other state, and any final orders of protection entered against the applicant; and

(D) Activities of applicant during the period of suspension or following withdrawal, revocation, or voluntary surrender.

(4) Time for reinstatement applications:

(A) An applicant who voluntarily surrendered his or her certification while in good standing with CLEET and not the subject of an investigation into, or a pending or completed proceeding involving, allegations of violation of 70 O.S. 3311 et seq. or CLEET rules, may apply for reinstatement at any time;

(B) An applicant whose certification was suspended may apply for reinstatement upon the expiration of the suspension period;

(C) An applicant whose certification was revoked or who withdrew his or her certification while the subject of an investigation into, or a pending or completed proceeding involving, allegations of violation of 70 O.S. 3311 et seq. or CLEET rules, may apply for reinstatement after at least five (5) years have passed since the entry of the Final Order of Withdrawal or Revocation.

(D) That an applicant has waited the appropriate time period before applying for reinstatement does not guarantee that a reinstatement will be granted. Such application is subject to review as provided for in these rules.

(5) CLEET may require an applicant for reinstatement to successfully complete certain refresher training either before granting reinstatement or within a specific time following reinstatement.

[OAR Docket #22-394; filed 6-22-22]

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

[OAR Docket #22-395]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Basic Academy Programs
390:15-1-21 [AMENDED]
Subchapter 4. Basic Peace Officer Certification Academy Program
390:15-4-12 [NEW]

AUTHORITY:

Council on Law Enforcement Education and Training; 20 O.S., §1313.2; 70 O.S., 3311 through 3311.13.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 22, 2021

COMMENT PERIOD:

January 19, 2022 through February 17, 2022

PUBLIC HEARING:

February 22, 2022

ADOPTION:

March 10, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 17, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Amendment to 390:15-1-21. (a) verbiage amended to read at the discretion of the Council may establish.

New Rule 390:15-4-12. BPOC Bridge Academy.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. BASIC ACADEMY PROGRAMS

390:15-1-21. Registration Fees

(a) At the discretion of the Council, CLEET has established may establish a registration fee for each agency to cover the cost of meals provided during the CLEET basic academy.

(1) The registration fee covers the cost of meals incurred by CLEET during the basic academy training and

payment is due by the 25th of each month preceding expected expenditures.

(2) An agency shall receive only one (1) invoice for the total amount due, but may elect to pay on a monthly basis, or payment can be made in full at the beginning of the training cycle.

(3) Payment will be accepted in a format described in 390:1-1-13.

(b) Agencies failing to make other arrangements approved by the Executive Director or meet the obligation established by enrollment of an officer into the basic academy shall be precluded from future participation of any employee from the delinquent organization in the CLEET basic academy.

SUBCHAPTER 4. BASIC PEACE OFFICER CERTIFICATION ACADEMY PROGRAM

390:15-4-12. BPOC Bridge Academy

(a) Upon written application to the CLEET Director, or designee, BPOC entities may be authorized by CLEET to offer BPOC Bridge Academies for individuals who have a reserve certification in good standing.

(1) Reserve officers who hold a current commission with a recognized Oklahoma law enforcement agency, have successfully completed a 240-hour reserve academy, and have been in active service in a reserve capacity (post reserve certification) for the six (6) months prior to the start date of the BPOC Bridge Academy may be approved by CLEET to attend the BPOC Bridge Academy pursuant to policies and procedures to be published by CLEET.

(2) Non-commissioned individuals who have successfully completed a 240-hour reserve academy and served for at least six (6) months in a reserve capacity (post reserve certification) for a recognized Oklahoma law enforcement agency in the five (5) years prior to the start date of the BPOC Bridge Academy may be approved by the BPOC entity to attend the BPOC Bridge Academy pursuant to policies and procedures to be published by CLEET.

(3) BPOC Bridge Academy students will be subject to all the rules in this subchapter and in subchapter 5 unless expressly stated otherwise in these rules or in applicable policies and procedures published by CLEET.

(b) BPOC entities which are authorized by CLEET to provide BPOC Bridge Academies must comply with all of the provisions in this subchapter and in subchapter 5 unless expressly stated otherwise in these rules or in applicable policies and procedures published by CLEET.

[OAR Docket #22-395; filed 6-22-22]

# Permanent Final Adoptions

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## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 20. RESERVE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #22-396]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
390:20-1-15 [AMENDED]

**AUTHORITY:**  
Council on Law Enforcement Education and Training; 11 O.S., § 34-101; 19 O.S., § 547; 63 O.S., §§ 683.1 et seq.; 70 O.S., § 3311 through 3311.13.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 22, 2021

**COMMENT PERIOD:**  
January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**  
February 22, 2022

**ADOPTION:**  
March 10, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
Amendments to 390:20-1-15. Amending verbiage, removing a legal update and adding refresher training.

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **390:20-1-15. Inactive reserve officers**

Every reserve officer, certified by the Council, who has not been employed as a reserve officer in the State of Oklahoma for five or more years, upon re-entry to reserve status, must complete refresher training ~~legal update~~ as prescribed by CLEET.

[OAR Docket #22-396; filed 6-22-22]

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION

[OAR Docket #22-397]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
390:25-1-8 [AMENDED]  
390:25-1-10 [AMENDED]  
390:25-1-18 [AMENDED]

**AUTHORITY:**  
Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.13.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 22, 2021

**COMMENT PERIOD:**  
January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**  
February 22, 2022

**ADOPTION:**  
March 10, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
Amendments to 390:25-1-8. Outside law enforcement schools and seminars (b) Amending verbiage to replace the word accreditation with cataloging.  
Amendments to 390:25-1-10. Requirements for basic instructor certification adding (b) Waiver.  
Amendments to 390:1-1-18. (c) amending verbiage to clarify the training points. Removing (e).

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **390:25-1-8. Outside law enforcement schools and seminars**

#### **(a) Centralized peace officer training records.**

(1) CLEET shall maintain a centralized depository of training records for every peace officer, reserve and full-time, which has been certified by the State of Oklahoma as either a reserve or fulltime peace officer in accordance with applicable Oklahoma statute. Schools and Seminars



attended by such officers may be entered into their individual training files upon request.

(2) Local "in-service" training or informational sessions of less than one (1) hour shall not be entered.

(3) Requests for individual training record entries shall be in format approved by CLEET.

(4) Requests for training entries shall minimally contain the following documentation:

(A) The date(s), location and title of the school or seminar; and

(B) An official school Attendance Roster or electronic roster, showing the name, CLEET number, and employing agency of each full-time, certified officer in attendance; and

(C) One of the following:

(i) The name and address of the instructor(s); or

(ii) A copy of the completion or attendance certificate issued by the school, and the requesting officer's name, CLEET number, and employing agency and the authorized signature of the agency head or designee certifying attendance.

(D) Training may not be recorded when names provided on the roster or electronic record cannot be matched to CLEET records by the CLEET number or name until additional identifying information is provided.

(E) Agencies or individuals submitting rosters or electronic records shall maintain a file copy, subject to inspection, for a period of three years.

(b) **Local training incentive cataloging.**

(1) For the purposes of this section, "CATALOGING" means that CLEET will assign a course catalog number and send a confirmation letter to the agency requesting such cataloging for a lesson plan submitted by that agency. It will be the responsibility of the agency requesting cataloging to retain the lesson plan and all supporting material. All lesson plans and supporting materials on file with the agency requesting a catalog number will be considered by CLEET to be copyrighted. Regarding any law enforcement concepts, practices, methods, techniques, products, or devices as might be taught, promoted, or otherwise espoused in outside schools or seminars, there is no intent, expressed or implied, that "cataloging" indicates or in a way conveys "CLEET approval" of such concepts, practices, methods, techniques, products, or devices, unless such approval is explicitly stated by CLEET.

(2) For the purpose of qualifying for training or educational pay increases, or for other training incentives which might be initiated by law enforcement agencies, and for which CLEET cataloging is a requisite, the rules and procedures set forth in this subsection shall apply.

(3) Requests for local training incentive cataloging for any outside school or seminar, shall be made in writing in a format approved by CLEET and shall minimally contain the following information:

(A) A description of the subject of the school or seminar;

(B) A resume' or summary of each known instructor's qualifications, describing his or her training and experience in the particular subject.

**390:25-1-10. Requirements for basic instructor certification**

(a) **Qualification.** To qualify for basic instructor certification, applicants must meet the following qualifications:

(1) Have a minimum of two (2) years of full-time or five (5) years of reserve or an equivalent combination of such full-time and reserve experience in law enforcement after completing the basic or reserve certification course, ~~and~~ be in compliance with 70 O.S., Section 3311, and have written endorsement from the applicant's agency head or designee and

(2) Successfully complete a CLEET recognized instructor development school, or

(3) Possess a teaching certificate for secondary education; or

(4) Possess an advanced degree in the field of secondary or adult education, or

(5) Be qualified to instruct at an accredited 4-year college or university.

(b) **Waiver.** To qualify for basic instructor certification waiver, applicants must meet the following qualifications: Meet the requirements of (a) (1) and have successfully completed an instructor development school that in the sole discretion of the director or designee meets or exceeds the standards of a CLEET recognized instructor development school.

(~~b~~c) **Inactive Peace Officers.** Any instructor who has been inactive as a peace officer for over five years shall not be allowed to use his/her Oklahoma Basic Instructor Development certification to teach CLEET courses. Instructors who are listed in an inactive status over five years must meet the requirements outlined for an adjunct instructor (390:25-1-13) if they intend to teach any CLEET course, including basic academy, reserve academy and continuing education. This provision is designed to insure students receive current subject matter expertise throughout the training.

**390:25-1-18. Point computation formula**

(a) Fifteen training points shall be given for the completion of a Basic Law Enforcement Academy.

(b) Two training points shall be given for the successful completion of a field training officer program which is ten weeks or longer in length.

(c) Each ~~semester~~-hour of college credit from an Accredited College or University shall equal one training point; ~~each quarter hour shall equal two third point.~~

(d) Twenty classroom hours of job-related training, as determined by the Council, shall equal one training point.

(~~e~~) ~~Using a table provided by the Council, training points may be substituted for years of experience.~~

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(f) Using a table provided by the Council, certificates shall be awarded to levels achieved by applicants based upon points accumulated and years of experience.

[OAR Docket #22-397; filed 6-22-22]

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 27. POLICE OFFICER ANNUAL FIREARMS REQUALIFICATION

[OAR Docket #22-398]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

390:27-1-2. [AMENDED]

390:27-1-5 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.13.

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

December 22, 2022

**COMMENT PERIOD:**

January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**

February 22, 2022

**ADOPTION:**

March 10, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendments to 390:27-1-2. (d) adding verbiage - No person may requalify themselves.

Amendments to 390:27-1-5. (a) amending verbiage to include or the individual.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**390:27-1-2. Minimum requalification standards**

(a) Requalification shall consist of successful completion of a course of fire approved by the Council and attaining a qualifying score of not less than seventy percent (70%).

(b) Requalification shall be accomplished with a handgun (revolver or semi-automatic) carried by the law enforcement officer as the primary duty weapon. Nothing shall preclude employing agencies from requiring requalification with additional handguns carried by the officer for special purposes.

(c) Requalification shall be conducted using a paper target of the same design currently used for firearms qualification in the CLEET basic academy, or of comparable design.

(d) Requalification must be successfully completed in the presence of a CLEET certified firearms instructor, a certified firearms instructor approved by the employing agency, or a CLEET certified line safety officer. No person may requalify themselves.

(e) The Council will not be responsible for expenses incurred by officers to complete firearms requalification.

**390:27-1-5. Proof of requalification**

(a) Proof of successful firearms requalification shall be reported to CLEET by the employing agency or the individual in a format approved by CLEET. The report shall contain the following information:

- (1) Date and location of requalification
- (2) Full name and CLEET number or last four digits of social security number of the officer requalifying
- (3) Verification of a passing score
- (4) The name of the employing agency
- (5) The full name of the CLEET Certified Firearms Instructor and CLEET Firearms Instructor number, the full name of the employing agency approved instructor, and telephone number of the instructor, or the full name of the CLEET certified line safety officer and telephone number of the CLEET certified line safety officer.
- (6) In the case of a certified firearms instructor approved by an employing agency, the employing agency head or their designee will certify they have validated the firearms instructor credentials of their approved instructor.

(b) Firearms requalification shall not be credited for purposes of meeting the annual peace officer training requirements of 70 O. S. Section 3311.4.

(c) Proof of firearms requalification may be submitted to CLEET throughout the year as the requalification event occurs.

(d) Reports for the ending calendar year shall be submitted to CLEET by December 31<sup>st</sup> of the year the training was received.

[OAR Docket #22-398; filed 6-22-22]

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 30. CDS DETECTOR DOG CERTIFICATION

[OAR Docket #22-399]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

390:30-1-6. [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 51 O.S., § 24.A.1 et seq.; 70 O.S., § 3311 through 3311.13; 75 O.S. § 250 et seq.

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

December 22, 2022

**COMMENT PERIOD:**

January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**

February 22, 2022

**ADOPTION:**

March 10, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendments to 390:30-1-6. Amending verbiage in (b) and (d) about applying through CLEET's online portal.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**390:30-1-6. Application for certification**

(a) Any person, group, or organization, public or private, that utilized canine teams for the purposes of detecting controlled dangerous substances, as a public service or for private gain, shall be required to annually obtain CLEET certification for such canine teams. Certification as to the demonstration abilities of any such canine team shall be based on evaluation of the canine team's performance during field tests.

(b) Persons wishing to seek CLEET CDS detector canine team certification may apply through CLEET's online portal ~~receive an application and instructions by calling or making a written request to CLEET administrative offices.~~

(c) Applicants must submit the application and appropriate test fee to CLEET.

(d) All applications must be completely filled out and be accompanied by ~~two~~ <sup>(2)</sup> a full-body, color ~~photographs~~ photograph of the applicant canine team and any other information required by CLEET. The ~~photographs~~ photograph shall include the full side-body of the dog and the face of the handler.

(e) Normally, no more than ten (10) applicant dogs shall be scheduled for testing on any date.

(f) Upon completion of CDS detector canine team testing, the owner/handler of each dog shall be informed as to the examiner's evaluation of the canine team's performance.

(g) Canine teams that fail to successfully complete the CDS detector tests in accordance with the required standards of performance may not be retested until seven (7) days from the last attempt, and must submit the retest fee to CLEET prior to testing.

(h) Canine teams that successfully complete CDS Detections tests in accordance with the required standards of performance shall be notified in writing by CLEET.

(i) When CLEET has determined that all application procedures are fully complete; the applicant canine team has met all required performance standards; and the correct certification fee has been received, a CDS detector canine team certificate shall be issued by CLEET.

(j) Any time a certified CDS detector canine team is being employed or otherwise utilized in CDS detection activities, the CLEET CDS detector canine team certificate, or a copy thereof, shall be immediately available for inspection by any interested party.

(k) CLEET CDS detector canine team certification shall remain effective for a period of one year from the date of evaluation. Upon renewal of a license that has not yet expired, the renewal date of that license will be the same month and day as the previous year.

(l) CDS detector canine teams shall be recertified annually. Application for renewal and the process of testing and performance evaluation shall be conducted in the same manner as the original certification. Application for recertification should be initiated not less than thirty (30) days prior to the expiration date of the previous certificate.

(m) All CDS detector canine team certifications that are not renewed shall be inactivated by CLEET. If a renewal of an expired certification is not initiated by the canine team within thirty (30) days from the expiration date of the certificate, the canine team shall be required to remit the full two hundred dollars (\$200.00) certification test fee to reinstate the certification status of the canine team concerned. Application and testing procedures in such cases shall be conducted in the same manner as an original certification.

(n) When any canine team certified under these laws and rules will no longer be utilized in the performance of CDS detection activities, the owner of such dog or the handler shall notify CLEET in writing.

(o) CDS detector canine teams owned by or used solely by a bona fide law enforcement agency for CDS detection activities in the service of the public shall be exempt from the certification fees herein, but shall be required to certify such canine teams annually in accordance with the laws and the rules of this section, unless such canine teams are certified annually by the United States Custom Service.

[OAR Docket #22-399; filed 6-22-22]

# Permanent Final Adoptions

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 31. BOMB DETECTOR DOG CERTIFICATION

[OAR Docket #22-400]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

390:31-1-6 [AMENDED]

### AUTHORITY:

Council on Law Enforcement Education and Training; 51 O.S. § 24-A.1 et seq.; and 70 O.S., § 3311 through 3311.13; 75 O.S., § 250 et seq.

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

December 22, 2021

### COMMENT PERIOD:

January 19, 2022 through February 17, 2022

### PUBLIC HEARING:

February 22, 2022

### ADOPTION:

March 10, 2022

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

March 17, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Amendments 390:31-1-6. Amending verbiage in (b) and (d) about applying through CLEET's online portal.

### CONTACT PERSON:

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **390:31-1-6. Application for certification**

(a) Any person, group, or organization, public or private, that utilize canine teams for the purposes of detecting explosive substances, as a public service or for private gain, shall be required to annually obtain CLEET certification for such canine teams. Certification as to the demonstration abilities of any such canine team shall be based on evaluation of the canine team's performance by an approved testing organization.

(b) Persons seeking CLEET Bomb Detector Canine Team Certification may apply through CLEET's online portal ~~receive an application and instructions by calling or making a written request to CLEET administrative offices.~~

(c) Applicants must submit the application fee to CLEET with the application.

(d) All applications must be completed and be accompanied by ~~two~~ <sup>(2)</sup> a full-body, color ~~photographs~~ photograph of the applicant canine team and any other information required by CLEET. The ~~photographs~~ photograph shall include the full side-body of the dog and the face of the handler.

(e) Upon completion of Bomb detector canine team testing CLEET shall be notified in writing that the canine team has successfully completed all Explosives Detection test requirements and the test examiner has documented evaluation of the canine team's performance.

(f) Canine teams that fail to successfully complete the Bomb detector tests in accordance with the required standards of performance may not be retested except as provided for by the standards for retesting established by the agency or organization which conducted the initial test.

(g) When CLEET has determined that all application procedures are complete; the applicant canine team has met all required performance standards; and the correct certification fee has been received, a Bomb Detector Canine Team Certificate shall be issued by CLEET. No CLEET employee may participate in the training or testing of any canine team.

(h) Any time a certified Bomb detector canine team is being employed or otherwise utilized in explosives detection activities, the CLEET Bomb Detector Canine Team Certificate, or a copy thereof, shall be immediately available for inspection by any interested party.

(i) CLEET Bomb Detector Canine Team certification shall remain effective for one (1) year from the date it was issued.

(j) Bomb Detector Canine Teams shall be recertified annually. Application for renewal and the process of testing and performance evaluation shall be conducted in the same manner as the original certification. Application for recertification should be initiated not less than fifteen (15) days prior to the expiration date of the previous certificate.

(k) All Bomb detector canine team certifications that are not renewed shall be inactivated by CLEET. If a renewal of an expired certification is not initiated by the canine team within thirty (30) days from the expiration date of the certificate, the canine team shall be required to remit the full certification test fee to reinstate the certification status of the canine team. Application and testing procedures in such cases shall be conducted in the same manner as an original certification.

(l) When any canine team certified under these laws and rules will no longer be utilized in the performance of explosives detection activities, the owner of such dog or the handler shall notify CLEET in writing.

(m) Bomb detector canine teams owned by or used solely by a bona fide law enforcement agency for Explosives detection activities in the service of the public shall be exempt from the certification fees herein as provided in 70 O.S. Section 3311 (L), but shall be required to certify such canine teams annually in accordance with the laws and the rules of this section, unless such canine teams are certified and annually recertified in the detection of explosives and materials by the United States Department of Defense.

[OAR Docket #22-400; filed 6-22-22]

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 35. REGULATION OF PRIVATE  
SECURITY INDUSTRY**

*[OAR Docket #22-401]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
  - 390:35-1-3 [AMENDED]
  - 390:35-1-4 [AMENDED]
- Subchapter 5. License Requirements
  - 390:35-5-1 [AMENDED]
  - 390:35-5-2 [AMENDED]
  - 390:35-5-2.1 [AMENDED]
  - 390:35-5-3 [AMENDED]
  - 390:35-5-5 [AMENDED]
  - 390:35-5-9 [AMENDED]
  - 390:35-5-13 [AMENDED]
- Subchapter 7. Application Procedure
  - 390:35-7-1 [AMENDED]
  - 390:35-7-4 [AMENDED]
  - 390:35-7-5 [AMENDED]
  - 390:35-7-6 [AMENDED]
  - 390:35-7-8 [AMENDED]
- Subchapter 9. Violations and Investigations
  - 390:35-9-2 [AMENDED]
  - 390:35-9-5 [AMENDED]
- Subchapter 13. Use of Firearms
  - 390:35-13-1 [AMENDED]
  - 390:35-13-3 [NEW]
- Subchapter 15. Training Requirements
  - 390:35-15-1 [AMENDED]
  - 390:35-15-2 [AMENDED]
  - 390:35-15-5 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 21 O.S., § 1290.27; 59 O.S., §§ 1350.1 et seq. and 1750.1 through 1750.14; 70 O.S., § 3311 et seq.

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

December 22, 2022

**COMMENT PERIOD:**

January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**

February 22, 2022

**ADOPTION:**

March 10, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Subchapter 1. General Provisions.  
 Amendments to 390:35-1-3. New definition for "Security guard services".  
 Amendments to 390: 35-1-4. Removed (d). Subchapter 5. License Requirements.  
 Amendments to 390:35-5-1. (a) removed verbiage Notice of change of address will not be accepted over the phone, fax or by email. (b) (1) added verbiage This provision applies to a peace officer who would otherwise be exempt from licensure requirements. (c) amended verbiage to remove and

will not be accepted over the phone, by fax, or by email. (f) amended typos verbiage. (i) Amended verbiage for agency application process.

Amendments to 390:35-5-2. Removed armed security guard. (c) amended verbiage to Proof of training and testing for purposes of obtaining an original license will only be acceptable for five years from the date of completion of the training or testing.

Amendments to 390:35-5-2.1. (a) remove (D), (6) amending verbiage eligibility of continuing education hours. Remove (A) (B) (C) (D) (E). (c) amended verbiage renewal license process.

Amendments to 390:35-5-3. (b) (1) removed verbiage An application form shall be considered complete when all applicable spaces have been filled in properly, required documents have been provided, and it has been signed and notarized; (2) removed.

Amendments to 390:35-5-5. (b) (1) adding verbiage or to supervise others who are providing security guard services; (4) removed the word full-time. (6) removed.

Amendments to 390:35-5-9. (e) removed verbiage unless the licensee is involved in a bonafide, covert investigation at the time.

Amendments to 390:35-5-13. (a) adding verbiage to make address, name, phone number changes through CLEET's online portal. (b) removed verbiage Notices will not be accepted over the phone, by fax, or by email and must be made within (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Directors' or his/her designee's approval. (c) adding verbiage to make address, name, phone number changes through CLEET's online portal Subchapter 7. Application Procedure

Amendments to 390:35-7-1. Change in title to Applications. Adding verbiage Applications may be completed through CLEET's online portal or other method authorized by CLEET. Remove (a) and (b).

Amendments to 390:35-7-4. (a) remove verbiage employment history. (c) amended verbiage to All applicants shall submit to a fingerprint background check as required by statute and in accordance with procedures in effect at the time the application is made. Removed (1) (2) (3).

Amendments to 390:35-7-6. (a) removed verbiage and fingerprints.

Amendments to 390:35-7-8. (e) amended verbiage submit an application process. (f) amended verbiage to state on photo is needed with application. (o) amended verbiage to submit application through CLEET's online portal. Subchapter 9. Violations and Investigations.

Amendments to 390:35-9-2. Adding verbiage through CLEET's online portal.

Amendments to 390:35-9-5. Adding (7) Does any of the things described in 390:35-15-8. Subchapter 13. Use of Firearms

Amendments to 390:35-13-1. (d) amending verbiage to a CLEET-licensed private security school which is authorized to provide firearms training or by an accredited and recognized firearms instructor and training program approved by CLEET. (e) amended verbiage to include rifles. (f) amended verbiage to include A semi-automatic rifle chambered in a 5.56x45 mm or .223 caliber with a detachable box magazine shall be the only authorized rifle weapon. (g) amended verbiage to include Authorized rifle ammunition shall be American, factory-made, and designed for law enforcement duty use. (h) amended verbiage to include and rifle.

Amendments to 390:35-13-3. Annual firearm requalification. New rule. (a) Every licensed security guard or private investigator who is authorized by CLEET to carry a firearm must requalify annually on any firearm the licensee is authorized to carry. (b) Requalifications will be pursuant to standards set by CLEET and shall be reported as directed by CLEET. Subchapter 15. Training Requirements.

Amendments to 390: 35-15-1. (e) added career and Technology and removed Vocational and Technical. (j) (1) amended verbiage An applicant who previously held a CLEET license as a security guard or private investigator and who has been inactive for more than five years must complete all applicable phases of training before being eligible for a anew license. Removed (2). (3) (2) amended verbiage Such training must have occurred within the last five (5) years to be eligible for credit. For firearms training to be eligible for credit the applicant must also provide proof of a successful firearms qualification obtained within sixty (60) days prior to submitting the application. (4) (3) added applicable statute and rules.

Amendments to 390:35-15-2. (b) (ii) add Career and Technology and remove Vocational and Technical. Remove (D).

Amendments to 390:35-15-5. (b) Add Career and Technology and remove Vocational and Technical. (c) amending verbiage to add Rifles shall be limited to semi-automatics chambered in 5.56x45 mm or .223 caliber with detachable box magazines.

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## CONTACT PERSON:

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 390:35-1-3. Definitions

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

**"Act"** means the Oklahoma Security Guard and Private Investigator Act, Title 59, O.S., Section 1750.1, et seq.

**"Agency"** means a private security agency or private investigative agency, as defined in this Act.

**"Applicant"** means a person, or as it relates to an agency license, any of its owners, partners, directors, or in the case of a corporation, each officer and registered agent (branch manager), applying for a license under the provisions of the Act.

**"Approved school"** means an organization or institution authorized by CLEET to conduct private security training pursuant to the Act.

**"Armored car"** means any vehicle operated, in the normal course of business, by an armored car company, while such vehicle is engaged in the transportation and protection of cash, securities, negotiables and/or other items of unusual value.

**"Armored car company"** means a company that knowingly and willingly transports and protects cash, securities, negotiables and/or other items of unusual value for a fee or other remuneration.

**"Armored car employee"** means an individual who provides protection for cash, securities, negotiables and/or other items of unusual value transported by an armored car company.

**"Armed private investigator"** means an informal term, referring to a licensed private investigator who is also a licensed armed security guard, and who is authorized to carry a firearm.

**"Armed security guard"** means a security guard who is licensed to carry a firearm.

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

**"Client"** means a real person or legal entity having a contract which authorizes services to be provided in return for financial or other considerations.

**"Conditional license"** means a temporary license issued, pending completion of a satisfactory background investigation and completion of required training.

**"Conflict of interest"** means a conflict or the appearance thereof between the private interests and public obligations of

an individual, organization, or other legal entity authorized to conduct business pursuant to the Act.

**"Contract"** means, for the purposes of these rules, a contract is an agreement between a person or agency licensed under this Act and a client, to provide security or investigative services, including guards and/or investigators to the client, for a contract labor fee; and where the wages of the guards or investigators are paid by the contractor. Such contracts may be oral or written, or in any combination thereof.

**"Contractor"** means, for the purposes of these rules, a contractor is a person or business entity not employed in a direct employer-employee relationship, but instead contracts with a client to provide his services as a security guard or to provide security guards and their services to that client, for a contract labor fee. The term "contractor" shall include "sub-contractor".

**"Conviction"** means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere, or an "Alford" plea, or otherwise resulting in a suspended sentence or judgment. Conviction does not include any court action in which the court has deferred imposition of judgement and sentence.

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

**"Curriculum"** means the collective, written documentation of the material content of a training course, or any particular phase of training prescribed by the Act, minimally consisting of course objectives, student objectives, lesson plans, training aids, and examinations.

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

**"Expungement"** means a court order expunging any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere, or an "Alford" plea, or any plea other than "not guilty," or otherwise. For purposes of these rules, expungement does not include a court order expunging a criminal record because no charges were filed or expunging a criminal record because the accused was acquitted at trial, or because the charges were dismissed on motion of the State prior to entry of any pleas other than "not guilty."

**"Full-time employment"** means any security guard, armed or unarmed, or private investigator, who is employed and paid for working twenty-five (25) hours or more per week on a regular basis.

**"Instructor"** means a person who directly facilitates learning through means of lecture, group participation, practical exercise, or other means, where there is a direct student-teacher relationship.

**"License"** means written authorization in the form of a certificate or identification card, issued by CLEET, under the provisions of the Act, permitting the holder to conduct business as a security guard, armed security guard, private investigator, security agency, or investigative agency.

**"Licensee"** means a person or as it relates to an agency license, any of its owners, partners, directors, or in the case of a corporation, each officer and registered agent (branch manager), authorized by CLEET under the provisions of this Act, to

lawfully conduct business as a security guard, armed security guard, private investigator, security agency, or investigative agency.

"Over-payment" means monies in excess of the amount due for a license, permit or fine that is returned to the individual or agency.

"Person" means any corporation, company, association, operation, firm, partnership, institution, trust, or other form of business association, as well as a natural person.

"Private security" refers collectively to the fields of occupations described in the Act.

"Publish" means to make ~~publically~~publicly or generally known.

"Reciprocity" means the mutual recognition of standards and practices of another state, as related to qualifications, background investigation, training, and assessment, for the purposes of professional licensure granted pursuant to the Act.

"School coordinator" means a person certified by CLEET to coordinate and conduct private security training at an approved school, and arrange or administer psychological examinations to firearms training students.

"Security guard services" means the providing or coordinating of services of the type described in the definition of security guard in the Act to include but not be limited to prevention of trespass, theft, misappropriation, wrongful concealment of merchandise, goods, money or other tangible items, or providing bodyguard or private watchman services to protect persons or property and shall include those types of services even if provided in part or in whole by active peace officers while working in a private capacity.

"Special event status" means term denoting that an event has been approved as a special event pursuant to the Act.

"Training course" means a complete, multi-phase course of instruction required to qualify for a license under the provisions of the Act.

"Training phase" means a block of training units that comprises a distinct phase in the private security training course.

"Training unit" means a unit of instruction within a training phase.

**390:35-1-4. Compliance with laws and rules**

(a) All licensees and approved schools shall be knowledgeable of and conduct operations in accordance with all federal, state, and local laws; and rules and regulations of CLEET. A commission, by clear and convincing evidence, of any criminal offense, may be grounds for an action against any person falling within the jurisdiction and purview of 59 O.S., Section 1750.1 et seq, if such offense reflects negatively on the licensee's or school's moral character.

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

(c) Any violation of this Chapter and applicable Laws of the State of Oklahoma may result in a written reprimand or the denial, suspension, or revocation of a license, and/or disciplinary penalty or fine.

~~(d) Interested parties may obtain information or submit comments related to this Chapter by writing to CLEET, Private Security Division, 2401 Egypt Road, Ada, Oklahoma, 74820-0669.~~

**SUBCHAPTER 5. LICENSE REQUIREMENTS**

**390:35-5-1. Agency license requirements**

(a) All licensed security guard and private investigative agencies, shall maintain a place of business within the State of Oklahoma, and shall maintain an operative telephone ~~having a published listing,~~ in the agency name. The agency must also provide proof of published phone number in a format specified by CLEET. Every license issued under this chapter shall be posted conspicuously in the licensee's principal place of business in this state. The phone number shall be on file with CLEET. The office of such business may be maintained at the personal residence of the executive officer, manager, or supervisor of such office. Such notification shall include both the geographical location (street address) and the mailing address. Any changes in the above shall be submitted to CLEET in writing, with an original signature, within 10 days of the effective date of the change. ~~Notice of change of address will not be accepted over the phone, fax or by email.~~

(b) The executive officer, manager, or other person in charge of supervising security guards and/or private investigators shall be a resident of the State of Oklahoma.

(1) The executive officer, manager, or other person in charge of supervising security guards in the performance of their duties shall be a licensed security guard. This provision applies to a peace officer who would otherwise be exempt from licensure requirements.

(2) The executive officer, manager, or other person in charge of supervising private investigators in the performance of their duties shall be a licensed private investigator.

(c) Agency licenses issued in the name of a corporation, limited liability company (LLC), or other non-natural person legal entity recognized by the State of Oklahoma remain with the corporation, LLC, or other non-natural person legal entity regardless of changes in ownership interests. Agency licenses issued in the name of an individual or in the name of a company which is not a corporation LLC, or other non-natural person legal entity, such as a "doing business as" (d/b/a) company, are not transferrable upon the sale of the company. Any agency licensee shall notify CLEET in writing, with an original signature, of changes in agency head, security guard and/or private investigator supervisor, and/or branch manager and such substitutes must satisfy the requirements listed in (d) of this section and be approved by CLEET. Such notices must be made within ten (10) days of any changes ~~and will not be accepted over the phone, by fax, or by email.~~

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(d) Every applicant for an agency license, or in the case of a corporation, LLC, or other nonnatural person legal entity, the agency head, security guard and/or private investigator supervisor, and /or branch manager shall meet the following qualifications before ~~it~~ the agency may engage in any business licensed under this chapter:

- (1) be 21 years of age;
  - (2) be a citizen of the United States or a resident alien;
  - (3) not have been convicted of a felony that substantially relates to the occupation of a security guard or private investigator and poses a reasonable threat to public safety or crimes enumerated in the Act or CLEET rules unless waived by the Council pursuant to O.S. Title 59, Section 1750.5 (H);
  - (4) not have had his or her license revoked or application for such license denied by CLEET or any other state and must provide a letter of good standing from any other state previously licensed;
  - (5) in the case of a corporation, be incorporated under the laws of this state, or shall be duly qualified to do business within this state.
- (e) Alarm Companies who respond to electrical, electronic or mechanical alarm signal devices, burglar alarms, television cameras or still cameras used to manually or automatically signal or detect burglary, fire, breaking or entering, shoplifting, pilferage, theft, or hold-up are required to be licensed as a Security Agency, and individually license employees as security guards, or armed security guards, who provide the response.
- (f) Temporary employment agencies who provide guards or private investigators to ~~its~~ their clients on a contractual basis ~~falls fall~~ within the definition of a contract security or investigative company and must be licensed pursuant to the Act.
- (g) Employee leasing services who provide an administrative service only for handling the payroll, employee's salaries, and benefits, who do not make assignments, supervise or direct the work of the employee, or select the employees, but who lease the employee back to the licensed agency, do not fall within the definition of a contract security or investigative company and are not required to obtain an agency license. Licensed agencies who utilize the employee leasing services, are responsible for the duties such as reporting employments, terminations, address changes to our agency, providing appropriate liability insurance coverage, etc., as if the employee were paid by the agency.
- (h) CLEET retains the right to inform an agency applicant that the Agency Name they are submitting is a duplicate too similar to an existing agency name licensed in the state.
- (i) Agency licenses that have expired for a period of more than thirty (30) days must complete the entire application process. If an agency renewal application is received more than thirty (30) days after the agency license expiration date, ~~a letter will be mailed to the Agency address of record with instructions to~~ must submit a completed new application and complete licensing fee.

### **390:35-5-2. Security guard, ~~armed security guard,~~ and private investigator licenses**

- (a) Applicants for security guard, private investigator ~~or armed security guard~~ licenses must meet and satisfy the requirements set forth in 59 O.S., Section 1750.1 et seq., The Oklahoma Security Guard and Private Investigator Act.
- (b) Applicants for Armed Security Guard or armed private investigator licenses must further:
- (1) Successfully pass a psychological evaluation by a licensed psychologist; provided that the applicant shall bear the cost of such evaluation.
  - (2) Successfully complete the firearms phase of private security training;
  - (3) Be twenty-one (21) years of age.
- (c) Proof of training and testing for purposes of obtaining an original license will only be acceptable for five years from the date of completion of the training or testing. ~~Applicants for an armed security guard license must submit an affidavit that they are gainfully employed as an armed security guard and that a firearm is required within the scope of their employment.~~
- (d) An Armed Security Guard License grants no authority to carry a firearm when not acting directly in the course and scope of employment.

### **390:35-5-2.1. Renewals and continuing education**

- (a) Continuing education training is required for renewal of an individual license.
- (1) Private Investigators must complete a minimum of sixteen (16) hours of continuing education training from an approved source, during the licensing period to maintain their license, pursuant to Title 59, O.S., § 1750.3.
  - (2) Security Guards must complete a minimum of eight (8) hours of continuing education training from an approved source, during the licensing period to maintain their pursuant to Title 59 O.S., § 1750.3.
  - (3) A person holding both a security guard license and private investigator license or a combination license must complete a total of sixteen (16) hours of continuing education training during the licensing period to maintain their license, pursuant to Title 59, O.S., § 1750.3.
  - (4) Any expenses incurred for continuing education courses by any licensee shall be the responsibility of the licensee.
  - (5) Firearms requalification courses will not count towards mandate training. Approved sources for mandated training are:
    - (A) College credit hours. Fifteen hours of mandate training will be granted for each successfully completed college hour. Proof of attendance needed is a certified copy of the grade report. Requests for credit must be submitted within one (1) calendar year from the date the college credit is obtained;
    - (B) Established Entities (Recognized county, state, and federal associations, professional associations, vocational-technical schools). One hour of training will be granted for each hour attended in a topic which directly relates to the performance of duties under the respective license. Proof of attendance needed



is a copy of a certificate, sign-in roster, electronic notification or other proof from the sponsor accepted by CLEET; or

(C) CLEET approved or cataloged Schools, Seminars, and Conferences. One hour of mandate training credit will be granted for each hour of instruction. For approval to conduct mandate training, sponsors must:

- (i) Submit a written request for program cataloging to CLEET;
- (ii) Provide course information, including course objectives;
- (iii) Provide resume for instructors; and
- (iv) After training, submit a roster of attendees completing the training to CLEET.

~~(D) Completion of training courses required for initial licensing will satisfy the continuing education requirements for the first licensing period of an initial license.~~

(6) Continuing education training may be reported to CLEET as it is completed or at the time of license renewal. Verification of the minimum hours of continuing education training will be made by CLEET when the licensee requests renewal. A licensee will not be eligible for renewal if continue continuing education hours are not completed. ~~be subject to the following disciplinary sanctions for failure to comply with the mandate training requirements:~~

- ~~(A) Written Reprimand~~
- ~~(B) Denial~~
- ~~(C) Suspension~~
- ~~(D) Revocation and/or~~
- ~~(E) Disciplinary penalty or fine~~

(b) Renewal applications will be accepted up to thirty (30) days after the date of expiration of the applicant's license. If the renewal application is received more than thirty (30) days after the expiration date of the applicant's license, a letter will be mailed to the applicant with instructions to submit a completed new application and complete licensing fee. Continuing education will still be required even if the applicant has to submit a new application. Renewal applications will be accepted no more than sixty (60) days before the date of expiration of the applicant's license. If the renewal application is received more than sixty (60) days before the expiration date of the applicant's license, the payment received and a letter will be mailed to the applicant with instructions of when to submit a completed renewal application and licensing fee.

(c) A renewal license will be issued only after CLEET receives a completed renewal application, ~~the renewal fee, current passport size and quality photographs, verification of current employment with a licensed Agency or verification of current insurance or bond coverage, and verification of the minimum hours of continuing education training for the license period including any requested supporting documentation and is determined to be eligible for renewal.~~

(d) A licensee who has timely submitted a request for renewal with payment and has failed to meet the minimum training requirements will be mailed a letter along with a penalty citation as listed in Appendix C requiring proof of

continuing education and disposition of the fine within fifteen (15) days. No license will be issued without verification of the minimum hours of continuing education and disposition of the above mentioned citation.

(e) A licensee who has failed to meet the minimum training requirements and continues to work after his/her license expiration date, will be subject to disciplinary action under Chapter 2 of this Title.

(f) If the renewal applicant is the defendant in a disqualifying charge that is pending in any court in this state, another state, tribal court, or pursuant to the United States Code, no license will be issued.

(g) If the renewal applicant is the subject of an order deferring imposition of judgment and sentence or deferred prosecution in this state or another state or pursuant to federal authority for the commission of a disqualifying offense, no license will be issued. The preclusive period shall be for five (5) years and shall begin upon final determination of the matter.

(h) Any person seeking an Oklahoma Security Guard or Private Investigators license, who has been licensed by a state whose training and standards have been deemed comparable to and approved by the Oklahoma Council on Law Enforcement Education and Training may obtain a license by reciprocity, under the following conditions:

(1) The applicant must meet the minimum license requirement standards set forth by Oklahoma Law including fingerprint requirements. Such fingerprints requirement may be waived by CLEET where a verified records check has been made within a reasonable period of time in the context of existing law requiring fingerprint checks. The individual must also complete the "Legal Block" of Phase IV Firearms Training.

(2) The applicant must have an active license in the original licensing state, and not be subject to any administrative action regarding the active status in the licensing state. A letter of good standing must be received from the original licensing state.

(3) The applicant receiving a license by reciprocity in Oklahoma shall at all times while working as a security guard or private investigator in Oklahoma be subject to all laws regarding security guards and private investigators including all applicable fees for such license.

(4) Reciprocity may be granted only from the state in which the applicant was originally licensed and not from any intervening state by reciprocity to the original licensing state.

(5) The applicant must sign a statement of irrevocable consent that service of process, in any complaint or disciplinary action filed against the applicant, arising out of the applicant's private investigative activities in the reciprocating state, may be made by the delivery of such process on the administrator of the private investigation regulatory agency in his/her/its state of residence.

(6) An armored car employee who is primarily employed by an armored car company in another state, and is properly licensed by that state to carry a weapon while acting in the services of that company in the home state, and meets the minimum home state requirements, would

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be exempt from other requirements of 59 O. S. Section 1750.1 et seq. during such time as the armored vehicle from that state is actively engaged in interstate commerce within Oklahoma pursuant to 15 U.S.C. Section 5901, the "Armored Car Industry Reciprocity Act of 1993."

### 390:35-5-3. Conditional licenses

(a) Conditional licenses may be issued only to employees of security or investigative agencies and will only be issued for unarmed security guard applicants or unarmed private investigator applicants. Conditional licenses will NOT be issued for armed security guard applicants or armed private investigator applicants.

(b) Conditional licenses may be issued to such employees when the following requirements have been met:

(1) Receipt of an applicant's completed license application form. ~~An application form shall be considered complete when all applicable spaces have been filled in properly, required documents have been provided, and it has been signed and notarized;~~

~~(2) Receipt of two (2) properly completed, CLEET issued "applicant" fingerprint cards or fingerprints submitted electronically through a fingerprint system approved by CLEET;~~

~~(3) Receipt of correct license fees;~~

~~(4) Receipt of a completed OSBI records name check.~~

(c) Conditional licenses may be issued to an applicant one time per new application every five (5) years. This does not include renewal applications.

(d) If after a conditional license has been issued, disqualifiers are discovered or the applicant fails to respond to requests for additional information within thirty (30) days of request, the conditional license will become null and void. The applicant and employer will be notified that the application is null and void and no further action will be taken.

(e) If, after a conditional license has been issued, the employee-employer relationship under which the application was made ceases to exist, the conditional license will become null and void. The application approval process for a security guard license will continue, however, and upon final approval a regular security guard license may issue. The application process for a private investigator becomes null and void when the employee-employer relationship ends and no further action on the application will be taken.

### 390:35-5-5. Peace officer exemptions and non-exemptions

(a) If a peace officer who is ordinarily exempt from licensing chooses to become licensed as a security guard or private investigator shall comply with 59 O.S. Section 1750.1 et seq., and these rules in all respects.

(b) The peace officer exemption shall not apply in the following applications of the Act:

(1) When a peace officer contracts with an employer to provide other guards or to supervise others who are providing security guard services;

(2) No peace officer or reserve peace officer may wear his official police uniform and insignia while working in a capacity of a licensed security guard, except when the policies of his employing law enforcement agency, and the agency in whose jurisdiction he is so privately employed, allow him to do so;

(3) CLEET certified peace officers, whether full-time or reserve, may be given comparable training credit for successful completion of their CLEET basic peace officer or basic reserve officer certification training, when applying for a private security license;

(4) Active, ~~full time~~ peace officers are exempt from the psychological evaluation that is required for armed security guard applicants. Retired, ~~full time~~ peace officers are exempt from the psychological evaluation for a period of one (1) year from the date of their retirement. This exemption shall apply to any person who possesses CLEET peace officer certification, except when such person has been terminated from a law enforcement agency for failure to exercise appropriate judgement, restraint, and self-control in the use of force, or when there exists clear and convincing evidence of such;

(5) Reserve peace officers are not exempt from the psychological evaluation required for an armed security guard license, unless they are in the active service of a law enforcement agency as a reserve peace officer at the time of application.

~~(6) Reserve peace officers are not exempt from security guard, armed security guard, or private investigator licenses, and must be licensed while employed as such;~~

~~(7) When working as a licensed security guard, armed security guard, or private investigator, peace officers and reserve peace officers may possess firearms only to the extent of the authority allowed under law, as applied to licensed armed security guards.~~

### 390:35-5-9. Individual identification cards

(a) An identification card shall be issued to all licensees. This card shall clearly indicate that the licensee is authorized by the State of Oklahoma to conduct business as a security guard, armed security guard, or private investigator, or armed private investigator.

(b) The identification card shall not be altered or defaced in any manner.

(c) The licensee shall not knowingly allow any other person to carry or use his identification card for any purpose whatsoever.

(d) The licensee shall carry his identification card on his person at all times while acting within the course and scope of his employment as a security guard or private investigator.

(e) The licensee shall present his identification card upon demand, for inspection by any person, within the course and scope of his employment as a security guard, armed security guard, or private investigator, ~~unless the licensee is involved in a bonafide, covert investigation at the time.~~ The card must be presented, upon demand, for inspection by a law enforcement officer or by a representative of CLEET, at any time.

(f) All identification cards or other written authorization shall remain the property of CLEET, and the licensee shall surrender his identification card to the Director or his designated representative upon written notice setting forth the reasons for such surrender.

(g) Agencies shall maintain a copy of the individual identification card for all employees.

**390:35-5-13. Notification of change of name or address or telephone number**

(a) Private investigators, and security guards shall maintain, with the Council, a current residential address and a current telephone number. Notice of change of address or telephone number must be made through CLEET's online portal or in writing, with an original signature within ten (10) days of the effected change. Notices will not be accepted over the phone by fax, or by email.

(b) Private investigators and security guards shall notify, in writing, with an original signature, CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name. ~~Notices will not be accepted over the phone, by fax, or by email and must be made within (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Directors' or his/her designee's approval.~~

(c) The Agency owner or branch manager (in the instances of national corporations) shall notify the Council through CLEET's online portal or in writing, with an original signature of changes in the business address and/or telephone number within 10 days of the effective date of the change. Notices will not be accepted over the phone, by fax, or by email.

(d) Failure to notify the Council of business address changes, business telephone changes, or residential address changes, in accordance with the provisions of this Section, shall be considered a violation.

(e) If failure to comply with this Chapter results in Council Action, the use of "lack of notice" shall not be deemed as a valid defense in any proceeding.

**SUBCHAPTER 7. APPLICATION PROCEDURE**

**390:35-7-1. ~~Requests for applications~~Applications**

Applications may be completed through CLEET's online portal or other method authorized by CLEET.

~~(a) An application may be requested at the following address: CLEET, Private Security Division, 2401 Egypt Road, Ada, Oklahoma, 74820-0669.~~

~~(b) When such request is received, requests will be handled in the most expeditious and cost effective manner.~~

**390:35-7-4. Background investigation of applicants**

(a) The requirements of the Act will necessitate an investigation into the personal history, ~~employment history,~~ and moral character of each applicant. Local, state, and federal

criminal indices will be examined in the normal processing of applications for evidence of any prior criminal record. In addition to those offenses set forth in the Statutes, convictions of crimes set forth in Appendix A of this Chapter, may be deemed as disqualifying convictions.

(b) Failure to provide the information necessary to complete this background investigation, including certified copies of final dispositions, shall preclude any further processing and shall result in denial of said application.

(c) All applicants shall submit to a fingerprint background check as required by statute and in accordance with procedures in effect at the time the application is made. Fingerprint cards or electronically captured fingerprints submitted by an applicant which have been rejected by the Oklahoma State Bureau of Investigation (OSBI) or Federal Bureau of Investigation (FBI), have failed to meet the statutory requirement of 59 O. S. Section 1750.6 (A)(1) for providing "classifiable fingerprints to enable the search of criminal indices for evidence of prior criminal record".

~~(1) Upon notice to CLEET from the OSBI or FBI that fingerprints have been rejected, CLEET shall send written notice to the applicant requesting resubmission of fingerprints.~~

~~(2) Failure to resubmit fingerprints within thirty (30) days of the request for resubmittal shall preclude any further processing and shall result in denial, suspension or revocation of any license held by the applicant.~~

~~(3) Upon the third rejection of fingerprints by the OSBI or FBI or the expiration of one hundred eighty days (180) days, whichever occurs first, from the original date of issuance of any license, such license shall be suspended or revoked until such time that classifiable fingerprints have been submitted and criminal history reports have been received from OSBI and FBI.~~

(d) An applicant shall state any and all names previously used by the applicant, and the date of any name change.

(e) An applicant shall provide information on any previous licenses held as a private security guard or private investigator, whether in this state or other state, and any previous revocations or suspensions of any such license.

(f) No license shall be issued under the following circumstances:

(1) A new license shall not be issued if a disqualifying charge is pending against the applicant in any court in this state, another state, tribal court, or pursuant to the United States Code.

(2) A new or renewal license shall not be issued if the applicant is subject to the provisions of a deferred sentence or deferred prosecution in any court in this state, another state, tribal court, or pursuant to federal authority for the commission of any disqualifying offense. The preclusive period shall be for five (5) years and shall begin upon the final determination of the matter.

(g) An applicant who has been reported to CLEET to have been involuntarily committed at anytime, will be notified in writing of the alleged involuntary commitment along with the applicant's employer. The applicant shall provide to CLEET written notification of a psychological evaluation conducted

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by a licensed physician or psychologist which attests and states by affidavit that the licensee and the evaluation test data of the licensee have been examined and that, in the professional opinion of the physician or psychologist, the licensee is psychologically suitable to be a security guard or private investigator.

### 390:35-7-5. License fees

~~(a) Individual and Agency license fees shall be determined as set forth in 59 O.S., Section 1750.1 et seq and applicable rules.~~

~~(b) One fingerprint fee is required of each applicant. For example, if a private investigator also applies for an armed security guard license, the applicant need not pay another fingerprint fee. Applicant is responsible for paying any fees required by the F.B.I.~~

~~(c) No fingerprint fee is required for Special Event Licenses.~~

~~(d) Overpayments of more than Ten Dollars (\$10.00) will be returned to the remitter.~~

~~(e) Overpayments less than Ten Dollars (\$10.00) will be returned to the remitter upon receipt of a written request by the remitter.~~

### 390:35-7-6. Conditional license fees

(a) All conditional license ~~and fingerprint~~ fees shall be non-refundable; and must accompany the license application.

(b) Conditional licenses shall be issued for a period of 180 days. The fee for a conditional license is the same as the regular license.

(c) The holder of a conditional license shall be issued a regular license when the following conditions have been satisfied:

(1) All required training and tests have been successfully completed; and

(2) The applicant's background investigation is satisfactorily completed.

(d) Regular licenses so issued shall expire three (3) years from the effective date of the conditional license.

### 390:35-7-8. Individual private security applicant requirements

(a) Applicants for a License issued pursuant to Title 59, Section 1750.1 through 1750.13 must:

(1) Be a citizen of the United States or an alien legally residing in the United States and have a minimum of six (6) months legal residence documented in this state;

(2) Be at least Eighteen (18) years of age for an un-armed license and at least twenty one (21) years of age for an armed license;

(3) Proof of successful completion of the training and psychological evaluation requirements for the license applied for, and related testing, as prescribed by CLEET;

(4) Have no final victim protection orders issued in any state in which applicant is the respondent / defendant;

(5) Have no record of a felony conviction or a deferred judgment or suspended sentence for a felony offense; that substantially relates to the occupation of a security guard

or private investigator and poses a reasonable threat to public safety;

(A) If the applicant is the defendant in such a felony criminal prosecution that is pending, no license will be issued until final resolution of the criminal prosecution.

(B) If the applicant is the subject of an Order Deferring Imposition of Judgment and Sentence in such a felony case, no license will be issued until completion of the deferred sentence and dismissal of the criminal prosecution without a finding of guilt.

(C) If the Applicant was convicted of a felony that substantially relates to the occupation of a security guard or private investigator, and the sentence was completed more than five (5) years prior to the date of application, and the Applicant otherwise meets the licensing requirements, an Unarmed Security or Private Investigator License may be issued, but an Armed Security Guard or Armed Private Investigator license may not be issued to the Applicant if the felony involved the use of a firearm or was violent in nature. The Applicant must provide all documentation required by CLEET.

(6) Have no record of conviction for assault or assault and battery, aggravated assault and battery, larceny, theft, false pretense, fraud, embezzlement, false impersonation of an officer, any offense involving a minor as a victim, any nonconsensual sex offense, any offense involving the possession, use, distribution, or sale of a controlled dangerous substance, any offense involving a firearm, or any other offense as prescribed by the Council.

(b) If an applicant was convicted of a disqualifying crime, and the sentence was completed more than five (5) years prior to the application date and the Council is convinced the offense constituted an isolated incident and the applicant has been rehabilitated, the Council may, in its discretion, waive the conviction disqualification as provided for in this paragraph and issue an unarmed Security or Private Investigator license, but shall not issue an armed Security or Private Investigator license if the offense was a felony and involved the use of a firearm, or was violent in nature. The passage of five (5) years from completion of the sentence does not mean that the applicant is entitled to a license. The decision on whether the disqualifying conviction is waived is within the sole discretion of CLEET. The applicant must supply all documentation required by CLEET for consideration of a possible waiver.

(c) If it is discovered that a disqualifying conviction exists, other than one that was waived pursuant to this section, the Council shall immediately revoke or deny any license;

(d) Under oath, the applicant shall certify that the applicant has no disqualifying convictions as specified in the Private Security Licensing Act or by CLEET rule, or must disclose the disqualifying convictions and state that more than five (5) years have lapsed since the completion of the sentence for a disqualifying conviction.

(e) The applicant must ~~submit a fingerprint search of provide CLEET and the Oklahoma State Bureau of Investigation with individual fingerprints for a state and national criminal history~~

records pursuant to procedures in effect at the time the application is submitted-search.

(f) The applicant must supply CLEET ~~an two (2) current individual passport style-sized photographs~~ photograph with the completed CLEET application.

(g) The applicant must provide certified copies of all court documents showing the disposition of any criminal charges. If no certified copies are available, the applicant must provide a "no records letter" from the appropriate court. Obtaining and providing certified copies is the responsibility of the applicant.

(h) The applicant must state, under oath, that the applicant is not currently undergoing treatment for a mental illness, condition, or disorder.

(i) The applicant must state, under oath, whether the applicant has ever been adjudicated incompetent or committed to a mental institution.

(j) The applicant must state, under oath, whether the applicant has any history of illegal drug use or alcohol abuse.

(k) Upon presentation by the Council of the name, gender, date of birth, and address of the applicant to the Department of Mental Health and Substance Abuse Services, the Department of Mental Health and Substance Abuse Services shall notify the Council within ten (10) days whether the computerized records of the Department indicate the applicant has ever been involuntarily committed to an Oklahoma state mental institution.

(l) The applicant must state, under oath, whether the applicant has ever been charged with any misdemeanor domestic violence offense.

(m) The applicant must provide proof of liability insurance or an individual bond in a minimum amount established by the Private Security Licensing Act.

(n) The applicant must complete all the training requirements, and pass the appropriate examinations related to training.

(o) The submission by the applicant of an online application or the signature of the applicant on the Application shall be considered an attestation that the Applicant has read these Rules, and agrees to obey these Rules.

(p) Private Security guard and or private investigator licenses are not transferrable.

(q) Any changes in licensee's information shall be provided to CLEET in writing within ten (10) days of the effective date of the change. Notice of changes of Licensee information will not be accepted over the phone.

(r) An applicant who previously voluntarily surrendered an Unarmed Security Guard, Armed Security Guard, Unarmed Private Investigator, Armed Private Investigator license, any combination license, or an Agency license shall complete all application requirements, including paying the applicable licensing fee, as if he or she is a new applicant. If said applicant was in good standing with CLEET and was not the subject of an investigation into, or a pending or completed proceeding involving, allegations of violation of the Act or CLEET rules at the time of such voluntary surrender, no particular time requirement shall be imposed before such applicant can make a new application. If such applicant voluntarily surrendered his or her license(s) while a subject of an investigation into, or

a pending or completed proceeding involving, allegations of violation of the Act or CLEET rules, such applicant will not be eligible to apply for another license under the Act until five (5) years have passed from the date of such voluntary surrender.

**SUBCHAPTER 9. VIOLATIONS AND INVESTIGATIONS**

**390:35-9-2. Complaint procedure**

Complaints of violations subject to investigation may be made in person, by telephone, through CLEET's online portal, or in writing to CLEET.

**390:35-9-5. Grounds for actions against licenses**

CLEET may take an action against a license issued under this Chapter, if the licensee:

- (1) Violates any provisions of the Act or rules and regulations promulgated hereunder;
- (2) Practices fraud, deceit or misrepresentation;
- (3) Commits an act which would disqualify the licensee;
- (4) Conviction of a crime related to the practice of the occupation; and
- (5) Willful or grossly negligent failure to comply with substantial provisions of federal law or state statute governing the practice of the occupation.
- (6) Involuntary commitment of a licensee in a mental institution or licensed private mental health facility for any mental illness, condition or disorder that is diagnosed by a licensed physician or psychologist as a substantial disorder of thought, mood, perception, psychological orientation, or memory that significantly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life. Provided, the license may be reinstated upon the Council receiving notification of a psychological evaluation conducted by a licensed physician or psychologist which attests and states by affidavit that the licensee and the evaluation test data of the licensee have been examined and that, in the professional opinion of the physician or psychologist, the licensee is psychologically suitable to return to duty as a security guard or private investigator.
- (7) Does any of the things described in 390:35-15-8.

**SUBCHAPTER 13. USE OF FIREARMS**

**390:35-13-1. Authorized firearms**

- (a) 59 O.S., Section 1750.1 et seq. is not intended to be used as a means to obtain authority to carry a weapon except in the course and scope of gainful employment as an armed security guard.
- (b) All armed security guards not in uniform apparel must carry their firearm concealed from view.

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(c) Under no condition shall an armed security guard licensee carry an inoperative, unsafe, or replica model firearm while on duty or any firearm in violation of a federal or state law, while in the course and scope of his employment.

(d) No armed security guard or private investigator shall carry a type of firearm with which he has not been formally trained to handle and operate. Formal training must be conducted by a CLEET-licensed private security school which is authorized to provide firearms training or by an accredited and recognized firearms instructor and training program approved by CLEET. Compliance with this requirement is incumbent upon the licensee and notification to CLEET shall be required by submitting a certificate of training or a copy thereof upon completion of said training. Said notification shall include:

- (1) Type of firearms
- (2) Entity and instructor providing training
- (3) Number of training hours
- (4) Qualification scores
- (5) Date(s) of training

(e) The only weapons authorized by CLEET for use by armed security guards or armed private investigators are revolvers, semi-automatic handguns, rifles, and shotguns. The prescribed revolver or semi-automatic handgun ammunition shall be "factory-loaded". Ammunition commonly referred to as "re-loads" is strictly prohibited for use as service ammunition.

(f) The pump (slide action) 12 gauge shotgun shall be the only authorized shotgun weapon. Pump shotguns which have a hammer safety are prohibited. The pump shotgun nomenclature shall be similar to the type indicated in Appendix B of this Chapter. A semi-automatic rifle chambered in a 5.56x45 mm or .223 caliber with a detachable box magazine shall be the only authorized rifle weapon.

(g) The authorized shotgun service ammunition shall be the standard 12-gauge shell which is 2 3/4 inches in length and ordinarily carries from 1 to 1 5/8 ounces of shot with pellets ranging from light bird shot to heavy buckshot. Authorized rifle ammunition shall be American, factory-made, and designed for law enforcement duty use.

(h) The prescribed shotgun and rifle ammunition shall be "factory loaded". Ammunition commonly referred to as "re-loads" is strictly prohibited for use as service ammunition.

(i) No licensee shall brandish, point, exhibit, or otherwise display a firearm at anytime, except as authorized by law, and the rules of this subchapter.

### **390:35-13-3. Annual firearm requalification**

Every licensed security guard or private investigator who is authorized by CLEET to carry a firearm must requalify annually on any firearm the licensee is authorized to carry. Requalifications will be pursuant to standards set by CLEET and shall be reported as directed by CLEET.

## **SUBCHAPTER 15. TRAINING REQUIREMENTS**

### **390:35-15-1. Private security school accreditation**

(a) All schools, school coordinators, and instructors approved by CLEET to conduct private security training shall do so in accordance with the Act and all applicable rules of set forth in this subchapter.

(b) The CLEET approved curricula for private security training was developed and validated by the Oklahoma State Department of ~~Career and Technology~~Vocational and Technical Education, under the direction of the Oklahoma Department of Public Safety, the Council on Law Enforcement Education and Training, and representatives from the fields of industrial security and private investigation. No additions, deletions, or revisions shall be made to the approved curricula without first obtaining the express permission of CLEET.

(c) Training schools wishing to implement private security training must meet the minimum standards for school coordinators, instructors, training facilities, and curriculum, as set forth in this section, to ensure a consistent training program throughout the State of Oklahoma.

(d) The approved private security training program includes three (3) courses of instruction, each being related to the type of license being applied for. These courses are divided into four (4) training phases:

- (1) Phase 1 "Basic" - A course of instruction related to general private security tasks.
- (2) Phase 2 "Security Guard" - A course of instruction specifically related to the tasks of unarmed security guards.
- (3) Phase 3 "Private Investigator" - A course of instruction specifically related to the tasks of private investigators.
- (4) Phase 4 "Firearms" - A course of instruction and familiarization in the care, handling, and firing of revolvers or semi-automatic handguns.

(e) Specific instructional objectives, lesson plans, and examinations for each training phase are published by the Department of ~~Career and Technology~~Vocational and Technical Education, in manual form.

(f) Security guard license applicants must successfully complete Phase 1 - "Basic", and Phase 2 - "Security Guard". This shall be known as the Security Guard Training Course.

(g) Private Investigator license applicants must successfully complete Phase 1 - "Basic", and Phase 3 - "Private Investigator". This shall be known as the Private Investigator Training Course.

(h) Armed Security Guard License applicants must successfully complete Phase 1 - "Basic", Phase 2 - "Security Guard", and Phase 4 - "Firearms". This shall be known as the Armed Security Guard Training Course.

(i) Private Investigators who wish to be licensed as an armed security guard, must successfully complete all phases of private security training at an approved training school, unless training is waived through experience, or credit is granted for comparable training, pursuant to the Act. Private Investigators who do not perform the duties as a security guard, who wish to have the "firearms authorized endorsement" must complete Phase I, III and IV.

(j) Every person licensed pursuant to the Act must meet the training requirements set forth therein, except in the following circumstances.

(1) All training requirements, except for firearms training, may be **waived** upon proof that the applicant was employed as a licensed or certified security guard, armed security guard, private investigator, or law enforcement officer on a full-time basis for at least one (1) year in the three (3) years immediately preceding the date of application. This experience may be continuous or cumulative, and must be in accordance with (2) of this subsection. An applicant who previously held a CLEET license as a security guard or private investigator and who has been inactive for more than five years must complete all applicable phases of training before being eligible for a new license.

~~(2) As defined in the Act, it is unlawful to be employed as a security guard, or private investigator after January 1, 1988 unless properly licensed. It is unlawful to be employed as an armed security guard after July 1, 1988 unless properly licensed. No person could lawfully gain the experience necessary to qualify for the "Experience Waiver" while working in a private security position under the purview of the Act. Therefore, credit for experience gained in a private security position shall only apply when this experience was accumulated prior to January 1, 1988. This "Experience Waiver" shall expire on January 1, 1990, except for applicants who accumulated such full-time experience while employed in a private security position that is specifically exempted from the license requirements of the Act, or in another state.~~

~~(32)~~ CLEET may grant an applicant credit for fulfilling all or part of the training requirements, including firearms training, when an applicant submits documented proof of training that meets or exceeds the prescribed training standards as set forth in the Phase 4 - Firearms curriculum. Such training must have occurred within the last five (5) years to be eligible for credit. For firearms training to be eligible for credit the applicant must also provide proof of a successful firearms qualification obtained within sixty (60) days prior to submitting the application.

~~(43)~~ Completion of CLEET mandated Basic Peace Officer training or reserve officer training, pursuant to applicable statute and rules Title 70, Section 3311 (F), may be considered as comparable training.

(k) Private security training conducted by any school without the prior approval of CLEET shall be considered null and void, and not in compliance with the provisions of this Act, and these rules and regulations.

(l) For credit to be given for any training conducted prior to the adoption of these rules and regulations, the training school must make application to CLEET, in compliance with these rules, for the approval of such training to be considered.

(1) If the curriculum of such training courses do not meet the minimum training standards, no credit shall be given.

(2) If any school conducted training under assurances that said training was approved by any agency of the State

of Oklahoma, or that such training would satisfy the training requirements of this Act, when in fact there was no such approval, or minimum requirements had not been met, CLEET may:

(A) Deny a subsequent application from that school, or take action against an approved private security training school, or

(B) Present the circumstances to the proper authorities for possible criminal charges or other sanctions authorized by law, or by the rules of this Chapter.

**390:35-15-2. Schools, school coordinators, and instructors**

(a) Unless otherwise provided in 390:35-15-2, CLEET shall recognize only those training courses that are conducted at approved schools. Approval to conduct private security training may be requested by making written application to the Director.

(b) Approval to conduct private security training courses shall be subject to the following requirements.

(1) Approved private schools must be licensed by the Oklahoma Board of Private Vocational Schools.

(2) Private security training courses must be conducted under the coordinating supervision of a person with professionally recognized training or experience in developing and managing training programs. School coordinators shall submit a resume of related education, training, instructional experience, and work experience. Coordinators may also be approved as instructors.

(3) Private Security student/instructor class ratios shall not exceed forty (40) to one (1); However, firearms instructor-to-shooter ratios shall be not less than one (1) to five (5).

(4) Training units (classes) must be taught by approved instructors.

(A) Instructor qualifications shall be based upon training, education, teaching experience, and work experience, but shall minimally include:

(i) One of the following:

(I) A minimum of two (2) years supervisory experience with a legally recognized security or investigative agency within the previous five (5) years; or

(II) A minimum of two (2) years experience as a full-time certified law enforcement officer within the previous five (5) years; or

(III) A minimum of one (1) year of experience as an instructor at an accredited educational institution in the subject matter for which approval is requested, or in a related field within the last five (5) years.

(ii) Completion of a curriculum orientation workshop conducted by the State Department of Career and Technology ~~Vocational and Technical~~ Education.

(B) Firearms instructors must be currently certified as a law enforcement or private security firearms

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instructor, by CLEET, the Federal Bureau of Investigation, the National Rifle Association, or other professionally recognized organizations.

(C) Instructors for Phase 3 - "Private Investigator" courses shall submit additional evidence as to their training or experience relating to the Phase 3 curriculum.

~~(D) Instructors for Fire Safety must be certified by the accrediting authorities in those fields.~~

(c) Approved schools will be subject to review and inspection by CLEET staff. Training facilities shall meet local and state fire and safety standards. Facilities shall provide a comfortable environment for students and instructors, with minimal learning distractions. Facility and equipment standards shall be consistent with the standards set forth below:

- (1) Classrooms of at least ten (10) square feet per student enrolled;
- (2) Classrooms adequately heated and cooled;
- (3) Classrooms adequately lighted;
- (4) Telephones are accessible;
- (5) Restrooms are accessible;
- (6) Audio/visual equipment is available (projection equipment, chalkboards, etc.);
- (7) Firearms training facilities shall minimally provide:
  - (A) Protective backstop;
  - (B) 5 firing points;
  - (C) 3, 5, 7, 15, and 25 yard firing lines;
  - (D) Public address system;
  - (E) Restroom facilities;
  - (F) Accessible telephone;
  - (G) First Aid supplies;
  - (H) Protective equipment for eyes and ears.
- (8) Indoor firearms training facilities minimally provide:
  - (A) Protective backstop;
  - (B) 3 firing points;
  - (C) 3, 5, 7, 15, 25 yard firing lines. In those instances where the range does not permit firing at 25 yards, the NRA B-34 or Colt T6 target shall be used for shooting the 25 yard state at 50 feet;
  - (D) Meet the minimum requirements as set forth in the OSHA Code of Federal Regulations, lead standards;
    - (i) CRF 29 1910.1025 (C) Permissible Exposure Limit
    - (ii) CRF 29 1910.1025 (D) Exposure Monitoring
    - (iii) CRF 29 1910.1025 (D)(9) Accuracy of Measurement
    - (iv) CRF 29 1910.1025 (D)(5)(11) Mechanical Ventilation for Compliance
  - (E) An annual exposure monitoring report. The monitoring can be conducted by either private firms or by the OSHA Consultation Division of the Department of Labor;
  - (F) Public address system;
  - (G) Restroom facilities;
  - (H) Accessible telephone;

(I) First Aid supplies;

(J) Protective equipment for eyes and ears.

(d) Schools approved to conduct the private security and investigative training courses required for licensing purposes must:

- (1) offer these courses as separate courses, independent of any other training course or hours;
- (2) separately charge a fee for these courses, if a fee is charged;
- (3) advise students that participation in other training programs is not required for licensing; and
- (4) refrain from using any statements as training being "CLEET Certified".

## 390:35-15-5. Firearms training

(a) Applicants for armed security guard licenses must show proof of successful completion of firearms training at:

- (1) CLEET approved private security training school; or
- (2) Firearms training that is held to be comparable to the CLEET approved firearms curriculum.

(b) Standards for completion of firearms training are set forth in the firearms curriculum available from developed by the Oklahoma State Department of Career and Technology/Vocational and Technical Education, which is based on the CLEET Basic Peace Officer Firearms curriculum.

(c) Firearms used for approved firearms training shall be consistent with those described in 390:35-13-1. Handguns shall be limited to revolvers in a minimum of .38 and .357 or larger caliber or semi-automatic handguns in a minimum of 9mm or larger caliber. Rifles shall be limited to semi-automatics chambered in 5.56x45 mm or .223 caliber with detachable box magazines.

(d) Approved schools which intend to conduct Phase 4 "Firearms" training must show proof that a firearm training facility is:

- (1) Owned and managed by the school itself; or
- (2) Being used through a written agreement with the owner of the facility.

[OAR Docket #22-401; filed 6-22-22]

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 45. RETIRED PEACE OFFICER FIREARMS PERMITS

[OAR Docket #22-402]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

390:45-1-7-1 [AMENDED]

### AUTHORITY:

Council on Law Enforcement Education and Training; 21 O.S., §§ 1289.8 and 1290.1 et seq.; 70 O.S., § 3311 et seq.; 74 O.S., § 150.9.



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

December 22, 2022

**COMMENT PERIOD:**

January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**

February 22, 2022

**ADOPTION:**

March 10, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendments 390:45-1-7.1. (c) amending verbiage renewal application process.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**390:45-1-7.1. Renewal**

(a) The card shall be valid for a period of ten, (10) years from date of issue.

(b) Upon expiration, or not more than 90 days prior to the listed expiration, the applicant may submit a renewal application to CLEET.

(c) In addition to the renewal application, applicant shall be subject to a background check pursuant to statute and in accordance with procedures and fees in place at the time the application is made and as provided in section 150.9 of Title 74 of the Oklahoma Statutes, the applicant shall submit two fingerprint cards and a nonrefundable fee for a national criminal history record check by fingerprint analysis. Fees will only be accepted in a format described in 390:1-1-13.

(1) Upon completion of a criminal history check that is clear from preclusions listed in 1290.10 or 1290.11 of the Oklahoma Self-Defense Act, a new card shall be issued which shall be valid for a period of 10 years from date of issue.

(2) If a preclusion from 1290.10 and 1290.11 is found no card shall be issued and the applicant be notified, in writing, and given explanation of the denial. Additionally, CLEET shall hold a hearing before taking any action to suspend or revoke the authority to carry a firearm pursuant to this rule.

[OAR Docket #22-402; filed 6-22-22]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 60. REGULATING BAIL ENFORCERS**

[OAR Docket #22-403]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 9. License Requirements  
390:60-9-9. Annual firearm requalification [NEW]  
Subchapter 13. Private Bail Enforcer Schools  
390:60-13-1 [AMENDED]  
390:60-13-2 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 59 O.S., §§ 1301, 1303, 1327, 1328, 1329, 1332, 1332.1.1, 1350.1 through 1350.20, and 1750.1 through 1750.14; 70 O.S., §§ 3311 et seq.

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

December 22, 2022

**COMMENT PERIOD:**

January 19, 2022 through February 17, 2022

**PUBLIC HEARING:**

February 22, 2022

**ADOPTION:**

March 10, 2022

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

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Subchapter 9. License Requirements  
390:60-9-9. Every licensed bail enforcer who is authorized by CLEET to carry a firearm must requalify annually on any firearm the licensee is authorized to carry. Requalification will be pursuant to standards set by CLEET and shall be reported as directed by CLEET.

Subchapter 13. Private Bail enforcer Schools  
Amendments to 390:60-13-1. Changing verbiage from Vocational and Technical to Career and Technology.

Amendments to 390:60-13-2. Changing verbiage from Vocational and Technical to Career and Technology.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 9. LICENSE REQUIREMENTS**

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## **390:60-9-9. Annual firearm requalification**

Every licensed bail enforcer who is authorized by CLEET to carry a firearm must requalify annually on any firearm the licensee is authorized to carry. Requalification will be pursuant to standards set by CLEET and shall be reported as directed by CLEET.

## **SUBCHAPTER 13. PRIVATE BAIL ENFORCER SCHOOLS**

### **390:60-13-1. Private school accreditation**

(a) All schools, school coordinators, and instructors approved by CLEET to conduct Bail Enforcer training shall do so in accordance with the Act and all applicable CLEET Rules.

(b) The CLEET approved curricula for Bail Enforcer training was developed and validated by the Oklahoma State Department of ~~Career and Technology~~~~Vocational and Technical~~ Education, under the direction of the Oklahoma Department of Public Safety, the Council on Law Enforcement Education and Training, and representatives from the fields of industrial security and private investigation and bail enforcement. No additions, deletions, or revisions shall be made to the approved curricula without first obtaining the express permission of CLEET.

(c) Training schools wishing to implement Bail Enforcer training must meet the minimum standards for school coordinators, instructors, training facilities, and curriculum, as set forth in these Rules, to ensure a consistent training program throughout the State of Oklahoma.

(d) Fees for training schools shall be as set in the Oklahoma Bail Enforcement and Licensing Act.

(e) The approved Bail Enforcer training program includes three (3) courses of instruction, each related to the type of license sought. These courses are divided into five (5) training phases:

(1) Phase 1 - A course of instruction related to general private security or bail enforcer tasks.

(2) Phase 2 - A course of instruction specifically related to the tasks of unarmed security guards and unarmed bail enforcers.

(3) Phase 3 - A course of instruction specifically related to the tasks of private investigators and bail enforcers.

(4) Phase 4 "Firearms" - A course of instruction and familiarization in the care, handling, and firing of revolvers or semi-automatic handguns.

(5) Phase 5 - A course of instruction specifically related to the tasks of Bail Enforcers. (f) Specific instructional objectives, lesson plans, and examinations for each training phase are published by the Department of ~~Career and Technology~~~~Vocational and Technical~~ Education, in manual form.

(f) Specific instructional objectives, lesson plans, and examinations for each training phase are published by the Department of Vocational and Technical Education, in manual form.

(g) Bail Enforcer license applicants must successfully complete Phase 1 - and Phase 2 - "Security Guard", and Phase 3

- "Private Investigator", and Phase 5 - "Bail Enforcer". This shall be known as the Bail Enforcer Training Course.

(h) Armed Bail Enforcer License applicants must successfully complete Phase 1, Phase 2, Phase 3, Phase 4, and Phase 5. This shall be known as the Armed Bail Enforcer Training Course.

(i) Each Bail Enforcer must be trained on the use of force continuum and the Rules for use of force.

### **390:60-13-2. Schools, school coordinators, and instructors**

(a) Unless otherwise provided in CLEET Rules, CLEET shall recognize only those training courses that are conducted at approved schools. Approval to conduct Bail Enforcer training may be requested by making written application to the Director.

(b) Approval to conduct Bail Enforcer training courses shall be subject to the following requirements.

(1) Approved private schools must be licensed by the Oklahoma Board of Private Vocational Schools.

(2) Private security training courses must be conducted under the coordinating supervision of a person with professionally recognized training or experience in developing and managing training programs. School coordinators shall submit a resume of related education, training, instructional experience, and work experience. School Coordinators may also be approved as instructors.

(3) Bail Enforcer student/instructor class ratios shall not exceed forty (40) to one (1); However, firearms instructor-to-shooter ratios shall be not less than one (1) to five (5).

(4) Training units (classes) must be taught by approved instructors.

(c) Instructor qualifications shall be based upon training, education, teaching experience, and work experience, but shall minimally include:

(1) One of the following:

(A) A minimum of two (2) years supervisory experience with a legally recognized security or investigative or Bail Enforcement Agency; or

(B) A minimum of two (2) years continuous experience as a full-time certified law enforcement officer; or

(C) A minimum of one (1) year of experience as an instructor at an accredited educational institution in the subject matter for which approval is requested, or in a related field.

(2) Completion of a curriculum orientation workshop conducted by the State Department of ~~Career and Technology~~~~Vocational and Technical~~ Education.

(d) Firearms instructors must be currently certified as a law enforcement or private security firearms instructor, by CLEET, the Federal Bureau of Investigation, the National Rifle Association, or other professionally recognized organizations.

(e) Instructors for Phase 3 - "Private Investigator" courses shall submit additional evidence as to their training or experience relating to the Phase 3 curriculum.

- (f) Instructors for Fire Safety must be certified by the accrediting authorities in those fields.
- (g) Use of force instructors must be currently certified as a defensive tactics instructor by CLEET, or other professionally recognized organizations.
- (h) Approved schools will be subject to review and inspection by CLEET staff. Training facilities shall meet local and state fire and safety standards. Facilities shall provide a comfortable environment for students and instructors, with minimal learning distractions. Facility and equipment standards shall be consistent with the standards set forth below:
  - (1) Classrooms of at least ten (10) square feet per student enrolled;
  - (2) Classrooms adequately lighted, heated, and cooled;
  - (3) Telephones are accessible;
  - (4) Restrooms are accessible;
  - (5) Audio/visual equipment is available (projection equipment, chalkboards, etc.);
  - (6) Firearms training facilities shall minimally provide:
    - (A) Protective backstop;
    - (B) 5 firing points;
    - (C) 3, 5, 7, 15, and 25 yard firing lines;
    - (D) Public address system;
    - (E) Restroom facilities;
    - (F) Accessible telephone;
    - (G) First Aid supplies;
    - (H) Protective equipment for eyes and ears.
  - (7) Indoor firearms training facilities shall minimally provide:
    - (A) Protective backstop;
    - (B) A minimum of 3 firing points;
    - (C) 3, 5, 7, 15, 25 yard firing lines. An indoor firing range may include reduction targets for weapons fired at fifty (50) feet to simulate weapons fired at seventy-five (75) feet);
    - (D) Public address system;
    - (E) Restroom facilities;
    - (F) Accessible telephone;
    - (G) First Aid supplies;
    - (H) Protective equipment for eyes and ears.
  - (8) Firearms training facilities must meet the minimum requirements as set forth in the OSHA Code of Federal Regulations, lead standards:
    - (A) 29 CFR 1910.1025 (C) Permissible Exposure Limit
    - (B) 29 CFR 1910.1025 (D) Exposure Monitoring
    - (C) 29 CFR 1910.1025 (D)(9) Accuracy of Measurement
    - (D) CRF 29 1910.1025 (D)(5)(11) Mechanical Ventilation for Compliance.
  - (9) Firearms training facilities must supply an annual exposure monitoring report. The monitoring can be conducted by either private firms or by the OSHA Consultation Division of the Department of Labor;
  - (10) Firearms used for approved firearms training shall be consistent with those described in CLEET Rules. Handguns shall be limited to revolvers in a minimum of

- .38 and .357 or larger caliber or semi-automatic handguns in a minimum of 9mm or larger caliber.
- (11) Approved schools which intend to conduct Phase 4 "Firearms" training must show proof that a firearm training facility is:
  - (A) Owned and managed by the school itself; or
  - (B) Being used pursuant to a written agreement with the owner of the facility.
- (i) Schools approved to conduct the private security and investigative and Bail Enforcer training courses required for licensing purposes must:
  - (1) offer these courses as separate courses, independent of any other training course or hours;
  - (2) separately charge a fee for these courses, if a fee is charged;
  - (3) advise students that participation in other training programs is not required for licensing; and
  - (4) refrain from using any statements of training being "CLEET Certified".
- (j) Completion of CLEET mandated Basic Peace Officer training or reserve officer training, pursuant to Title 70, Section 3311, may be considered as comparable training for firearms training purposes.
- (k) Bail Enforcer training conducted by any school without the prior approval of CLEET shall be considered null and void, and not in compliance with the provisions of this Act, and these Rules and regulations.

*[OAR Docket #22-403; filed 6-22-22]*

**TITLE 405. OKLAHOMA DEPARTMENT OF LIBRARIES  
CHAPTER 1. ADMINISTRATIVE RULES OF THE DIRECTOR**

*[OAR Docket #22-529]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

405:1-1-9 [AMENDED]

405:1-1-11 [AMENDED]

**AUTHORITY:**

Oklahoma Department of Libraries Board; 65 O.S. §2-106(m)

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

September 24, 2021

**COMMENT PERIOD:**

October 15, 2021 through November 19, 2021

**PUBLIC HEARING:**

November 19, 2021

**ADOPTION:**

December 10, 2021

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

December 14, 2021

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

# Permanent Final Adoptions

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## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The amendments remove and update outdated language and provide current information regarding the structure of the Department.

## CONTACT PERSON:

Jan Davis, Administrative Archivist, Oklahoma Department of Libraries, 200 NE 18<sup>th</sup> Street, Oklahoma City, OK 73105, 405-522-3191, jan.davis@libraries.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **405:1-1-9. Office location; hours; information availability**

(a) The Oklahoma Department of Libraries is located in the Allen Wright Memorial Library Building, 200 N.E. 18<sup>th</sup> Street, Oklahoma City, Oklahoma 73105-3298 in the State Capitol area. Telephone numbers are 405/521-2502 and 800/522-8116.

(b) All requests for information or petition should be addressed to the Director.

(c) The Department is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays.

~~(d) By laws of the Board and the rules governing the Oklahoma Department of Libraries are available for inspection at the Allen Wright Memorial Library Building.~~

### **405:1-1-11. Structure of the Department**

To carry out the functions of OAC 405:1-1-10, the Department is divided into ~~seven offices~~ four divisions: ~~Deputy Director, Jan Eric Cartwright Memorial Law Library, Government Information, Library Development, Library Technology, Public Information, and OTIS/Information Services Administration, Services to Libraries, Services to Government, and Information Services.~~ The Department acts as the administrative agency for the Archives and Records Commission and the Oklahoma Historical Records Advisory Board.

[OAR Docket #22-529; filed 7-1-22]

## **TITLE 405. OKLAHOMA DEPARTMENT OF LIBRARIES CHAPTER 3. ADMINISTRATIVE RULES OF THE BOARD**

[OAR Docket #22-530]

## **RULEMAKING ACTION:**

PERMANENT final adoption

## **RULES:**

405:3-1-8 [AMENDED]

405:3-1-10 [AMENDED]

## **AUTHORITY:**

Oklahoma Department of Libraries Board; 65 O.S. §2-106(m)

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

September 24, 2021

## **COMMENT PERIOD:**

October 15, 2021 through November 19, 2021

## **PUBLIC HEARING:**

November 19, 2021

## **ADOPTION:**

December 10, 2021

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

December 14, 2021

## **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 11, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

n/a

## **INCORPORATIONS BY REFERENCE:**

n/a

## **GIST/ANALYSIS:**

The amendments remove and update outdated language and provide current information regarding the location and structure of the Department.

## **CONTACT PERSON:**

Jan Davis, Administrative Archivist, Oklahoma Department of Libraries, 200 NE 18<sup>th</sup> Street, Oklahoma City, OK 73105, 405-522-3191, jan.davis@libraries.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **405:3-1-8. Office location; hours; information availability**

(a) The Oklahoma Department of Libraries is located in the Allen Wright Memorial Library Building, 200 N.E. 18<sup>th</sup> Street, Oklahoma City, Oklahoma 73105-3298 in the State Capitol area; the Jan Eric Cartwright Memorial Law Library is located in the Capitol and the State Records Center is located at ~~425 N. E. 21<sup>st</sup>~~ 426 East Hill Street, Oklahoma City, Oklahoma. Telephone numbers are 405/521-2502 and 1-800/522-8116.

(b) All requests for information or petitions should be addressed to the Director.

(c) The Department is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays.

~~(d) By laws of the Board and the rules governing the Oklahoma Department of Libraries are available for inspection at the Allen Wright Memorial Library Building.~~

### **405:3-1-10. Structure of the Department**

To carry out these functions, the Department is divided into ~~seven offices~~ four divisions: ~~Deputy Director, Jan Eric Cartwright Memorial Law Library, Government Information, Library Development, Library Technology, Public Information, and OTIS/Information Services Administration, Services to Libraries, Services to Government, and Information Services.~~ The Department acts as the Administrative Agency

for the Archives and Records Commission and the Oklahoma Historical Records Advisory Board.

[OAR Docket #22-530; filed 7-1-22]

TITLE 405. OKLAHOMA DEPARTMENT OF LIBRARIES
CHAPTER 25. STATE AID GRANTS TO PUBLIC LIBRARIES

[OAR Docket #22-531]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

405:25-1-3 [AMENDED]

AUTHORITY:

Oklahoma Department of Libraries Board; 65 O.S. §2-106(m)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 24, 2021

COMMENT PERIOD:

October 15, 2021 through November 19, 2021

PUBLIC HEARING:

November 19, 2021

ADOPTION:

December 10, 2021

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 14, 2021

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

405:25-1-3 [AMENDED]

Gubernatorial approval:

March 18, 2021

Register publication:

38 Ok Reg 705

Docket number:

21-268

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amendments modify the requirements for eligibility for State aid grants to public libraries in the event of emergency declarations or other extraordinary circumstances.

CONTACT PERSON:

Jan Davis, Administrative Archivist, Oklahoma Department of Libraries, 200 NE 18th Street, Oklahoma City, OK 73105, 405-522-3191, jan.davis@libraries.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

405:25-1-3. Eligibility for State aid grants to public libraries

Eligibility for state aid grants to public libraries is governed by the following requirements listed below: Eligibility

may be impacted by emergency declarations by the President of the United States or the Governor of Oklahoma, public health, public safety, or other extraordinary circumstances as determined by the Director of the Oklahoma Department of Libraries and the ODL Board. Under those conditions, the Director will present recommendations to the ODL Board to modify application of specific User Service or Administration and Finance requirements. The ODL Board has the authority to accept or deny the recommendations.

(1) Basic requirements.

(A) Libraries must meet the definition of a public library as defined in 65 O.S. § 1-104.

(B) Libraries must be legally established and operating according to Oklahoma Statutes, Title 65, Article 4, § 101 and Title 11, Article 31; and Article 10, § 10A of the Oklahoma Constitution.

(2) User service requirements.

(A) Libraries must provide free library service.

(B) Libraries shall be open to the public the minimum number of hours stipulated in the following schedule. These hours shall be maintained year round. Single county systems organized under 65 O.S., §§ 151 and 552 which have branch libraries may aggregate their hours, if, discounting overlap, the citizens are served according to the following schedule:

(i) cities and towns under 2,000 population will be open 15 hours a week. The schedule will include at least two hours after 5 p.m. each week;

(ii) cities and towns of at least 2,000 but less than 5,000 people, will be open 30 hours a week. The schedule will include at least two hours after 5 p.m. each week and weekend hours are recommended;

(iii) cities with at least 5,000 but less than 10,000 people, will be open 35 hours a week. The schedule will include at least four hours after 5 p.m. each week and three weekend hours;

(iv) cities with at least 10,000, but less than 25,000, will be open 50 hours a week. The schedule will include at least eight hours after 5 p.m. each week and four weekend hours; and

(v) cities with 25,000 or more will be open 60 hours a week. The schedule will include a minimum of five weekend hours.

(C) Libraries must have a telephone located in the library with a listed number.

(D) All libraries and branches must provide internet access to the public. The library shall have a written internet use policy.

(E) All libraries shall at a minimum offer programming for youth under 18 years of age.

(F) A public library shall have a collection of materials (e.g., books, periodicals, audio-visual materials, etc.) that is circulated to the community.

(i) Libraries shall provide bibliographic access to its collection for customers.

## Permanent Final Adoptions

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- (ii) The library shall offer interlibrary loan to customers and participate in interlibrary loan networks or consortia to borrow materials not held in the library upon request for customers. Libraries shall promote the service to customers through promotional materials and/or signs in the library and on its website to make customers aware of the service.
- (iii) The library shall do an age and condition study on its collection every four years as determined by the Oklahoma Department of Libraries and report the findings to its library board and the Oklahoma Department of Libraries.
- (3) **Administration and finance requirements.**
- (A) Legally established libraries that are not part of a library system must complete and submit the Oklahoma Department of Libraries' online annual report for the preceding fiscal year by August 15th and library systems must submit such reports by October 1st.
- (B) Libraries must have a board of trustees appointed by the city and or county government officials which holds regularly scheduled meetings at least quarterly and all libraries must file annually a list of trustees, terms of office and meeting times with the Oklahoma Department of Libraries. The board shall approve the policies by which the library operates. The board shall review all required policies within a four year cycle as determined by the Oklahoma Department of Libraries and shall report all current policies to the Oklahoma Department of Libraries. Required policies are:
- (i) Circulation policy which shall include interlibrary loan;
- (ii) Library materials selection policy; and
- (iii) Internet use policy.
- (C) Libraries must receive operating income from local government sources, i.e. town, city or county. A public library is primarily supported by either municipal funds or a direct library levy on a permanent basis.
- (D) Local government must continue to expend an amount for library service, i.e., operating expenditures, not less than that of the preceding fiscal year, as reported on the Annual Report for Public Libraries. Public library systems organized under 65 O.S. Sections 151-161 and Sections 551-561, Sections 4-101-107.1 and Sections 4-201-206 may not reduce their millage levy. Exemption waivers to drop in operating income based on special circumstances shall be considered.
- (i) If a city or county has less total income for the most recent fiscal year as compared to the immediate fiscal year, exemption to the requirement in (D) of this paragraph may be made. The Oklahoma Department of Libraries will then supply forms for city or county officials to certify that the library's budget sustained no greater reduction than the total percentage reduction of income of the city or county budget.
- (ii) The requirement in (D) of this paragraph may be waived in those years when the budget is decreased according to (i) of this subparagraph.
- (E) Libraries must have paid permanent employees who are employees of the town, city, county or system. Town, city, county or system must pay said employees at least the federally required minimum wage and meet the requirements of the Fair Labor Standards Act.
- (F) All library directors and all personnel who work more than twenty (20) hours a week must attend at least one continuing education program each year. Staff in library systems or public libraries serving over 25,000 may meet this requirement with in-house training. Personnel are exempt if they have been employed at the library less than one (1) year.
- (G) Multi-county library systems must abide by the Oklahoma Department of Libraries' rules concerning systems as set forth in Chapter 10 of this title.
- (H) Libraries must file with the Oklahoma Department of Libraries, Office of Library Development, a report of expenditures made with state aid grant funds each preceding fiscal year by August 15th and library systems must submit such reports by October 1st.
- (I) Libraries must have a written statement of purpose.
- (J) Libraries shall provide annual library visits each year on the annual report to the Oklahoma Department of Libraries.
- (K) Libraries must provide bibliographic access to their collections.
- (L) Libraries serving a population of 10,000 or more must have submitted to the Oklahoma Department of Libraries a long range plan written or updated within the last 3 years. This document must address future directions of the library for services and resources, and must be approved by the local library board.
- (M) Libraries that are a department of municipal government in cities serving a population of 25,000 or more must employ a director with a Master's Degree in Library and Information Science from a library school accredited by the American Library Association or an alternate degree as follows. A comparable master's degree in business, education, school library media, or public administration, with a minimum of five years of prior supervisory library experience shall also be acceptable. For those with an alternate degree but without prior experience working in a library, the director shall complete the Institute in Public Librarianship Certification Program within two years of employment as director.
- (N) Libraries will evaluate, deselect and maintain their collections ensuring that their collections include up-to-date and useful materials and report

the figures to its library board and to the Oklahoma Department of Libraries.

(O) Libraries shall submit performance measures to the Oklahoma Department of Libraries on a schedule as determined by the Oklahoma Department of Libraries.

[OAR Docket #22-531; filed 7-1-22]

**TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD  
CHAPTER 1. ADMINISTRATIVE RULES OF PROCEDURE**

[OAR Docket #22-581]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

420:1-1-5. Procedure for requesting promulgation, amendment or repeal of a rule [AMENDED]

**AUTHORITY:**

Oklahoma Liquefied Petroleum Gas Board; 52 O.S. § 420.3

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

January 20, 2022

**COMMENT PERIOD:**

February 15, 2022 - March 18, 2022

**PUBLIC HEARING**

March 22, 2022

**ADOPTION:**

March 24, 2022

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

March 31, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The rule amendment changes how rulemaking petitions are handled by the agency. Petitions must either be put before the LP Gas Board in a special or regular Board meeting, or the agency must provide a written response to the petitioner explaining why rulemaking proceedings were not initiated, all within thirty (30) calendar days of submission. The proposed revisions to the rule bring it in compliance with recent changes to 75 O.S., § 305.

**CONTACT PERSON:**

Chandra Heitzinger, Administrator, LP Gas Administration, 3815 N. Santa Fe, Suite 117, Oklahoma City, Oklahoma, 73118, (405) 521-2458, Chandra.Heitzinger@lpgas.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**420:1-1-5. Procedure for requesting promulgation, amendment or repeal of a rule**

Any request for promulgation, amendment or repeal of a rule by a person shall be by petition, ~~said~~. Said petition must specify the rule to be promulgated, amended or repealed, and indicate ~~indicate~~ why such a rule change would be in the interest of those involved. Such petition shall bear the signatures of no less than twenty-five registrants, with no more than forty (40%) percent from any one category of registrants. Such ~~petitions~~ petition shall be filed with the Administration office. Within thirty (30) calendar days of the submission of a petition, the petition must either be put before the LP Gas Board in a special or regular Board meeting, or the agency must provide a written response to the petitioner explaining why rulemaking proceedings were not initiated at least 30 days prior to the scheduled quarterly LP Gas Board meeting, and must be placed upon said Board's Agenda for consideration without delay.

[OAR Docket #22-581; filed 7-11-22]

**TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD  
CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION**

[OAR Docket #22-582]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

420:10-1-5. Permits [AMENDED]

420:10-1-14. Standards for the storage and handling of liquified petroleum gas [AMENDED]

420:10-1-16. Training schools [AMENDED]

420:10-1-18. Insurance requirements [AMENDED]

420:10-1-19. Permit expirations [AMENDED]

**AUTHORITY:**

Oklahoma Liquefied Petroleum Gas Board; 52 O.S. § 420.3

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

January 20, 2022

**COMMENT PERIOD:**

February 15, 2022 - March 18, 2022

**PUBLIC HEARING**

March 22, 2022

**ADOPTION:**

March 24, 2022

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

March 31, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated Standards:**

National Fire Protection Association 58, "current and subsequent editions and any subsequent changes and/or additions," per 52 O.S., § 420.3(E) 49 C.F.R., § 177.816 (2022)

**Incorporating Rules:**

420:10-1-16

# Permanent Final Adoptions

## Availability:

7:30 a.m. to 4:30 p.m., Monday through Friday at LP Gas Administration, 3815 N. Santa Fe, Suite 117, Oklahoma City, OK 73118, 405-521-2458

## GIST/ANALYSIS:

The proposed revisions to the rules require Class I permit holders to provide information to the Administration regarding sales and deliveries of Un-Odorized LP Gas, and limit sales and deliveries within Oklahoma to properly permitted facilities, consistent with the requirements on Class III permit holders; require Class I, Class II, and Class III permit holders to have a current electronic or paper copy of National Fire Protection Association ("NFPA") 58 and 54 available for use at each separate branch; strike language that is no longer relevant; clarify that LPG registration decals and inspection forms are not to be used if the truck transporter permit holder becomes inactive; exempt Class VI permit holders from safety school; clarify that Safety Code Enforcement Officers may ask LP Gas transport drivers for documents that establish qualifications and identification; correct a scrivener's error; and specifically describe the LP Gas Administration's late fee on untimely renewals, as is authorized by 52 O.S., § 420.4(B)(2).

## CONTACT PERSON:

Chandra Heitzinger, Administrator, LP Gas Administration, 3815 N. Santa Fe, Suite 117, Oklahoma City, Oklahoma, 73118, (405) 521-2458, Chandra.Heitzinger@lpgas.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## 420:10-1-5. Permits

(a) **Permits required.** No person, firm, corporation, association or other entity shall engage in the manufacturing, assembling, fabrication, installing or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus or appliance without having first obtained a permit to do so as provided in this section.

(b) **Permit classifications.** The permits required for engaging in business shall be divided into the following classifications:

(1) **Class I - Dealer permit.** The Class I Dealer Permit permits the holder to engage in any phase of the LP Gas business. A Class X Manager's permit must be secured for the person actually in charge of an LP Gas operation at each separate branch or base of operation of a Class I permit holder. The initial permit fee for a Class I is One Thousand Dollars (\$1,000.00) The annual renewal fee required to be paid for the Class I permit is Five Hundred Dollars (\$500.00).

(A) Class I holder can go on inactive status, but will have to meet all the requirements of the permit, including paying the annual renewal fee, and having proper insurance requirements filed with the Administrator, before going back on active status. If requirements are not met the permit will then be revoked. The annual renewal fee required to be paid for a Class I permit holder on inactive status is Four Hundred Dollars (\$400.00).

(B) Applicant must furnish to the Board, evidence of the following insurance:

- (i) A minimum of \$1,000,000.00 general liability insurance, as per 420:10-1-18;
- (ii) Worker's Compensation insurance shall be required as per state requirements;
- (iii) Motor vehicle insurance must meet State and Federal requirements.

(C) Brokers/wholesalers selling LP Gas to anyone other than Class I permit holders or refinery/gas processing type facilities shall obtain a Class I permit and meet the requirements thereof, except for minimum storage and metering, when said sales are by transport bulkhead to bulkhead.

(D) Before testing for a Class I permit, an applicant must meet the following requirements as approved by the Board:

- (i) Five (5) years experience as an active Class X Manager or equivalent; and
- (ii) Forty (40) hours of specified training.

(E) Prior to application or renewal of any Class I Permit, the applicant or holder shall provide the Administration as part of this application or renewal a complete list of facilities and each delivery location, including the name of facility, street address of facility, name of contact person, and contact information of said facility, to which Un-Odorized LP Gas is being delivered. Sales and deliveries of Un-Odorized LP Gas shall only be made to facilities in Oklahoma that are properly permitted by this Administration.

(2) **Class II - Truck Transporter permit.** The Class II Transporter Permit permits the holder to transport LP Gas as a common carrier or private carrier to another of the following: a person, firm, or corporation engaged in the production or manufacture of LP Gas and/or selling or reselling LP Gas to transporters, industrial consumers, processors, distributors, retailers, and/or to holders of Class I, III, or VI permits. A Class II permit shall not authorize the resale of LP Gas to an end-user. A Class II permit shall not be a substitute where a Class I is needed. A transport must meet all CFR 49 requirements. The initial permit fee for a Class II is One Thousand Dollars (\$1,000.00). The annual fee for a Class II permit is Four Hundred Dollars (\$400.00). All LP Gas transport drivers employed by a Class II permit holder are required to obtain a fuel handlers card. The annual filing fee for a fuel handlers card is Ten Dollars (\$10.00).

(3) **Class III - DOT Cylinder Transporter Permit.**

(A) The Class III DOT Cylinder Transporter Permit permits the holder to operate a LP Gas cylinder sale or delivery service for LP Gas in accordance with all other rules and regulations and NFPA Pamphlets 54 and 58.

(B) The Class III DOT Cylinder Transporter Permit for Un-Odorized LP Gas Endorsement. A separate endorsement to a Class III permit is required, if applicable, and in addition to the Class III DOT Cylinder Transporter Permit, and allows the holder to operate a



DOT cylinder sale or delivery service for un-odorized LP Gas in accordance with all other rules and regulations, NFPA Pamphlets 54 and 58, and the following:

(i) Pursuant to this Endorsement, un-odorized LP Gas shall be sold or delivered in approved DOT cylinders only.

(ii) All deliveries shall be made in appropriately marked and placarded vehicles.

(iii) Delivery vehicles shall be operated by licensed personnel holding appropriate certificates and qualifications for the safe handling of LP Gas.

(iv) Prior to application or renewal of any Class III DOT Cylinder Transporter Permit for Un-Odorized LP Gas Endorsement, the applicant or holder shall provide the Administration as part of this application or renewal a complete list of facilities and each delivery location, including the name of facility, street address of facility, name of contact person and contact information of said facility, and the name and location of the Class I permit dealer supplying the Un-Odorized LP Gas to the permit holder.

(v) Sales ~~of and~~ deliveries of ~~un-odorized~~ Un-Odorized LP Gas made pursuant to this Endorsement shall only be made to facilities in Oklahoma that are properly permitted by this Administration ~~only~~.

(C) The Bulk Delivery Class III A Endorsement. The separate Class III A Bulk Delivery Endorsement to the Class III permit is required if applicable and shall permit the holder to invoice the end user for bulk delivery of odorized LP Gas to the facility of the end user only when the LP Gas is delivered to that location by a Class I permit holder.

(D) The annual fee for a Class III permit is \$300. The annual fee for the Un-Odorized LP Gas Endorsement is \$300. The annual fee for the Bulk Delivery Endorsement is \$300.

(E) All DOT cylinder transport drivers employed by a Class III permit holder are required to obtain a fuel handlers card. The annual filing fee for a fuel handlers card is Ten Dollars (\$10.00).

(4) **Class IV - Installer permit.**

(A) The Class IV Installer Permit permits the holder to install and service LP Gas systems, appliances, and other LP Gas equipment. The applicant is required to have immediate supervision for two (2) weeks with a Class IV, IV-D, Class X, or a person licensed by Oklahoma Construction Industries Board with a Mechanical License, and then shall be required to pass a written examination for each separate endorsement. The endorsements will be as follows:

(i) LP, Low Pressure systems covered by NFPA 54;

(ii) HP, High Pressure systems covered by NFPA 58;

(iii) RV, Recreational Vehicle systems covered by NFPA 1192;

(iv) MC, Meter Calibration systems covered by NIST Handbook 44;

(v) TI, Truck Inspections and Piping covered by NFPA 58 and CFR 49;

(vi) DO, Dispenser Operator for Class IV permit holders that also dispense propane.

(B) Exception from two (2) week training period would be anyone already licensed by Oklahoma Construction Industries Board with a Mechanical License. If the supervising person determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV's, as of September 1, 1994, are not required to take a written exam. Upon renewal, endorsements will be based on services provided as authorized by the Administrator. The annual fee for a Class IV permit with one (1) endorsement is Seventy Dollars (\$70.00). Each additional endorsement is Ten Dollars (\$10.00).

(C) Class IV permit does not permit the holder to install or service LP-Gas carburetion systems.

(D) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(5) **Class IV-D - Driver/Installer Permit.**

(A) The Class IV-D Driver/Installer Permit permits the holder to deliver LP Gas by bobtail and install and service LP Gas systems, appliance, and other LP Gas equipment. Class IV-D permit can only be issued under a Class I permit. New applicants must be under immediate supervision from a current Class IV-D, or Class X while in a minimum of a two (2) week training period before testing. Permit holder shall be required to pass a written examination. The tests shall be given according to current policies of the LP Gas Administration. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV-D application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV-D permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV permit holders, as of September 1, 1994, properly trained in delivery of LP Gas will not be required to take the test and will be issued a IV-D permit. The annual fee for a Class IV-D is Fifty Dollars (\$50.00).

(B) Class IV-D permit does not permit the holder to install or service LP Gas carburetion systems.

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(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

**(6) Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operator Permit.**

(A) The Class VI DOT Cylinder and/or LP Gas Motor Fuel Station Operator Permit permits the holder to operate DOT cylinder dispensing station and/or a motor fuel dispenser for public resale. Said Permit must be prominently displayed for public and official inspection at all times. A permit is required for each DOT cylinder dispensing station and/or motor fuel station. The endorsements will be as follows:

(i) AAG, This Attended Autogas "AAG" endorsement permits the holder to operate LP Gas dispenser stations that fill DOT cylinders and/or Attended LP Gas motor fuel refueling dispensers for resale.

(ii) UAG, This Unattended Autogas "UAG" endorsement permits the holder to operate Unattended self-service LP Gas motor fuel dispenser stations; however, these installations require more stringent regulations than those that are attended. In addition to the requirements in this section, the permit holder shall be required to install equipment that meets or exceeds the minimum installation and performance standards described in OAC Section 420:10-1-14(28). For the purpose of defraying the cost and expenses of administering and enforcing this rule, persons, firms and corporations shall pay at the time of initial inspection a fee of Three Hundred Dollars (\$300.00) for each unattended LP Gas motor fuel dispenser station. Thereafter, the annual inspection fee is One Hundred Fifty Dollars (\$150.00) for each unattended LP Gas motor fuel dispenser station.

(B) Permit holder must comply with reasonable training requirements of the Class 1 and Class 10 manager of the LP Gas provider ~~insuring~~ insuring that all employees dispensing LP Gas at each location of permit holder are trained and permitted by this agency including notification to the Class 10 manager whenever training is necessary for new and/or unpermitted employees. Class VI locations may not become operational until a permit has been issued. A Class VI-A LP Gas Dispensing permit must be secured for the person actually in charge of an LP Gas dispensing operation of a Class VI permit holder. A permit will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VI permit is One Hundred Fifty Dollars (\$150.00).

(C) Un-Odorized LP Gas End User Endorsement. Facilities obtaining un-odorized LP Gas in approved DOT cylinders or otherwise for use must obtain an Un-Odorized LP Gas End User Endorsement. To

obtain such an endorsement, detailed plans describing such use and location of cylinder storage, and any and all LP Gas plumbing in said facility must be submitted in writing and approved for any facility using un-odorized LP Gas in any manner. These plans must be submitted to the Administration Office along with the proper fee, and an on-site inspection must be performed by a Safety Code Enforcement Officer prior to final approval and before the introduction of LP Gas into the system. A \$100.00 plan review fee must accompany all plans submitted. The fee for the inspection is \$100.00. The annual fee for the Un-Odorized LP Gas End User Endorsement is \$500. This endorsement must be prominently displayed for official inspection at any time.

**(7) Class VI-A - LP Gas Dispensing Permit.** All employees involved in dispensing LP Gas must acquire a Class VI-A permit, except a Class IV, Class IV-D, and Class X. A Class VI-A LP Gas Dispensing permit is required for a person actively in charge of or engaged in LP Gas dispensing operations for the holder of a Class VI permit. All Class VI-A permit holders must be an employee of said Class VI permit holder. Class VI-A applicants must be properly trained by a Class X or at a Board-approved training class on proper filling of ASME tanks and DOT cylinders, and inspection thereof per NFPA 58. Applicants shall be required to pass an approved written examination. Test shall be administered by a Safety Code Enforcement Officer, or by Class X manager. In either case, the test fee for the Class VI-A permit is Ten Dollars (\$10.00). Holder must post permit at the facility they are employed by and attend a Board-approved annual safety school once every year. This does not prohibit any person, firm or corporation from filling his own equipment from his own supply line, or dispensing motor fuel from an approved limited access self-service dispenser. The annual fee for a Class VI-A permit is ~~Thirty-Five~~ Thirty-Five Dollars (\$35.00).

**(8) Class VII - Cylinder Exchange Program Permit.** The Class VII Cylinder Exchange Program Permit permits the holder to participate in the cylinder exchange program for odorized LP Gas only. A permit is required for each cylinder exchange location. Class VII locations may not become operational until a permit has been issued. Permits will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VII permit is Fifty Dollars (\$50.00).

**(9) Class IX - LP Gas Container Sales Permit.** The Class IX Gas Container Sales Permit permits the holder to manufacture and/or sell LP Gas containers. This permit is required by both wholesalers and retailer. The annual fee for a Class IX permit is Seventy Dollars (\$70.00).

**(10) Class IX-A - Manufactured Homes and Recreation Sales Permit.**

(A) The Class IX-A Manufactured Homes and Recreation Sales Permit permits the holder to manufacture, fabricate and sell all LP Gas facilities or

systems used in manufactured homes, campers, recreational vehicles and portable buildings whether such LP Gas system is manufactured, fabricated or sold separately or as an integral part of such trailer, camper, recreational vehicle or portable building. The annual fee for a Class IX-A is Seventy Dollars (\$70.00).

(B) This shall not be construed to require a permit for a sale by the owner of a manufactured home or recreational vehicle who is not engaged in such business on a commercial basis and does not make over two such sales in one year.

(11) **Class X - Manager's Permit.**

(A) A Class X Manager's permit is required for a person actively in charge of LP Gas operation for holder of Class I permit and at each separate branch or base of operation of a Class I permit. All Class X holders must be a full-time employee of said Class I holder. The annual fee for a Class X permit is One Hundred Fifty Dollars (\$150.00).

(B) Before testing for a Class X permit, an applicant must meet the following requirements as approved by the Board:

- (i) Hold an active Class IV or Class IV-D permit and employed under an active Class I Dealer for a minimum of three (3) years or equivalent; and
- (ii) One (1) year of the minimum three (3) years required experience can be satisfied with forty (40) hours of specified training.

(C) Temporary exemptions for emergency conditions can be granted by the Administrator.

(12) **Additional permits required for employees of Class I dealers.** Class IV, IV-D, VI-A, and X permits are the only additional permits that may be required for the employees of a Class I dealer, or as may be required by future Board action.

(13) **LP Gas Trailer, Bobtail or Cargo Tank inspections.** For the purpose of defraying the cost and expenses of administering and enforcing this act, persons, firms and corporations shall also pay at the time of inspection an annual inspection fee of One Hundred Fifty Dollars (\$150.00) for each LP Gas bobtail, MC 330 or MC 331 trailer or cargo tank that transports LP Gas in this State. All requirements imposed subsequent to these inspections must be met within thirty (30) days of the initial inspection. Failure to comply will necessitate a re-inspection at a charge of One Hundred Fifty Dollars (\$150.00) for each inspection. The inspection fee shall increase to Three Hundred Dollars (\$300.00) for each LP Gas bobtail, MC 330 or MC 331 trailer or cargo tank that transports LP Gas in this State if said LP Gas bobtail, MC 330 or MC 331 trailer or cargo tank is not initially inspected within sixty (60) days following the current permit expiration date, or if requirements imposed subsequent to the initial inspection are not completed within sixty (60) days of the initial inspection, whichever is later, or at the discretion of the Administrator.

(14) **Containers or cylinders.** There is hereby levied the following fee, to be paid to the Administrator, upon

all first sales, purchases, rentals or uses in this state of liquefied petroleum gas containers or cylinders; on all Department of Transportation (DOT) cylinders, vehicle fuel containers, a fee of Three Dollars (\$3.00) each, and on all other containers, a fee of Ten Dollars (\$10.00) each.

**420:10-1-14. Standards for the storage and handling of liquefied petroleum gas**

(a) **NFPA standards.** The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the Legislature in 52 O.S. 1991, Section 402.3 (e) and shall be accepted standards for the State of Oklahoma. All Class I, Class II, and Class III permit holders must have a current electronic or paper copy of NFPA 58 and 54 ~~on file~~ available for use at each separate branch.

(b) **Supplemental standards.** The following standards are supplemental to NFPA pamphlet No. 58 and shall be part of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board:

(1) **Definitions.**

(A) The word "approved" as used in this section means acceptable to the State Liquefied Petroleum Gas Administrator. A device or system having materials or forms different from those detailed in this section may be examined and tested according to the intent of the regulations and if found equivalent, may be approved.

(B) In this section those provisions which are considered essential for adequate protection of life and property from fire are indicated by the words "shall" and "must". The words "should" or "preferably" indicate advisory provisions concerning which the State Liquefied Petroleum Gas Administrator of Oklahoma should be consulted.

(C) In each place mentioned in NFPA No. 54 and NFPA No. 58 where it refers to "the authority having jurisdiction" this would mean the Liquefied Petroleum Gas Administrator.

(D) An "important building" shall be any building, open to the public, or inhabited by people, in which any LP Gas system or any type is installed

(2) **Submittal of plans.**

(A) Prior to the installation of new, or the modification of liquefied petroleum gas plumbing systems, excluding tank change outs, in school buildings, churches, courthouses, office building and other building to which the public is invited, such as cafes, dance halls, tourist courts and parks, plans and specifications for such installation in duplicate, shall be submitted to, and approved, by the State Liquefied Petroleum Gas Administrator, and before such systems are filled with liquefied petroleum gas, they shall be physically inspected and approved by a licensed

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installer and a report made by him to the State Liquefied Petroleum Gas Administrator on LPG Form 4, or its revision, furnished by the LP Gas Administrator's office.

(B) Plans must be submitted and approved on any dispenser used to fill DOT cylinders and/or ASME containers, and used for public resale of LP Gas, including unattended self-service LP Gas motor fuel dispenser stations. These plans must be submitted by a Class I permit holder to the Administration office along with the proper fee, and an onsite inspection must be performed by a Safety Code Enforcement Officer prior to final approval and before the dispenser can be placed into service. A One Hundred Dollar (\$100.00) plan review fee must accompany all dispenser plans submitted. If a dispenser is taken out of service, written notice must be given to the Administration office within seven (7) working days. If a dispenser is moved to a new location, new plans must be submitted to the Administrator and onsite inspection performed by a Safety Code Enforcement Officer prior to final approval and dispenser being placed into service. A complete list of dispensers by location shall be submitted to the LP Gas Administration as indicated on Class I permit renewal forms.

(C) Plans must be submitted to, and approved, by the Administrator on any fixed installation with individual water capacity of 2,000 gallons or more, or aggregate water capacity exceeding 4,000 gallons.

(D) Plans must be submitted and approved for any facility using Un-Odorized LP Gas in any manner and a permit endorsement must be obtained pursuant to 420:10-1-5(b)(6)(C). These plans must be submitted to the Administration Office by the permit holder or applicant proposing to service such facility with product along with the proper fee. An on-site inspection must be performed by a Safety Code Enforcement Officer of the LP system prior to final approval and before the introduction of LP Gas and the system placed into service. A \$100 plan review fee must accompany all plans submitted. The final inspection fee is \$100.00.

(3) **Report of accident.** In case of accident or fire at any location where a liquefied petroleum gas system or equipment is involved, or any accident involving liquefied petroleum gas systems or equipment, the dealer owning, operating or servicing the equipment or installation shall notify the State Liquefied Petroleum Gas Administrator. This notification shall be forwarded as soon as feasibly possible after the dealer has knowledge of the accident in order that an inspection may be made by the State Liquefied Petroleum Gas Administrator before the site has been disturbed

(4) **Piping - including pipe, tubing and fittings.**

(A) No person, firm, or corporation shall connect a liquefied petroleum gas tank to any piping without having first determined that such piping complies with the laws of the State of Oklahoma and the rules

and regulations of the State Liquefied Petroleum Gas Administrator relative to liquefied petroleum gas piping.

(B) All installations, installed after July 1, 2002, of storage containers, with more than 4,000 gallon water capacity, shall have internal valves installed as per NFPA 58.

(C) On installations of stationary or portable storage, with an aggregate of more than 4,000 gallon water capacity, a bulkhead approved by the LP Gas Administrator shall be required on each liquid line of one and one-half (1-1/2) inch or larger and each vapor line of one and one-quarter (1-1/4) inch or larger.

(5) **Vaporizers and housings.**

(A) The minimum capacity of the storage container feeding the vaporizer shall not be less than ten (10) times the hourly capacity of the vaporizer in gallons.

(B) The minimum capacity of a storage container being heated by a direct fired tank heater shall not be less than ten (10) times the hourly vaporizing capacity of the tank heater in gallons.

(6) **Liquid metering systems.** Each bulk retail delivery of liquid LP Gas shall be measured by a suitable LP Gas liquid meter system, except those deliveries of liquid LP Gas in cylinders which are filled by weight, deliveries of LP Gas vapor through vapor meters and a delivery of a full transport load from the terminal to the end-user with a bill of lading, are exempt from the requirements of this paragraph.

(A) LP Gas Liquid meters shall indicate deliveries in terms of gallons and to the nearest tenth of a gallon.

(B) The LP Gas liquid meter shall meet, in addition to the other requirements of this paragraph, the following requirements:

(i) The system shall include a device (such as a differential back-pressure regulator) so designed and installed that the product being measured will remain in a liquid state during passage through the meter.

(ii) No means shall be provided by which any measured liquid can be diverted from the measuring chamber, differential valve equipment or the discharge line therefrom.

(iii) Effective January 1, 1994, in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, all LP Gas Liquid meters used for bulk delivery shall be designed with the necessary equipment for mechanically printing gallons on a delivery ticket and the customer served thereby shall be given a ticket mechanically imprinted by the printing device. The customer's name and Class I Dealer's name must be included on the metered ticket. Meters used for stationary dispensing of motor fuel will not be required to be equipped with such printing device.

(iv) All bulk metered sales of propane, via bobtail or transport, shall be made by temperature

compensated measure. Except, any truck now operating without a temperature compensation meter shall be retrofitted by no later than July 1, 2003.

(C) All meters where product is sold to the public must be proved annually by an approved meter tester/inspector and have written certification on file at permit holders place of business. All meters and temperature compensators must be accurate within the manufacturers tolerance not to exceed + or -1% at any time. The LP Gas liquid meter system shall be designed and constructed to provide for applying lead-and-wire seals in such a manner that no modifications or adjustments which would affect the accuracy of deliveries, can be made without mutilating the seal or seals. If a seal is broken, notification must be made to the Administrator and resealed by a Safety Code Enforcement Officer, an approved meter tester, or a person approved by the Administrator. In addition, the Administrator at his discretion may require proving of metering system to determine the accuracy.

(D) No dealer or firm controlled or affiliated with a dealer may calibrate or certify its own meters. All meters must be tested with a volumetric meter prover.

(7) **Qualified personnel.** Each holder of an LP Gas permit shall be responsible for having qualified personnel operating and installing LP Gas equipment.

(8) **Filling unsafe or unapproved dispensing or storage tanks prohibited.** No person, firm, or corporation shall introduce liquefied petroleum gas into a dispensing or storage tank in the State with knowledge that such dispensing or storage tank or piping is known to be in an unsafe operating condition.

~~(9) **Basement installations.** No appliance shall be installed in any basement or semi-basement unless it is fully automatically controlled and properly vented and must have the approval of the State Liquefied Petroleum Gas Administrator.~~

~~(10) **Standards for containers.**~~

(A) In accordance with 52 O.S. Sec. 420.5, all first sales, rentals, purchases or uses of DOT cylinders and ASME tanks in this State, must have Oklahoma Identification tags attached to such cylinders or tanks. However, all DOT cylinders and ASME tanks in Oklahoma, with a manufacturers date prior to September 1, 1993, are not required to have Oklahoma Identification tags. These Oklahoma Identification tags are not transferable from one cylinder or tank to another.

(B) Any new container sold or installed in Oklahoma for use in this State shall carry a ~~five~~ five-year warranty covering workmanship and material. This warranty shall provide that any container not in compliance with this regulation must be repaired or replaced by the fabricator at no expense to the dealer or customer. This provision is to take care of "pin-hole" leaks in the weld that were not detected at the time of fabrication and does not apply to fittings.

(C) Containers shall be filled or used only upon authorization of the fee simple owner. The name of the fee simple owner, if other than the consumer, shall be conspicuously shown on the container.

(D) Any stationary storage container converted from anhydrous ammonia to propane shall be converted as follows:

(i) The container shall be purged of anhydrous ammonia by water flooding, steam or other methods described by the National Propane Gas Association's (NPGA) Recommendation for Prevention of Ammonia Contamination; and

(ii) It shall then be properly purged with propane vapor and tested with the red litmus paper as described in NFPA 58 or by any other test approved by the Board; and

(iii) The test shall be completed by the permit holder that performs the conversion; and

(iv) The results shall be documented and shall contain the container manufacturer, water capacity, serial number, the results of the test, the capacity of the relief valve, the date of the test, and the signature of the permit holder conducting the test. A copy of the results shall be provided to the owner of the container; and

(v) Any dealer filling a converted anhydrous ammonia container for the first time shall either be provided a copy of the test or complete the test as described above; and

(vi) The container shall meet all requirements of NFPA 58.

~~(11)~~ **Underground containers.**

(A) Underground containers before being reinstalled must be inspected by the State Liquefied Petroleum Gas Administrator, and a fee of One Hundred Dollars (\$100.00) paid to the State Liquefied Petroleum Gas Administrator's office, and reinstalled by a licensed LP Gas installer.

(B) Underground containers shall be dug up at the expense of the owner at any time at the discretion of the State Liquefied Petroleum Gas Administrator.

(C) Prior to performing an installation of an underground container, a person must complete Board approved Cathodic Protection training.

~~(12)~~ **Minimum storage.** All new Class I permit holders must provide bulk propane storage capacity of not less than an aggregate of 18,000 water gallons. The minimum storage must be maintained and operational, with installation approved by the authority having jurisdiction, and within a fifty (50) mile radius of the corporate office or branch location. The minimum storage shall be considered maintained if the area meets the requirements of NFPA 58, the rules and regulations established by the Board and is kept reasonably clear of long, dry grass, weeds, debris, and any other combustible material. Any exceptions to the minimum storage requirement may be granted by the Board. Current active Class I permit holders, as of September 1, 1994, are not required to meet

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this minimum storage requirement. After a change of ownership, the new Class I permit holder must secure the minimum storage requirement within one year.

~~(4312)~~ **Painting.** All bulk storage containers of a capacity 120 gallons water capacity or greater shall be painted a heat reflection color.

~~(4413)~~ **Lettering bulk storage and dispensers.**

(A) All bulk storage 2,000 gallons and above shall be lettered with the name of the contents, such as LP Gas, butane, propane, and a "No Smoking" sign in letters not less than six (6) inches high.

(B) In addition to subparagraph (A) of this paragraph, all bulk storage used for loading and unloading facilities, and all container filling storages (dispensers) shall include the name of the person, firm, or corporation operating the bulk storage or dispenser and their phone number in letters not less than two (2) inches high. This information shall be placed so as to be readily visible to the public.

(C) For all size bulk storage containers, the name of the fee simple owners, if other than the consumer, shall be conspicuously shown on the container.

~~(4514)~~ **Extinguishers required.** Extinguishers of the dry chemical type, with a B:C or A:B:C rating, are required. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once each year by an authorized inspector such as Fire Departments or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher.

~~(4615)~~ **Marking cargo vehicles.** Every tank vehicle used for transportation of liquefied petroleum gas shall be marked and placarded according to current DOT requirements. Each tank vehicle must also have the name of the person, firm or corporation on each side of the cargo tank in letters a minimum of two (2) inches in height. This information shall be placed so as to be readily visible to the public. This name shall be the same as permit holder has designated on the Class I or Class II permit.

~~(4716)~~ **Parking and garaging LP gas tank vehicles.** Any tank vehicle used for transportation of Liquefied petroleum gas shall not be parked beneath or adjacent to any electric transmission line in such position that there is a possibility of a conductor contacting the tank in event of breakage.

~~(4817)~~ **Filling unapproved truck, trailer or cargo tanks prohibited.**

(A) An inspection form, when properly completed, and a LPG registration decal (the serial number of which is shown on the inspection form), shall be evidence that the liquefied petroleum gas truck, trailer or cargo tank described on the inspection form by its serial number has been approved by the Liquefied Petroleum Gas Administrator for use in the transportation of liquefied petroleum gas. Such LPG registration decal and inspection form also shall authorize the person, firm or corporation whose name

appears on the inspection form or its bona fide employees to operate the truck or trailer tank described on the inspection form, and further shall authorize the filling of such truck, trailer or cargo tank with liquefied petroleum gas.

(B) The LPG registration decal shall be displayed at all times in an easily visible location on the left front of the cargo tank, which is on the driver's side. A copy of the inspection form shall be retained, until the expiration date, in the office of the person, firm or corporation whose name appears thereon. It will not be necessary to keep or display a copy of the inspection form on the truck, trailer or cargo tank.

(C) No person, firm or corporation shall operate a truck, trailer or cargo tank in the transportation of liquefied petroleum gas in this State unless such person, firm or corporation has been issued a LPG registration decal and an inspection form certifying that such tank has been registered with and approved by the State Liquefied Petroleum Gas Administrator, or unless its operation has been specifically approved by a communication from the State Liquefied Petroleum Gas Administrator.

(D) The LPG registration decal and the inspection form required in this paragraph are not transferable by the person, firm or corporation to whom they are issued or from one truck, trailer or cargo tank to another, and they are not to be used after the expiration date of the fiscal year for which they were issued, or in the event the Class I or Class II permit becomes inactive.

~~(4918)~~ **Vaporizers.** Exhaust gases shall not be used as a direct means of heat supply for the vaporization of fuel.

~~(2019)~~ **Stationary engines in building.**

(A) All engine rooms shall be well ventilated at the floor level.

(B) When engines are installed below grade level, suitable floor level mechanical exhaust ventilation shall be provided and operated continuously, or adequate means shall be provided to purge the room before the engine is started. In any case the mechanical ventilation shall be in operation when the engine is running. Before and during any repairs to the engine the room shall be ventilated.

(C) Automatic fire doors shall be provided at openings in the engine room that open into other sections of the building.

(D) Exhaust gases shall be discharged outside the building in a manner that will not create a fire or any other hazard.

(E) Regulators and pressure relief valves installed in buildings and engine rooms shall be vented to the outside and discharge at least five feet away from any building opening. Such venting will not be required for combination engine fuel vaporizing - fuel reducing - fuel metering devices providing an acceptable automatic shut-off valve is installed immediately ahead of such devices.

(2120) **Storage outside of buildings.** Valves and safety relief devices shall be protected against accumulations of ice and snow. Protective caps shall be deemed adequate.

(2221) **Appliances.** Any mobile home, travel trailer, camper or recreational vehicle shall be delivered to the buying public by the permit holder with the system properly installed and free of leaks.

(2322) **Maximum vapor pressure and container working pressure.**

(A) The maximum vapor pressure of the product at ~~100-degree~~100-degree Fahrenheit which may be transferred to a container shall not exceed the design working pressure of the container. Exception: 200 psig ASME working pressure vessels in LP Gas service in Oklahoma prior to January 1, 1994, may be continued in service for commercial propane, provided that they are fitted with relief valves and meet the start-to-leak setting in relation to the design pressure of the container, shall be in accordance with NFPA 58. For the purpose of this exception, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at ~~100-degree~~100-degree Fahrenheit. This exception does not apply to LP Gas motor fuel and mobile fuel containers.

(B) Any stationary 200 psig ASME containers brought into Oklahoma from out of state and intended for stationary LP Gas installation in Oklahoma at any facility requiring submission of plans and specification must be tested by at least two (2) of the following nondestructive test methods recognized by ASME to determine if the container or assembly is safe for LP Gas use in Oklahoma. The following test results must be submitted to the Oklahoma LP Gas Administration for approval.

- (i) Hydrostatic Test;
- (ii) Ultrasonic thickness test;
- (iii) Wet particle fluorescent or magnaflux.

(2423) **Testing, leakage and visual inspection, and meter calibration.**

(A) Hydrostatic testers operating in Oklahoma that are hydrostatic testing cargo containers for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and shall:

- (i) Hold a Federal C.T. number;
- (ii) Include in their testing the use of a calibrated pressure chart recorder;
- (iii) Hold a Class IV installer permit.

(B) Leakage and visual inspectors operating in Oklahoma and performing this inspection on cargo containers and their systems for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

- (i) Inspectors shall hold a Federal C.T. number;
- (ii) If the inspection includes repairs that require the LP Gas system to be re-plumbed, a Class IV permit is required.

(C) Meter calibrators operating in Oklahoma that are calibrating meters for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

- (i) Meters shall be tested in accordance to Oklahoma Rules and Regulations, Section 420:10-1-14(7);
- (ii) Meter calibrators shall furnish the meter owner a copy of the calibration showing the correct gear numbers and temperature compensator settings;
- (iii) Meter calibration results shall be on a form approved by the LP Gas Administrator and a copy of the completed form shall be furnished to the meter owner;
- (iv) Meter calibrators shall hold a Class IV permit.
- (v) Meter calibration testers shall test meters according to National Institute of Standards and Technology (NIST) standards.

(2524) **Cylinder exchange stations.**

(A) Cylinder exchange cabinets shall be constructed as per NFPA 58.

(B) The cabinet shall have the following signs affixed to it and readily visible to the public:

- (i) "Propane" or "Flammable Gas" and "No Smoking" in letters not less than two (2) inches high;
- (ii) "Net Weight \_\_\_ lbs." with the net weight of the cylinders to be specified, all of which shall be displayed on the front of the cabinet in letters not less than two (2) inches high;
- (iii) Name of Class I permit holder who supplies the cylinders;
- (iv) 24-hour Emergency telephone number.

(C) The cabinet shall be located for distance and number of cylinders as per NFPA 58.

(D) The cylinder storage area shall be kept free of wood, debris and other combustible/flammable material not necessary to the storage for a distance of ten (10) feet, not to include the construction materials of the building itself.

(E) Protection against vehicle impact shall be provided in accordance with good engineering practice where vehicle traffic normally is expected at the location as per NFPA 58.

(F) A fire extinguisher shall be provided as per NFPA 58

(G) A warning sign shall be posted at or near any entrance doorway stating the "LP GAS EXCHANGE CYLINDERS EMPTY OR FULL SHALL NOT BE TAKEN INDOORS FOR ANY REASON."

(H) The Class I permit holder shall provide safety training materials to the Class VII permit holder. The Class VII permit holder is responsible for providing appropriate safety information to the individual exchanging the cylinder. This documentation of

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training will be kept by the Class VII permit holder at the Class VII location.

(I) Automated cylinder exchange cabinets that include an automated vending system for exchanging cylinders shall comply with the following additional requirements:

- (i) Electrical equipment installed in cylinder storage compartments shall comply with the requirements for Class I, Division 2 equipment in accordance with NFPA 70, National Electrical Code;
- (ii) Cabinets shall be designed such that cylinders can be placed inside only in the upright position;
- (iii) Door releases for access to stored cylinders shall be permitted to be pneumatic, mechanical or electrically powered;
- (iv) A manual override control shall be permitted for use by authorized personnel;
- (v) The vending system shall not be capable of returning to automatic operation after a manual override until the system has been inspected and reset by authorized personnel.

(J) A Class I permit shall be required in order to supply exchange cylinders for the cylinder exchange permit holder.

(K) A busy sidewalk and thoroughfare, as referenced in NFPA 58, shall be further defined as not being located on private property. A busy sidewalk is alongside a public road and a thoroughfare is a public road.

~~(2625)~~ **Recreational vehicles.** Installations or repairs on LP Gas systems on recreational vehicles shall be performed as per NFPA 1192, Standard on Recreational Vehicles.

~~(2726)~~ **Minimum installation and performance standards of unattended self-service LP Gas motor fuel dispenser stations.**

(A) Unattended self-service LP Gas motor fuel dispenser stations shall meet the applicable sections of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board and NFPA 58.

(B) Any unattended self-service LP Gas motor fuel dispenser shall also meet all Alternative Provisions for Installations of ASME containers found in NFPA 58 regardless of tank size. This includes Redundant ~~Fail-Safe~~ Fail-Safe Product Control and Low Emission Transfer requirements.

(C) The delivery valve and nozzle combination shall be designed, installed, and operated, so that LP Gas will not be released unless the valve is correctly attached to the filler coupling on the receiving valve of the LP Gas motor fuel container.

(D) To maintain minimum performance standards, the following shall be considered minimum system performance requirements:

(i) Dispensing rate minimum of eight (8) gallons per minute (GPM) per manufacturer's specifications;

(ii) Vehicle fueling area, ground where vehicle is parked, shall be reasonably level to allow for complete fuel fills.

(E) The dispenser shall have the following signs affixed to the dispenser and readily visible to the public:

(i) Step by step operating instructions, approved in advance by the Administrator;

(ii) A warning sign(s) stating, "WARNING, STATE LAW PROHIBITS FILLING ANY PORTABLE DOT CONTAINERS AT THIS DISPENSER" and "All vehicles refueling at this dispenser must have an appropriate ASME container fitted with an operational OPD valve" in letters not less than two (2) inches high;

(iii) Proper name of LP Gas being dispensed, as specified by federal regulations at CFR-Title 49, in letters not less than two (2) inches high;

(iv) "No Smoking" in letters not less than two (2) inches high;

(v) 24-hour emergency telephone number in letters not less than two (2) inches high;

(vi) Name of the Class 1 permit holder that services the dispenser, in letters not less than two (2) inches high.

### 420:10-1-16. Training Schools

(a) **Safety schools for Class I dealers and X managers.**

It shall be the continuing responsibility of all Class I holders, including Sole Proprietorships and Class X permit holders to attend a Board sanctioned management safety seminar at least once every two years. Seminars shall be available at least annually, with biennial attendance a requisite for license renewals.

(b) **Safety school for fuel handling personnel.** Class IV, IV-D, ~~VI~~, and VI-A permit holders must attend a Board sponsored or sanctioned safety school at least once a year.

(1) Schools will be held at least annually at such times and places as may be deemed advisable. It shall be the administration policy to make available regional schools for the convenience of the industry.

(2) Such schools in no way relieve the dealer of the responsibility of training new employees adequately through on the job training.

(3) A fuel handlers card is required for all LP Gas transport drivers to demonstrate their qualifications ~~per CFR 49 requirements for transporting to transport LP Gas, including, but not limited to, compliance with training requirements in NFPA 58 and Section 177.816 of Title 49 of the Code of Federal Regulations. A Safety Code Enforcement Officer may ask an LP Gas transport driver for documents sufficient to establish his or her identity and qualifications, including, but not limited to, a driver license and fuel handlers card.~~



(c) **Compliance.** Failure to comply with this section shall be cause for suspension or revocation of the permit under which such person, firm or corporation might be operating.

**410:10-1-18. Insurance requirements**

Insurance pursuant to the provisions of this section shall be maintained in full force and effect during the operation of the business for which the coverage was issued. Except as otherwise provided for in this section, no registration permit shall be issued until said certificate is filed with the Administrator. No insurance coverage shall be canceled or terminated without thirty (30) days prior written notice of cancellation or termination to the Administrator. The following are the minimum insurance requirements for LP Gas permit holders licensed by the State of Oklahoma

- (1) **Class I - Dealer Permit.**
  - (A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$1,000,000 per occurrence; ~~\$1,00,000~~\$1,000,000 aggregate.
  - (B) Motor vehicle insurance must meet State and Federal requirements.
  - (C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.
- (2) **Class II - Truck Transporter Permit.**
  - (A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$1,000,000 per occurrence; \$1,000,000 aggregate.
  - (B) Motor vehicle insurance must meet State and Federal requirements.
  - (C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.
- (3) **Class III - DOT Cylinder Transporter Permit.**
  - (A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$1,000,000 per occurrence; \$1,000,000 aggregate.
  - (B) Motor vehicle insurance must meet State and Federal requirements.
  - (C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.
- (4) **Class IV - Installer Permit.**
  - (A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$500,000 per occurrence; \$500,000 aggregate.
  - (B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.
- (5) **Class IV - D - Driver/Installer Permit.** The Class IV-D permit is only issued in conjunction with the Class I permit; therefore, the insurance coverage of the Class I permit holder will cover the Class IV-D permit holder.
- (6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operation Permit.**

- (A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$100,000 per occurrence; \$100,000 aggregate.
- (B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.
- (7) **Class VI-A - LP Gas Dispensing Permit.** The Class VI-A permit is only issued in conjunction with the Class I, II, III, VI and/or VII permit; therefore, the insurance coverage of the Class I, II, III, VI and/or VII permit holder will cover the Class VI-A permit holder.
- (8) **Class VII - Cylinder Exchange Program Permit.**
  - (A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$25,000 per occurrence; \$25,000 aggregate.
  - (B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.
- (9) **Class IX - LP Gas Container Sales Permit.**
  - (A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$25,000 per occurrence; \$25,000 aggregate. This insurance coverage is only necessary when the permit holder engages in manufacturing and/or installing LP Gas containers.
  - (B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.
- (10) **Class IX-A - Manufactured Homes and Recreation Sales Permit.**
  - (A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$25,000 per occurrence; \$25,000 aggregate. This insurance coverage is only necessary when the permit holder engages in manufacturing, fabrication or installation of LP Gas systems.
  - (B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.
- (11) **Class X - Manager's Permit.** The Class X permit is only issued in conjunction with the Class I permit; therefore, the insurance coverage of the Class I permit holder will cover the Class X permit holder.

**420:10-1-19. Permit expirations**

- (a) **Setting expiration dates.** Registration permits shall expire annually with no permit extending longer than one calendar year. The expiration dates will be set by the Board.
- (b) **Semi-annual permits.** The Administrator may issue a Semi-Annual permit to applicants engaging in such business after (6) six months of renewal date of any year. A semi-annual permit shall run until the following renewal date and the fee for such permit shall be one-half that of the corresponding annual permit.
- (c) **Late fee.** The Board is authorized to establish necessary penalty provisions required to ensure prompt payment of said renewal fees. Any permit that is not renewed before September 1 of each year, shall accrue a penalty of twenty-five (25%)

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of the annual permit fee. This penalty must be paid in full before the permit can be renewed, and is in addition to any other penalty provided by law, including, but not limited to, the administrative penalty established by 52 O.S., § 420.6.

(d) **Expiration dates.** All class of permits shall expire on August 31 of each year.

[OAR Docket #22-582; filed 7-11-22]

## TITLE 428. LONG-RANGE CAPITAL PLANNING COMMISSION CHAPTER 10. ADMINISTRATION OF THE STATE CAPITAL IMPROVEMENT PLANNING ACT

[OAR Docket #22-579]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

428:10-1-1. Purpose and Scope [AMENDED]

428:10-1-3. Definitions [AMENDED]

Subchapter 3. State Capital Plan

Part 1. State Entity Requests

428:10-3-2. Procedures for Capital Outlay Requests [AMENDED]

Part 3. Preparation of the State Capital Plan

428:10-3-5. Implementation of the Plan [AMENDED]

### AUTHORITY:

62 O.S. §901; Long-Range Capital Planning Commission.

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

November 17, 2021

### COMMENT PERIOD:

December 15, 2021 through January 20, 2022

### PUBLIC HEARING:

January 20, 2022

### ADOPTION:

February 17, 2022

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

February 22, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

These amendments to the rules of the Long-Range Capital Planning Commission are necessary to update and clarify the rules, make deadlines more reasonable, allow state agencies more flexibility to manage financial aspects of certain capital improvement projects, and correct scrivener's errors.

### CONTACT PERSON:

Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 428:10-1-1. Purpose and scope

In order to provide guidelines for all state governmental entities as defined in 62 O.S., Section 695.3 and the Regents for Higher Education, which are subject to the provisions of the State Capital Improvement Planning Act, the rules of this Chapter establish the time frames, methods, evaluation criteria and information required to be prepared and submitted by state governmental entities and Regents for Higher Education in order to facilitate the business of the Commission. The Long-Range Capital Planning Commission of the State of Oklahoma was created to implement the State Capital Improvement Planning Act found at 62 O.S., Section 900 et seq. The Commission has been charged with the annual preparation of a state capital plan which address ~~state~~ state public capital facility needs for the ensuing eight years.

### 428:10-1-3. Definitions

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

"**The Act**" means the State Capital Improvement Planning Act, 62 O.S., Section 900 et seq.

"**Capital project**" is defined as a planned expense for a facility or physical item requiring a minimum expenditure of ~~\$25,000~~ \$50,000, having a useful lifespan of five years or more, and meeting one of the following definitions:

(A) Involves the acquisition or construction of any physical facility;

(B) Involves the acquisition of land;

(C) Involves the acquisition or construction of public utilities;

(D) Involves the acquisition of major equipment or physical systems, such as computer technology, communications systems, major specialized vehicles, etc.;

(E) Involves modifications to facilities, including additions to existing facilities, which increases the useful life of the facility, and/or

(F) Capital maintenance or replacement projects on existing facilities, which are defined as non-recurring projects to repair, maintain or replace existing facilities for the purpose of protecting the state's investment in a facility and minimizing future maintenance and replacement costs. To be considered a capital maintenance project, a project must have an interval between expenditures of at least five years. Capital projects do not include normal operating expenditures for salaries, routine maintenance or repair, or activities associated with or consumed during a single fiscal year.

"**Commission**" means the Long-Range Capital Planning Commission established pursuant to 62 O.S., Section 901.

"**Decision package**" means the capital project information and supporting documentation that an agency submits as a capital outlay request.

"Inventory of capital facilities" means a schedule of capital items held by state government entities. Such schedule shall include, but not be limited to, a description of property, date of acquisition, useful/remaining life, and replacement value.

"Plan" means the state capital plan to be prepared annually by the Long-Range Capital Planning Commission.

"Remaining useful life" means an estimate of the period of time over which the facility or item shall continue to serve its intended function, based on its current condition. The current condition should be assessed each year at the time the inventory is prepared and the remaining useful life should be determined according to this annual assessment.

"Replacement cost" means the cost to replace the item at the time the inventory is being prepared. That is, the current replacement cost, rather than the cost of replacing the item at the end of its useful life.

(c) Change orders to approved capital projects will be made in accordance with change order rules set forth by the Office of Management and Enterprise Services - Construction and Properties. Project changes falling outside of those rules shall be approved by the Commission.

(d) ~~Implementation of approved~~ Approved capital projects shall be ~~initiated~~ completed within the ~~fiscal year in which the project was approved and shall be completed within two fiscal years of approval~~ thirty (30) months of notification by OMES to the agency that the project has been approved. Projects that are not ~~implemented~~ completed within the ~~fiscal year~~ thirty (30) months of notification of approval will be considered void. Funding from the Maintenance of State Buildings Revolving Fund that has been allocated for voided capital projects shall be released to be used for other approved capital projects by order of priority in the Plan. Voided projects may be resubmitted for consideration by the Commission at a later date.

[OAR Docket #22-579; filed 7-11-22]

SUBCHAPTER 3. STATE CAPITAL PLAN

PART 1. STATE ENTITY REQUESTS

428:10-3-2. Procedures for capital outlay requests

(a) The Office of Management and Enterprise Services shall provide sufficient training to state entity personnel regarding the process for submitting capital outlay requests.

(b) The process for submitting capital outlay requests shall be provided to state governmental entities no later than ~~May~~ June 1 of each calendar year.

(c) State governmental entities shall submit completed capital outlay requests to the Office of Management and Enterprise Services, along with any and all attachments required for a decision package, no later than July ~~31~~ of the same calendar year.

PART 3. PREPARATION OF THE STATE CAPITAL PLAN

428:10-3-5. Implementation of the Plan

(a) The Office of Management and Enterprise Services ~~manages approved capital projects, including but not limited to: bidding, contract management, purchase orders and expenditure of approved funds~~ may advance fund agencies for approved capital projects. Funds ~~State agencies that are awarded funds from the Maintenance of State Buildings Revolving Fund shall not be distributed directly to state governmental entities for capital project implementation~~ report completion and financial progress to the Office of Management and Enterprise Services on a schedule and forms to be determined by the Office of Management and Enterprise Services.

(b) State governmental entities with approved capital projects shall initiate their approved capital project following procedures established by the Office of Management and Enterprise Services.

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
CHAPTER 1. ADMINISTRATION

[OAR Docket #22-452]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Information
- 450:1-1-1.1 [AMENDED]
- 450:1-1-2 [AMENDED]
- 450:1-1-3 [AMENDED]
- Subchapter 9. Certification and Designation of Facility Services
- 450:1-9-4 [AMENDED]
- 450:1-9-5 [AMENDED]
- 450:1-9-5.4 [AMENDED]
- 450:1-9-5.5 [AMENDED]
- 450:1-9-5.6 [AMENDED]
- 450:1-9-5.7 [AMENDED]
- 450:1-9-5.8 [AMENDED]
- 450:1-9-5.9 [AMENDED]
- 450:1-9-6 [AMENDED]
- 450:1-9-6.1 [AMENDED]
- 450:1-9-6.2 [NEW]
- 450:1-9-7 [AMENDED]
- 450:1-9-7.1 [AMENDED]
- 450:1-9-7.2 [AMENDED]
- 450:1-9-7.3 [AMENDED]
- 450:1-9-7.4 [AMENDED]
- 450:1-9-8.1 [AMENDED]
- 450:1-9-13 [AMENDED]
- 450:1-9-14 [AMENDED]

AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. § 85.9G.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 8, 2021

COMMENT PERIOD:

January 3, 2022 through February 2, 2022

PUBLIC HEARING:

February 3, 2022

# Permanent Final Adoptions

## ADOPTION:

March 25, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 28, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 1. General Information

450:1-1-1.1 [AMENDED]

450:1-1-2 [AMENDED]

Subchapter 9. Certification and Designation of Facility Services

450:1-9-5 [AMENDED]

450:1-9-5.8 [AMENDED]

450:1-9-6 [AMENDED]

450:1-9-7.3 [AMENDED]

### Gubernatorial approval:

October 28, 2021

### Register publication:

39 Ok Reg 183

### Docket number:

21-765

## INCORPORATIONS BY REFERENCE:

### Incorporated standards:

Accessibility Guidelines for Buildings and Facilities (ADAAG) for alterations and new construction; Universal Precautions for Transmission of Infectious Diseases from the Occupational Safety Health Administration (OSHA); 42 C.F.R., Part 2 and 45 C.F.R. §§ 160.101 et seq.; Records Disposition Schedule 82-17

### Incorporating rules:

450:1-9-5.4(f)(1); 450:1-9-5.5(a)(2); 450:1-9-5.5(e)(1); 450:1-9-5.6(d)(5)

### Availability:

9:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen, Suite 2-600, Oklahoma City, OK 73106, 405-271-9200

### GIST/ANALYSIS:

The proposed rule revisions to Chapter 1 make changes and clarifications to provider certification processes and criteria, including Commissioner approval scope, definitions of and thresholds for critical and necessary standards, clarifications to certain general program standards, and procedures for Permits for Temporary Operations, Probationary Certification, and the addition of new programs. Revisions also add new references to rule language newly added through HB 2006 and other clean-up language.

### CONTACT PERSON:

Melissa Miller, Policy Director and Administrative Rules Liaison, Melissa.Miller@odmhsas.org or (405) 248-9345

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. GENERAL INFORMATION

### 450:1-1-1.1. Definitions

The following words or terms, as defined below, when used in Chapters 1, 15, 16, 17, 18, 21, 23, 24, 27, 30, 50, 53, 55, 60, 65, ~~and 70~~, and 75, shall have the following meaning, unless the context clearly indicates otherwise and will prevail in the event there is a conflict with definitions included elsewhere in

Chapters 1, 15, 16, 17, 18, 21, 23, 24, 27, 30, 50, 53, 55, 60, ~~65, and 70~~, and 75:

**"Administrative Hearing Officer"** means an individual who is an attorney licensed to practice law in the State of Oklahoma and is appointed by the Commissioner of ODMHSAS to preside over and issue a proposed order in individual proceedings.

**"AOA"** means American Osteopathic Association.

**"Behavioral Health Aide (BHA)"** means individuals must have completed sixty (60) hours or equivalent of college credit or may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience, and:

(A) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(B) must be supervised by a bachelor's level individual with a minimum of two years case management experience or care coordination experience; and

(C) treatment plans must be overseen and approved by a LBHP or Licensure Candidate; and

(D) must function under the general direction of a LBHP, Licensure Candidate and/or systems of care team, with a LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

**"Board"** means the Oklahoma State Board of Mental Health and Substance Abuse Services.

**"CARF"** means Commission on Accreditation of Rehabilitation Facilities (CARF).

**"Certification"** means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates the provider is in compliance with minimum standards as incorporated in OAC 450 to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

**"Certified Alcohol and Drug Counselor (CADC)"** means Oklahoma certification as an Alcohol and Drug Counselor.

**"Certified Behavioral Health Case Manager" or "CM"** means any person who is certified by the ODMHSAS as a Behavioral Health Case Manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.

**"Certified facility"** means any facility which has received a certification status by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS.

**"Certification report"** means a summary of findings documented by ODMHSAS related to an applicant's compliance with certification standards.

**"COA"** means the Council on Accreditation of Services for Families and Children, Inc.

**"Consumer"** means an individual who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

**"Critical incident"** means an occurrence or set of events inconsistent with the routine operations of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include, but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff, and visitor; medication errors; residential consumers that have been absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

**"Critical standard"** means a standard that ODMHSAS deems to have the potential to significantly impact the safety, well-being, and/or rights of consumers, or consumers' access to appropriate services.

**"Discharge summary"** means a clinical document in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare.

**"Contractor"** or **"contractors"** means any person or entity under contract with ODMHSAS for the provision of goods, products or services.

**"Employment Consultant (EC)"** means an individual who (i) has a high school diploma or equivalent; and (ii) successful completion of Job Coach training.

**"Entities"** or **"entity"** means sole proprietorships, partnerships and corporations.

**"Facilities"** or **"facility"** means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

**"Family"** means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

**"Family Support and Training Provider (FSP)"** means

- (A) have a high school diploma or equivalent;
- (B) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or have lived experience as the primary caregiver of a child or youth who has received services for substance use disorder and/or co-occurring substance use and mental health, or have lived experience being the caregiver for a child with Child Welfare/Child Protective Services involvement;
- (C) successful completion of Family Support Training according to a curriculum approved by the ODMHSAS and pass the examination with a score of 80% or better;
- (D) pass OSBI background check;
- (E) treatment plans must be overseen and approved by a LBHP or Licensure Candidate; and

(F) must function under the general direction of a LBHP, Licensure Candidate or systems of care team, with a LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

**"Follow-up"** means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

**"Governing authority"** means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

**"Individual proceeding"** means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

**"Institutional Review Board"** or **"IRB"** means the ODMHSAS board established in accordance with 45 C.F.R. Part 46 for the purposes expressed in this Chapter.

**"Intensive Case Manager (ICM)"** means an individual who is designated as an ICM and carries a caseload size of not more than twenty-five (25) individuals. They are a LBHP, Licensure Candidate, CADC, or certified as a Behavioral Health Case Manager II, and have:

- (A) a minimum of two (2) years Behavioral Health Case Management experience,
- (B) crisis diversion experience, and
- (C) successfully completed ODMHSAS ICM training.

**"IRB approval"** means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other agency and Federal requirements.

**"Levels of performance"** or **"level of performance"** means units of service by types of service.

**"Licensed Alcohol and Drug Counselor"** or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

**"Licensed Behavioral Health Professional"** or **"LBHP"** means:

- (A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided and certified in a psychiatric mental health specialty;
- (C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;
- (D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

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(E) A practitioner with a license to practice in the state in which services are provided issued by one of the following licensing boards:

- (i) Social Work (clinical specialty only);
- (ii) Professional Counselor;
- (iii) Marriage and Family Therapist;
- (iv) Behavioral Practitioner; or
- (v) Alcohol and Drug Counselor.

**"Licensed dietitian"** means a person licensed by the Oklahoma Board of Medical Licensure and Supervision as a dietitian.

**"Licensed mental health professional"** or **"LMHP"** as defined in Title 43A §1-103(11).

**"Licensed physician"** means an individual with an M.D. or D.O. degree who is licensed in the state of Oklahoma to practice medicine.

**"Licensed practical nurse"** means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

**"Licensure candidate"** means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

**"Minimal risk"** means that the probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.

**"Necessary standard"** means a certification standard that ODMHSAS deems important for an entity's overall functioning but generally does not have a significant, immediate impact on consumers.

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

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

**"Paraprofessional"** means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

**"Peer Recovery Support Specialist"** or **"PRSS"** means an individual certified by ODMHSAS as a Peer Recovery Support Specialist pursuant to requirements found in OAC 450:53.

**"Performance improvement"** means an approach to the continuous study and improvement of the processes of providing services to meet the needs of consumers and others.

**"Probationary certification"** means a certification status granted for a period less than three (3) years one-year period for programs or facilities that have changed majority ownership or majority board composition but operations of the program or facility continue.

**"Psychiatrist"** means a licensed physician who specialized in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology, or has equivalent training or experience.

**"Registered nurse"** means an individual who is a graduate of an approved school of nursing and is licensed in the state of Oklahoma to practice as a registered nurse.

**"Rehabilitative services"** means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

**"Reimbursement rates"** means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract.

**"Research"** means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**"Respondent"** means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

**"Sentinel event"** means a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events take place in the facility and/or occur during the delivery of services and signal the need for immediate investigation and response. Sentinel events include, but are not limited to suicide, homicide, ~~criminal activity~~, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

**"Service area"** means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health [43A O.S. § 3-302(1)].

**"Service Provider"** means a person who is allowed to provide substance abuse services within the regulation and scope of their certification level or license.

**"Site Review Protocol"** means an ODMHSAS document developed as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility as well as to the Board for its consideration and action related to certification.

"Staff privileging" means an organized method for facilities and programs to authorize an individual to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Substantial compliance" means the demonstration of compliance by an entity subject to certification to ODMHSAS of a minimum percentage of all applicable critical and necessary standards in accordance with these rules. The determination of whether an individual standard is deemed compliant may be done on a pass/fail basis or as a minimum percentage of required elements.

"Support Services Provider (SSP)" means an individual age eighteen (18) or older with a high school diploma or equivalent.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Tobacco" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

450:1-1-2. Applicability

This, and all subsequent chapters are applicable, unless otherwise specifically noted in a chapter, subchapter, part or section of Oklahoma Administrative Code Title 450, to the Oklahoma Department of Mental Health and Substance Abuse Services, the State Board of Mental Health and Substance Abuse Services, and:

- (1) all employees and institutions and facilities of ODMHSAS (43A O.S. §§ 3-101 and 3-107); and
- (2) all facilities (43A O.S. §§ 1-103(7), 3-306.1, 3-315, 3-317, 3-319, 3-320, 3-222, 3-323A and 3-415) under contract with ODMHSAS; and
- (3) all facilities subject to certification by ODMHSAS (43A O.S. §§ 3-306.1, 3-315, 3-317, 3-319, 3-320, 3-222, 3-415, 3-601); and
- (4) institutions, organizations and individuals subject to certification by ODMHSAS to provide alcohol and drug substance abuse courses (43A O.S. §§ 3-451 through 3-453); and
- (5) agencies and individuals subject to certification by ODMHSAS to provide alcohol and drug assessment and evaluation programs related to driver's license revocation [47 O.S. §§ 11-902(G) and 6-212.2; 43A O.S. § 3-460];
- (6) individuals subject to certification to be a behavioral health case manager pursuant to 43A O.S. § 3-318; ~~and~~
- (7) Individuals subject to certification to be recovery support specialist to 43A O.S. § 3-326; ~~and~~

- (8) Individuals subject to certification to be a problem gambling treatment counselor pursuant to 43A O.S. § 3-322a.

450:1-1-3. Compliance with laws and rules

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

(b) All persons and organizations affected by the rules of this and all subsequent chapters and related laws shall be knowledgeable of the conduct pertinent in operating in accordance with all such rules and laws.

~~(c) New or amended rules promulgated through permanent rulemaking will be enforced as of November 1 of the year in which they become effective.~~

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITY SERVICES

450:1-9-4. Reviewing authority

(a) The Board may certify community mental health centers, community residential mental health facilities, community-based structured crisis centers, eating disorder treatment programs, alcohol and drug treatment programs, outpatient mental health treatment programs (mental illness treatment programs), comprehensive addiction treatment centers, programs of assertive community treatment, gambling addiction treatment programs, and narcotic treatment programs as cited in Section 450:1-9-1, and directs that such shall be carried out as stated in this subchapter.

(b) The Commissioner or designee may approve certifications subsequent to initial certifications for Permits for Temporary Operations, and probationary certifications. Such certifications must be presented at the next ODMHSAS Board meeting for Board review and confirmation. In the event the Board does not confirm the certification status granted by the Commissioner or designee, the certification shall expire no later than thirty (30) days from the Board's action as stipulated in a written notice provided to the organization for which the certification was denied.

~~(bc)~~ The Board, or the Commissioner, or designee, may also certify qualified individuals to perform within the scope of specific functions to provide treatment or support services related to behavioral health services. Certification of individuals shall be carried out as stated in OAC 450: 1 and in accordance with applicable requirements specified in other chapters of OAC 450.

~~(ed)~~ The Commissioner of ODMHSAS may grant or extend a Permit for Temporary Operations to respond to unplanned changes that create an emergency need for service provision in the public behavioral health delivery system for services operated by or funded by ODMHSAS.

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- (1) Provider Certification shall conduct a site review at the designated facility which must meet the minimal compliance requirements as cited in 450:1-9-7.
- (2) The application procedure for completion of the certification process shall be accomplished in accordance with 450:1-9-6 and 450:1-9-7.
- (3) The Permit for Temporary Operations emergency certification status granted to the facility by the Commissioner as described above must be presented at the next ODMHSAS Board meeting for Board review and confirmation. In the event the Board does not confirm the Temporary Certification status granted by the Commissioner, the Permit for Temporary Operations expire no later than thirty (30) days from the Board's action as stipulated in a written notice provided to the organization for which the Permit was denied.

### 450:1-9-5. Qualifications for certification of facilities, programs and individuals

(a) Qualifications for certification of facilities and programs providing mental health, substance related, or addictive disorder treatment services are as follows:

(1) ~~Compliance~~ Substantial compliance with applicable Standards and Criteria as authorized within the authority of Title 43A of the Oklahoma Statutes, including but not limited to those Core Organizational Standards, Core Operational Standards and Quality Clinical Standards formally codified in Title 450 regulating the area for which certification is sought:

- (A) Chapter 16, Standards and Criteria for Community Residential Mental Health Facilities;
- (B) Chapter 17, Standards and Criteria for Community Mental Health Centers;
- (C) Chapter 18, Standards and Criteria for Substance Related and Addictive Disorder Treatment Services;
- (D) Chapter 23, Standards and Criteria for Community Based Structured Crisis Centers;
- (E) Chapter 24, Standards and Criteria for Comprehensive Community Addiction Recovery Centers;
- (F) Chapter 27, Standards and Criteria for Mental Illness Service Programs;
- (G) Chapter 55, Standards and Criteria for Programs of Assertive Community Treatment;
- (H) Chapter 60, Standards and Criteria for Certified Eating Disorder Treatment Programs;
- (I) Chapter 65, Standards and Criteria for Gambling Treatment Programs; and
- (J) Chapter 70, Standards and Criteria for Opioid Substitution Treatment Programs.

(2) ~~Compliance~~ Substantial compliance with applicable Core Organizational Standards, Core Operational Standards and Quality Clinical Standards set forth in OAC 450:1-9-5.4, OAC 450:1-9-5.5 and OAC 450:1-9-5.6. Core Organizational Standards, Core Operational Standards and Quality Clinical Standards address separate requirements as follows:

(A) Core Organizational Standards address requirements necessary to assure the public and consumers of services that essential organizational functions are substantially in place at the facility and the facility is prepared to initiate services for which certification is being requested. These requirements can be verified prior to the initiation of services for which the organization is requesting certification.

(B) Core Operational Standards address other essential conditions and processes that must be in place to assure basic safety and protection of consumer rights. Some of these requirements can also be verified prior to the initiation of service. Others must be verified when an organization begins providing services.

(C) Quality Clinical Standards address actual services provided, qualifications of staff, clinical documentation, and processes designed to assure consistency in quality and efficacy of services. These requirements can only be verified after a reasonable time during which services have been provided.

(3) Substantial compliance with applicable Core Organizational Standards, Core Operational Standards and Quality Clinical Standards will be evaluated by assessing each program or facility's level of compliance with applicable standards. Standards will have separate minimum compliance thresholds based on their categorization as critical or necessary in accordance with 450:1-9-5.7. Critical and Necessary Standards are defined as follows:

(A) Critical Standards are standards that have the potential to significantly impact the safety, well-being, and/or rights of consumers, or consumers' access to appropriate services.

(B) Necessary Standards are standards that are important for the organization's overall functioning but generally do not have a significant, immediate impact on consumers.

(34) Compliance with all applicable Core Organizational Standards, Core Operational Standards and Quality Clinical Standards will be evaluated in the manner and methods prescribed by ODMHSAS. Compliance methods include, but are not limited to, on-site inspections and observation, staff interviews, and review of relevant records and documentation as determined by ODMHSAS. The determination of whether an individual standard is deemed compliant may be done on a pass/fail basis or as a minimum percentage of required elements. Failure to provide documentation or access requested by ODMHSAS will be grounds for disciplinary action. Failure to demonstrate substantial compliance with ~~any~~ applicable ~~standards~~ standards will result in immediate suspension and/or revocation.

(45) An applicant for certification must also comply with all other applicable statutory licensing provisions, including but not limited to individual professional licensure, other licenses, or permits required of organizational entities.



(b) A certified Community Mental Health Center that provides alcohol and drug treatment services in the course of its outpatient or inpatient services, but has no designated or specialized alcohol and drug abuse treatment program component, shall not be subject to additional certification under Chapter 18 of this Title.

(c) A certified Community Mental Health Center providing alcohol and drug abuse treatment services as a designated or specialized program component shall be subject to certification under Chapter 18 or Chapter 24 of this Title.

(d) Qualifications for certification of entities and individuals providing alcohol and drug course instruction or assessments are as follows:

(1) Compliance with applicable Standards and Criteria as authorized within the authority of Title 43A of the Oklahoma Statutes, including but not limited to those formally codified in Title 450, Chapter 21, Alcohol and Drug Substance Abuse Courses (ADSAC) and Assessments.

(2) An applicant for certification must also comply with all other applicable statutory licensing provisions, including but not limited to individual professional licensure and other licenses or permits.

(e) Qualifications for certification of individual providers of mental health, substance use, or addictive disorder services are as follows:

(1) Compliance with applicable Standards and Criteria as authorized within the authority of Title 43A of the Oklahoma Statutes, including but not limited to those formally codified in Title 450 regulating the area for which certification is sought:

(A) Chapter 50, Standards and Criteria for Certified Behavioral Health Case Managers; ~~and~~

(B) Chapter 53, Standards and Criteria for Certified Peer Recovery Support Specialists; and

(C) Chapter 75, Standards and Criteria for Certified Problem Gambling Treatment Counselors.

(2) An applicant for certification must also comply with all other applicable statutory licensing provisions, including but not limited to individual professional licensure and other licenses or permits.

**450:1-9-5.4. Core organizational standards for facilities and programs**

(a) **Governing Authority.** With the exception of facilities certified under Chapter 16 of this Title, all facilities and programs shall have documents of authority, which shall be available to the public and ODMHSAS upon request. Documents of authority shall identify the duly constituted authority and governance structure for assuring legal responsibility and for requiring accountability for performance and operation of the facility (including all components and satellites). The documents of authority shall indicate:

- (1) Eligibility criteria for governing body membership;
- (2) The number and types of membership;
- (3) The method of selecting members;
- (4) The number of members necessary for a quorum;
- (5) Attendance requirements for governing body membership;

(6) The duration of appointment or election for governing body members and officers; and

(7) The powers and duties of the governing body and its officers and committees or the authority and responsibilities of any person legally designated to function as the governing body.

(b) **Organizational Description.** All facilities and programs shall have a written organizational description which is ~~reviewed and approved annually~~ by its governing authority. The facility or program shall make the organizational description available to staff and, upon request, to the public. The organizational description shall minimally include descriptions of:

- (1) Population(s) to be served;
- (2) The overall program mission statement;
- (3) The ~~annual~~ goals and objectives for the program, including the goal of continued progress in providing evidence-based practices; and
- (4) The specific geographic area in which services are provided for programs certified under Chapter 55 of this Title.

(c) **Personnel Policies and Procedures.**

(1) All facilities and programs shall have written personnel policies and procedures. With the exception of facilities certified under Chapter 16 of this Title, these policies and procedures shall be approved by the governing authority.

(2) All employees shall have access to personnel policies and procedures, as well as other rules and regulations governing the conditions of their employment.

(3) The facility or program shall develop, adopt, and maintain policies and procedures at each provider location to provide for qualified personnel during all hours of operation.

(4) There shall be job descriptions for all positions setting forth minimum qualifications and duties of each position.

(d) **Utilization of Volunteers.**

(1) In facilities and programs where volunteers are utilized, specific policies and procedures shall be in place to define the purpose, scope, training, supervision and operations related to the use of volunteers.

(2) There shall be documentation to verify orientation of each volunteer which shall enable him or her to have knowledge of program goals, and familiarity with routine procedures.

(3) All volunteers must receive in-service training pursuant to OAC ~~450:1-9-5.3(b)~~ 450:1-9-5.6(b).

(e) **Information Analysis and Performance Improvement.**

(1) With the exception of facilities certified under Chapter 16 of this Title, all facilities and programs shall have an ongoing information analysis and performance improvement system in order to objectively and systematically monitor, evaluate, and improve consumer outcomes and organizational performance.

(2) The system shall also address the fiscal management of the facility or program.

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(3) Each facility and program shall prepare a year-end management report annually which shall include, at a minimum:

(A) An analysis of consumer outcomes and organizational processes, including:

(i) A quarterly quality consumer record review to evaluate the quality of service delivery, including:

- (I) Appropriateness of services;
- (II) Patterns of service utilization;
- (III) Consumer involvement in service planning;
- (IV) Assessment processes;
- (V) Service planning procedures and compliance;
- (VI) Alignment between services provided and treatment goals;
- (VII) Service documentation procedures and compliance; and
- (VIII) Alignment between services provided and billed service encounters.

(ii) A review of staff privileging processes;

(iii) A review of critical and ~~unusual~~ incidents and consumer grievances and complaints;

(iv) An assessment of service provision, including the provision of trauma-informed, co-occurring capable, culturally competent, and consumer-driven services; and

(v) Consumer satisfaction.

(B) Identified areas of improvement; and

(C) Strategies that will be implemented to address areas of improvement.

(4) The management report shall be made available to consumers, staff, the governing authority and ODMHSAS upon request.

(f) **Special Populations.**

(1) Under Titles 11 and 111 of the Americans with Disabilities Act of 1990, all facilities shall comply with the "Accessibility Guidelines for Buildings and Facilities (ADAAG) for alterations and new construction." State and local standards for accessibility and usability may be more stringent. Facilities shall assume responsibility for verification of all applicable requirements and comply with the most stringent standards.

(2) All facilities and programs shall have written policy and procedures for providing or arranging for services for persons who fall under the protection of the Americans with Disabilities Act of 1990 and provide documentation of compliance with applicable Federal, state, and local requirements. A recommended reference is the "Americans with Disabilities Handbook" published the in U.S. Equal Employment Opportunities Commission and the U.S. Department of Justice.

(3) All facilities shall have a policy of non-discrimination against persons with Human Immunodeficiency Virus (HIV) and persons with Acquired Immunodeficiency Syndrome (AIDS).

### 450:1-9-5.5. Core operational standards for facilities and programs

(a) **Physical facility environment and safety.**

(1) All facilities shall have written policies and procedures to ensure the safety and protection of all persons within the facility's physical environment, including all leased or owned property and buildings.

(2) All facilities shall be in compliance with applicable fire and safety regulations, codes, and statutory requirements of the federal, state, and local government. This shall include, but not be limited to, the Universal Precautions for Transmission of Infectious Diseases from the Occupations Safety Health Administration (OSHA).

(3) All facilities shall have an annual fire and safety inspection from the State Fire Marshal or local fire department which documents approval for continued occupancy. All facilities shall keep a copy of the inspection documentation and any correspondence regarding any deficiency at the facility.

(4) All facilities shall have an emergency preparedness plan to meet the needs of consumers, visitors, and staff during a disaster. The emergency preparedness plan shall be evaluated annually and shall, at a minimum, address:

- (A) Fires;
- (B) Floods;
- (C) Tornadoes;
- (D) Explosions;
- (E) Chemical spills; and
- (F) Prolonged loss of heat, light, water, and air conditioning.

(5) All facilities shall have a designated Safety Officer.

(6) There shall be written plans and diagrams posted prominently noting emergency evacuation routes and shelter locations.

(7) All facilities shall have fire alarm systems. All alarms shall be in working order and have visual signals suitable for individuals with a hearing impairment.

(8) There shall be emergency power to supply lighting throughout each location where consumers receive services.

(9) Storage of dangerous substances (toxic or flammable substances) shall be in locked, safe areas or cabinets.

(10) There shall be a written plan for the protection and preservation of consumer records in the event of a disaster.

(11) If the facility serves children or adolescents in any form of residential care, there shall be outside play and recreational space and equipment provided which:

- (A) Is protected and free from hazards;
- (B) Is safely accessible from indoors;
- (C) Has supplies and equipment maintained safely; and
- (D) Has some shade provided.

(b) **Hygiene and sanitation.**

(1) Residential facilities shall provide the following services and applicable supporting documentation:

- (A) Toilet facilities in a minimum ratio of one (1) per eight (8) resident beds. Each toilet facility shall

include a sink in the same room or immediately adjacent thereto;

(B) Bathing facilities in a minimum ratio of one (1) tub or shower per each eight (8) resident beds;

(C) Sewage discharge into a municipal sewerage system or collected, treated, and disposed of in an independent sewerage system;

(D) Regular inspections and treatment by a licensed pest control operator;

(E) Solid waste disposal through public systems or in a manner approved by the local agency having jurisdiction and the OSDH or Department of Environmental Quality (DEQ), as necessary, with documentation from OSDH or DEQ that the solid waste disposal system is free from deficiencies if applicable;

(F) Water obtained from an approved public water supply or tested at least quarterly and treated as necessary, thereby maintaining a determination as an approved water supply by the authority having jurisdiction and the OSDH or DEQ, as necessary, with documentation from OSDH or DEQ that the solid waste disposal system is free from deficiencies if applicable;

(G) Linen in quantities adequate to provide at least two (2) changes of bedding each week; and

(H) Housekeeping services that provide a hygienic environment in the facility.

(2) Outpatient treatment facilities shall provide:

(A) Toilet facilities in a minimum ratio of one (1) per twenty (20) persons. Each toilet facility shall include a sink in the same room or immediately adjacent thereto;

(B) Water and sewerage in the same manner as prescribed for residential facilities; and

(C) Housekeeping services that provide a hygienic environment in the facility.

(c) **Tobacco-free campus.**

(1) With the exception of facilities certified under Chapter 16 of this Title, all facilities shall provide a tobacco-free campus for its employees, consumers and visitors. Possession and use of any tobacco product is prohibited on the grounds of the facility by employees, consumers, volunteers and visitors.

(2) All facilities shall visibly post signs on the property notifying consumers, employees and visitors that the visible possession and use of tobacco products is prohibited.

(3) Facility employees shall not share tobacco or tobacco replacement products with consumers.

(4) The facility shall offer assistance to employees who are tobacco users while employed by the facility. The facility shall have written policies describing the types of assistance offered to employees.

(5) The facility shall ~~always~~ inquire about consumers' tobacco use status as part of the screening and treatment planning process and be prepared to offer treatment upon request of the consumer.

(d) **Technology.** With the exception of facilities certified under Chapter 16 of this Title, all facilities and programs shall have policies and procedures regarding the use of technology and systems to support and advance effective and efficient service and business practices. The plan shall include, but not be limited to:

- (1) Hardware and software;
- (2) Security;
- (3) Confidentiality;
- (4) Backup policies;
- (5) Assistive technology;
- (6) Disaster recovery preparedness; and
- (7) Virus protection.

(e) **Confidentiality and information security.**

(1) All facilities and programs shall have written policies and procedures describing the conditions under which consumer information may be disclosed and the procedures for releasing such information. These conditions and procedures shall adhere to all applicable federal and state rules and statutes, including:

- (A) 42 C.F.R., Part 2 and 45 C.F.R. §§ 160.101 et seq.;
- (B) 43A O.S. § 1-109 and 63 O.S. § 1-502.2; and
- (C) OAC 450:15-3-20.1, OAC 450: 15-3-20.2 and OAC 450:15-3-60.

(2) It shall be the responsibility of facility or program to safeguard client information against loss, theft, defacement, tampering, or use by unauthorized persons.

**450:1-9-5.6. Quality clinical standards for facilities and programs**

(a) **Staff qualifications.**

(1) All staff who provide clinical services within facilities and programs shall have documented qualifications or training specific to the clinical services they provide.

~~(2) Staff qualifications for contracted entities shall be in compliance with 450:1-1-1.1 and 450:1-3-5.~~

~~(3)~~ (2) Each facility or program shall have policies and procedures for documenting and verifying the training, experience, education, and other credentials of service providers prior to their providing treatment services for which they were hired. All staff shall be documented as privileged prior to performing treatment services.

~~(4)~~ (3) All direct care staff shall be at least eighteen (18) years old.

~~(5)~~ (4) Each facility or program shall minimally perform a review each calendar year of current licensure, certifications, and current qualifications for privileges to provide specific treatment services.

(b) **Staff development and training.**

(1) All facilities and programs shall have a written staff development and training plan for all administrative, professional and support staff. This plan shall include, at a minimum:

- (A) Orientation procedures;
- (B) In-service training and education programs;
- (C) Availability of professional reference materials;

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- (D) Mechanisms for ensuring outside continuing educational opportunities for staff members; and
- (E) Performance improvement activities and their results.
- (2) In-service training shall be conducted each calendar year and shall be required ~~upon hire~~ within thirty (30) days of each employee's hire date and each calendar year thereafter for all employees on the following topics:
- (A) Fire and safety, including the location and use of all fire extinguishers and first aid supplies and equipment;
  - (B) Universal precautions and infection control;
  - (C) Consumer's rights and the constraints of the Mental Health Patient's Bill of Rights;
  - (D) Confidentiality;
  - (E) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115;
  - (F) Facility policy and procedures;
  - (G) Cultural competence (including military culture if active duty or veterans are being served);
  - (H) Co-occurring disorder competency and treatment principles;
  - (I) Trauma informed service provision;
  - (J) Crisis intervention; ~~and~~
  - (K) Suicide risk assessment, prevention, and response; and
  - ~~(K)~~ (L) Age and developmentally appropriate trainings, where applicable.
- (3) All clinical staff, direct care staff, and/or volunteers providing direct care shall have non-physical intervention training in techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention within thirty (30) days of being hired with updates each calendar year thereafter. Staff and volunteers shall not participate in an intervention without first completing this training. This standard shall not apply to facilities or programs subject to Chapter 27 of this Title.
- (4) The local facility Executive Director shall designate which positions and employees, including temporary employees, will be required to successfully complete physical intervention training. ~~Any designated~~ employee or volunteer shall not provide direct care services to consumers until completing this training. This standard shall not apply to facilities or programs subject to Chapter 16 or Chapter 27 of this Title, or outpatient programs subject to Chapter 18 of this Title.
- (5) The training curriculum for ~~(2) and (3) and (4)~~ of this subsection must be approved by the ODMHSAS commissioner or designee in writing prior to conducting of any training pursuant to this provision.
- (6) Each site providing residential level of care services and/or subject to Chapter 23 of this Title shall have staff during all hours of operation who maintain current certification in basic first aid and Cardiopulmonary Resuscitation (CPR).
- (c) **Clinical supervision.**
- (1) With the exception of facilities certified under Chapter 16 of this Title, all facilities and programs shall have written policies and procedures, operational methods, and documentation of the provision of clinical supervision for all direct treatment and service staff. For facilities that employ only one service provider, supervision will be in the form of clinical consultation from a qualified service provider in the same field. These policies shall include, but are not limited to:
- (A) Credentials required for the clinical supervisor;
  - (B) Specific frequency for case reviews with treatment and service providers;
  - (C) Methods and time frames for supervision of individual, group, and educational treatment services; and
  - (D) Written policies and procedures defining the program's plan for appropriate counselor-to-consumer ratio, and a plan for how exceptions may be handled.
- (2) Ongoing clinical supervision shall be provided and shall address:
- (A) The appropriateness of treatment selected for the consumer;
  - (B) Treatment effectiveness as reflected by the consumers meeting their individual goals; and
  - (C) The provision of feedback that enhances the clinical skills of service providers.
- (d) **Clinical record keeping, basic requirements.**
- (1) All facilities and programs shall establish and maintain an organized clinical record system for the collection and documentation of information appropriate to the treatment processes; and which insures organized, easily retrievable, usable clinical records stored under confidential conditions and with planned retention and disposition.
- (2) Each facility or program shall maintain an individual record for each consumer.
- (3) The facility's or program's policies and procedures shall:
- (A) Define the content of the consumer record in accordance with all applicable state and federal rules, requirements, and statutes;
  - (B) Define storage, retention and destruction requirements for consumer records in a manner that prevents unauthorized information disclosures;
  - (C) Require consumer records not in electronic format be maintained in locked equipment which is kept within a locked room, vehicle, or premise;
  - (D) Require legible entries in consumer records, signed with first name or initial, last name, and dated by the person making the entry;
  - (E) Require the consumer's name or unique identifier be typed or written on each page in ~~the consumer record~~ records not in electronic format; or appear on each screen of an electronic record;

- (F) Require a signed consent for treatment before a consumer is admitted on a voluntary basis; and
- (G) ~~Require a signed consent for referral and payment, and for follow up before any contact after discharge is made.~~ Require consent for release of information in accordance with federal and state laws, guidelines, and standards, including OAC 450:15-3-20.1 and OAC 450:15-3-20.2. For disclosure of information related to substance use disorder referral, payment, and follow up, a signed consent is required.
- (4) If electronic clinical (medical) records are maintained, there shall be proof of compliance with all applicable state and federal rules and statutes related to electronic medical records, encryption, and other required features.
- (5) ODMHSAS operated facilities shall comply with Records Disposition Schedule 82-17 as approved by the Oklahoma Archives and Records Commission.
- (6) The facility or program shall assure consumer records are readily accessible to all staff providing services to consumers. Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records.
- (e) **Discharge summary.**
- (1) A completed discharge summary shall be entered in each consumer's record within fifteen (15) days of the consumer completing, transferring, or discontinuing services. The summary shall be signed and dated by the staff member completing the summary. Consumers who have received no services for one hundred eighty (180) days shall be discharged if it is determined that services are no longer needed or desired.
- (2) A discharge summary shall include, but not be limited to, the consumer's progress made in treatment, ~~the consumer's response to services rendered,~~ initial condition and condition of the consumer at discharge, diagnoses, summary of current medications, when applicable, and recommendations for referrals, if deemed necessary. It shall include a discharge plan which lists written recommendations and specific referrals for implementing aftercare services, including medications. ~~Aftercare~~ Discharge plans shall be developed with the knowledge and cooperation of the consumer, when possible. This standard shall not apply to facilities certified under Chapter 16 of this Title.
- (3) The signature of the staff member completing the summary and the date of completion shall be included in the discharge summary.
- (4) In the event of death of a consumer, in lieu of a discharge summary, a summary statement including applicable information shall be documented in the record.
- (f) **Critical incidents.**
- (1) All facilities and programs shall have written policies and procedures requiring documentation and reporting of critical incidents and analysis of the contributors to the incident to ODMHSAS.
- (2) The documentation of critical incidents shall contain, at a minimum:
- (A) Facility name and signature of the person(s) reporting the incident;
- (B) Names of the ~~resident(s)consumer(s),~~ and/or staff member(s) involved;
- (C) Time, date, and physical location of the incident;
- (D) Time and date incident was reported and name of person within the facility to whom it was reported;
- (E) Description of incident;
- (F) Severity of each injury, if applicable. Severity shall be indicated as follows:
- (i) No off-site medical care required or first aid care administered on-site;
- (ii) Medical care by a physician or nurse or follow-up attention required; or
- (iii) Hospitalization or immediate off-site medical attention was required;
- (G) Resolution or action taken and date resolution or action was taken; and
- (H) Signature of the facility administrator, or designee of the facility administrator. ~~The designee must be previously identified in writing to the Department and designated within the facility's policy and procedures by the facility administrator. Only one designee per facility shall be permitted.~~ Designees shall be identified in the facility's policy and procedures.
- (3) Critical incidents shall be reported to ODMHSAS with specific timeframes, as follows:
- (A) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax, or ODMHSAS designated electronic system, to ODMHSAS within ~~twenty four (24)~~ seventy-two (72) hours of the incident ~~being documented.~~
- (B) Critical incidents involving allegations constituting a sentinel event or residentconsumer abuse shall be reported to ODMHSAS immediately via telephone or fax, but within not more than twenty-four (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours of the incident.

**450:1-9-5.7. Types and duration of certification status for facilities and programs**

- (a) The ODMHSAS may grant the following types of certification for the durations specified below.
- (1) ~~Permit for temporary operations. Permits for temporary operations may be granted upon ODMHSAS's verification that the organization has complied with all Core Organizational Standards and Core Operational Standards applicable to the related type of services for which certification is sought. In addition, for facilities that have provided services for 30 days or longer applicable to this type of certification ODMHSAS may review compliance with applicable Quality Clinical Standards. The Permit will expire at the end of six (6) months or if~~

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a subsequent certification is achieved by the organization and subsequently granted by ODMHSAS prior to the expiration of the Permit. ODMHSAS may extend a Permit for no more than 60 days in the event of extenuating circumstances as determined by ODMHSAS.

**(1) Permit for Temporary Operations.** A Permit for Temporary Operations may be granted upon ODMHSAS's verification that the organization has substantially complied with Core Organizational Standards and Core Operational Standards applicable to the type of services for which Certification is sought. A Permit for Temporary Operations allows for the organization to begin operations so that compliance with Quality Clinical Standards may be assessed by the Department.

**(A)** A Permit for Temporary Operations will be granted for six (6) months and will expire upon subsequent certification achieved by the organization or upon a determination by ODMHSAS that the organization is not in substantial compliance with Quality Clinical Standards.

**(B)** Organizations shall notify ODMHSAS in writing no later than fourteen (14) calendar days after initiating clinical services in order to begin the compliance review of Quality Clinical Standards. Failure to provide such notification within the required timeframe may result in immediate termination of the Permit for Temporary Operation.

**(C)** A Permit for Temporary Operations may not be renewed. ODMHSAS may extend a Permit for Temporary Operations for no more than ninety (90) days in the event of extenuating circumstances as determined by ODMHSAS.

**(D)** Organizations that do not achieve subsequent Certification after obtaining a Permit for Temporary Operations must wait a minimum of ninety (90) days before making re-application.

**(2) Probationary certification.** Probationary Certification may be awarded for a one (1) year period by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 and when ODMHSAS verifies that all conditions in 450:1-9-5.7(a)(3) exist but the program initiated operations prior to the awarding of a Permit for Temporary Operations for the services for which certification is statutorily required. Additionally, certified organizations that provide services out of a satellite prior to the satellite being approved by ODMHSAS will have their organization's certification reduced to a Probationary Certification. Organizations awarded Probationary Certification must apply for and be awarded Probationary Certification for two additional one (1) year terms, prior to being considered for other categories of ODMHSAS Certification.

**(2) Probationary Certification.** Probationary Certification may be awarded for a one (1) year period by ODMHSAS in cases where a program or facility has changed majority ownership or majority board composition but operations of the program or facility continue. Such programs or facilities must provide ODMHSAS

with documentation of any changes in policies, procedures, personnel, services, and other documentation as requested by ODMHSAS. Upon determination by ODMHSAS that the program or facility meets the requirements of 450:1-9-5.7(a)(3) prior to expiration of the Probationary Certification, the program or facility may obtain applicable Certification.

**(3) Certification.** ODMHSAS may award Certification for a one (1) year or two (2) year period beyond the period approved for a Permit for Temporary Operations or as a renewal of a previously awarded Certification in accordance with applicable chapters as stipulated in 450:1-9-5 and when ODMHSAS determines that the organization has met ~~minimal~~ substantial compliance with each type of standard (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) applicable standards. To qualify for Certification, programs must meet the following:

**(A)** Demonstrate compliance with all Core Organizational Standards and with all Core Operational Standards as verified by ODMHSAS and within timeframes stipulated by ODMHSAS; and,

**(B)** For a two (2) year certification, demonstrate compliance with at least 75% of all Quality Clinical Standards on the initial site review, and file an acceptable plan of correction and demonstrate compliance with 100% of Quality Clinical Standards, as verified by ODMHSAS in accordance 450:1-9-7.1 and 450:1-9-7.3.

**(A)** Demonstrate compliance with a minimum of ninety percent (90%) of all Critical Standards as identified in the ODMHSAS Provider Certification Manual on the initial site review, file an acceptable plan of correction in the required timeframe addressing standards for which compliance was not achieved on the initial site review, and demonstrate compliance with one hundred percent (100%) of all Critical Standards after the initial site review.

**(B)** Demonstrate compliance with a minimum of seventy-five percent (75%) of all Necessary Standards as identified in the ODMHSAS Provider Certification Manual on the initial site review and file an acceptable plan of correction in the required timeframe addressing standards for which compliance was not achieved on the initial site review. ODMHSAS may verify compliance with standards identified in the plan of correction at its discretion.

**(C)** Programs with fewer than five (5) active cases for which clinical records could be reviewed must meet the requirements in (B) above, but can be considered for no more than a one (1) year certification.

**(D)** Community Residential Mental Health Programs can be considered for no more than a one (1) year certification.

**(E)** Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.7(3) until all conditions of 450:1-9-5.7(2) have been satisfied.

(F) Programs found to have initiated operations prior to the awarding of a Permit for Temporary Operations for the services for which certification is statutorily required shall obtain the necessary Permit for Temporary Operations to continue operations. Subsequently, these programs will be eligible for Certification for a one (1) year period only for the first two (2) years of Certification. Programs that fail to obtain the necessary Permit for Temporary Operations shall be required to cease operations.

(4) **Certification with distinction.** Certification with Distinction may be awarded for up to three (3) years by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 for programs seeking renewal of previously awarded certification when ODMHSAS verifies all of the following minimal conditions are satisfied:-

~~(A) Programs must have provided services with an approved ODMHSAS Certification as described in 450:1-9-5.4(3)450:1-9-5.7(a)(3) for one (1) year or longer in addition to the time services were provided under an approved Permit for Temporary Operations or a Probationary Certification.~~

~~(B) Programs must demonstrate compliance with all Core Organizational Standards and with all Core Operational Standards as verified by ODMHSAS; and,~~

~~(C) Programs must also demonstrate compliance with at least 90% of all Quality Clinical Standards on the initial renewal site visit and review as verified by ODMHSAS. Compliance may be determined during initial site reviews or during additional site reviews following the implementation of a plan of correction as required ODMHSAS, in accordance 450:1-9-7.1 and 450:1-9-7.3.~~

(B) Programs must demonstrate compliance with a minimum of ninety percent (90%) of all Critical Standards as identified in the ODMHSAS Provider Certification Manual on the initial site review, file an acceptable plan of correction in the required timeframe addressing standards for which compliance was not achieved on the initial site review, and demonstrate compliance with one hundred percent (100%) of all Critical Standards after the initial site review.

(C) Programs must demonstrate compliance with a minimum of eighty-five percent (85%) of all Necessary Standards as identified in the ODMHSAS Provider Certification Manual on the initial site review and file an acceptable plan of correction in the required timeframe addressing standards for which compliance was not achieved on the initial site review. ODMHSAS may verify compliance with standards identified in the plan of correction at its discretion.

~~(D) Programs for which ODMHSAS determines compliance with all standards as required in (a), (b), and (c) may be considered for Certification with Distinction for a three (3) year period.~~

~~(E) ODMHSAS may refund certification renewal application fees for organizations that demonstrate 100% compliance with all standards (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) during the initial renewal site visit and review.~~

~~(F) Community Residential Mental Health Programs can be considered for no more than a one (1) year Certification with Distinction.~~

~~(G) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.7(4) until all conditions of 450:1-9-5.7(2) have been satisfied.~~

(5) **Certification with special distinction.** Certification with Special Distinction may be awarded for up to three (3) years by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 for programs seeking renewal of previously awarded certification when ODMHSAS verifies all of the following minimal conditions are satisfied.

(A) The program must meet all conditions for Certification with Distinction as outlined in 450:1-9-5.7(a)(4); and,

(B) The program has attained national accreditation (COA, CARF, or TJC) for the services to which ODMHSAS Certification applies.

(C) Certification with Special Distinction will be reduced by ODMHSAS to Certification with Distinction by ODMHSAS if during the certification period for which the Special Distinction was approved, the program fails to maintain national accreditation status.

(D) ODMHSAS may refund certification renewal application fees for organizations that demonstrate 100% compliance with all standards (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) during the initial renewal site visit and review.

(E) Community Residential Mental Health Programs can be considered for no more than a one (1) year Certification with Special Distinction.

(F) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.7(a)(4) until all conditions of 450:1-9-5.7(a)(2) have been satisfied.

(b) Permits for Temporary Operations granted to applicants for initial certification of a facility, location, or level of service shall be for a period of six (6) months and shall become effective immediately upon approval by the ODMHSAS Board, the Commissioner or designee.

(c) Certification, other than Permits for Temporary Operations, granted to an applicant shall become effective the first day of the month following the date of the action by the Board, provided however, the Board may waive this requirement and make the Certification effective immediately.

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## 450:1-9-5.8. Types and duration of certification of individuals

- (a) Certification for organizations and individuals providing alcohol and drug abuse course instruction or assessments will be in accordance with requirements and procedures stipulated in OAC 450:21.
- (b) Certification for Behavioral Health Case Managers will be in accordance with requirements and procedures stipulated in OAC 450:50.
- (c) Certification for Recovery Support Specialists will be done in accordance with requirements and procedures stipulated in OAC 450:53.
- (d) Certification for Problem Gambling Treatment Counselors will be done in accordance with requirement and procedures stipulated in OAC 450:75.

## 450:1-9-5.9. Additional conditions related to certification

- (a) ~~Certification granted by ODMHSAS is not transferable. A change of the ownership of a facility automatically terminates any certification status, requiring application for certification by the new ownership.~~
  - (1) ~~If the certified facility is owned by a corporation the following applies:~~
    - (A) ~~If the corporation is not for profit, a change in membership of the Board of Directors of more than fifty percent (50%) of the Directors in three (3) or less calendar months, unless such change was caused by the normal expiration of terms in accordance with the bylaws of the Board of Directors, shall require the facility to be recertified.~~
    - (B) ~~If the corporation is other than not for profit, a change in the ownership of more than forty per cent (40%) of the stock in the corporation from the owners at the beginning of the period of certification shall require the facility to be recertified.~~
  - (2) ~~It is the responsibility of the facility to notify the ODMHSAS of the occurrence of either of the conditions requiring recertification and to request the application materials for recertification.~~
- (b) ~~Organizations granted certification, including Permits for Temporary ~~Operation~~Operations, shall only publically refer to ODMHSAS Certification in relationship to the specific services, locations, and dates applicable to each currently granted ODMHSAS Certification. This includes all published materials, electronic media, and information posted within a facility. Failure to adhere to this restriction can be cause for action related to Certification in accordance with 1-5-4.~~
- (e) ~~ODMHSAS shall may conduct at least one unannounced additional certification site ~~visit~~visits during each one (1) year term of a program programs granted Probationary Certification and each program programs granted 1-Year Certification.~~
  - (1) A site visit report will be supplied to the program or facility within five (5) days of the site visit unless precluded by extenuating circumstances.
  - (2) If deficiencies are noted, the program or facility must file a Plan of Correction addressing all deficiencies within ten (10) days of receipt of the report.

- (3) Deficiencies verified during the unannounced site visit that indicate danger to the health, safety and/or welfare of the clients will result in immediate suspension and/or revocation.

(4) Certification may be suspended or revoked with the basis for such action being delineated in Section 450:1-9-9 of this Subchapter.

## 450:1-9-6. Procedures for application for certification

- (a) Applications for certification as a ~~community mental health center, community residential mental health facility, community based structured crisis center, comprehensive community addiction recovery centers, mental illness service programs, eating disorder treatment program, alcohol and drug treatment program, program of assertive community treatment, gambling addiction treatment program, and narcotic treatment facility~~ or program must be made to ODMHSAS in writing on a form and in a manner prescribed by the ~~Commissioner of ODMHSAS~~ and include the following:
  - (1) A fully completed ODMHSAS application for certification form signed by authorized officials;
  - (2) The necessary written documentation or supporting evidence required on the application for certification form; and
  - (3) The required certification fee ~~in the form of a check or money order~~, payable to the Oklahoma Department of Mental Health and Substance Abuse Services.
  - (4) The following fees are required:
    - (A) Application fee for all Treatment Programs is \$1,000 per certification period.
    - (B) Application fee for Community Residential Mental Health Programs is \$100 per certification period.
  - (5) ~~The application for certification form, required written documentation and fee must be submitted to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.~~
  - (6) The application may require a listing of all services provided by the applicant, as well as specifics about the applicant including but not limited to governing authority, administrative, fiscal, proof of status as a business entity recognized by the State of Oklahoma, Secretary of State, all locations or sites where applicant will provide services and types of services to be provided.
  - (7) The application must include a listing of key personnel responsible for business and clinical operations of the facility. At a minimum, the application will require a listing of the following, along with current contact information:
    - (A) Agency director;
    - (B) Business director or financial officer;
    - (C) Clinical director, currently licensed in the clinical area(s) for which certification is sought.
      - (i) If both substance use disorder treatment and mental health treatment services will be provided by the entity, the Clinical Director must have



evidence of dual license or additional training in the area for which they are not currently licensed.

(ii) The facility must also provide evidence that the Clinical Director will be employed to serve as Clinical Director a minimum of ten (10) hours per week.

(87) ODMHSAS may refund certification fees based on exemplary performance during the Certification process for which the application has been submitted and based on guidelines established by ODMHSAS.

(b) Applications for certification or credentials as an individual provider must be made to ODMHSAS in writing on a form and in a manner prescribed by the ~~Commissioner~~ of ODMHSAS and, as applicable, in accordance with specific requirements stipulated in OAC 450:21, OAC 450:50, and OAC 450:53-, and OAC 450:75.

(c) Failure to provide required materials within sixty (60) days of receipt of the application will result in a denial of the application.

**450:1-9-6.1. Expanding certification of facilities and programs to additional geographical areas; ~~Adding new programs or levels of care~~**

~~(a) Except for a Community Mental Health Center, a facility or program, after being certified, may request to add additional service locations within the State.~~

~~(b) A Community Mental Health Center, after being certified, may request to add a service location within its service area established by ODMHSAS in accordance with 43A O.S. § 3-302 (3).~~

~~(c) Approval may be granted by the Commissioner upon submission of the required documentation to the Provider Certification Division provided the organization is not certified under a Permit for Temporary Operations.~~

~~(1) The facility must notify ODMHSAS in writing of the plan to expand service locations on a form and in a manner prescribed by the Commissioner of ODMHSAS.~~

~~(2) The required written documentation or supporting evidence includes, but is not limited to:~~

- ~~(A) fire & safety inspection;~~
- ~~(B) facility policies and procedures;~~
- ~~(C) zoning compliance; and~~
- ~~(D) evidence of compliance with Title 43A O.S. §3-417.1, if applicable.~~

~~(d) At the time of the next review of the facility's main office certification, any location which extended service provision to a different location will require a separate certification application and may be reviewed on a schedule separate and apart from the certification schedule of the main office.~~

~~(e) If after being certified, a facility desires to offer a new type of service or new level of care, for which certification is required, the facility must submit an application for certification, the required documentation and fee to the ODMHSAS Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.~~

(a) After initial certification, a facility or program may request to add additional service locations within the state. A

Community Mental Health Center may only request to add additional Community Mental Health Center locations within its service area established by ODMHSAS in accordance with 43A O.S. § 3-302 (3).

(b) Such additional service locations do not require a Permit for Temporary Operations for certification, provided that the organization has an existing certification(s) in good standing for the chapter(s) which cover the scope of services in the additional service locations. The existing certification(s) must not be a Permit for Temporary Operations.

(c) If the additional service locations will provide services not covered by the organization's existing certifications, the organization must first obtain a Permit for Temporary Operations for the applicable services.

(d) Approval for additional service locations specified in (b) above may be granted by the Commissioner or designee upon submission of the following required documentation to ODMHSAS:

(1) The facility must notify ODMHSAS in writing of the plan to expand service locations on a form and in a manner prescribed by ODMHSAS.

(2) The required written documentation and supporting evidence includes, but is not limited to:

- (A) fire & safety inspection;
- (B) facility policies and procedures;
- (C) zoning compliance; and
- (D) evidence of compliance with Title 43A O.S. §3-417.1, if applicable.

(e) At the time of the next review of the facility's main office certification, additional service locations may be reviewed on a schedule separate and apart from the certification schedule of the main office.

**450:1-9-6.2. Adding new programs or optional services**

(a) After initial certification, a facility or program may request to add additional programs or optional services.

(b) Addition of new programs do not require a Permit for Temporary Operations for certification, provided that:

(1) The organization has an existing certification(s) in good standing for the chapter(s) which cover the new program. The existing certification(s) must not be a Permit for Temporary Operations; and

(2) The new program is providing services that are the same or lower level of care than the program(s) currently certified with the organization. If the new program is providing services at a higher or more restrictive level of care, the organization must first obtain a Permit for Temporary Operations for the applicable services.

(c) A currently certified Community Mental Health Center service location may add a Certified Community Behavioral Health Clinic certification without first obtaining a Permit for Temporary Operations.

(d) Organizations may add optional services to their existing certification upon request to ODMHSAS, provided that the optional services are included in the scope of the existing certification Chapter. The existing certification must not be a Permit for Temporary Operations.

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(e) Approval for additional programs that meet the requirements specified in (b) or (c) above may be granted by the Commissioner or designee upon submission of the required documentation to ODMHSAS.

(1) The facility must notify ODMHSAS in writing of the plan to add a program or level of care on a form and in a manner prescribed by ODMHSAS.

(2) The required documentation and supporting evidence includes, but is not limited to:

(A) description of new program or level of care and services provided;

(B) personnel and training information; and

(C) number of beds and physical facility changes, if applicable.

(3) If the new program or level of care will be provided at a new service location, the required written documentation and supporting evidence also includes, but is not limited to:

(A) fire & safety inspection;

(B) facility policies and procedures;

(C) zoning compliance; and

(D) evidence of compliance with Title 43A O.S. §3-417.1, if applicable.

(f) At the time of the next review of the organization's certification, new programs or optional services may be reviewed on a separate schedule.

### **450:1-9-7. Procedures for completion of the Permit for Temporary Operations certification process**

(a) Completion of the certification process for a Permit for Temporary Operations will be done in cooperation between the applicant and ODMHSAS staff, and consists of the following:

(1) Each organization pursuing ODMHSAS certification shall initially apply for a Permit for Temporary Operations, with the exception of special circumstances specified in 450:1-9-5.7(a)(2).

(2) Upon receipt of an application ODMHSAS will provide all applicants for a Permit for Temporary Operations a document listing the Core Organizational Standards, Core Operational Standards and Quality Clinical Standards required for a Permit for Temporary Operations. For facilities or programs that have provided clinical services for 30 days or longer, at the time of the initial application, ODMHSAS may also review applicable Quality Clinical Standards.

(3) The application, including required documentation of policies and procedures, shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled and completed. Failure to provide required materials within 60 days of receipt of the application will result in a denial of the application.

(4) Any deficiencies of applicable Core Organizational Standards and Core Operational Standards, and Quality Clinical Standards if applicable, cited as a result of the site visit or ~~subsequent~~ review(s) of documents requested by ODMHSAS will be identified and a report will provided

to the facility by ODMHSAS within five (5) working days of the site visit unless precluded by extenuating circumstances.

(5) The facility will have ten (10) working days from receipt of the deficiency report to correct deficiencies related to Core Organizational and Core Operational Standards ~~and provide to ODMHSAS proof of compliance categorized as Necessary Standards.~~ The facility will have five (5) working days from receipt of the report to submit a plan of correction related to cited deficiencies in standards categorized as Critical Standards. ODMHSAS may conduct an additional site visit(s) to verify proof of compliance with any deficiencies cited in the initial review. Compliance with all Critical Standards for which the facility was not compliant upon the initial review must be demonstrated through a follow up site visit or review.

(6) If any pending deficiencies in Core Organizational Standards and Core Operational Standards are identified following this ten (10) day correction period, the program will have five (5) additional working days from receipt of any subsequent report to correct and verify compliance with any pending deficiencies.

(7) The following additional procedures will apply to programs or facilities reviewed for Quality Clinical Standards pursuant to an application for Permit for Temporary Operation as referenced in 1-9-7 (2) above.

(A) The facility will also have ten (10) working days from receipt of the report to submit a plan ~~for~~ of correction related to cited deficiencies in Quality Clinical Standards categorized as Necessary Standards. The facility will have five (5) working days from receipt of the report to submit a plan of correction related to cited deficiencies in Quality Clinical Standards categorized as Critical Standards. The plan of correction will indicate the earliest date by which ODMHSAS should schedule an additional site visit or documentation review to determine compliance with Quality Clinical Standards for which deficiencies were cited but not more than twenty (20) working days from receipt of report as referenced in (5) above. Compliance with all in Quality Clinical Standards categorized Critical Standards for which the facility was not compliant upon the initial review must be demonstrated through a follow up review.

(B) Any deficiencies of applicable standards identified during the ~~additional site visit or follow up~~ review referenced in (A) above will be identified by ODMHSAS and included in a report provided to the facility by ODMHSAS within three (3) working days of the site visit or review unless precluded by extenuating circumstances. Facilities for which ODMHSAS cannot determine compliance with all pending Clinical Standards categorized as Critical Standards during the follow up site visit or review referenced in (A) above may request ODMHSAS to complete one additional site visit or review prior to the finalization of a certification report. Facilities desiring this additional review must do so in writing

to the Director of Provider Certification ODMHSAS within three (3) working days of receipt of the follow up report referenced in (A) above and indicate the earliest date by which ODMHSAS should schedule the final review but not more than fifteen (15) working days from receipt of report as referenced in (A) above. If the applicant fails to demonstrate compliance with all Quality Clinical Standards categorized as Critical Standards during the additional site visit or review, the application will be denied.

(8) Facilities for which ODMHSAS can verify substantial compliance with ~~all~~ applicable Critical and Necessary Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards during the initial review, and subsequently submit required plans of correction and demonstrate compliance with all Critical Standards within the timeframes specified in ~~(3)(5)~~ through (7) above may be considered for Permit for Temporary Operation in accordance with guidelines established in 450:1-9-5.7.

(9) Anytime, during the process outlined above, ODMHSAS may request one or more written plan(s) of correction in a form and within a timeframe designated by ODMHSAS.

(10) Failure of any applicant for a Permit for Temporary Operation to ~~clear deficiencies of all~~ demonstrate compliance with applicable Standards within timeframes stipulated in ~~(3)(5)~~ through (7), shall result in a notice of denial of the application for a Permit for Temporary Operations

(b) Additional certification procedures related to a Permit for Temporary Operations.

(1) Re-application for a Permit can be accepted no sooner than six months after issuance of a notification of denial.

(2) If an applicant fails a second time to satisfy requirements for a Permit for Temporary Operations as stipulated in 450:1-9-7(a)(8), ODMHSAS can accept an additional re-application no sooner than twelve (12) months from time of the issue of the second notification of denial.

(3) Organizations granted a Permit for Temporary Operations must achieve a subsequent level of ODMHSAS certification prior to the expiration of a Permit for Temporary Operations. Failure to do so will result in a cancellation by ODMHSAS of the Permit for Temporary Operations. ODMHSAS will provide notice of the cancellation and stipulate to the organization that it is must discontinue services subject to any statutory provisions that mandate the applicable ODMHSAS Certification. Re-application for a Permit for Temporary Operations, following a cancellation by ODMHSAS or by the organization to which a Permit was issued, may occur after six months and in accordance with the requirements of 450:1-9-7 and 450:1-9-12.

**450:1-9-7.1. Procedures for completion of additional certification processes subsequent to a Permit for Temporary Operations**

(a) The following procedures apply for organizations awarded Permit for Temporary Operation pursuant to 450:1-9-7 that elect to progress to an additional certification by ODMHSAS. The process outline below will be done in cooperation between the applicant and ODMHSAS staff, and consists of the following:

~~(1) Ninety (90) days prior to the expiration of a Permit for Temporary Operations, ODMHSAS will notify the permitted facility that a supplemental certification application form must be completed so the organization can be reviewed for a new certification level. Along with a request for a supplemental certification application, ODMHSAS will provide a document listing Quality Clinical Standards applicable to the new certification level. The document will also indicate the Core Organization Standards and Core Operational Standards for which continued compliance must be verified.~~

~~(2) Each organization desiring to be considered for certification subsequent to being awarded a Permit for Temporary Operations will complete a supplemental certification application form at least sixty (60) days prior to the expiration of the Permit for Temporary Operations.~~

~~(3) In the event an organization, after being awarded a Permit for Temporary Operations, fails to supply the supplemental certification application in accordance with (1) and (2) above or elects to not pursue further ODMHSAS certification, the Permit for Temporary Operations will be allowed to expire.~~

~~(4) No additional fee, beyond that required for a Permit for Temporary Operation will be required along with the supplemental certification application.~~

~~(5) The application shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled and completed.~~

~~(6) Any deficiencies of applicable standards identified as a result of the subsequent certification site visit or documentation reviews requested by ODMHSAS will be identified and a report will provided to the facility by ODMHSAS within five (5) working days of the site visit unless precluded by extenuating circumstances.~~

~~(7) The facility will have ten (10) working days from receipt of the report to correct deficiencies of all Core Organizational Standards and Core Operational Standards and provide ODMHSAS proof of compliance with these standards. ODMHSAS may require an additional site visit(s) to determine of compliance with Core Organizational Standards and Core Operational Standards. The facility will have no more than twenty (20) working days from the certification site visit referenced in (6) above to achieve complete compliance with all Core Organizational Standards and Core Operational Standards.~~

~~(8) The facility will also have ten (10) working days from receipt of the report to submit a plan for correction related to deficiencies in Quality Clinical Standards. The~~

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plan of correction will indicate the earliest date by which ODMHSAS should schedule a site visit or documentation review to determine compliance with Quality Clinical Standards for which deficiencies were cited but not more than twenty (20) working days from receipt of report as referenced in (6) above. The site visit or review may or may not be conducted in conjunction with a review to verify compliance with pending Core Organizational Standards, and Core Operational Standards.

(9) Any deficiencies of applicable standards identified during the site visit or review referenced in (8) above will be identified by ODMHSAS and included in a report provided to the facility by ODMHSAS within three (3) working days of the site visit or review unless precluded by extenuating circumstances. Facilities for which ODMHSAS cannot determine compliance with all pending Clinical Standards during the follow up site visit or review referenced in (8) above may request ODMHSAS to complete one additional site visit or review prior to the finalization of a report. Facilities desiring this additional review must do so in writing to the Director of Provider Certification within three (3) working days of receipt of the follow up report referenced in (9) above and indicate the earliest date by which ODMHSAS should schedule the final review but not more than fifteen (15) working days from receipt of report as referenced in (9) above.

(10) Facilities for which ODMHSAS can verify compliance with all applicable Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards, within the timeframes specified in 450:1-9-7.1 may be considered for a certification status in accordance with guidelines established in 450:1-9-5.7.

(11) Anytime, during the process outlined above, ODMHSAS may request one or more written plan(s) of correction in a form and within a timeframe designated by ODMHSAS.

(12) If the applicant fails to submit a plan of correction within a required time frame or fails to submit a timely or adequate revised plan of correction, denial of the application for subsequent certification shall be sent to the applicant by the Commissioner or designee and the current Permit for Temporary Operations be allowed to expire. Likewise, if the applicant fails to request an additional site visit or documentation review in accordance with timeframes stipulated in (9) above denial of the application for subsequent certification shall be sent to the applicant by the Commissioner or designee and the current Permit for Temporary Operations be allowed to expire.

(1) No later than ninety (90) days prior to the expiration of a Permit for Temporary Operation, ODMHSAS will notify the facility of necessary records and documentation to verify compliance with applicable Quality Clinical Standards for Certification. The facility shall provide the required materials within thirty (30) days of notification from ODMHSAS.

(2) A site review of the facility or program will be scheduled and completed once the necessary records and documentation have been received.

(3) Any deficiencies of applicable Quality Clinical Standards cited as a result of the site visit or subsequent review(s) of documents requested by ODMHSAS will be identified and a report will be provided to the facility by ODMHSAS within five (5) working days of the site visit unless precluded by extenuating circumstances.

(4) The facility will have ten (10) working days from receipt of the deficiency report to correct deficiencies related to Quality Clinical Standards categorized as Necessary Standards. The facility will have five (5) working days from receipt of the report to submit a plan of correction related to cited deficiencies in Quality Clinical Standards categorized as Critical Standards. ODMHSAS may conduct an additional site visit(s) to verify proof of compliance. Compliance with all Quality Clinical Standards categorized as Critical Standards for which the facility was not compliant upon the initial review must be demonstrated through a follow up review.

(5) If any pending deficiencies in Quality Clinical Standards are identified following this ten (10) day correction period, the program will have five (5) additional working days from receipt of any subsequent report to correct and verify compliance with any pending deficiencies.

(6) Facilities for which ODMHSAS cannot determine compliance with all Quality Clinical Standards categorized as Critical Standards during the follow up site visit or review may request ODMHSAS to complete one additional site visit or review prior to the finalization of a report. Facilities desiring this additional review must do so in writing to ODMHSAS within three (3) working days of receipt of the follow up report and indicate the earliest date by which ODMHSAS should schedule the final review but not more than fifteen (15) working days from receipt of the follow up report. If the applicant fails to demonstrate compliance during the additional site visit or review, the application for subsequent certification shall be denied, and the Permit for Temporary Operations will expire.

(7) Facilities for which ODMHSAS can verify substantial compliance with applicable Critical and Necessary Quality Clinical Standards during the initial review, and subsequently submit required plans of correction and demonstrate compliance with all Critical Quality Clinical Standards within the timeframes specified in (4) through (6) above may be considered for Certification in accordance with guidelines established in 450:1-9-5.7.

(8) Anytime, during the process outlined above, ODMHSAS may request one or more written plan(s) of correction in a form and within a timeframe designated by ODMHSAS.

(9) Failure of any applicant to demonstrate compliance with standards within the timeframes specified in (4) through (6) above shall result in denial of the application for subsequent certification and the Permit for Temporary Operations will expire.

**450:1-9-7.2. Procedures for renewal of certification**

(a) The following procedures apply to organizations previously awarded certification pursuant to ~~450:1-9-7.1~~450:1-9-5.7 and organizations that have maintained Certification or Certification with Commendation awarded by ODMHSAS prior to November 1, 2010. The process outline below can result in an entity being awarded Certification, Certification with Distinction, or Certification with Special Distinction. The process will be done in cooperation between the applicant and ODMHSAS staff, and consists of the following:

(1) ~~Ninety~~No later than ninety (90) days prior to the expiration of a current Certification, ~~except a Permit for Temporary Operations,~~ ODMHSAS will provide the certified facility with a notice of certification expiration and advise the facility that a renewal certification application form must be completed so the organization can be reviewed for consideration for a renewal of certification. Along with the notice of certification expiration, ODMHSAS will provide a document listing Core Organization Standards, Core Operational Standards, and Quality Clinical Standards potentially applicable to the renewed certification.

(2) Each organization desiring to renew Certification must submit a completed certification application form, fees and other required materials in accordance with 450:1-9-6 and at least sixty (60) days prior to the expiration of the current Certification.

(3) In the event an organization, after being notified of the Certification expiration in accordance with (1) and (2) above fails to submit the renewal certification application, fees, or other materials as referenced in (2) above, the current Certification will be allowed to expire.

(4) The application shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled and completed.

(5) The facility shall provide ODMHSAS documentation regarding its policies and procedures prior to the site review. This documentation may include an attestation that the facility's policies and procedures have not changed since the latest certification review, or a list of which policies and procedures have changed, in lieu of submitting all policies and procedures for review.

~~(5)~~ Any deficiencies of applicable standards identified as a result of the renewal site visit or subsequent review(s) of documents requested by ODMHSAS will be identified and a report will provided to the facility by ODMHSAS within five (5) working days of the initial renewal site visit unless precluded by extenuating circumstances.

~~(6)~~ The facility will have ten (10) working days from receipt of the report to correct deficiencies of all ~~Core Organizational Standards and Core Operational Standards~~Necessary Standards and provide to ODMHSAS ~~proof of compliance with these standards.~~ ODMHSAS may require an additional site visit to verify proof of compliance of ~~Core Organizational Standards and Core Operational Standards~~Necessary Standards. ~~If deficiencies continue, the facility will have no more than twenty~~

~~(20) working days from the initial renewal site visit to achieve complete compliance with all Core Organizational Standards and Core Operational Standards.~~

~~(7)~~ The facility will also have ~~ten (10)~~five (5) working days from receipt of the report to submit a plan ~~for~~of correction related to cited deficiencies in ~~Quality Clinical~~Critical Standards. The plan of correction will indicate the earliest date by which ODMHSAS should schedule an additional ~~site visit or documentation~~review to determine compliance with ~~Quality Clinical~~Critical Standards for which deficiencies were cited but not more than twenty (20) working days from receipt of report as referenced in ~~(5)~~(6) above. The site visit may or may not be conducted in conjunction with a site visit to verify compliance with pending ~~Core Organizational Standards, and Core Operational~~Necessary Standards. Compliance with all Critical Standards for which the facility was not compliant upon the initial review must be demonstrated through a follow up review.

~~(8)~~ Any deficiencies of applicable standards identified during the ~~additional site visit or follow up~~review referenced in ~~(7)~~(8) above will be identified by ODMHSAS and included in a report provided to the facility by ODMHSAS within three (3) working days of the site visit or review unless precluded by extenuating circumstances. ~~Facilities for which ODMHSAS cannot determine compliance with all pending Clinical Standards during the follow up site visit or review referenced in (8) above may request ODMHSAS to complete one additional site visit or review prior to the finalization of a report. Facilities desiring this additional review must do so in writing to the Director of Provider Certification within three (3) working days of receipt of the follow up report referenced in (8) above and indicate the earliest date by which ODMHSAS should schedule the final review but not more than fifteen (15) working days from receipt of report as referenced in (8) above.~~

(9) Facilities for which ODMHSAS can verify compliance with all applicable Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards, within the timeframes specified in 450:1-9-7.3 may be considered for renewal of Certification in accordance with guidelines established in 450:1-9-5.7.

(10) Facilities for which ODMHSAS cannot determine compliance with all Critical Standards during the follow up review may request ODMHSAS to complete one additional review prior to the finalization of a report. Facilities desiring this additional review must do so in writing to ODMHSAS within three (3) working days of receipt of the follow up report and indicate the earliest date by which ODMHSAS should schedule the final review but not more than fifteen (15) working days from receipt of the follow up report.

(11) Facilities for which ODMHSAS can verify substantial compliance with Critical and Necessary Standards upon the initial site review and demonstrate compliance with all Critical Standards within the timeframes specified

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in (7) through (10) above may be considered for Certification renewal in accordance with guidelines established in 450:1-9-5.7.

~~(4012)~~ Anytime, during the process outlined above, ODMHSAS may request one or more written plan(s) of correction in a form and within a timeframe designated by ODMHSAS.

~~(4113)~~ If the applicant fails to ~~submit a plan of correction within the required time frame, fails to submit a timely and adequate revised plan of correction, or fails to provide evidence of correction for all cited deficiencies~~ demonstrate compliance with standards within the timeframes specified in (7) through (10) above, a recommendation to initiate revocation proceedings must be made to the Commissioner or designee. If the Commissioner or designee approves the initiation of revocation proceedings, the provisions of Subchapter 5 will be followed.

### 450:1-9-7.3. Additional certification procedures

(a) **Site reviews.** The following conditions will apply to site visits and other related certification reviews conducted by ODMHSAS.

(1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled and conducted by designated representatives of the ODMHSAS at each location or site of the applicant. ODMHSAS may conduct virtual site visits at its discretion.

(2) ODMHSAS may require materials be submitted to Provider Certification, in a form determined by ODMHSAS, prior to on-site visits to verify compliance with ~~one~~ or more applicable Core Organizational Standards, Core Operational Standards, and/or Quality Clinical Standards.

(3) One or more site review(s) may be conducted to determine compliance with prior deficiencies as well as with standards not applicable during the prior certification visit(s).

(4) A minimum number of consumer records, as determined by ODMHSAS, shall be made available for review to determine compliance with applicable Quality Clinical Standards. For organizations, unable to provide the required minimum of records, the current certification status, including a Permit for Temporary Operations, will be allowed to expire. ODMHSAS may require review of additional consumer records to assure a representative sample of records is evaluated to determine compliance with Quality Clinical Standards.

(5) A Site Review Protocol shall be completed during each certification review. Protocols shall contain the current ODMHSAS Standards and Criteria applicable to the facility.

(A) A facility must be prepared to provide evidence of compliance with each applicable standard.

(B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects consumer safety or health, the reviewer(s) shall notify the facility director and appropriate ODMHSAS staff.

An immediate suspension of certification may be made by the Commissioner of ODMHSAS.

(b) **Accreditation status.** The ODMHSAS may accept accreditation granted by The Joint Commission (TJC), the Commission on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation of Services for Families and Children, Inc. (COA), ~~or the American Osteopathic Association (AOA)~~ as compliance with certain specific ODMHSAS standards. For such accreditation to be considered, the facility shall make application and submit evidence to the ODMHSAS of current accreditation status and scope. This evidence shall include documentation of the program or programs included in the most recent accreditation survey, including survey reports of all visits by the accrediting organization, any reports of subsequent actions initiated by the accrediting organization, any plans of correction, and the dates for which the accreditation has been granted. ODMHSAS may, at its discretion, conduct additional compliance monitoring and verification of standards deemed compliant based upon accreditation status.

(c) **Deficiencies.** A deficiency shall be cited for each rule not met by the facility.

(d) **Report to applicant and plan of correction.**

(1) During the course of the certification process, and prior to determination of certification status, ODMHSAS staff shall report the results of the certification review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report in accordance with 450:1-9-7, 450:1-9-7.1, and ~~450:1-9-7.3~~450:1-9-7.2.

(2) The facility may be required to submit a written plan of correction as determined by 450:1-9-7, 450:1-9-7.1, and ~~450:1-9-7.3~~450:1-9-7.2. Approval of the plan of correction by Provider Certification may be required before a final report of findings can be presented to ODMHSAS or the Board.

(3) If a request for a revised plan of correction is necessary, the facility must submit an acceptable plan of correction within the required time frame to continue the certification process. Failure to submit a timely and adequate revised plan of correction shall result in either a notice of denial of the application, expiration of certification, or revocation of the certification status, as applicable.

(e) **Notification of consideration and possible action for certification.**

(1) After consideration of materials requested by ODMHSAS pursuant to certification procedures, and completion of the necessary review(s), ODMHSAS staff shall prepare a report that summarizes findings related to compliance with applicable certification standards.

(2) Reports regarding applications for ~~Permit~~Permits for Temporary Operations and Certifications will be forwarded to the ODMHSAS Board, and/or the Commissioner, or designee.

(3) Reports for ~~all other Certification applications will be forwarded to the ODMHSAS Board for consideration~~ or individual certification applications will be handled in accordance with procedures outlined in OAC 450:21, OAC 450:50, ~~or OAC 450:53,~~ or OAC 450:75.

(4) Prior to the ODMHSAS staff's presentation of its report related to the applicant's certification to the Board or the Commissioner or designee, the ODMHSAS staff shall notify the applicant of:

- (A) the findings included in the report, and
- (B) the date and time of the Board meeting at which the facility's application, and the certification will be considered, if applicable.

(5) Achievement of certain scores is a prerequisite for consideration of a specific certification status but may not be the sole determinant. Individual deficiencies that meet the criteria in 450:1-9-9 may be grounds for suspending or revoking certification or denying applications for certification.

(6) Consideration of certification may be deferred while additional information regarding a facility's compliance status is reviewed.

(7) The minimum conditions for compliance that must be verified by ODMHSAS for consideration of a certification status shall be stipulated in 450:1-9-5.7.

(f) **Recommendations for revocation of certification.** In the event ODMHSAS can not verify compliance with applicable certification standards in accordance with 450:1-9-5.7, except for Permits for Temporary Operations, ODMHSAS shall forward recommendation for revocation of certification to the Commissioner or designee. If the Commissioner or designee approves a recommendation to revoke certification, an individual proceeding shall be initiated pursuant to Subchapter 5. Applicants unable to demonstrate compliance with standards required for Permit for Temporary Operation are not subject to the provisions for revocation and are simply denied the Permit as stipulated in 450:1-9-7.

**450:1-9-7.4. Actions on Non-Certified Providers**

If at the initial site review it is found the facility is providing services prior to the granting of an ODMHSAS certification status, applicable for those services being provided and in violation of statutory requirements, including prior to the granting of a Permit for Temporary Operations, the following actions will be taken:

(1) The review will be continued and will include a review of all applicable Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards.

~~(2) The facility must comply with the requirements cited in 450:1-9-5. to continue the certification process. An organization providing services statutorily subject to ODMHSAS Certification prior to the issuance of a Permit for Temporary Operations cannot be considered for a Permit for Temporary Operations specific to those services. Such organizations are eligible only for a consideration of a Probationary Certification.~~

(2) Programs found to have initiated operations prior to the awarding of a Permit for Temporary Operations for the services for which certification is statutorily required shall obtain the necessary Permit for Temporary Operations to continue operations.

(3) The applicant must comply within twenty (20) working days of the initial certification visit, with all applicable Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards for a report for consideration of ~~Probationary Certification~~ Permit for Temporary Operation to be made to the Board. Failure to achieve the required compliance level for ~~Probationary Certification~~ shall result in a denial for Certification and an Order issued to cease the provision of services, if applicable.

(4) If the applicant achieves the required compliance level within the required time frame, a ~~Probationary Certification may be considered for no more than one (1) year~~ Permit for Temporary Operations may be granted.

~~(5) Continued certification after the Probationary Certification period of one year will require the submission of a new application for each of the next two (2) years. The requirements in 450:1-9-5.7(a)(3) shall apply. If the applicant achieves the required compliance level within the required time frame, a Probationary Certification can be considered for no more than one (1) year for each of the next two years.~~

(5) Subsequent to the Permit for Temporary Operations, these programs will be eligible for Certification for a one (1) year period only for the first two (2) years of Certification.

**450:1-9-8.1. Site reviews**

ODMHSAS may conduct a site review or visit or an investigation, which may or may not be unannounced. Reasons for such review include but are not limited to:

- (1) verification of continued compliance with Standards and Criteria and related regulations;
- (2) determination of correction of cited deficiencies;
- (3) receipt of a complaint;
- (4) change in ownership, management, Board membership, or location;
- (5) substantial change in either the service provided or new service(s) initiated;
- (6) substantial turnover in staff at the executive or professional level;
- (7) change in statutorily required licensure status; and
- (8) change in or verification of external accreditation status.

**450:1-9-13. Designated emergency examination sites**

(a) ODMHSAS shall maintain a list of facilities designated by the Commissioner as appropriate to conduct emergency examinations to determine if emergency detention is warranted. All hospitals licensed by the Oklahoma State Department of Health who have a designated emergency department and who have an LMHP on staff, under contract, or on call, shall automatically be designated as an emergency examination site.

(b) The following types of facilities may be placed on the list of designated emergency examination facilities:

- (1) Hospitals licensed by the Oklahoma State Department of Health;

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- (2) Community Mental Health Centers certified by the Board pursuant to Chapter 17 of Title 450 of the Oklahoma Administrative Code;
- (3) Community-based Structured Crisis Centers certified by the Board pursuant to Chapter 23 of Title 450 of the Oklahoma Administrative Code;
- (4) Facilities operated by ODMHSAS; or
- (5) Hospitals accredited by JCAHO, CARF, ~~or AOA~~ the Accreditation for Health Care/Health Facility Accreditation Program (ACHC/HFAP), or the Center for Improvement in Health Care Quality (CIHQ).

(c) A facility may request the Commissioner to designate the facility as an emergency examination facility to be placed on the list. The facility shall make a request in writing to the Provider Certification Division of ODMHSAS and verify it has the ability to conduct emergency examinations as defined in 43A O.S. § 5-206(4) and has one or more licensed mental health professionals as defined in 43A O.S. § 1-103(11) capable of performing the functions set forth in 43A O.S. §§ 5-207 and 5-208.

(d) The facility shall receive a letter from the Commissioner notifying the facility whether its request to be placed on the list of designated emergency examination facilities has been granted.

## 450:1-9-14. Designated emergency detention sites

(a) ODMHSAS shall maintain a list of facilities designated by the Commissioner as appropriate for emergency detention. All hospitals licensed by the Oklahoma State Department of Health who have an LMHP on staff, under contract, or on call and have designated beds for the treatment of mental health or substance abuse disorders, shall automatically be designated as an emergency detention site.

(b) The following types of facilities may be placed on the list of designated emergency detention facilities:

- (1) Hospitals licensed by the Oklahoma State Department of Health;
- (2) Community Mental Health Centers certified by the Board pursuant to Chapter 17 of Title 450 of the Oklahoma Administrative Code;
- (3) Community-based Structured Crisis Centers certified by the Board pursuant to Chapter 23 of Title 450 of the Oklahoma Administrative Code; and
- (4) Facilities operated by ODMHSAS; or
- (5) Hospitals accredited by JCAHO, CARF, ~~or AOA~~ ACHC/HFAP, or CIHQ.

(c) A facility may request the Commissioner to designate the facility as an emergency detention facility to be placed on the list. The facility shall make a request in writing to the Provider Certification Division of ODMHSAS and verify it has the ability to detain a person in emergency detention as defined in 43A O.S. § 5-206(5) and comply with 43A O.S. §§ 5-208 and 5-209.

(d) ~~The facility shall receive a letter from the Commissioner notifying the facility whether its request to be placed on the list of designated emergency detention facilities has been granted.~~

[OAR Docket #22-452; filed 6-23-22]

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #22-453]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Consumer Rights

Part 1. Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights

450:15-3-20.1 [AMENDED]

Part 3. Consumer Grievance Procedure

450:15-3-45 [AMENDED]

### AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 2-108 and 2-109.

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

December 8, 2021

### COMMENT PERIOD:

January 3, 2022 through February 2, 2022

### PUBLIC HEARING:

February 3, 2022

### ADOPTION:

March 25, 2022

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

March 28, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule revisions to Chapter 15 make clarifications regarding consumer grievance and notification procedures.

### CONTACT PERSON:

Melissa Miller, Policy Director and Administrative Rules Liaison, Melissa.Miller@odmhsas.org or (405) 248-9345

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 3. CONSUMER RIGHTS



**PART 1. MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS**

**450:15-3-20.1. Consumer rights regarding confidentiality of mental health and drug or alcohol abuse treatment information**

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless an exception under state or federal law applies. The information available to persons or agencies actively engaged in the treatment of the consumer shall be limited to the minimum amount of information necessary for the person or agency to carry out its function or the purpose for the release. Nothing in this section shall prohibit disclosure of information as required in 22 O.S. § 1175.

(b) A consumer or his or her legally authorized representative shall have the right to request access to the consumer's own mental health and drug or alcohol abuse treatment information as provided for in 450:15-3-60.

(c) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:

- (1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;
- (2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative except as otherwise permitted by state and federal law;
- (3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;
- (4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;
- (5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written

consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws; and

(6) a procedure by which to notify a consumer of his or her right to confidentiality at admission.

(d) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:

- (1) the name of the person, program or entity permitted to make the disclosure;
- (2) the name or title of the person or the name of the organization to which disclosure is to be made;
- (3) the name of the consumer whose records are to be released;
- (4) a description of the information to be disclosed;
- (5) the purpose for the disclosure;
- (6) the signature of the consumer or the consumer's legally authorized representative;
- (7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;
- (8) a statement indicating that treatment services are not contingent upon or influenced by the consumer's decision to permit the information release;
- (9) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;
- (10) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;
- (11) a confidentiality notice which complies with state and federal law; and
- (12) a statement in bold type stating "The information authorized for release may include records which may indicate the presence of a communicable or non-communicable disease."

(e) Unless an exception applies, all facilities operated by ODMHSAS will provide consumers with a copy of the ODMHSAS Notice of Privacy Practices.

(f) Compliance with 450:15-3-20.1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.

**PART 3. CONSUMER GRIEVANCE PROCEDURE**

**450:15-3-45. Consumer Grievance Policy and Procedures and local advocacy activities**

Facilities shall have a written grievance policy that includes:

- (1) A written notice of the grievance procedure is provided to each consumer or guardian and, to an individual of the consumer's choice at admission;
- (2) Time frames for the grievance procedures which allow for an expedient resolution of consumer grievance(s);

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- (A) Inpatient and residential programs shall be a seven (7) day timeframe;
  - (B) Outpatient, intensive outpatient and day treatment programs shall be a fourteen (14) day timeframe;
  - (C) Crisis stabilization, medical detoxification and social detoxification programs shall have a three (3) day timeframe;
- (3) A procedure for advising the consumer he or she has the right to make a complaint to the facility's local advocate or the ODMHSAS Consumer Advocacy Division and the mechanism for contacting the Consumer Advocacy Division. A consumer shall have unimpeded and confidential access to the facility's local advocate and the ODMHSAS Office of Consumer Advocacy. No policy or procedure shall require contact with the facility's local advocate prior to contacting the ODMHSAS Office of Consumer Advocacy;
- (4) The procedure by which consumers are notified of the specific name(s) of the individual(s) responsible for coordinating the program's grievance procedure; the individual responsible for or authorized to make decisions for resolution of the grievance; and the specific name(s) of the individual(s) acting as the facility's local advocate. The individual responsible for or authorized to make decisions regarding grievances shall be impartial. In the instance where the decision making is the subject of a grievance, decision making authority shall be delegated. The designated local advocate shall work with facility staff and contractors to ensure the needs of consumers are met at the lowest level possible and that consumer rights are enforced and not violated;
- (5) The provision of written notification to the consumer of the grievance outcome and mechanism by which an individual may appeal the outcome;
- (6) ODMHSAS operated facility procedures shall include a process by which the consumer may appeal the grievance outcome to the Commissioner or designee;
- (7) A mechanism to monitor the grievance process and improve performance based on outcomes;
- (8) An annual review of the grievance policy and procedure including providing copies of updated grievance policy and procedure information to the Office of Consumer Advocacy when requested; and
- (9) The ongoing monitoring of the grievance process and, based on outcomes, adjust and improve processes;
- (10) The individual(s) designated as a facility's local advocate shall be responsible for coordinating and monitoring the facility's advocacy activities and contacts with the ODMHSAS Office of Consumer Advocacy. Duties of the facility's local advocate shall include, but is not limited to:

- (A) Serve as the on-sight advocate for consumers being treated or under the care of the program or facility and act as a liaison to the ODMHSAS Office of Consumer Advocacy. Such activities may include
  - (i) Assist consumers in filing grievances;

- (ii) Serve as resource for consumers for questions or information dissemination about the facility, admission and discharge processes, or other basic human needs while in treatment; and
  - (iii) Make contact with consumers involved in or who witness Critical Incidents or Sentinel Events while in treatment to ensure needs are being met.
- (B) Serve as facility or program liaison to the Office of Consumer Advocacy in advocacy activities.

[OAR Docket #22-453; filed 6-23-22]

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH CENTERS

[OAR Docket #22-454]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Provisions
  - 450:17-1-1 [AMENDED]
  - 450:17-1-2 [AMENDED]
  - 450:17-1-6 [AMENDED]
- Subchapter 3. Required Services
  - Part 9. Medication Clinic Services
    - 450:17-3-81 [AMENDED]
    - 450:17-3-82 [AMENDED]
  - Part 11. Case Management
    - 450:17-3-101 [AMENDED]
- Subchapter 5. Optional Services
  - Part 11. Community Living Programs
    - 450:17-5-56 [AMENDED]
    - 450:17-5-59.1 [REVOKED]
    - 450:17-5-60 [REVOKED]
    - 450:17-5-64 [REVOKED]
    - 450:17-5-66 [REVOKED]
    - 450:17-5-67.2 [REVOKED]
    - 450:17-5-67.3 [REVOKED]
  - Part 25. Certified Community Behavioral Health Clinics
    - 450:17-5-174 [AMENDED]
    - 450:17-5-176 [AMENDED]
    - 450:17-5-177 [AMENDED]
    - 450:17-5-179 [AMENDED]
    - 450:17-5-185 [AMENDED]
    - 450:17-5-189.1 [NEW]
    - 450:17-5-191 [AMENDED]
- Subchapter 7. Facility Clinic Records
  - 450:17-7-1 [REVOKED]
  - 450:17-7-4 [REVOKED]
  - 450:17-7-8 [AMENDED]
  - 450:17-7-10 [AMENDED]
- Subchapter 15. Performance Improvement and Quality Management
  - 450:17-15-5 [AMENDED]
- Subchapter 25. Governing Authority
  - 450:17-25-2 [AMENDED]

### AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-306, 3-306.1 and 3-315

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

December 8, 2021

**COMMENT PERIOD:**

January 3, 2022 through February 2, 2022

**PUBLIC HEARING:**

February 3, 2022

**ADOPTION:**

March 25, 2022

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

March 28, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule revisions to Chapter 17 remove language that duplicates rules in Chapter 1, remove language regarding compliance with open meetings laws, and revise language regarding documentation requirements and medication clinic services. Language regarding specific housing programs is removed. Revisions also add language regarding required CCBHC and CMHC services and new requirements regarding CCBHC service locations.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**450:17-1-1. Purpose**

(a) This chapter sets forth the Standards and Criteria used in the certification of Community Mental Health Centers and implements 43A O.S. § 3-306.1, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Community Mental Health Centers.

(b) The rules regarding the certification process including but not necessarily limited to application, fees and administrative sanctions are found in the Oklahoma Administrative Code, Title 450 Chapter 1, Subchapters 5 and 9.

(c) Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC ~~450:1-9-5~~450:1-9-5.6.

**450:17-1-2. Definitions**

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical

injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"Adults who have a Serious Mental Illness" means persons eighteen (18) years of age or older who show evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or Serious Mental Illness as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable Serious Mental Illness.

(C) The adult must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a Serious Mental Illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit an adult from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the criminal justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence, disregard for safety and welfare of self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations.

(V) Impairment in functioning at school or work manifested by the inability to pursue educational or career goals.

"Advance Practice Registered Nurse" means a registered nurse in good standing with the Oklahoma Board of Nursing, and has acquired knowledge and clinical skills

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through the completion of a formal program of study approved by the Oklahoma Board of Nursing Registration and has obtained professional certification through the appropriate National Board recognized by the Oklahoma Board of Nursing. Advance Practice Registered Nurse services are limited to the scope of their practice as defined in 59 Okla. Stat. § 567.3a and corresponding rules and regulations at OAC 485:10-5-1 through 10-16-9.

"**AOA**" means American Osteopathic Association

"**ASAM**" means the American Society of Addiction Medicine.

"**ASAM criteria**" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"**Case management services**" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"**CARF**" means Commission on Accreditation of Rehabilitation Facilities

"**Child with Serious Emotional Disturbance**" or "**SED**" means a child under the age of 18 who shows evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or Serious Emotional Disturbance as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance use disorders, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious emotional disturbance.

(C) The child must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a Serious Mental Illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit a child or adolescent from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of age appropriate behavioral controls, decision-making, judgment and value systems which result in

potential involvement or involvement with the juvenile justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers and adults.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence to siblings and/or parents, disregard for safety and welfare or self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations which may result in removal from the family or its equivalent).

(V) Impairment in functioning at school manifested by the inability to pursue educational goals in a normal time frame (e.g., consistently failing grades, repeated truancy, expulsion, property damage or violence toward others).

"**Chronic Homelessness**" refers to an individual with a disabling condition who has either: (a) been continuously homeless for a year or more, or (b) has had at least 4 episodes of homelessness in the past 3 years. For this condition, the individual must have been on the streets or in an emergency shelter (i.e. not transitional housing) during these episodes. Chronic homelessness only includes single individuals, not families. A disabling condition is a diagnosable substance abuse disorder, serious mental illness, or developmental disability, including the co-occurrence of two or more of these conditions.

"**Clinical privileging**" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"**Clubhouse**" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"**Community living programs**" means either transitional or permanent supported housing for persons not in crisis who need assistance with obtaining and maintaining an independent living situation.

"**Community-based Structured Crisis Center**" or "**CBSCC**" means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"**Community mental health center**" or "**CMHC**" means a facility offering a comprehensive array of community-based mental health services, including but not limited to,

inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

**"Consultation"** means the act of providing information or technical assistance to a particular group or individual seeking resolution of specific problems. A documented process of interaction between staff members or between facility staff and unrelated individuals, groups, or agencies for the purpose of problem solving or enhancing their capacities to manage consumers or facilities.

**"Consumer"** means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

**"Consumer advocacy"** includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

**"Consumer committee"** or **"consumer government"** means any established group within the facility comprised of consumers, led by consumers and meets regularly to address consumer concerns to support the overall operations of the facility.

**"Contract"** means a document adopted by the governing authority of a treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program, as well as the monies to be expended in exchange.

**"Co-occurring disorder" (COD)** means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

**"Co-occurring disorder capability"** means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

**"Crisis Diversion"** means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

**"Crisis Intervention"** means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

**"Crisis stabilization"** means emergency, psychiatric, and substance use disorder treatment services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

**"Critical incident"** means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

**"Cultural competency"** means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

**"Designated Collaborating Organization" or "DCO"** means a provider with whom a Certified Community Behavioral Health Clinic has a formal relationship to provide certain allowable services on behalf of the Certified Community Behavioral Health Clinic.

**"DSM"** means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

**"Emergency detention"** means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond a one hundred twenty (120) hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

**"Emergency examination"** means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

**"Emergency services"** means a twenty-four (24) hour capability for assessment, intervention, and resolution of a consumer's crisis or emergency provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to function or remain in the community and may include placement of the individual in a protective environment, withdrawal management, individual and group consultation, and medical assessment.

**"Face-To-Face"** for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

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**"Facilities or Facility"** means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

**"Family"** means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

**"Follow-up"** means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

**"General psychiatric rehabilitation" or "PSR"** means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychiatric rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

**"Home-based services to children and adolescents"** means intensive therapeutic services provided in the home to children for the purpose of reduction of psychiatric impairment and preventing removal of the child to a more restrictive setting for care. Services include a planned combination of procedures developed by a team of qualified mental health professionals, including a physician.

**"Homeless"** refers to a person who is sleeping in an emergency shelter; sleeping in places not meant for human habitation, such as cars, parks, sidewalks, or abandoned or condemned buildings; spending a short time (30 consecutive days or less) in a hospital or other institution, but ordinarily sleeping in the types of places mentioned above; living in transitional/supportive housing but having come from streets or emergency shelters; being evicted within a week from a private dwelling unit and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; being discharged from an institution and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; or is fleeing a domestic violence situation and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.

**"ICCD"** means the International Center for Clubhouse Development.

**"Independent living skills, assistance in development of"** means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, house-cleaning, problem-solving, communication and vocational skills.

**"Individual Placement and Support" or "IPS"** means an evidence-based, specific type of employment and education

service to help people with mental illness, substance use disorders, or co-occurring disorders find and keep competitive employment.

**"Licensed Behavioral Health Professional" or "LBHP"** means:

- (A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided and certified in a psychiatric mental health specialty;
- (C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;
- (D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
- (E) A practitioner with a license to practice in the state in which services are provided by one of the following licensing boards:
  - (i) Social Work (clinical specialty only);
  - (ii) Professional Counselor;
  - (iii) Marriage and Family Therapist;
  - (iv) Behavioral Practitioner; or
  - (v) Alcohol and Drug Counselor.

**"Licensed mental health professional" or "LMHP"** as defined in Title 43A §1-103(11).

**"Licensure candidate"** means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

**"Linkage"** refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

**"Medical resident"** means an allopathic physician or an osteopathic physician who is a graduate of a school of medicine or college of osteopathic medicine and who is receiving specialized training in a teaching hospital under physicians who are certified in that specialty.

**"Medically necessary"** means health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine.

**"Medication error"** means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs,

prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

**"Nurse Care manager"** means a Licensed Practical Nurse (LPN) or a Registered Nurse (RN).

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

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

**"Peer Recovery Support Specialist" or "PRSS"** means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

**"Performance Improvement" or "PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

**"Permanent supported housing"** means a type of Community Living Program, either permanent scattered site housing or permanent congregate housing, where consumers are assisted with locating housing of their choice and are offered on-going support services based on need and choice to ensure successful independent living.

**"PICIS System"** means a management information system based on national standards for mental health and substance abuse databases. Information gathered through PICIS is used for prior authorizations, service utilization management and continuous quality improvement processes. PICIS data is reported throughout the treatment episode to ensure service recipients receive appropriate types and levels of care and are making satisfactory progress. Numerous reports are developed using PICIS data and are provided to clinicians, administrators and the general public.

**"Primary Care Practitioner (PCP)"** means a licensed allopathic physician, osteopathic physician, Advance Practice Registered Nurse (APRN), or Physician Assistant (PA) licensed in the State of Oklahoma.

**"Program of Assertive Community Treatment" or "PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

**"Progress notes"** mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

**"Psychiatric Residential Treatment Facility" or "PRTF"** means a non-hospital facility that provides inpatient psychiatric services to individuals under the age of twenty-one (21).

**"Psychosocial assessments"** are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior

and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

**"Psychosocial rehabilitation" or "PSR"** means curriculum based education and skills training performed to improve an individual's ability to function in the community. PSR provides an array of services that focus on long term recovery and maximization of self-sufficiency, role functioning, and independence, as distinguished from the symptom stabilization function of acute care.

**"Psychotherapy" or "Therapy"** means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

**"Rehabilitation Services"** means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

**"Resident"** means a person residing in a community living program certified by ODMHSAS.

**"Restraint"** refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

**"Risk Assessment"** means a clinical function that aims to determine the nature and severity of the mental health problem, determine which service response would best meet the needs of the consumer, and how urgently the response is required.

**"Screening"** means the process to determine whether the person seeking assistance needs further comprehensive assessment.

**"Sentinel event"** is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, ~~criminal activity~~, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

**"Service area"** means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S. §3-302(1)]. Only one certified Community Mental Health Center is allowed per service area.

**"Service Intensity"** means the frequency and quantity of services needed, the extent to which multiple providers or agencies are involved, and the level of care coordination required.

**"Service plan" or "Treatment plan"** means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

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**"Socialization"** means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

**"Supportive services"** refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

**"TJC"** means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

**"Tobacco"** means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

**"Transitional housing program"** means a type of Community Living Program in which the consumer's stay in the residence is considered temporary and time-limited in nature. The actual program model may include a range of approaches, including but not limited to supervised transitional living programs and supervised transitional housing programs.

**"Trauma informed capability"** means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

**"Urgent recovery clinic"** means a program of non-hospital emergency services for mental health and substance use crisis response including, but not limited to, observation, evaluation, emergency treatment, and referral, when necessary to a higher level of care. This service is limited to CMHCs and Comprehensive Community Addiction Recovery Centers (CCARCs) certified by ODMHSAS or facilities operated by ODMHSAS.

**"Vocational assessment services"** means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

**"Vocational placement services"** means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

**"Vocational preparation services"** means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

**"Volunteer"** means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

**"Wellness"** means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

**"Wellness Coach"** means an individual who is actively working on personal wellness and who is designated to collaborate with others to identify their personal strengths and goals within the eight dimensions of wellness (spiritual, occupational, intellectual, social, physical, environmental, financial, and emotional).

(A) In order to qualify to be a Wellness Coach, individuals shall:

- (i) Have a behavioral health related associates degree or two years of experience in the field and/or have an active certification and/or license within the behavioral health field (e.g. PRSS, Case Management, LBHP, LPN, etc.); and
- (ii) Complete the ODMHSAS Wellness Coach Training Program and pass the examination with a score of 80% or better.

(B) Wellness Coach roles and responsibilities include:

- (i) Role model wellness behaviors and actively work on personal wellness goals;
- (ii) Apply principles and processes of coaching when collaborating with others;
- (iii) Facilitate wellness groups;
- (iv) Conduct motivational interventions;
- (v) Practice motivational interviewing techniques;
- (vi) Provide referrals to community resources for nutrition education, weight management, Oklahoma Tobacco Helpline, and other wellness-related services and resources;
- (vii) Create partnerships within local community to enhance consumer access to resources that support wellness goals;
- (viii) Raise awareness of wellness initiatives through educational in-service and community training;
- (ix) Elevate the importance of wellness initiatives within the organization;
- (x) Promote a culture of wellness within the organization for both consumers and staff;
- (xi) Respect the scope of practice and do not practice outside of it, referring people to appropriate professionals and paraprofessionals as needed.

**"Young Adults in Transition"** are persons between sixteen to twenty-five (16-25) years of age who have a Serious Mental Illness (ages 18 - 25), or Serious Emotional Disturbance (ages 16 - 18).

### 450:17-1-6. Services and service areas

(a) All facilities providing services shall have a group of services herein designated as required core services in accordance



with 450:17-3-2. Each site certified as a CMHC shall offer all required core services through in-person and/or virtual means. ~~CMHCs~~ CMHCs may have specific additional services, some of which are designated as optional services in accordance with 450:17-5-1. All required core services and all optional services must ~~demonstrate progress toward becoming~~ be co-occurring disorder capable.

(b) Service areas are established by ODMHSAS to ensure the most efficient statewide availability of treatment services. Only one certified CMHC is allowed per service area.

**SUBCHAPTER 3. REQUIRED SERVICES**

**PART 9. MEDICATION CLINIC SERVICES**

**450:17-3-81. Medication clinic services**

(a) Medication clinic services shall include an assessment of each individual's condition and needs; and an assessment of the effectiveness of those services.

(b) Medication clinic services shall be co-occurring capable and shall utilize accepted practice guidelines for psychopharmacologic management of co-occurring disorders.

(c) CMHCs shall offer comprehensive medication clinic services to consumers in need of this service, including, but not limited to:

(1) Prescribing or administering medication, including evaluation and assessment of the ~~medication services~~ medications provided.

(2) ~~Medication orders and administration:~~

(A) Licensed allopathic physicians, osteopathic physicians, medical residents or consultant physicians shall write medication orders and prescriptions. Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.

(B) A list of those allopathic physicians and osteopathic-physicians authorized to prescribe medications shall be maintained and regularly updated.

~~(C) Only authorized licensed staff shall administer medications~~

~~(D) A list of licensed staff members authorized to administer medications shall be maintained and regularly updated.~~

(C) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed.

(d) CMHCs shall ensure that consumers who have transitioned to the CMHC from a higher level of care have their medication needs met within two (2) weeks of being discharged from the facility providing the higher level of care.

(e) Compliance with 450:17-3-81 shall be determined by on-site observation and a review of the following: clinical records, written policy and procedures, and roster of licensed, credentialed staff.

**450:17-3-82. Medication clinic, medication monitoring**

(a) Medication administration, storage and control, and consumer reactions shall be regularly monitored at all facilities where medications are stored, dispensed, or administered.

(b) Facilities shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.

(1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.

(2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.

(3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, or administered, or stored.

(4) A qualified allopathic physician or osteopathic physician shall supervise the preparation and stock of an emergency kit which is readily available, but accessible only to physician, nursing and pharmacy staff. Documentation by the qualified allopathic physician or osteopathic physician shall clearly indicate that the supervision has been performed.

(5) Only authorized licensed staff shall administer medications

(6) A list of licensed staff members authorized to administer medications shall be maintained and regularly updated.

(c) Compliance with 450:17-3-82 shall be determined by on-site observation and a review of the following: written policy and procedures, clinical records, and PI records.

**PART 11. CASE MANAGEMENT**

**450:17-3-101. Case management services**

(a) Case management efforts shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development and consumer advocacy provided in various settings based on consumer need.

(b) Case management services shall be offered to all adults who have a Serious Mental Illness and, to each Child (or their parent/guardian) with Serious Emotional Disturbance.

(c) Case management shall be co-occurring disorder capable.

(d) Case management services shall be planned referral, linkage, monitoring and support, and advocacy assistance provided in partnership with a client to support that client in self sufficiency and community tenure. Activities include:

(1) Completion of strengths based assessment for the purpose of assisting in the development of an individual plan of care ~~development, which shall include evidence that the following were evaluated:~~

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- ~~(A) Consumer's level of functioning within the community;~~
  - ~~(B) Consumer's job skills and potential; and/or educational needs;~~
  - ~~(C) Consumer strengths and resources;~~
  - ~~(D) Consumer's present living situation and support system;~~
  - ~~(E) Consumer's use of substances and orientation to changes related to substance use;~~
  - ~~(F) Consumer's medical and health status;~~
  - ~~(G) Consumer's needs or problems which interfere with the ability to successfully function in the community; and~~
  - ~~(H) Consumer's goals.~~
- (2) Development of case management care plan, which can be integrated into the existing individual plan of care;
  - (3) Referral, linkage and advocacy to assist with gaining access to appropriate community resources;
  - (4) Contacts with other individuals and organizations that influence the recipient's relationship with the community, i.e., family members, law enforcement personnel, landlords, etc;
  - (5) Monitoring and support related to the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress;
  - (6) Follow-up contact with the consumer if they miss any scheduled appointments (including physician/medication, therapy, rehabilitation, or other supportive service appointments as delineated on the service plan); and
  - (7) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist consumer(s) from progression to a higher level of care.
- (e) Compliance with 450:17-3-101 shall be determined by on-site observation and a review of the following: clinical records, and written policy and procedures.

## SUBCHAPTER 5. OPTIONAL SERVICES

### PART 11. COMMUNITY LIVING PROGRAMS

#### 450:17-5-56. Community living programs

- (a) Community living programs shall be co-occurring ~~disorders~~disorder capable and include at least one of the following two types of supportive housing options for persons not in crisis who need assistance with obtaining and maintaining an independent living situation:
- (1) Transitional housing; or
  - (2) Permanent Supported housing;
- (b) Community living programs shall maintain staffing numbers, composition, training, and expertise to sufficiently supervise, provide, and maintain the services as defined in the program's goals and objectives and to ensure the safety

of residents. A community living program shall have written policies and procedures specifying how, and by whom, the following services shall be performed:

- (1) Medical treatment for residents on both emergency and routine bases;
  - (2) Mental health and substance use disorder services on both emergency and routine bases;
  - (3) Daily living, social and occupational evaluation and progress planning;
  - (4) Daily living and social skills training;
  - (5) Occupational and vocational training;
  - (6) Assistance to residents in locating appropriate alternative living arrangements as clinically indicated or requested by resident or as part of program completion or graduation;
  - (7) A mechanism for orientation and education of new residents, which shall include, at least:
    - (A) Emergency procedures including fire, health and safety procedures;
    - (B) Resident rights and responsibilities; and
    - (C) Program expectations and rules; and
  - (8) Assistance to residents in accessing community resources including but not limited to rental assistance and other benefits.
- (c) There shall be documentation indicating that each resident has received orientation and education on emergency procedures, resident rights and responsibilities, and program expectations and rules.
- (d) To ensure a safe and sanitary environment for residents, the following shall apply for all CMHC owned and/or managed housing facilities:
- (1) The apartment or house and furnishings shall be in good repair, and free of unpleasant odors, and insect and rodent infestations.
  - (2) The apartment or house shall contain safe heating and air conditioning systems, which are in proper working ~~conditions~~condition. Each apartment or house shall have an annual fire and safety inspection by the State or local Fire Marshal's office.
  - (3) Apartments or houses shall be inspected by CMHC staff on a regular basis as specified in agency Policy and Procedures to ensure that fire, health or safety hazards do not exist.
  - (4) The program shall develop and maintain emergency policy and procedures which shall include but are not limited to:
    - (A) Fire response and evaluations;
    - (B) Response to other disasters;
    - (C) Relocation if housing unit(s) become unlivable; and
    - (D) Personal accident or illness.
- (e) Compliance with 450:17-5-56 shall be determined by on-site observation; interviews with residents, program staff, and other appropriate CMHC staff; and a review of facility documentation including a review of the CMHC written policy and procedures and resident records.

**450:17-5-59.1. Transitional housing programs**

**[REVOKED]**

- (a) The length of stay for Transitional housing programs shall be temporary and transitional in nature.
- (b) Transitional housing programs shall include at least one of the following two types of housing programs:
  - (1) Supervised transitional living programs; or
  - (2) Supported transitional housing programs.
- (c) Transitional housing programs shall define general parameters for length of stay.
- (d) Compliance with 450:17-5-59.1 shall be determined by a review of the program's written policy and procedures.

**450:17-5-60. Supervised transitional living programs**

**[REVOKED]**

- (a) Supervised transitional living programs are supervised places of temporary transitional residence for mental health consumers needing on-site support twenty four (24) hours a day. These programs are intended to assist residents with stabilization and acquisition of skills necessary to transition to an independent living situation.
- (b) Supervised transitional living programs shall:
  - (1) Have paid staff on duty twenty four (24) hours a day, with backup coverage in case of staff unscheduled absences, illness or emergencies.
  - (2) Maintain staffing number and composition, and training and expertise to sufficiently supervise, provide and maintain the services as defined in the program's goals and objectives and to ensure the safety of the residents.
  - (3) Develop and implement a component of governance by the tenants.
  - (4) Be licensed by the Oklahoma State Department of Health if required.
- (c) In these programs, the following shall be available for all residents, and shall be specified on the resident's service plan or housing plan, according to individual resident needs and interests: The program shall offer 20 hours per week of meaningful activity. A minimum of ten (10) hours should be provided on-site, with at least eight (8) of those ten (10) hours focusing specifically on independent living skills training.
- (d) Compliance with 450:17-5-60 shall be determined by on-site observation; interviews with residents, program staff, and other appropriate CMHC staff; and a review of the following: policy and procedures, facility documentation (including staff schedules), residents' council minutes, and valid State Department of Health Certificate of Licensure if required.

**450:17-5-64. Supported transitional housing programs**

**[REVOKED]**

- (a) Supported transitional housing programs are grouped apartment or other residential settings with staff available as needed, but there is not necessarily twenty four (24) hour on-site supervision. In these programs, the following shall be available for all residents, and shall be specified on the resident's treatment plan or housing plan, according to individual resident needs and interests:

- (1) The program shall offer or make available psychiatric rehabilitation program services for residents;
- (2) The program shall offer or make available at least one (1) evening or weekend socialization and recreational activity per week; and
- (3) The program shall offer or make available eight (8) hours of meaningful activity per week. A minimum of five (5) of those hours should include on-site independent living skills training. This shall include working side-by-side with the resident(s) to instruct in the development of independent living skills.
- (b) Compliance with 450:17-5-64 shall be determined by interviews with residents, program staff, or other appropriate CMHC staff; and a review of facility documentation including a review of the CMHC written policy and procedures and resident records.

**450:17-5-66. Permanent supported housing programs**

**[REVOKED]**

- (a) Permanent supported housing programs include at least one of the following two (2) types of housing programs:
  - (1) Permanent scattered-site housing programs; or
  - (2) Permanent congregate housing programs.
- (b) In permanent supported housing programs the following shall be available for all residents, and shall be specified on the resident's service plan or housing plan, according to individual resident needs and interests:
  - (1) The CMHC permanent supported housing programs shall make ongoing monthly contact with each resident, either on or offsite.
  - (2) The program shall offer independent living skill training. This training shall include working side by side with residents to provide instruction in the development of independent living skills.
  - (3) Psychiatric rehabilitation program services shall be made available to residents.
  - (4) The CMHC shall offer, or arrange for, socialization and recreational opportunities at least twice a week for individuals in permanent supported housing programs; including at least one evening activity.
- (c) Compliance with 450:17-5-66 shall be determined by interviews with residents, program staff, and other appropriate CMHC staff; and a review of CMHC policy and procedures, and resident records.

**450:17-5-67.2. Permanent scattered-site housing programs [REVOKED]**

- (a) The permanent scattered-site housing programs shall facilitate the acquisition of permanent, scattered-site housing in the community, which in any given housing complex has no more than fifty percent (50%) of its residents with psychiatric disabilities.
- (b) Resident choice shall be documented in the selection of housing.
- (c) The Resident shall be the lessee, and the services provider shall not be the landlord.

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~~(d) Compliance with 450:17-5-67.2 shall be determined by the following: on site observation; interviews with residents, program staff and other appropriate CMHC staff; and a review of facility and resident record documentation.~~

## **450:17-5-67.3. Permanent congregate housing programs [REVOKED]**

~~(a) Permanent congregate housing programs are programs in which the individual is assisted in finding an apartment or housing within the community, where the housing complex has more than 50% of its residents with psychiatric disabilities.~~

~~(b) Resident choice shall be documented in the selection of housing.~~

~~(c) The Resident shall be the lessee, and the landlord may be the services provider.~~

~~(d) Compliance with 450:17-5-67.3 shall be determined by the following: on site observation; interviews with residents, program staff and other appropriate CMHC staff; and a review of facility and resident record documentation.~~

## **PART 25. CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS**

### **450:17-5-174. Staff Training**

(a) In addition to the requirements found in ~~450:19-5-3(b)~~450:1-9-5.6(b) in-service presentations shall be conducted upon hire/contracting and each calendar year thereafter for all CCBHC employees on the following topics:

(1) Person/Family-centered, recovery oriented, evidence-based and trauma-informed care;

(2) Primary care/behavioral health integration; and

~~(3) Risk assessment, suicide prevention and suicide response;~~

~~(4) Best practices in utilization of family support providers and peer recovery support specialists; and~~

~~(5) Crisis response and management.~~

(b) The facility shall assess the skills and competence of each individual furnishing services and, as necessary, provide in-service training and education programs. The facility will have written policies and procedures describing its method(s) of assessing competency and maintains a written accounting of the in-service training provided during the previous 12 months.

(c) Individuals providing staff training must be qualified as evidenced by their education, training and experience.

(d) Compliance with this Section shall be determined by a review of policies and procedures and personnel records.

### **450:17-5-176. Availability and accessibility of services**

(a) A CCBHC must conduct outreach activities to engage those consumers who are difficult to find and engage, with an emphasis on the special population list also known as the "Most in Need" list that is determined and supplied to the CCBHC by the ODMHSAS. These activities must be services reported through the Medicaid Management Information System (MMIS). The CCBHC must have dedicated staff who do not carry a caseload. The CCBHC must have policies and

procedures to describe how outreach and engagement activities will occur to assist consumers and families to access benefits and formal or informal services to address behavioral health conditions and needs.

(b) Facility records will identify which staff members are responsible for specific elements of outreach and engagement.

(c) To the extent possible, the facility should make reasonable efforts to provide transportation or transportation vouchers for consumers to access services provided or arranged for by the facility.

(d) To the extent allowed by state law, facility will make services available via telemedicine in order to ensure consumers have access to all required services.

(e) The facility will ensure that no individuals are denied services, including but not limited to crisis management services, because of an individual's inability to pay and that any fees or payments required by the clinic for such services will be reduced or waived to enable the facility to fulfill this assurance. The ~~Facility~~facility will have a published sliding fee discount schedule(s) that includes all services offered.

(f) The facility will ensure no individual is denied behavioral healthcare services because of place of residence or homelessness or lack of a permanent address. Facility will have protocols addressing the needs of consumers who do not live within the facility's service area. At a minimum, facility is responsible for providing crisis response, evaluation, and stabilization services regardless of the consumer's place of residence and shall have policies and procedures for addressing the management of the consumer's ongoing treatment needs. In addition, for those consumers who are homeless, the CCBHC must attempt to obtain at least two contact phone numbers for persons of the consumer's choice who know how to reach the consumer in the consumer's record, and/or a location where the consumer is most likely to be found, and/or a location to find a person of the consumer's choice likely to know where the consumer is located.

(g) Each CCBHC must have the following within three (3) years of initial CCBHC certification or by July 1, 2024, whichever is later:

(1) A minimum of one outpatient clinic with twenty-four (24) hour service availability, urgent recovery clinic (URC), or crisis unit in each of the following:

(A) Every county within the CCBHC catchment area with a population of 20,000 or more; and

(B) A minimum of one (1) adjacent county (if not within the county) for every county within the catchment area with a population of less than 20,000. A URC or crisis unit in another catchment area may be utilized to satisfy this requirement.

~~(g)h~~ Compliance with this Section shall be determined by a review of policies, consumer records and facility fee schedule.

### **450:17-5-177. General service provisions**

(a) Facility is responsible for the provision of the following services:

(1) Screening, assessment and treatment planning;

(2) Crisis Services (24/7 walk-in crisis clinic or urgent care);

- (3) Outpatient behavioral health services;
- (4) Outpatient primary care screening and monitoring;
- (5) Case management;
- (6) Psychiatric rehabilitation;
- (7) Peer and family supports;
- (8) Intensive community-based outpatient behavioral health care for members of the US Armed Forces and veterans-;
- (9) Extensive outreach and intensive community-based outpatient behavioral health care for historically disadvantaged populations and older persons to ensure consumers served are representative of the communities served; and
- (10) Individual Placement and Support (IPS) Services.

(b) ~~Many of the~~Certain services may be provided either directly by the facility or through formal relationships with other providers. Whether directly supplied by the facility or by a Designated Collaborating Organization (DCO) through a formal arrangement, the facility is ultimately clinically responsible for all care provided. The facility must have policies and procedures that ensure DCO-provided services for facility's consumers must meet the same quality standards as those provided by the facility.

(c) Compliance with this Section shall be determined by a review of policies, procedures and consumer records.

**450:17-5-179. Primary care screening and monitoring**

(a) The facility is responsible for outpatient clinic primary care screening and monitoring of key health indicators and health risk. Facility shall have policies and procedures to ensure that these services are received in a timely fashion, whether provided directly by the facility or through a DCO.

(b) Required primary care screening and monitoring of key health indicators and health risk provided by the facility shall include but not be limited to the following, ~~as applicable:~~

- (1) ~~Adult Body Mass Index (BMI) Screening and Follow Up;~~
- (2) ~~Weight assessment and counseling for nutrition and physical activity for children/adolescents (WCC);~~
- (3) ~~Blood Pressure;~~
- (4) ~~Tobacco use: Screening and cessation intervention;~~
- (5) ~~Screening for clinical depression and follow up plan;~~
- (6) ~~Unhealthy alcohol use;~~
- (7) ~~Diabetes screening for people with schizophrenia or bipolar disorder who are using antipsychotic medications;~~
- (8) ~~Diabetes care for people with serious mental illness;~~
- (9) ~~Metabolic monitoring for children and adolescents on antipsychotics;~~
- (10) ~~Cardiovascular health screening for people with schizophrenia;~~
- (11) ~~Adherence to mood stabilizers for individuals with Bipolar I Disorder;~~
- (12) ~~Adherence to antipsychotic medications for individuals with Schizophrenia; and~~
- (13) ~~Antidepressant medication management.~~

(1) For all consumers, as applicable based on age as specified in the CCBHC Manual:

- (A) Adult Body Mass Index (BMI) screening and follow-up for adults or weight assessment and counseling for nutrition and physical activity for children/adolescents (WCC);
- (B) Blood pressure;
- (C) Screening for clinical depression and follow-up plan;
- (D) Tobacco use: Screening and cessation intervention; and
- (E) Unhealthy alcohol use.

(2) As applicable:

- (A) Adherence to antipsychotic medications for individuals with Schizophrenia;
- (B) Adherence to mood stabilizers for individuals with Bipolar I Disorder;
- (C) Antidepressant medication management;
- (D) Cardiovascular health screening for people with schizophrenia;
- (E) Diabetes care for people with serious mental illness;
- (F) Diabetes screening for people with schizophrenia or bipolar disorder who are using antipsychotic medications; and
- (G) Metabolic monitoring for children and adolescents on antipsychotics.

(c) The facility will ensure children receive age appropriate screening and preventive interventions including, where appropriate, assessment of learning disabilities, and older adults receive age appropriate screening and preventive interventions.

(d) Compliance with this Section will be determined by a review of facility policies and consumer records.

**450:17-5-185. Outpatient therapy services**

(a) The facility will directly provide outpatient mental health and substance use disorder services ~~that are evidence based or best practices, consistent with the needs of the individual consumers as identified in their individual service plan~~in accordance with 450:17-3 Part 7. In the event specialized services outside the expertise of the facility are required ~~for purposes of outpatient treatment to meet the needs of the consumer,~~ the facility will make them available through referral or other formal arrangement with other providers or, where necessary and appropriate, through the use of telemedicine services.

(b) Evidence-based or best practices shall include, but not be limited to, medication assisted treatment and those referenced in the CCBHC Manual.

(c) Outpatient therapy services shall include:

- (1) Individual therapy;
- (2) Group therapy;
- (3) Family therapy;
- (4) Psychological/psychometric evaluations or testing;
- (5) Psychiatric assessments; and
- (6) Medication assisted treatment.

(d) Compliance with this Section shall be determined by facility policies and clinical records.

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## **450:17-5-189.1. Individual Placement and Support services**

- (a) The facility is responsible for the provision of Individual Placement and Support (IPS) services, which will be made available to all consumers as appropriate and identified in the individual service plan.
- (b) IPS services shall be provided by appropriately trained staff who have credentials as an IPS service provider.
- (c) Compliance with this Section shall be determined by a review of facility policy and clinical records.

## **450:17-5-191. Consumer (Patient Care) Registries and Population Health Management**

- (a) The facility must implement clinical decision support mechanisms following nationally published evidence-based guidelines for:
  - (1) A mental health or substance use disorder;
  - (2) A chronic medical condition;
  - (3) An acute condition;
  - (4) A condition related to unhealthy behaviors; and
  - (5) Well child or adult care.
- (b) Facility must have descriptions of programs in place to demonstrate how it encourages healthier lifestyles for consumers, including increased physical activity, better nutrition, avoidance of behavioral risks, and wider use of preventive care.
- (c) The facility shall electronically submit data to a ~~health home~~ an information management system, subject to prior approval by the Director of ODMHSAS Provider Certification, which will act as a consumer registry, care management device and outcomes measurement tool.
- (d) The facility shall utilize information provided through the approved information system for the purpose of enrollment and discharge tracking, compliance, quality assurance, and outcome monitoring.
- (e) Compliance will be determined by on-site observation, review of information available through an approved information system, and consultation with the ODMHSAS Decision Support Services and ODMHSAS Information Services Division.

## **SUBCHAPTER 7. FACILITY CLINICAL RECORDS**

### **450:17-7-1. Clinical record keeping system [REVOKED]**

~~Each CMHC shall maintain an organized clinical record system for the collection and documentation of information appropriate to the treatment processes; and which insures organized, easily retrievable, usable clinical records stored under confidential conditions and with planned retention and disposition.~~

### **450:17-7-4. Record access for clinical staff [REVOKED]**

- (a) ~~The CMHC shall assure consumer records are readily accessible to the program staff directly caring for the consumer.~~

~~Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records.~~

- (b) ~~Compliance with 450:17-7-4 shall be determined by on-site observation and staff interviews.~~

### **450:17-7-8. Behavioral Health Service plan**

- (a) The service plan shall be completed by a LBHP or licensure candidate and is performed with the active participation of the consumer and a support person or advocate if requested by the consumer. In the case of children under the age of ~~18~~ eighteen (18), it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges and problems.
- (b) The service plan is developed after and based on information obtained in the ~~mental health~~ assessment and includes the evaluation of the assessment information by the clinician and the consumer.
- (c) The service plan must have an overall general focus on recovery which, for adults, may include goals like employment, independent living, volunteer work, or training, and for children, may include areas like school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.
- (d) Comprehensive service plans must be completed within six (6) treatment sessions and adhere to the format and content requirements described in the facility policy and procedures.
- (e) Service plan updates should occur at a minimum of every 6 months during which services are provided and adhere to the format and content requirements described in the facility policy and procedures.
- (f) Service plans, both comprehensive and update, must include dated signatures ~~for~~ of the consumer ~~customer~~ (if over age 14), the parent/guardian (if the consumer is under age 18 ~~eighteen~~ (18) or otherwise applicable), and the primary service practitioner. Signatures must be obtained after the service plan is completed.
- (g) Compliance with 450:17-7-8 shall be determined by a review of the clinical records, policies and procedures, and interviews with staff and consumers, and other agency documentation.

### **450:17-7-10. Progress Notes**

- (a) Progress notes shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, and the consumer's response to the services provided and the consumer's progress in treatment and shall adhere to the format and content requirements described in the facility policy and procedures.
- (b) ~~Progress notes shall be documented according to the following time frames:~~

- (1) ~~Outpatient staff must document each visit or transaction, except for assessment completion or service plan development, including missed appointments;~~

~~(2) Community living program staff shall complete a summary note monthly identifying the name of the person served and the day(s) the person received the service;~~

~~(3) Inpatient nursing service is to document on each shift. Each member of the treatment team shall write a weekly progress note for the first two months and monthly thereafter; and~~

~~(4) PSR staff must maintain a daily, member sign in/sign out record of member attendance, and shall write a progress note daily or a summary progress note weekly.~~

(b) Progress notes must include the consumer's name, be signed by the service provider, and include the service provider's credentials.

(c) Compliance with 450:17-7-10 shall be determined by a review of clinical records and policies and procedures.

**SUBCHAPTER 15. PERFORMANCE IMPROVEMENT AND QUALITY MANAGEMENT**

**450:17-15-5. Critical incident reporting**

In addition to the requirements set forth in OAC ~~450:19-5-3(f)~~450:1-9-5.6(f), sentinel events shall have a root cause analysis completed no later than 30 days after the event occurred with a copy of the completed report sent to ODMHSAS.

**SUBCHAPTER 25. GOVERNING AUTHORITY**

**450:17-25-2. Board composition**

(a) Members of the Board of Directors shall reside, or be employed, or otherwise have a demonstrated interest in the area served.

(b) The composition of the Board shall reflect an equitable representation of the population distribution in the service area. Each county in a multi-county service area of five or fewer counties must be represented on the Board by at least one resident of the county. CMHCs serving six or more counties may rotate such membership or otherwise ensure representation.

(c) Composition of the Board shall also reflect a broad representation of the community, including minorities, at least one consumer of Mental Health services and one family member of a child with an emotional disturbance.

(d) No more than forty percent of the Board's members shall be providers of mental health services.

(e) The Board shall have no less than seven members.

(f) System shall be devised to provide for a staggering of terms so that the terms of the Directors do not all expire at the same time.

(g) The Board shall have a provision for the removal of individuals from the Board for non-attendance of Board meetings.

(h) The governing body shall meet at least quarterly.

(i) Employees of an agency shall be prohibited from participation as Board members of their governing authority, except in an ex-official, nonvoting capacity.

~~(j) The meetings of the Board of Directors shall comply with the Oklahoma open meeting laws.~~

(kj) Compliance with 450:17-25-2 shall be determined by a review of facility policy and procedures regarding governing authority; governing body bylaws, rules and regulations; governing body minutes; membership rolls; and other documentation as needed.

*[OAR Docket #22-454; filed 6-23-22]*

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
CHAPTER 18. STANDARDS AND CRITERIA FOR SUBSTANCE RELATED AND ADDICTIVE DISORDER TREATMENT SERVICES**

*[OAR Docket #22-455]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

450:18-1-1 [AMENDED]

450:18-1-2 [AMENDED]

Subchapter 5. Organizational and Facility Management

450:18-5-3.2 [AMENDED]

450:18-5-10 [REVOKED]

Subchapter 7. Facility Clinical Records

Part 1. Record System [REVOKED]

450:18-7-1 [REVOKED]

450:18-7-2 [REVOKED]

450:18-7-4 [REVOKED]

Part 3. Screening and Assessment

450:18-7-21 [AMENDED]

450:18-7-23 [AMENDED]

450:18-7-24 [REVOKED]

450:18-7-25 [REVOKED]

450:18-7-26 [REVOKED]

Part 7. Case Management

450:18-7-61 [AMENDED]

450:18-7-63 [AMENDED]

Part 9. Service Planning

450:18-7-81 [AMENDED]

450:18-7-82 [REVOKED]

Part 11. Progress Notes

450:18-7-101 [AMENDED]

Part 13. Discharge Planning

450:18-7-121 [AMENDED]

450:18-7-122 [AMENDED]

Subchapter 9. Services Support and Enhancement

Part 1. Staff Support [REVOKED]

450:18-9-1 [REVOKED]

Subchapter 13. Substance Use Disorder Treatment Services

Part 1. Levels of Care

450:18-13-2 [AMENDED]

Part 3. Outpatient Services, ASAM Level 1

450:18-13-21 [AMENDED]

450:18-13-22 [REVOKED]

450:18-13-23 [REVOKED]

Part 7. Medically Supervised Withdrawal Management, ASAM Level 3.7

450:18-13-62 [REVOKED]

450:18-13-63 [REVOKED]

Part 11. Residential Treatment, ASAM Level 3.5

450:18-13-101 [AMENDED]

450:18-13-101.1 [REVOKED]

450:18-13-102 [REVOKED]

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450:18-13-103 [REVOKED]

Part 13. Residential Treatment for Persons with Dependent Children and Pregnant Women, ASAM Level 3.5

450:18-13-121 [AMENDED]

450:18-13-122 [REVOKED]

450:18-13-123 [REVOKED]

450:18-13-124 [REVOKED]

Part 15. Residential Treatment for Adults with Co-occurring Disorders, ASAM Level 3.3

450:18-13-141 [AMENDED]

450:18-13-142 [REVOKED]

450:18-13-143 [REVOKED]

Part 17. Residential Treatment for Adolescents, ASAM Level 3.5

450:18-13-161 [AMENDED]

450:18-13-161.1 [REVOKED]

450:18-13-162 [REVOKED]

450:18-13-163 [REVOKED]

Part 19. Halfway House Services, ASAM Level 3.1

450:18-13-181 [AMENDED]

450:18-13-182 [REVOKED]

450:18-13-183 [REVOKED]

Part 20. Adolescent Halfway House Services, ASAM Level 3.1

450:18-13-190 [AMENDED]

450:18-13-191 [REVOKED]

450:18-13-192 [REVOKED]

Part 21. Halfway House Services for Persons with Dependent Children and Pregnant Women, ASAM Level 3.1

450:18-13-201 [AMENDED]

450:18-13-202 [REVOKED]

450:18-13-203 [REVOKED]

## AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-306, 3-317, 3-403(1), 3-404, 3-406, 3-415 and 3-416

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

December 8, 2021

## COMMENT PERIOD:

January 3, 2022 through February 2, 2022

## PUBLIC HEARING:

February 3, 2022

## ADOPTION:

March 25, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 28, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

### Incorporated standards:

340:110-3-153.2

### Incorporating rules:

450:18-13-161(b)(3)(C), 450:18-13-190(b)(3)(C)

### Availability:

9:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen, Suite 2-600, Oklahoma City, OK 73106, 405-271-9200

## GIST/ANALYSIS:

The proposed rule revisions to Chapter 18 remove language that is addressed elsewhere or is otherwise unnecessary, including discharge and admission criteria, outreach requirements, weekly required treatment hours, group size limitations, and timeframes for assessments and service plans. Language regarding intensive levels of care are removed and standards are simplified to address American Society of Addiction Medicine (ASAM) level of care and population-specific standards.

## CONTACT PERSON:

Melissa Miller, Policy Director and Administrative Rules Liaison, Melissa.Miller@odmhsas.org or (405) 248-9345

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 450:18-1-1. Purpose

This chapter sets forth the standards and criteria used in the certification of facilities and organizations providing treatment services for consumers with substance-related and addictive disorders and implements 43A O.S. §§ 3-403, 3-415, 3-416, 3-417, 3-417.1, 3-601, 3-602 and 3-603. The rules regarding the certification processes, including, but not limited to, the application process, fees, and administrative sanctions are found in OAC 450:1, Subchapters 5 and 9. Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC ~~450:1-9-5.3~~450:1-9-5.6.

### 450:18-1-2. Definitions

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

"**Abuse**" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"**Acute intoxication or withdrawal potential**" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's withdrawal patterns and current level of intoxication and potential for withdrawal complications as it impacts level of care decision making.

"**Admission**" means the acceptance of a consumer by a treatment program to receive services at that program.

"**Admission criteria**" means those criteria which shall be met for admission of a consumer for services.

"**Adult**" means any individual eighteen (18) years of age or older.

"**ASAM**" means the American Society of Addiction Medicine.

"**ASAM levels of care**" means the different options for treatment as described in the current edition of the ASAM criteria that vary according to the intensity of the services offered. Each treatment option is a level of care.

"**ASAM criteria**" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.



**"ASAM level 1"** means Outpatient Services for adolescents and adults. This level of care typically consists of less than nine (9) hours of services per week for adults or less than six (6) hours of services per week for adolescents. Services may be delivered in a wide variety of settings.

**"ASAM level 3"** means residential and inpatient services and encompasses ASAM levels 3.1, 3.3, 3.5 and 3.7.

**"ASAM level 3.1"** means Clinically Managed Low-Intensity Residential Services for adolescents and adults. This level of care typically provides at least five (5) hours of clinical services a week and provides a twenty-four (24) hour living support and structure with trained personnel. The corresponding service description for this level of care is Halfway House Services.

**"ASAM level 3.3"** means Clinically Managed Population-Specific High-Intensity Residential Services. This level of care is for adults only and typically offers twenty-four (24) hour care with trained personnel and is designed to accommodate individuals with cognitive or other impairments, including co-occurring disorders. The corresponding service description for this level of care is Residential Treatment for Adults with Co-Occurring Disorders.

**"ASAM level 3.5"** means Clinically Managed Medium-Intensity Residential Services for adolescents and Clinically Managed High-Intensity Residential Services for adults. This level of care provides twenty-four (24) hour care and offers a wide range of therapeutic services. The corresponding service descriptions for this level of care are Residential Treatment and Intensive Residential Treatment.

**"ASAM level 3.7"** means Medically Monitored High-Intensity Inpatient Services for adolescents and Medically Monitored Intensive Inpatient Withdrawal Management for adults. This level of care provides twenty-four (24) hour nursing care with physician supervision and medication availability. This level of care is appropriate for individuals withdrawing from alcohol or other drugs with subacute biomedical and emotional, behavioral, or cognitive problems severe enough to require inpatient treatment but for whom hospitalization is not necessary. The corresponding service description for this level of care is Medically Supervised Withdrawal Management.

**"Assessment"** means those procedures by which a program provides an on-going evaluation process with the consumer as outlined in applicable rules throughout OAC 450 to collect pertinent information needed as prescribed in applicable rules and statutes to determine courses of actions or services to be provided on behalf of the consumer. Assessment may be synonymous with the term evaluation.

**"Behavioral health services"** means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness, substance use disorders, and co-occurring disorders.

**"Biomedical condition and complications"** means one dimension to be considered in placement, continued stay, and discharge and is an evaluation of the consumer's current physical condition and history of medical and physical functioning as it impacts level of care decision making.

**"Biopsychosocial assessment"** means face-to-face interviews conducted by a Licensed Behavioral Health Professional

(LBHP) or Licensure Candidate designed to elicit historical and current information regarding the behaviors, experiences, and support systems of a consumer, and identify the consumer's strengths, needs, abilities, and preferences for the purpose of guiding the consumer's recovery plan.

**"Care management"** means a type of case management in residential substance use disorder (ASAM Level 3) treatment settings that includes assessment, development of a care plan, and referral and linkage to community supports and community-based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.

**"Case management"** means planned referral, linkage, monitoring, support, and advocacy provided in partnership with a consumer to assist that consumer with self-sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

**"Child"** or **"Children"** means any individuals under eighteen (18) years of age.

**"Client"** See "Consumer."

**"Community-based Structured Crisis Center"** or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance use disorder crisis stabilization as authorized by 43A O.S. §3-317 including, but not limited to, observation, evaluation, emergency treatment, and referral, when necessary, for inpatient psychiatric or substance use disorder treatment services. This service is limited to CMHCs who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental of Substance Abuse Services.

~~**"Community information, consultation, and outreach"** means services designed to reach the facility's target population, to promote available services, and to give information on substance related and addictive disorders, domestic violence, sexual assault, and other related issues to the general public, the target population, or to other agencies serving the target population. These services include presentations to human services agencies, community organizations, and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.~~

**"Community mental health center"** or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services including, but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education, and certain services at the option of the center including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

**"Consultation"** means the act of providing information or technical assistance to a particular group or individual seeking resolution of specific problems. A documented process of interaction between staff members or between facility staff and unrelated individuals, groups, or agencies for the purpose

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of problem solving or enhancing their capacities to manage consumers or facilities.

**"Consumer"** means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

**"Consumer advocacy"** means all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

**"Consumer record"** means the collection of written information about a consumer's evaluation or treatment that includes the admission data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

**"Continuing care"** means providing a specific period of structured therapeutic involvement designed to enhance, facilitate, and promote transition from a current level of services to support ongoing recovery.

**"Contract"** means a document adopted by the governing authority of a treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program, as well as the monies to be expended in exchange.

**"Co-occurring disorder" (COD)** means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

**"Co-occurring disorder capability"** means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumer's with co-occurring disorders.

**"Correctional institution"** means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program operated by, or under contract to, the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody include juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial. Programs which are providing treatment services within a correctional facility may be exempt from certain services described in this chapter which cannot be provided due to circumstance.

**"Crisis Diversion"** means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

**"Crisis intervention"** means actions taken and services provided to address emergency psychological, physiological,

and safety aspects of alcohol, drug-related, and mental health crises.

**"Cultural competency"** means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs, and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

**"Day school"** means the provision of therapeutic and accredited academic services on a regularly scheduled basis.

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

**"Detoxification"** means the process of eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

**"DHS"** or **"OKDHS"** means the Oklahoma Department of Human Services.

**"Diagnosis"** means the determination of a disorder as defined by current DSM criteria and in accordance with commonly accepted professional practice standards.

**"Dietitian"** or **"Dietician"** means an individual trained and licensed in the development, monitoring, and maintenance of food and nutrition in accordance with the Oklahoma State Board of Medical Licensure and Supervision.

**"Discharge criteria"** means individualized measures by which a program and the consumer determine readiness for discharge or transition from services being provided by that facility. These may reference general guidelines as specified in facility policies or procedures and/or in published guidelines including, but not limited to, the current ASAM criteria for individuals with substance use disorders, but should be individualized for each consumer and articulated in terms of consumer behaviors, resolutions of specific problems, and attainment of goals developed in partnership with the participant and the provider.

**"Discharge planning"** or **"transition planning"** means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs. Discharge planning may or may not include a document identified as a discharge plan.

**"Discharge summary"summary"** means a clinical document in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare.

**"DOC"** or **"ODOC"** means the Oklahoma Department of Corrections.

**"Documentation"** means the provision of written, dated, and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

**"DSM"** means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

**"Education"** means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning mental health, substance-related and addictive disorders, or other related problems and services related to the specific focus of treatment.

**"Emergency services"** means a twenty-four (24) hour capability for assessment, intervention, and resolution of a consumer's crisis or emergency provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to function or remain in the community and may include placement of the individual in a protective environment, withdrawal management, individual and group consultation, and medical assessment.

**"Emotional, behavioral or cognitive conditions and complications"** means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's historical and current emotional, behavioral, or cognitive status including the presence and severity of any diagnosed mental illnesses, as well as, the level of anxiety, depression, impulsivity, guilt, and behavior that accompanies or follows these emotional states and historical information, as it impacts on level of care decision making.

**"Evaluation"** See "Assessment."

**"Evidence based practice"** means programs or practices that are supported by research methodology and have produced consistently positive patterns of results when replicated within the intent of the published guidance.

**"Executive director"** means the person hired by the governing authority to direct all the activities of the organization; may be used synonymously with administrative director, administrator, chief executive officer, and director.

**"Face-To-Face"** for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

**"Facilities"** or **"facility"** means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling disorder treatment, and narcotic treatment programs.

**"Family"** means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

**"Follow-up"** means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

**"Gambling disorder treatment services"** means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

- (A) Assessment and diagnostic impression, ongoing;

- (B) Treatment planning and revision, as necessary;
- (C) Individual, group and family therapy;
- (D) Case management;
- (E) Psychosocial rehabilitation; and
- (E) Discharge planning.

**"Goals"** means broad general statements of purpose or intent that indicates the general effect the facility or service is intended to have.

**"Guardian"** means an individual who has been given the legal authority for managing the affairs of another individual.

**"Halfway house"** means low intensity substance use disorder treatment in a supportive living environment to facilitate the individual's reintegration into the community, most often following completion of primary treatment. Corresponding ASAM Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

**"Halfway house for persons with children"** means a halfway house that includes services for the recovering person's children who will reside with him or her in the house. Corresponding ASAM Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

**"Infant"** means any child from birth up to 3 years of age.

**"Initial contact"** means a person's first contact with the facility, e.g., a request for information or service by telephone or in person.

**"Inpatient services"** means the process of providing care to persons who require twenty-four (24) hour supervision in a hospital or other suitably equipped medical setting as a result of acute or chronic medical or psychiatric illnesses and professional staff providing medical care according to a treatment plan based on documentation of need.

**"Intervention"** means a process or technique intended to facilitate behavior change.

**"Licensed Behavioral Health Professional" or "LBHP"** means:

- (A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided and certified in a psychiatric mental health specialty;
- (C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;
- (D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
- (E) A practitioner with a license to practice in the state in which services are provided by one of the following licensing boards:
  - (i) Social Work (clinical specialty only);
  - (ii) Professional Counselor;
  - (iii) Marriage and Family Therapist;
  - (iv) Behavioral Practitioner; or

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(v) Alcohol and Drug Counselor.

**"Licensed physician"** means an individual with an M.D. or D.O. degree who is licensed in the State of Oklahoma to practice medicine.

**"Licensed practical nurse"** means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

**"Licensure"** means the process by which an agency of government grants permission to persons or health facilities meeting qualifications to engage in a given occupation or business or use a particular title.

**"Licensure Candidate"** means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

**"Life skills"** means abilities and techniques necessary to function independently in society.

**"Medical care"** means those diagnostic and treatment services which, under the laws of the jurisdiction in which the facility is located, can only be provided or supervised by a licensed physician.

**"Medical withdrawal management"** means diagnostic and treatment services performed by licensed facilities for acute alcohol or drug intoxication, delirium tremens, and physical and neurological complications resulting from acute intoxication. Medical withdrawal management includes the services of a physician and attendant medical personnel including nurses, interns, and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol or drugs. [43 A.O.S. § 3-403(5)] It is an organized service delivered by medical and nursing professionals that provides for twenty-four (24)-hour medically directed evaluation and withdrawal management in an acute care inpatient setting. Services are delivered under a defined set of physician-approved policies and physician-managed procedures or medical protocols. Corresponding ASAM Service Level: Level 4-WM, Medically Managed Intensive Inpatient Withdrawal Management.

**"Medical services"** means the administration of medical procedures by a physician, registered nurse, nurse practitioner, physician's assistant, or dentist and in accordance with a documented treatment plan and medical supervision available to provide the consumer with the service necessitated by the prevalent problem identified and includes physical examinations, withdrawal management from alcohol or drugs, methadone maintenance, dental services, or pharmacy services, etc.

**"Medically supervised withdrawal management"** means withdrawal management outside of a medical setting, directed by a physician who has attendant medical personnel including nurses for intoxicated consumers, and consumer's withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances that would require hospitalization as determined by an examining physician. Corresponding ASAM Service Level: Level 3.7-WM, Medically Monitored Inpatient Withdrawal Management. Withdrawal management is intended to stabilize and prepare consumers in accessing treatment.

**"Medication"** means any prescription or over-the-counter drug that is taken orally, injected, inserted, applied topically, or otherwise administered by staff or self-administered by the consumer for the appropriate treatment or prevention of medical or psychiatric issues.

**"Medication assisted treatment"** means the use of medications, in combination with counseling and behavioral therapies, to provide a whole patient approach to the treatment of substance use disorders.

**"Medication-self administration"** means the consumers administer their own medication to themselves, or their children, with staff observation.

**"Neglect"** means:

- (A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;
- (B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;
- (C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or
- (D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

**"Non-medical withdrawal management"** means withdrawal management services for intoxicated consumers and consumers withdrawing from alcohol or other drugs presenting with no apparent medical or neurological symptoms as a result of their use of substances. Corresponding ASAM Service Level: Level 3.2-WM, Clinically managed Residential Withdrawal Management. Withdrawal management is intended to stabilize and prepare consumers in accessing treatment.

**"Objectives"** means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

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

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

"**OSDH**" means the Oklahoma State Department of Health.

"**Outpatient services**" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. For substance use disorder treatment services, the corresponding ASAM Treatment Level is Level I, Outpatient Treatment.

~~"**Outreach**" means the process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter into and accept the service delivery system.~~

"**Peer Recovery Support Specialist**" or "**PRSS**" means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"**Performance Improvement**" or "**PI**" means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms, include continuous quality improvement, continuous improvement, organization-wide quality improvement, and total quality management.

"**Personnel record**" means a chart or file containing the employment history and actions relevant to individual employee or volunteer activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials, etc.

"**PICIS**" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators, and consumers. It includes unique identifiers for agencies, staff, and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, community residential mental health facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"**Play therapy**" means a form of action therapy that uses, but is not limited to, sand play, fairy tales, art and puppetry to encourage communication in children who have inadequate or immature verbalization skills or who verbalize excessively due to defensiveness.

"**Policy**" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of services.

"**Prevention**" means the assessment, development, and implementation of strategies designed to prevent the adverse effects of mental illness, substance use disorders, addiction, and trauma.

"**Procedures**" means the written methods by which policies are implemented.

"**Process**" means information about what a program is implementing and the extent to which the program is being implemented as planned.

"**Program**" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the consumers or patients.

"**Progress notes**" means a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"**Psychiatrist**" means a licensed physician who specializes in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology or has equivalent training or experience.

"**Psychotherapy**" or "**Therapy**" means a goal directed process using generally accepted clinical approaches provided face-to-face by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate with consumers in individual, group, or family settings to promote positive, emotional, or behavioral change.

"**Readiness to change**" means one dimension to be considered in consumer placement, continued stay, and transition and is an evaluation of the consumer's current emotional and cognitive awareness of the need to change, coupled with a commitment to change.

"**Recovery**" means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized, and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"**Recovery/living environment**" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's current recovery environment, current relationships, degree of support for recovery, current housing, employment situation, availability of alternatives, and historical information as it impacts on level of care decision making.

"**Registered nurse**" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to practice as a registered nurse.

"**Rehabilitation services**" means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life. Rehabilitation services for substance use disorders are also referred to as skill development services.

"**Relapse**" means the process which may result in the return to the use of substances after a period of abstinence.

"**Relapse potential, continued use, or continued problem potential**" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's attitudes, knowledge, and coping skills, as well as the likelihood that the consumer will relapse from a previously achieved and maintained abstinence and/or stable and healthy mental health function. If an individual has

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not yet achieved abstinence and/or stable and healthy mental health function, this dimension assesses the likelihood that the individual will continue to use alcohol or other drugs and/or continue to have mental health problems.

**"Residential treatment-substance abuse"** means treatment for a consumer in a live-in setting which provides a regimen consisting of twenty-four (24) treatment hours per week. This level of care should correspond with the ASAM Service Level: Level 3.5, Clinically managed High-Intensity Residential Services.

**"Residential treatment for persons with children-substance abuse"** means a residential treatment facility that includes services for the recovering person's children who will reside with him or her in the residential facility. Corresponding ASAM Service Level (Parent Only): Level 3.5 Clinically Managed High-Intensity Residential Services.

**"Screening"** means the process to determine whether the person seeking assistance needs further comprehensive assessment.

**"Service plan" or "Treatment plan"** means the document used during the process by which a LBHP or a Licensure Candidate and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

**"Service Provider"** means a person who is allowed to provide treatment services within the regulation and scope of their certification level or license.

**"Significant others"** means those individuals who are, or have been, significantly involved in the life of the consumer.

**"Socialization"** means all activities, which encourage interaction and the development of communication, interpersonal, social, and recreational skills and can include consumer education.

**"Substance-related and addictive disorders"** means a substance-related disorder involving problems related to the use of ten distinct classes of drugs: alcohol; caffeine; cannabis; hallucinogens; inhalants; opioids; sedatives, hypnotics and anxiolytics; stimulants; tobacco; and other (unknown) substances. Substance-related disorders fall into one of two categories, substance use disorders and substance induced disorders. A substance use disorder is a cluster of cognitive, behavioral and physiological symptoms indicating the consumer continues using the substance(s) despite significant substance-related problems. A substance-induced disorder is a reversible substance-specific syndrome due to the recent ingestion of a substance. Addictive disorders involve repetitive clusters of behaviors that activate reward systems similar to those activated by drugs and create behavioral symptoms comparable to those produced by substance use disorders such as compulsive gambling.

**"Substance use disorder treatment services"** means the coordination of treatment activities for consumers by service provider that includes, but is not limited to, the following:

- (A) Screening, diagnostic impression, and assessment.
- (B) Treatment planning and revision, as necessary.

(C) Continuing care review to assure continuing stay and discharge criteria are met.

(D) Case management services.

(E) Reports and record keeping of consumer related data.

(F) Consultation that facilitates necessary communication in regard to consumers.

(G) Discharge planning that assists consumers in developing continuing care plans and facilitates transition into post-treatment recovery.

(H) Individual, group, and family therapy.

(I) Rehabilitation services.

(J) Peer recovery support services.

(K) Crisis intervention services.

**"Substance-use disorders"** means alcohol or drug dependence or psychoactive substance use disorder as defined by current DSM criteria or by other standardized and widely accepted criteria.

**"Substance withdrawal"** means a state of being in which a group of symptoms of variable clustering and degree of severity occur on cessation or reduction of use of a psychoactive substance that has been taken repeatedly, usually for a prolonged period and/or in high doses. The syndrome may be accompanied by signs of physiological disturbance. Onset and course of the withdrawal state are time-limited and are related to the type of substance and the dose being used immediately before abstinence.

**"Supportive services"** refers to assistance with the development of problem-solving and decision making skills to maintain or achieve optimal functioning within the community and can include consumer education.

**"Therapeutic hour(s)"** means the amount of time in which the consumer is engaged with a service provider identifying, addressing, and/or resolving issues that are related to the consumer's treatment plan.

**"Tobacco"** means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

**"Trauma informed capability"** means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

**"Treatment"** means the broad range of emergency, inpatient, intermediate and outpatient services and care including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation, and career counseling. [43A O.S. § 3-403(11)].

**"Treatment hours - residential"** means the structured hours in which a consumer is involved in receiving professional services to assist in achieving recovery.

**"Treatment session-outpatient"** means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

**"Volunteer"** means any person who is not on the program's payroll, but provides services and fulfills a defined

role within the program and includes interns and practicum students.

"Wellness" means the condition of good physical, mental, and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"Withdrawal Management" means the process of eliminating the toxic effects of substances from the body. Withdrawal management methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

SUBCHAPTER 5. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:18-5-3.2. Standards for food service

The following shall be applicable to all residential facilities and to any outpatient facilities which provide an on-premise meal service.

(1) Storage, preparation, dishwashing, and serving of food and ice shall be in compliance with the requirements of the OSDH regulations governing public feeding establishments.

(2) Dishwashing may be accomplished by either mechanical dishwashers or by approved manual methods. If mechanical dishwashers are used, the final rinse shall be in clear water of 180 degrees Fahrenheit, or in compliance with the OSDH regulations. Manual procedures, if used, shall follow a written procedure which outlines the steps followed, temperature of cleaning and rinsing solutions, detergents and chemicals used, etc., and shall be specifically approved by the local or OSDH.

(3) Equipment used in the preparation and handling of food shall bear the seal of or document compliance with the National Sanitation Foundation (NSF) or equivalent, or with OSDH standards or other appropriate regulatory body.

(4) Ice used in contact with food or drink shall come from a source approved by the OSDH. Transportation, storage, handling, and dispensing shall be in a sanitary manner approved by the OSDH.

(2) Each facility shall have an annual inspection completed by the OSDH free from any pending violations.

450:18-5-10. Community information, consultation, outreach, and street outreach [REVOKED]

(a) Each facility shall, as a regular part of consumer based planning and services provision, provide the community with information, consultation, and outreach services to aid in reaching and attracting its specified target populations. These outreach efforts shall be conducted by staff members or program approved volunteers.

(b) These services shall be designed to:

- (1) Reach and attract the facility's target population;
(2) Provide information on substance use disorders and related issues to the public; and

(3) Provide information to the public regarding the facility's services.

(e) These services include, but are not limited to, presentations or outreach efforts to community groups, organizations, and individuals.

(d) Written documentation of all community information, consultation, and outreach services shall be maintained and shall include the following:

- (1) Names of persons or organizations receiving the services;
(2) Names of persons providing the service;
(3) Number of persons attending;
(4) Locations at which the services were provided;
(5) Date services were provided; and
(6) Description of the services provided.

(e) Facilities providing street outreach services shall have written policies and procedures describing the processes for systematically reaching a community for the purpose of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter and accept the treatment services system.

(f) Compliance with 450:18-5-10 may be determined by a review of facility policy and procedures, documentation of community information, consultation, and outreach services, PICIS documentation and reports, and any other supporting facility documentation.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

PART 1. RECORD SYSTEM [REVOKED]

450:18-7-1. Purpose. [REVOKED]

All facilities providing services in one or more levels of care shall document and maintain records as described in Subchapter 7.

450:18-7-2. Consumer records, basic requirements [REVOKED]

(a) Consumer records shall be developed and maintained to ensure that all appropriate individuals have access to relevant clinical and other information regarding the consumer. The consumer record shall communicate information in a manner that is organized, clear, complete, current, and legible. Consumer records shall contain, if applicable, the following:

- (1) Entries in consumer records shall be legible, signed with first name or initial and last name of the person making the entry;
(2) The consumer shall be identified by name on each page of the consumer record and each screen of an electronic record;
(3) A signed consent for treatment shall be obtained before any person can be admitted into treatment at a facility, unless the admission was on an involuntary basis;

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- (4) A signed consent for follow up, referral and payment for subsequent services shall be obtained before any contact after discharge can be made;
- (5) An admission assessment;
- (6) A biopsychosocial assessment. Those facilities providing Medically Supervised Withdrawal Management or Non-Medical Withdrawal Management are exempt from this requirement;
- (7) Service plans. Those facilities providing Medically Supervised Withdrawal Management or Non-Medical Withdrawal Management are exempt from 450:18-7-81 and 450:18-7-83;
- (8) Progress notes;
- (9) A continuing care plan;
- (10) Consultation reports;
- (11) Psychological or psychometric testing;
- (12) Records and reports from other entities;
- (13) Medication records; and
- (14) A discharge summary.

(b) Compliance with 450:18-7-2 may be determined by a review of policies and procedures, treatment records, performance improvement guidelines, interviews with staff, and other facility documentation.

## 450:18-7-4. Consumer record storage, retention, and disposition [REVOKED]

(a) Each facility shall have written policies and procedures which:

- (1) Limits access to consumer records to persons with a need to know.
- (2) Requires consumer records be maintained in locked equipment which is kept within a locked room, vehicle, or premise.
- (3) With regard to closed consumer records, requires:
  - (A) Confidential storage under lock and secure measures;
  - (B) A stated period of retention; and
  - (C) Records disposition and destruction under confidential conditions.

(b) EXCEPTION: With regard to 450:18-7-4(a)(3)(B), facilities operated by ODMHSAS shall comply with the provisions of the Records Disposition Schedule for said facility as approved by the Oklahoma Archives and Records Commission [67 O.S. § 305 and OAC 60:1-1-2].

(c) Compliance with 450:18-7-4(a) and, if applicable, 450:18-7-4(b) may be determined by a review of facility policies and procedures, and any other supporting facility documentation.

## PART 3. SCREENING AND ASSESSMENT

### 450:18-7-21. Clinical record content, screening and assessment

(a) All facilities shall complete a face-to-face screening with each individual to determine appropriateness of further assessment.

(b) The facility shall maintain written screening policies and procedures that, at a minimum include: (1) how the screening is to be conducted; (2) that the screening conducted is an integrated screening to identify both immediate and ongoing needs, which includes screening for whether the consumer is a risk to self or others, including suicide risk factors; and (3) how the consumer is assisted with admission for services, and/or with accessing other appropriate services.

(c) All facilities shall assess each consumer for appropriateness of admission to the treatment program. Each presenting consumer for substance use disorder treatment shall be assessed, according to ASAM criteria, which includes a list of symptoms for all six dimensions and each level of care to determine a clinically appropriate placement in the least restrictive level of care. The ODMHSAS designated ASAM Service Level instrument must be completed to determine clinically appropriate residential/inpatient level of care (ASAM Level 3) treatment placement prior to admission into the treatment facility. Facilities must ensure that a consumer's refusal of a particular service does not preclude the consumer from accessing other needed mental health or substance-related or addictive disorder treatment services. Should the service provider determine the consumer's needs cannot be met within the facility, clinical assessments and referrals for the consumer shall be documented.

(d) Any consumer seeking admission to inpatient or residential services, including medically-supervised withdrawal management, while under the influence or undergoing withdrawal of alcohol or drugs, shall be assessed prior to admission for medical needs. The written criteria to be used for medical needs assessment of persons under the influence or undergoing withdrawal of alcohol or drugs, and the protocols for determining when physician review of the assessment is needed, shall be approved by the facility's consulting physician.

(e) Upon determination of appropriate admission, consumer assessment demographic information shall contain, but not be limited to, the following:

- (1) Date of initial contact requesting services;
- (2) Date of the screening and/or assessment;
- (3) Consumer's name;
- (4) Gender;
- (5) Birthdate;
- (6) Home address;
- (7) Telephone number;
- (8) Referral source;
- (9) Reason for referral;
- (10) Significant other to be notified in case of emergency; and
- (11) PICIS data core content, if the facility reports on PICIS.

(f) Compliance with 450:18-7-21 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Intake protocols;
- (3) assessment instruments;
- (4) Treatment records;
- (5) Interviews with staff and consumers; and
- (6) Other facility documentation.



**450:18-7-23. Biopsychsocial assessment**

(a) All programs shall complete a biopsychsocial assessment using the Addiction Severity Index (ASI) for adults or the Teen Addiction Severity Index (T-ASI) for adolescents, ~~which~~ that gathers sufficient information to assist the consumer in developing an individualized service plan and utilizes standardized tools such as the Addiction Severity Index (ASI) for adults or the Teen Addiction Severity Index (T-ASI) for adolescents. The assessment must also list the client's past and current psychiatric medications, if applicable. The assessment must be completed by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate. Licensure candidate signatures must be co-signed by a fully-licensed LBHP in good standing.

(b) Compliance with 450:18-7-23 may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Biopsychsocial assessment instruments;
- (3) Consumer records;
- (4) Case management assessments;
- (5) Interviews with staff and consumers; and
- (6) Other facility documentation.

**450:18-7-24. Biopsychsocial assessment, time frame [REVOKED]**

(a) ~~The assessment shall be completed during the admission process and within specific timelines established by the facility but no later than the following time frames:~~

- ~~(1) Residential services: The assessment shall be completed during the admission process, not to exceed forty eight (48) hours after admission procedures are initiated;~~
- ~~(2) Halfway house services: The assessment shall be completed during the admission process, not to exceed forty eight (48) hours after admission procedures are initiated;~~
- ~~(3) Intensive outpatient services: The assessment shall be completed by the fourth visit;~~
- ~~(4) Outpatient services: The assessment shall be completed by the end of the fourth visit.~~

~~(b) In the event of a consumer re-admission after one (1) year of the last biopsychsocial assessment, a new biopsychsocial assessment shall be completed. If readmission occurs within one (1) year after the last biopsychsocial assessment, an update shall be completed.~~

~~(c) Compliance with 450:18-7-24 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Biopsychsocial assessment instruments;~~
- ~~(3) Treatment records;~~
- ~~(4) Case management assessments;~~
- ~~(5) Interviews with staff and consumers; and~~
- ~~(6) Other facility documentation.~~

**450:18-7-25. Biopsychsocial assessments of children accompanying a parent into treatment [REVOKED]**

~~(a) All programs shall document biopsychsocial assessments for the parent and for children accompanying their parent into treatment who are receiving services from the facility:~~

~~(1) Assessments of children (including infants) accompanying their parent into treatment (residential or halfway house levels of care) who are receiving services from the facility shall include the following items in addition to the requirements in 450:18-7-23:~~

- ~~(A) parent-child relationship;~~
- ~~(B) physical and psychological development;~~
- ~~(C) educational needs;~~
- ~~(D) parent related issues; and~~
- ~~(E) family issues related to the child.~~

~~(2) Assessments of the parent bringing their children into treatment (residential or halfway house levels of care) shall include the following items, in addition to the requirements of 450:18-7-23:~~

- ~~(A) parenting skills (especially in consideration of the child's issues);~~
- ~~(B) knowledge of age appropriate behaviors;~~
- ~~(C) parental coping skills;~~
- ~~(D) personal issues related to parenting; and~~
- ~~(E) family issues as related to the child.~~

~~(b) Compliance with 450:18-7-25 may be determined by a review of the following:~~

- ~~(1) Policy and procedure;~~
- ~~(2) Biopsychsocial assessment instruments;~~
- ~~(3) Treatment records;~~
- ~~(4) Case management assessments;~~
- ~~(5) Interviews with staff and consumers; and~~
- ~~(6) Other facility documentation.~~

**450:18-7-26. Biopsychsocial assessments of children accompanying a parent into treatment, time frame [REVOKED]**

~~(a) The assessment shall be completed as soon as possible after admission and within specific timelines established by the facility but no later than:~~

- ~~(1) Residential: The assessment shall be completed during the admission process, not to exceed forty eight (48) hours after admission procedures are initiated;~~
- ~~(2) Halfway house: The assessment shall be completed during the admission process, not to exceed forty eight (48) hours after admission procedures are initiated.~~

~~(b) In the event of a consumer readmission within one (1) year of the last biopsychsocial assessment, a photocopy of the latest biopsychsocial assessment and a biopsychsocial update will suffice.~~

~~(c) Compliance with 450:18-7-26 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Biopsychsocial assessment instruments;~~
- ~~(3) Treatment records;~~
- ~~(4) Case management assessments;~~

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- (5) Interviews with staff and consumers; and
- (6) Other facility documentation.

## PART 7. CASE MANAGEMENT

### 450:18-7-61. Case management services

(a) Case management efforts shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development and consumer advocacy provided in various settings based on consumer need.

(b) As allowed per Title 43A O.S. Section 3-318, case management services shall be offered to all adults and children who have substance-related disorders, and to their family members, if applicable, to ensure access to needed services.

(c) Case management shall be co-occurring disorder capable.

(d) Case management services shall be planned referral, linkage, monitoring and support, and advocacy assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure. Activities include:

(1) Completion of strengths based assessment for the purpose of individual plan of care development; ~~which shall include evidence that the following were evaluated:~~

~~(A) Consumer's level of functioning within the community;~~

~~(B) Consumer's job skills and potential; and/or educational needs;~~

~~(C) Consumer strengths and resources;~~

~~(D) Consumer's financial needs;~~

~~(E) Consumer's legal needs;~~

~~(F) Consumer's present living situation and support system;~~

~~(G) Consumer's use of substances and orientation to changes related to substance use;~~

~~(H) Consumer's medical and health status;~~

~~(I) Consumer's needs or problems which interfere with the ability to successfully function in the community; and~~

~~(J) Consumer's goals.~~

(2) Development of case management care plan which can be reflected as a part of the comprehensive service plan;

(3) Referral, linkage and advocacy to assist with gaining access to appropriate community resources;

(4) Contacts with other individuals and organizations that influence the recipient's relationship with the community, i.e., family members, law enforcement personnel, landlords, etc.;

(5) Monitoring and support related to the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress;

(6) Follow-up contact with the consumer if they miss any scheduled appointments (including physician/medication, therapy, rehabilitation, or other supportive service appointments as delineated on the service plan); and

(7) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist consumer(s) from progression to a higher level of care.

(e) Compliance with 450:18-7-61 shall be determined by on-site observation and a review of the clinical records and written policies and procedures.

### 450:18-7-63. Case management services for consumers admitted to higher levels of care

(a) Case managers from the outpatient facilities to which the consumer will be discharged shall assist the consumer and withdrawal management/residential/halfway house facility, psychiatric inpatient unit, and/or CBSCC, with discharge planning for consumer returning to the community, ~~pursuant to appropriately signed releases and adherence to applicable privacy provisions;~~

(b) Consumers discharging from a withdrawal management/residential/halfway house facility shall be offered case management and other supportive services. This shall occur as soon as possible, but shall be offered no later than one (1) week post-discharge.

(c) Compliance with 450:18-7-63 shall be determined by a review of the clinical records; staff interviews; and information from ODMHSAS withdrawal management/residential/halfway house facilities, operated psychiatric inpatient unit, and CBSCC facilities.

## PART 9. SERVICE PLANNING

### 450:18-7-81. Service Plan

(a) A service plan shall be completed for each adult and child consumer, including dependent children receiving services from a residential or halfway house facility. The service plan is performed with the active participation of the consumer and a support person or advocate, if requested by the consumer. In the case of children under the age of sixteen (16), it is performed with the participation of the parent or guardian, if allowed by law, and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges, and problems. The service plan shall be completed by a LBHP or Licensure Candidate.

(b) The service plan is developed after and based on information obtained in the assessment and includes the evaluation of the assessment information by the clinician and the consumer.

(c) The service plan must have an overall general focus on recovery which, for adults, may include goals like employment, independent living, volunteer work, or training, and for children, may include areas like school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) ~~Comprehensive service plan contents shall address the following:~~

- ~~(1) Consumer strengths, needs, abilities, and preferences;~~
- ~~(2) Identified presenting challenges, needs, and diagnosis;~~
- ~~(3) Goals for treatment with specific, measurable, attainable, realistic, and time limited objectives;~~
- ~~(4) Type and frequency of services to be provided;~~
- ~~(5) Description of consumer's involvement in, and response to, the service plan;~~
- ~~(6) The service provider who will be rendering the services identified in the service plan; and~~
- ~~(7) Discharge criteria that are individualized for each consumer and beyond that which may be stated in the ASAM criteria.~~

(e) ~~Service plan updates shall address the following:~~

- ~~(1) Progress on previous service plan goals and/or objectives;~~
- ~~(2) A statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;~~
- ~~(3) Change in goals and/or objectives based upon consumer's progress or identification of new needs and challenges;~~
- ~~(4) Change in frequency and/or type of services provided;~~
- ~~(5) Change in staff who will be responsible for providing services on the plan; and~~
- ~~(6) Change in discharge criteria.~~

~~(f)~~ Service plan updates should occur at a minimum of every six (6) months during which outpatient services are provided. Service plan updates shall occur at a minimum of once every thirty (30) days during which services are provided for levels of care with ASAM Level 3 (residential and inpatient services). ~~(g)~~ Service plans, both comprehensive and update, must include dated signatures ~~for~~of the consumer (if over age 14), the parent/guardian (if the consumer is under age sixteen (16) and allowed by law), and the LBHP or Licensure Candidate. Licensure candidate signatures must be co-signed by a fully-licensed LBHP in good standing. Signatures must be obtained after the service plan is completed.

~~(h)~~ Compliance with 450:18-7-81 shall be determined by a review of the clinical records, interviews with staff and consumers, and other facility documentation.

**450:18-7-82. Comprehensive Service plans, time frames [REVOKED]**

(a) ~~Comprehensive service plans shall be completed according to the time frames outlined by the facility, but no later than:~~

- ~~(1) Residential services, four (4) days;~~
- ~~(2) Halfway house services, four (4) days;~~
- ~~(3) Intensive outpatient services, sixth (6th) visit;~~
- ~~(4) Outpatient services, sixth (6th) visit.~~

(b) ~~Compliance with 450:18-7-82 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Treatment protocols;~~

- ~~(3) Clinical services manuals;~~
- ~~(4) Service plan forms;~~
- ~~(5) Consumer records;~~
- ~~(6) Interviews with staff and consumers; and~~
- ~~(7) Other facility documentation.~~

**PART 11. PROGRESS NOTES**

**450:18-7-101. Progress notes**

(a) Progress notes shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, the consumer's response to the services provided, and the consumer's progress in treatment.

(b) Progress notes, unless defined otherwise by level of care, shall address the following:

- ~~(1) date;~~
- ~~(2) consumer's name;~~
- ~~(3) start and stop time for each timed treatment session or service;~~
- ~~(4) signature of the service provider;~~
- ~~(5) credentials of the service provider;~~
- ~~(6) specific service plan needs, goals and/or objectives addressed;~~
- ~~(7) services provided to address needs, goals, and/or objectives;~~
- ~~(8) progress or barriers to progress made in treatment as it relates to the goals and/or objectives;~~
- ~~(9) consumer (and family, when applicable) response to the session or service provided; and~~
- ~~(10) any new needs, goals and/or objectives identified during the session or service.~~

(b) Progress notes must include the consumer's name, be signed by the service provider, and include the service provider's credentials.

(c) Outpatient staff must document each visit or transaction, except for assessment completion or service plan development, including missed appointments.

(d) Compliance with 450:18-7-101 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Consumer records;
- (3) Progress notes;
- (4) Interviews with staff; and
- (5) Other facility documentation.

**PART 13. DISCHARGE PLANNING**

**450:18-7-121. Discharge assessment**

(a) All facilities shall assess each consumer for appropriateness of discharge from a treatment program.—~~Each consumer shall be assessed using ASAM criteria that includes a list of symptoms for all six dimensions and each of the levels of care, to determine a clinically appropriate placement in the least restrictive level of care. This organized process involves a professional determination for appropriate placement to a specific~~

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level of care based on the consumer's severity of symptoms and current situations.

(b) Compliance with 450:18-7-121 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Continuing care plans;
- (3) Discharge assessments;
- (4) Discharge summaries;
- (5) Progress notes;
- (6) Consumer records;
- (7) Interviews with staff and consumers; and
- (8) Other facility documentation.

## **450:18-7-122. Transition/discharge plan**

(a) The facility shall assist the consumer to obtain services that are needed, but not available within the facility, and/or in transitioning from one level of care to another, and/or discharging from a facility. Transition/discharge plans shall be developed with the knowledge and cooperation of the consumer.

(b) A written plan of recommendations and specific referrals for implementation of continuing care services, including medications, shall be prepared for each consumer ~~who meets the ASAM dimensional continued service criteria, in each level of care. The discharge plan is to include, at a minimum, recommendations for continued treatment services and other appropriate community resources. Appointments for outpatient therapy and other services, as applicable, should be scheduled prior to discharge from residential service settings.~~ Development of the transition/discharge plan shall begin no later than two (2) weeks after admission into residential/inpatient level of care (ASAM Level 3) service settings.

~~(c) The consumer's response to the transition/discharge plan shall be noted in the plan or a note shall be made that the consumer was not available and why. In the event of the death of a consumer, a summary statement including this information shall be documented in the record.~~

~~(c)~~ The transition/discharge plan shall be included in the discharge summary.

~~(e)~~ Compliance with 450:18-7-122 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Continuing care plans;
- (3) Discharge assessments;
- (4) Discharge summaries;
- (5) Progress notes;
- (6) Consumer records;
- (7) Interviews with staff and consumers; and
- (8) Other facility information.

## **SUBCHAPTER 9. SERVICES SUPPORT AND ENHANCEMENT**

### **PART 1. STAFF SUPPORT [REVOKED]**

## **450:18-9-1. Purpose [REVOKED]**

~~The purpose of this subchapter is to set forth the rules regarding required components which support and enhance treatment services.~~

## **SUBCHAPTER 13. SUBSTANCE USE DISORDER TREATMENT SERVICES**

### **PART 1. LEVELS OF CARE**

## **450:18-13-2. HIV/STD/AIDS education, testing and counseling services**

(a) Every facility shall provide or refer for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, testing, and counseling services for drug dependent persons, and every facility shall:

- (1) Provide or refer for educational sessions regarding HIV/STD/AIDS) to consumers and the significant other(s) of the consumer;
- (2) Provide or refer all drug dependent persons, and their identified significant others for HIV/STD/AIDS testing and counseling;
- (3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and
- (4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.

(b) Compliance with 450:18-13-2 shall be determined by a review of the following: written policies and procedures; consumer records; and other supporting facility records and documentation.

## **PART 3. OUTPATIENT SERVICES, ASAM LEVEL 1**

## **450:18-13-21. Outpatient services**

(a) Outpatient services shall be organized non-residential services with scheduled treatment sessions that accommodate employed and parenting consumers' schedules and offer treatment services during the day, evening, or weekends. Services shall be designed to provide a variety of professional diagnostic and primary substance-related and/or addictive disorder treatment services for consumers their families, and significant others, whose emotional and physical statuses allows them to function in their usual environments.

(b) The program shall maintain written programmatic descriptions and operational methods that address the following:

- (1) Environment:
  - (A) The facility shall be publicly accessible and accommodate office space, individual and group space, secure record storage, protect consumer confidentiality, and provide a safe, welcoming, culturally, and age appropriate environment.

(B) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

(C) For facilities that do not provide twenty-four (24) hour services, the facilities' hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted either on the building directory or the facility's office door.

(2) Support system:

(A) The facility shall maintain written policies and procedures for handling medical emergencies and an emergency medical number shall be posted for use by staff; and

(B) The facility shall have available specialized professional consultation or professional supervision.

(3) Staff:

(A) The facility shall maintain documentation that service providers are knowledgeable regarding biopsychosocial dimensions of substance-related and addictive disorders, evidenced based practices, cultural, age, and gender specific issues, and co-occurring disorder issues.

~~(B) Staff shall be, at least, eighteen (18) years of age.~~

~~(C) The facility shall document in personnel records all education, training, and experience stated above prior to service providers providing direct care services.~~

(4) Treatment services:

(A) Substance-related and addictive disorders treatment services shall be provided to assess and address the individual needs of each consumer. These services shall include, but not be limited to, therapy, rehabilitation services, ~~educational group~~, case management services, and crisis intervention;

(i) **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a generally accepted clinical approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities.

(ii) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, or Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). These services include educational and supportive services regarding

independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan.

(iii) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Services shall be provided in accordance with OAC 450:18-13-221.

(iv) **Case Management.** Case management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinically indicated. These services include planned referral, linkage, monitoring, support, and advocacy provided in partnership with a consumer to assist that consumer with self-sufficiency and community tenure.

(v) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(B) Frequency of services shall be determined by mutual agreement between the service provider and the consumer; ~~and~~

(C) When appropriate, and with the consumer's consent in accordance with state and federal laws, guidelines, and standards, the treatment program coordinates with other treatment providers that the consumer is currently utilizing; ~~and~~

(D) Documentation shall reflect each consumer received and/or was offered, at minimum, individual, group, and/or family therapy, rehabilitation services, case management services and, if appropriate, crisis intervention services.

(c) Compliance with 450:18-13-21 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Licenses;
- (3) Treatment protocols;
- (4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;
- (5) Treatment records;
- (6) Interviews with staff and consumers; and
- (7) Other supporting facility records.

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## 450:18-13-22. Outpatient services, admission criteria [REVOKED]

(a) Admission to outpatient services shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policy and procedures.

(b) Compliance with 450:18-13-22 may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Admission protocols;
- (3) Admission assessment instruments;
- (4) Consumer records;
- (5) Interviews with staff and consumers; and
- (6) Other facility documentation.

## 450:18-13-23. Outpatient services, discharge criteria [REVOKED]

(a) Programmatic discharge from outpatient services shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policy and procedures.

(b) Compliance with 450:18-13-23 may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Discharge protocol;
- (3) Discharge assessment instruments;
- (4) Continuing care plans;
- (5) Discharge summaries;
- (6) Consumer records;
- (7) Interviews with staff and consumers; and
- (8) Other facility records.

## PART 7. MEDICALLY SUPERVISED WITHDRAWAL MANAGEMENT, ASAM LEVEL 3.7

## 450:18-13-62. Medically-supervised withdrawal management, admission criteria [REVOKED]

(a) Admission to medically supervised withdrawal management shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policies and procedures.

(b) Compliance with 450:18-13-62 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Admission assessment instruments;
- (3) Admissions protocols;
- (4) Treatment records;
- (5) Progress notes;
- (6) Interviews with staff and consumers;
- (7) Publicly posted information; and
- (8) Other supporting facility documentation.

## 450:18-13-63. Medically-supervised withdrawal management, discharge criteria [REVOKED]

(a) Programmatic discharge from medically supervised withdrawal management shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policies and procedures.

(b) Compliance with 450:18-13-63 may be determined by a review of the following:

- (1) Discharge policies and procedures;
- (2) Discharge protocols;
- (3) Discharge and continuing care documentation;
- (4) Treatment records;
- (5) Discharge summaries;
- (6) Interviews with staff and consumers; and
- (7) Other facility documentation.

## PART 11. RESIDENTIAL TREATMENT, ASAM LEVEL 3.5

### 450:18-13-101. Residential treatment for adults

(a) Substance use disorder treatment in a residential setting shall provide a planned regimen of twenty-four (24) hours a day, seven (7) days a week of professionally directed evaluation, care, and treatment in a permanent program location. Consumers shall participate in at least twenty-four (24) treatment hours of substance use disorder treatment services per week. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

- (1) Support system:
  - (A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week;
  - (B) The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed physician; and an emergency medical number shall be conspicuously posted for staff use; and
  - (C) The facility shall maintain written policies and procedures for the handling of clinical issues during times in which clinical staff are not at the facility.
- (2) Staff:
  - (A) The facility shall maintain documentation that service providers are knowledgeable regarding the biopsychosocial dimensions of substance use disorders, evidenced-based practices, culture, age, and gender related issues, and co-occurring disorder issues.
  - (B) Staff shall be at least eighteen (18) years of age.
  - (C) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.
  - (D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week.

(3) Treatment services. Daily (twenty-four [24] hours a day, seven [7] days a week) substance use disorder treatment services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to:

(A) **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a generally accepted clinical approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. ~~For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six. Therapy must be provided at least one (1) hour per week.~~

(B) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, or Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). These services include educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. ~~Rehabilitation services must be provided at least seven (7) hours per week. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.~~

(C) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. ~~Peer recovery support services may be offered to adult consumers with substance use disorders, including co-occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221. A maximum of seven (7) hours per week of peer recovery support services may count toward the weekly required treatment hours.~~

(D) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinically indicated. Care management is case management provided in residential settings that includes assessment, development of a care plan, and referral and linkage to community supports and community-based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.

(E) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(F) Documentation shall reflect each consumer received and/or was offered, at minimum, individual, group, and/or family therapy, rehabilitation services, care management services and, if appropriate, peer recovery support services and crisis intervention services.

(4) ~~Treatment documentation:~~

~~(A) All documentation for therapy, crisis intervention and case management must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:~~

- ~~(i) Date;~~
- ~~(ii) start and stop time for each session;~~
- ~~(iii) Specific problems, goals, and objectives addressed;~~
- ~~(iv) type of service and method(s) used to address problems;~~
- ~~(v) Summary of progress made toward goals and objectives, or lack of;~~
- ~~(vi) Consumer response to overall treatment services;~~
- ~~(vii) Any new problems, goals, or objectives identified during the session;~~
- ~~(viii) dated signature and credentials of the service provider completing the documentation; and~~
- ~~(ix) Consumer's name.~~

~~(B) Documentation for rehabilitation and peer recovery support services must include daily member sign in/sign out record of member attendance (including date, time, type of service and service focus), and a daily progress note or a summary progress note weekly.~~

~~(C) Documentation shall reflect each consumer has received a minimum of twenty four (24) hours of treatment services each week, including the treatment services required in 18-13-101(b)(3), in addition to life skills, recreational, and self-help supportive meetings.~~

~~(54) The program provides documentation of the following community living components:~~

- ~~(A) A written daily schedule of activities.~~
- ~~(B) Quarterly meetings between consumers and the program personnel.~~
- ~~(C) Recreational activities to be utilized on personal time.~~
- ~~(D) Personal space for privacy.~~
- ~~(E) Security of consumer's property.~~

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- (F) A clean, inviting, and comfortable setting.
  - (G) Evidence of individual possessions and decorations.
  - (H) Daily access to nutritious meals and snacks.
  - (I) Policy addressing separate sleeping areas for the consumers based on:
    - (i) Gender;
    - (ii) Age; and
    - (iii) Needs.
- (c) Compliance with 450:18-13-101 may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:
- (1) Licenses;
  - (2) Policies and procedures;
  - (3) Treatment protocols;
  - (4) Personnel record, documentation of professional licensure or certification, documentation of professional work experience, and ongoing in-service trainings;
  - (5) Treatment records; and
  - (6) Interviews with staff and consumers.

### 450:18-13-101.1. Intensive residential treatment for adults [REVOKED]

- (a) Intensive substance use disorder treatment in a residential setting shall provide a planned regimen of twenty four (24) hours a day, seven (7) days a week of professionally directed evaluation, care, and treatment in a permanent program location. Consumers shall participate in at least thirty seven (37) treatment hours of substance use disorder treatment services per week. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.
- (b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:
- (1) **Support system:**
    - (A) A licensed psychiatrist shall be available, at least by telephone, twenty four (24) hours per day, seven (7) days per week;
    - (B) The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed psychiatrist; and an emergency medical number shall be conspicuously posted for staff use; and
    - (C) The facility shall maintain written policies and procedures for the handling of clinical issues during times in which clinical staff are not at the facility.
  - (2) **Staff:**
    - (A) The facility shall maintain documentation that service providers are knowledgeable regarding the biopsychosocial dimensions of substance use disorders, evidenced based practices, culture, age, and gender related issues, and co-occurring disorder issues.
    - (B) Staff shall be at least eighteen (18) years of age.
    - (C) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.

- (D) The facility shall have staff members on site twenty four (24) hours per day, seven (7) days per week.
- (3) ~~Treatment services. Daily (twenty four [24] hours a day, seven [7] days a week) substance use disorder treatment services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to:~~

~~(A) **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a generally accepted clinical approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals. Therapy must be provided at least four (4) hours per week.~~

~~(B) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). These services include educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. Rehabilitation services must be provided at least seven (7) hours per week. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.~~

~~(C) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Peer recovery support services may be offered to adult consumers with substance use disorders, including co-occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221. A maximum of eleven (11) hours per week of peer recovery support services may count toward the weekly required treatment hours.~~

~~(D) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinically indicated. Care management is case management in residential settings that includes assessment, development of a care plan, and referral and linkage to community supports and community based or lower level of care services to~~



promote continued recovery after the individual discharges from the treatment facility.

~~(E) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.~~

~~(4) Treatment documentation:~~

~~(A) All documentation for therapy, case management and crisis intervention must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:~~

- ~~(i) Date;~~
- ~~(ii) start and stop time for each session;~~
- ~~(iii) Specific problems, goals, and objectives addressed;~~
- ~~(iv) type of service and method(s) used to address problems;~~
- ~~(v) Summary of progress made toward goals and objectives, or lack of;~~
- ~~(vi) Consumer response to overall treatment services;~~
- ~~(vii) Any new problems, goals, or objectives identified during the week;~~
- ~~(viii) Dated signature and credentials of the service provider completing the documentation; and~~
- ~~(ix) Consumer's name.~~

~~(B) Documentation for rehabilitation and peer recovery support services must include daily member sign in/sign out record of member attendance (including date, time, type of service and service focus); and a daily progress note or a summary progress note weekly.~~

~~(C) Documentation shall reflect each consumer has received a minimum of thirty seven (37) hours of treatment services each week, including the treatment services required in 18-13-101.1(b)(3), in addition to life skills, recreational, and self help supportive meetings.~~

~~(5) The program provides documentation of the following community living components:~~

- ~~(A) A written daily schedule of activities.~~
- ~~(B) Quarterly meetings between consumers and the program personnel.~~
- ~~(C) Recreational activities to be utilized on personal time.~~
- ~~(D) Personal space for privacy.~~
- ~~(E) Security of consumer's property.~~
- ~~(F) A clean, inviting, and comfortable setting.~~
- ~~(G) Evidence of individual possessions and decorations.~~
- ~~(H) Daily access to nutritious meals and snacks.~~

~~(I) Policy addressing separate sleeping areas for the consumers based on:~~

- ~~(i) Gender;~~
- ~~(ii) Age; and~~
- ~~(iii) Needs.~~

~~(e) Compliance with 450:18-13-101.1 may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:~~

- ~~(1) Licenses;~~
- ~~(2) Policies and procedures;~~
- ~~(3) Treatment protocols;~~
- ~~(4) Personnel record, documentation of professional licensure or certification, documentation of professional work experience, and ongoing in service trainings;~~
- ~~(5) Treatment records; and~~
- ~~(6) Interviews with staff and consumers.~~

**450:18-13-102. Adult residential treatment, admission criteria [REVOKED]**

~~(a) Admission to residential treatment for adults shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policies and procedures.~~

~~(b) Compliance with 450:18-13-102 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Admission assessment instruments and protocols;~~
- ~~(3) Consumer records;~~
- ~~(4) Brochures;~~
- ~~(5) Posted public information; and~~
- ~~(6) Interviews with staff and consumers.~~

**450:18-13-103. Adult residential treatment, discharge criteria [REVOKED]**

~~(a) Programmatic discharge from residential treatment for adults shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policies and procedures.~~

~~(b) Compliance with 450:18-13-103 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Discharge evaluation assessment instruments;~~
- ~~(3) Medical evaluations;~~
- ~~(4) Consumer records;~~
- ~~(5) Discharge summaries; and~~
- ~~(6) Interviews with staff and consumers.~~

**PART 13. RESIDENTIAL TREATMENT FOR PERSONS WITH DEPENDENT CHILDREN AND PREGNANT WOMEN, ASAM LEVEL 3.5**

**450:18-13-121. Residential treatment for persons with dependent children and pregnant women**

(a) Substance use disorder treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) hours a day, seven (7) days a week of professionally directed evaluation, care, and treatment in a permanent setting

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and under a defined set of policies and procedures. ~~Consumers with dependent children and consumers who are pregnant shall participate in at least twenty-four (24) treatment hours of substance use disorder treatment services per week.~~

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall provide family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational and leisure space. The facility shall provide for materials and space appropriate for ages and development of children receiving services. (43A O.S. §3-417). The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.

(2) Support system:

(A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week.

(B) The facility shall promote and facilitate children's access to the fullest possible range of medical services available such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verify immunization records.

(C) Access to emergency health care shall be provided as necessary. The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed physician, and an emergency medical number shall be conspicuously posted for staff use.

~~(D) The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed physician, and an emergency medical number shall be conspicuously posted for staff use.~~

(D) The facility shall have access to public schools for school age children, and facilitation of the child's receiving the benefits of Public Laws 99-142; and

(E) The facility staff shall document a liaison with the local Oklahoma Department of Human Service (OKDHS) offices to:

(i) Promote preservation of families;

(ii) In cases of investigation of abuse, provide instruction in positive parenting behavior, if requested by the Oklahoma Department of Human Services (OKDHS) and with parental consent, provide daily observations of parent-child interaction;

(iii) Expedite investigations in a timely manner; and

(iv) Ensure prompt facility response to situations which require immediate intervention.

(3) Staff:

(A) The facility shall maintain documentation that service providers are knowledgeable regarding biopsychosocial dimensions of substance use disorder, evidenced based practices, culture, age and gender related issues, co-occurring disorder issues and treatment of infants, toddlers, preschool children, and school-age children.

(B) The facility shall document that service providers have training in the following:

(i) trauma issues, identification of domestic violence, spousal or partner abuse, and child abuse and neglect, with special emphasis on failure to thrive, and sexual abuse of children;

(ii) child development and age appropriate behaviors;

(iii) parenting skills appropriate to infants, toddlers, preschool, and school age children; and

(iv) the impact of substances and substance use disorders on parenting and family units.

(C) The facility shall document that staff working with children shall have ongoing training in the following and demonstrate job appropriate functional comprehension of:

(i) the impact of prenatal drug and alcohol exposure on child development;

(ii) the effect of substance use disorders on parenting children and families;

(iii) parenting skills appropriate to infants, toddlers, preschool, and school age children;

(iv) common children's behavioral and developmental problems;

(v) appropriate play activities according to developmental stage;

(vi) recognition of sexual acting-out behavior; and

(vii) the substance use disorder recovery process, especially as related to family units.

(D) The facility shall document that staff are knowledgeable regarding facility-required education, and training requirements and policies;

(E) The facility shall have staff on site twenty-four (24) hours a day; and

~~(F) Staff shall be at least eighteen (18) years of age; and~~

~~(G) The facility shall document in personnel records, all education, training, and experience stated above prior to the provision of services.~~

(4) Treatment services:

(A) The facility shall provide (twenty-four [24] hours a day, seven [7] days a week) substance use disorder treatment services to assess and address individual needs of each consumer. Treatment services, shall include, but are not limited to: those specified in 450:18-13-101(b)(3). Documentation shall reflect each consumer received and/or was offered, at minimum, individual, group, and/or family therapy, rehabilitation services, care management services and, if appropriate, peer recovery support services and crisis intervention services.

~~(i) **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a generally accepted clinical approach to treatment such as cognitive behavioral treatment,~~

narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six. Therapy must be provided at least one (1) hour per week.

(ii) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). These services include educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. Rehabilitation services must be provided at least seven (7) hours per week. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.

(iii) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Peer recovery support services may be offered to consumers age sixteen (16) and older with substance use disorders, including co-occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221. A maximum of seven (7) hours per week of peer recovery support services may count toward the weekly required treatment hours.

(iv) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinically indicated. Care management is case management in residential settings that includes assessment, development of a care plan, and referral and linkage to community supports and community based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.

(v) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger

of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(B) Services may be provided to dependent children by providers certified under this Chapter when provided to address the impacts related to the parent's addiction; however, ~~Compliance~~ compliance with separate provider qualifications ~~is may be~~ required for ~~other~~ treatment services provided to dependent children, in accordance with OAC 450 and Title 43A of the Oklahoma Statutes. The facility shall provide treatment services for children ages four (4) to twelve (12) years in accordance with the child's service plan, including, but not limited to, assessment and age appropriate individual, family and group therapy (topics can include, but are not limited to, poor impulse control, anger management, peer interaction, understanding feelings, problem/conflict resolution), according to the development of the child. Special attention shall be given to the high risk of sexual abuse, sexual acting-out by children, suicide risk, and the treatment of toddlers and preschool children; and

(C) Children's services, excluding infants, shall address the significant issues and needs documented in the child's and/or parent's assessment utilizing both structured and unstructured therapeutic activity. Services shall create and enhance positive self-image and feelings of self-worth, promote family unity, teach personal body safety, and positive school interactions, and to prevent alcohol, tobacco, and other drug use; and

(D) Services for infants (ages birth to three [3] years of age) shall include, at a minimum, developmentally appropriate parent-child interactive bonding activities and developmentally appropriate structured activities that promote and nurture the growth and well being of the infant; and

(E) Case management services for each adult and each child that include assessment of and planning and arranging for recovery needs.

(5) **Treatment documentation:**

(A) All documentation for therapy, case management and crisis intervention must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:

- (i) Date;
- (ii) start and stop time for each session;
- (iii) Specific problems, goals, and objectives addressed;
- (iv) type of service and method(s) used to address problems;
- (v) Summary of progress made toward goals and objectives, or lack of;
- (vi) Consumer response to overall treatment services;

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(vii) Any new problems, goals, or objectives identified during the week;

(viii) Dated signature and credentials of the service provider completing the documentation; and

(ix) Consumer's name.

~~(B) Documentation for rehabilitation and peer recovery support services must include daily member sign in/sign out record of member attendance (including date, time, type of service and service focus), and a daily progress note or a summary progress note weekly.~~

~~(C) Documentation shall reflect that each consumer with dependent children and/or consumer who is pregnant has received a minimum of twenty four (24) hours of treatment services each week.~~

~~(D) Documentation shall reflect each child services in accordance with the child's service plan if services are provided by the facility.~~

(65) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumer and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E) Security of consumer's property.

(F) A clean, inviting, and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(c) Compliance with 450:18-13-121 may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:

(1) Licenses;

(2) Policies and procedures;

(3) Treatment protocols;

(4) Personnel record, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;

(5) Records;

(6) Interviews with staff; and

(7) Other facility documentation.

## 450:18-13-122. Residential treatment for persons with dependent children and pregnant women, admission criteria [REVOKED]

~~(a) Admission to residential treatment for persons with dependent children and pregnant women shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policies and procedures. Admission of the~~

~~parent's children shall depend upon the program's ability to provide and/or coordinate the needed services.~~

~~(b) Compliance with 450:18-13-122 may be determined by a review of the following:~~

~~(1) Policies and procedures;~~

~~(2) Admission assessment instruments and protocols;~~

~~(3) Medical assessments;~~

~~(4) Consumer records;~~

~~(5) Brochures;~~

~~(6) Posted public information; and~~

~~(7) Interviews with staff and consumers.~~

## 450:18-13-123. Residential treatment for persons with dependent children and pregnant women, discharge criteria [REVOKED]

~~(a) Programmatic discharge from residential treatment for persons with dependent children and pregnant women shall be determined according to 450:18-7-121; and the children shall have been linked with needed educational, therapy, and medical services in the planned community of residence. These criteria and the requirements for children shall be included in the program's written policies and procedures.~~

~~(b) Compliance with 450:18-13-123 may be determined by a review of the following:~~

~~(1) Policies and procedures;~~

~~(2) Discharge evaluation assessment instruments;~~

~~(3) Medical evaluations;~~

~~(4) Discharge protocols;~~

~~(5) Continuing care plans;~~

~~(6) Discharge summaries;~~

~~(7) Treatment records;~~

~~(8) Interviews with staff and consumers; and~~

~~(9) Other facility documentation.~~

## 450:18-13-124. Intensive residential treatment for persons with dependent children and pregnant women, ASAM Level 3.5 [REVOKED]

~~(a) Substance use disorder treatment shall be provided in a residential setting offering a planned regimen of twenty four (24) hours a day, seven (7) days a week of professionally directed evaluation, care, and treatment in a permanent setting and under a defined set of policies and procedures. Adult consumers shall participate in at least thirty five (35) treatment hours of substance use disorder treatment services per week.~~

~~(1) **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a generally accepted clinical approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities.~~

For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six. Therapy must be provided at least four (4) hours per week.

~~(2) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). These services include educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. Rehabilitation services must be provided at least seven (7) hours per week. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.~~

~~(3) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Peer recovery support services may be offered to consumers age sixteen (16) and older with substance use disorders, including co-occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221. A maximum of eleven (11) hours per week of peer recovery support services may count toward the weekly required treatment hours.~~

~~(4) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinically indicated. Care management is case management in residential settings that includes assessment, development of a care plan, and referral and linkage to community supports and community-based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.~~

~~(5) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.~~

~~(b) Documentation shall reflect that each consumer with dependent children and/or consumer who is pregnant has received a minimum of thirty five (35) hours of treatment services each week.~~

~~(c) If services to dependent children are provided by the facility, documentation shall reflect each child has received services in accordance with the child's service plan that address the needs and issues documented in either, or both, the child's or parent's assessments; the child's response to those services; and an assessment and planning of recovery needs.~~

~~(d) A licensed psychiatrist must be available by telephone twenty four (24) hours a day, seven (7) days a week.~~

~~(e) Facilities shall otherwise comply with all requirements within 450:18-13-121, 450:18-13-122, and 450:18-13-123.~~

**PART 15. RESIDENTIAL TREATMENT FOR ADULTS WITH CO-OCCURRING DISORDERS, ASAM LEVEL 3.3**

**450:18-13-141. Adult residential treatment for consumers with co-occurring disorders**

(a) Substance use disorder and mental health treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) hour structured evaluation, care, and treatment, under a defined set of policy and procedures, and shall have a permanent setting. ~~Consumers shall participate in at least twenty four (24) treatment hours of mental health or substance use disorder treatment services per week.~~ The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Support system:

(A) The facility shall maintain availability of a licensed ~~physicians~~physician, who is knowledgeable in substance use disorders and mental health issues to provide evaluation, treatment and follow-up; and a licensed psychiatrist will be available by telephone twenty-four (24) hours per day, seven (7) days per week;

(B) The facility shall make available medication evaluation, administration, or monitoring, and staff shall be available to monitor medications as needed; and

(C) The facility shall provide case management services.

(D) The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed psychiatrist, and an emergency medical number shall be conspicuously posted for staff use.

(2) Staff:

(A) Service providers shall be knowledgeable regarding substance use disorders, mental health, evidenced based practices, co-occurring issues, culture, age, and gender related issues.

(B) All staff shall be knowledgeable regarding facility-required education, training, and policies; and

~~(C) Staff shall be at least eighteen (18) years of age; and~~

~~(DC)~~ (D) The facility shall document in personnel records, prior to the provision of treatment services, all education, training, and experience stated above.

(3) Treatment services:

(A) Daily treatment service shall be provided to assess and address individual needs of each consumer.

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These services shall include: those specified at 450:18-13-101(b)(3).

- (i) ~~Therapy. See 18-13-101(b)(3)(A) for requirements.~~
  - (ii) ~~Rehabilitation services. See 18-13-101(b)(3)(B) for requirements.~~
  - (iii) ~~Peer recovery support services. See 18-13-101(b)(3)(C) for requirements.~~
  - (iv) ~~Case management services. See 18-13-101(b)(3)(D) for requirements.~~
  - (v) ~~Crisis intervention. See 18-13-101(b)(3)(E) for requirements.~~
- (B) Psychiatric and/or psychological and/or mental health evaluations shall be completed on all consumers;
- (C) Medication monitoring shall be provided.
- (4) Treatment documentation:
- (A) ~~All documentation for therapy, case management and crisis intervention must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:~~
- (i) ~~Date;~~
  - (ii) ~~start and stop time for each session;~~
  - (iii) ~~Specific problems, goals, and objectives addressed;~~
  - (iv) ~~type of service and method(s) used to address problems;~~
  - (v) ~~Summary of progress made toward goals and objectives, or lack of;~~
  - (vi) ~~Consumer response to overall treatment services;~~
  - (vii) ~~Any new problems, goals, or objectives identified during the week;~~
  - (viii) ~~Dated signature and credentials of the service provider completing the documentation; and~~
  - (ix) ~~Consumer's name; and~~
  - (x) ~~Consumer's medication and response to medication therapy, if used, shall be documented.~~
- (B) ~~Documentation for rehabilitation and peer recovery support services must include daily member sign in/sign out record of member attendance (including date, time, type of service and service focus), and a daily progress note or a summary progress note weekly.~~
- (C) ~~The service plan shall address the consumer's mental health needs and related medications. The consumer's medications shall be re-assessed a minimum of once every thirty (30) days.~~
- (B) Documentation shall reflect each consumer received and/or was offered, at minimum, individual, group, and/or family therapy, rehabilitation services, care management services and, if appropriate, peer recovery support services and crisis intervention services.
- (5) The program provides documentation of the following community living components:
- (A) A written daily schedule of activities.

- (B) Quarterly meetings between consumers and the program personnel.
  - (C) Recreational activities to be utilized on personal time.
  - (D) Personal space for privacy.
  - (E) Security of consumer's property.
  - (F) A clean, inviting, and comfortable setting.
  - (G) Evidence of individual possessions and decorations.
  - (H) Daily access to nutritious meals and snacks.
  - (I) Policy addressing separate sleeping areas for the consumers based on:
    - (i) Gender;
    - (ii) Age; and
    - (iii) Needs.
- (c) Compliance with 450:18-13-141 may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:
- (1) Licenses;
  - (2) Policies and procedures;
  - (3) Treatment protocols;
  - (4) Personnel record, documentation of professional licensure or certification, documentation of professional work experience and ongoing in-service trainings;
  - (5) Treatment records;
  - (6) Interviews with staff; and
  - (7) Other facility documentation.

### **450:18-13-142. Adult residential treatment for consumers with co-occurring disorders, admission criteria [REVOKED]**

- (a) ~~Admission to residential treatment for co-occurring consumers shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policies and procedures.~~
- (b) ~~Compliance with 450:18-13-142 may be determined by a review of the following:~~
- (1) ~~Policies and procedures;~~
  - (2) ~~Admission assessment instruments;~~
  - (3) ~~Admission protocols;~~
  - (4) ~~Treatment records;~~
  - (5) ~~Medical assessments;~~
  - (6) ~~Psychiatric assessments;~~
  - (7) ~~Publicly posted information;~~
  - (8) ~~Interviews with staff and consumers; and~~
  - (9) ~~Other facility documentation.~~

### **450:18-13-143. Residential treatment for consumers with co-occurring disorders, discharge criteria [REVOKED]**

- (a) ~~Programmatic discharge from residential treatment for co-occurring consumers shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policies and procedures.~~
- (b) ~~Compliance with 450:18-13-143 may be determined by a review of the following:~~
- (1) ~~Policies and procedures;~~

- ~~(2) Discharge evaluation assessment instruments;~~
- ~~(3) Medical evaluations;~~
- ~~(4) Consumer records;~~
- ~~(5) Discharge plans and summaries;~~
- ~~(6) Continuing care plans;~~
- ~~(7) Interviews with staff and consumers; and~~
- ~~(8) Other facility documentation.~~

**PART 17. RESIDENTIAL TREATMENT FOR ADOLESCENTS, ASAM LEVEL 3.5**

**450:18-13-161. Residential treatment for adolescents**

(a) Residential treatment for adolescents ages thirteen (13) to seventeen (17) shall provide a planned regimen of twenty-four (24) hour, seven (7) days a week, professionally directed evaluation, care, and treatment for chemically dependent adolescents, under written policies and procedures in a permanent facility. Adolescents not attending academic training shall participate in at least twenty-four (24) substance use disorder treatment related hours per week. ~~Adolescents attending academic training shall participate in at least fifteen (15) hours of substance use disorder treatment related hours per week. Other activities such as self help support groups, meetings, and religious participation shall be in addition to required hours.~~ The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.

(b) The residential treatment program shall maintain written programmatic descriptions and operational methods addressing the following:

- (1) Environment:
  - (A) The facility shall maintain an environment which is supportive of physical and emotional growth and development which is appropriate to the needs of adolescents;
  - (B) The facility shall provide space, both indoor and outdoor, for the recreational and social needs of adolescents;
  - (C) The facility shall group consumers appropriately by age, developmental level, gender, and treatment needs;
  - (D) The program may provide transportation to activities in the community as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants;
  - (E) The program shall provide study areas within the facility and shall provide ancillary study materials such as encyclopedias, dictionaries, and educational resource texts and materials; and
  - ~~(F) The facility shall provide a safe, welcoming, and culturally/age appropriate environment.~~
  - (G) The facility shall be licensed by the Oklahoma State Department of Human Services (OKDHS) as a "Residential Child Care Facility".
- (2) Support systems:

- (A) The facility shall make available a licensed physician by telephone twenty-four (24) hours per day, seven (7) days per week;
- (B) The facility shall have specialized professional consultation or supervision available;
- (C) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws; and
- (D) The facility shall provide emergency services and crisis interventions.

(E) The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed physician, and an emergency medical number shall be conspicuously posted for staff use.

- (3) Staff:
  - (A) The facility shall document that service providers are knowledgeable regarding the biopsychosocial aspects of substance use disorder, cultural, gender, and age specific issues, co-occurring disorder issues, child and adolescent development and, evidenced based practices.

(B) Maintain documentation that service providers are knowledgeable regarding the identification of violence and domestic violence, spousal or partner abuse, child abuse and neglect, parent and sibling abuse, normal and abnormal adolescent development, and family dynamics;

(C) Ensure at least two (2) staff members are awake and on duty twenty-four (24) hours a day, seven (7) days a week. Staffing ratios shall not exceed those specified in OAC 340:110-3-153.2.

(D) If educational services are provided, the facility shall maintain documentation to verify that providing staff meets all state requirements for education or special education;

(E) Staff shall be knowledgeable regarding the facility required education, and training requirements and policies; and

~~(F) Staff shall be least eighteen (18) years of age; and~~

~~(G) The facility shall document in personnel records all education training and experience stated in above prior to the provision of direct care service.~~

- (4) Treatment services:
  - (A) A multidisciplinary team approach shall be utilized in providing daily substance use disorder treatment services to assess and address the individual needs of each adolescent;
  - (B) Services shall include, but not be limited to, those specified at 450:18-13-101(b)(3).

~~(i) **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a clinical approach generally accepted as reliable in the relevant clinical community, such as cognitive behavioral treatment, narrative therapy,~~

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solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For all children under the age of eighteen, the total group size is limited to six. Therapy must be provided at least one (1) hour per week.

(ii) **Rehabilitation Services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). These services include educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. The maximum staffing ratio for group rehabilitation services is eight to one for children under the age of eighteen. Rehabilitation services must be provided at least seven (7) hours per week.

(iii) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Peer recovery support services may be offered to consumers age sixteen (16) and older with substance use disorders, including co occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221. A maximum of seven (7) hours per week of peer recovery support services may count toward the weekly required treatment hours.

(iv) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinical indicated. Care management is case management in residential settings that includes assessment, development of a care plan, and referral and linkage to community supports and community based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.

(v) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(C) Services shall be provided in appropriate groups according to age, gender, developmental level, treatment status, and individual needs;

(D) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma law;

(E) Consumers shall participate in educational programs within the community, when clinically indicated, including extracurricular activities; and

(F) Service providers shall confer on a regular basis with school personnel, including the provision of necessary information, when appropriate, on the educational progress of the consumer, and shall assess and respond to the needs for changes in the educational plans.

(G) Documentation shall reflect each consumer received and/or was offered, at minimum, individual, group, and/or family therapy, rehabilitation services, care management services and, if appropriate, peer recovery support services and crisis intervention services.

(5) Assessments:

(A) A physical examination shall be conducted by a licensed physician, to include physical assessment, health history, immunization status, and evaluation of motor development and function, speech, hearing, visual, and language functioning; and

(B) The facility shall facilitate and document the involvement and participation of family members or significant others in the assessment, treatment, rehabilitation, and continuing treatment needs of each consumer;

(6) Treatment documentation:

(A) All documentation for therapy, case management and crisis intervention must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:

- (i) Date;
- (ii) start and stop time for each session;
- (iii) Specific problems, goals, and objectives addressed;
- (iv) type of service and method(s) used to address problems;
- (v) Summary of progress made toward goals and objectives, or lack of;
- (vi) Consumer response to overall treatment services;
- (vii) Any new problems, goals, or objectives identified during the week;
- (viii) Dated signature and credentials of the service provider completing the documentation; and
- (ix) Consumer's name.

(B) Documentation for rehabilitation and peer recovery support services must include daily member sign in/sign out record of member attendance (including date, time, type of service and service focus);



and a daily progress note or a summary progress note weekly.

~~(C) Documentation shall reflect that each consumer receives a minimum of twenty four (24) hours of treatment related hours each week or fifteen (15) or more treatment related hours if participating in academic training.~~

(76) Documentation of the following community living components:

- (A) A written daily schedule of activities.
- (B) Quarterly meetings between consumers and the program personnel.
- (C) Recreational activities to be utilized on personal time.
- (D) Personal space for privacy.
- (E) Security of consumer's property.
- (F) A clean, inviting, and comfortable setting.
- (G) Evidence of individual possessions and decorations.
- (H) Daily access to nutritious meals and snacks.
- (I) Policy addressing separate sleeping areas for the consumers based on:

- (i) Gender;
- (ii) Age; and
- (iii) Needs.

(c) Compliance with 450:18-13-161 may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:

- (1) Licenses;
- (2) Policies and procedures;
- (3) Treatment and service protocols;
- (4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service training(s);
- (5) Treatment records;
- (6) Interviews with staff and consumers; and
- (7) Other facility documentation.

**450:18-13-161.1. Intensive residential treatment for adolescents [REVOKED]**

(a) ~~Intensive substance use disorder treatment in a residential setting for adolescents ages thirteen (13) to seventeen (17) shall provide a planned regimen of twenty four (24) hours a day, seven (7) days a week of professionally directed evaluation, care, and treatment in a permanent program location. Consumers shall participate in at least thirty seven (37) treatment hours of substance use disorder treatment services per week. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.~~

(b) ~~The facility shall maintain written programmatic descriptions and operational methods addressing the following:~~

- (1) ~~Environment: The facility shall comply with requirements within OAC 450:18-13-161(b)(1).~~
- (2) ~~Support system:~~
  - (A) ~~A licensed psychiatrist shall be available, at least by telephone, twenty four (24) hours per day, seven (7) days per week;~~

(B) ~~The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed psychiatrist, and an emergency medical number shall be conspicuously posted for staff use;~~

(C) ~~The facility shall maintain written policies and procedures for the handling of clinical issues during times in which clinical staff are not at the facility;~~

(D) ~~The facility shall have specialized professional consultation or supervision available;~~

(E) ~~The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws; and~~

(F) ~~The facility shall provide emergency services and crisis interventions.~~

(3) ~~Staff:~~

(A) ~~The facility shall maintain documentation that service providers are knowledgeable regarding the biopsychosocial dimensions of substance use disorders, evidenced based practices, culture, age, and gender related issues, and co-occurring disorder issues.~~

(B) ~~Staff shall be at least eighteen (18) years of age.~~

(C) ~~The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.~~

(D) ~~The facility shall ensure at least two (2) staff members are awake and on duty twenty four (24) hours a day, seven (7) days a week. Staffing ratios shall not exceed those specified in OAC 340:110-3-153.2.~~

(4) ~~Treatment services. Daily (twenty four [24] hours a day, seven [7] days a week) substance use disorder treatment services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to:~~

(A) ~~**Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a generally accepted clinical approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six. Therapy must be provided at least four (4) hours per week.~~

(B) ~~**Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM~~

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H). These services include educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. Rehabilitation services must be provided at least seven (7) hours per week. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.

(C) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Peer recovery support services may be offered to consumers age sixteen (16) and older with substance use disorders, including co-occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221. A maximum of eleven (11) hours per week of peer recovery support services may count toward the weekly required treatment hours.

(D) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinically indicated. Care management is case management in residential settings that includes assessment, development of a care plan, and referral and linkage to community supports and community based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.

(E) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(5) Treatment documentation:

(A) All documentation for therapy, case management and crisis intervention must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:

- (i) Date;
- (ii) Start and stop time for each session;
- (iii) Specific problems, goals, and objectives addressed;
- (iv) Type of service and method(s) used to address problems;
- (v) Summary of progress made toward goals and objectives, or lack of;
- (vi) Consumer response to overall treatment services;

(vii) Any new problems, goals, or objectives identified during the week;

(viii) Dated signature and credentials of the service provider completing the documentation; and

(ix) Consumer's name.

(B) Documentation for rehabilitation and peer recovery support services must include daily member sign in/sign out record of member attendance (including date, time, type of service and service focus); and a daily progress note or a summary progress note weekly.

(C) Documentation shall reflect each consumer has received a minimum of thirty seven (37) hours of treatment services each week, in addition to life skills, recreational, and self help supportive meetings.

(6) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumers and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E) Security of consumer's property.

(F) A clean, inviting, and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(e) Compliance with 450:18-13-161.1 may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:

(1) Licenses;

(2) Policies and procedures;

(3) Treatment protocols;

(4) Personnel record, documentation of professional licensure or certification, documentation of professional work experience, and ongoing in-service trainings;

(5) Treatment records; and

(6) Interviews with staff and consumers.

### 450:18-13-162. Residential treatment for adolescents, admission criteria [REVOKED]

(a) Admission to residential treatment for adolescents shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policies and procedures.

(b) Compliance with 450:18-13-162 may be determined by a review of the following:

(1) Policies and procedures;

(2) Admission protocols;

(3) Admission assessment instruments;

(4) Medical assessments;

(5) Consumer records;

- (6) ~~Posted public information; and~~
- (7) ~~Interviews with staff and consumers.~~

**450:18-13-163. Residential treatment for adolescents, discharge criteria [REVOKED]**

~~(a) Programmatic discharge from residential treatment for adolescents shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policies and procedures.~~

~~(b) Compliance with 450:18-13-163 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Discharge protocols;~~
- ~~(3) Discharge assessment instruments;~~
- ~~(4) Continuing care plans;~~
- ~~(5) Treatment records;~~
- ~~(6) Discharge summaries;~~
- ~~(7) Interviews with staff and consumers; and~~
- ~~(8) Other facility documentation.~~

**PART 19. HALFWAY HOUSE SERVICES, ASAM LEVEL 3.1**

**450:18-13-181. Adult halfway house services**

(a) Halfway house services shall provide low intensity treatment in a supportive living environment to facilitate reintegration into the community. Major emphasis shall be on continuing substance use disorder care and follow-up, and community ancillary services in an environment supporting continued abstinence. ~~Consumers shall participate in a minimum of six (6) hours of structured substance use disorder treatment per week. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.~~

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

- (1) Environment: The facility shall be a freestanding facility or portion of a related healthcare facility having at least one (1) each of toilet, lavatory, and bathing facilities for each eight (8) residents. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.
- (2) Support system:
  - (A) A licensed physician shall be available, by telephone twenty-four (24) hours a day, seven (7) days a week;
  - (B) The facility shall have a written plan for emergency procedures, approved by a licensed physician;
  - (C) The facility shall have supplies, as designated by the written emergency procedures plan, which shall be accessible to staff at all times; and
  - (D) Specialized professional consultation or professional supervision shall be available.
- (3) Staff:
  - (A) Service providers shall be knowledgeable regarding biopsychsocial dimensions of substance use

disorders, evidenced based practices, culture, age, and gender related issues, and co-occurring disorder issues;

(B) Staff shall be knowledgeable regarding facility-required education, training, and policies;

(C) Staff shall be knowledgeable about emergency procedures as specified in the emergency procedures plan;

(D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week; and

~~(E) Staff shall be at least eighteen (18) years of age; and~~

~~(F) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.~~

(4) Treatment services. The facility shall have scheduled rehabilitation services to assess and address the individual needs of each consumer. Such services shall include, but not be limited to: those specified at 450:18-13-101(b)(3). Documentation shall reflect each consumer received and/or was offered, at minimum, individual, group, and/or family therapy, rehabilitation services, care management services and, if appropriate, peer recovery support services and crisis intervention services.

~~(A) **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a clinical approach generally accepted as reliable in the relevant community, such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals.~~

~~(B) **Rehabilitation Services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). This service includes educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults.~~

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~~(C) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Peer recovery support services may be offered to adult consumers with substance use disorders, including co-occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221.~~

~~(D) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM-II or CM-I as clinically indicated. Care management is a type of case management that includes assessment, development of a care plan, and referral and linkage to community supports and community-based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.~~

~~(E) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.~~

(5) Treatment documentation:

~~(A) All documentation for therapy, case management and crisis intervention must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:~~

- ~~(i) Date;~~
- ~~(ii) start and stop time for each session;~~
- ~~(iii) Specific problems, goals, and objectives addressed;~~
- ~~(iv) type of service and method(s) used to address problems;~~
- ~~(v) Summary of progress made toward goals and objectives, or lack of;~~
- ~~(vi) Consumer response to overall treatment services;~~
- ~~(vii) Any new problems, goals, or objectives identified during the week;~~
- ~~(viii) Dated signature and credentials of the service provider completing the documentation; and~~
- ~~(ix) Consumer's name.~~

~~(B) Documentation for rehabilitation and peer recovery support services must include daily member sign in/sign out record of member attendance (including date, time, type of service and service focus), and a daily progress note or a summary progress note weekly.~~

~~(C) Documentation shall reflect that the consumer works or attempts to find work while receiving halfway house services.~~

(c) Compliance with 450:18-13-181 may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:

- (1) Licenses;
- (2) Policies and procedures;
- (3) Treatment protocols;
- (4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;
- (5) Treatment records;
- (6) Interviews with staff and consumers; and
- (7) Other facility records.

### **450:18-13-182. Adult halfway house services, admission criteria [REVOKED]**

~~(a) Admission to halfway house services shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policies and procedures.~~

~~(b) Compliance with 450:18-13-182 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Admission protocols;~~
- ~~(3) Consumer records;~~
- ~~(4) Posted public information;~~
- ~~(5) Interviews with staff and consumers; and~~
- ~~(6) Other facility information.~~

### **450:18-13-183. Adult halfway house services, discharge criteria [REVOKED]**

~~(a) Programmatic discharge from halfway house services shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policy and procedures.~~

~~(b) Compliance with 450:18-13-183 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Discharge assessment instruments;~~
- ~~(3) Discharge summaries;~~
- ~~(4) Continuing care plans;~~
- ~~(5) Consumer records;~~
- ~~(6) Progress notes;~~
- ~~(7) Interviews with staff and consumers; and~~
- ~~(8) Other facility documentation.~~

## **PART 20. ADOLESCENT HALFWAY HOUSE SERVICES, ASAM LEVEL 3.1**

### **450:18-13-190. Adolescent halfway house services**

(a) Halfway house treatment for adolescents ages thirteen (13) to seventeen (17) shall provide low intensity substance use disorder treatment in a supportive living environment to facilitate reintegration into the home or community. Emphasis shall be on applying recovery skills, relapse prevention, independent living skills, and educational and vocational skills. ~~Consumers shall participate in at least six (6) hours of structured substance use disorder treatment services weekly. Self help meetings are~~

~~not included in the required hours. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.~~

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment:

~~(A) The facility shall be a freestanding facility or portion of a related healthcare facility having at least one (1) each of toilet, lavatory, and bathing facilities for each eight (8) residents;~~

~~(B) The facility shall maintain an environment supportive of physical and emotional growth and development, and appropriate to the needs of adolescents;~~

~~(C) The facility shall provide space, both indoor and outdoor. In co ed treatment, the facility shall maintain separate sleeping quarters for males and females;~~

~~(D) The program may provide transportation to activities in the community as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants;~~

~~(E) The program shall provide study areas within the facility and shall provide ancillary study materials, such as encyclopedias, dictionaries, and educational resource texts and materials;~~

~~(F) The facility shall be licensed by the Oklahoma State Department of Human Services (OKDHS) as a "Residential Child Care Facility"; and~~

~~(G) The facility shall provide a safe, welcoming, and culturally/age appropriate environment.~~

(A) The facility shall maintain an environment which is supportive of physical and emotional growth and development which is appropriate to the needs of adolescents;

(B) The facility shall provide space, both indoor and outdoor, for the recreational and social needs of adolescents;

(C) The facility shall group consumers appropriately by age, developmental level, gender, and treatment needs;

(D) The program may provide transportation to activities in the community as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants;

(E) The program shall provide study areas within the facility and shall provide ancillary study materials such as encyclopedias, dictionaries, and educational resource texts and materials; and

(F) The facility shall be licensed by the Oklahoma State Department of Human Services (OKDHS) as a "Residential Child Care Facility".

(2) Support systems:

(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;

~~(B) Specialized professional consultation or supervision, emergency services, and crisis intervention shall be available;~~

~~(C) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws; and~~

~~(D) The facility shall have a written plan for emergency procedures approved by the licensed physician, and staff shall have access to supplies as designated in this plan.~~

(B) The facility shall have specialized professional consultation or supervision available;

(C) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws; and

(D) The facility shall provide emergency services and crisis interventions.

(E) The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed physician, and an emergency medical number shall be conspicuously posted for staff use.

(3) Staff:

(A) Service providers shall be knowledgeable regarding the biopsychsocial aspects of substance use disorders, evidenced based practices, co-occurring disorder issues, child and adolescent development issues, and culture, age, and gender related issues.

(B) Service providers shall be knowledgeable regarding the identification of violence and domestic violence, spousal or partner abuse, child abuse and neglect, parent and sibling abuse, normal and abnormal adolescent development, and family dynamics;

(C) The facility shall have a minimum of two (2) staff members on duty twenty-four (24) hours per day, seven (7) days a week. Staffing ratios shall not exceed those specified in OAC 340:110-3-153.2.

(D) Staff shall be knowledgeable about emergency procedures as specified in the emergency procedures plan;

(E) If educational services are provided, documentation shall be maintained to verify providing staff meet all state requirements for education or special education;

(F) Staff shall be knowledgeable regarding the facility-required education, training requirements, and policies; and

~~(G) Staff shall be at least eighteen (18) years of age; and~~

(HG) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.

(4) Treatment services:

(A) The facility shall provide substance use disorder treatment services to assess and address the individual needs of each adolescent, to include, but not be limited to: those specified at 450:18-13-101(b)(3). Documentation shall reflect

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each consumer received and/or was offered, at minimum, individual, group, and/or family therapy, rehabilitation services, care management services and, if appropriate, peer recovery support services and crisis intervention services.

~~(i) **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a clinical approach generally accepted as reliable in the relevant clinical community, such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For all children under the age of eighteen, the total group size is limited to six.~~

~~(ii) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). This service includes educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. The maximum staffing ratio for group rehabilitation services is eight to one for children under the age of eighteen.~~

~~(iii) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Peer recovery support services may be offered to consumers age sixteen (16) and older with substance use disorders, including co-occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221.~~

~~(iv) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinically indicated. Care management case management in residential settings that includes assessment, development of a care plan, and referral and linkage to community supports and community based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.~~

~~(v) **Crisis intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding~~

~~to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.~~

~~(B) The facility shall provide services in appropriate groups according to age, gender, developmental level, and individual needs;~~

~~(C) The facility shall provide for clinically appropriate public educational services in compliance with applicable Oklahoma law;~~

~~(D) Consumers may participate in educational programs in the community, when clinically indicated, including extracurricular activities; and~~

~~(E) Service providers shall confer on a regular basis with school personnel, including the provision of necessary information when appropriate, on the educational progress of the consumer and shall assess and respond to the needs for changes in the educational plans.~~

~~(5) Assessment;~~

~~(A) A physical examination shall be conducted by a licensed physician to include physical assessment, health history, immunization status, and evaluation of motor development and functioning, speech, hearing, visual and language functioning, if no records are available on admission reflecting such examination within the previous year; and~~

~~(B) The facility shall facilitate involvement and participation of family members or significant others in the assessment, treatment, rehabilitation, and continuing treatment needs of each consumer.~~

~~(6) Treatment documentation:~~

~~(A) All documentation for therapy, case management and crisis intervention must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:~~

~~(i) Date;~~

~~(ii) start and stop time for each session;~~

~~(iii) Specific problems, goals, and objectives addressed;~~

~~(iv) type of service and method(s) used to address problems;~~

~~(v) Summary of progress made toward goals and objectives, or lack of;~~

~~(vi) Consumer response to overall treatment services;~~

~~(vii) Any new problems, goals, or objectives identified during the week;~~

~~(viii) Dated signature and credentials of the service provider completing the documentation; and~~

~~(ix) Consumer's name.~~

~~(B) Documentation for rehabilitation and peer recovery support services must include daily member~~

~~sign in/sign out record of member attendance (including date, time, type of service and service focus); and a daily progress note or a summary progress note weekly.~~

(c) Compliance with the above may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:

- (1) Licenses;
- (2) Policies and procedures;
- (3) Treatment protocols;
- (4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;
- (5) Treatment records;
- (6) Interviews with staff and consumers; and
- (7) Other facility records.

**450:18-13-191. Adolescent halfway house services, admission criteria [REVOKED]**

~~(a) Admission to adolescent halfway house services shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policies and procedures.~~

~~(b) Compliance with 450:18-13-191 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Admission protocols;~~
- ~~(3) Consumer records;~~
- ~~(4) Posted public information;~~
- ~~(5) Interviews with staff and consumers; and~~
- ~~(6) Other facility information.~~

**450:18-13-192. Adolescent halfway house services, discharge criteria [REVOKED]**

~~(a) Programmatic discharge from adolescent halfway house services shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policies and procedures.~~

~~(b) Compliance with 450:18-13-192 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Discharge assessment instruments;~~
- ~~(3) Discharge summaries;~~
- ~~(4) Aftercare plans;~~
- ~~(5) Consumer records;~~
- ~~(6) Progress notes~~
- ~~(7) Interviews with staff and consumers; and~~
- ~~(8) Other facility documentation.~~

**PART 21. HALFWAY HOUSE SERVICES FOR PERSONS WITH DEPENDENT CHILDREN AND PREGNANT WOMEN, ASAM LEVEL 3.1**

**450:18-13-201. Halfway house services for persons with dependent children and pregnant women**

(a) Halfway house services for persons with dependent children and pregnant women shall provide substance use disorder treatment services in a residential setting and shall include a planned regimen of twenty-four (24) hour, seven (7) days a week, supervised living arrangements, to include professionally directed evaluation, care, and treatment, under a defined set of policy and procedures, in a permanent setting. ~~Consumers with dependent children and consumers who are pregnant shall participate in at least six (6) hours of treatment services per week.~~

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall be a freestanding facility providing family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational space. The facility shall provide materials and space appropriate for ages of children receiving services. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.

(2) Support system:

(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;

(B) The facility shall ensure children's access to the fullest possible range of medical services available, such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verification of immunization records;

(C) The facility shall have access to emergency health care provided as necessary. The facility shall maintain written policy and procedures for handling medical emergencies which are approved by the licensed physician, and an emergency medical number shall be conspicuously posted for staff use;

(D) The facility shall have access to public schools for school age children, and facilitation of the child's receiving the benefits of Public Laws 99-142; and

(E) The facility staff shall document a liaison with the local Oklahoma Department of Human Service (OKDHS) offices to:

- (i) Promote preservation of families;
- (ii) In cases of investigation of abuse, provide instruction in positive parenting behavior, if requested by the Oklahoma Department of Human Services (OKDHS) and with parental consent, provide daily observations of parent-child interaction;
- (iii) Expedite investigations in a timely manner; and
- (iv) Ensure prompt facility response to situations which require immediate intervention.

(3) Staff:

(A) Service providers shall be knowledgeable regarding Biopsychsocial dimensions of substance use disorder, evidenced-based practices, culture, age, and gender related issues, co-occurring disorder issues,

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and services for infants, toddlers, preschool, and school-age children.

(B) Service providers are minimally trained in:

- (i) ~~The Trauma issues,~~ identification of domestic violence, spousal or partner abuse, and child abuse and neglect, with special emphasis on failure to thrive and sexual abuse of children.
- (ii) Child development and age appropriate behaviors.
- (iii) Parenting skills appropriate to infants, toddlers, pre-school, and school age children.
- (iv) The impact of substances and substance use disorders on parenting and family units.

(C) Service providers working with children shall be knowledgeable and demonstrate job appropriate functional comprehension of:

- (i) The impact of prenatal drug and alcohol exposure on child development.
- (ii) The effect of substance use disorders on parenting, children, and families.
- (iii) Parenting skills appropriate to infants, toddlers, pre-school, and school age children.
- (iv) Common child behavioral and developmental problems.
- (v) Appropriate play activities according to developmental stage.
- (vi) Recognition of sexual acting out behavior.
- (vii) The substance use disorder recovery process, especially as related to family units.

(D) The facility shall have staff members on site and awake twenty-four (24)–hours per day, seven (7) days per week;

(E) Staff shall be knowledgeable regarding facility-required education and training requirements and policies; and

~~(F) Staff shall be at least eighteen (18) years of age; and~~

~~(G) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.~~

(4) Treatment services:

(A) Daily (twenty-four [24] hours a day, seven [7] days a week) substance use disorder services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to: those specified at 450:18-13-101(b)(3). Documentation shall reflect each consumer received and/or was offered, at minimum, individual, group, and/or family therapy, rehabilitation services, care management services and, if appropriate, peer recovery support services and crisis intervention services.

- (i) ~~Therapy.~~ **Therapy.** Therapy, including individual, family, and group therapy, must be provided by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate who must use and document a clinical approach generally accepted as reliable in the relevant clinical community, such as cognitive behavioral treatment, narrative therapy,

~~solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six.~~

~~(ii) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). This service includes educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.~~

~~(iii) **Peer Recovery Support Services.** Peer recovery support services must be provided by Peer Recovery Support Specialists. Peer recovery support services may be offered to consumers age sixteen (16) and older with substance use disorders, including co-occurring disorders. Services shall be provided in accordance with OAC 450:18-13-221.~~

~~(iv) **Crisis intervention.** Crisis intervention services must be provided by a LBHP or Licensure Candidate. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.~~

~~(v) **Care Management.** Care management must be provided by a LBHP, Licensure Candidate, CADC, CM II or CM I as clinically indicated. Care management is a type of case management that includes assessment, development of a care plan, and referral and linkage to community supports and community based or lower level of care services to promote continued recovery after the individual discharges from the treatment facility.~~



(B) Services ~~are~~ may be provided to dependent children by providers certified under this Chapter when provided to address the impacts related to the parent's addiction; ~~however, Compliance compliance~~ with separate provider qualifications ~~is may be~~ required for ~~other~~ treatment services provided to dependent children, in accordance with OAC 450 and Title 43A of the Oklahoma Statutes. Services for children shall be provided in accordance with the child's service plan consisting of, but not limited to, assessment and therapy, according to the development of the child. Documentation of all needs identified for each child shall be identified on that child's case management service plan and/or service plan.

(C) Children's services, excluding infants, shall be provided which address the significant issues and needs documented in either or both the child's and the parent's assessment and shall utilize both structured and unstructured therapeutic activity. Services shall address the significant issues and needs documented in the parent's or child's assessment and create and enhance positive self image and feelings of self-worth, promote family unity, teach personal body safety and positive school interactions, and to prevent alcohol, tobacco, and other drug use;

(D) Infant services, ages birth to three (3) years of age, shall be provided and shall consist, at a minimum, of developmentally appropriate parent-child bonding (interactive) activities and play therapy as determined by mother's service plan; and

(E) Case management services for each adult and each child shall be provided, which include the assessment of and planning and arranging for recovery needs.

(5) Treatment documentation:

(A) All documentation for therapy, case management and crisis intervention must be documented in an individual note and reflect the content of each session provided. Documentation must include, at a minimum, the following:

- (i) Date;
- (ii) start and stop time for each session;
- (iii) Specific problems, goals, and objectives addressed;
- (iv) type of service and method(s) used to address problems;
- (v) Summary of progress made toward goals and objectives, or lack of;
- (vi) Consumer response to overall treatment services;
- (vii) Any new problems, goals, or objectives identified during the week;
- (viii) Dated signature and credentials of the service provider completing the documentation; and
- (ix) Consumer's name.

(B) Documentation for rehabilitation and peer recovery support services must include daily member

~~sign in/sign out record of member attendance (including date, time, type of service and service focus); and a daily progress note or a summary progress note weekly.~~

~~(C) Documentation shall reflect each consumer with dependent children and/or consumer who is pregnant has received a minimum of six (6) hours of service each week. Documentation shall reflect each child has received services in accordance with the child's service plan that address issues and needs indicated in the assessments (parent or child), if services are provided by the facility.~~

(c) Compliance with 450:18-13-201 may be determined by review and/or observation of facility documentation and operations, including but not limited to the following:

- (1) Licenses;
- (2) Policies and procedures;
- (3) Treatment protocols;
- (4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, and ongoing in-service trainings;
- (5) Treatment records;
- (6) Interviews with staff and consumers; and
- (7) Other facility documentation.

**450:18-13-202. Halfway house services for persons with dependent children, admission criteria [REVOKED]**

~~(a) Admission to halfway house services for persons with dependent children shall be determined according to 450:18-7-21, with admission of the parent's children being contingent upon the program's ability to provide needed services. Further, these criteria, and the requirements for children shall be included in the program's written policies and procedures.~~

~~(b) Compliance with 450:18-13-202 may be determined by a review of the following:~~

- ~~(1) Policies and procedures;~~
- ~~(2) Admission assessment instruments and protocols;~~
- ~~(3) Medical assessments;~~
- ~~(4) Consumer records;~~
- ~~(5) Brochures;~~
- ~~(6) Posted public information;~~
- ~~(7) Interviews with staff and consumers; and~~
- ~~(8) Other facility documentation.~~

**450:18-13-203. Halfway house services for persons with dependent children, discharge criteria [REVOKED]**

~~(a) Programmatic discharge from halfway house services for persons with dependent children shall be determined according to 450:18-7-121, and whose children have been linked with needed educational, therapy, and medical services in the planned community of residence. Further, these criteria are a part of the program's written policies and procedures.~~

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(b) Compliance with 450:18-13-203 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Discharge evaluation assessment instruments;
- (3) Medical evaluations;
- (4) Consumer records;
- (5) Discharge summaries;
- (6) Interviews with staff and consumers; and
- (7) Other facility documentation.

[OAR Docket #22-455; filed 6-23-22]

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 21. ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC) AND ASSESSMENTS

[OAR Docket #22-456]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

450:21-1-3 [AMENDED]

Subchapter 4. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors

450:21-4-2 [AMENDED]

Subchapter 7. Certification of Alcohol and Drug Assessors Related to Driver's License Revocation

450:21-7-3 [AMENDED]

450:21-7-5 [AMENDED]

450:21-7-8 [AMENDED]

450:21-7-9 [AMENDED]

### AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-451 through 3-453.1, and 3-460; 47 O.S. §§ 6-212.2, 11-902 and 761(D); 22 O.S. §§ 991a and 991c.

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

December 8, 2021

### COMMENT PERIOD:

January 3, 2022 through February 2, 2022

### PUBLIC HEARING:

February 3, 2022

### ADOPTION:

March 25, 2022

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

March 28, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

#### Incorporated standards:

42 CFR Part 2, 45 CFR Parts 160 and 164

#### Incorporating rules:

450:21-7-5(c)

#### Availability:

9:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen, Suite 2-600, Oklahoma City, OK 73106, 405-271-9200

### GIST/ANALYSIS:

The proposed rule revisions to Chapter 21 clarify and amend requirements for photograph and background check submissions, participant data entry, assessments, and evaluation instruments.

### CONTACT PERSON:

Melissa Miller, Policy Director and Administrative Rules Liaison, Melissa.Miller@odmhsas.org or (405) 248-9345

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 450:21-1-3. Definitions

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

"**Abuse**" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a participant by staff responsible for the participant's health, safety, or welfare, including, but not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) use of mechanical restraints without proper authority;
- (E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the participant; or
- (F) deprivation of food, clothing, shelter, or health-care by staff responsible for providing these services to a participant.

"**Action Code**" means a numerical designation applied to ADSAC by the Oklahoma Department of Public Safety, and which will be provided by ODMHSAS to organizations and institutions conducting ADSAC, for use in completing the written verification of an individual's completion of an ADSAC.

"**Administrator**" means the person responsible for administering ADSAC courses within a certified institution or organization.

"**ADSAC**" means Alcohol and Drug Substance Abuse Course.

"**ADSAC Facilitator**" means an individual certified to teach both the ten (10) or the twenty-four (24) hour ADSAC courses.

"**ASAM**" means the American Society of Addiction Medicine.

"**ASAM levels of care**" means the different options for treatment as described in the current edition of the ASAM criteria that vary according to the intensity of the services offered. Each treatment option is a level of care.

"**Assessment**" means a face-to-face clinical interview evaluating an individual's need and receptivity to substance abuse treatment and his or her prognosis.

"**Assessor**" means an individual certified to conduct alcohol and other drug assessments related to driver's license revocations.

"**Audit**" means a systematic inspection of accounting records involving analyses, tests, and confirmations or the hearing or investigation by an auditor.

"**Biopsychsocial Assessment**" means a face-to-face clinical interview conducted by an ADSAC assessor designed to elicit historical and current information regarding the behavior and experiences of a participant, and is designed to provide sufficient information for problem formulation, intervention planning, and formulation of appropriate substance abuse-related clinical and/or educational interventions to reduce or eliminate recidivism.

"**Certification**" means an institution, organization, or individual approved by ODMHSAS to conduct ADSAC courses.

"**Certified Alcohol and Drug Counselor**" or "**CADC**" means any person who is certified through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

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

"**Conflict of interest**" means a conflict between the private interests and public obligations of a certified organization, institution, or certified ADSAC Facilitator.

"**Consumer**" means an individual who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"**Course**" means multiple classes offering an approved ADSAC curriculum.

"**Critical incident**" means an occurrence or set of events inconsistent with the routine operation of an approved institution or organization approved to do ADSAC, or the routine work with a participant in an ADSAC course. Critical incidents specifically include, but are not limited to: self-destructive behavior; deaths and injuries to the participant, participant's family, staff or visitors; abuse of a participant, fire, unauthorized disclosure of information; damage to or theft of property belonging to a participant or an approved institution or organization; other unexpected occurrences; or events subject to litigation. A critical incident may involve multiple individuals or results.

"**Curricula**" (plural of Curriculum) See Curriculum.

"**Curriculum**" means a specific course of study in alcohol and drug substance abuse designed for ADSAC.

"**Defendant Questionnaire**" or "**DQ**" means an automated assessment or screening instrument used in assessing an offender with alcohol or other drug involvement. This instrument contains scales to measure truthfulness, stress coping ability, and severity of the alcohol or other drug use disorder diagnosis using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria.

"**Denial**" means a refusal to certify to conduct ADSAC courses.

"**DOC**" means the Oklahoma Department of Corrections.

"**Documentation**" means the provision of written, dated and authenticated evidence to substantiate compliance with standards.

"**DPS**" means Department of Public Safety.

~~"**Driver Risk Inventory II**"~~ "**Driver Risk Inventory**" or "~~**DRI II**~~" "**DRI**" means an assessment or screening instrument, which contains six scales measuring truthfulness, alcohol, drug, driver risk, stress management, and severity of alcohol or other drug abuse and classifies a participant as being either a substance abuser or substance dependent in compliance with current Diagnostic and Statistical Manual criteria.

"**Equipment**" means hardware, such as audio visual equipment, used as a tool to present material in an ADSAC course.

"**Evidence based practice**" means programs or practices that are proven to be successful through research methodology and have produced consistently positive patterns of results.

"**Facilitator candidate**" means an individual who has applied for and is in the process of being certified to conduct an ADSAC course as an ADSAC facilitator.

"**Facility**" means any ODMHSAS approved building in which ADSAC is conducted.

"**Group counseling**" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more participants that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the participant's treatment goals and objectives, and does not include social or daily living skill development as described in educational group counseling.

"**Independent practitioner**" means any professional, appropriately licensed or certified as an alcohol and drug counselor through the State of Oklahoma, pursuant to state law, and certified by ODMHSAS to conduct ADSAC assessments who does so through the format of a private practice.

"**Individual counseling**" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with one participant to promote positive emotional or behavioral change.

"**Instructional material**" means written or printed data distributed to the participant during an ADSAC course for informational or educational purposes.

"**Intensive outpatient services**" or "**IOP**" means an organized, non-residential outpatient treatment service with scheduled sessions that provide a range of nine (9) to fifteen (15) treatment hours per week. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the individual participates in daytime treatment services but goes home at night. Intensive Outpatient shall correspond to ASAM Patient Placement Criteria Treatment Level: Level II.1, Intensive outpatient.

"**Intern facilitator**" means a facilitator who has initial approval to conduct ADSAC courses under supervision, both ten (10) and twenty-four (24) hour, but who has not completed internship or training requirements, and is not certified.

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**"Lapse"** means the expiration of an otherwise valid ADSAC certification due to the failure to timely complete and submit the required application for recertification.

**"Licensed Alcohol and Drug Counselor"** or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

**"Licensed Behavioral Health Professional"** or **"LBHP"** means:

- (A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided and certified in a psychiatric mental health specialty;
- (C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;
- (D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
- (E) A practitioner with a license to practice in the state in which services are provided issued by one of the following licensing boards:
  - (i) Social Work (clinical specialty only);
  - (ii) Professional Counselor;
  - (iii) Marriage and Family Therapist;
  - (iv) Behavioral Practitioner; or
  - (v) Alcohol and Drug Counselor.

**"Licensure Candidate"** means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinical if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner;
- (F) Alcohol and Drug Counselor.

**"Mutual support group"** means a non-professional, widely available, peer directed, system of support meetings, available at little or no charge to the participant, in a group format, dedicated to the support and teaching of the skills related to an alcohol and other drug free lifestyle.

**"Needs assessment"** or **"NEEDS"** means a one hundred and thirty (130) item comprehensive adult assessment instrument addressing attitude, emotional stability, employment, health, education, substance abuse, relationships, support systems, criminal history and supervision needs.

**"Notes"** means a complete, chronological written description of any intervention(s) provided to a participant requiring documentation. Notes may include the participant's

response and are written by the ADSAC staff delivering the service.

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

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

**"OSBI"** means the Oklahoma State Bureau of Investigation.

**"Participant"** means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug-related revocation or suspension of driving privileges in Oklahoma and who is involved in the ADSAC process.

**"Professional setting"** means a facility that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and HIPAA, and without distraction or interruption from adjacent business or activities.

**"Program"** means a structured set of treatment activities designed to achieve specific objectives relative to the needs of individuals served by the facility and certified or recognized by ODMHSAS.

**"Recertification"** means the renewal of certification for an institution, or organization, or instructor to provide ADSAC courses.

**"Residential treatment"** means treatment for a participant in a live-in setting which provides a twenty-four (24) hour therapeutic regimen. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III. 5, Clinically managed High-Intensity Residential Services.

**"Revocation"** means cancellation of an existing certification to conduct or instruct ADSAC courses.

**"Sentinel event"** is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a participant, or risk thereof. Serious injury specifically includes loss of limb or limb function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a participant. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

**"Suspend"** means to temporarily cancel certified ADSAC services or certification for a designated period of time.

**"TAAD"** or **"Triage Assessment for Addictive Disorders"** means a very brief, structured interview covering current alcohol and drug problems related to DSM-IV criteria for substance abuse and dependency. The TAAD is intended to be presented as an interview and not as a paper and pencil instrument.

**"Transtheoretical Model of Change"** or **"TMC"** means a model which identifies distinct stages of change existing

for each individual involved in any educational or therapeutic process and enhances the ability to accurately assess the individual's readiness for clinical or educational engagement at the time of an assessment. This is also referred to as the "Stages of Change" model.

"Victims Impact Panel" or "VIP" means the two (2) hour presentation, identified statutorily, intended to enhance awareness of the participant regarding possible impact on others by the individual driving while impaired.

**SUBCHAPTER 4. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND INSTRUCTORS**

**450:21-4-2. Applications**

(a) Applications for certification of institutions, organizations or facilitators to conduct ADSAC courses shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.

(b) ODMHSAS shall give each institution, organization and facilitator candidate requesting certification to conduct ADSAC courses the following:

- (1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;
- (2) A copy of these standards and criteria; and
- (3) The appropriate application(s).

(c) An institution or organization applying for certification to conduct ADSAC shall provide to ODMHSAS for consideration:

- (1) Completed application;
- (2) Film approval form(s) for the ten (10) and twenty-four (24) hour ADSAC;
- (3) Instructional materials for the ten (10) and twenty-four (24) hour ADSAC;
- (4) Written verification the applicant is a nonprofit educational institution of higher learning appropriately accredited pursuant to state law, a governmental entity or a nonprofit corporation. If a non-profit corporation, verification shall be a copy of the U.S. Internal Revenue Service Documents granting the corporation 501(c)(3) status;
- (5) Completed certification applications and resumes of proposed facilitators;
- (6) The physical address (street, building name and suite [if applicable], city and zip code) and description of all sites at which the ADSAC course(s) will be conducted; and
- (7) Letters of support from at least two (2) of the following individuals who serve in the community in which each proposed site, including satellites, is located:
  - (A) District or Associate District Judge;
  - (B) County Sheriff;
  - (C) Municipal Judge;
  - (D) District or Assistant District Attorney; or
  - (E) Chief of Police.

(d) If the applicant is a non-profit corporation, the applicant shall submit evidence it was constituted, and is operated, to

provide substance abuse, mental health or educational services as its primary services and that the corporation is operated from a professional administrative office, which is open and operated during normal business hours.

(e) Requests from a certified ADSAC provider for additional or replacement course sites shall be submitted to the ODMHSAS and shall meet all requirements for initial applications, except the institution or organization need not submit items previously submitted that are currently applicable to the new site(s) and expressly stated as such in the application for new course site(s).

(f) Renewal of certification of ADSAC institutions or organizations shall be contingent upon submission of renewal application and programmatic history of compliance with Oklahoma Administrative Code, Title 450. The application for renewal shall include all items required for initial certification as well as any unpaid fees required by 450:21-4-1(g). Applications with outstanding unpaid fees will not be processed until a resolution is reached regarding payment of outstanding fees.

(g) In addition to submitting an application and fulfilling the renewal standards for certification per 21-4-2(f), a review of consumer and organization documentation shall be performed. A score of at least 75% on clinical standards must be achieved in order to move forward with certification. The process will follow that of agency certifications found in 450:1-9-7.2. All deficiencies must be resolved in order for certification to be renewed.

(h) An applicant for initial certification as a facilitator to conduct ADSAC courses shall provide to ODMHSAS for consideration:

- (1) A letter of recommendation from an administrator of a certified institution or organization;
- (2) A current resume, which shall include:
  - (A) Educational background including an official college transcript from an accredited college or university; and
  - (B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).
- (3) A completed application.
- (4) A one hundred dollar (\$100.00) application fee for initial certification; and
- (5) Upon initial application, a completed Oklahoma State Bureau of Investigation background check or a similar background check from any other state(s) of residence for the past five (5) years;
- (6) ~~Provide a~~ Provide a current, recognizable, color, photographic image, in good condition, in digital format or no smaller than two (2) inch by two (2) inches if printed, of the applicant every ~~six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008; and~~ three (3) years with the certification renewal; and
- (7) A new OSBI background check ~~must be submitted every six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008~~ three (3) years with the certification renewal application. The results of

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the OSBI background check must be submitted with the recertification application and any conviction may result in denial of certification. ~~This will be required of all individuals who have been certified as ADSAC facilitators for six (6) years or more, recertifying after July 1, 2008.~~

- (i) ODMHSAS shall consider each applicant for certification in accordance with these rules. The Commissioner of ODMHSAS or designee shall notify each applicant in writing of an approval or denial of certification. Certification shall be effective for three (3) years commencing with the date of issue.
- (j) Faxes will not be accepted as permanent copies for an applicant's record.
- (k) Applications are good for one (1) year from approval. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.
- (l) Completed applications must be received by ODMHSAS twenty (20) days prior to the new facilitator training event.
- (m) A facilitator whose certification has been expired for less than twelve (12) months must make application for an initial certification as set forth in 450:21-4-7. If approved by the Department, such a facilitator will not be required to attend the initial ADSAC facilitator training or successfully complete the training exam.
- (n) A facilitator whose certification has been expired for more than twelve (12) months must make application for an initial certification as set forth in 450:21-4-7, including attending the initial ADSAC facilitator training, and successful completion of the training exam.
- (o) Each facilitator shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the facilitator may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

### SUBCHAPTER 7. CERTIFICATION OF ALCOHOL AND DRUG ASSESORS RELATED TO DRIVER'S LICENSE REVOCATION

#### 450:21-7-3. Assessor applicants

- (a) An applicant for certification as an assessor shall submit proof of the following:
  - (1) Proof of current licensure as an LBHP or certification as an alcohol and drug counselor acting within scope of licensure/certification or proof of current status as a Licensure Candidate under the onsite supervision of a certified ADSAC assessor; and
  - (2) Proof of having at least two (2) years documented full-time clinical experience in drug/alcohol treatment counseling; and
  - (3) Proof of successful completion of a one (1) day ASAM training within two (2) years of the submission of the application; and
  - (4) A recognizable, current, color photographic image of the applicant no smaller than two (2) inch by two (2) inch;

- (5) A current OSBI background check or a similar background check from another state of residence for the past five (5) years; and

- (6) A copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers; and

- (7) Fees.

- (b) Applications for certification as an assessor shall be made in writing to ODMHSAS on a form in a manner prescribed by the Commissioner or designee.

- (c) Completed applications must be received by ODMHSAS twenty (20) days prior to the training event. Before being certified, the applicant shall:

- (1) Observe one (1) assessment with written permission of the participant prior to completing new assessor training;

- (2) Complete the ODMHSAS new assessor training; and

- (3) Complete and pass the ODMHSAS assessment skills competency examination. A minimum score to pass the exam shall be eighty (80) percent:

- (A) The exam shall require the applicant to correctly identify the major aspects of the Driver Risk Inventory-revised (DRI-II), and the Defendant Questionnaire (DQ);

- (B) The exam shall require the applicant to correctly identify the major components of motivational interviewing; and

- (C) The exam shall require the applicant to correctly identify rules from this chapter.

- (4) Conduct two (2) assessments, after completing the new assessor training under the supervision of a certified ADSAC assessor, with written permission of the participant; and

- (A) Submit a copy of one written court report completed by the applicant on each assessment;

- (B) The observing assessor shall submit an evaluation of the applicant's skill level on a form and in a manner prescribed by the ODMHSAS Commissioner or designee.

- (d) ODMHSAS may require explanation of negative references prior to issuance of certification.

- (e) Faxes will not be accepted as part of a permanent record.

- (f) Applications are good for one (1) year from approval. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.

- (g) Any prior sanctions by ODMHSAS of an individual may be cause for denial of an assessor application.

- (h) An assessor applying for renewal shall submit the following for ODMHSAS review:

- (1) ~~Complete~~Completed ODMHSAS renewal application form;

- (2) ~~Submit documentation~~Documentation of receiving ten (10) continuing education hours in each twelve (12) month period beginning with the date of original certification. Acceptable continuing education hours shall include the following subject areas with four (4) hours coming

from area (A), four (4) hours coming from area (B) and two (2) hours coming from area (C):

- (A) The application and use of the following:
  - (i) ASAM;
  - (ii) DRI;
  - (iii) DQ;
  - (iv) NEEDS; and
  - (v) TAAD;
- (B) Evidence based interview techniques;
- (C) General substance abuse; and
- (D) If a mandatory training is required by ODMH-SAS the hours may come from area (c) above; and
- (E) Training hours shall not include ADSAC course facilitation.

(3) ~~A new recognizable, current, photographic image of the applicant every six years no smaller than two (2) inch by two (2) inch, with any qualifying recertifications occurring on or after July 1, 2008; A current, recognizable, color, photographic image, in good condition, in digital format or no smaller than two (2) inch by two (2) inches if printed, of the applicant every three (3) years with the certification renewal application;~~

(4) ~~Provide ODMHSAS a new OSBI background check for the applicant every six years, with any qualifying recertifications occurring on or after July 1, 2008; A new OSBI background check every three (3) years with the certification renewal application;~~

(5) The fifty dollar (\$50) application renewal fee for certification; and

(6) Any unpaid fees required by 450:21-7-5(c)(7)(A). Renewal applications with outstanding unpaid fees will not be processed until a resolution is reached regarding payment of outstanding fees.

(i) In addition to submitting an application and fulfilling the renewal standards for certification per 450:21-7-3(h) and 450:21-7-5(c)(14), a review of consumer and agency documentation shall be performed. A score of at least 75% on clinical standards must be achieved in order to move forward with certification. The process will follow that of agency certifications found in 450:1-9-7.2. All deficiencies must be resolved in order for certification to be renewed.

(j) Certification shall be valid for thirty six (36) months.

(k) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification.

(1) A person whose certification has expired for less than twelve (12) months must make application for an initial certification as set forth in 450:21-7-3 with the exception of attending the initial ADSAC assessor training or having to pass the training exam.

(2) A person whose certification has expired for twelve (12) months or more must make application for an initial certification as set forth in 450:21-7-3.

(l) Each assessor shall notify ODMHSAS of any change of application information related to his or her licensure status, email address, phone number, work or home address at least

fifteen (15) days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

(m) All renewals of certification are due on the third anniversary of certification.

**450:21-7-5. Assessor responsibilities**

(a) ADSAC assessments shall be provided by individuals certified by ODMHSAS to provide such assessments.

(b) All fees due ODMHSAS shall be remitted within thirty (30) days. Any fees identified as being delinquent shall be paid within thirty (30) days of discovery of the omission.

(c) Certified assessors shall:

(1) Conduct assessments and based on assessment findings, recommend education or treatment or both;

(2) Report to the court within seventy-two (72) hours of completing an assessment if the court is anticipating such a report;

(3) Provide information in writing regarding state and local area education and treatment resources specific to the area in which the participant resides, to each individual assessed appropriate to the referral recommendations and, in a format prescribed by the Commissioner of ODMH-SAS or designee;

(4) Manage and distribute all reports according to confidentiality laws under 42 CFR, Part 2, as well as all 45 C.F.R. Parts 160 & 164 (HIPAA) regulations and inform all participants that all contacts, evaluation results and reports are protected through federal confidentiality regulations under 42 CFR, Part 2;

(5) Assure there is no conflict of interest by:

(A) Referring participants to only those services in which the assessor has no vested interest;

(B) Providing three (3) outside referral options in writing for each recommended service, or as many options as available within a 70-mile radius; and

(C) Maintaining written assessment documentation pursuant to 450:21-1-7.7(a)(3)(C).

(6) Provide liaison with court officials and related other agencies;

(7) The fee for those undergoing an assessment and evaluation as a result of their driving privilege being suspended or revoked pursuant to an arrest on or after November 1, 2008 is one hundred sixty dollars (\$160.00). The fee for those undergoing an assessment and evaluation as a result of their driving privilege being suspended or revoked pursuant to an arrest prior to November 1, 2008 is one hundred seventy five dollars (\$175.00);

(A) Remit 10% of each fee collected for any assessment and evaluation completed as a result of a person's driving privilege being suspended or revoked pursuant to an arrest prior to November 1, 2008 to the State Treasurer to be credited to the Department of Mental Health and Substance Abuse Services Revolving Fund within thirty (30) days. No such 10% fee shall be remitted for any assessment and evaluation completed as a result of a person's driving privilege being suspended or revoked pursuant to an arrest on or

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- after November 1, 2008. Completion of assessment includes payment in full by the participant for the assessment service; and
- (B) No additional charges, extra fees or interest shall be attached to the assessment process.
- (8) Explain possible liability and ability to pay for ODMHSAS affiliated, private and other education and treatment facilities;
- (9) For those participants whose license was withdrawn due to an alcohol and drug related offense on or before June 30, 2003, and needing to participate in the ADSAC assessment process for license reinstatement, as verified by DPS, the assessor shall:
- (A) Verify the participant has completed the assessment to include payment in full;
- (B) Affix the official red stamp;
- (C) Provide the participant with a certificate of completion; and
- (D) Report completion to the Department of Public Safety through ODMHSAS.
- (10) For those participants whose license was withdrawn due to receiving an alcohol and drug related offense on or after July 1, 2003, and needing to participate in the ADSAC assessment process for license reinstatement, the assessor shall:
- (A) Verify the participant has completed the ADSAC assessment to include payment in full.
- (B) Verify the participant has completed all recommendations identified through the assessment and required for license reinstatement prior to affixing the official stamp;
- (C) Affix the official stamp, with the stamp in red ink;
- (D) Provide the participant with a certificate of completion; and
- (E) Report completion to the Department of Public Safety through ODMHSAS;
- (11) Those participants whose most recent offense was before September 1, 1993 should be referred to DPS to verify an assessment is not required.
- (12) Provide ODMHSAS notification of those participants; ~~successfully completing required education and treatment, including the participant's name, address, date of birth and driver's license number through the online data entry system known as ADSAC online, or in a manner prescribed by the Commissioner or designee. This notification shall be submitted to ODMHSAS within seventy two (72) hours upon verification of successful completion of all requirements;~~
- (A) Completing the initial portion of the ADSAC assessment through the online data entry system known as ADSAC online, or in a manner prescribed by the Commissioner or designee. This notification shall be submitted to ODMHSAS within seventy-two (72) hours upon providing the participant with their intervention recommendations; and
- (B) Successfully completing required education and treatment, including the participant's name,
- address, date of birth and driver's license number through the online data entry system known as ADSAC online, or in a manner prescribed by the Commissioner or designee. This notification shall be submitted to ODMHSAS within seventy-two (72) hours upon verification of successful completion of all requirements.
- (13) Certified ADSAC assessors must provide to a caller adequate information regarding the ADSAC assessment process and scheduling requirements. The phone number published specific for each assessor must be continuously available, either answered in person, answering machine, electronic voice mail, or a professional answering service. Numbers published for the purpose of ADSAC assessment and evaluation advertisement must be answered by individuals appropriately trained in all relevant aspects of 42 CFR, Part 2 and HIPAA regulations;
- (14) All assessors will complete a minimum of six (6) ADSAC assessments during each twelve (12) month period in order for assessor certification to remain active;
- (15) Each assessor shall maintain an inventory of required and approved instruments sufficient to meet ODMHSAS requirements;
- (16) Provide each individual assessed with information regarding all assessor certifications and licensures to include; name, phone number and address of the certifying or licensing body. If certified rather than licensed, the name of the licensed individual serving as supervisor with all licensures including; name, phone number and addresses of the licensing bodies pursuant to Oklahoma state statutes. Contact information for ODMHSAS, ADSAC personnel at ODMHSAS shall be included. All information shall be in a form prescribed by the Commissioner of ODMHSAS or designee;
- (17) Each certified assessor shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to thirty (30) days after a change has occurred;
- (18) For participants who have a language other than English:
- (A) The participant shall be referred to an ADSAC assessor fluent in that language, if such as assessor is available. If no assessor fluent in the language is available then an interpreter shall be present for the entire assessment process; and
- (B) If an interpreter is required, the interpreter shall not be younger than eighteen (18) years of age and should not be related to the participant.
- (19) Provide assessment services only at sites approved by ODMHSAS;
- (20) Report all data to ODMHSAS within thirty (30) days or as otherwise directed in this Chapter;
- (21) Make recommendations based on ODMHSAS required assessment instruments;
- (22) Make all recommendations based on current accepted placement criteria; and



(23) Preference in clinical referrals shall be given to institutions and organizations possessing a substance abuse certification from ODMHSAS, if such service is available.

**450:21-7-8. Participant evaluation**

(a) The assessment and evaluation of the participant shall be as comprehensive as possible. ADSAC assessors shall not conduct any portion of the assessment process or provide any evaluation services on more than one participant at a time. The assessment shall include, but not be limited to:

~~(1) A face-to-face biopsychosocial assessment which gathers sufficient information that could assist the participant, and includes the following items:~~

- ~~(A) Behavioral, including substance use, abuse, and dependence;~~
- ~~(B) Emotional, including issues related to past or current trauma;~~
- ~~(C) Physical;~~
- ~~(D) Social and recreational; and~~
- ~~(E) Vocational.~~

(1) A face-to-face biopsychosocial assessment that gathers sufficient information to assist the consumer in developing an individualized service plan. The biopsychosocial assessment includes historical and current information regarding the behavior and experiences of the consumer and is conducted in a standardized manner.

(2) The assessor shall obtain and document the participants driving history information from public record(s), when made available. This information shall, at a minimum, include the following:

- (A) Arrest date;
- (B) All charges relating to alcohol and drug offenses; and
- (C) Driving record.

(3) Alcohol and other drug information as supplied by the participant or referring party:

- (A) Blood alcohol concentration at time of arrest;
- (B) Prior alcohol/drug treatment;
- (C) Polydrug use;
- (D) Prior alcohol-related arrest(s); and
- (E) Prior drug related arrest(s).

(4) Pursuant to 450:21-7-9, the use of completed and scored standardized evaluation instruments; and

(5) All information shall be in a format prescribed by the Commissioner of ODMHSAS or designee.

(b) Recommendations, known as Intervention Categories, shall be based on scores derived from and verified by, a battery of required and appropriate assessment/evaluation instruments, and adhered to by all assessors unless otherwise indicated by ODMHSAS:

(1) All those identified as being at low risk to recidivate as indicated by scores derived from the assessment process shall be referred to educational interventions only:

(A) Intervention Category One shall be identified by alcohol or drug scale scores from the DRI II or DQ of zero (0) to thirty-nine (39) and recommendations shall consist of:

- (i) Ten (10) hour ADSAC course; and

(ii) Victims Impact Panel.

(iii) The ten (10) hour ADSAC course and Victims Impact Panel may be attended concurrently.

(B) Intervention Category Two shall be identified by alcohol or drug scale scores from the DRI II or DQ of zero (0) to thirty-nine (39) and a previous alcohol or drug related offense resulting in license revocation pursuant to Title 47, § 6-212.2, A and recommendations shall consist of:

- (i) Twenty-four (24) hour ADSAC course; and
- (ii) Victims Impact Panel.
- (iii) The twenty-four (24) hour ADSAC course and the Victims Impact Panel may be attended concurrently.

(2) All those identified as being at moderate risk to recidivate shall be referred to a combination of educational and clinical interventions:

(A) Intervention Category Three, shall be identified by alcohol or drug scale scores from the DRI I or DQ of forty (40) to sixty nine (69) and recommendations shall consist of:

- (i) Twenty-four (24) hour ADSAC course;
- (ii) Victims Impact Panel; and
- (iii) Substance abuse related group involvement for six (6) weeks, meeting one (1) time per week.
- (iv) The twenty-four (24) hour ADSAC should be attended prior to the initiation of the six (6) week substance abuse group.

(B) Those with scoring appropriate for an Intervention Category Four or Five and placed at this level due to clinical override shall be required to attend:

- (i) Twelve (12) weeks of substance abuse related group meeting a minimum of one (1) time per week and a maximum of two (2) times per week; and
- (ii) Twelve (12) weeks of mutual support group attendance, once per week.
- (iii) It must be possible to complete the combination of interventions within ninety (90) days.

(3) All those identified as being at problem risk to recidivate shall be referred to clinical interventions only: Intervention Category Four shall be identified by alcohol or drug scale scores from the DRI II or DQ of seventy (70) to eighty nine (89) and recommendations shall consist of:

- (A) Intensive outpatient treatment;
- (B) Aftercare; and
- (C) Twelve (12) weeks of mutual support meetings.
- (D) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.
- (E) The combination of interventions recommended must be able to be completed within ninety (90) days.

(4) All those identified as being at severe risk to recidivate shall be referred to clinical interventions only: Intervention Category Five will be identified by alcohol or drug scale scores from the DRI II/DQ of ninety (90) to one hundred (100) and recommendations shall consist of:

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- (A) Residential or inpatient treatment;
  - (B) Aftercare; and
  - (C) Mutual support meetings.
  - (D) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.
  - (E) The combination of interventions recommended must be able to be completed within ninety (90) days.
- (5) If no groups are available or if the participant has a significant, appropriately diagnosed co-occurring disorder, then individual counseling can be substituted for group counseling. This must be addressed with an override and cleared through ODMHSAS.
- (6) Interventions completed prior to the assessment may be accepted if:
- (A) The intervention is completed after the offense resulting in license revocation;
  - (B) The intervention meets or exceeds all the requirements listed in the recommendation; and
  - (C) The provider of the intervention is appropriately accredited.
- (7) Assessments will remain valid for six (6) months from the date of completion:
- (A) If after six (6) months, action toward completing assessment recommendations has not been initiated, then the assessment shall be considered invalid and a new assessment will be required.
  - (B) The participant must be notified of this fact in writing upon assessment.
- (8) A recommendation can be lowered one intervention category through the appropriate use of one of the available overrides. However, an intervention level for clinical services only or combination of educational and clinical services cannot be lowered to an intervention level for educational services only. ODMHSAS approval must be granted for overrides of more than one intervention category.
- (9) Any significant discrepancy between the scores obtained on either the DRI II or the DQ and an appropriately chosen additional supportive instrument should be cause for reevaluation of participant's answers to the assessment instruments. If the discrepancy cannot be resolved, then an override should be considered.
- (10) Any recommendation can be lowered with the appropriate use of one of the following overrides:
- (A) "Geographic accessibility";
  - (B) "On waiting list for appropriate level of care";
  - (C) "Language barriers";
  - (D) "Sustained abstinence"; or
  - (E) "ASAM override".
- (11) In each instance, the most appropriate and applicable override category shall be used.
- (12) All overrides must be supported in writing and with information or evidence that clearly justifies the decision made. Verifying and/or validating documentation must be included in the record.
- (13) "Geographic accessibility" should be used when one or more of the services required for a specific intervention category does not exist within seventy (70) miles from the town the participant identifies as the home town, as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:
- (A) The recommendation should be reduced to the first intervention category with all services available, and
  - (B) Before using this override, the participant's address shall be verified;
- (14) "On waiting list for appropriate level of care" should be used when one or more of the services required for a specific intervention category is not available within seventy (70) miles from the town the participant identifies as a home town as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:
- (A) The service recommended must also not be available within thirty (30) days of the initial date of assessment,
  - (B) The recommendation should be reduced to the first intervention category with all services available, and
  - (C) Before using this override, the participant's address shall be verified.
- (15) "Language barriers" should be used when one or more of the services required for a specific intervention category is not offered in the language of a non-English speaking participant within seventy (70) miles from the town the participant identifies as the home town:
- (A) The recommendation should be altered to include the most appropriate combination of interventions available in the participant's language,
  - (B) Due to problems with service availability caused by language barriers, this is the only override in which interventions from multiple categories can be commingled, and
  - (C) Before using this override, the participant's address shall be verified.
- (16) "Sustained abstinence" should be used when an override may be appropriate when recognizing that a significant period of verifiable abstinence or recovery exists between the time of the offense and the assessment:
- (A) The abstinence/recovery must be at least six (6) months' duration,
  - (B) The abstinence/recovery must be continuous,
  - (C) The abstinence/recovery must be verifiable,
  - (D) Three notarized statements from individuals who know, but are not related to, the participant, and
  - (E) The notarized statement verifying abstinence/recovery will be in a form prescribed by the commissioner of ODMHSAS or designee.
- (17) "ASAM override" should be used when the participant has been assessed by a receiving provider as not meeting the ASAM level of care recommended by the ADSAC assessment. This override must be substantiated

by including the receiving provider's ASAM in the participant's ADSAC file.

**450:21-7-9. Standardized evaluation instruments**

- (a) Standardized evaluation instruments shall be administered in the manner intended and findings shall be a component of the overall assessment and recommendations.
(b) The approved standardized evaluation instruments shall be limited to:

- (1) For all alcohol and drug related driving offenses resulting related to driving under the influence or while impaired that result in license revocation, a completed and scored, current computerized version of the Driver Risk Inventory II (DRI II) Driver Risk Inventory (DRI) in a face-to-face structured interview. For all non-driving alcohol and drug related convictions resulting offenses not related to driving under the influence or while in impaired that result in license revocation, a completed and scored, current computerized version of the Defendant Questionnaire (DQ) shall be used and;
(2) A completed biopsychsocial;
(3) A completed and scored additional, supportive clinical instrument to support initial findings shall be chosen by the assessor from the menu of approved supportive instruments listed below:
(A) Needs Assessment (NEEDS); or
(B) Triage Assessment for Addictive Disorders (TAAD); and
(4) A thorough face-to-face interview.
(5) All additional, supportive clinical assessment instruments shall be used only in a manner consistent with the instrument design, intended purpose and to support the identified level of severity of the participant;
(6) All assessment instruments approved for use in the ADSAC process shall be used according to directions from the manual of each instrument; and
(7) Assessment instruments appropriate for use with those with a primary language other than English shall be identified as the instruments are approved for use by ODMHSAS.

[OAR Docket #22-456; filed 6-23-22]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 23. STANDARDS AND CRITERIA FOR COMMUNITY-BASED STRUCTURED CRISIS CENTERS

[OAR Docket #22-457]

RULEMAKING ACTION: PERMANENT final adoption
RULES:

- Subchapter 1. General Provisions
450:23-1-1 [AMENDED]
Subchapter 3. CBSCC Services

- Part 1. Facility-Based Crisis-Facility-Based Crisis Stabilization
450:23-3-5 [AMENDED]
Subchapter 5. CBSCC Clinical Records
450:23-5-2 [AMENDED]
450:23-5-3 [REVOKED]
450:23-5-4 [AMENDED]
450:23-5-5 [AMENDED]
450:23-5-6 [AMENDED]
Subchapter 21. Facility Environment
450:23-21-1 [AMENDED]

AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. § 3-317

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 8, 2021

COMMENT PERIOD:

January 3, 2022 through February 2, 2022

PUBLIC HEARING:

February 3, 2022

ADOPTION:

March 25, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 28, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 15, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule revisions to Chapter 23 remove language regarding documentation requirements, clarify assessment requirements, and include other clean up language.

CONTACT PERSON:

Melissa Miller, Policy Director and Administrative Rules Liaison, Melissa.Miller@odmhsas.org or (405) 248-9345

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

450:23-1-1. Purpose

This chapter sets forth the Standards and Criteria used in the certification of CBSCC's (43A O.S. § 3-317). The rules regarding the certification processes including, but not necessarily limited to, applications, fees, requirements for, levels of, and administrative sanctions are found at OAC 450:1, Subchapters 5 and 9. Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC 450:1-9-5.3450:1-9-5.6.

SUBCHAPTER 3. CBSCC SERVICES

# Permanent Final Adoptions

## **PART 1. FACILITY BASED-CRISIS FACILITY-BASED CRISIS STABILIZATION**

### **450:23-3-5. Crisis stabilization, psychiatric, substance use disorder and co-occurring services**

(a) Crisis stabilization services shall provide continuous twenty-four (24) hour evaluation, observation, crisis stabilization, and social services intervention seven (7) days per week for consumers experiencing mental health or substance use disorder related crises; or those who present with co-occurring disorders.

(b) Licensed nurses and other support staff shall be adequate in number to provide care needed by consumers twenty-four (24) hours a day seven (7) days per week.

(c) Crisis stabilization services shall be provided by a co-occurring disorder capable multidisciplinary team of medical, nursing, social services, clinical, administrative, and other staff adequate to meet the clinical needs of the individuals served.

(d) ~~Staff members assigned to~~ Every staff member providing services within a medical supervised detoxification component shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs and the implication of those vital signs, and emergency procedures as well as demonstrating core competencies in addressing the needs of individuals receiving detoxification services who may have co-occurring mental health disorders and be on psychotropic medication.

(e) Services shall minimally include:

(1) Medically-supervised substance use disorder and mental health screening, observation and evaluation;

(2) Initiation and medical supervision of rapid stabilization regimen as prescribed by a physician, including medically monitored detoxification where indicated;

(3) Medically-supervised and co-occurring disorder capable detoxification, in compliance with procedures outlined in OAC Title 450, Subchapter 18;

(4) Intensive care and intervention during acute periods of crisis stabilization;

(5) Motivational strategies to facilitate further treatment participation for mental health and/or substance abuse needs; and,

(6) Providing referral, linkage or placement, as indicated by consumer needs.

(f) Crisis stabilization services, whether psychiatric, substance use disorder, or co-occurring, shall be utilized only after less restrictive community resources have been determined to be inadequate to meet the current needs of the consumer.

(g) Compliance with 450:23-3-5 shall be determined by a review of the following: personnel files and clinical privileges records; clinical records; ICIS information; policy and procedures; critical incident reports; staffing; census; and by on-site observation.

### **450:23-5-2. Basic requirements**

(a) The CBSCC's policies and procedures shall:

(1) define the content of the consumer record in accordance with 450:23-5-4 through 23-5-9; and

~~(2) define storage, retention and destruction requirements for consumer records;~~

~~(3) require consumer records be confidentially maintained in locked equipment under secure measures;~~

~~(4) require legible entries in consumer records signed with first name or initial, last name, and dated by the person making the entry;~~

~~(5) require the consumer's name be typed or written on each sheet of paper or page in the consumer record;~~

~~(6) require a signed consent for treatment before the consumer is admitted on a voluntary basis; and~~

~~(7) require a signed consent for follow up before any contact after discharge is made.~~

(2) meet all requirements set forth in OAC 450:1-9-5.6(d).

(b) Compliance with 450:23-5-2 shall be determined by on-site observation and a review of the following: CBSCC policy, procedures and operational methods; clinical records; other CBSCC provided documentation; and PI information and reports.

### **450:23-5-3. Record access for clinical staff [REVOKED]**

~~The CBSCC shall assure consumer records are readily accessible to the CBSCC staff directly caring for the consumer. Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records. Compliance with 450:23-5-3 shall be determined by on-site observation and staff interviews.~~

### **450:23-5-4. Clinical record content, intake Intake and assessment**

(a) The CBSCC shall assess each individual to determine appropriateness of admission. ~~Initial assessments by an LMHP are to be completed on all minors voluntary or involuntary prior to admission.~~ For minors admitted on a voluntary or involuntary basis, an LMHP must complete an initial assessment prior to admission.

(b) Consumer intake information shall contain, but not be limited to the following identification data:

(1) Consumer name;

(2) Name and identifying information of the legal guardian(s)

(3) Home address;

(4) Telephone number;

(5) Referral source;

(6) Reason for referral;

(7) Significant other to be notified in case of emergency;

~~(8) PICIS intake data core content;~~

~~(9) Presenting problem and disposition;~~

~~(10) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities~~

## **SUBCHAPTER 5. CBSCC CLINICAL RECORDS**

shall be obtained during intake and kept in a highly visible location in or on the record; and

(H10) Screening for co-occurring disorders, trauma, and homelessness, medical and legal issues.

(c) Consumer assessment information for consumers admitted to facility-based crisis stabilization shall be completed within 72 hours of admission. — ~~Assessment information for consumers in a URC, if applicable, shall be completed within twelve (12) hours of arrival.~~

(1) Integrated mental health and substance abuse psychosocial evaluation that minimally addresses:

(A) The consumer's strengths and abilities to be considered during community re-entry;

(B) Economic, vocational, educational, social, family and spiritual issues as indicated; and

(C) An initial discharge plan.

(2) Interpretive summary of relevant assessment findings that results in the development of an intervention plan addressing mental health, substance use disorder, and other related issues contributing to the crisis;

(3) An integrated intervention plan that minimally addresses the consumer's:

(A) Presenting crisis situation that incorporates the identified problem(s);

(B) Strengths and abilities;

(C) Needs and preferences; and

(D) Goals and objectives.

(d) Assessment information for consumers admitted to a URC shall be completed within twelve (12) to twenty-four (24) hours of arrival.

~~(e)~~ Compliance with 450:23-5-4 shall be determined by a review of the following: intake assessment instruments and other intake documents of the CBSCC; clinical records; and, other agency documentation of intake materials or requirements.

**450:23-5-5. Health, mental health, substance abuse, and drug history**

(a) A health and drug history shall be completed for each consumer at the time of admission in facility-based crisis stabilization and as soon as practical in the URC. The medical history shall include obtainable information regarding:

(1) Name of medication;

(2) Strength and dosage of current medication;

(3) Length of time patient was on the medication if known;

(4) Benefit(s) of medication;

(5) Side effects;

(6) The prescribing medical professional if known; and

(7) Relevant drug history of family members.

(b) A mental health history, including symptoms and safety screening, shall be completed for each consumer at the time of admission in facility-based crisis stabilization and as soon as practical in the URC.

(c) A substance abuse history, including ~~checklist for~~ use, abuse, and dependence for common substances (including

nicotine ~~and caffeine~~) and screening for withdrawal risk and IV use shall be completed for each consumer at the time of admission

(d) Compliance with 450:23-5-5 shall be determined by a review of clinical records.

**450:23-5-6. Progress notes**

(a) ~~The CBSCC shall have a policy and procedure mandating the chronological documentation of progress notes~~ Progress notes shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, and the consumer's progress in treatment for consumers admitted to facility-based crisis stabilization.

(b) Progress notes shall minimally address the following:

(1) Person(s) to whom services were rendered;

(2) Activities and services provided and as they relate to the goals and objectives of the intervention plan, including ongoing reference to the intervention plan;

(3) Documentation of the progress or lack of progress in crisis resolution as defined in the intervention plan;

(4) Documentation of the intervention plan's implementation, including consumer activities and services;

(5) The consumer's current status;

(6) Documentation of the consumer's response to intervention services, changes in behavior and mood, and outcome of intervention services;

(7) Plans for continuing therapy or for discharge, whichever is appropriate; and

(b) Progress notes must include the consumer's name, be signed by the service provider, and include the service provider's credentials.

(c) Progress notes shall be documented according to the following time frames:

(1) Intervention team shall document progress notes daily; and

(2) Nursing service shall document progress notes on each shift.

(d) Compliance with 450:23-5-6 shall be determined by a review of clinical records.

**SUBCHAPTER 21. FACILITY ENVIRONMENT**

**450:23-21-1. Facility environment**

In addition to the requirements set forth in OAC ~~450:9-1-5.2(a)~~ 450:9-1-5.5(a), the CBSCC shall:

(1) Have a written Infection Control Program and staff shall be knowledgeable of Center for Disease Control (CDC) Guidelines for Tuberculosis and of the Blood Borne Pathogens Standard, location of spill kits, masks, and other personal protective equipment; and

(2) Have a written Hazardous Communication Program and staff shall be knowledgeable of chemicals in the workplace, location of Material Safety Data Sheets, personal protective equipment; and toxic or flammable

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substances shall be stored in approved locked storage cabinets.

[OAR Docket #22-457; filed 6-23-22]

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 24. STANDARDS AND CRITERIA FOR COMPREHENSIVE COMMUNITY ADDICTION RECOVERY CENTERS

[OAR Docket #22-458]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
450:24-1-1 [AMENDED]  
Subchapter 3. Required Services  
Part 3. Screening, Assessment and Referral  
450:24-3-21 [AMENDED]  
450:24-3-22 [AMENDED]  
Part 15. Case Management  
450:24-3-141 [AMENDED]  
450:24-3-143 [AMENDED]  
Subchapter 7. Facility Clinical Records  
450:24-7-5 [AMENDED]  
450:24-7-9 [AMENDED]  
450:24-7-11 [AMENDED]  
450:24-7-12 [AMENDED]  
Subchapter 23. Governing Authority  
450:24-23-2 [AMENDED]

### AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, and 3-415

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

December 8, 2021

### COMMENT PERIOD:

January 3, 2022 through February 2, 2022

### PUBLIC HEARING:

February 3, 2022

### ADOPTION:

March 25, 2022

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

March 28, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule revisions to Chapter 24 remove language regarding documentation requirements for assessments, progress notes, and discharge plans. Other clean up language is also included.

### CONTACT PERSON:

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### PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

**FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 450:24-1-1. Purpose

(a) This chapter sets forth the Standards and Criteria used in the certification of Comprehensive Community Addiction Recovery Centers (CCARC) and implements 43A O.S. § 3-415. A.1., which authorizes the Board of Mental Health and Substance Abuse Services to certify private facilities and organizations which provide treatment, counseling and rehabilitation services directed toward alcohol and drug dependent persons. A CCARC is considered distinct and separate from facilities that may be certified under OAC 450:18 in that 450:24 requires the provision of all services stipulated in Subchapter 450: 24-3 et seq.

(b) The rules regarding the certification process including but not necessarily limited to application, fees and administrative sanctions are found in the Oklahoma Administrative Code, Title 450 Chapter 1, Subchapters 5 and 9.

(c) Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC ~~450:1-9-5~~ 450:1-9-5.6.

## SUBCHAPTER 3. REQUIRED SERVICES

### PART 3. SCREENING, ASSESSMENT AND REFERRAL

### 450:24-3-21. Integrated screening and assessment services

(a) CCARC policy and procedure shall require that a screening of each consumer's service needs is completed in a timely manner. An integrated screening should be welcoming, trauma-informed, and culturally appropriate, include screening of whether the consumer is a risk to self or others, including suicide risk factors, as well as maximize recognition of the prevalence of co-occurring disorders among those who present for services at a Community Comprehensive Addiction Recovery Center.

(b) Upon determination of appropriate admission, a biospsy-social assessment must be completed using standardized tools such as the Addiction Severity Index (ASI) for adults or the Teen Addiction Severity Index (T-ASI) for adolescents, which gathers sufficient information to assist the consumer in developing an individualized service plan. The assessment must also list the client's past and current psychiatric medications. The assessment must be completed by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate. Licensure candidate signatures must be co-signed by a fully-licensed LBHP in good standing.

- (c) The consumer and family as appropriate shall be an active participant(s) in the screening and assessment process.
- (d) The CCARC shall have policy and procedures specific to each program service which dictate timeframes by when assessments must be completed and documented. ~~If halfway house, residential, or medically supervised withdrawal management services are provided, assessments shall be completed in accordance with 450:18-7-24 through 450:18-7-26 and 450:18-13-61(b)(5)(B).~~ In the event the consumer is not admitted and as a result the assessment is not included in the clinical record, the policy shall specify how screening and assessment information is maintained and stored.
- (e) Compliance with 450:24-3-21 shall be determined by a review of clinical records, and policy and procedures.

**450:24-3-22. Screening and assessment services, access or referral to needed services**

- (a) Written policy and procedures governing the screening and assessment services shall specify the following:
  - (1) The information to be obtained on all applicants or referrals for admission;
  - (2) The procedures for accepting referrals from outside agencies or organizations;
  - (3) The procedure to be followed when an applicant or referral is found to be ineligible for admission;
  - (4) Methods of collection of information from family members, significant others or other social service agencies;
  - (5) Methods for obtaining a physical examination or continued medical care where indicated;
  - (6) Referral to other resources when the consumer has treatment or other service needs the facility cannot meet; and
  - ~~(7) Emphasis on welcoming all consumers and conveying a recovery oriented hopeful message; and~~
  - ~~(8) No barriers to entry based solely on the presence of historic, current or recent mental health symptoms.~~
- (b) Compliance with 450:24-3-22 shall be determined by a review of the facility's written policy and procedures.

**PART 15. CASE MANAGEMENT**

**450:24-3-141. Case management services**

- (a) Case management efforts shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development and consumer advocacy provided in various settings based on consumer need.
- (b) Case management services shall be offered to all adults who are receiving services and, to each child (or their parent/guardian).
- (c) Case management shall be co-occurring disorder capable.
- (d) Case management services shall be planned referral, linkage, monitoring and support, and advocacy assistance provided in partnership with a client to support that client in self sufficiency and community tenure. Activities include:

- (1) Completion of strengths based assessment for the purpose of individual plan of care development; ~~which shall include evidence that the following were evaluated:~~
  - ~~(A) Consumer's level of functioning within the community;~~
  - ~~(B) Consumer's job skills and potential; and/or educational needs;~~
  - ~~(C) Consumer strengths and resources;~~
  - ~~(D) Consumer's financial needs;~~
  - ~~(E) Consumer's legal needs;~~
  - ~~(F) Consumer's present living situation and support system;~~
  - ~~(G) Consumer's use of substances and orientation to changes related to substance use;~~
  - ~~(H) Consumer's medical and health status;~~
  - ~~(I) Consumer's needs or problems which interfere with the ability to successfully function in the community; and~~
  - ~~(J) Consumer's goals.~~
- (2) Development of case management care plan;
- (3) Referral, linkage and advocacy to assist with gaining access to appropriate community resources;
- (4) Contacts with other individuals and organizations that influence the recipient's relationship with the community, i.e., family members, law enforcement personnel, landlords, etc;
- (5) Monitoring and support related to the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress;
- (6) Follow-up contact with the consumer if they miss any scheduled appointments (including physician/medication, therapy, rehabilitation, or other supportive service appointments as delineated on the service plan); and
- (7) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist consumer(s) from progression to a higher level of care.
- (e) Compliance with 450:24-3-141 shall be determined by on-site observation and a review of the following: clinical records, and written policy and procedures.

**450:24-3-143. Case management services for consumers admitted to higher levels of care**

- (a) Case managers shall maintain contact with existing CCARC consumers, and establish contact with newly referred persons who are receiving services in residential treatment settings, Community Based Structured Crisis Centers (CB-SCC), or 24-hour settings providing substance use disorder withdrawal management treatment.
- (b) Each CCARC shall assign at least one (1) staff member who is responsible for linkage between CBSCCs, withdrawal management center and/or the residential substance use disorder treatment facility and the CCARC. Linkage shall include, but not limited to, the following activities, pursuant to appropriately signed releases and ~~adherence to~~ applicable privacy provisions:

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(1) Regular visits or communication with the CBSCC, withdrawal management setting, and/or residential substance use disorder treatment facility to monitor progress of those consumers in a CBSCC, withdrawal management setting and/or in facility-based substance use disorder treatment from the CCARC's service area.

(2) Provide knowledge and communication to other CCARC staff regarding CBSCC, withdrawal management setting, and/or residential substance use disorder treatment facility and discharge procedures.

(c) Case managers from the CCARC to which the consumer will be discharged shall assist the consumer and unit, CBSCC, and/or substance use disorder treatment facility with discharge planning for consumers returning to the community.

(d) Individuals discharging from an inpatient setting, CBSCC, and/or substance use disorder treatment facility, who have not already been engaged, shall be offered case management and other supportive services. This shall occur as soon as possible, but shall be offered no later than one (1) week post-discharge.

(e) Compliance with 450:24-3-143 shall be determined by a review of the following: clinical records; staff interviews; information from ODMHSAS operated psychiatric inpatient unit; CBSCC facilities, substance use disorder treatment facilities; meetings minutes (CCARC or state-operated psychiatric inpatient unit); and a review of a minimum of ten (10) clinical records of consumers who received services at an inpatient unit, CBS, and/or 450-hour setting providing substance use disorder treatment within the past twelve (12) months.

## SUBCHAPTER 7. FACILITY CLINICAL RECORDS

### 450:24-7-5. Clinical record content, screening and assessment

(a) All facilities shall complete a face-to face screening with each individual to determine appropriateness of admission.

(b) The CCARC shall document the face-to-face screening between the potential consumer and the CCARC including how the consumer was welcomed and engaged, how the consumer was assisted to identify goals and experience hope, how the consumer received integrated screening to identify both immediate and ongoing needs and how the consumer was assisted to determine appropriateness of admission, and/or to access other appropriate services.

(c) All facilities shall assess each consumer for appropriateness of admission to the treatment program. ~~Each presenting consumer for substance use disorder treatment shall be assessed, according to ASAM criteria, which includes a list of symptoms for all six dimensions and each level of care to determine a clinically appropriate placement in the least restrictive level of care. The ODMHSAS designated ASAM Service Level instrument must be completed to determine clinically appropriate residential/inpatient level of care (ASAM Level 3) treatment placement prior to admission into the treatment facility.~~ Facilities must ensure that a consumer's refusal

of a particular service does not preclude the consumer from accessing other needed mental health or substance-related or addictive disorder treatment services. Should the service provider determine the consumer's needs cannot be met within the facility, clinical assessments and referrals for the consumer shall be documented.

(d) Any consumer seeking admission to inpatient or residential services, including medically-supervised withdrawal management and non-medical withdrawal management while under the influence or undergoing withdrawal of alcohol or drugs, shall be assessed prior to admission for medical needs. The written criteria to be used for medical needs assessment of persons under the influence or undergoing withdrawal of alcohol or drugs, and the protocols for determining when physician review of the assessment is needed, shall be approved by the facility's consulting physician.

~~(e) Upon determination of appropriate admission, consumer assessment demographic information shall contain, but not be limited to, the following:~~

- ~~(1) Date of initial contact requesting services;~~
- ~~(2) Date of the screening and/or assessment;~~
- ~~(3) Consumer's name;~~
- ~~(4) Gender;~~
- ~~(5) Birthdate;~~
- ~~(6) Home address;~~
- ~~(7) Telephone number;~~
- ~~(8) Referral source;~~
- ~~(9) Reason for referral;~~
- ~~(10) Significant other to be notified in case of emergency; and~~
- ~~(11) PICIS data core content, if the facility reports on PICIS.~~

(~~e~~) Compliance with 450:18-7-21 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Intake protocols;
- (3) assessment instruments;
- (4) Treatment records;
- (5) Interviews with staff and consumers; and
- (6) Other facility documentation.

### 450:24-7-9. Progress Notes

(a) Progress notes shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, ~~the consumer's response to the services provided~~ and the consumer's progress in treatment.

(b) Progress notes shall address the following:

- (1) date;
- (2) consumer's name;
- (3) Start and stop time for each timed treatment session or service;
- (4) type of service provided; and
- (5) signature of the service provider with their credential(s).

(b) Progress notes must include the consumer's name, be signed by the service provider, and include the service provider's credentials.



- (c) Outpatient staff must document each visit or transaction, except for assessment completion or service plan development, including missed appointments.
- (d) Compliance with 450:24-7-9 shall be determined by a review of clinical records and policies and procedures.

**450:24-7-11. Discharge assessment**

- (a) All facilities shall assess each consumer for appropriateness of discharge from a substance use disorder treatment program. ~~Each consumer shall be assessed using ASAM criteria that includes a list of symptoms for all six dimensions and each of the levels of care, to determine a clinically appropriate placement in the least restrictive level of care. This organized process involves a professional determination for appropriate placement to a specific level of care based on the consumer's severity of symptoms and current situations.~~
- (b) Compliance with 450:24-7-11 may be determined by a review of the following:
  - (1) Policies and procedures;
  - (2) Continuing care plans;
  - (3) Discharge assessments;
  - (4) Discharge summaries;
  - (5) Progress notes;
  - (6) Consumer records;
  - (7) Interviews with staff and consumers; and
  - (8) Other facility documentation.

**450:24-7-12. Transition/discharge plan**

- (a) The facility shall assist the consumer to obtain services that are needed, but not available within the facility, and/or in transitioning from one level of care to another, and/or discharging from a facility. ~~A written plan of recommendations and specific referrals for implementation of continuing care services, including medications, shall be prepared for each consumer who meets the ASAM PPC dimensional continued service criteria, in each level of care. transition/discharge~~ Transition/discharge plans shall be developed with the knowledge and cooperation of the consumer.
- (b) ~~Appointments for outpatient therapy and other services, as applicable, should be scheduled prior to discharge from residential/inpatient level of care (ASAM level 3) service settings. Development of the transition/discharge plan shall begin no later than two (2) weeks after admission into residential service settings.~~
- (c) ~~The consumer's response to the continuing care plan shall be noted in the plan or a note shall be made that the consumer was not available and why. In the event of the death of a consumer, a summary statement including this information shall be documented in the record.~~
- (b) A written plan of recommendations and specific referrals for implementation of continuing care services, including medications, shall be prepared for each consumer
- (d) The transition/discharge plan shall be included in the discharge summary.
- (e) Compliance with 450:24-7-12 may be determined by a review of closed clinical records.

**SUBCHAPTER 23. GOVERNING AUTHORITY**

**450:24-23-2. Board composition**

- (a) Members of the Board of Directors shall reside, or be employed, or otherwise have a demonstrated interest in the area served.
- (b) The composition of the Board shall reflect an equitable representation of the population distribution in the service area. Each county in a multi-county service area of five or fewer counties must be represented on the Board by at least one resident of the county. CCARC's serving six or more counties may rotate such membership or otherwise ensure representation.
- (c) Composition of the Board shall also reflect a broad representation of the community, including minorities, at least one consumer of addiction recovery services and one family member of an adolescent who has received addiction recovery services.
- (d) No more than forty percent of the Board's members shall be providers of mental health and/or addiction recovery services.
- (e) The Board shall have no less than seven members.
- (f) System shall be devised to provide for a staggering of terms so that the terms of the Directors do not all expire at the same time.
- (g) The Board shall have a provision for the removal of individuals from the Board for non-attendance of Board meetings.
- (h) The governing body shall meet at least quarterly.
- (i) Employees of an agency shall be prohibited from participation as Board members of their governing authority, except in an ex-official, nonvoting capacity.
- (j) ~~The meetings of the Board of Directors shall comply with the Oklahoma open meeting laws.~~
- (k) Compliance with 450:24-23-2 shall be determined by a review of facility policy and procedures regarding governing authority; governing body bylaws, rules and regulations; governing body minutes; membership rolls; and other documentation as needed.

[OAR Docket #22-458; filed 6-23-22]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES**  
**CHAPTER 27. STANDARDS AND CRITERIA FOR MENTAL ILLNESS SERVICE PROGRAMS**

[OAR Docket #22-459]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 450:27-1-1 [AMENDED]
- Subchapter 3. Organization Structure and Administrative Operations
- Part 5. Safety and Risk Management
- 450:27-3-43 [AMENDED]
- 450:27-3-44 [REVOKED]
- Subchapter 5. Quality Management of Operations

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Part 3. Operations for Service Documentation  
450:27-5-21 [REVOKED]  
450:27-5-22 [REVOKED]  
450:27-5-23 [REVOKED]  
Subchapter 7. Clinical Services  
Part 1. Required Services  
450:27-7-1 [REVOKED]  
450:27-7-3 [AMENDED]  
Part 3. Additional or Optional Services  
450:27-7-21 [AMENDED]  
450:27-7-22 [AMENDED]  
Part 5. Clinical Documentation  
450:27-7-41 [AMENDED]  
450:27-7-42 [AMENDED]  
450:27-7-44 [AMENDED]

## AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, and 3-323A

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

December 8, 2021

## COMMENT PERIOD:

January 3, 2022 through February 2, 2022

## PUBLIC HEARING:

February 3, 2022

## ADOPTION:

March 25, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 28, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 15, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed rule revisions to Chapter 27 remove language regarding hygiene and sanitation, clinical documentation, assessments, progress notes, and service plans that is addressed elsewhere or is otherwise unnecessary. Other clean up language is also included.

## CONTACT PERSON:

Melissa Miller, Policy Director and Administrative Rules Liaison,  
Melissa.Miller@odmhsas.org or (405) 248-9345

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 450:27-1-1. Purpose

(a) This chapter sets forth the Standards and Criteria used in the certification of certain facilities or organizations providing mental health treatment services and implements 43A O.S. § 3-323A which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify facilities as a Mental Illness Service Program.

(b) The rules regarding the certification process including but not necessarily limited to application, fees and administrative sanctions are found in the Oklahoma Administrative Code, Title 450 Chapter 1, Subchapters 5 and 9.

(c) Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC ~~450:1-9-5.3~~450:1-9-5.6.

## SUBCHAPTER 3. ORGANIZATION STRUCTURE AND ADMINISTRATIVE OPERATIONS

### PART 5. SAFETY AND RISK MANAGEMENT

#### 450:27-3-43. Incident Reporting; procedures

(a) The facility shall have written policies and procedures requiring documentation and reporting of unusual incidents and analysis of the contributors to the incident, with attention to issues that may reflect opportunities for system level or program level improvement.

(b) Policies shall be in accordance with documentation and submission requirements as stipulated in ~~450:27-7-47 Incident Reporting; documentation and notification~~OAC 450:1-9-5.6(f).

(c) Compliance for 450:27-3-43 will be determined by review of policies and procedures, review of incidents reported, as applicable, to ODMSHAS, and staff interviews.

#### 450:27-3-44. Hygiene and sanitation [REVOKED]

~~Facilities shall provide:~~

~~(1) Lavatories and toilet facilities on site in a minimum ratio of (1) per twenty (20) persons;~~

~~(2) Water obtained from an approved public water supply or tested at least quarterly and treated as necessary, thereby maintaining a determination as an approved water supply by the authority having jurisdiction and the OSDH or DEQ, as necessary;~~

~~(3) Housekeeping services so that a hygienic environment is maintained in the facility.~~

## SUBCHAPTER 5. QUALITY MANAGEMENT OF OPERATIONS

### PART 3. OPERATIONS FOR SERVICE DOCUMENTATION [REVOKED]

#### 450:27-5-21. Clinical record keeping system [REVOKED]

~~(a) Each facility must establish and maintain an organized clinical record system for the collection and documentation of information appropriate to the treatment processes; and which insures organized, easily retrievable, usable clinical records~~

stored under confidential conditions and with planned retention and disposition.

(b) Compliance with 450:27-5-21 may be determined by on-site observation, a review of policies and procedures, treatment records, performance improvement guidelines, interviews with staff, and other facility documentation.

**450:27-5-22. Clinical record system; basic requirements [REVOKED]**

- (a) The facility's policies and procedures shall:
  - (1) Define the content of the consumer record.
  - (2) Define storage, retention and destruction requirements for consumer records.
  - (3) Require consumer records be maintained in locked equipment which is kept within a locked room, vehicle, or premise.
  - (4) Require legible entries in consumer records, signed with first name or initial, last name, and dated by the person making the entry.
  - (5) Require the consumer's name be typed or written on each page in the consumer record; or appear on each screen of an electronic record.
  - (6) Require a signed consent for treatment before a consumer is admitted on a voluntary basis.
- (b) If electronic clinical (medical) records are maintained, the facility will have proof of compliance with federal and state statutes related to electronic medical records, encryption, and other required features.
- (c) Compliance with 450:27-5-22 shall be determined by a review of the following: facility policy, procedures or operational methods; clinical records; other facility provided documentation; and PI information and reports.

**450:27-5-23. Record access for clinical staff [REVOKED]**

- (a) The facility shall assure consumer records are readily accessible to all staff providing services to consumers. Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records.
- (b) Compliance with 450:27-5-23 shall be determined by on-site observation and staff interviews.

**SUBCHAPTER 7. CLINICAL SERVICES**

**PART 1. REQUIRED SERVICES**

**450:27-7-1. Core behavioral health services [REVOKED]**

- (a) Each facility shall minimally provide the following services:
  - (1) Screening, assessment and referral services;
  - (2) Emergency services; and
  - (3) Outpatient therapy services.

(b) Compliance with 450:27-7-1 shall be determined observation and review of clinical records that document the provision of services the above listed services.

**450:27-7-3. Assessment services**

- (a) Facility policies shall describe, upon determination of appropriate admission to the facility service(s), the procedures by which assessment and admission occur.
- (b) The consumer assessment shall be completed by an LBHP or licensure candidate and shall include, but not be limited to, the following information:
  - (1) Behavioral, including mental health and addictive disorders as well as the following:
    - (A) presenting problem and current symptomology;
    - (B) previous treatment history;
    - (C) current and past psychotropic and addiction medications, including name, dosage and frequency; and
    - (D) Family history of mental health and other addictive disorders.
  - (2) Emotional, including issues related to past or current trauma and domestic violence;
  - (3) Physical/medical including medications:
    - (A) health history and current biomedical conditions and complications;
    - (B) current and past physical health medications, including name, dosage and frequency.
  - (4) Social and recreational; and, including:
    - (A) family and other relationships;
    - (B) recovery and community supports;
    - (C) leisure and wellness activities; and
    - (D) culture, including traditions and values.
  - (5) Vocational, including:
    - (A) educational attainment, difficulties, and history;
    - (B) current or previous military service including discharge status; and
    - (C) current and desired employment status.
- (c) The facility shall have policy and procedures specific to each program service which dictate timeframes by when assessments must be completed and documented.
- (d) The policy shall specify how screening and assessment information is maintained and stored in the event the consumer is not admitted for program services,
- (e) The consumer, family as appropriate, and others as appropriate and approved by the consumer shall be an active participant(s) admission and assessment process.
- (f) Compliance with 450:27-7-3 shall be determined by a review of clinical records, and policy and procedures.

**PART 3. ADDITIONAL OR OPTIONAL SERVICES**

**450:27-7-21. Additional treatment services;**

- (a) If the facility provides the following additional services those shall be provided in accordance with related standards

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described within OAC 450:27 and other portions of OAC:450, as applicable.

- (1) Case Management Services;
  - (2) Medication Services;
  - (3) Pharmacy Services; ~~Peer Recovery Support Services;~~
  - (4) Wellness Activities and Supports;
  - (5) Behavioral Health Rehabilitation Services;
  - (6) Day treatment services for children and adolescents; and;
  - (7) ~~Behavioral Health Home~~ Peer Recovery Support Services.
- (b) If the facility provides the following services, in addition to those stipulated in 450:27-7-1. and 450:27-7-21, separate ODMHSAS certification will be required in accordance with OAC 450:\_, including but not limited to the following:
- (1) Community Residential Mental Health Facilities, per OAC 450:16;
  - (2) Alcohol and Drug Treatment Programs, per OAC 450:18;
  - (3) Community Based Structured Crisis Services, per OAC 450:23;
  - (4) Comprehensive Community Addiction Recovery Centers, per OAC 450:24;
  - (5) Programs of Assertive Community Treatment, per OAC 450:55;
  - (6) Eating Disorder Treatment Programs, per OAC 450:60;
  - (7) Gambling Treatment Programs, per OAC 450:65; and/or,
  - (8) Opioid Substitution Treatment Programs, per OAC 450:70
- (c) Compliance with 450:27-7-21 is determined by review of program descriptions, clinical documentation, and review of ODMHSAS Certification findings additional applicable portions of OAC 450.

## 450:27-7-22. Case management services

- (a) If provided, case management services shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development and consumer advocacy provided in various settings based on consumer need. These services include referral, linkage, monitoring and support, and advocacy assistance provided in partnership with a client to support that client in self sufficiency and community tenure. Needs should be determined, at least in part, by completion of a strengths based assessment in partnership with the consumer and family members, as applicable, and utilized in the development of a case management plan. The case management plan can be incorporated in the overall services plan.
- (b) If case management services are provided, policies and procedures should articulate that ~~an assessment includes evidence that the following are evaluated:~~ a strengths based assessment for the purpose of assisting in the development of an individual plan of care must be completed.
- (1) ~~Consumer's level of functioning within the community;~~

- (2) ~~Consumer's job skills and potential; and/or educational needs;~~
- (3) ~~Consumer strengths and resources;~~
- (4) ~~Consumer's present living situation and support system;~~
- (5) ~~Consumer's use of substances and orientation to changes related to substance use;~~
- (6) ~~Consumer's medical and health status;~~
- (7) ~~Consumer's needs or problems which interfere with the ability to successfully function in the community; and~~
- (8) ~~Consumer's goals.~~

- (c) Compliance with 450:27-7-22 shall be determined by a review of policy and procedures and clinical documentation.

## PART 5. CLINICAL DOCUMENTATION

### 450:27-7-41. Clinical record content, screening, intake and assessment, documentation

- (a) The facility shall complete a face-to face screening with each individual to determine appropriateness of admission in accordance with 450:27-7-2. Screening services.
- (b) The facility shall document the face-to-face screening conducted how the consumer was assisted to identify goals, how the consumer received integrated screening to identify both immediate and ongoing needs and how the consumer was assisted to determine appropriateness of admission, and/or to access other appropriate services.
- (c) Each consumer admitted for treatment for co-occurring services shall be assessed by a qualified professional ~~demonstrating competency in the use of ASAM criteria, according to ASAM criteria, which includes a list of symptoms for all six dimensions and each level of care,~~ to determine a clinically appropriate placement in the least restrictive level of care. Facilities must ensure that a consumer's refusal of a particular service does not preclude the consumer from accessing other needed co-occurring treatment services. Should the service provider determine the consumer's needs cannot be met within the facility, clinical assessments and referrals for the consumer shall be documented.
- (d) Upon determination of appropriate admission, consumer demographic information shall be collected, as defined by facility policies and procedures.
- (e) For persons admitted to service, the facility shall complete a psychosocial assessment which gathers sufficient information to assist the consumer develop an individualized service plan.
- (f) An intake assessment update, to include date, identifying information, source of information, present needs, present life situation, current level of functioning, and what consumer wants in terms of service, is acceptable as meeting requirements of 450:27-7-41 only on re-admissions within one (1) year of previous admission at the facility.
- (g) Compliance with 450:450:27-7-41 shall be determined by a review of the following: psychosocial assessment instruments; consumer records; case management assessments; interviews with staff and consumers; policies and procedures and other facility documentation.

**450:27-7-42. Behavioral health service plan; documentation**

(a) The service plan is developed and finalized with the active participation of the consumer and a support person or advocate if requested by the consumer. In the case of children under the age of ~~18~~eighteen (18), it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges and problems.

(b) The service plan shall be completed by a LBHP or licensure candidate and be based on information obtained in the mental health assessment, other information provided on behalf of the consumer, and includes the evaluation of the assessment information by the clinician and the consumer.

(c) For adults, the service plan must be focused on recovery. For children the plan should address school and education concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) Service plans must be completed within six (6) treatment sessions and ~~include: adhere to the format and content requirements described in the facility policy and procedures.~~

- ~~(1) Consumer strengths, needs, abilities, and preferences;~~
- ~~(2) Identified presenting challenges, needs, and diagnosis;~~
- ~~(3) Goals for treatment with specific, measurable, attainable, realistic, and time limited objectives;~~
- ~~(4) Type and frequency of services to be provided;~~
- ~~(5) Description of consumer's involvement in, and response to, the service plan;~~
- ~~(6) The service provider who will be rendering the services identified in the service plan; and~~
- ~~(7) Discharge criteria that are individualized for each consumer.~~

(e) Service plans updates should occur at a minimum of every 6 months during which services are provided and ~~include the following: adhere to the format and content requirements described in the facility policy and procedures.~~

- ~~(1) Progress on previous service plan goals and/or objectives;~~
- ~~(2) A statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;~~
- ~~(3) Change in goals and/or objectives based upon consumer's progress or identification of new needs and challenges;~~
- ~~(4) Change in frequency and/or type of services provided;~~
- ~~(5) Change in staff who will be responsible for providing services on the plan; and~~
- ~~(6) Change in discharge criteria.~~

(f) Service plans, both comprehensive and update, must include dated signatures ~~for~~of the consumer (if over age 14), the

parent/guardian (if the consumer is under age 18 or otherwise applicable), and the primary service practitioner. Signatures must be obtained after the service plan is completed.

(g) Compliance with 450:27-7-42 shall be determined by a review of the clinical records, policies and procedures, and interviews with staff and consumers, and other agency documentation.

**450:27-7-44. Progress notes**

(a) Progress notes shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, the consumer's response to the services provided, and the consumer's progress in treatment, ~~and include the following:~~

- ~~(1) Date;~~
- ~~(2) Name of consumer(s) to whom services were rendered;~~
- ~~(3) Start and stop time for each timed treatment session or service;~~
- ~~(4) Original signature of the therapist/service provider; in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider must obtain the original signature for the clinical file within 30 days and no stamped or photocopied signatures are allowed. Electronic signatures are acceptable;~~
- ~~(5) Credentials of therapist/service provider;~~
- ~~(6) Specific service plan need(s), goals and/or objectives addressed;~~
- ~~(7) Services provided to address need(s), goals and/or objectives;~~
- ~~(8) Progress or barriers to progress made in treatment as it relates to the goals and/or objectives;~~
- ~~(9) Consumer (and family, when applicable) response to the session or intervention;~~
- ~~(10) Any new need(s), goals and/or objectives identified during the session or service.~~

(b) Progress notes shall be documented according to the following time frames:

- ~~(1) Outpatient staff must document each visit or transaction, except for assessment completion or service plan development, including missed appointments;~~
- ~~(2) Behavioral health rehabilitation services and day treatment programs for children and adolescents staff must maintain a daily, member sign in/sign out record of member attendance, and shall write a progress note daily or a summary progress note weekly.~~

(b) Progress notes must include the consumer's name, be signed by the service provider, and include the service provider's credentials.

(c) Compliance with 450:27-7-44 shall be determined by a review of clinical records and policies and procedures.

[OAR Docket #22-459; filed 6-23-22]

# Permanent Final Adoptions

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 53. STANDARDS AND CRITERIA FOR CERTIFIED PEER RECOVERY SUPPORT SPECIALISTS

[OAR Docket #22-460]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Peer Recovery Support Specialists Certification Application  
450:53-3-1 [AMENDED]  
450:53-3-2 [AMENDED]  
450:53-3-5 [AMENDED]

**AUTHORITY:**  
Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, and 3-326

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 8, 2021

**COMMENT PERIOD:**  
January 3, 2022 through February 2, 2022

**PUBLIC HEARING:**  
February 3, 2022

**ADOPTION:**  
March 25, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 28, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed rule revisions to Chapter 53 clarify employment documentation requirements, change language regarding education requirements, and add language which requires criminal history reports to be submitted. Language addressing criteria for criminal convictions is also added.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

### SUBCHAPTER 3. PEER RECOVERY SUPPORT SPECIALISTS CERTIFICATION APPLICATION

#### 450:53-3-1. Qualifications for certification

Each applicant for certification as a Peer Recovery Support Specialist shall:

- (1) Possess a High School Diploma, ~~or~~ General Equivalency Diploma (GED), High School Equivalency (HSE) Credential, or college or university degree;
- (2) Have demonstrated self-driven recovery from a mental illness, substance abuse disorder or both;
- (3) Be at least 18 years of age;
- (4) Be willing to self-disclose about their own recovery;
- (5) Be employed by or ~~volunteer-intern with, within six (6) months from the date the application was submitted, with~~ the state, a behavioral service provider or an advocacy agency contracting with the state to provide behavioral health services, or a behavioral health services provider certified by ODMHSAS, employed by a tribe or tribal facility that provides behavioral health services, or employed by an Oklahoma Department of Veterans Affairs or a United States Department of Veterans Affairs facility.
- (6) Possess good moral character;
- (7) Be actively working on recovery and/or overall wellness;
- (8) Pass an examination based on standards promulgated by ODMHSAS pursuant to 43A O.S. § 3-326;
- (9) Not be engaged in any practice or conduct which would be grounds for denying, revoking or suspending a certification pursuant to this title; and
- (10) Otherwise comply with rules promulgated by the Board implementing 43A O. S. § 3-326.

#### 450:53-3-2. Applications for certification

- (a) Applications for certification as a Peer Recovery Support Specialist shall be submitted to the Department on a form and in a manner prescribed by the Commissioner or designee.
- (b) An application shall include the following items:
  - (1) Application form completed in full according to its instructions;
  - (2) Application fee ~~shall be submitted~~ in an amount up to \$50.00;
  - (3) ~~Documentation of Employment status verification form(s) showing current status as being employed by an employee of the state of Oklahoma, by a behavioral service provider, advocacy agency contracting with the state to provide behavioral health services, or by a behavioral health services provider certified by ODMHSAS, a tribe or tribal facility that provides behavioral health services, or employed by an Oklahoma Department of Veterans Affairs or a United States Department of Veterans Affairs facility;~~ The employment status verification form(s) must be sent to ODMHSAS by the employer but may be provided up to six (6) months after submission of the application form and other required materials;
  - (4) ~~The employment status verification form(s) from the employer must be sent to ODMHSAS by the employer;~~  
Oklahoma State Bureau of Investigation (OSBI) name-based criminal history report. The report must be an official OSBI document. If there is an incident of stolen identity, a Criminal History Record Theft number and letter must be submitted with the application. The

report may be supplied by the applicant or the applicant's employer;

(5) Official high school transcript, or General Equivalency Diploma (GED), High School Equivalency (HSE) Credential, or college or university transcript; An unofficial transcript may be accepted if the document can be substantiated by the Department;

(6) Documentation of age; and

(7) Detailed information, as requested on the application, demonstrating recovery from a mental illness, substance abuse disorder or both.

(c) An applicant, who meets the requirements for certification and otherwise complied with the Chapter, shall be eligible for certification.

(d) ~~A complete~~ An application must be submitted at least fourteen (14) days prior to attending Peer Recovery Support Specialists training.

(e) Applications shall be submitted and approved by the Department prior to eligibility of taking the C-PRSS training.

(f) The applicant is not considered certified until verification of employment, exam approval results, and proof of the required training has been submitted.

~~(fg)~~ Applications shall only be valid for a period up to six (6) months.

**450:53-3-5. Fitness of applicants**

(a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as a Certified Peer Recovery Support Specialists and to set forth the criteria by which the Commissioner or designee shall determine the fitness of the applicants.

(b) The substantiation of any of the following items related to the applicant shall be, as the Commissioner or designee determines, the basis for the denial of or delay of certification of the applicant:

(1) Lack of necessary skills and abilities to provide adequate services;

(2) Misrepresentation on the application or other materials submitted to the Department; ~~or~~

(3) Any action that would otherwise be considered a violation of the rules of professional conduct set forth in this Chapter; ~~or~~

(4) Certain felony conviction(s), as determined by the Department.

~~(4) The Department shall obtain document(s) necessary to determine the fitness of an applicant.~~

~~(5) The Department may require explanation of negative references prior to issuance of certification.~~

(c) The Department shall obtain document(s) necessary to determine the fitness of an applicant.

(d) The Department may require explanation of negative references prior to issuance of certification.

[OAR Docket #22-460; filed 6-23-22]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
CHAPTER 55. STANDARDS AND CRITERIA FOR PROGRAMS OF ASSERTIVE COMMUNITY TREATMENT**

[OAR Docket #22-461]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. General Provisions  
450:55-1-1 [AMENDED]  
Subchapter 5. PACT Clinical Documentation  
450:55-5-2 [REVOKED]  
450:55-5-4 [AMENDED]  
450:55-5-9 [AMENDED]  
Subchapter 19. Facility Environment  
450:55-19-1 [AMENDED]

**AUTHORITY:**  
Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-306 and 3-319

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 8, 2021

**COMMENT PERIOD:**  
January 3, 2022 through February 2, 2022

**PUBLIC HEARING:**  
February 3, 2022

**ADOPTION:**  
March 25, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 28, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed rule revisions to Chapter 55 remove language regarding consumer records, progress notes, assessments, and service plans that is addressed elsewhere or is otherwise unnecessary. Other clean up language is also included.

**CONTACT PERSON:**  
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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**450:55-1-1. Purpose**

(a) This Chapter implements 43A O.S. § 3-319, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board,

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to certify programs of assertive community treatment. Section 3-319 requires the Board to promulgate rules and standards for certification of facilities or organizations that desire to be certified.

(b) The rules regarding the certification procedures including applications, fees and administrative sanctions are found in the Oklahoma Administrative Code, Title 450, Chapter 1, Subchapters 5 and 9.

(c) Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC 450:1-9-5.6.

## SUBCHAPTER 5. PACT CLINICAL DOCUMENTATION

### 450:55-5-2. Basic requirements [REVOKED]

(a) ~~Each PACT program shall have policies and procedures requiring the following:~~

- ~~(1) All consumer records shall contain the defined required documentation;~~
- ~~(2) Storage, retention and destruction requirements for consumer records;~~
- ~~(3) Records maintained in locked equipment under secure measures;~~
- ~~(4) Entries in consumer records shall be legible, signed with first name, last name, credentials, and dated by the person making the entry; and~~
- ~~(5) The consumer's name typed or written on each sheet of paper or page in the clinical record.~~

(b) ~~Compliance with 450:55-5-2 shall be determined by on-site observation, a review of PACT policy, procedures or operational methods, clinical records, other PACT provided documentation and PI information and reports.~~

### 450:55-5-4. Initial assessment and treatment plan

(a) The initial assessment data shall be collected and evaluated by PACT team leader or appropriate staff designated by the team leader. Such assessments shall be based upon all available information, including self-reports, reports of family members and other significant parties, and written summaries from other agencies, including police, courts, and outpatient and inpatient facilities, where applicable, culminating in a comprehensive initial assessment. Consumer assessment information for admitted consumers shall be completed on the day of admission to the PACT.

(b) ~~The initial assessment shall contain, but not be limited to, the following identification data:~~

- ~~(1) Consumer's name;~~
- ~~(2) Date of admission to PACT;~~
- ~~(3) Social Security number;~~
- ~~(4) Presenting problem/client self assessment of problem;~~
- ~~(5) Reason for treatment;~~
- ~~(6) Availability of social supports and resources;~~
- ~~(7) History of psychiatric illness and previous services;~~

- ~~(8) Current functioning;~~
- ~~(9) Admitting diagnosis;~~
- ~~(10) Justification for Admission; and,~~
- ~~(11) Primary case manager (Certified Behavioral Health Case Manager) and individual treatment team (ITT).~~

(e-b) ~~The initial treatment plan is completed on the day of admission and guides team services until the comprehensive assessment and comprehensive treatment plan is completed. Interventions from the initial treatment plan should be reported on the consumer weekly schedule card. The initial treatment plan shall contain, but not be limited to, the following identification data: shall include individualized goals and objectives and actively involve the consumer.~~

- ~~(1) Consumer's name;~~
- ~~(2) Date;~~
- ~~(3) Short term goals;~~
- ~~(4) Problems to be addressed;~~
- ~~(5) Objectives;~~
- ~~(6) Consumer or guardian participation;~~
- ~~(7) Consumer's signatures; and,~~
- ~~(8) Team leader's signature.~~

(e-c) ~~Compliance with 450:55-5-4 shall be determined by a review of the following: intake assessment instruments and other intake documents of the PACT program, clinical records and other agency documentation of admission materials or requirements.~~

### 450:55-5-9. PACT progress note

(a) The PACT shall have a policy and procedure mandating the chronological documentation of progress notes. Every contact and service that relates to the consumer's treatment shall be documented.

(b) ~~Progress notes shall minimally address the following:~~

- ~~(1) Date;~~
- ~~(2) Person(s) to whom services were rendered;~~
- ~~(3) Start and stop time for each timed treatment session or service;~~
- ~~(4) Original signature of the therapist/service provider;~~
- ~~(5) Credentials of therapist/service provider;~~
- ~~(6) Specific treatment plan problems(s), goals and/or objectives addressed;~~
- ~~(7) Services provided to address need(s), goals and/or objectives;~~
- ~~(8) Progress or barriers to progress made in treatment as it relates to the goals and/or objectives;~~
- ~~(9) Location of service;~~
- ~~(10) Member (and family, when applicable) response to the session or intervention; (what did the member do in session? What did the provider do in session?);~~
- ~~(11) Any new need(s), goals and/or objectives identified during the session or service.~~

(b) Progress notes shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, and the consumer's progress in treatment.

(c) Progress notes must include the consumer's name, be signed by the service provider, and include the service provider's credentials.



(ed) Compliance with 450:55-5-9 shall be determined by a review of clinical records.

SUBCHAPTER 19. FACILITY ENVIRONMENT

450:55-19-1. Facility environment

In addition to the requirements set forth in OAC 450:1-9-5.2(a)450:1-9-5.5(a), the PACT program shall:

- (1) Have a written Infection Control Program and staff shall be knowledgeable of Center for Disease Control (CDC) Guidelines for Tuberculosis and of the Blood Borne Pathogens Standard, location of spill kits, masks, and other personal protective equipment; and
(2) Have a written Hazardous Communication Program and staff shall be knowledgeable of chemicals in the workplace, location of Material Safety Data Sheets, personal protective equipment; and toxic or flammable substances shall be stored in approved locked storage cabinets.

[OAR Docket #22-461; filed 6-23-22]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 60. STANDARDS AND CRITERIA FOR CERTIFIED EATING DISORDER TREATMENT PROGRAMS

[OAR Docket #22-462]

RULEMAKING ACTION: PERMANENT final adoption
RULES:

- Subchapter 1. General Provisions
450:60-1-1 [AMENDED]
Subchapter 3. Required Services
450:60-3-3 [AMENDED]
Subchapter 7. Facility Clinical Records
450:60-7-1 [REVOKED]
450:60-7-3 [REVOKED]
450:60-7-4 [REVOKED]
450:60-7-5 [REVOKED]
450:60-7-6 [AMENDED]
450:60-7-8 [AMENDED]

AUTHORITY: Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. § 3-320

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY: December 8, 2021

COMMENT PERIOD: January 3, 2022 through February 2, 2022

PUBLIC HEARING: February 3, 2022

ADOPTION: March 25, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE: March 28, 2022

APPROVED BY GOVERNOR'S DECLARATION: Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION: June 21, 2022

EFFECTIVE: September 15, 2022

SUPERSEDED EMERGENCY ACTIONS: n/a

INCORPORATIONS BY REFERENCE: n/a

GIST/ANALYSIS:

The proposed rule revisions to Chapter 60 clarify and remove language regarding consumer records, progress notes, assessments, and service plans that is addressed elsewhere or is otherwise unnecessary. Other clean up language is also included.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

450:60-1-1. Purpose

- (a) This chapter sets forth standards for certification of eating disorders treatment programs and implements 43A O.S. § 3-320, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify eating disorder treatment programs.
(b) The rules regarding the certification process including but not necessarily limited to application, fees and administrative sanctions are found in the Oklahoma Administrative Code, Title 450 Chapter 1, Subchapters 5 and 9.
(c) Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC 450:1-9-5.6.

SUBCHAPTER 3. REQUIRED SERVICES

450:60-3-3. Screening, intake, and assessment services

- (a) CEDT policy and procedure shall require a comprehensive assessment of each consumer's service needs be completed in a timely manner.
(b) Screening and intake services shall include a complete assessment of each consumer to determine clinical needs. The assessment shall be completed by a LBHP or licensure candidate and shall include but not be limited to an assessment of the following areas and needs:
(1) Behavioral, including mental health and addictive disorders as well as the following:
(A) presenting problem and current symptomology;
(B) previous treatment history;

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- ~~(C) current and past psychotropic and addiction medications, including name, dosage and frequency; and~~
- ~~(D) Family history of mental health and other addictive disorders.~~
- (2) Emotional, including issues related to past or current trauma and domestic violence;
- (3) Physical, including food and nutrition status;
  - ~~(A) health history and current biomedical conditions and complications;~~
  - ~~(B) current and past physical health medications, including name, dosage and frequency; and~~
  - ~~(C) food and nutrition status.~~
- (4) Social and recreational, including; and
  - ~~(A) family and other relationships;~~
  - ~~(B) recovery and community supports;~~
  - ~~(C) leisure and wellness activities; and~~
  - ~~(D) culture, including traditions and values.~~
- (5) Vocational, including;
  - ~~(A) educational attainment, difficulties, and history;~~
  - ~~(B) current or previous military service including discharge status; and~~
  - ~~(C) current and desired employment status~~
- (c) The consumer and family as appropriate shall be an active participant(s) in the intake and assessment process.
- (d) The CEDT shall have policy and procedures specific to each program service that dictate timeframes by when assessments must be completed and documented. In the event the consumer is not admitted and the assessment is not included in the clinical record, the policy shall specify how screening and assessment information is maintained and stored.

## SUBCHAPTER 7. FACILITY CLINICAL RECORDS

### 450:60-7-1. Clinical record keeping system [REVOKED]

~~Each CEDT shall maintain an organized clinical record system for the collection and documentation of information appropriate to the treatment processes; and which insures organized, easily retrievable, usable clinical records stored under confidential conditions and with planned retention and disposition.~~

### 450:60-7-3. Basic requirements [REVOKED]

~~The CEDT's policies and procedures shall:~~

- ~~(1) Define the content of consumer records in accordance with 450:60-7-4 through 60-7-9.~~
- ~~(2) Define storage, retention and destruction requirements for consumer records.~~
- ~~(3) Require consumer records be contained within equipment which is maintained under locked, secure measures.~~

- ~~(4) Require legible entries in consumer records, signed with first name or initial, last name, credentials, and dated by the person making the entry.~~
- ~~(5) Require the consumer's unique identifier be typed or written on each page in the consumer record.~~
- ~~(6) Require a signed consent for treatment before a consumer is admitted on a voluntary basis.~~
- ~~(7) Require a signed consent for follow up before any contact after discharge is made.~~

### 450:60-7-4. Record access for clinical staff [REVOKED]

~~The CEDT shall assure consumer records are readily accessible to the program staff directly caring for the consumer. Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records.~~

### 450:60-7-5. Clinical record content, intake assessment [REVOKED]

- ~~(a) All facilities shall assess each individual to determine appropriateness of admission.~~
- ~~(b) The CEDT shall document the first contact per episode between the potential consumer and the CEDT to determine appropriateness of admission.~~
- ~~(c) Consumer intake assessment information shall contain but not be limited to the following:~~
  - ~~(1) Date, to include month, day and year of the interview or intake, including re admissions for CEDT services;~~
  - ~~(2) Source of information;~~
  - ~~(3) Consumer's first name, middle initial, and last name;~~
  - ~~(4) Gender;~~
  - ~~(5) Birth date;~~
  - ~~(6) Home address;~~
  - ~~(7) Telephone number;~~
  - ~~(8) Referral source;~~
  - ~~(9) Reason for referral;~~
  - ~~(10) Significant other to be notified in case of emergency;~~
  - ~~(11) Presenting problem and disposition;~~
  - ~~(12) Health and drug history information, with drug history information to include the following for both current and past medications:~~
    - ~~(A) Name of medication;~~
    - ~~(B) Strength and dosage of medication;~~
    - ~~(C) Length of time consumer was on the medication, if known;~~
    - ~~(D) Benefit(s) of medication, and~~
    - ~~(E) Side effects;~~
- ~~(13) Psychosocial information, which shall include:~~
  - ~~(A) Personal history, including:~~
    - ~~(i) Family—social;~~
    - ~~(ii) Educational;~~
    - ~~(iii) Cultural—moral beliefs;~~
    - ~~(iv) Occupational—military;~~

- (v) Sexual;
- (vi) Marital;
- (vii) Domestic violence or sexual assault;
- (viii) Recreation and leisure;
- (ix) Financial;
- (x) Clinical treatment history including medical and psychiatric treatment;
- (xi) Legal or criminal record;
- (xii) Substance use, abuse, and dependence.
- (B) Present life situation;
- (C) Interviewer's interpretation of findings;
- (D) What consumer wants in terms of service;
- (E) Disposition;
- (F) Mental status information, including questions regarding:
  - (i) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.;
  - (ii) Affective process, such as mood, affect, manner and attitude, etc.; and
  - (iii) Cognitive process, such as intellectual ability, social adaptive behavior, thought processes, thought content, and memory, etc.;
- (G) Level of Functioning;
- (H) Signature of interviewer and professional credentials, if any.

(14) Additional information as required by the facility.

- (d) The CEDT shall have policy and procedures that dictate timeframes by when intake assessment must be completed for each program service to which a client is admitted.
- (e) An intake assessment update, to include date, identifying information, source of information, present problems, present life situation, current level of functioning, and what the consumer wants in terms of service, is acceptable only on re-admissions within one (1) year of previous admission.

**450:60-7-6. Service Plan**

- (a) The service plan shall provide evaluation, formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or identification of needs, challenges and new problems.
- (b) An initial treatment plan shall be completed after completion of intake assessment or after the first treatment session on all consumers.
- (c) The CEDT shall have policy and procedures that dictate timeframes by when comprehensive service plans must be completed for each program service to which a consumer is admitted.
- (d) Comprehensive service plan contents shall:
  - (1) Describe assets and liabilities;
  - (2) Reflect consideration of clinical needs;
  - (3) Specify services necessary to meet the needs;
  - (4) Include referrals for needed services;
  - (5) Contain specific goals;
  - (6) Contain measurable time framed objectives;
  - (7) Specify frequency of treatment;
  - (8) Designate person(s) responsible for providing treatment;

- (9) Delineate specific discharge criteria;
- (10) Include substantiated diagnosis in terminology of the current Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and
- (11) Describe the consumer's involvement in, and consumer's response to the service plan as evidenced by a statement dated and signed by the consumer verifying his or her involvement in the service planning process and his or her agreement with the plan, proposed interventions, and target dates for completion.

- (d) Consumers shall be actively involved in the development of the service plan.
- (e) Service plans shall be dated and signed by all members of the treatment team who participate in the planning or in providing the services.
- (f) Service plan updates shall contain:
  - (1) Change in goals and objectives based upon consumer's progress or identification of new problems;
  - (2) Change in primary clinician assignment;
  - (3) Change in frequency or types of services provided; and
  - (4) A statement documenting review, including an explanation if no changes are made in the plan.
- (gf) The CEDT shall have policy and procedures that dictate timeframes by when service plan updates must be completed for each program service to which a consumer is admitted.

**450:60-7-8. Progress notes**

- (a) Progress notes shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, and the consumer's progress in treatment and document the consumer's response to services related to the treatment.
- (b) Progress notes shall address the following:
  - (1) Person(s) to whom services were rendered;
  - (2) Activities and services provided as they relate to the goals and objective of the service plan, including ongoing reference to the service plan;
  - (3) Documentation of the progress or lack of progress made in treatment as it relates to the service plan;
  - (4) Documentation of the implementation of the individualized service plan, including consumer activities and services and all treatment rendered;
  - (5) The consumer's current status;
  - (6) Documentation of the consumer's response to treatment services, changes in behavior and mood, and outcome of treatment or services;
  - (7) Plans for continuing therapy or for discharge, whichever is appropriate; and
  - (8) Family's response to services provided when applicable.
- (c) Progress notes shall be documented according to the following time frames:
  - (1) Outpatient staff must document each visit or transaction including missed appointments;
  - (2) Residential nursing staff must document each shift; and

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(3) Residential physicians, psychotherapists, and dietitians must document each unit of service provided.

(b) Progress notes must include the consumer's name, be signed by the service provider, and include the service provider's credentials.

[OAR Docket #22-462; filed 6-23-22]

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 65. STANDARDS AND CRITERIA FOR GAMBLING TREATMENT PROGRAMS

[OAR Docket #22-463]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

450:65-1-1 [AMENDED]

450:65-1-2 [AMENDED]

Subchapter 3. Gambling Treatment Services and Documentation

450:65-3-4 [AMENDED]

450:65-3-4.1 [NEW]

450:65-3-6 [AMENDED]

450:65-3-8 [AMENDED]

450:65-3-10 [REVOKED]

Subchapter 7. Organizational and Facility Management

450:65-7-9 [REVOKED]

### AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-306, 3-317, 3-403(1), 3-404, 3-406, 3-415 and 3-416

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

December 8, 2021

### COMMENT PERIOD:

January 3, 2022 through February 2, 2022

### PUBLIC HEARING:

February 3, 2022

### ADOPTION:

March 25, 2022

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

March 28, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule revisions to Chapter 65 amend language regarding service plans, case management services, and continuing care plans. Language regarding consumer records and outreach that is addressed elsewhere or is otherwise unnecessary is removed. Language regarding requirements for progress notes is added. Other clean up language is also included.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 450:65-1-1. Purpose

(a) This chapter sets forth the standards and criteria to be used in the certification of Gambling Treatment Programs, and implements 43A O.S. § 3-222 which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Gambling Treatment Programs.

(b) The rules regarding the certification process, including but not necessarily limited to, application process, fees and administrative sanctions are found in the Oklahoma Administrative Code, Title 450, Chapter 1.

(c) Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC ~~450:1-9-5.3~~450:1-9-5.6.

### 450:65-1-2. Definitions

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

"**Admission**" means the acceptance of a consumer by a treatment program.

"**Admission criteria**" means those criteria which shall be met for admission of a consumer to gambling treatment.

"**Assessment**" means those procedures by which a gambling treatment program provides an on-going evaluation process with the consumer to collect his or her historical information, and identify strengths, needs, abilities, and preferences in order to determine a plan for recovery.

"**Case management**" means actions such as planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and may occur in the consumer's home, in the community, or in the facility.

"**Certified Gambling Addiction Treatment**" or "**CGAT**" means programs certified by ODMHSAS to provide treatment to individuals diagnosed with a problem gambling disorder.

~~"Community information, consultation and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on problem gambling and other related issues to the general public, the target population or to other agencies serving the target population. These services include presentations to human services agencies, community organizations and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.~~

**"Consumer"** means an individual, adult or adolescent, who is receiving evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19, 23, and 65 as client(s) or patient(s) or resident(s) or a combination thereof.

**"Consumer record"** means the collection of written information about a consumer's evaluation or treatment that includes the admission data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

**"Continuing care"** means providing a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary treatment services to ongoing recovery.

**"Contact"** means any encounter with a consumer who is inquiring about or seeking services.

**"Contract"** means a document adopted by the governing authority of an approved treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program as well as the monies to be expended in exchange.

**"Cultural competency"** means the ability to recognize, respect, and address the unique needs, worth, thoughts, communication, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

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

**"Diagnosis"** means the determination of a disorder as defined by current DSM criteria.

**"Discharge criteria"** means general guidelines to inform the judgment of the gambling treatment professional which shall be considered in order for the consumer to be appropriately discharged from a treatment program.

**"Discharge planning"** means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs.

**"Discharge summary"** means a clinical document in the gambling treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to community services.

**"Documentation"** means the provision of written, dated, and authenticated evidence to substantiate compliance with CGAT standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, treatment records, policies, procedures, and announcements.

**"DSM"** means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

**"Education"** means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning gambling issues and services. A systematic presentation of selected information to impart knowledge or

instructions, to increase understanding of specific issues or programs, and to examine attitudes or behaviors which may stimulate social action or community support of the program and the consumers.

**"Educational group"** means groups in which information focuses on topics that impact a consumer's recovery from problem and pathological gambling. Topics should be gender and age specific and should include, but not be limited to, information regarding their diagnosis or identified problems on their treatment plan. This service may involve teaching skills in communication, relapse prevention, self-care, and social skills to promote recovery. Paraprofessionals and/or professionals in fields related to the education topic may facilitate educational groups.

**"Family"** means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

**"Follow-up"** means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

**"Gambling treatment services"** means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

- (A) Assessment and diagnostic impression, ongoing;
- (B) Treatment planning and revision, as necessary;
- (C) Individual, group and family therapy;
- (D) Case management;
- (E) Discharge planning.

~~**"Gambling treatment professional"** means an individual holding a valid NCGC I or II certification or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and is either a Licensed Behavioral Health Professional or Licensure Candidate.~~

**"Gambling treatment professional"** means an individual who meets the qualifications and is certified pursuant to OAC 450:75 to offer problem gambling treatment services.

**"Gambling related disorders/problems"** means gambling related issues or problems which impact the normal functioning of an individual.

**"Goals"** means broad general statements of purpose or intent that indicate the general effect the facility or service is intended to have.

**"Group counseling"** means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the consumer's treatment goals and objectives, and does not include social or daily skill development as described in educational group counseling.

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**"Individual therapy"** means a method of using various evidence based/commonly accepted treatment approaches provided face-to-face by a gambling treatment professional with one consumer to promote positive emotional or behavioral change.

**"Intervention"** means a process or technique intended to facilitate behavior change.

**"Licensed Alcohol/Drug Abuse Counselor"** or **"LADC"** means an individual licensed to provide substance abuse counseling pursuant to Title 59 O.S., Chapter 43B, Licensed Alcohol and Drug Counselors Act.

**"Licensed mental health professional"** or **"LMHP"** as defined in Title 43A §1-1-3(11).

**"Linkage"** refers to the communication and coordination with consumers and other service providers to assure timely and appropriate referrals between the CGAT program and other providers.

**"Mental health services"** means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of problem and pathological gambling, and other mental disorders including substance abuse.

**"NCGC"** means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

**"Objectives"** means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

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

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

**"OSDH"** means the Oklahoma State Department of Health.

**"Outpatient services"** means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens.

**"Paraprofessional"** means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

**"Pathological gambling diagnosis"** means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits, as defined by the most recent edition of the DSM.

**"Peer Recovery Support Specialist"** or **"PRSS"** means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

**"Personnel record"** means a chart or file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials and training information.

**"Policy"** means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of gambling treatment services.

**"Procedures"** means the methods by which policies are implemented.

**"Problem Gambling"** means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits as defined by the most recent edition of the DSM.

**"Program"** means a structured set of treatment activities designed to achieve specific objectives relative to the needs of consumers served by the facility.

**"Progress notes"** means a complete chronological written description of services provided to a consumer and includes the consumer's response and is written by the individual or clinical team delivering the gambling treatment services.

**"Recovery"** means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

**"Screening"** means the process to determine whether the person seeking assistance needs further assessment for problem or pathological gambling.

**"Tobacco"** means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

**"Treatment planning"** means the process by which a gambling treatment professional and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

**"Treatment session-outpatient"** means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

**"Update"** means a dated and signed review of a report, plan or document with or without revision.

**"Volunteer"** means any person providing direct consumer rehabilitative services and who is not on the facility payroll, but fulfills a defined role within the approved treatment facility. This includes, but is not limited to, court ordered community services, practicum students, interns, and ministers; it excludes professionals and entities with which the facility has a written affiliation.

## SUBCHAPTER 3. GAMBLING TREATMENT SERVICES AND DOCUMENTATION

### 450:65-3-4. ~~Treatment~~Service planning

~~(a) Treatment planning is the ongoing process by which a clinician and the consumer identify and rank problems, establish agreed-upon goals, and decide on the treatment process and resources to be utilized.~~

(b) The treatment plan shall include, but not be limited to, the following information:

- (1) Presenting problems;
- (2) Strengths, needs, abilities, and preferences of the consumer;
- (3) Goals for treatment with specific, measurable, attainable, realistic and time limited objectives;
- (4) Type and frequency of services to be provided;
- (5) Primary person responsible for providing services;
- (6) Description of consumer's involvement in, and response to, the treatment plan, and his or her signature and date; and
- (7) Specific date for each planned treatment plan review and update.

(c) The treatment plan shall be based on the consumer's expectations of their recovery.

(d) Treatment plans shall be dated and signed by the primary service provider and the consumer. A list of the treatment team members who participate in providing services shall be included on the treatment plan.

(e) Treatment plans shall be completed by the fifth (5<sup>th</sup>) session from the date and time of admission.

(f) The treatment plan shall be reviewed and updated according to the time frame required by the treatment plan and for any of the following situations:

- (1) Change in primary counselor assignment; or
- (2) Change in frequency and types of services provided.

(g) Compliance with 450:65-3-4 may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Consumer records; and
- (3) Interviews with staff and consumers; and
- (4) Other facility documentation.

(a) A service plan shall be completed for each consumer. The service plan is performed with the active participation of the consumer and a support person or advocate, if requested by the consumer. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges, and problems. The service plan shall be completed by a LBHP or Licensure Candidate.

(b) The service plan is developed after and based on information obtained in the assessment and includes the evaluation of the assessment information by the clinician and the consumer.

(c) The service plan must have an overall general focus on recovery which, for adults, may include goals like employment, independent living, volunteer work, or training, and for children, may include areas like school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) Service plan updates should occur at a minimum of every six (6) months during which outpatient services are provided.

(e) Service plans, both comprehensive and update, must include dated signatures of the consumer (if over age 14), the parent/guardian (if the consumer is under age sixteen (16) and

allowed by law), and the LBHP or Licensure Candidate. Signatures must be obtained after the service plan is completed.

(f) Compliance with 450:65-3-4 shall be determined by a review of the clinical records, interviews with staff and consumers, and other facility documentation.

## **450:65-3-4.1. Progress notes**

(a) Progress notes shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, and the consumer's progress in treatment.

(b) Progress notes must be signed by the service provider and include the service provider's credentials.

(c) Outpatient staff must document each visit or transaction, except for assessment completion or service plan development, including missed appointments.

(d) Compliance with 450:65-3-4.1 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Consumer records;
- (3) Progress notes;
- (4) Interviews with staff; and
- (5) Other facility documentation.

## **450:65-3-6. Case management**

(a) Case management services providing advocacy, linkage and referral services shall be offered to all gambling treatment consumers and shall minimally include screening to determine and address the following:

- (1) job skills and potential;
- (2) strengths and resources;
- (3) recovery environment;
- (4) medical and physical health needs;
- (5) mental health needs;
- (6) financial needs; and
- (7) legal needs.

(b) Compliance with 450:65-3-6 may be determined by a review of the following:

- (1) Consumer records;
- (2) Progress notes;
- (3) Interviews with staff; and
- (4) Other facility documentation.

(a) Case management efforts shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development and consumer advocacy provided in various settings based on consumer need.

(b) As allowed per Title 43A O.S. Section 3-318, case management services shall be offered to all adults and children who have substance-related disorders, and to their family members, if applicable, to ensure access to needed services.

(c) Case management shall be co-occurring disorder capable.

(d) Case management services shall be planned referral, linkage, monitoring and support, and advocacy assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure. Activities include:

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- (1) Completion of strengths based assessment for the purpose of individual plan of care development;
  - (2) Development of case management care plan which can be reflected as a part of the comprehensive service plan;
  - (3) Referral, linkage and advocacy to assist with gaining access to appropriate community resources;
  - (4) Contacts with other individuals and organizations that influence the recipient's relationship with the community, i.e., family members, law enforcement personnel, landlords, etc.;
  - (5) Monitoring and support related to the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress;
  - (6) Follow-up contact with the consumer if they miss any scheduled appointments (including physician/medication, therapy, rehabilitation, or other supportive service appointments as delineated on the service plan); and
  - (7) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist consumer(s) from progression to a higher level of care.
- (e) Compliance with 450:65-3-6 shall be determined by on-site observation and a review of the clinical records and written policies and procedures.

## 450:65-3-8. Continuing care plan

(a) In discharge planning, the facility shall assist the consumer to obtain services that are needed but not available within the facility and/or in transitioning from one program to another. ~~A written plan of recommendations and specific referrals for implementation of continuing care services shall be prepared for each consumer.~~ Continuing care plans shall be developed with the knowledge and cooperation of the consumer. ~~The continuing care plan may be included in the discharge summary. The consumer's response to the continuing care plan shall be noted in the plan, or a note shall be made that the consumer was not available and why. In the event of the death of a consumer, a summary statement including this information shall be documented in the record.~~

(b) A written plan of recommendations and specific referrals for implementation of continuing care services shall be prepared for each consumer.

(bc) Compliance with 450:65-3-8 may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Continuing care plans;
- (3) Discharge assessments;
- (4) Discharge summaries;
- (5) Progress notes;
- (6) Consumer records;
- (7) Interviews with staff and consumers; and
- (8) Other facility documentation.

## 450:65-3-10. Consumer records, basic requirement [REVOKED]

~~(a) CGAT consumer records shall be developed and maintained to ensure that all appropriate individuals have access to relevant clinical and other information regarding the consumer. The consumer record shall communicate information in a manner that is organized, clear, complete, current, and legible. All consumer records shall contain the following:~~

- ~~(1) Entries in consumer records shall be legible, signed with first name or initial, last name, and dated by the person making the entry;~~
- ~~(2) The consumer shall be identified by name and unique identifier on each sheet in the consumer record, on both sides of each page if both sides are used;~~
- ~~(3) A signed consent for treatment shall be obtained before any person can be admitted into treatment at a facility, unless the admission was on an involuntary basis;~~
- ~~(4) A signed consent for follow up shall be obtained before any contact after discharge can be made;~~
- ~~(5) An assessment;~~
- ~~(6) Documentation of screening to determine the priority of needs to be addressed through case management services;~~
- ~~(7) Treatment plans;~~
- ~~(8) Progress notes documenting the following:
  - ~~(A) date, start and stop time for each timed treatment session;~~
  - ~~(B) signature and credentials of the staff person providing the service;~~
  - ~~(C) specific problem(s), goals and objectives addressed;~~
  - ~~(D) interventions used to address problem(s), goals and objectives;~~
  - ~~(E) progress made toward goals and objectives, or lack of;~~
  - ~~(F) consumer response to the session or intervention;~~
  - ~~(G) any new problem(s), goals and objectives identified during the session; and~~
  - ~~(H) consumer's name and unique identifier.~~~~
- ~~(9) A continuing care plan;~~
- ~~(10) Consultation reports;~~
- ~~(11) Psychological or psychometric testing;~~
- ~~(12) Records and reports from other entities; and~~
- ~~(13) A discharge summary.~~

~~(b) In the event the consumer is not admitted and no case record is developed, a policy shall specify how screening and assessment information is maintained and stored.~~

~~(c) Compliance may be determined by a review of the following:~~

- ~~(1) Consumer records;~~
- ~~(2) Policy and procedures; and~~
- ~~(3) Other facility documentation.~~

## SUBCHAPTER 7. ORGANIZATIONAL AND FACILITY MANAGEMENT



450:65-7-9. Community information, consultation, outreach and street outreach [REVOKED]

- (a) Each facility shall, as a regular part of consumer-based planning and services provision, provide the community with information, consultation and outreach services to aid in reaching and attracting their specified target population(s).
(b) These services shall be designed to: (1) Reach and attract the facility's target population; (2) Provide information on problem and pathological gambling and related issues to the public; and (3) Provide information to the public regarding the facility's services.
(c) These services include, but are not limited to, presentations or outreach efforts to community groups, organizations, and individuals.
(d) Written documentation of all community information, consultation, and outreach services shall be maintained, and shall include the following: (1) Name of person(s) or organization(s) receiving the services; (2) Name of person(s) providing the service; (3) Number of persons attending; (4) Location at which the services were provided; (5) Date services were provided; and (6) Description of the services provided.
(e) Facilities providing street outreach services shall have written policy and procedures describing the processes for systematically reaching a community for the purpose of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter and accept the treatment services system.
(f) Compliance with 450:65-7-9 may be determined by a review of (1) facility policy and procedures; (2) documentation of community information, consultation, and outreach services; and (3) any other supporting facility documentation.

[OAR Docket #22-463; filed 6-23-22]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 70. STANDARDS AND CRITERIA FOR OPIOID TREATMENT PROGRAMS

[OAR Docket #22-464]

RULEMAKING ACTION: PERMANENT final adoption

- RULES: Subchapter 1. General Provisions 450:70-1-1 [AMENDED] 450:70-1-2 [AMENDED] 450:70-1-4 [AMENDED]

- Subchapter 3. Facility Record System Part 1. Record System 450:70-3-3 [REVOKED] Part 3. Intake and Admission Assessment 450:70-3-5.6 [AMENDED] 450:70-3-5.8 [AMENDED] 450:70-3-5.9 [AMENDED] Part 7. Service Planning 450:70-3-8 [AMENDED] Part 9. Progress Notes 450:70-3-9 [AMENDED] Subchapter 4. Services Support and Enhancement Part 3. Organizational and Facility Management 450:70-4-6 [AMENDED] 450:70-4-12 [REVOKED] Subchapter 6. Substance Use Disorder Treatment Services Part 2. Levels of Treatment 450:70-6-10 [AMENDED] Part 3. Phases of Services 450:70-6-15 [AMENDED] 450:70-6-17.2 [AMENDED] 450:70-6-17.3 [AMENDED] 450:70-6-17.4 [AMENDED] 450:70-6-17.5 [AMENDED] 450:70-6-17.6 [AMENDED] 450:70-6-17.7 [AMENDED]

AUTHORITY: Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. § 3-601 et. seq. SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY: December 8, 2021 COMMENT PERIOD: January 3, 2022 through February 2, 2022 PUBLIC HEARING: February 3, 2022 ADOPTION: March 25, 2022 SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE: March 28, 2022 APPROVED BY GOVERNOR'S DECLARATION: Approved by Governor's declaration on June 21, 2022 FINAL ADOPTION: June 21, 2022 EFFECTIVE: September 15, 2022 SUPERSEDED EMERGENCY ACTIONS: n/a INCORPORATIONS BY REFERENCE: Incorporated standards: 42 CFR Part 8, Federal Drug Administration Guidelines for Opioid Treatment Programs Incorporating rules: 450:70-6-10(c) Availability: 9:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen, Suite 2-600, Oklahoma City, OK 73106, 405-271-9200 GIST/ANALYSIS: The proposed rule revisions to Chapter 70 removes language regarding patient records, service planning, progress notes, and outreach that is addressed elsewhere or is otherwise unnecessary. Requirements regarding treatment hours and services for each phase of treatment are amended. Other clarifying and clean up language is also included. CONTACT PERSON: Melissa Miller, Policy Director and Administrative Rules Liaison, Melissa.Miller@odmhsas.org or (405) 248-9345

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

# Permanent Final Adoptions

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SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:

## SUBCHAPTER 1. GENERAL PROVISIONS

### 450:70-1-1. Purpose

This chapter sets forth rules regulating program requirements, activities, and services standards and criteria used in the certification of facilities and organizations providing medication assisted opioid treatment programs. The rules regarding the certification process, including, but not limited to, the application process, fees, and administrative sanctions are found in OAC 450:1, Subchapters 5 and 9. Rules outlining general certification qualifications applicable to facilities and organizations certified under this Chapter are found in OAC 450:1-9-5 through OAC 450:1-9-5.6.

### 450:70-1-2. Definitions

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

**"Accreditation"** means the process of review and acceptance by a nationally recognized accreditation body.

**"Accreditation body"** means a body that has been approved by SAMHSA to accredit opioid treatment programs using opioid agonist or partial agonist treatment medications.

**"Administer"** means the direct application of a prescription drug by ingestion or any other means to the body of a patient by a licensed practitioner, or the patient at the direction of, or in the presence of, a practitioner.

**"Administrative withdrawal"** means a patient's medically supervised withdrawal involving the gradual tapering of dose of medication over time, coinciding with the patient's usually involuntary discharge from medication assisted treatment. Administrative withdrawal typically results from non-payment of fees, violent or disruptive behavior, incarceration or other confinement.

**"Approved narcotic drug"** means a drug approved by the United States Food and Drug Administration for maintenance and/or detoxification of a person physiologically dependent upon opioid drugs.

**"ASAM criteria"** means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

**"Biopsychosocial assessment"** means in-person interviews conducted by a LBHP or Licensure Candidate designed to elicit historical and current information regarding the behavior and experiences of a patient, and are designed to provide sufficient information for problem formulation, intervention planning, case management needs, and formulation of appropriate substance abuse-related treatment and service planning.

**"Buprenorphine"** means a partial agonist, Schedule III narcotic approved for use in opioid dependence treatment.

**"CARF"** means the Commission on the Accreditation of Rehabilitation Facilities.

**"Central registry"** A document or database to which an OTP shall report patient identifying information about individuals who are applying for or undergoing medically supervised withdrawal or maintenance treatment on an approved opioid agonist or partial agonist to a central record system approved by the Commissioner or designee.

**"Certification"** means the process by which ODMHSAS or SAMHSA determine that an OTP is qualified to provide opioid treatment under applicable State and Federal standards.

**"Chain of custody"** means the process of protecting items so that movement, possession and location are secure and documented and there is no possibility for altering or otherwise tampering with the item.

**"Chronic pain disorder"** means an ongoing condition or disorder consisting of chronic anxiety, depression, anger and changed lifestyle, all with a variable but significant level of genuine neurologically based pain. The pain becomes the main focus of the patient's attention, and results in significant distress and dysfunction.

**"Clinical Opioid Withdrawal Scale" or "COWS"** means a well validated, standardized assessment instrument for evaluating the severity of a patient's withdrawal through the identification of objective and subjective symptoms and the severity of these symptoms.

**"Clinical supervision"** means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance.

**"COA"** means the Commission on Accreditation.

**"Comprehensive maintenance treatment" is:**

(A) Dispensing or administering an approved opioid agonist or partial agonist medication at stable dosage levels for a period in excess of 21 days to a patient for opioid dependence, and

(B) Providing medical, clinical and educational services to the patient with opioid dependence.

**"Continuing care plan" or "discharge summary"** means a written plan of recommendations and specific referrals for implementation of continuing care services, including medications, developed with the knowledge and cooperation of the patient.

**"Co-occurring disorder" or "COD"** means any combination of mental health and substance use disorder symptoms or diagnoses as determined by the current Diagnostic and Statistical Manual of Mental Disorders that affect a patient.

**"Critical incident"** means an occurrence or set of events inconsistent with the routine operation of an approved treatment facility, or the routine care of a patient. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries (including automobile accidents) to the patient, patient family, staff and visitors; medication errors; neglect or abuse of a patient; fire; unauthorized disclosure of information; damage to or theft of property belonging to a patient or an approved treatment facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

**"Cultural competency"** means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

**"DEA"** means Drug Enforcement Administration.

**"Discharge planning"** means the process, beginning at admission of determining a consumer's continued need for treatment services and developing a plan to address ongoing consumer recovery needs.

**"Diskette"** means a compressed wafer form of methadone intended to be dissolved in water for consumption. For the purposes of this chapter methadone diskettes will not be considered to be the same as tablet methadone. Diskettes shall be dissolved in liquid prior to being dispensed, or dissolved in liquid by the patient in full and clear view of OTP staff before the patient may leave the clinic with the dose.

**"Dispense"** means preparing, packaging, compounding and labeling for delivery, a prescription drug in the course of professional practice to an ultimate user by the lawful order of a physician.

**"Diversion"** means the unauthorized or illegal transfer of an opioid agonist or partial agonist treatment medication.

**"Diversion control plan" or "DCP"** means documented procedures to reduce the possibility that controlled substances are used for any purpose other than legitimate use.

**"Drug test"** means the assessment of an individual to determine the presence or absence of illicit or non-prescribed drugs or alcohol or to confirm maintenance levels of treatment medication(s), by a methodology approved by the OTP medical director based on informed medical judgment and conforming to State and Federal law. This may include blood testing, oral-fluid and urine testing.

**"Exception request process"** means a process recording the justification of the need to make a change in treatment protocol for an opioid patient and submitted to SAMHSA using form SMA-168.

**"FDA"** Federal Food and Drug Administration.

**"Federal opioid treatment standards"** means the established standards of SAMHSA, CSAT and the DEA that are used to determine whether an OTP is qualified to engage in medication assisted opioid treatment.

**"HIPAA"** means Health Insurance Portability and Accountability Act

**"Holiday"** means those days recognized by the State of Oklahoma as holidays.

**"Individual Placement and Support" or "IPS"** means an evidence based specific type of employment and education service to help people with mental illness, substance use disorders or co-occurring disorders, find and keep competitive employment.

**"Individualized service planning"** means the ongoing process by which a clinician and the patient identify and rank problems, establish agreed upon goals, and decide on the treatment process and resources to be utilized.

**"Interim maintenance treatment"** means maintenance treatment provided in conjunction with appropriate medical

services while a patient is awaiting transfer to a program that provides comprehensive maintenance treatment.

**"JC" or "TJC"** means the Joint Commission.

**"Licensed Behavioral Health Professional" or "LBHP"** means:

(A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided and certified in a psychiatric mental health specialty;

(C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;

(D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

(E) A practitioner with a license to practice in the state in which services are provided by one of the following licensing boards:

- (i) Social Work (clinical specialty only);
- (ii) Professional Counselor;
- (iii) Marriage and Family Therapist;
- (iv) Behavioral Practitioner; or
- (v) Alcohol and Drug Counselor.

**"Licensure candidate"** means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

**"Liquid methadone"** means a liquid concentrate of methadone meant to be mixed with water for ingestion.

**"Lock box"** means a container with a combination lock or key lock entry system for securing take home medications. The box must have the ability to lock and should be secure enough to thwart access by children.

**"Long-term care facilities"** means a facility or institution that is licensed, certified or otherwise qualified as a nursing home or long term care facility by the state in which methadone or buprenorphine treatment services are rendered. This term includes skilled, intermediate, and custodial care facilities which operate within the terms of licensure.

**"Long-term detoxification treatment"** means detoxification treatment for a period of more than 30 days but less than 180 days.

**"Medical director"** means a physician, licensed to practice medicine in Oklahoma, who assumes responsibility for the administration of all medical services performed by an OTP,

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either by performing them directly or by delegating specific responsibility to authorized program physicians and healthcare professionals functioning under the medical director's direct supervision, unless otherwise indicated in this chapter. This includes ensuring the program is in compliance with all federal, state, and local laws and regulations regarding the medical treatment of dependence on an opioid drug.

**"Medical withdrawal"** means a condition created by administering an opioid agonist or partial agonist treatment medication in decreasing doses to an individual to alleviate adverse physical or psychological effects of withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.

**"Medication unit"** means a satellite facility established as part of, but geographically separate from, an OTP from which appropriately licensed practitioners dispense or administer an opioid agonist or partial agonist treatment medication or collect samples for drug testing or analysis. No medical or clinical interventions related to OTP treatment can be conducted at this site.

**"Non-oral methadone"** means an injectable form of methadone not allowed for use by an OTP.

**"Nurse practitioner"** means a registered nurse who is prepared through advanced education and clinical training, to provide a wide range of health care services.

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

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

**"OBND"** means the Oklahoma Bureau of Narcotics and Dangerous Drug Control.

**"Oklahoma state-issued identification card"** means a photo identification card issued by the Oklahoma Department of Motor Vehicles for use in identification.

**"Opiate drug"** means any of a class of drugs also called narcotics derived from the opium poppy or containing opium and with analgesic or sedative effects that can form sustain or enhance addiction and physical dependency.

**"Opioid agonist"** means a drug that has an affinity for and stimulates physiologic activity at cell receptors in the central nervous system normally stimulated by opioids. Methadone is an opioid agonist.

**"Opioid agonist or partial agonist treatment medication"** means a prescription medication, such as methadone, buprenorphine or other substance scheduled as a narcotic under the Federal Controlled Substances Act (21 U.S.C. Section 811) that is approved by the U.S. Food and Drug Administration for use in the treatment of opiate addiction or dependence.

**"Opioid antagonist"** means a drug that binds to cell receptors in the central nervous system that normally are bound by opioid psychoactive substances and that blocks the activity of opioids at these receptors without producing the physiologic activity produced by opioid agonists. Naltrexone is an opioid antagonist.

**"Opioid dependence"** means a cluster of cognitive, behavioral, and physiological symptoms in which an individual continues use of opioids despite significant opioid-induced problems. Opioid dependence is characterized by repeated self-administration resulting in opioid tolerance, withdrawal symptoms, and compulsive drug-taking. Dependence may occur with or without the physiological symptoms of tolerance and withdrawal.

**"Opioid drug"** means any of a class of drugs also called narcotics, having a dependence-forming or dependence-sustaining liability similar to morphine. Originally a term for synthetic narcotics only, but for the purposes of this chapter and unless otherwise specified, currently used to describe both opium based and synthetic narcotics. These drugs have analgesic or sedative effects.

**"Opioid partial agonist"** means a drug that binds to, but incompletely activates, opiate receptors in the central nervous system, producing effects similar to those of an opioid agonist but, at increasing doses, does not produce as great an agonist effect as do increased doses of an agonist. Buprenorphine is a partial opioid agonist.

**"Opioid treatment"** means the dispensing of opioid agonist or partial agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opioid dependence. This term encompasses detoxification treatment, short-term detoxification treatment, long-term detoxification treatment, maintenance treatment or comprehensive maintenance treatment, interim maintenance treatment and treatment provided in medication units, long term care facilities or hospitals.

**"Opioid Treatment Program (OTP)"** An organization which has been certified by ODMHSAS to provide opioid treatment whose certification has not been suspended, revoked, or surrendered to the department, referred to in statute as an Opioid Substitution Treatment Program.

**"Pain management"** means the successful management of chronic pain or a chronic pain disorder.

**"Patient record"** or **"medical record"** means the collection of written information about a patient's evaluation or treatment that includes the intake data, evaluation, service plan, description of services provided, medications as prescribed, continuing care plan, and discharge information on an individual patient.

**"Parenteral"** means injected, infused or implanted, used to describe drug administration other than oral or anal.

**"Physician assistant"** means a licensed or certified mid-level medical practitioner who works under the supervision of a licensed physician (MD) or osteopathic physician (DO).

**"Program physician"** A licensed physician who provides medical treatment and counsel to the patients of an OTP while under the supervision of the medical director.

**"Program sponsor"** A person named in the application for an OTP permit who is responsible for the operation of the OTP and who assumes responsibility for all its employees, including any practitioners, staff, or other persons providing

medical, rehabilitative, or therapy services at the program or any of its medication units. The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director.

"**Psychotherapy**" or "**Therapy**" means a goal directed process using generally accepted clinical approaches provided face-to-face by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate with consumers in individual, group, or family settings to promote positive, emotional, or behavioral change.

"**Rehabilitation Services**" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life. Rehabilitation services must be provided by a Licensed Behavioral Health Professional (LBHP), Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CMII).

"**SAMHSA**" means the Substance Abuse and Mental Health Services Administration.

"**Sentinel event**" means a type of critical incident that is an unexpected occurrence involving the death or serious injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for an immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events (including medication overdoses by patients and associates of patients) resulting in serious injury or death.

"**Service Provider**" means a person who is allowed to provide services for those with substance use disorders within the regulation and scope of their certification level or license.

"**Short-term detoxification treatment**" means detoxification treatment for a period not in excess of 30 days.

"**State Opioid Treatment Authority**" or "**SOTA**" is the agency designated by the Governor or other appropriate official designated by the Governor to exercise the responsibility and authority within the State or Territory for governing the treatment of opioid dependence with an opioid drug. For Oklahoma it is the Oklahoma Department of Mental Health and Substance Abuse Services.

"**STD**" means sexually transmitted disease.

~~"**Street outreach**" means methods of direct intervention/prevention with high risk populations for HIV, HCV, tuberculosis and other infectious and communicable diseases.~~

"**Tablet methadone**" means methadone in a tablet form intended to be taken orally. For the purposes of this chapter diskettes will not be considered to be tablet methadone. Tablet methadone is not allowed for use by an OTP.

"**Take-home privilege or take home medication**" means one or more doses of an opioid agonist or partial agonist treatment medication dispensed to a patient for use off the premises.

"**Therapeutic hour(s)**" means the amount of time in which the patient was engaged with a service provider in identifying, addressing, and/or resolving those issues that have been identified in that patients treatment plan.

"**Urine analysis (UA)**" means a urine sample taken to determine if metabolites are present indicating the use of drugs.

"**Withdrawal treatment**" means either administrative withdrawal, or medical titration and withdrawal from any drug or medication until the patient has achieved a drug free state.

**450:70-1-4. Applicability**

- (a) This chapter is applicable to all certified substance use disorder treatment facilities and organizations providing medication assisted opioid treatment programs, including opioid withdrawal or opioid maintenance using methadone ~~or and buprenorphine including but not limited to therapy, rehabilitation services and substance use disorder treatment services including methadone and buprenorphine maintenance services,~~ short term withdrawal management, long term withdrawal management or interim maintenance services which are statutorily required to be certified and approved by the ODMH-SAS, the Alcohol and Drug Abuse Prevention, Training and Rehabilitation Authority [43A O.S. § 3-601,(c)].
- (b) Any conviction for a violation of any rule in this Part which has been promulgated pursuant to the provisions of 43A O.S. § 3-601 shall be a felony [43A O.S. § 3-601(B)].

**SUBCHAPTER 3. FACILITY RECORD SYSTEM**

**PART 1. RECORD SYSTEM**

**450:70-3-3. Patient records, basic requirement [REVOKED]**

- ~~(a) Patient records shall be developed and maintained to ensure that all appropriate individuals have access to relevant clinical and other information regarding the patient. The patient record shall communicate information in a manner that is organized, clear, complete, current and legible. All patient records shall contain the following:~~
  - ~~(1) Entries in patient records shall be legible, signed with first name or initial, last name, and dated by the person making the entry;~~
  - ~~(2) The patient shall be identified by name on each sheet in the patient record and on each screen of the electronic record.~~
  - ~~(3) A signed consent for treatment shall be obtained and placed in the record before any person can be admitted into treatment at an OTP;~~
  - ~~(4) A signed consent for follow up shall be obtained and placed in the record before any contact after discharge can be made;~~
  - (5) An intake and admission assessment;
  - (6) A biopsychsocial assessment;
  - (7) Case management needs assessment;
  - (8) Service planning;
  - (9) Documentation of progress notes;

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- (10) ~~A discharge biopsychosocial assessment;~~
  - (11) ~~A continuing care plan;~~
  - (12) ~~Consultation reports;~~
  - (13) ~~Psychological or psychometric testing;~~
  - (14) ~~Records and reports from other entities;~~
  - (15) ~~Medication records;~~
  - (16) ~~A discharge summary; and~~
  - (17) ~~Referral and transfer.~~
- (b) ~~Compliance with 450:70-3-3 may be determined by:~~
- (1) ~~A review of policies and procedures;~~
  - (2) ~~Treatment records;~~
  - (3) ~~Performance improvement guidelines;~~
  - (4) ~~Interviews with staff; and~~
  - (5) ~~Other facility documentation.~~

## PART 3. INTAKE AND ADMISSION ASSESSMENT

### 450:70-3-5.6. Assessment and record content - Central registry

- (a) The OTP shall have written policy and procedure outlining the requirement for the reporting of persons receiving medication assisted opioid treatment to the ODMHSAS. This report to the Central Registry shall be made ~~electronically in a format~~ requested by the ~~Commissioner or designee~~ Department and within twenty-four (24) hours of admission, change of medical status or discharge of any patient.
- (b) Compliance with 450:70-3-5.6 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

### 450:70-3-5.8. Assessment and record content - ASAM

- (a) The OTP shall document and assess all patients for appropriateness of admission taking into account the patient's needs as identified by, but not limited to:
- (1) ~~Acute intoxication and/or~~ withdrawal potential;
  - (2) Biomedical conditions and complications;
  - (3) Emotional, ~~and behavioral, or cognitive~~ conditions and complications;
  - (4) Readiness to change;
  - (5) ~~Relapse, continued used, or continued problem potential; and~~
  - (6) ~~Recovery~~ Recovery/living environment.
- (b) Compliance with 450:70-3-5.8 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

### 450:70-3-5.9. Assessment and record content - Supportive service array

- (a) The OTP shall have a written policy and procedure that shall be made available to all patients, outlining rehabilitation services. Minimum services include:

- (1) Individual therapy or rehabilitation services until the patient is fully stabilized and as indicated in this chapter;
  - (2) Group and family therapy or rehabilitation services for spouses, parents, or significant others and as indicated in this chapter;
  - (3) ~~Vocational or educational services and referral and as indicated in this chapter; and~~ Individual Placement and Support services;
  - (4) Case management services;
  - (5) Peer recovery support services; and
  - (6) Referral for additional services as outlined by the individualized treatment plan.
- (b) Compliance with 450:70-3-5.9 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## PART 7. SERVICE PLANNING

### 450:70-3-8. Individualized service planning

- (a) Upon completion of the admission evaluation, an individualized service plan shall be developed by a LBHP or licensure candidate. Service plans completed by a licensure candidate must be co-signed by a fully licensed LBHP. ~~The individualized service plan shall include, but not be limited to:~~
- (1) ~~Presenting problems or diagnosis;~~
  - (2) ~~Strengths, needs, abilities, and preferences of the patient;~~
  - (3) ~~Goals for treatment with specific, measurable, attainable, realistic and time limited;~~
  - (4) ~~Type and frequency of services to be provided;~~
  - (5) ~~Dated signature of primary service provider;~~
  - (6) ~~Description of patient's involvement in, and responses to, the service plan, and his or her signature and date;~~
  - (7) ~~Individualized discharge criteria or maintenance;~~
  - (8) ~~Projected length of treatment;~~
  - (9) ~~Measurable long and short term treatment goals;~~
  - (10) ~~Primary and supportive services to be utilized with the patient;~~
  - (11) ~~Type and frequency of therapeutic activities in which patient will participate;~~
  - (12) ~~Documentation of the patient's participation in the development of the plan; and~~
  - (13) ~~Staff who will be responsible for the patient's treatment.~~
- (b) The service plan shall be based on the patient's presenting problems or diagnosis, intake assessment, biopsychosocial assessment, and expectations of their recovery.
- (c) Frequency of services shall be determined by mutual agreement between the facility treatment team and the patient.
- (d) Service plans shall be completed by the fourth (4) ~~therapy or rehabilitation service~~ visit after admission.
- (e) The service plan review should occur according to the time frame required by the agency but, no less often than every

six (6) months; and further, is required by any of the following situations:

- (1) Change in goals and objectives based upon patient's documented progress, or identification of any new problem;
- (2) Change in primary therapist or rehabilitation service provider assignment;
- (3) Change in frequency and types of services provided;
- (4) Critical incident reports; or
- (5) Sentinel events; ~~or~~
- (6) ~~Phase change.~~

(f) Each patient accepted for treatment shall be assessed initially and periodically by qualified personnel to determine the most appropriate combination of services and treatment. The service plan also must identify the frequency and intensity of services to be provided.

(g) The plan must be reviewed and updated to reflect that patient's personal history, current needs for medical, social, and psychological services, and current needs for education, vocational rehabilitation, and employment services. Service plan updates shall be completed by an LBHP or licensure candidate. Service plan updates completed by a licensure candidate must be co-signed and dated by a fully licensed LBHP.

(h) The OTP will provide adequate and appropriate ~~therapy or rehabilitation~~ services to each patient as clinically necessary. ~~This therapy~~Therapy shall be provided by a program LBHP or Licensure Candidate. Rehabilitation services must be provided by a LBHP, Licensure Candidate, CADC or ~~CMHCertified Case Manager II. Case Management services must be provided by a LBHP, Licensure Candidate, CADC, or Certified Case Manager I or II. Peer recovery support services must be provided by a Certified Peer Recovery Support Specialist. Individual Placement and Support (IPS) services must be provided by a provider trained and credentialed in IPS.~~

- (i) Compliance with 450:70-3-8 may be determined by:
  - (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

**PART 9. PROGRESS NOTES**

**450:70-3-9. Progress notes**

(a) Unless defined otherwise by level of care, medication assisted opioid treatment services and any issues related to treatment shall be reflected by written documentation in the patient's record ~~and that shall include the following:~~chronologically describe the services provided by date and, for timed treatment sessions, time of service, and the consumer's progress in treatment.

- (1) ~~date;~~
- (2) ~~start and stop time for each timed treatment session;~~
- (3) ~~dated signature of the staff person providing the service;~~
- (4) ~~redentials of the staff person providing the service;~~

- (5) ~~when service is provided by a paraprofessional, signatures of the paraprofessional and a credentialed staff person;~~
- (6) ~~specific service plan needs, goals and/or objectives addressed;~~
- (7) ~~interventions used to address problem(s), goals and objectives;~~
- (8) ~~progress made toward goals and objectives, or lack of;~~
- (9) ~~patient response to the session or intervention;~~
- (10) ~~any new problem(s), goals and objectives identified during the session.~~

(b) Progress notes must be signed by the service provider and include the service provider's credentials.

- (b)c) Compliance with 450:70-3-8 may be determined by:
  - (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

**SUBCHAPTER 4. SERVICES SUPPORT AND ENHANCEMENT**

**PART 3. ORGANIZATIONAL AND FACILITY MANAGEMENT**

**450:70-4-6. New program approval**

(a) Determination of the need for new services shall be at the sole discretion of ODMHSAS as the designated state authority responsible for medication assisted opioid recovery services through information provided by the proposed new agency including:

- (1) Copies of all planned promotional materials, advertisements, and marketing strategies to publicize the proposed program;
- (2) Policies and procedures that will be used to identify if a patient is enrolled in another clinic;
- (3) The source and adequacy of financial assets necessary to operate the program;
- (4) If applicable, the compliance history of the applicant, including any issues reported to ODMHSAS by SAMHSA, DEA or any other regulatory agency;
- (5) Adequate planning and organizational structure demonstrated by full and complete answers submitted to all questions in the application materials;
- (6) A written statement that the applicant has read, understood and agreed to follow all federal and state regulations concerning operation of an OTP signed by the program sponsor and the medical director;
- (7) ~~Document~~Documentation of the need for new services in the area as demonstrated by providing ODMHSAS with waiting lists, numbers of opioid related emergency room visits, opioid related arrest data, and federal drug use forecasting data;
- (8) ~~Demonstrate~~Demonstration of the general community acceptance by providing ODMHSAS with copies of

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letters of support from local authorities and local residents living near the site; and

~~(9) Additional information and documentation for medication units in accordance with SAMHSA guidelines and as requested by ODMHSAS, if applicable; and~~  
~~(10) Produce written documentation that ODMHSAS has received and accepted all the requirements listed above.~~

- (b) Compliance with 450:70-4-7 may be determined by:
- (1) A review of policies and procedures,
  - (2) On-site verification of hours posted,
  - (3) Interviews with staff, and
  - (4) Other facility documentation.

## 450:70-4-12. Community information, consultation, outreach, and street outreach [REVOKED]

~~(a) Each OTP shall, as a regular part of patient-based planning and services provision, provide the community with information, consultation and outreach services to aid in reaching and attracting their specified target population(s). These outreach efforts shall be conducted by staff members or approved program volunteers.~~

~~(b) These services shall be designed to:~~

- ~~(1) Reach and attract the facility's target population;~~
- ~~(2) Provide information on substance abuse and related issues to the public; and~~
- ~~(3) Provide information to the public regarding the facility's services.~~

~~(c) These services include, but are not limited to, presentations or outreach efforts to community groups, organizations, and individuals.~~

~~(d) Written documentation of all community information, consultation, and outreach services shall be maintained, and shall include the following:~~

- ~~(1) Name of person(s) or organization(s) receiving the services;~~
- ~~(2) Name of person(s) providing the service;~~
- ~~(3) Number of persons attending;~~
- ~~(4) Location at which the services were provided;~~
- ~~(5) Date services were provided; and~~
- ~~(6) Description of the services provided.~~

~~(e) Facilities providing street outreach services shall have written policy and procedures describing the processes for systematically reaching into a community for the purpose of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter and accept the treatment services system.~~

~~(f) Compliance with 450:70-4-12 may be determined by:~~

- ~~(1) A review of facility policy and procedures;~~
- ~~(2) Documentation of community information, consultation, and outreach services, and~~
- ~~(3) Any other supporting facility documentation.~~

## PART 2. LEVELS OF TREATMENT SERVICES

### 450:70-6-10. Medication units, long term care facilities and hospitals

(a) Before providing medication assisted opioid recovery services through a medication unit, long term care facility or hospital, the program must receive the written approval of both SAMHSA and ODMHSAS, and ~~certified by ODMHSAS certification, OBND approval, and national accreditation.~~

(b) Certification as an OTP will not be required for the maintenance or managed withdrawal of a patient who is admitted to a hospital or long term care facility for the treatment for medical conditions other than opioid addiction and who requires maintenance or withdrawal management during the stay in the hospital or long term care facility.

(c) Medication units, long term care facilities and hospitals shall be in compliance with the following:

(1) Currently licensed by the DEA; and approved by SAMHSA.

(2) Written policy and procedure stating the medical director shall make all recommendations for medication dosages according to best medical practice guidelines and all applicable rules contained in this chapter.

(3) Written policy and procedure stating all female consumers shall have a pregnancy test on admission and at least annually thereafter, unless otherwise indicated.

(4) Written policy and procedure to address the provision of all services in compliance with Federal Drug Administration Guidelines for opioid treatment programs in accordance with 42 CFR, Part 8.

(d) Compliance with 450:70-6-10 may be determined by:

- (1) A review of policies and procedures,
- (2) Certifications and licenses, and
- (3) Other facility documentation.

## PART 3. PHASES OF TREATMENT SERVICES

### 450:70-6-15. Service

(a) Each OTP shall use opioid agonists or partial agonists in conjunction with other treatment modalities ~~such as including~~, but not limited to, individual, family and group therapy; ~~vocational training and placement; case management; Individual Placement and Support services; peer recovery support services;~~ and other modalities enhancing positive life style changes in the consumer.

(b) Compliance with 450:70-6-15 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

### 450:70-6-17.2. Service phases - General

(a) The OTP shall have written policy and procedure describing structured phases of treatment and rehabilitation to support patient progress and to establish requirements regarding patient attendance and service participation. The requirements listed below for each phase indicate minimum

## SUBCHAPTER 6. SUBSTANCE USE DISORDER TREATMENT SERVICES



requirements and the frequency and extent of treatment and rehabilitation services may be increased, based on individual patient need and unless otherwise indicated in this chapter. The OTP shall utilize ASAM criteria to determine the appropriate level of care during each phase of treatment.

- (1) Advancement in phase and/or increased take-home privilege shall not occur without significant compliance with all current treatment plan goals.
  - (2) Advancement in phase and/or increased take-home privilege shall not occur if there are consistent or consecutive positive urine drug screens.
  - (3) Reduction in phase and/or decreased take-home privilege shall occur if there are consistent or consecutive positive urine drug screens and/or substantial non-compliance with the individualized service plan.
  - (4) For patients to be eligible for Phase IV or above they must be;
    - (A) be employed full time,
    - (B) be a full time student (at least twelve (12) semester hours),
    - (C) be retired, or
    - (D) have proof of disability.
  - (5) Prior to the patient advancing in Phase and/or receiving take-home medication, the patient shall demonstrate a level of stability as evidenced by:
    - (A) absence of alcohol and other drug abuse,
    - (B) regularity of program attendance,
    - (C) absence of significant behavior problems,
    - (D) absence of recent criminal activities, and
    - (E) employment, actively seeking employment or attending school if not retired, disabled, functioning as a homemaker, or otherwise producing evidence of economic stability.
  - (6) If an OTP is providing doses to a patient receiving residential level of care (ASAM Level 3) substance use disorder services, the required minimum services listed for each phase may be delivered by the residential level of care substance use disorder provider. The OTP shall document the provision of these services and the provider delivering such services in the service plan.
- (b) Compliance with 450:70-6-17.2 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

**450:70-6-17.3. Service phases - Phase I**

(a) Phase I consists of a minimum ninety (90)-day period in which the patient attends the program for observation of medication assisted opioid treatment daily or at least six (6) days a week. Phase I take-home dosage privileges are limited to a single dose each week including take home dosages required due to regularly scheduled clinic closures. All approved holidays allow an additional take-home dosage. The patient shall ingest all other doses under appropriate supervision at the clinic. During Phase I, a minimum of four (4) treatment sessions per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual

Placement and Support services, and peer recovery support services.

- ~~(1) During Phase I, the patient shall participate in a minimum of four (4) sessions of therapy or rehabilitation services per month, with at least one (1) session being individual therapy or rehabilitation service and/or case management.~~
  - ~~(2) During Phase I, the service plan shall be reviewed and updated a minimum of once monthly.~~
- (b) Compliance with 450:70-6-17.3 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

**450:70-6-17.4. Service phases - Phase II**

- (a) Phase II is designated for patients who have been admitted more than ninety (90) days, and who have successfully met all Phase I criteria.
- (1) During Phase II, the program may issue no more than two (2) take-home doses of methadone at a time including take-home dosages required due to regular and/or holiday scheduled clinic closures. With the exception of any take-home doses, the patient shall ingest all other doses under appropriate supervision at the clinic.
  - ~~(2) The patient shall participate in at least two (2) therapy or rehabilitation service sessions per month during the first ninety (90) days of Phase II, with at least one (1) of the sessions being individual therapy or rehabilitation service and/or case management.~~
  - (2) For the first ninety (90) days of Phase II, a minimum of two (2) treatment sessions per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.
  - (3) After the initial ninety (90) days in Phase II, the patient shall participate in at least one (1) session of ~~individual therapy or rehabilitation~~ treatment service per month.
  - ~~(4) The service plan shall be reviewed and updated at least once every three (3) months during Phase II.~~
- (b) Compliance with 450:70-6-17.4 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

**450:70-6-17.5. Service phases - Phase III**

- (a) Phase III is designated for patients who have been admitted more than six (6) months and who have successfully completed Phase II criteria.
- (1) During Phase III, the program may issue no more than four (4) take-home doses of methadone plus closed and holiday days.
  - ~~(2) The patient shall participate in at least one (1) session of individual therapy or rehabilitation service and/or case management per month during Phase III.~~

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(2) A minimum of one (1) treatment session per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

~~(3) The service plan shall be reviewed and updated at least every six (6) months during Phase III or more frequently if circumstances warrant.~~

- (b) Compliance with 450:70-6-17.5 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## 450:70-6-17.6. Service phases - Phase IV

(a) Phase IV is designated for patients who have been admitted more than nine (9) months and who have successfully met progressive Phase III criteria.

(1) During Phase IV, the program may issue one (1) week take-home doses plus closed and holiday days.

~~(2) The patient shall participate in at least one (1) session of individual therapy or rehabilitation service and/or case management per month during this phase.~~

(2) A minimum of one (1) treatment session per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

~~(3) The service plan shall be reviewed and updated at least every six (6) months during this phase.~~

- (b) Compliance with 450:70-6-17.6 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## 450:70-6-17.7. Service phases - Phase V

(a) Phase V is designated for patients who have been admitted for more than one (1) year.

(1) During Phase V, the program may issue two (2) weeks maximum take-home doses.

~~(2) The patient shall participate in at least one (1) session of individual therapy or rehabilitation service or case management per month during this phase.~~

(2) A minimum of one (1) treatment session per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

~~(3) The service plan shall be reviewed and updated at least every six (6) months during this phase.~~

- (b) Compliance with 450:70-6-17.7 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

[OAR Docket #22-464; filed 6-23-22]

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 75. STANDARDS AND CRITERIA FOR CERTIFIED PROBLEM GAMBLING TREATMENT COUNSELORS

[OAR Docket #22-465]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions [NEW]

450:75-1-1 [NEW]

450:75-1-2 [NEW]

450:75-1-3 [NEW]

Subchapter 3. Certification Criteria and Application Requirements [NEW]

450:75-3-1 [NEW]

450:75-3-3 [NEW]

450:75-3-5 [NEW]

450:75-3-7 [NEW]

450:75-3-9 [NEW]

450:75-3-11 [NEW]

Subchapter 5. Rules of Professional Conduct [NEW]

450:75-5-1 [NEW]

450:75-5-3 [NEW]

450:75-5-5 [NEW]

450:75-5-7 [NEW]

Subchapter 7. Enforcement [NEW]

450:75-7-1 [NEW]

450:75-7-3 [NEW]

### AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-322a

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

December 8, 2021

### COMMENT PERIOD:

January 3, 2022 through February 2, 2022

### PUBLIC HEARING:

February 3, 2022

### ADOPTION:

March 25, 2022

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

March 28, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 15, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions [NEW]

450:75-1-1 [NEW]

450:75-1-2 [NEW]

450:75-1-3 [NEW]

Subchapter 3. Certification Criteria and Application Requirements [NEW]

450:75-3-1 [NEW]

450:75-3-3 [NEW]

450:75-3-5 [NEW]

450:75-3-7 [NEW]

450:75-3-9 [NEW]

450:75-3-11 [NEW]

Subchapter 5. Rules of Professional Conduct [NEW]

450:75-5-1 [NEW]

450:75-5-3 [NEW]

450:75-5-5 [NEW]

450:75-5-7 [NEW]

Subchapter 7. Enforcement [NEW]

450:75-7-1 [NEW]

450:75-7-3 [NEW]

**Gubernatorial approval:**

October 28, 2021

**Register publication:**

39 Ok Reg 189

**Docket number:**

21-766

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules establish standards and procedures for certification of Problem Gambling Treatment Counselors, including criteria for certification and renewal, fees, application requirements, education and training requirements, continuing education requirements, and rules of professional conduct.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**450:75-1-1. Purpose**

This Chapter implements 43A O.S. § 3-322a, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Problem Gambling Treatment Counselors. Section 3-322a requires the Board to promulgate rules and standards for certification of Problem Gambling Treatment Counselors addressing criteria for certification and renewal, including minimum education requirements, examination and supervision requirements, continuing education requirements, and rules of professional conduct.

**450:75-1-2. Definitions**

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

"Assessment" means those procedures by which a Problem Gambling Treatment Counselor provides an on-going evaluation process with the consumer to collect his or her historical information, and identify strengths, needs, abilities, and preferences in order to determine a plan for recovery.

"Board" means the State Board of Mental Health and Substance Abuse Services.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to support the consumer in self-sufficiency and community tenure. Services take place in the individual's home, in the community, or in a facility, in accordance with the service plan developed with and approved by the consumer and qualified staff.

**"Certified Problem Gambling Treatment Counselor"**

means an individual who is certified by the Oklahoma Department of Mental Health and Substance Abuse Services to offer problem gambling treatment services as an employee of a mental health facility or a drug or alcohol treatment facility that is operated by the Department or contracts with the State to provide behavioral health services, a tribe or tribal facility that provides behavioral health services, or an Oklahoma Department of Veterans Affairs or a United States Department of Veterans Affairs facility.

"Consumer" means an individual, adult, adolescent, or child who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Contact" means any encounter with a consumer who is inquiring about or seeking services.

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

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Family therapy" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with the consumer's family, guardian, and/or support system to promote positive emotional or behavioral change.

"Group therapy" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the consumer's treatment goals and objectives, and does not include social or daily skill development as described in educational group counseling.

"ICGC" means International Certified Gambling Counselor, offered at levels I or II through the International Gambling Counselor Certification Board.

"Individual therapy" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with one consumer to promote positive emotional or behavioral change.

"Licensure candidate" means a practitioner actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

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"NCGC" means National Certified Gambling Counselor, offered at levels I or II through the International Gambling Counselor Certification Board.

"Oklahoma Association on Problem Gambling and Gaming" or "OAPGG" means an entity which provides training and educational resources for Certified Problem Gambling Treatment Counselors and applicants.

"Problem gambling" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits as defined by the most recent edition of the DSM.

"Problem gambling treatment services" means treatment activities for consumers by a gambling treatment professional that include the following:

- (A) Assessment;
- (B) Treatment planning;
- (C) Individual, group and family therapy;
- (D) Case management; and
- (E) Discharge planning.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Treatment planning" means the process by which a treatment professional and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

## **450:75-1-3. Authority of the Commissioner and Department**

(a) The Commissioner shall have the authority and duty to issue, renew, revoke, deny, suspend and place on probation certifications to offer problem gambling treatment and shall have authority to reprimand Certified Problem Gambling Treatment Counselors.

(b) The Department shall have authority to:

- (1) Receive and deposit fees pursuant to 43A O.S. § 3-322a;
- (2) Examine all qualified applicants for Certified Problem Gambling Treatment Counselor;
- (3) Investigate complaints and possible violation of the rules and standards of Certified Problem Gambling Treatment Counselors;
- (4) Make recommendations regarding the outcome of formal complaints; and
- (5) Enforce the recommendations of the formal complaint process.

## **SUBCHAPTER 3. CERTIFICATION CRITERIA AND APPLICATION REQUIREMENTS**

### **450:75-3-1. Qualifications for certification**

(a) Each applicant for certification as a Certified Problem Gambling Treatment Counselor shall:

(1) Be employed within six (6) months from the date the final application for certification was submitted at a mental health facility or a substance use disorder/addiction treatment facility that is operated by the Department or contracts with the State to provide behavioral health services, a tribe or tribal facility that provides behavioral health service, or an Oklahoma Department of Veterans Affairs or a United States Department of Veterans Affairs facility;

(2) Possess good moral turpitude;

(3) Be at least 21 years of age; and

(4) Otherwise comply with rules promulgated by the Board implementing 43A O. S. § 3-322a.

(b) In addition to the qualifications specified in subsection (a), an applicant for a certification as a Certified Problem Gambling Treatment Counselor must meet the following criteria:

(1) Meet one of the following:

(A) Hold a current, valid license to practice in the state in which services are provided from one of the following licensing boards:

(i) Social Work (clinical specialty only);

(ii) Professional Counselor;

(iii) Marriage and Family Therapist; or

(iv) Alcohol and Drug Counselor.

(B) Hold a current, valid license to practice as a Clinical Psychologist from the State Board of Examiners of Psychologists; or

(C) Be a licensure candidate as defined in OAC 450:75-1-2.

(2) Have completed the required training and experience as follows:

(A) Completion of the thirty (30) hour Basic Training for Problem Gambling from the Oklahoma Association on Problem Gambling and Gaming (OAPGG) or another entity approved by the Department; and

(B) Completion of twelve (12) hours of group case consultation and presentation of at least two (2) case studies for feedback to an OAPGG consultant; and

(C) Completion of fifty (50) hours of documented clinical experience with gambling consumers after attending the training required in part (2) above.

(D) Applicants with current or former certification as a National Certified Gambling Counselor (NCGC) I or II or certification as an International Certified Gambling Counselor (ICGC) I or II from the International Gambling Counselor Certification Board (IGCCB) are not required to complete the training and experience in parts (A), (B), and (C) above for application. If such certification is lapsed, applicants must complete ten (10) hours of approved gambling-specific Continuing Education Units (CEUs) within the twelve (12) months prior to application submission for certification as a Certified Problem Gambling Treatment Counselor.

(E) Applicants with current state certification as a problem gambling counselor from another state may

request a waiver of the training and experience requirements in parts (A), (B), and (C) above. The Department may grant such a waiver if the state certification is deemed sufficient by the Department.

(c) Licensure candidates may submit an application for certification as a Certified Problem Gambling Treatment Counselor in order to complete the training and experience requirements while under supervision. However, the application shall only be considered for final application approval once the individual can provide documentation of licensure.

(d) Initial application may be made prior to completion of the training and experience requirements. However, the application shall only be considered for final application approval once the individual can provide documentation that all training and experience requirements have been completed.

(e) If an applicant has not completed the training and experience requirements at the time of initial application, the applicant shall have no more than two (2) years from the date of initial application submission to submit all necessary components for final application processing in accordance with OAC 450:75-3-3.

(f) Applicants for renewal of certification as a Certified Problem Gambling Treatment Counselor must complete ten (10) hours of approved gambling-specific Continuing Education Units (CEUs) within the twelve (12) months prior to renewal application submission.

**450:75-3-3. Application for certification**

(a) Application for certification as a Certified Problem Gambling Treatment Counselor shall be submitted to the Department on a form and in a manner prescribed by the Commissioner or designee.

(b) The initial application shall include the following items:

(1) Application form completed in full according to its instructions;

(2) Copy of a current, valid license required in 450:75-3-1(b)(1) or documentation of status as a licensure candidate. If the latter is supplied, a copy of a current, valid license is required for final application processing;

(3) Documentation of required training and experience:

(A) Certificate of completion of Basic Training for Problem Gambling. If such training was provided by an entity other than OAPGG, documentation of course content must also be provided; and

(B) Documentation of group case consultation and presentation; and

(C) Documentation of clinical experience; or

(D) Copy of National Gambling Counselor Certification or International Gambling Counselor Certification. If such certification is lapsed, documentation of CEUs as required in 450:75-3-1(b)(2)(D) must also be provided; or

(E) Copy of current state certification as a problem gambling counselor from another state for consideration by the Department.

(F) With the exception of item (D) above, documentation of required training and experience may be

supplied after the initial application is submitted but is required for final application processing.

(4) Signed Gambling Counselor Ethical Standards statement;

(5) Criminal history or other report, if requested; and

(6) Fees.

(c) A renewal application shall include the following items:

(1) Application form completed in full according to its instructions;

(2) Documentation of ten (10) hours of approved gambling-specific CEUs within the twelve (12) months prior to renewal application submission;

(3) Signed Gambling Counselor Ethical Standards statement;

(4) Criminal history or other report, if requested; and

(5) Fees.

**450:75-3-5. Duration of certification**

(a) Issuance. ODMHSAS will issue an appropriate certification to all applicants who successfully complete the requirements for certification as specified in this Chapter.

(b) Renewal. Unless revoked, certification issued pursuant to this Chapter must be renewed by June 30 of the calendar year following the first twelve (12) months of continuous certification and annually by June 30 thereafter.

(c) Suspension and Reinstatement. Certifications not renewed by the renewal deadline will be suspended. A suspended certification may be renewed by submitting required fees and documentation within six (6) months of the date of suspension. Suspended certifications not renewed within this six (6) month timeframe will be terminated. The individual must then wait a period of sixty (60) days and submit a new application for certification and provide all required items for initial certification as specified in this Chapter.

**450:75-3-7. Fees**

(a) Application Fee. Fifty dollars (\$50.00) shall be submitted with the application.

(b) Renewal Fee. Fifty dollars (\$50.00) shall be submitted with the renewal application.

(c) Late Renewal Fee. An additional twenty-five dollars (\$25.00) shall be included with the renewal application if the application is submitted after the June 30 deadline.

**450:75-3-9. Fitness of applicants**

(a) The purpose of this Section is to establish the fitness of the applicant as one of the criteria for approval of certification as a Certified Problem Gambling Treatment Counselor and to set forth the criteria by which the Commissioner will determine the fitness of the applicants.

(b) The substantiation of any of the following items related to the applicant may be, as the Commissioner or designee determines, the basis for the denial, delay, or revocation of certification of the applicant:

(1) Lack of necessary skills and abilities to provide adequate services;

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- (2) Misrepresentation or falsification of any information on the application or other materials submitted to the Department;
- (3) Revocation of license or certification required for certification under this Chapter;
- (4) Violation of the Gambling Counselor Ethical Standards;
- (5) Any conviction of a crime involving a child or vulnerable adult;
- (6) Any conviction of a sex offense not identified in (b)(7)(D) of this Section;
- (7) Any other felony conviction, unless the applicant can demonstrate to the Department's satisfaction the successful completion of a minimum of one (1) year of probation related to one or more of the offenses below:
  - (A) Forgery, fraud, or perjury;
  - (B) Burglary, arson, embezzlement, knowingly concealing stolen property, leaving the scene of an accident, or larceny;
  - (C) Possession, manufacturing, distribution, maintaining a dwelling, driving under the influence, contributing to the delinquency of a minor, or parent causing delinquency; or
  - (D) Prostitution or nonconsensual dissemination of private sexual images.
- (8) A violation of the rules of professional conduct set forth in this Chapter.
- (c) The Department shall obtain document(s) necessary to determine the fitness of an applicant.
- (d) The Department may require explanation of negative references prior to issuance of certification.

### **450:75-3-11. Scope of Problem Gambling Treatment Counselor Certification**

A Certified Problem Gambling Treatment Counselor who meets the requirements within this Chapter is authorized to provide problem gambling treatment services, including:

- (1) Assessment;
- (2) Treatment planning;
- (3) Individual, group and family therapy;
- (4) Case management; and
- (5) Discharge planning.

## **SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT**

### **450:75-5-1. Responsibility and scope of practice**

(a) Certified Problem Gambling Treatment Counselors shall be dedicated to advancing the welfare of individuals and their families. Certified Problem Gambling Treatment Counselors shall not participate in, condone, or be associated with dishonesty, fraud, deceit or misrepresentation, and shall not exploit their relationships with the consumers for personal advantage, profit, satisfaction, or interest.

- (b) Certified Problem Gambling Treatment Counselors shall practice only within the boundaries of their individual certification(s) and competence based on their education, training, experience, state and national accreditations, and licenses.
- (c) Certified Problem Gambling Treatment Counselors shall only use the title if employed by a mental health facility or a substance use disorder/addiction treatment facility that is operated by the Department or contracts with the State to provide behavioral health services, a tribe or tribal facility that provides behavioral health service, or an Oklahoma Department of Veterans Affairs or a United States Department of Veterans Affairs facility.
- (d) As an employee of a behavioral health provider, reimbursement for services rendered will not be collected outside of the agency's system of service reimbursement.
- (e) Certified Problem Gambling Treatment Counselors shall provide services with populations and in areas only within the boundaries of their competence, based on education, training, consultation, study or professional experience.
  - (1) Certified Problem Gambling Treatment Counselors that delegate or assign work to employees, supervisees, or assistants must take reasonable steps to see that such persons perform the services competently.
  - (2) Certified Problem Gambling Treatment Counselors are eligible to provide services within the scope of their certification that would not lead to conflict of interest, exploitation of relationship, loss of objectivity and based on education, training, and experience.
  - (3) Certified Problem Gambling Treatment Counselors shall provide consumers at the beginning of service written, accurate, and complete information regarding the extent and nature of the services available to them, to include fees and manner of payment.
- (f) If Certified Problem Gambling Treatment Counselors determine that they are unable to be of professional assistance to a consumer, the Certified Problem Gambling Treatment Counselor shall refer the consumer to appropriate resources when indicated. If the consumer declines the referral the Certified Problem Gambling Treatment Counselors shall terminate the relationship.
- (g) Certified Problem Gambling Treatment Counselors shall not commit fraud and shall not represent that he or she performed services which were not performed.

### **450:75-5-3. Code of ethics and professional standards**

- (a) Certified Problem Gambling Treatment Counselors shall adhere to the following code of ethics:
  - (1) Certified Problem Gambling Treatment Counselors shall be committed to respecting the dignity and autonomy of all persons that is to include, but is not limited to, professional relationships with consumers (or former consumers), supervisees, students, employees, or research participants in efforts to maintain the highest standards of their practice.
  - (2) Certified Problem Gambling Treatment Counselors shall terminate service to consumers, and professional relationships with them, when such service and relationships

are no longer required or in which a conflict of interest arises.

(3) Certified Problem Gambling Treatment Counselors shall not, in the rendering of their professional services, participate in, condone, and promote discrimination on the basis of race, color, age, gender, religion, disability and or limitation, or national origin.

(4) Certified Problem Gambling Treatment Counselors shall be aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status and consider these factors when working with members of such groups. They shall also eliminate the effect on their work of biases based on those factors, and shall not knowingly participate in or condone activities of others based upon such prejudices or influence.

(5) Certified Problem Gambling Treatment Counselors shall be obligated to report witnessed, involved, or reported ethical violations without violation of any confidentiality rights that may be involved. Certified Problem Gambling Treatment Counselors shall be obligated to follow steps of reporting professional misconduct as set forth by the Department and in this Chapter.

(6) Certified Problem Gambling Treatment Counselors shall give precedence to his or her professional responsibility over personal interests.

(7) Certified Problem Gambling Treatment Counselors shall not engage in any form of gambling, betting, or wagering specifically with clients.

(8) Certified Problem Gambling Treatment Counselors shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(b) Certified Problem Gambling Treatment Counselors must be aware of their influential positions with respect to consumers and not exploit the trust and dependency of consumers. Certified Problem Gambling Treatment Counselors shall refrain from dual relationships with consumers because of the potential to impair professional judgment and to increase the risk of harm to consumers. Certified Problem Gambling Treatment Counselors shall not exploit their relationships with current or former consumers, supervisees, students, employees, or others, sexually or otherwise, for personal advantage, profit, satisfaction, or interest.

(1) Certified Problem Gambling Treatment Counselors shall not have any type of sexual contact with consumers and shall not provide services to persons with whom they have had a sexual relationship.

(2) Certified Problem Gambling Treatment Counselors shall not engage in sexual contact with former consumers.

(3) Certified Problem Gambling Treatment Counselors shall not knowingly enter into a close personal relationship or engage in any business or financial dealings with a former consumer for five (5) years after the termination of the treatment relationship.

(4) Certified Problem Gambling Treatment Counselors shall be committed to each individual's rights of his or her

own life choices and recovery journey by letting him or her direct the healing process.

(5) Certified Problem Gambling Treatment Counselors shall keep confidential all information entrusted except when to do so puts the consumer at grave risk. Problem Gambling Treatment Counselors will be obligated to explain the limits of confidentiality initially in the professional working relationship.

(6) If the demands of an affiliated organization for whom the Certified Problem Gambling Treatment Counselors is working is in conflict with these ethics and standards, the issues must be clarified and resolved to allow adherence to the rules set forth in this Chapter.

(7) Certified Problem Gambling Treatment Counselors shall not solicit the clients of one's agency for private practice or to change service locations.

(8) Certified Problem Gambling Treatment Counselors shall not solicit clients, particularly at gambling establishments or self-help groups.

(c) It shall be unprofessional conduct for a Certified Problem Gambling Treatment Counselor or applicant to violate a state or federal statute if the violation is directly related to the duties and responsibilities of the counselor or if the violation involves moral turpitude.

**450:75-5-5. Reporting**

(a) Certified Problem Gambling Treatment Counselors shall report any violation of professional conduct by a Certified Problem Gambling Treatment Counselor as outlined in this Chapter.

(b) Certified Problem Gambling Treatment Counselors shall notify the Department of any change in name, address, telephone number, or employment if the counselor will continue to provide problem gambling treatment services in the new employment setting.

**450:75-5-7. Failure to comply**

A Certified Problem Gambling Treatment Counselor who does not comply with the standards in 450:75-5-1 or 450:75-5-3 shall be guilty of unprofessional conduct and subject to disciplinary action.

**SUBCHAPTER 7. ENFORCEMENT**

**450:75-7-1. Enforcement**

(a) ODMHSAS may impose administrative sanctions, including revocation, suspension, non-renewal of certification and reprimand against Certified Problem Gambling Treatment Counselors.

(b) The Department shall conduct itself in a manner to intervene in an immediate action to protect a consumer(s) according to the guidelines and rules provided, to prevent further detriment to any consumer.

(c) All proceedings, hearing and appeals shall be conducted in accordance with Chapter 1 of Title 450 and the Administrative Procedures Act.

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## **450:75-7-3. Complaints of professional conduct**

If ODMHSAS determines that a possible violation of any rules set forth in this Chapter has occurred, ODMHSAS may commence an investigation of the complaint pursuant to this Chapter and Chapter 1 of Title 450.

[OAR Docket #22-465; filed 6-23-22]

## **TITLE 460. DEPARTMENT OF MINES CHAPTER 1. OKLAHOMA MINING COMMISSION**

[OAR Docket #22-682]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Operational Procedures

460:1-3-2. Location [REVOKED]

460:1-3-6. Public inspection of documents [REVOKED]

Subchapter 9. Rules

460:1-9-1. Purpose [REVOKED]

### **AUTHORITY:**

45 O.S. Sections 1.5 et seq.; Oklahoma Mining Commission

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

April 2, 2021

### **COMMENT PERIOD:**

May 17, 2021 through June 21, 2021

### **PUBLIC HEARING:**

None held or requested

### **ADOPTION:**

Feb 17, 2022

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

Feb 28, 2022

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

### **FINAL ADOPTION:**

June 21, 2022

### **EFFECTIVE:**

September 11, 2022

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

Executive Order (EO) 2020-03, issued on February 3, 2020, requires state agencies to identify at least two (2) existing regulatory restrictions, as defined in EO 2020-03, to be revoked whenever they propose one (1) new regulatory restriction through the permanent rulemaking process. Because the agency recently adopted eight restrictions and revoked three obsolete restrictions, the agency determined that it must identify an additional thirteen (13) regulatory restrictions to be revoked. Among the rules proposed to be revoked in accordance with EO 2020-03 are three (3) rules in Chapter 1 of Title 460 of the Oklahoma Administrative Code (OAC). All of the rules identified below were written more than thirty (30) years ago and appear to no longer serve their intended purpose.

Section 460:1-3-2 was determined by the agency to be outdated and ineffective because it lists an incorrect address for the office of the Oklahoma Mining Commission (OMC), and because the OMC already uses the principal office of the Oklahoma Department of Mines for all its functions.

Section 460:1-3-6 was determined by the agency to be outdated and unnecessary because the Oklahoma Open Records Act, 51 O.S. ' 24A.1 *et seq.*, already provides for the public inspection of all OMC records described by the rule.

Section 460:1-9-1 was determined by the agency to be duplicative because another rule in the same chapter, 460:1-1-1, adequately explains the scope and purpose of Chapter 1 of Title 460 of the OAC.

### **CONTACT PERSON:**

Andrea Adams, Legal Secretary, Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106; (405) 522-9840.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

## **SUBCHAPTER 3. OPERATIONAL PROCEDURES**

### **460:1-3-2. Location [REVOKED]**

~~The Commission shall maintain at its offices in Oklahoma City, Oklahoma, all papers, records, and data necessary to the operation of the Commission. All official communications should be addressed to the Chairman of the Oklahoma Mining Commission, 2915 North Classen Boulevard, Suite 213, Oklahoma City, Oklahoma 73106, or to the Director of the Oklahoma Department of Mines, 2915 North Classen Boulevard, Suite 213, Oklahoma City, Oklahoma 73106.~~

### **460:1-3-6. Public inspection of documents [REVOKED]**

~~In compliance with Oklahoma Open Records Act (51 O.S. Sections 24A.1 et seq.) records of the Commission including, but not limited to, rules, regulations, orders and resolutions that make up the policy of the Commission and interpret and guide in the understanding and implementation of the Commission's policies will be available at the Commission's office for public inspection and copying during normal business hours. All records copied or searched shall be kept in the order found and shall be put back in the files as such. The cost of such copies and research will be those established by the Director of the Department.~~

## **SUBCHAPTER 9. RULES**

### **460:1-9-1. Purpose [REVOKED]**

~~The rules and regulations found in this Chapter are intended to define the scope of authority of the Commission as established by law. Under no circumstances shall they be construed to deprive, limit or restrict the powers, duties or jurisdiction of the Commission as provided by law. Should any section or parts of the rules of this Chapter be determined to be invalid for any reason such determination shall have no force or effect upon the remaining sections or parts of the rules.~~

[OAR Docket #22-682; filed 7-26-22]



**TITLE 460. DEPARTMENT OF MINES  
CHAPTER 3. NON-COAL RULES OF  
PRACTICE AND PROCEDURES**

[OAR Docket #22-683]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
460:3-1-2. Description of organization [REVOKED]  
460:3-1-3. Method of operation [AMENDED]

**AUTHORITY:**

Oklahoma Mining Commission; 45 O.S. Sections 1.5 and 732

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

April 2, 2021

**COMMENT PERIOD:**

May 17, 2021 through June 21, 2021

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

Feb 17, 2022

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

Feb 28, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Executive Order (EO) 2020-03, issued on February 3, 2020, requires state agencies to identify at least two (2) existing regulatory restrictions, as defined in EO 2020-03, to be revoked whenever they propose one (1) new regulatory restriction through the permanent rulemaking process. Because the agency recently adopted eight restrictions and revoked three obsolete restrictions, the agency determined that it must identify an additional thirteen (13) regulatory restrictions to be revoked. Among the rules proposed to be revoked in accordance with EO 2020-03 are two (2) rules in Chapter 3 of Title 460 of the Oklahoma Administrative Code (OAC). Each rule identified no longer serves its intended purpose.

Section 460:3-1-2 was determined by the agency to be outdated and ineffective because it gives an outdated description of the Department of Mines, and because it does not belong in Chapter 3, which contains rules governing administrative hearings related to non-coal mining activities and permits.

Section 460:3-1-3 will be amended to revoke all but subsections (c) and (h), which will be renumbered as subsections (a) and (b). The remaining subsections were determined by the agency to be outdated and unnecessary because they contain outdated information or are duplicative with other rules and statutory requirements. For example, the requirements of subsections (e) and (f) are duplicative with the requirements found in the Oklahoma Open Records Act, 51 O.S. § 24A.1 *et seq.*, which already provides for the public inspection of all agency records described by the rule.

**CONTACT PERSON:**

Andrea Adams, Legal Secretary, Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106; (405) 522-9840.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**460:3-1-2. Description of organization  
[REVOKED]**

(a) ~~The office of Chief Inspector of Mines, Oil and Gas (hereinafter referred to as the Department) was created and exists by virtue of Article 6, Section 25 of the Constitution of the State of Oklahoma, as amended.~~

(b) ~~The Chief Executive Officer is the Chief Mine Inspector, who is appointed by the Governor by and with the consent of the Senate for terms of four (4) years to run concurrently with the term of the Governor [Article VI, Sec. 1, Oklahoma Constitution, as amended.]~~

(c) ~~The Chief Mine Inspector shall perform all administrative duties required of said office under the direction of the Governor and shall perform all duties and shall have such authority as is vested in the Chief Mine Inspector by the provisions of Title 45 of the Oklahoma Statutes.~~

(d) ~~Mining districts are created by the Chief Mine Inspector for the Assistant Mine Inspectors to fulfill their duties of inspection and enforcement. Copies of maps showing the boundaries of the mining districts of this Chapter are available to the public upon request to the Department. [45 O.S. Supp (1981), Sec. 21.1]~~

(e) ~~In the absence of an appointed Chief Mine Inspector, the Chief Executive Officer of the Department of Mines shall be the Director of the Department of Mines. The Director shall be appointed by the Oklahoma Mining Commission and shall serve at the pleasure of said Commission which shall fix the Director's duties and compensation. The Director shall be chosen with regard to his or her knowledge, training, experience and ability in administering the functions of the Department. The appointed Director shall have been a resident and a qualified elector of Oklahoma for a period of at least three (3) years preceding the appointment. [45 O.S. § 1b].~~

**460:3-1-3. Method of operation**

(a) ~~The principal office of the Department is. 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.~~

(b) ~~Office hours shall be from 8:00 A.M. to 4:30 P.M., unless otherwise designated by the Director of the Department of Mines, each day except Saturday and Sunday and legal holidays established by statute or proclamation of the Governor.~~

(c) ~~The Department of Mines may exercise its official powers at any location in the State of Oklahoma.~~

(d) ~~Every communication in writing to the Department shall be addressed to the Director at the principal office.~~

(e) ~~All rules and other written statements of policy or interpretations formulated, adopted or used by the Department in the discharge of its functions, all final orders, decisions and opinions and all forms, applications and instructions which are required to be completed in applying for a license or permit will be made available at the principal office during regular office hours.~~

(f) ~~Copies of all official records of the Department, not privileged or protected from publication by law, may be made and certified by the Director on the request of any person. The~~

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~~person making such request shall pay the expense of making such copies in accordance with a fee schedule adopted by the Department. Certified copies of any records or papers on file in the Department shall be evidence equally with the originals thereof and when introduced as evidence shall have the same validity as the originals.~~

(hb) When computing time, the following shall apply:

- (1) Except as otherwise provided, computation of time is based on calendar days.
- (2) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday on which the Department is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.
- (3) Intermediate Saturdays, Sundays and legal holidays are excluded from the computation when the period or prescribed time is seven (7) days or less.

*[OAR Docket #22-683; filed 7-26-22]*

## TITLE 460. DEPARTMENT OF MINES CHAPTER 10. NON-COAL RULES AND REGULATIONS

*[OAR Docket #22-684]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 25. Form, Conditions, and Terms of Performance Bonds  
460:10-25-3. Terms and conditions of the bond [AMENDED]

### AUTHORITY:

Oklahoma Mining Commission; 45 O.S. Sections 1.5 and 732

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

April 2, 2021

### COMMENT PERIOD:

May 17, 2021 through June 21, 2021

### PUBLIC HEARING:

None held or requested

### ADOPTION:

Feb 17, 2022

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

Feb 28, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Executive Order (EO) 2020-03, issued on February 3, 2020, requires state agencies to identify at least two (2) existing regulatory restrictions, as defined in EO 2020-03, to be revoked whenever they propose one (1) new regulatory restriction through the permanent rulemaking process. Because the agency recently adopted eight restrictions and revoked three obsolete restrictions, the agency determined that it must identify an additional thirteen (13) regulatory restrictions to be revoked. Among the rules proposed to be revoked in accordance with EO 2020-03 is one requirement found in Section

10-25-3 of Title 460 of the Oklahoma Administrative Code (OAC). The provision identified below appears to no longer serve its intended purpose.

Subsection (e) of Section 460:10-25-3 was determined by the agency to be outdated and ineffective because it is no longer necessary to limit collateral bonds to a maximum amount of \$100,000. It is now sufficient for a collateral bond not to exceed the maximum insurable amount determined by the FDIC and FSIC. Section:10-25-3 will be amended to remove the restriction against accepting certificates for a denomination in excess of \$100,000.

### CONTACT PERSON:

Andrea Adams, Legal Secretary, Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106; (405) 522-9840.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 25. FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS

### 460:10-25-3. Terms and conditions of the bond

(a) The performance bond shall be in the amount determined by the Department as provided in Section 460:10-23-2 and 460:10-23-3 or as provided in 460:10-10-5 for limited use permits.

(b) The performance bond shall be payable to the Department.

(c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Mining Lands Reclamation Act, this Chapter, and the conditions of the permit and shall cover the entire permit area.

(d) The duration of the bond shall be for the entire period provided in Section 460:10-23-4.

(e) Collateral Bonds, except Letters of Credit, shall be subject to the following conditions:

(1) The Department shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in the bonding regulations contained in Subchapters 21, 23, and 27 of this Chapter.

(2) The Department shall value collateral at their current market value, not face value.

(3) The Department shall require that Certificates of Deposit be assigned to the Department in writing, and upon the books of the bank issuing such certificates.

(4) The Department shall not accept an individual certificate for a denomination in excess of ~~\$100,000.00, or the~~ maximum insurable amount as determined by FDIC and FSIC.

(5) The Department shall require the banks issuing these certificates to waive all rights to setoff or liens which it has or might have against those certificates.

(6) The Department shall only accept automatically renewable Certificates of Deposits.

(7) The Department shall require the applicant to deposit sufficient amounts of certificates of deposits, to assure that the Department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the

amount of the bond required under the bonding regulations.

(f) Letters of Credit shall be subject to the following conditions:

(1) The letter may only be issued by a bank organized or authorized to do business in the United States.

(2) Letters of Credit shall be irrevocable during their terms. The Department may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of credit for the purpose of this paragraph shall notify the Department in writing at least 90 days prior to the maturity date of such letter of credit or expiration of the letter of credit agreement. Letters of credit utilized as security in areas requiring continuous bond coverage shall be forfeited and collected by the Department if not replaced by other suitable evidence of financial responsibility at least 30 days before the expiration date of the letter of credit agreement.

(3) The letter must be payable to the Department in part or in full upon demand and receipt from the Department of a notice of forfeiture issued in accordance with Subchapter 29 of this Chapter.

(4) The Department shall not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet by a Certified Public Accountant.

(5) The Department shall not accept a letter of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation, as provided by State Law or in the absence of State Law, in accordance with (e)(2) of this section.

(6) The bond shall provide that:

(A) The bank will give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations or requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligation under the letter of credit for any reason, notice shall be given immediately to the permittee and the Department;

(C) Upon the incapacity of the bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without bond coverage in violation of Section 460:10-21-4(b). The Department shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period, the Department shall conduct weekly inspections to ensure continuing compliance with other permit requirements and the Act. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

[OAR Docket #22-684; filed 7-26-22]

**TITLE 460. DEPARTMENT OF MINES  
CHAPTER 15. UNDERGROUND COAL AND ASPHALT**

[OAR Docket #22-685]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Standards

460:15-1-15. Self rescue device [AMENDED]

460:15-1-19. Safety devices [AMENDED]

**AUTHORITY:**

Oklahoma Mining Commission; 45 O.S. Section 1.5 et seq.

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

April 2, 2021

**COMMENT PERIOD:**

May 17, 2021 through June 21, 2021

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

Feb 17, 2022

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

Feb 28, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Executive Order (EO) 2020-03, issued on February 3, 2020, requires state agencies to identify at least two (2) existing regulatory restrictions, as defined in EO 2020-03, to be revoked whenever they propose one (1) new regulatory restriction through the permanent rulemaking process. Because the agency recently adopted eight restrictions and revoked three obsolete restrictions, the agency determined that it must identify an additional thirteen (13) regulatory restrictions to be revoked. Among the rules proposed to be revoked in accordance with EO 2020-03 are certain requirements found in Chapter 15 of Title 460 of the Oklahoma Administrative Code (OAC). These provisions are outdated and no longer conform to industry practice.

Subsections (1) and (2) of Section 460:15-1-15 were determined by the agency to be outdated and ineffective because advances in self-rescue devices have made them smaller and lighter, making it no longer necessary to regulate the distance at which they may be kept from the underground miner. Those two subsections shall be removed, leaving only the requirements that the operator provide self-rescue devices and provide training on their use.

Section 460:15-1-19 was determined by the agency to be outdated because it requires "approved [ . . . ] flame safety lamps." Flame safety lamps are antiquated technology and no longer used. The section will be amended to remove all references to flame safety lamps and requirements related to flame safety lamps.

**CONTACT PERSON:**

Andrea Adams, Legal Secretary, Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106; (405) 522-9840.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL STANDARDS**

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## 460:15-1-15. Self rescue device

Every operator shall supply every miner and every visitor a self rescue device and a self contained breathing apparatus which are approved by MSHA. Every miner or visitor must be instructed in the use of such.

~~(1) The self rescue device must be carried by the miner at all times the self contained breathing apparatus may be placed in an area or on his equipment provided it is readily accessible, protected from damage and not more than twenty five (25) feet from such person.~~

~~(2) The mine operator may apply to the Department of Mines for a variance to place the self contained self rescue device more than twenty five (25) feet from the miner. The requirements for said variance shall comply with CFR 30 sec 75-1714-2.~~

## 460:15-1-19. Safety devices

(a) Only approved miners cap lamps, flame safety lamps and methane detectors shall be used. The operator shall provide an adequate number of cap lamps, ~~flame safety lamps~~ and methane detectors for miners and certified personnel. ~~Only certified personnel may use a flame safety lamp.~~

(b) It shall be unlawful for any person to carry an open light, match, flame making devices, or any smoking material into any coal mine.

(c) Each person that works in or around a mine shall wear the following protective clothing and devices:

- (1) Suitable protective clothing and face shield or goggles when welding, cutting or working with molten metals or when any hazard to the eyes exist from flying objects.
- (2) Suitable clothing when handling toxic or corrosive materials.
- (3) A suitable hard hat and protective footwear.
- (4) Snug fitting clothing shall be worn when around moving equipment or machinery.

[OAR Docket #22-685; filed 7-26-22]

## TITLE 460. DEPARTMENT OF MINES CHAPTER 25. OKLAHOMA EXPLOSIVES AND BLASTING RULES AND REGULATIONS

[OAR Docket #22-686]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Standards
- 460:25-1-9. Availability of records [REVOKED]
- Subchapter 7. Permit Information
- 460:25-7-2. Public notices of filing of permit application [AMENDED]
- Subchapter 13. Performance Standards
- 460:25-13-5. General requirements [AMENDED]
- 460:25-13-19. Blasting standards [AMENDED]
- Subchapter 15. State Inspection
- 460:25-15-5. Availability of records [REVOKED]
- Appendix A. Table to be Used for Determining Weight of Explosives to be Used on a Single Delay [REVOKED]

### AUTHORITY:

Oklahoma Mining Commission; 63 O.S. Section 123.4

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

April 2, 2021

### COMMENT PERIOD:

May 17, 2021 through June 21, 2021

### PUBLIC HEARING:

None held or requested

### ADOPTION:

Feb 17, 2022

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

Feb 28, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Executive Order (EO) 2020-03, issued on February 3, 2020, requires state agencies to identify at least two (2) existing regulatory restrictions, as defined in EO 2020-03, to be revoked whenever they propose one (1) new regulatory restriction through the permanent rulemaking process. Because the agency recently adopted eight restrictions and revoked three obsolete restrictions, the agency determined that it must propose an additional thirteen (13) regulatory restrictions to be revoked. Among the rules proposed to be revoked in accordance with EO 2020-03 are certain provisions in Chapter 25 of Title 460 of the Oklahoma Administrative Code (OAC). These provisions are duplicative of the agency's other statutory requirements and thus no longer necessary.

Section 460:25-1-9 was determined by the agency to be outdated and unnecessary because the Oklahoma Open Records Act, 51 O.S. § 24A.1 *et seq.*, already provides for the public inspection of all agency records described by the rule.

Section 460:25-7-2 was determined to be ineffective as it lists a specific address for review of blasting permit applications, when it would be more effective to state that such applications will be posted and may be reviewed at the principal office of the Department of Mines. In this way, the public notice procedure will not be interrupted by the relocation of the agency's principal office.

Subsection (u) of Section 460:25-13-5 was determined to be obsolete as it contains requirements for buildings used in the mixing of blasting agents, a practice no longer utilized by industry and no longer allowed by law. Subsection (u) and its requirements will be removed.

Section 460:25-15-5 was determined by the agency to be outdated and unnecessary because the Oklahoma Open Records Act, 51 O.S. § 24A.1 *et seq.*, already provides for the public inspection or confidentiality of certain agency records described by the rule.

Appendix A was determined to be duplicative with the scale distance formula described in Section 460:25-13-19. References to Appendix A in Section 460:25-13-19 will also be removed.

### CONTACT PERSON:

Andrea Adams, Legal Secretary, Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106; (405) 522-9840.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL REQUIREMENTS

**460:25-1-9. Availability of records [REVOKED]**

Records required by this Chapter to be made available to the public shall be retained at the offices of the Oklahoma Department of Mines, 2915 North Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

**SUBCHAPTER 7. PERMIT INFORMATION**

**460:25-7-2. Public notices of filing of permit application**

A permit application shall be posted at the principal office of the Oklahoma Department of Mines at the Oklahoma City Office, located at 2915 North Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 when filed with the Department. The posted permit application, which will serve as public notice, shall contain, at a minimum, the following information:

- (1) The name and business address of the applicant;
- (2) Verification of application;
- (3) Blaster's state certificate number with issuance date and expiration date; and
- (4) Copy of the certificate of blasting.

**SUBCHAPTER 13. PERFORMANCE STANDARDS**

**460:25-13-5. General requirements**

- (a) Each certified blaster shall comply with all applicable State, Federal, and Local Laws in the use of explosives.
- (b) All blasting operations shall be conducted by experienced, trained and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certificate as required by 63. O.S. (1995), Section 460:25-13-6.
- (c) Blasting certification shall be carried by the blaster or shall be on file at the blasting area during the blasting operation.
- (d) A blaster and at least one other person shall be present at the firing of any and all blasts.
- (e) The blaster shall permit only authorized and qualified persons to handle and use explosives.
- (f) Smoking, firearms, matches, open flame lamps, and other fires, flame or heat producing devices and sparks shall be prohibited in or near explosive magazines or while explosives are being handled, transported or used.
- (g) No person shall be allowed to handle or use explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs.
- (h) All explosives shall be accounted for at all times. Explosives not being used shall be kept in a locked magazine, unavailable to persons not authorized to handle them. The employer shall maintain an inventory and use record of all explosives. ATF shall be notified of any loss, theft, or unauthorized entry into a magazine.
- (i) No explosives or blasting agents shall be abandoned.

(j) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.

(k) When blasting is done in congested areas or in proximity to a structure, railway, or highway, or any other installation that may be damaged, the blaster shall take special precautions in the loading, delaying, initiation, and confinement of each blast with mats or other methods so as to control the throw of fragments and not to exceed the peak particle velocity limits requirements of 460: 25-1319(a) at a structure.

(l) Employees authorized to prepare explosives charges or conduct blasting operations shall use every reasonable precaution including, but not limited to, visual and audible warning signals, flags, or barricades, to ensure employee safety.

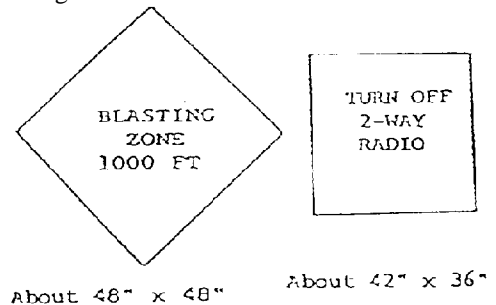
(m) Blasting operations above ground shall be conducted between sunrise and sunset.

(n) Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent power lines, dust storms, or other sources of extraneous electricity. These precautions shall include:

- (1) Detonators shall be short-circuited in holes which have been primed and shunted.
- (2) The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electric storm;
- (3) Signs and warnings shall be done in the following manner:

(A) The prominent display of adequate signs, warning against the use of mobile radio transmitters on all roads within 1,000 feet of blasting operations. Whenever adherence to the 1,000-foot distance would create an operational handicap, this distance may be modified so long as the modification is adequately designed in compliance with paragraph (5) of this subsection to prevent any premature firing of electric blasting caps.

(B) Specimens of signs which would meet the requirements of Section 460: 25-138(p) are the following:



(4) Ensuring that mobile radio transmitters and cellular phones which are less than 100 feet away from electric blasting caps, in other than original containers, shall be deenergized and effectively locked;

(5) Compliance with the recommendations of The Institute of the Makers of Explosives with regard to blasting in the vicinity of radio transmitters as stipulated in Radio

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Frequency Energy-A Potential Hazard in the Use of Electric Blasting Caps, IME Publication No. 20, March 1971.

- (o) Empty boxes and paper and fiber packing materials, which have previously contained high explosives, can be destroyed by burning at an approved location on site.
- (p) Explosives, blasting agents, and blasting supplies that are obviously deteriorated or damaged shall not be used. Contact the manufacturer for instructions.
- (q) Delivery and issue of explosives shall only be made by and to authorized persons and into authorized magazines or approved temporary storage or handling areas.
- (r) Blasting operations in the proximity of overhead power lines, communication lines, utility services, or other services and structures shall not be carried on until the operators and/or owners have been notified and measures for safe control have been taken.
- (s) The use of black powder for blasting shall be prohibited.
- (t) All loading and firing shall be directed and supervised by a certified blaster.
- ~~(u) Buildings used for the mixing of blasting agents and water gels shall conform to the requirements of this section.~~
  - ~~(1) Building shall be of noncombustible construction or sheet metal on wood studs.~~
  - ~~(2) Floors in a mixing plant shall be of concrete or of other non absorbent materials.~~
  - ~~(3) All fuel oil storage facilities shall be separated from the mixing plant and located in such a manner that in case of tank rupture, the oil will drain away from the mixing plant building.~~
  - ~~(4) The building shall be well ventilated.~~
  - ~~(5) Heating units which do not depend on combustion processes, when properly designed and located, may be used in the building. All direct sources of heat shall be provided exclusively from units located outside the mixing building.~~
  - ~~(6) All internal combustion engines used for electric power generation shall be located outside the mixing plant building, or shall be properly ventilated and isolated by a firewall. The exhaust system on all such engines shall be located so any spark emission cannot be a hazard to any materials in or adjacent to the plant.~~

### 460:25-13-19. Blasting standards

- (a) In all blasting operations, except as hereinafter otherwise provided, the maximum safe peak particle velocity shall not exceed at the immediate location of any dwelling house, public building, school, church, commercial or institutional building, the following:
  - (1) Distance of structure from a blast 0-300 feet 2.0"/sec PPV ~~(see Appendix A for allowable pounds per delay).~~
  - (2) Distances of structure from blast 301 feet and beyond 1.0"/sec PPV initially until the blaster can determine from a history of blasts that a preponderance of frequencies, 40 HZ or above, are high enough to justify the 2.0"/sec PPV limit.

(b) This ground velocity limit is not construed to mean property owned, leased, or contracted by the blaster or blaster's company or property on which the owner gives a written waiver.

(c) No two (2) consecutive subcharges within any charge shall be separated by a delay time of less than eight (8) milliseconds.

~~(d) A table to be used for determining weight of explosives to be used on a single delay is in Appendix A of this Chapter.~~

~~(e)~~ The standard table for the maximum charge per delay shall be generated by the formula:  $W = (D/\text{scaled distance})^2$ ; Where W is the weight of explosive in pounds and D is the distance from the charge to the nearest dwelling house, public building, school, church, commercial or institutional building in feet. The scaled distance factors allowed for various distances from the blast site, the table in Subsection (h) will be used. On sites where the Department decides it necessary to comply with the provision of the law this formula may be altered.

~~(f)~~ For the purpose of well shooting below 100 feet, the table shall be generated by the formula:  $W = (D/50)^3$ ; Where W is the total weight of explosives in the hole and D is the distance from the charge to the nearest dwelling house, public building, school, church, commercial, or institutional building.

~~(g)~~ Scaled Distance factors allowed for various distances from blast site:

- (1) 0 to 300 ft. from blast site-Use scaled distance factor of 50 without seismic monitoring.
- (2) 301 to 5,000 ft. from blast site - Use scaled distance factor of 55 without seismic monitoring.
- (3) 5,001 ft and beyond from blast site - Use scaled distance factor of 65 without seismic monitoring.

~~(h)~~ For distances less than 300 feet use the table in Appendix A.

## SUBCHAPTER 15. STATE INSPECTION

### 460:25-15-5. Availability of records [REVOKED]

~~(a) Copies of all records, reports, inspection materials, or information obtained by the Department under Oklahoma Statute, Title 63, and this Chapter shall be made immediately available for examination upon request to the public, except that the Department may refuse to make available:~~

- ~~(1) Investigatory reports compiled for law enforcement purposes; and~~
- ~~(2) Information not required to be made available under subsection (c) of this Section.~~

~~(b) Copies of documents and information required to be made available under (a) of this Section shall also be provided for examination at the Department of Mines in Oklahoma City.~~

~~(c) In order to protect preparation for hearings and enforcement proceedings, the Department may designate for special handling, investigative and enforcement reports and other such materials.~~

**APPENDIX A. TABLE TO BE USED FOR DETERMINING WEIGHT OF EXPLOSIVES TO BE USED ON A SINGLE DELAY [REVOKED]**

**TABLE TO BE USED FOR DETERMINING WEIGHT OF EXPLOSIVES TO BE USED ON A SINGLE DELAY**

<b>DISTANCE-FT</b> (Scaled Distance 50)	<b>WEIGHT-LBS.</b>	<b>DISTANCE-FT</b> (Scaled Distance 55)	<b>WEIGHT-LBS.</b>
5-10	1/8	350	40
11-15	1/4	400	53
16-20	1/2	500	83
21-25	3/4	600	119
26-30	1.00	700	162
40	2.25	800	212
50	3.50	900	268
60	4.75	1000	331
70	6.00	1100	400
80	7.25	1200	476
90	8.50	1300	559
100	9.75	1400	648
110	11.0	1500	744
130	13.5	1600	846
150	16.0	1700	955
170	18.5	1800	1071
190	21.0	1900	1194
210	23.5	2000	1322
230	26.0	2500	2066
250	28.5	3000	2976
270	31.0	3500	4050
290	33.5	4000	5290
300	34.75	5000	8265

**DISTANCE** is the distance to the nearest house, public building, school, church, commercial or institutional building in feet.

**WEIGHT** is the maximum weight of explosives to be used on a single delay permit of 8 milliseconds or greater.

Less than five feet, the total charge should not exceed 1/8 lb.

For distances greater than 5,000 feet not included in the table use the formula:  
 $weight = (distance/65)^2$

[OAR Docket #22-686; filed 7-26-22]

# Permanent Final Adoptions

## TITLE 460. DEPARTMENT OF MINES CHAPTER 30. COAL COMBUSTION BY-PRODUCT PLACEMENT RULES AND REGULATIONS

[OAR Docket #22-687]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 4. Bond Requirements for CCB Operations

460:30-4-3. Definitions [AMENDED]

460:30-4-5. Form of the performance bond [REVOKED]

### AUTHORITY:

Oklahoma Mining Commission; 45 O.S. Sections 732, 940

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

April 2, 2021

### COMMENT PERIOD:

May 17, 2021 through June 21, 2021

### PUBLIC HEARING:

None held or requested

### ADOPTION:

Feb 17, 2022

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

Feb 28, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Executive Order (EO) 2020-03, issued on February 3, 2020, requires state agencies to identify at least two (2) existing regulatory restrictions, as defined in EO 2020-03, to be revoked whenever they propose one (1) new regulatory restriction through the permanent rulemaking process. Because the agency recently adopted eight restrictions and revoked three obsolete restrictions, the agency determined that it must identify an additional thirteen (13) regulatory restrictions to be revoked. Among the rules proposed to be revoked in accordance with EO 2020-03 is one rule in Chapter 30 of Title 460 of the Oklahoma Administrative Code (OAC). This rule is duplicative with one of the agency's other rules in the same subchapter.

Section 460:30-4-5 was determined to be unnecessary as its requirements are duplicative with the definitions found in Section 460:30-4-3. Section 460:30-4-3 will be amended so that it can stand alone without being accompanied by 460:30-4-5.

### CONTACT PERSON:

Andrea Adams, Legal Secretary, Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106; (405) 522-9840.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

### 460:30-4-3. Definitions

As used in this Subchapter, the following terms, which describe types of performance bonds allowed by the Department, have these specified meanings, except where otherwise indicated:

"**Collateral bond**" means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Department of one or more of the following:

(A) A cash account, which shall be the deposit of cash in one or more federally insured or equivalently protected accounts, payable only to the Department upon demand, or the deposit of cash directly with the Department;

(B) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Department;

(C) Negotiable certificates of deposit made payable or assigned to the Department and placed in its possession;

(D) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the Department upon presentation;

(E) A perfected, first-lien security interest in real property in favor of the Department; or

(F) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Department.

"**Self-bond**" means an indemnity agreement in a sum certain executed by the permittee and the parent company guarantor and made payable to the Department, with or without separate surety.

"**Surety bond**" means an indemnity agreement in a sum certain payable to the Department, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.

### 460:30-4-5. Form of the performance bond [REVOKED]

~~The Department shall prescribe the form of the performance bond. The Department may allow for:~~

- ~~(1) A surety bond;~~
- ~~(2) A collateral bond;~~
- ~~(3) A self bond; or~~
- ~~(4) A combination of any of these bonding methods.~~

[OAR Docket #22-687; filed 7-26-22]

## SUBCHAPTER 4. BOND REQUIREMENTS FOR CCB OPERATIONS



TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #22-472]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse and Licensed Practical Nurse
485:10-7-9 [AMENDED]
Subchapter 10. Advanced Unlicensed Assistant
485:10-10-11 [NEW]
Subchapter 11. Disciplinary Action
485:10-11-2 [AMENDED]
Subchapter 15. Requirements for Practice as an Advanced Practice Registered Nurse
485:10-15-10 [NEW]

AUTHORITY:

Oklahoma Board of Nursing; 59 O.S. Sections 567.2(A); 567.3a, 567.4(F); 567.5(B); 567.5a(B); 567.6(B); 567.6a(B); 567.8(F); 75 O.S. Section 309(G)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 24, 2021

COMMENT PERIOD:

December 15, 2021 to January 24, 2022

PUBLIC HEARING:

February 1, 2022

ADOPTION:

February 1, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse and Licensed Practical Nurse
485:10-7-9 [AMENDED]

Gubernatorial approval:

December 10, 2021

Register publication:

39 Ok Reg 347

Docket number:

21-900

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Title 485. Chapter 10 proposed changes clarify that that submitting a change of name and/or a change of address within thirty (30) days of the change applies to all licensees making such changes and modifies language to align with the Oklahoma Administrative Procedures Act, 75 O.S. Section 309(G), the length of time in which recordings of oral proceedings are maintained. Proposed revisions for subchapter 7, 10, 11 and 15 include:

OAC 485:10-7-9 clarifies that the submission of a change of name and a change of address within thirty (30) days of the changes applies to all licensees making such changes and is not limited to only those requesting the change.

OAC 485:10-10-11 and OAC 485:10-15-10 add language regarding the submission of a change of name and a change of address within thirty (30) days of the changes.

OAC 485:10-11-2(e) provides alignment with the Administrative Procedures Act, specifically, 75 O. S. §309(G), regarding the retention of recordings of oral proceedings.

CONTACT PERSON:

Jackye Ward, MS, RN, CNE, FRE, Oklahoma Board of Nursing, 2501 N. Lincoln Blvd., Suite 207, Oklahoma City, OK 73105 (405) 962-1800, jackye.ward@nursing.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 7. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A REGISTERED NURSE AND LICENSED PRACTICAL NURSE

485:10-7-9. Change of name and address

Each Registered Nurse or Licensed Practical Nurse licensee requesting with a change of name and/or address shall:

- (1) Provide certified evidence (a copy of marriage license or court action) to the Board regarding any change of name of the licensee within 30 days of the change.
(2) Submit a fee as established by the Board, to accompany the change of name request.
(3) Submit the any change of address in writing to the Board within 30 days of the change.

SUBCHAPTER 10. ADVANCED UNLICENSED ASSISTANT

485:10-10-11. Change of name and address

Each Advanced Unlicensed Assistant with a change of name and/or address shall:

- (1) Provide certified evidence (a copy of marriage license or court action) to the Board regarding any change of name of the certificant within 30 days of the change.
(2) Submit a fee as established by the Board, to accompany the change of name request.
(3) Submit any change of address in writing to the Board within 30 days of the change.

SUBCHAPTER 11. DISCIPLINARY ACTION

485:10-11-2. Hearings

(a) Conduct of hearing. All hearings and notice thereof shall be conducted and governed in accordance with the provisions of the Oklahoma Administrative Procedures Act. [75 O.S. Section 309 et seq.]

(b) Procedures before the Board.

- (1) Every individual proceeding shall be initiated by a sworn complaint containing a brief statement of the facts supporting the request for action by the Board.
(2) The respondent shall file with the Board a written response under oath to the Complaint by the date to be

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furnished. If no response is filed, the Respondent shall be considered in default and the Board may take whatever action it deems sufficient and appropriate. The Executive Director of the Board or designee may extend the time within which a response must be filed, but in no event may the time be extended beyond the hearing date.

(3) Written requests for continuances shall be received in the Board office not less than four (4) business days prior to the date and time set for the hearing. The request shall state the reasons for the request and time period desired. The Board or its designee shall promptly rule on such requests.

(4) Discovery shall be conducted in accordance with the Administrative Procedures Act except that all discovery must be completed ten (10) days prior to the date set for hearing unless otherwise ordered by the Board.

(5) The order of procedure at the hearing shall be as follows: (1) presentation of evidence by both parties followed by cross-examination and rebuttal of witnesses, questions by State Board members; (2) closing arguments by legal counsel of both parties; and (3) submission of case to Board for decision.

(6) The admissibility of evidence shall be governed by the provisions of the Oklahoma Administrative Procedures Act [75 O.S. Section 310].

(7) The President of the Board or his/her designee shall rule on admissibility of evidence and objections to such evidence and shall rule on other motions or objections in the course of the hearing.

(8) The Board, its designee, attorney for the Board, the respondent or attorney for the respondent, may conduct examinations.

(9) A respondent who fails to appear, after having received proper notice, may be determined to have waived the right to present a defense to the charges in the complaint and the Board may declare the respondent in default and revoke, suspend or otherwise discipline respondent as it may deem necessary.

(10) Subpoenas for the attendance of witnesses and/or furnishing of information required by the Board staff and as requested by the respondent, and/or the production of evidence or records of any kind shall be issued by the Director of the Investigative Division or the Director's designee.

(A) In all cases where a party desires to have subpoenas or subpoenas duces tecum issued to compel the attendance of witnesses, or production of documents, a written request shall be filed with the administrative office of the Board by such party or his attorney, and directed to the Director of the Investigative Division or the Director's designee. The Director of the Investigative Division or the Director's designee shall have three (3) business days to process the request. The request shall specify the witness by name and address; and shall identify any documents to be subpoenaed. The request shall acknowledge that any expense associated with the subpoena process shall

be paid by the party requesting the subpoena, including travel expense and daily attendance fees, in the amount as set by statute for other civil matters, at the time of the service of such subpoena.

(B) The Director of the Investigative Division or the Director's designee shall cause such subpoenas to be issued and mailed in conformity with said written requests; provided, that in said subpoena the witnesses named therein shall be advised that they may demand their travel fees and daily attendance fees from the party, or his representative; and that neither the Board nor the State of Oklahoma shall be responsible for any traveling fees, daily attendance fees, or other expenses incurred by such witness in attending any proceeding.

(C) All requests for subpoenas and subpoenas duces tecum shall be filed with the Director of the Investigative Division or the Director's designee, no later than ten (10) business days prior to the date of the proceeding at which the presence of any such witness or documents would be required.

(D) A party requesting issuance of subpoenas and subpoenas duces tecum shall be responsible for obtaining service and for the cost of that service.

(11) The respondent is responsible for any expenses associated with witnesses, subpoenas and/or evidence presented on her/his behalf.

(12) Any pre-trial motions and/or discovery motions must be filed in the Board office not less than 20 days prior to the date set for hearing unless otherwise ordered by the Board.

(13) The respondent shall not communicate with any member of the Board concerning the matters alleged in the complaint before or during or after the hearing. This restriction does not apply to the presentation of testimony or evidence by the respondent in the course of the hearing.

(14) If for any reason a hearing is not completed and the Board finds that the public health, safety or welfare imperatively requires emergency action, the Board may take such emergency action with regard to the respondent's license as it deems necessary in order to protect the health, safety or welfare of the public.

(15) When a majority of the officers of the Board, those being the President, Vice President and Secretary/Treasurer, have summarily suspended an individual's license or certification pursuant to Title 59 Section 567.8(O) of the Oklahoma Statutes, none of the officers participating in the emergency summary suspension decision shall participate in the Board hearing at which the emergency summary suspension will be considered by the full Board.

(c) **Administrative Penalties.** When determining the amount of the administrative penalty to be imposed for a violation of the Oklahoma Nursing Practice Act the following additional factors shall be a part of the consideration by the Board when establishing the nature, circumstance, and gravity of the violation, the degree of culpability, the effect on the ability of the person to continue to practice and any show of good

faith in attempting to achieve compliance with the provisions of the Oklahoma Nursing Practice Act:

- (1) evidence of actual or potential harm to patients, clients or the public;
(2) the seriousness of the violation, including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety and welfare of the public;
(3) evidence of misrepresentation(s) of knowledge, education, experience, credentials or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
(4) evidence of practice history;
(5) evidence of present lack of fitness;
(6) evidence of prior disciplinary history by the Board or any other health care licensing agency in Oklahoma or another jurisdiction;
(7) the length of time the licensee has practiced;
(8) the actual damages, physical or otherwise resulting from the violation;
(9) the deterrent effect of the penalty imposed;
(10) attempts by the licensee to correct or stop the violation;
(11) any mitigating or aggravating circumstances;
(12) the extent to which system dynamics in the practice setting contributed to the problem;
(13) evidence of a lack of truthfulness or trustworthiness;
(14) any other matter that justice may require.

(d) Orders.

- (1) At the conclusion of the hearing, the Board will announce its decision and a written order reviewed and signed by the Board President or other official who presided at the hearing will be issued within twenty (20) days of the Board's decision.
(2) A copy of the order shall be delivered or mailed to the Respondent and the Respondent's attorney of record.

(e) Record of hearing.

- (1) The record in an individual proceeding shall be as defined in the Oklahoma Administrative Procedures Act and shall also include the licensing history of the respondent.
(2) All hearings shall be transcribed by a duly certified reporter, unless the presiding officer designates otherwise. A transcript of the proceedings shall not be made except in the event of an appeal of the decision of the Board, or upon written application accompanied by a deposit sufficient to cover the cost of transcription. Tapes and shorthand or stenotype notes of the proceedings shall be retained for a period of not less than five (5) years. Oral proceedings of the hearing shall be electronically recorded. Such recordings shall be maintained for such time so as to protect the record through judicial review.

(f) Appeals and reconsideration. Requests for reconsideration and appeals of order in individual proceeding shall be in accordance with the Oklahoma Administrative Procedures Act.

SUBCHAPTER 15. REQUIREMENTS FOR PRACTICE AS AN ADVANCED PRACTICE REGISTERED NURSE

485:10-15-10. Change of name and address

Each Advanced Practice Registered Nurse with a change of name and/or address shall:

- (1) Provide certified evidence (a copy of marriage license or court action) to the Board regarding any change of name of the licensee within 30 days of the change.
(2) Submit a fee as established by the Board, to accompany the change of name request.
(3) Submit any change of address in writing to the Board within 30 days of the change.

[OAR Docket #22-472; filed 6-24-22]

TITLE 510. STATE BOARD OF OSTEOPATHIC EXAMINERS CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #22-489]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. General Course and Method of Operations

510:1-3-3 [AMENDED]

510:1-3-4 [AMENDED]

510:1-3-8 [AMENDED]

Subchapter 5. Individual Proceedings

510:1-5-1 [AMENDED]

510:1-5-1.1 [AMENDED]

510:1-5-3 [AMENDED]

510:1-5-4 [AMENDED]

510:1-5-5 [AMENDED]

510:1-5-6 [AMENDED]

510:1-5-6.1 [AMENDED]

510:1-5-8 [AMENDED]

510:1-5-9 [AMENDED]

510:1-5-10 [AMENDED]

Subchapter 9. Forms

510:1-9-1 [AMENDED]

Subchapter 11. Interpretation of Rules

510:1-11-1 [AMENDED]

Subchapter 13. Declaratory Rulings

510:1-13-1 [AMENDED]

510:1-13-4 [AMENDED]

510:1-13-6 [AMENDED]

AUTHORITY:

Oklahoma State Board of Osteopathic Examiners; 59 O.S., Sections 620-645; 650

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

March 30, 2022

COMMENT PERIOD:

February 15, 2022 through close of business (4:30 p.m. CST) March 17, 2022

PUBLIC HEARING:

March 18, 2022

ADOPTION:

March 24, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

# Permanent Final Adoptions

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## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## GIST/ANALYSIS:

Title 510 Chapter 1 administrative rules changes were designed to make the rules regarding administrative operations and hearings more clear, streamlined, and transparent.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 3. GENERAL COURSE AND METHOD OF OPERATIONS

#### 510:1-3-3. Communication with the Board

Written communication may be addressed to the Board at the office of the Board. Facsimile communications may be sent to the office of the Board. All except that applications for licensure, renewal and related documents may not be faxed must be submitted through the Board's online platform. Telephonic communications may be made during regular office hours for assistance and accommodation.

#### 510:1-3-4. Board meetings

The Board holds regular quarterly meetings on the third Thursday of March, June and September and the second Thursday of December of each year except that such regularly scheduled meetings may be cancelled or changed at the Board's discretion. The Board may hold other meetings of a special or emergency nature in its discretion. Meetings will be conducted at the Board office or other designated locations as necessary or desirable. A majority of the members of the Board constitute a quorum and may transact any business of the Board by a simple majority vote of the quorum present. The Board Executive Director, or designee, shall ensure all notice and final Agenda posting requirements for any meeting of the Board comply with 25 O.S. § 311.

#### 510:1-3-8. Investigations

The Board may investigate any matter within its statutory authority. Licensees and applicants for licensure shall provide information requested by the Board and shall allow the Board to inspect their records and facilities. The Board may compel oral testimony, written responses to interrogatories, production of documents and inspection of property through subpoenas issued by the Board ~~president or secretary~~ President, Board

Secretary, Board Executive Director, any other persons authorized by the Board authorized to issue subpoenas, or search warrants issued by the district court. [59 O.S., Section 626(D) and 637(C)].

### SUBCHAPTER 5. INDIVIDUAL PROCEEDINGS

#### 510:1-5-1. Initiation of individual proceedings, complaint, and citation

An individual proceeding may be initiated, upon information indicating the possible violation of the Act, through the filing of a formal verified complaint by the Board staff setting out the matters enumerated in 75 O.S., Section 309, and containing a statement setting forth the allegations and naming the licensee against whom the complaint is made. The Secretary, or Board staff, shall issue a citation notifying the respondent of the formal verified complaint and the date and place of the hearing.

#### 510:1-5-1.1. Definitions

The following words and terms, as used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise.

"Allegation" means the unverified information concerning a physician's acts or omissions provided to or discovered by Board investigative staff and reviewed by the Medical Review Committee. Such information may or may not ultimately merit a verified complaint of unprofessional conduct.

"Individual proceeding" means consideration of issuing a formal sanction penalizing a licensee of the Board. It does not mean consideration of the issuance or reinstatement of a license.

"Respondent" means the licensed osteopathic physician whose licensure is the subject of the individual proceeding.

"Verified Complaint" means the formal allegation of unprofessional conduct against the named physician filed by Board staff that leads to an individual proceeding adjudged by the Board en banc.

#### 510:1-5-3. Service

(a) The formal verified complaint and citation and all subpoenas shall be served personally in the manner authorized by state law for service of summons in a judicial proceeding or by certified mail, return receipt requested, delivery restricted to the addressee. If personal service or service by certified mail cannot be completed, service of the formal verified complaint and citation may be made by first class mail to the respondent at the last address furnished to the Board by the respondent or by publication in a newspaper or newspapers for the time, or posting at the places, the Secretary of the Board determines will be most likely to provide notice to the respondent.

(b) Personal service may be made by any person appointed by the Secretary of the Board, Board Investigators, or any person authorized by State law to serve process in judicial proceedings.

(c) Service of all other papers shall be made by first-class mail to the address at which service of the initial complaint and citation was made or in the manner by which such service was made if not by mail or personal service or such other address designated by the respondent; to the Board at its office, the office of its general counsel and the prosecuting attorney; and to the address designated by any other party to the proceeding.

(d) Service by mail shall be complete upon the date the notice is placed in the U.S. Mail with sufficient postage prepaid. Service by publication shall be complete on the date of the first publication. Service by posting shall be complete on the date the notice is posted. Personal service shall be complete upon delivery.

**510:1-5-4. Hearing date, continuance, or extension of time**

(a) The hearing, shall not be less than twenty (20) days after service of the complaint and citation ~~provided, however, that unless an agreement of the parties is made in writing and on the record, the~~ The Board may suspend a license without notice if the Board determines, upon the vote of three-fourths ( $\frac{3}{4}$ ) of the quorum present at the meeting, that an emergency exists and the Board schedules a hearing within thirty (30) days of the date the suspension takes effect.

(b) Written motions for any continuance or extension of time by either party shall state the additional time desired and the reason for the request, ~~unless a written agreement is made by the Board's Executive Director and the respondent. The Secretary of the Board may~~ Board's General Counsel must rule on these motions prior to the scheduled hearing. Any agreement to continue the hearing must be on the record at the next regularly scheduled meeting. If the request is denied, ~~the~~ either party may renew the request and make a proper showing at the hearing.

**510:1-5-5. Written answer, extension of time**

The respondent shall file a written answer under oath with the Board within twenty (20) days after the service of a citation. If said answer is not filed, the respondent shall be considered in default and appropriate sanctions may be imposed, if the evidence is deemed sufficient by the Board. Unless by agreement of the Board Executive Director and the respondent, only one (1) continuance is allowed by Executive Director for extension of time. The Secretary of the Board may extend the time within which an answer must be filed; however, in no case shall the time to file an answer be extended beyond the hearing date.

**510:1-5-6. Prehearing procedures**

(a) **Discovery.** The Board and the respondent may use discovery techniques available to parties in civil proceedings in Oklahoma courts. See Title 12 O.S., Sections 3201 Et Seq. Subpoenas to compel testimony, production of documents and inspection of property may be issued by the president, secretary of the Board, or any Board staff or designee licensed to practice law in the State of Oklahoma.

(b) **Scheduling orders.** The Board's ~~general~~ General Counsel may establish a schedule for the parties' completion of discovery, submission of motions, identification of witnesses and exhibits and other matters. The Board's General Counsel may also make rulings on extension of time to respond to a verified complaint or any hearing date.

**510:1-5-6.1. Hearing procedures**

(a) **Order of proceeding;** rules of evidence. Hearings shall be conducted in public view and in an orderly manner by the President of the Board. The order of proceeding will follow that which applies in civil proceedings of law. However, the rules of evidence shall be those specified by the Oklahoma Administrative Procedures Act.

(b) **Rulings of the President.** The President of the Board shall rule upon the admissibility of evidence and objections thereto, and shall rule upon other motions or objections as they arise during the course of the hearing. The rulings of the President, in all questions, shall be the rulings of the Board unless reversed by a majority vote of the Board upon a party's appeal from such rulings of the President. Rulings by the President may be delegated.

(c) **Burden of proof.** The Board's decisions ~~will~~ shall be based on clear and convincing evidence presented at ~~the~~ a public hearing.

**510:1-5-8. Subpoena of witnesses, evidence or records for hearing**

Subpoenas for the attendance of witnesses and for the production of evidence or records of any kind shall be issued by the ~~president, or secretary~~ President, Secretary of the Board, or by any Board staff or designee licensed to practice law in the State of Oklahoma. Subpoenas shall be served and a return made in any manner prescribed by civil law.

**510:1-5-9. Hearing records**

(a) An ~~electronic~~ audio or video record will be made of all hearings conducted by the Board. A transcript of the proceedings shall not be made except upon the written application and payment of a deposit sufficient to pay for having the record transcribed, according to the provisions of Title 75 O.S., Section 309.

(b) The ~~record~~ records of the ~~hearing~~ hearings and the ~~file~~ files containing the pleadings will be maintained in the Board's office. ~~Tape recordings~~ The records of the proceedings shall be maintained ~~for one year unless the proceedings are the subject of a judicial appeal. In that case they will be preserved until the final disposition of the appeal.~~ in accordance with the Oklahoma Archives and Records Act and the Oklahoma Open Records Act.

**510:1-5-10. Final orders**

All final orders in individual proceedings shall be in writing. ~~The~~ Any final order shall include Findings of Fact and Conclusions of Law, separately stated. A copy of the final

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order will be mailed to each party and to his/her attorney of record.

## SUBCHAPTER 9. FORMS

### 510:1-9-1. Forms approved by the Board

The Board shall use standard forms for application for licensure, and application for renewal of licensure, and any annual registration or permit as a dispenser of dangerous drugs ~~that elicit information required by the Board and as for the Board's action on such applications as stated in Oklahoma law and the Board's rules.~~

## SUBCHAPTER 11. INTERPRETATION OF RULES

### 510:1-11-1. Adoption of rules; fair and impartial construction

The rules contained in this Title are adopted for the purpose of protecting the public and Oklahoma patients, simplifying procedures, minimizing expenses, and facilitating the administration of the Osteopathic Medicine Act and other state laws impacting the practice of Osteopathic medicine in Oklahoma. To that end, this Title shall be given a fair and impartial construction.

## SUBCHAPTER 13. DECLARATORY RULINGS

### 510:1-13-1. Persons who may seek a declaratory rule

Any person may file a written petition seeking a declaratory ruling by the Board with respect to the application of a statute, rule or order of the Board. A petition for declaratory ruling shall be set for a public hearing before the Board at its next regularly scheduled meeting.

### 510:1-13-4. Board consideration

The Board may assign a petition for declaratory ruling to ~~an~~ legal counsel or any appropriate advisory committee or Board subcommittee for its review and a recommendation. The advisory committee or subcommittee may require submission of oral and written evidence and legal memoranda. The advisory committee or subcommittee review and recommendation shall not constitute final Board action.

### 510:1-13-6. Board action

Board rulings shall be made public in writing with a statement of appropriate findings of fact and conclusions of law. Copies of any Board action shall be sent by certified mail to the respondent.

[OAR Docket #22-489; filed 6-28-22]

## TITLE 510. STATE BOARD OF OSTEOPATHIC EXAMINERS CHAPTER 5. PROFESSIONAL STANDARDS

[OAR Docket #22-490]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. ~~Dispensing Dangerous Drugs Restriction on Dispensing Drugs~~

510:5-3-1 [AMENDED]

510:5-3-2 [AMENDED]

510:5-3-3 [AMENDED]

510:5-3-4 [AMENDED]

510:5-3-5 [AMENDED]

510:5-3-6 [AMENDED]

510:5-3-7 [AMENDED]

Subchapter 5. Disposal of Human Tissue

510:5-5-2 [AMENDED]

510:5-5-3 [AMENDED]

510:5-5-4 [AMENDED]

Subchapter 7. Unprofessional Conduct ~~Relating to Prescribing or Dispensing Dangerous Drugs~~

510:5-7-1 [AMENDED]

Subchapter 9. Prescribing for ~~Chronic Pain~~

510:5-9-1 [AMENDED]

510:5-9-2 [AMENDED]

510:5-9-3 [AMENDED]

Subchapter 11. Medical Micropigmentation

510:5-11-2 [AMENDED]

510:5-11-3 [AMENDED]

Subchapter 13. Advertising Board Certification

510:5-13-4 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Osteopathic Examiners; 59 O.S., Sections 620-645; 650

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

March 30, 2022

### COMMENT PERIOD:

February 15, 2022 through close of business (4:30 p.m. CST) March 17, 2022

### PUBLIC HEARING:

March 18, 2022

### ADOPTION:

March 24, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### GIST/ANALYSIS:

Title 510 Chapter 5 administrative rules changes were designed to make the rules regarding professional standards including, prescribing/dispensing drugs, disposal of human tissue, and prescribing for pain more clear, streamlined, and transparent.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

**SUBCHAPTER 3. DISPENSING DANGEROUS DRUGS**  
**RESTRICTION ON DISPENSING DRUGS**

**510:5-3-1. Purpose**

The purpose of this subchapter is to provide information regarding certain statute requirements for prescribing, ~~recommending, administering,~~ and dispensing ~~dangerous~~ drugs. (Title 59 O.S. 355 Et Seq.)

**510:5-3-2. Definitions**

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

**"~~Dangerous~~ Drugs"** means any ~~dangerous, legend, or prescription~~ drug intended for use by ~~man~~—a person which, because of its toxicity or other potentiality for harmful effects, or the method of its use, or the collateral measures necessary for its use, is not safe for use except under the supervision of a practitioner licensed ~~by law~~—to administer such drugs. This shall include all drugs upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed the following: "Caution-Federal Law prohibits dispensing without prescription".

**"Licensed practitioner"** means an Osteopathic Physician and Surgeon licensed to practice and authorized to prescribe medication within the scope of ~~his~~their practice.

**"Professional samples"** means ~~complimentary~~—drugs packaged ~~as a~~ free pre-packaged quantity of drugs in accordance with federal and state statutes and regulations ~~and provided that are provided~~ to a licensed practitioner ~~free of charge in such a~~ no cost and appropriately distributed in the same package by the licensed practitioner to his patients.

**510:5-3-3. Restriction on dispensing ~~dangerous~~ drugs; packaging and labeling**

(a) Only a licensed Osteopathic Physician and Surgeon who has established a physician-patient relationship and with appropriate documentation may dispense ~~dangerous~~ drugs to patients and ~~must do so only for the expressed~~ for the sole purpose of serving the best interests of the patient and promoting the patient-patient's welfare.

(b) The ~~dangerous~~—drugs shall be dispensed in accordance with federal and state statutes and regulations and in an appropriate container to which a label ~~has been~~is affixed. This label shall include the name and office address of the licensed osteopathic physician, date dispensed, name of patient, directions for administration, the prescription number, the trade or generic name of the substance, the quantity and strength, of the drug therein contained. This requirement shall ~~not~~ apply to compound ~~medicines~~—drugs.

(c) A dispenser of a Schedule II, III, IV, or V controlled ~~dangerous~~—substance shall transmit to a central repository

designated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for each dispensation, that information required by 63 O.S. Section 2-309(C) if applicable. A dispenser of controlled substances under this section shall review the patients Prescription Monitoring Program ("PMP") pursuant to Oklahoma statutes and make a note of this review in the patient's chart.

**510:5-3-4. Record Keeping**

A licensed osteopathic physician shall keep a suitable book, file, or record of each and every ~~dangerous~~—drug compounded or dispensed by him/her. This book, file, or record shall be kept for a period of not less than five (5) years. This book, file, or record shall be maintained separately from all other records of the registrant and must be open for inspection and copying by the Board. A record of all purchases of scheduled controlled substances shall also be open for inspection and copying by the Board.

**510:5-3-5. Annual Registration**

(a) A licensed osteopathic physician desiring to dispense ~~dangerous~~—drugs shall register annually and obtain a permit with the Board as a dispenser. Forms for registration shall be provided by the Board. Registration shall be done on or before the first day of July annually. Each such application shall be accompanied by the appropriate fee.

(b) Only an individual holding a valid license in good standing issued by the Oklahoma State Board of Osteopathic Examiners may register as a dispenser.

(c) If dispensing in multiple locations, the physician shall have a separate permit for each location. All such location addresses shall be provided to the Board.

**510:5-3-6. Dispensing ~~Providing~~ professional samples**

A licensed osteopathic physician who ~~dispenses~~—provides professional samples of ~~dangerous~~—drugs to ~~his or her~~their patients shall be exempt from the provisions of 510:5-3-5 if:

- (1) the licensed osteopathic physician ~~fulfills~~—provides the professional samples to the patient in the package provided by the manufacturer; and
- (2) no charge is made to the patient; and
- (3) an appropriate record is entered in the patient's chart.

**510:5-3-7. Violations**

The violation of any provision of this subchapter shall constitute unprofessional conduct, ~~for which an application for licensure or reinstatement may be denied and~~ for which appropriate sanctions, including costs, may be imposed on a licensee.

**SUBCHAPTER 5. DISPOSAL OF HUMAN TISSUE**

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## 510:5-5-2. Definitions

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

**"Conviction"—"Final Order"** means a finding, by the Board, that a physician did violate any provision of this subchapter.

**"Human tissue"** means all parts of the human body recognizable as such without the use of specialized equipment.

**"Physician"** means a person licensed under the provisions of Title 59 O.S., Section 620 et seq.

## 510:5-5-3. Method of disposal

(a) All human tissue, which is collected in the course of the diagnosis and/or treatment of any human condition by a doctor of osteopathic medicine, ~~his~~ their employee or agent, must be handled in one of the following ways:

- (1) Sent for analysis and possible retention as a surgical specimen;
- (2) Sent for autopsy;
- (3) Sent for embalming and burial in accordance with accepted interment standards; or,
- (4) Sent for disposal by incineration in a pathological incinerator in the same manner as hazardous medical waste is handled under the applicable state statutes, rules and regulations.

(b) Nothing in this Section shall preclude the doctor's right to use human tissue for the treatment of disease or injury. Likewise, the doctor shall have the right to assist in arranging appropriate donations through the process of the Anatomical Board, under the provisions of the Anatomical Gift Act or the preservation of human tissue for other legitimate educational purpose in any accredited educational endeavor.

(c) In no event shall any person knowingly dispose of any human tissue in a public or private dump, refuse or disposal site or place open to public view.

## 510:5-5-4. Violations

Any osteopathic physician who violates, or whose employees or agents violate, this subchapter shall, upon ~~conviction~~ a finding by the Board that a violation of Board statute or rule has occurred, and in a public hearing before the Board, be fined an amount not to exceed Ten Thousand Dollars (\$10,000.00) and may have their license put on probation, suspended or revoked.

## SUBCHAPTER 7. UNPROFESSIONAL CONDUCT RELATING TO PRESCRIBING OR DISPENSING DANGEROUS DRUGS

### 510:5-7-1. Unprofessional conduct relating to prescribing or dispensing dangerous drugs related to Controlled Drugs

The Board has the right to refuse to issue, renew or reinstate a license and may revoke a license or impose other appropriate sanctions for unprofessional conduct. In addition

to those acts of unprofessional conduct listed in Title 59 O.S., Section 637 the following acts shall be included without limiting, in any way the Board's ability to interpret other acts as unprofessional conduct:

(1) Indiscriminate or excessive prescribing, dispensing or administering controlled ~~dangerous~~ drugs.

(2) Issuing prescriptions for controlled ~~dangerous~~ drugs to minors in violation of Title 63 O.S.

(3) Purchasing, prescribing, dispensing, recommending, or administering any controlled ~~dangerous~~ drug or other regulated substance in Schedule I through V, as those schedules are defined in Title 63 O.S. chapter 2, Sections 2-101 et seq. for the physician's personal use unless it is prescribed, dispensed, recommended, or administered by another physician who is licensed to do so.

(4) The delegation of authority to another person for the signing of prescriptions, whether controlled ~~dangerous~~ substances or otherwise.

(5) Issue a prescription for a controlled substance without establishing a physician-patient relationship at the time of the initial prescription.

(6) Issue a prescription for a controlled substance without documentation, diagnosis, and physical exam.

(7) It shall not be considered unprofessional conduct for a physician to renew a prescription for controlled drugs over telemedicine provided an initial script was issued in person.

(~~5~~8) Any violation of any provisions of Title 63 O.S., Chapter 2, Sections 2-101 et seq or the Uniform Controlled Dangerous Substances Act.

## SUBCHAPTER 9. PRESCRIBING FOR CHRONIC PAIN

### 510:5-9-1. Purpose

The purpose of this subchapter is to provide guidelines and requirements for osteopathic physicians who prescribe for ~~chronic~~ chronic pain. ~~Chronic pain is defined as a state in which pain persists beyond the usual course of an acute disease or healing of an injury.~~

### 510:5-9-2. Guidelines and requirements

This rule requires that ~~diagnosis~~ diagnoses be documented, it requires that certain records be maintained, and it requires that the physician must discuss and document the discussion of the risks and benefits with the patient or the patient's guardian. Prescriptions for pain must comply with all current federal and state law.

(~~1~~) ~~To treat a patient's intractable pain, as long as the benefit of the expected relief outweighs the risk, even if the use of the drug increases the risk of death, so long as it is not furnished for the purpose of causing, or the purpose of assisting in causing death, the physician may prescribe or administer Schedule II, III, IV or V controlled dangerous substances or other pain relieving drugs in higher than normal dosages when, in that physician's judgment, the~~



higher dosages are necessary to produce the desired therapeutic effect.

(2) The determination of intractable pain must include a complete medical history and physical examination which includes an assessment of the patient's pain, physical and psychological function, substance abuse history, underlying or co-existing diseases or conditions and the presence of a recognized medical indication for the use of an analgesic.

(3) The treatment plan must state objectives by which treatment success can be evaluated, such as pain relief and/or improved physical and psychological function, and must indicate what further diagnostic evaluations or other treatments are planned. The drug therapy must be tailored to the individual needs of each patient.

(4) The course of treatment and any new information about the etiology of the intractable pain must be reviewed periodically, at least annually, with consideration given to referral for a current second opinion. The continuation or modification of treatment will depend on the results of this review and the evaluation of the patient's progress toward the treatment objectives. If the patient has not improved, the physician must assess the appropriateness of continuing the current therapy and the trial of other modalities.

(5) The management of intractable pain in patients with a history of substance abuse requires extra care, monitoring, documentation and consultation with addiction medicine specialists, and may include the use of agreements between the physician and patient specifying rules for medication use and consequences for its misuse.

(6) The physician must discuss the risks and benefits of the use of controlled substances with the patient or the patient's guardian and obtain informed consent prior to proceeding if it substantially increases the risk of death.

(7) Accurate and complete records documenting these requirements must be kept.

(8) To prescribe controlled substances, the physician must be licensed in Oklahoma, have a valid controlled substances registration and comply with federal and state regulations for issuing controlled substances prescriptions.

(9) Expert clinical testimony may be used to prove a violation of this rule. As used herein, a "clinical expert" is a physician who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

(10) Nothing in this rule shall limit a physician's authority to prescribe or administer prescription drug products beyond the customary indications as noted in the manufacturer's package insert for use in treating intractable pain, provided the drug is recognized for treatment of intractable pain in standard reference compendia or medical literature.

**510:5-9-3. Violations**

The violation of any provision of this subchapter shall constitute unprofessional conduct, for which an application for licensure or reinstatement may be denied and for which appropriate sanctions may be imposed. The violation of any provision of this subchapter shall constitute unprofessional conduct, for which appropriate sanctions, including costs, may be imposed on a licensee.

**SUBCHAPTER 11. MEDICAL MICROPIGMENTATION**

**510:5-11-2. Definitions**

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

**"Direct supervision"** means that the supervising physician is present in the office before, during and after the procedure and includes the authorization and evaluation of the procedure with the physician/patient relationship remaining intact.

**"Medical Micropigmentologist"** means a person credentialed according to the provisions of Title 63 O.S. Section 1-1450 et seq.

**"Patient"** means any person undergoing a micropigmentation procedure.

**"Physician"** means an osteopathic physician licensed in good standing by the Oklahoma State Board of Osteopathic Examiners.

**510:5-11-3. Duties and Responsibilities**

(a) To be eligible to serve as a supervising physician for a Medical Micropigmentologist a physician shall meet the following criteria:

(1) Have possession of a full and unrestricted license to practice osteopathic medicine and surgery in the State of Oklahoma.

(2) The supervising physician shall be in ~~full-time~~ practice with a minimum of twenty (20) hours per week of direct patient contact.

(b) Medical micropigmentation procedures may only be undertaken within the context of an appropriate ~~doctor/patient~~ physician-patient relationship wherein a proper patient record is maintained.

(c) The supervising physician ~~may employ and/or utilize no more than two (2) Medical Micropigmentologists at any one time-is limited to the total number of mid-level providers allowed in 510:10-4-3.~~

(d) The employment and/or utilization of a Medical Micropigmentologist requires direct supervision by the supervising physician.

**SUBCHAPTER 13. ADVERTISING BOARD CERTIFICATION**

# Permanent Final Adoptions

## 510:5-13-4. Prohibited terms

The terms "board eligible," "board qualified," or any similar words or phrases shall not be used in osteopathic physician advertising, unless permitted by the specialty boards.

[OAR Docket #22-490; filed 6-28-22]

## TITLE 510. STATE BOARD OF OSTEOPATHIC EXAMINERS CHAPTER 10. LICENSURE OF OSTEOPATHIC PHYSICIANS AND SURGEONS

[OAR Docket #22-491]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Licensure Requirements

510:10-3-1 [AMENDED]

510:10-3-2 [REVOKED]

510:10-3-3 [REVOKED]

510:10-3-4 [AMENDED]

510:10-3-6 [REVOKED]

510:10-3-7 [AMENDED]

510:10-3-8 [AMENDED]

510:10-3-10 [AMENDED]

510:10-3-11 [NEW]

510:10-3-12 [NEW]

510:10-3-13 [NEW]

Subchapter 4. Osteopathic Supervision of Mid-Level practitioners

510:10-4-1 [AMENDED]

510:10-4-2 [AMENDED]

510:10-4-3 [AMENDED]

Subchapter 7. Fee Schedule

510:10-7-1 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Osteopathic Examiners; 59 O.S., Sections 620-645; 650

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

March 30, 2022

### COMMENT PERIOD:

February 15, 2022 through close of business (4:30 p.m. CST) March 17, 2022

### PUBLIC HEARING:

March 18, 2022

### ADOPTION:

March 24, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### GIST/ANALYSIS:

Title 510 Chapter 10 administrative rules changes were to make the rules regarding the licensure of osteopathic physicians and surgeons more modern, clear, streamlined, and transparent. Further, these amendments also address the supervision of mid-level practitioners and proposed fee changes.

### CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

## SUBCHAPTER 1. GENERAL PROVISIONS

### 510:10-1-1. Purpose

The purpose of this chapter is to describe the process of licensure for applicants, renewal for current license holders and annual registration requirements for ~~dispensation~~ dispensing of drugs.

## SUBCHAPTER 3. LICENSURE REQUIREMENTS

### 510:10-3-1. General ~~Full~~ licensure requirements

(a) ~~Licensure by Board required.~~ It is the general requirement in the State of Oklahoma that ~~practitioners of osteopathic medicine and surgery~~ osteopathic physicians be licensed by the State Board of Osteopathic Examiners. No person shall be licensed by the Board unless and until that person first fully complies with all licensure provisions of the Act and these Rules and has satisfied the Board of the ability to practice osteopathic medicine and surgery with reasonable skill and safety.

(b) ~~Temporary license.~~ ~~The Osteopathic Medicine Act does authorize the Board to issue a temporary license for certain classes of Resident physicians.~~

(c) ~~Postgraduate training.~~ One completed year of postgraduate training is a requirement for full licensure. The training must be or have been completed in a residency program that is approved by either the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA). This experience must If the applicant did not complete a residency, then this experience may be in the form of a rotating internship or its equivalent, in an accredited internship or residency program acceptable to the Board. To be deemed equivalent to a rotating internship and, acceptable to the Board, a program must provide the following:

(1) The program must provide the following core experience:

- (A) One (1) month - General Practice
- (B) Two (2) months - General Internal Medicine
- (C) One (1) month - General Surgery
- (D) One (1) month - Obstetrics/Gynecology
- (E) One (1) month - Pediatrics

(2) This core experience must be supplemented by three (3) months of Selectives and three (3) months of Electives, accounting for a total of twelve (12) months. A Selective may be defined as any core category or Emergency Medicine. An Elective may be any category of experience chosen by the intern or resident.

(3) ~~If an applicant has completed an ACGME accredited residency training program, the Board shall consider this standing as equivalent training.~~

(dc) Application. An applicant for a license to practice osteopathic medicine and surgery shall complete an application provided by the Board, which is available on the Board's website at: [www.osboe.ok.gov](http://www.osboe.ok.gov). The applicant shall complete and submit the application in full prior to the Board consideration. In addition to the application form online, each candidate must also provide the following materials: All candidates for examination or licensure must make application on a form furnished by the Board. No application will be approved until fully complete, in every respect, including photograph and fingerprints, with non refundable fee paid. In addition to the application form, each candidate must also provide the following materials:

- (1) Photocopies of all of the items in (A) through (D) of this paragraph must be notarized as true copies of the originals. A 3x4 photograph or larger taken within the previous sixty (60) days which meets the requirements of a passport photo;
- (2A) the diploma conferring the Doctor of Osteopathic Medicine or Doctor of Osteopathy degree; Verification of graduation from an osteopathic medical school approved by the American Osteopathic Association (AOA) or the Board. The applicant's medical school shall provide a copy of a final transcript and diploma in addition to verifying graduation;
- (3B) the postgraduate training certificate for both internship and residency, as applicable;
- (4C) certificate of specialty board certification, as applicable;
- (D) the license being used as a basis for reciprocity (which must be by examination), if applicable, or the Certificate of Diplomacy of the National Board of Osteopathic Medical Examiners, and/or USMLE if that is the basis of the application.
- (2) Letters of good standing which state no disciplinary actions were taken against the candidate from:
  - (A) all hospitals where the candidate has practiced;
  - (B) all osteopathic associations of which the candidate is a member;
  - (C) the Dean of the osteopathic college from which the candidate graduated;
  - (D) the Director of Medical Education from each place where the candidate is or has been an intern or resident.
- (5) Payment of all fees as established by the Board in the Fee Schedule under rule 510:10-7-1;
- (6) A transcript ordered from the National Board of Osteopathic Medical Examiners (NBOME) or the National Board of Medical Examiners (NBME), with a passing score on all steps of the examination as set forth by the testing entity. The Board may accept an equivalent exam given by another State Board. The Board is not required, however, to accept these exams in lieu of the COMLEX-USA or USMLE examinations;
- (7) A notarized copy of the applicant's birth certificate or passport;
- (8) Verification of postgraduate training on a form furnished by the Board on its website, [www.osboe.ok.gov](http://www.osboe.ok.gov).

The postgraduate training form shall be filled out in its entirety by the program's residency coordinator or director, for each residency that the physician attended;

(39) Verification—License verification of standing from each state where the ~~candidate~~ physician has held a license, whether that license is current or inactive and whether or not the ~~candidate~~ physician has been the subject of any disciplinary action in that state. If action has been taken by another state board, all orders and relevant documentation are required to be sent to the Board before the physician can be reviewed for licensure;

(410) A curriculum vitae/chronology of events which accou~~nts~~ for all of the ~~candidate's~~ applicants time and activity, chronologically, from the time of medical school graduation to the present.

(511) A report from the National Practitioner Data Bank (NPDB), which the candidate must request and which must be received by the Board directly, shall be ordered by the applicant and sent to the Board;

(12) Fingerprints by a Board approved entity that meet the requirements of a National Criminal History Record check pursuant to 74 O.S. § 150.9.

(ed) Interview. The Board may require a personal interview from any applicant.

(fe) Beginning of practice. Applicants for licensure either by examination, reciprocity or endorsement, must not begin practice until they are in possession of their license. shall not begin practice until their license information is publicly provided on the Board's website at [www.osboe.ok.gov](http://www.osboe.ok.gov).

**510:10-3-2. Application for licensure [REVOKED]**

(a) Photographs, fingerprints, and personal interview. Applicants for licensure as an osteopathic physician and surgeon must be identified by a recent personal photograph, as outlined in the application for endorsement or examination; fingerprints certified by a law enforcement officer should be included. The Board may require at its own discretion a personal interview.

(b) Osteopathic diploma. A photostatic copy or photographic reproduction of the applicant's diploma must accompany all applications for examination or endorsement. If the applicant's diploma has been lost, a sworn statement from the Dean or Registrar of the Osteopathic College issuing the diploma shall be furnished in lieu thereof. The original diploma or certificate should not be mailed or attached to such application.

**510:10-3-3. Licensure by examination [REVOKED]**

(a) Examination Requirements. To be consistent with the expressed public policy of the State of Oklahoma affecting the licensure of osteopathic physicians and surgeons under the provisions of the Osteopathic Medicine Act candidates for licensure must be examined by a vehicle which tests the individual's basic osteopathic knowledge and skill embracing the same philosophy as that in which the candidate was educated.

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(b) **Postgraduate training.** An applicant must take the National examination before completing the required year of postgraduate training, provided that no license will be issued until evidence of the satisfactory completion of that year is filed with the Board.

(c) **National examinations; failure of examination.** Any person seeking licensure as an osteopathic physician and surgeon by taking the National examination must meet all other requirements.

(d) **National examination.** Candidates may be licensed upon the successful completion of the examination sequence of the National Board of Osteopathic Medical Examiners or the National Board of Medical Examiners. The candidate must submit proof of having achieved a Minimum Total Passing Score or above on tests administered through the National Board of Osteopathic Medical Examiners or the National Board of Medical Examiners.

## 510:10-3-4. Licensure by endorsement

(a) **Reciprocity.** An applicant for licensure by reciprocity, who has been successfully examined by the licensing board of any other state, territory of the United States or the District of Columbia, using an examination sufficient to test the applicant in osteopathic medicine and surgery, and having received scores not less than those required by the Oklahoma State Board of Osteopathic Examiners, and who is licensed in that state, territory of the United States or district of Columbia, and, in addition, presents the required documentation that the applicant has fulfilled all scholastic and other requirements of the Board, may, at the discretion of the Board, be licensed without further examination. Such applicants may be required to appear before the Board. An applicant for a license to practice osteopathic medicine and surgery by reciprocal endorsement shall:

(1) Complete and submit the uniform application together with all applicable fees and required documentation;

(2) Provide evidence of graduation from a medical school accredited by the Commission on Osteopathic College Accreditation (COCA);

(3) Provide license verification from each state in which the applicant is currently or was previously licensed.

(b) **Endorsement of the National Board of Osteopathic Medical Examiners or the National Board of Medical Examiners.** An applicant who has successfully completed all three parts of the examination sequence of the National Board of Osteopathic Medical Examiners or the National Board of Medical Examiners and, who presents the required documentation of having met all of the scholastic and other requirements of the Board, may, at the discretion of the Board, be licensed without further examination.

(c) **Board discretion.** The Board may refuse to grant a license by reciprocity or endorsement to any applicant who has failed any examination administered by or accepted by the Oklahoma State Board of Osteopathic Examiners.

## 510:10-3-6. Display of license [REVOKED]

All persons licensed under the Osteopathic Medicine Act, who are practicing osteopathic medicine in the State of Oklahoma, shall prominently display their current annual certificate of licensure in the primary place of practice. Anyone regularly practicing at more than one location may receive a duplicate renewal certificate upon request.

## 510:10-3-7. Duplicate license

~~Upon the presentation of an affidavit and satisfactory proof that a licensee's original license has been lost, stolen or destroyed, the Board may issue a duplicate license. Such duplicate license shall carry the notation that it is a duplicate to replace the original. A fee of fifty (\$50.00) dollars will be charged. A physician may request another wall certificate if the physician pays the applicable fee pursuant to the Fee Schedule 510:10-7-1.~~

## 510:10-3-8. Annual registration

(a) A licensee shall renew his or her license every year, by submitting a renewal application, which is available on the Board's website, and paying a non-refundable renewal fee in an amount established by the Board in its Fee Schedule pursuant to 510:10-7-1. A physician who fails to acquire and submit a renewal application may not practice using an expired license. The renewal application together with all documents submitted with the application is the property of the Board and shall not be returned.

(~~a~~b) **Continuing education required.** Annual license renewal requires proof of having attended and received credit for sixteen (16) American Osteopathic Association (AOA) ~~category 1~~ Category One hours of Continuing Medical Education (CME) ~~credit~~. Osteopathic physicians who are obtaining or maintaining board certification through the American Medical Association (AMA) may complete sixteen (16) Category One AMA credit hours for purposes of satisfying their CME credits for renewal. One (1) hour every other year of the required sixteen (16) hours shall be devoted to the subject of the proper prescribing, dispensing, and administering of Controlled Dangerous Substances (CDS) as defined in Title 21, Code of Federal Regulations, Part 1308 or Title 63 of the Oklahoma Statutes.

(1) ~~This~~ The one (1) hour ~~program~~ of CME shall be dedicated to pain management, opioid use, or addiction. The course shall be obtained at a seminar approved by the State Board of Osteopathic Examiners.

(2) Certification of attendance shall be provided by the organization sponsoring the program ~~via sign in.~~

(3) Those osteopathic physicians who are licensed in Oklahoma, ~~but not practicing in this state, or physicians who do not possess the State Bureau of Narcotics and Drug Enforcement Administration authority to handle CDS are exempt from this requirement.~~

(~~b~~c) **Fee required.** ~~Those licensed osteopathic physicians who reside or practice in the State of Oklahoma must pay an annual renewal fee. Those licensed osteopathic physicians who reside and practice outside the state must pay an annual~~

renewal fee. Said fees are set forth in the herein contained fee schedule and may contain a convenience fee. A late penalty may also be charged for those who are not renewed by the first day of July of each year. All osteopathic physicians licensed to practice by the Board shall pay an annual renewal fee on or before July 1. In addition to the annual renewal fee, the Board may charge a convenience fee. A late fee shall be charged for any license not renewed by July 1. Any license reinstated by Board staff within six (6) months of cancellation for failure to renew timely shall pay all renewal fees and an administrative fine of five hundred (500) dollars. The Boards fees are provided in the Fee Schedule in 510:10-7-1.

(d) **Professional Standards Questionnaire.** Annual license renewal requires the physician to truthfully answer questions posed by the Board regarding relevant personal and professional history of the applicant since their last renewal. If any question is answered "yes", then the applicant shall provide supporting documentation and a personal statement to the Board regarding the question answered.

**510:10-3-10. Change of name and address**

All osteopathic physicians licensed in this state shall notify the Board within ~~fourteen (14)~~thirty (30) days of any change in either their practice address, home address, ~~and/or electronic mail or email~~ address. The Board shall also be notified of changes in practice and personal cell phone numbers. Each licensee whose first or last name has been changed shall report this to the Board. The physician will need to request a name change online and upload certified documentation for proof of change to be reviewed by the Board. The Board must approve all name changes before the name is changed in the physician's profile or on their license.

**510:10-3-11. Resident training license**

The Osteopathic Medicine Act authorizes the Board to issue a Resident Training license for medical school graduates during their first year of postgraduate training, also known as PGY-1. The Board may issue a Resident Training license upon completion of an application, payment of any fees, and submission of documentation from the applicants Oklahoma training program recommending the physician and stating the applicant meets all the requirements for such license. Any person holding a Resident Training license is not guaranteed subsequent full licensure in Oklahoma as an osteopathic physician.

- (1) A Resident Training license shall be:
  - (A) Issued by the State Board of Osteopathic Examiners to eligible physicians;
  - (B) Issued for no longer than one (1) year;
  - (C) Issued without continuing medical education (CME) requirements unless the physician holds a registration to prescribe controlled drugs in Oklahoma;
  - (D) Nonrenewable unless approved by the State Board of Osteopathic Examiners and upon payment of the fee.
- (2) If the physician's resident training program specifically approves the resident to have prescribing authority, the resident training license shall permit the physician to

apply for prescribing privileges from state or federal authorities.

- (3) The Resident Training license shall not permit:
  - (A) The physician to apply for prescribing privileges for controlled drugs unless authorized by the resident's training program;
  - (B) The physician to recommend medical marijuana;
  - (C) The physician to supervise any mid-level practitioner;
  - (D) The physician to practice medicine outside the scope allowed by the training program; or
  - (E) The physician to practice independent of the training program.

**510:10-3-12. Temporary Resident License**

The Osteopathic Medicine Act authorizes the Board to issue a temporary license for certain classes of Resident physicians. The Board may issue a temporary license upon completion of an application, payment of any fees, and submission of documentation from the applicants primary training program recommending the physician and stating the applicant meets all the requirements for such license. Any person holding a temporary resident license is not guaranteed subsequent full licensure in Oklahoma as an osteopathic physician.

- (1) A temporary resident license shall be:
  - (A) Issued by the State Board of Osteopathic Examiners to eligible physicians;
  - (B) Issued to an out-of-state resident to perform rotations in Oklahoma;
  - (C) Issued for no longer than six (6) months;
  - (D) Issued without continuing medical education (CME) requirements; and
  - (E) Renewable only once upon payment of the fee.
- (2) The temporary resident license shall not permit:
  - (A) The physician to apply for prescribing privileges for controlled drugs;
  - (B) The physician to recommend medical marijuana;
  - (C) The physician to supervise any mid-level practitioner;
  - (D) The physician to practice outside the scope of the Oklahoma training program; or
  - (E) The physician to practice independent of the training program.

**510:10-3-13. Volunteer and Emeritus Medical License**

(a) The Osteopathic Medicine Act authorizes the Board to issue a volunteer medical license for physicians who are retired from active practice and wish to donate their expertise for the medical care and treatment of indigent and needy persons of the State. The Board may issue a volunteer medical license:

- (1) Upon completion of a special volunteer medical license application, including documentation of the physician's osteopathic school graduation and practice history;
- (2) Upon receipt of documentation that the physician has been previously issued a full and unrestricted license

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to practice medicine in Oklahoma or in another state of the United States and that they have never been the subject of any medical disciplinary action in any jurisdiction;

(3) Upon acknowledgement and documentation that the physician's practice under the volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in Oklahoma or to providing care under the Oklahoma Medical Reserve Corps; and

(4) Upon acknowledgement and documentation that the physician will not receive or have the expectation to receive any payment or compensation, either direct or indirect, for any medical services rendered under the volunteer medical license.

(5) A volunteer medical license shall be:

(A) Issued by the State Board of Osteopathic Examiners to eligible physicians;

(B) Issued without any fees;

(C) Issued without continuing medical education (CME) requirements;

(D) Issued for no longer than one (1) year;

(E) Renewable annually upon completion of renewal application furnished by Board.

(6) The volunteer medical license shall not permit:

(A) The physician to apply for prescribing privileges for controlled drugs;

(B) The physician to recommend medical marijuana;

(C) The physician to supervise any mid-level practitioner;

(D) The physician to receive compensation for medical care and treatment provided.

(b) Holders of full and unrestricted licenses in Oklahoma for at least ten (10) years may choose at any time to apply for a Physician Emeritus license by notifying the office of the Board. The Physician Emeritus license is for fully retired physicians. The Physician Emeritus license shall be issued with no Continuing Medical Education (CME) requirements. A fee may be charged for this license.

(1) Physicians holding an Emeritus license may continue to use the title or append to their name the letters, D.O., Doctor, Specialist, Physician or any other title, letters or designation which represents that such person is a physician. Service on boards, committees or other such groups which require that a member be a physician shall be allowed.

(2) Physicians holding an Emeritus license shall not practice medicine in any form or prescribe, dispense, or administer drugs.

(3) When a physician has retired from practice and subsequently chooses to return to active practice from Physician Emeritus status, the physician may, be required, at the Boards discretion, to:

(A) Pay required reinstatement fees;

(B) Complete required forms;

(C) Make a personal appearance before the Board or Secretary of the Board;

(D) Submit to a physical examination, psychological and/or psychiatric examination; and

(E) Provide evidence of successful completion of continuing medical education.

(4) Upon acknowledgement and documentation that the physician will not receive or have the expectation to receive any payment or compensation, either direct or indirect, for any medical services rendered under the Physician Emeritus license.

### SUBCHAPTER 4. OSTEOPATHIC SUPERVISION OF MID-LEVEL PRACTITIONERS

#### 510:10-4-1. Purpose

The purpose of this Subchapter is to set forth the requirements for osteopathic physicians to supervise any mid-level medical practitioner ~~with prescriptive authority.~~

#### 510:10-4-2. Definitions

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

"Board" means the State Board of Osteopathic Examiners.

"Mid-level practitioners" include physician assistants and advanced practice nurses.

"Proper physician supervision" means the supervising physician ~~should~~ regularly and routinely ~~review~~ reviews the prescriptive practices and patterns of the ~~advanced practice nurse with prescriptive authority.~~ mid-level practitioners. Proper physician supervision of ~~the advanced practice nurse with prescriptive authority~~ mid-level practitioners is essential.

~~"Supervision" implies that there is appropriate referral and consultation between the mid-level practitioner and the supervising physician.~~

#### 510:10-4-3. Eligibility, Limits, and Responsibilities ~~Responsibility of supervising osteopathic physician~~

(a) To be eligible to serve as a supervising physician for ~~advanced practice nurse with prescriptive authority~~ mid-level practitioners, an osteopathic physician shall meet the following criteria:

(1) Have possession of a full and unrestricted Oklahoma license to practice osteopathic medicine; with Drug Enforcement Agency (DEA) and Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBNDD) permits.

(2) The supervising physician shall be trained and fully qualified in the field of the mid-level practitioners specialty.

(b~~3~~) No physician shall supervise more than ~~four (4)~~ full time equivalent mid-level practitioners regarding their prescriptive authority at any one time. For purposes of this section each "full time equivalent" mid-level practitioner position equals ~~forty (40) hours per week collectively worked by the part time~~

~~mid-level practitioner being supervised by the physician, six (6) mid-level practitioners.~~

~~(4) Notwithstanding the provisions for the supervision of four (4) full-time equivalent mid-level practitioners above, no physician shall supervise more than a total of four (4) mid-level practitioners.~~

~~(c5) The Board may make an exception to any limit set herein upon written request by of the physician.~~

~~(d) Subject to approval, disapproval, or modification by the Board, the Executive Director of the Board may temporarily approve a written request to supervise seven (7) or more mid-level practitioners between regularly scheduled meeting of the Board. Under no circumstance shall the Executive Director approve more than ten (10) mid-level practitioners without expressed approval of the Board.~~

~~(e) All supervising osteopathic physicians shall have a written agreement with each mid-level practitioner they supervise to memorialize the extent of the authority of the mid-level practitioner to practice under the supervision of the physician. The written agreement shall comply with Oklahoma law.~~

**SUBCHAPTER 7. FEE SCHEDULE**

**510:10-7-1. Fees for licensure-Fee Schedule**

(a) ~~The following fees shall apply for licensure as an osteopathic physician and surgeon: The fees charged by the Board are as follows:~~

- (1) ~~Physician and Surgeon License Application Fee \$ 575.00~~ License Application Fee \$ 600.00
- (2) ~~Physician and Surgeon Renewal Fee for full licensure (Physician/Surgeon) \$ 225.00~~
  - (A) ~~In State Renewal \$ 225.00~~
  - (B) ~~Out of State Renewal \$ 150.00~~
  - (C) ~~Residents and Fully Retired Physicians \$ 200.00~~
- (3) ~~Certificate of Grades (Form Letter) \$ 50.00~~
- (3) Reinstatement fee after cancellation by Board \$ 500.00
- (4) Duplicate License (Physician/Surgeon) \$ 50.00
- (5) Late Re-registration Fee \$150.00
- (6) ~~Copies of Records (per page) \$ .25 plus \$ 10.00 research fee~~ Copy of Licensure File \$50.00
- (7) Copy of Disciplinary File \$25.00
- (8) ~~Supplemental Report & Research \$ 20.00/hr~~
- (78) Verification of Licensure \$ 30.00
- (9) Registration to Dispense Dangerous Drugs \$ 50.00 per location
- (10) Licensure Data Base \$ 50.00
  - (A) ~~Fee for list \$ 50.00~~
  - (B) ~~Fee for disk \$ 50.00~~
- (11) Fee for Certification of Files \$ 5.00
- (12) Returned Check Fee \$ 25.00
- (13) Letter of Good Standing for incorporations-~~\$ 5.00~~ \$30.00
- (14) Specialty Licenses
  - (A) Temporary Resident License (6-month license) \$100

- (B) Resident Training License (PGY1 resident only) \$120
- (C) ~~Telemedicine License \$500~~
- (D) ~~Spouse of Active Duty Military \$250~~
- (b) **Note:** Licensure fees may include a convenience fee.

[OAR Docket #22-491; filed 6-28-22]

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY  
CHAPTER 10. PHARMACISTS; AND INTERNS, PRECEPTORS AND TRAINING AREAS**

[OAR Docket #22-612]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Pharmacists
- 535:10-3-4. Uniform pharmacy continuing education [AMENDED]
- Subchapter 11. Pharmacist Administration of Immunizations [AMENDED]
- 535:10-11-1. Purpose [AMENDED]
- 535:10-11-3. D.Ph. administering of immunizations requirements [AMENDED]
- 535:10-11-6. Records [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Pharmacy; Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, 353.24 - 353.26, 364, Title 59 O.S. Sec. 6002 and Title 63 O.S. Section 2-312.25.

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

November 9, 2021

**COMMENT PERIOD:**

December 1, 2021 through January 14, 2022

**PUBLIC HEARING:**

January 19, 2022

**ADOPTION:**

January 19, 2022

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

January 26, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The revision in 535:10-3-4 adds to (n) "Webinars are considered live CE if the pharmacist can ask questions and get answers from the presenter(s) or moderator during the webinar."

The revisions in 535:10-11-1, 535:10-11-3, and 535:10-11-6 bring these sections into compliance with the statute change in SB398 effective 4/22/2021, see Title 59 OS Section 353.30 (C).

The revision in 535:10-11-3 new (b) corrects from "approved for immunizations" to "approved to administer immunizations" in order to make the rule clear and grammatically correct.

**CONTACT PERSON:**

Dr. Marty Hendrick, Executive Director, Oklahoma State Board of Pharmacy, 3812 N Santa Fe Ste 300, Oklahoma City, OK 73118-8500 [temporary address], Phone number 405 521-3815

# Permanent Final Adoptions

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

## SUBCHAPTER 3. PHARMACISTS

- 535:10-3-4. Uniform pharmacy continuing education**
- (a) **Certification.** At the time of annual renewal of registration each pharmacist must certify that he has obtained at least 15 clock hours of continuing education credits through satisfactory completion of an accredited program during the previous calendar year (January 1 -December 31).
- (b) **Verification forms.** Verification forms of attendance and/or completion of continuing education programs shall be obtained and maintained by the pharmacist.
- (c) **Records.** Proof of continuing education will be maintained by the individual pharmacist for a period of two (2) years from renewal date and submitted to the Board only on request.
- (d) **Graduate school.** Pharmacists in pharmacy graduate school will be allowed credit for the required fifteen (15) hours continuing education.
- (e) **Military personnel.** Military personnel will not be exempt from the continuing education requirement because of the availability of correspondence courses, etc.
- (f) **Job credit.** No credit for continuing education will be granted for anything directly connected with a pharmacist's job.
- (g) **Journals.** No credit will be allowed for reading, subscribing to or writing articles for various professional and trade journals.
- (h) **Meetings.** Requests for approval of credit for individual meetings will be submitted to the Committee on Continuing Education by the individual pharmacist for review and decision.
- (i) **Prior approval.** Prior approval of programs of continuing education shall be obtained by the program sponsor. Each program must be submitted in its entirety, including all materials, in order to be evaluated by the Continuing Education Committee. Continuing education programs sponsored by various drug companies may be acceptable, if the programs are continuing education oriented and not promotional or product oriented.
- (j) **Approved programs notice.** Programs approved for credit by the Continuing Education Committee and the Board will be published on the Board's webpage as these programs are approved.
- (k) **Colleges of pharmacy.** The two State colleges of pharmacy may review the various continuing education programs and make recommendations to the Continuing Education Committee.
- (l) **American Council on Pharmaceutical Education (ACPE).** The Board accepts ACPE approved continuing education (CE) for CE credit.

- (m) **Continuing Education Committee.** The Continuing Education Committee will consist of up to six (6) pharmacist members appointed by the Board for a three (3) year minimum term. The committee will meet quarterly or as needed.
- (n) **Live Continuing education recommended.** Pharmacists are encouraged to attain three (3) hours or more of live continuing education (CE) each year as part of the fifteen (15) hours required. Live CE is attained in the presence of other pharmacists with a presenter and the possibility of interaction with a peer group. Webinars are considered live CE if the pharmacist can ask questions and get answers from the presenter(s) or the moderator during the webinar.
- (o) **Specific Continuing Education requirement.** The Board may, at its discretion, require up to three (3) hours of continuing education on a specific topic. Adequate notice shall be provided to registrants of any specific continuing education when required by the Board.

## SUBCHAPTER 11. PHARMACIST ADMINISTRATION OF IMMUNIZATIONS

### 535:10-11-1. Purpose

- (a) The purpose of this Subchapter is to identify standards for the provisions of those acts or services that are necessary for pharmacists to administer immunizations—~~ordered by a prescribing licensed practitioner.~~
- (b) The rules in this Subchapter implement a portion of the requirements authorized in 59 O.S. Section 353.30.

### 535:10-11-3. D.Ph. administering of immunization requirements

- (a) A D.Ph. must have completed an approved training course and received registration for immunizations with the Board as stated in 535:10-11-4 prior to administering immunizations.
- (b) ~~A D.Ph. shall administer immunizations on the order of a prescribing licensed practitioner.~~
- (c) ~~The Board will maintain a register of those pharmacists who have been approved for to administer immunizations.~~
- (c) ~~A D.Ph. with immunization registration must maintain ongoing competency through required training, including at a minimum current CPR certification and current continuing education.~~

### 535:10-11-6. Records

- (a) Records of these immunizations will be kept on file by the pharmacy. The files will include, but not be limited to, the following:
- (1) Patient name (Parent name, if patient is a minor)
  - (2) Address of patient
  - (3) Prescribing licensed practitioner or pharmacist
  - (4) Immunization order
  - (5) Name, Manufacturer, Lot no., Expiration Date
  - (6) Date for continued dose regimen if required
- (b) Such records must be readily available for inspection in the pharmacy.



- (c) Records or reports will be sent to the State Health Department, if required.
- (d) Report of immunization to prescribing licensed practitioner, if requested.

[OAR Docket #22-612; filed 7-13-22]

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY  
CHAPTER 15. PHARMACIES**

[OAR Docket #22-613]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Pharmacies
- 535:15-3-9. Non-resident pharmacies [AMENDED]
- 535:15-3-13. Pharmacist's responsibility in a pharmacy [AMENDED]
- Subchapter 10. Good Compounding Practices
- Part 3. Good Compounding Practices for Sterile Preparations
- 535:15-10-54. CSP microbial contamination risk levels [AMENDED]
- 535:15-10-55. Drug compounding facilities [AMENDED]
- 535:15-10-65. Compounding of sterile hazardous drugs [AMENDED]
- Subchapter 13. Pharmacy Supportive Personnel
- 535:15-13-4. Pharmacy technician qualifications and training [AMENDED]
- 535:15-13-6. Duties [AMENDED]
- Subchapter 16. Pharmacy Emergency Medication Kits for Use in a Facility
- 535:15-16-3. Licensing requirements [AMENDED]
- 535:15-16-4. Policies and procedures for use of emergency medication kit drugs [AMENDED]
- 535:15-16-5. Security [AMENDED]
- 535:15-16-6. ~~Drug categories~~ Drugs allowed in emergency medication kits [AMENDED]
- Subchapter 17. Nuclear Pharmacy
- 535:15-17-7. Minimum equipment [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Pharmacy; Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 353.26 - 354, and 367.8.

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

November 9, 2021

**COMMENT PERIOD:**

December 1, 2021 through January 14, 2022

**PUBLIC HEARING:**

January 19, 2022

**ADOPTION:**

January 19, 2022

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

January 26, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The revision in 535:15-3-9 (c) (1) clarify and adds (4) and (5) to add pharmacist in charge requirements for non-resident pharmacies.

The revision in 535:15-3-13 (c) clarifies a pharmacist's right not to fill a valid prescription.

The change in 535:15-10-54 (h) (3) adds daily documentation of humidity in areas where sterile products or sterile preparations are stored or compounded.

The change in 535:15-10-55 (g) (10) and (11) regarding cleaning logs, cleaning frequency and cleaning requirements are updated and clarified.

The revision in 535:15-10-65 adds new (m) and (n) regarding rules on hazardous drug spills management, policies procedures, and location of spill kits and cleanup materials. The Board language correction in 535:15-10-66 (m) makes the rule more clear.

The revision in 535: 15-13-4 (a) add HiSet Examination to minimum education and clarify language regarding good moral character.

The revision in 535:15-13-6 adds a new (12) regarding pharmacy technician duties in a filling dispensing and distribution systems in a licensed retail pharmacy.

The revision in 535:15-16-3 clarify emergency medication kit licensing requirements and that the kit permit expires at the same date as the pharmacy license.

The revision in 535:15-16-4 (f), (g) and (h) update policies and procedures to deal with issues discovered due to COVID19 in caring for patients in facilities and in the handling of drugs where residents must be protected from exposure.

The revision in 535:15-16-4 and 535:15-16-5 update who may access or resupply emergency medication kits.

The revision in 535:15-16-6 changes what drugs may be maintained in an emergency medication kit based on lessons learned in dealing with COVID in facilities. Board corrected capitalization error in 535:15-15-16 (b) and (c).

The revision in 535:15-17-7 (a) cleans up language, adding (6) and (7), removing (8), (10) and (11).

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. PHARMACIES**

**535:15-3-9. Non-resident pharmacies**

(a) **Definitions.** "Non-resident pharmacy" means a pharmacy, not located in Oklahoma, which transacts or does business in Oklahoma by soliciting, receiving, dispensing, and/or delivering prescription medications and devices to Oklahoma residents.

(b) **Licensing requirements.** A non-resident pharmacy shall:

- (1) make application and receive an annual non-resident pharmacy license at a fee set by the Board;
- (2) maintain in good standing a pharmacy license in its resident state;
- (3) comply with the Oklahoma Secretary of State requirements for conducting business in this state.
- (4) submit on initial licensure and on renewals a written report of an inspection conducted within the previous twenty-four (24) months by the non-resident's state or by any organization approved by the Board;
- (5) be in a commercial location and not a personal dwelling or residence;
- (6) submit on initial licensure the name and license number of an Oklahoma licensed pharmacist in charge (PIC) who is responsible for the non-resident's pharmacy

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- compliance with Oklahoma laws. The name of the Oklahoma licensed PIC shall be reported to the Board, in writing, with each renewal and/or within 10 days of any change of such PIC.
- (7) the pharmacy registrant may request, in writing, that the Board allow additional time for a new pharmacist-in-charge to get Oklahoma licensed in emergency or urgent situations. If the Board determines circumstances warrant they may grant up to a 90 day extension.
- (c) **Laws and regulations.** Oklahoma pharmacy laws and regulations shall apply to the practice of pharmacy for the Oklahoma portion of the nonresident pharmacy's practice or operation.
- (1) The pharmacist manager (also called pharmacist-in-charge (PIC)) and all other pharmacists performing pharmacist-only functions in Oklahoma licensed non-resident pharmacies must be currently licensed in the state in which ~~the non-resident pharmacy is located, they are practicing.~~ The PIC must also be licensed by the Oklahoma Board.
- (2) The pharmacist manager (PIC) and/or pharmacy owner(s), or partners, or corporate officer(s) shall be responsible for compliance with Oklahoma laws and regulations pertaining to the provisions of receiving, dispensing, and/or delivering of prescriptions or prescription medications and devices to Oklahoma residents.
- (3) No pharmacist may serve as a PIC in more than one pharmacy at a time.
- (4) The PIC shall be present and practicing at the pharmacy for which he holds the PIC position no less than 20 hours per week during the pharmacy's ordinary course of business. In the event the pharmacy's normal hours of business are less than 40 hours per week the PIC shall be present and practicing at least 50 percent of the normal business hours.
- (5) A PIC shall work sufficient hours in the pharmacy to exercise control and meet the responsibilities of the PIC.
- (d) **Inspections.** Non-resident pharmacies are subject to inspection and investigation. The Board may conduct on-site periodic routine inspections and investigations during reasonable business hours.
- (e) **Records.** Prescription records documenting prescriptions delivered and distributed to Oklahoma residents shall be identifiable, readily retrievable, and available for Board review.
- (1) Records must be maintained for not less than five years.
- (2) Patient records shall comply with 535:15-3-14.
- (3) Schedule II, III, IV, and V prescription records. These records shall be sent to the Oklahoma Prescription Drug Monitoring program as set out in Title 63 of the Oklahoma Statutes.
- (f) **Counseling services.** Non-resident pharmacies shall provide accessible toll-free telephone counseling by a licensed pharmacist for patient drug inquiries during regular working hours. The counseling provided shall comply with the pharmaceutical care requirements listed in OAC 535:10-9.
- (g) **Prescription integrity.** A pharmacy or registrant shall not increase the quantity of a prescription without the authorization of the prescriber. Unless specified otherwise by the prescriber, a pharmacist may exercise his professional judgment to dispense up to a ninety (90) day supply for maintenance non-controlled dangerous drugs, if sufficient quantity has been authorized by the prescriber on the original prescription, including any refills. Increasing controlled dangerous drugs or any medications that require reporting to the controlled substance database are prohibited. (See 59 O.S.353.20.2)
- (h) **Written drug diversion detection and prevention.** The pharmacy and the pharmacy manager shall implement and follow a written drug diversion detection and prevention policy and procedure. This policy and procedure shall be available for Board review.
- (i) **Pharmacy refrigerator and freezer temperature logs.**
- (1) All refrigerators and freezers used to store medications shall have a sensor or thermometer capable of reading internal temperatures.
- (2) The internal temperatures maintained in the refrigerators and freezers shall be appropriate for the products stored.
- (3) Temperatures in refrigerators and freezers shall be logged twice daily (AM and PM) on days the pharmacy is open for business or shall have continuous temperature monitoring.
- (A) Pharmacy name, date, time, temperature, and staff person taking reading shall be logged at a minimum for paper logs.
- (B) Temperature logs shall be maintained on paper or electronically for two years and be available for inspection.
- (4) If there is a temperature reading that falls outside of appropriate ranges, a notation must be made on the temperature log detailing the corrective measures which were taken.
- (5) It is the PIC's responsibility to review the temperature readings to ensure compliance with appropriate storage temperatures.
- (j) **Prescription shipping.** The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.
- (1) No prescription shipped to a citizen of Oklahoma should have a temperature excursion that exceeds the temperature storage conditions outlined in the package insert or by the manufacturer of the drug product.
- (2) A pharmacy or pharmacist shall refuse to deliver by mail or common carrier a prescription drug which, in the professional opinion of the pharmacy or pharmacist, may be therapeutically compromised by delivery by mail or common carrier.
- (3) A mail order or non-resident pharmacy shall make available to the patient or patient's caregiver the contact information for the Oklahoma State Board of Pharmacy.

**535:15-3-13. Pharmacist's responsibility in a pharmacy**

- (a) **Access to drugs.** Only a pharmacist shall be responsible for control and distribution of all drugs.
  - (1) Only the pharmacist shall be permitted to unlock the pharmacy area or any additional storage areas for dangerous drugs, except in extreme emergency.
  - (2) An extreme emergency shall be in case of fire, water leak, electrical failure, public disaster or other catastrophe whereby the public is better served by overlooking the safety/security restrictions on drugs.
  - (3) Prescription medications shall not be left outside the prescription area when the pharmacist is not in attendance.
- (b) **Professional judgement.** A pharmacist is required to exercise sound professional judgement with respect to the legitimacy of a prescription. The law does not require a pharmacist to dispense a prescription if the pharmacist doubts its origin or if he believes that the prescription may not have been issued for a legitimate medical purpose.
- (c) **Legitimate purpose.** The pharmacy and pharmacist shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized prescriber acting in the usual course of the prescriber's professional practice. The pharmacist maintains the right not to fill the valid prescription.
- (d) **Valid patient prescriber relationship.** The pharmacy and pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued without a valid preexisting patient-prescriber relationship.
- (e) **Valid prescription drugs.** Only those prescription drugs legal to sell in the United States shall be dispensed. (e.g. FDA approved prescription drugs, or legally compounded prescription drugs, or drugs in a drug-testing protocol, or other legal prescription drugs.)

**SUBCHAPTER 10. GOOD COMPOUNDING PRACTICES**

**PART 3. GOOD COMPOUNDING PRACTICES FOR STERILE PREPARATIONS**

**535:15-10-54. CSP microbial contamination risk levels**

- (a) **Sterile preparations.** Pharmacies and pharmacists dispensing sterile preparations shall comply with all applicable federal, state, and local law and regulation concerning pharmacy. If the PEC (primary engineering control) is a compounding aseptic isolator that does not meet the environmental requirements described in USP or is a laminar air-flow workbench (LAFW) or a biological safety cabinet (BSC) that cannot be located within an ISO Class 7 buffer area, then only low-risk level nonhazardous CSPs pursuant to a physician's order for a specific patient may be prepared, and administration of such CSPs shall commence within 12 hours of preparation or as

recommended in the manufacturers' package insert, whichever is less. Low-risk level CSPs with a 12-hour or less BUD shall meet all of the following criteria:

- (1) PECs (LAFWs, BSCs, CAIs, CACIs,) shall be certified and maintain ISO Class 5 as described in USP for exposure of critical sites and shall be in a segregated compounding area restricted to sterile compounding activities that minimize the risk of CSP contamination.
  - (2) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction. Sinks should not be located adjacent to the ISO Class 5 PEC. Sinks should be separated from the immediate area of the ISO Class 5 PEC device.
  - (3) Personnel shall follow proper procedures for personnel cleansing and garbing prior to compounding and maintain proper competency of aseptic work practices.
  - (4) Personnel will follow proper procedures in ensure cleaning and disinfection of sterile compounding areas. Additionally, viable and non-viable environmental air sampling must be performed according to facility written procedures.
- (b) **Risk level.** Requirements for compounding of sterile preparations will be based on the distinction of sterile products as either low-risk, medium-risk or high-risk preparations. These risk levels apply to the quality of CSPs immediately after the final aseptic mixing or filling or immediately after the final sterilization, unless precluded by the specific characteristics of the preparation.
- (1) **Low-Risk Level CSPs.** Sterile preparations compounded under all of the following conditions are at a low risk of contamination:
    - (A) The CSPs are compounded with aseptic manipulations entirely within an ISO Class 5 environment or better air quality using only sterile ingredients, products, components, and devices.
    - (B) The compounding involves only transfer, measuring, and mixing manipulations using not more than three commercially manufactured packages of sterile products and not more than two entries into any one sterile container or package (e.g., bag, vial) of sterile product or administration container/device to prepare the CSP.
    - (C) Manipulations are limited to aseptically opening ampuls, penetrating disinfected stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices and package containers of other sterile products, and containers for storage and dispensing.
  - (2) **Medium-Risk Level CSPs.** When CSPs compounded aseptically under low-risk conditions, and one or more of the following conditions exists, such CSPs are at a medium risk of contamination. 132
    - (A) Multiple individual or small doses of sterile products are combined or pooled to prepare a sterile product that will be administered either to multiple patients or to one patient on multiple occasions.

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- (B) The compounding process includes complex aseptic manipulations other than the single volume transfer.
- (C) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogeneous mixing.
- (3) **High-risk Level CSPs.** CSPs compounded under any of the following conditions are either contaminated or at a high risk to become contaminated.
- (A) Non-sterile ingredients are incorporated, or a non-sterile device is employed before terminal sterilization
- (B) Any of the following are exposed to air quality worse than ISO Class 5 for more than 1 hour
- Sterile contents of commercially manufactured products,
  - CSPs that lack effective antimicrobial preservatives, and
  - Sterile surfaces of devices and containers for the preparation, transfer, sterilization, and packaging of CSPs.
- (C) Compounding personnel are improperly garbed and gloved as outlined by USP.
- (D) Sterile water-containing preparations are stored for more than 6 hours before being sterilized.
- (E) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or Compendial specifications in unopened or in opened packages of bulk ingredients.
- (c) **Immediate use.** The immediate use provision is intended only for those situations where there is a need for emergency or immediate patient administration of a CSP. Such situations may include cardiopulmonary resuscitation, emergency room treatment, preparation of diagnostic agents, or critical therapy where the preparation of the CSP under conditions described for Low-Risk Level subjects the patient to additional risk due to delays in therapy. Immediate use CSPs are not intended for storage for anticipated needs or batch compounding. Preparations that are medium-risk level and high-risk level CSPs shall not be prepared as immediate use CSPs. Immediate use CSPs are exempt from the requirements described for Low-Risk Level CSPs only when all of the following criteria are met:
- The compounding process involves simple transfer of not more than three commercially manufactured packages of sterile nonhazardous products from the manufacturers' original containers and not more than two entries into any one container or package (e.g., bag, vial) of sterile infusion solution or administration container/device. For example, anti-neoplastics shall not be prepared as immediate use CSPs because they are hazardous drugs.
  - Unless required for the preparation, the compounding procedure is a continuous process not to exceed 1 hour.
  - During preparation, aseptic technique is followed and, if not immediately administered, the finished CSP is under continuous supervision to minimize the potential for contact with non-sterile surfaces, introduction of particulate matter or biological fluids, mix-ups with other CSPs, and direct contact of outside surfaces.
- (A) Administration begins not later than 1 hour following the start of the preparation of the CSP.
- (B) Unless immediately and completely administered by the person who prepared it or immediate and complete administration is witnessed by the preparer, the CSP shall bear a label listing patient identification information, the names and amounts of all ingredients, the name or initials of the person who prepared the CSP, and the exact 1-hour beyond use date and time.
- (C) If administration has not begun within 1 hour following the start of preparing the CSP; the CSP shall be promptly, properly, and safely discarded.
- (d) Opened or needle-punctured single dose containers, such as bags, bottles, syringes, and vials of sterile products and CSPs shall be used within 1 hour if opened in worse than ISO Class 5 air quality and any remaining contents must be discarded.
- (e) Single-dose vials exposed to ISO Class 5 or cleaner air may be used for multiple needle entries up to 6 hours after initial needle puncture. Opened single-dose ampuls shall not be stored for any time period. Multiple-dose containers (e.g., vials) are formulated for removal of portions on multiple occasions because they usually contain antimicrobial preservatives.
- (f) The BUD after initially entering or opening (e.g., needle-punctured) multiple-dose containers is 28 days unless an alternate time period is otherwise specified by the manufacturer. This does not mean the expiration date of the unopened container.
- (g) **Quality Assurance.** Quality assurance practices include, but are not limited to the following:
- Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.
  - Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments, such as eye protection and face masks.
  - Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.
  - Visual inspection of CSPs to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.
  - All clean rooms must meet NSF/ANSI standard 49. The aseptic processing for sterile preparations shall be in an area separate and distinct from the area used for the compounding of nonsterile drug preparations. A primary engineering control (PEC), (laminar airflow workbench (LAFW), biological safety cabinet (BSC), compounding aseptic isolator (CAI) or compounding aseptic containment isolator (CACI)) will be used to prepare all sterile preparations, except those compounded for Immediate Use.

- (A) Semiannual certification of the primary engineering controls.
- (B) Semiannual certification of nonviable environmental monitoring of all ISO 5, ISO 7, ISO 8 and segregated compounding areas.
- (C) Semiannual certification of viable environmental monitoring of all ISO 5, ISO 7, ISO 8 and segregated compounding areas.
- (D) Removable prefilters shall be inspected monthly, cleaned or changed at least quarterly or as directed by a qualified certifier, and the date documented.
- (E) HEPA filters shall be repaired or replaced when recommended by a qualified certifier.
- (6) Initial and annual competence documentation of personnel, including:
  - (A) Written test
  - (B) Hand Hygiene and garbing
  - (C) Gloved fingertip sampling
  - (D) Aseptic manipulation
  - (E) Aseptic media-fill test
  - (F) Cleaning and disinfecting
  - (G) Surface sampling
  - (H) Equipment
  - (I) Routine visual inspection of all compounded sterile preparations
  - (J) Provision of guidelines to nursing education for competence documentation for nonpharmacy personnel who mix sterile preparations for immediate use.
- (h) **Quality control practices will include:**
  - (1) Daily documentation of temperature in areas where sterile products or sterile preparations are stored or compounded
  - (2) Daily documentation of the accuracy and precision of devices such as automated compounders and repeater pumps.
  - (3) Daily documentation of humidity in areas where sterile products or sterile preparations are stored or compounded.
- (i) The PIC or designee will prepare a periodic report of infection control procedures to track quality control and quality assurance activities, as appropriate.
- (j) Records of laminar air flow workbench maintenance and certification and ante-area, clean-room and buffer area certifications shall be kept in the pharmacy. A certification stamp shall be affixed to the hood.
- (k) **Storage.** All pharmacies preparing and dispensing compounded sterile preparations must provide:
  - (1) Adequate controlled room temperature storage space for all raw materials.
  - (2) Adequate storage space for all equipment. All drugs and supplies shall be stocked on shelving above the floor.
  - (3) Adequate refrigerator storage space for compounded solutions, with routinely documented temperatures. Temperature ranges required are 36-46° F or 2-8° C.
  - (4) Adequate freezer storage space if finished products are to be frozen (e.g. reconstituted antibiotics.) There shall be a procedure to routinely document temperatures.
- (l) **Labeling.** In addition to regular labeling requirements, the label shall include:
  - (1) Sterile compounded preparations shall have the rate of infusion when applicable.
  - (2) Expiration date (Policies and procedures shall address label change procedures as required by physician orders.)
  - (3) Storage requirements or special conditions.
  - (4) Name of ingredients and amounts contained in each dispensing unit.
  - (5) All products dispensed to outpatients, and removed from the site of preparation for administration different than the site of preparation, shall have label information as required by state law.
- (m) **Shipping.** Sterile preparation shipping:
  - (1) Policies and procedures shall assure preparation storage requirements during delivery.
  - (2) Pharmacy must assure ability to deliver preparations within an appropriate time frame.
- (n) **Home patient care services.** The pharmacist in charge of the pharmacy dispensing sterile compounded preparations solutions shall provide the following or assure that they are provided prior to providing medications.
  - (1) The pharmacist must assure that the patient is properly trained if self-administering.
  - (2) In situations where a pharmacy or pharmacist employs a nurse to administer medications, the pharmacist in charge must:
    - (A) Employ a registered nurse.
    - (B) Assure that proper records are maintained in compliance with laws and regulations.
    - (C) Make these records available to inspectors from appropriate agencies.
  - (3) 24-hour service shall be assured by the pharmacy.
  - (4) Pharmacists shall recommend and monitor clinical laboratory data as requested.
  - (5) Side effects and potential drug interactions should be documented and reported to the physician.
  - (6) Patient histories and therapy plans should be maintained.
- (o) **Pharmacist-in-charge responsibilities for high-risk Level CSP preparations.** When preparing high risk sterile Level CSP preparations, the pharmacist in charge is responsible for making sure the above procedures, in addition to the following, shall be met:
  - (1) Compound all medications in one of the following environments:
    - (A) A separate controlled limited access area with a positive air flow room inspected and certified as meeting ISO Class 7 requirements.
    - (B) An enclosed room providing an ISO Class 5 environment for compounding.
    - (C) A barrier isolator that provides an ISO Class 5 environment for compounding. It is recommended that all pharmacies have an anteroom designed to be

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- separate from the buffer room. The anteroom should be available for the decontamination of supplies and equipment, and donning of protective apparel. A sink should be available in the anteroom area so that personnel can scrub prior to entering the buffer room.
- (2) Use total aseptic techniques, including gowning, mask, and hair net.
  - (3) Provide a system for tracking each compounded product including:
    - (A) Personnel involved in each stage of compounding;
    - (B) Raw materials used including quantities, manufacturer, lot number, and expiration date;
    - (C) Labeling;
    - (D) Compounding records shall be kept for 5 years.
  - (4) Establishment of procedures for sterilization of all preparations compounded with any non-sterile ingredients by filtration with 0.22 micron or other means appropriate for the preparation components.
  - (5) All high-risk Level CSP preparations for administration by injection that are prepared:
    - (A) in groups of more than twenty-five (25) identical individual single-dose packages (such as ampules, bags, syringes, and/or vials), or;
    - (B) in multiple dose vials for administration to multiple patients, or;
    - (C) are exposed longer than twelve (12) hours at a two (2) to eight (8) degrees centigrade and longer than six (6) hours at warmer than eight (8) degrees centigrade before they are sterilized; shall be tested to ensure they are sterile, do not contain excessive bacterial endotoxins, and are of labeled potency before they are dispensed or administered as provided below.
      - (i) Sterility testing (bacterial and fungal) - The USP Membrane Filtration Method is the method of choice where feasible (e.g. components are compatible with the membrane). The USP Direct Transfer Method is preferred when the membrane filtration is not feasible. An alternative method may be used if verification results demonstrate that the alternative is at least as effective and reliable as the USP Membrane Filtration Method or the USP Direct Transfer Method. The pharmacist in charge shall establish written procedures requiring daily observation of the media and 136 requiring an immediate recall if there is any evidence of microbial growth and said procedures must be available to Board inspectors.
      - (ii) Bacterial endotoxin (pyrogen) testing - The USP Bacterial Endotoxin Test, or verified equivalent, shall be used to ensure compounded sterile products do not contain excessive endotoxins.
  - (6) Establishment of procedures for semi-annual testing the techniques of pharmacists using simulated aseptic procedures and documentation thereof.

### **535:15-10-55. Drug compounding facilities**

- (a) Pharmacies engaging in compounding shall have a specifically designated and adequate space for the orderly compounding of prescriptions, including the placement and storage of equipment and materials.
- (b) The aseptic processing for sterile preparations shall be in an area separate and distinct from the area used for the compounding of non-sterile drug preparations. A primary engineering control (PEC), (laminar airflow workbench (LAFW), biological safety cabinet (BSC), compounding aseptic isolator (CAI) or compounding aseptic containment isolator (CACI)) will be used to prepare all sterile preparations, except those compounded for Immediate Use.
- (c) The area(s) used for the compounding of drugs shall be maintained in a good state of repair. These area(s) shall also be maintained in a clean and sanitary condition. Adequate washing facilities are to be provided and sewage, trash and other refuse in the compounding area is to be disposed of in a safe, sanitary, and timely manner.
- (d) Bulk drugs and other chemicals or materials used in the compounding of drugs must be stored as directed by the manufacturer, or according to USP monograph requirements, in a clean, dry area under appropriate temperature conditions (controlled room temperature, refrigerator, or freezer in adequately labeled containers.) Bulk drugs shall also be stored such that they are protected from contamination.
- (e) Adequate lighting and ventilation shall be provided in all compounding areas.
- (f) Potable water shall be supplied under continuous positive pressure in a plumbing system free of defects that could contribute contamination to any compounded drug preparation.
- (g) Work area and equipment. Any pharmacy dispensing compounded sterile preparations shall meet or exceed the following requirements:
  - (1) A transition area from the general pharmacy (also called ante area or ante room) shall have a certified and inspected ISO Class 8 or better area which may contain a sink. All personnel hand hygiene and garbing procedures, staging of components, order entry, CSP labeling, and other high- particulate-generating activities are performed in the ante area. Drugs and other materials, taken into the transition area shall be removed from corrugated cardboard and other particle-generating materials before being taken into the area.
  - (2) A separate controlled limited access area (also called a buffer area or buffer room) shall have a certified and inspected ISO Class 7 or better environment for compounding sterile solutions. The buffer room shall be of adequate space. Cleanliness of the area is of critical importance.
  - (3) A separate controlled limited access area (also called a buffer area or buffer room) for compounding sterile solutions, which shall be of adequate space for compounding, labeling, dispensing, and sterile preparation of the medication. This area shall have controlled temperature. Cleanliness of the area is of critical importance. Drugs and other materials, taken into the limited

access area, shall be removed from cardboard and other particle generating materials before being taken into the area.

(4) The controlled limited access area shall have a certified and inspected ISO Class 5 environment. Such an environment exists inside a certified laminar airflow hood (clean room, biological safety cabinet or other barrier isolator meeting ISO Class 5 requirements) used for the preparation of all compounded sterile products. The ISO Class 5 environment device or area is to be inspected and certified semiannually. Barrier isolator workstations are closed systems and are not as sensitive to their external environment as laminar airflow equipment. It is recommended to place them in a limited access area with cleaning and sanitizing in the surrounding area on a routine basis.

(5) A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the clean room and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 and the general pharmacy area shall not be less than 5 Pa (0.02 inch water column). In facilities where low and medium-risk level CSPs are prepared, differential airflow shall maintain a minimum velocity of 0.2 meters per second (40 feet per minute) between buffer area and ante-area.

(6) Hazardous drugs shall be prepared within a certified Class II, Type A (exhaust may be discharged to the outdoors) or Class II, Type B (exhaust may be discharged to the outdoors) laminar flow biological safety cabinet. Hazardous drug compounding shall have negative pressure to adjacent positive pressure ISO Class 7 or better ante-areas, thus providing inward airflow to contain any airborne drug. All vented cabinets shall be vented through HEPA filtration, preferably to outside air or through use of suitable technology or equipment. Ventilation exhaust shall be placed as not to reenter the facility at any point.

(7) The area shall be designed to avoid excessive traffic and airflow disturbances.

(8) The area shall be ventilated in a manner not interfering with laminar flow hood conditions.

(9) PECs should be left on continuously. If a PEC has been turned off, allow the blowers to run continuously for at least 30 minutes before using.

(10) Daily procedures must be established for cleaning the compounding area. The pharmacy must keep cleaning logs consistent with the minimum cleaning frequency. Logs shall be kept for 2 years as outlined in USP 797 standards:

(11) Minimum frequency of cleaning and disinfecting compounding areas (~~USP 797~~); ~~site and minimum frequency~~ are listed below:

(A) ISO Class 5 [Primary Engineering Control (e.g. LAFW, BSC, CAI, CACI)] shall be cleaned and disinfected at the beginning of each shift, before each

batch, not longer than 30 minutes following the previous surface disinfection when ongoing compounding activities occur, after spills, and when surface contamination is known or suspected.

(B) Counters and easily cleanable work surfaces shall be cleaned and disinfected daily.

(C) Floors shall be cleaned and disinfected daily.

(D) Walls shall be cleaned and disinfected monthly.

(E) Ceilings shall be cleaned and disinfected monthly.

(F) Storage shelving shall be cleaned and disinfected monthly.

**535:15-10-65. Compounding of sterile hazardous drugs**

(a) Although the potential therapeutic benefits of compounded sterile and non-sterile hazardous drug preparations outweigh the risks of their adverse effects in ill patients, exposed healthcare workers risk similar adverse effects with no therapeutic benefit. Occupational exposure to hazardous drugs can result in:

- (1) Acute effects, such as skin rashes;
- (2) Chronic effects, including adverse reproductive events; and
- (3) Possibly cancer. Each facility must have a communication program that identifies hazardous drugs and communicates this list to all workers that participate in product acquisition, storage, transportation, housekeeping, and waste disposal.

(b) Hazardous drugs shall be any drug identified by at least one of the following six criteria: carcinogenicity, teratogenicity or developmental toxicity, reproductive toxicity in humans, organ toxicity at low doses in humans or animals, or genotoxicity. A new or investigational drug that has no information on toxicity should be treated as a hazardous drug. At a minimum, the hazardous drug communication list shall be drugs received in the facility that are recognized as such by the National Institute for Occupational Safety and Health (NIOSH).

(c) Hazardous drugs shall be prepared for administration only under conditions that protect the healthcare workers and other personnel in the preparation and storage areas. Hazardous drugs shall be stored separately from other inventory in a manner to prevent contamination and personnel exposure. Many hazardous drugs have sufficient vapor pressures that allow volatilization at room temperature; thus storage is preferably within a containment area such as a negative pressure room. The storage area should have sufficient general exhaust ventilation, at least 12 air changes per hour (ACPH) to dilute and remove any airborne contaminants.

(d) Hazardous drugs shall be handled with caution at all times using appropriate chemotherapy gloves during receiving, distribution, stocking, inventorying, preparation for administration, and disposal.

(e) Hazardous sterile drugs shall be prepared in an ISO Class 5 environment with protective engineering controls in place as specified in 535.15-10-55(g). Hazardous drug compounding shall have negative pressure to adjacent positive pressure ISO Class 7 or better ante-areas, thus providing inward airflow to contain any airborne drug. All vented cabinets shall be vented

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through HEPA filtration, preferably to outside air or through use of suitable technology or equipment. Ventilation exhaust shall be placed as not to reenter the facility at any point.

(f) If a CACI that meets the requirements of this chapter is used outside of an ISO class 7 buffer area, the compounding area shall maintain negative pressure and have a minimum of 12 ACPHs. Manufacturer's guidelines or NSF/ANSI Standard 49 standards shall be followed for isolators, containment hoods and BSC. Quality control certification for proper function shall be performed every six months by NSF/ANSI Standard 49 certified personnel.

(g) When closed-system vial-transfer devices (CSTDs) (i.e., vial-transfer systems that allow no venting or exposure of hazardous substance to the environment, Add-Vantage and PhaSeal) are used, they shall be used within the vented cabinet.

(h) In facilities that prepare a low volume, an average of no more than two per day, of hazardous drugs, the use of two tiers of containment (e.g., CSTD within a BSC or CACI that is located in a non-negative pressure room) is acceptable.

(i) Appropriate PPE shall be worn when compounding hazardous drugs. PPE should include gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, gloving with chemotherapy gloves; and compliance with manufacturers' recommendations when using a CACI.

(j) All personnel who compound hazardous drugs shall be fully trained in the storage, handling, and disposal of these drugs. This training shall occur prior to preparing or handling hazardous drugs, and its effectiveness shall be verified by testing specific hazardous drugs preparation techniques. Such verification shall be documented for each person at least annually. This training shall include didactic overview of hazardous drugs, including mutagenic, teratogenic, and carcinogenic properties, and it shall include ongoing training for each new hazardous drug that enters the marketplace. Compounding personnel of reproductive capability shall confirm in writing that they understand the risks of handling hazardous drugs. The training shall include at least the following:

- (1) safe aseptic manipulation practices;
- (2) negative pressure techniques when utilizing a BSC, powder containment hood or CACI;
- (3) correct use of CSTD devices;
- (4) containment, cleanup, and disposal procedures for breakages and spills; and,
- (5) treatment of personnel contact and inhalation exposure.

(k) Consider a medical surveillance program or allow workers to have routine medical care.

(l) Disposal of all hazardous drug wastes shall comply with all applicable federal and state regulations. All personnel who perform routine custodial waste removal and cleaning activities in storage and preparation areas for hazardous drugs shall be trained in appropriate procedures to protect themselves and prevent contamination.

(m) Pharmacies engaging in compounding of hazardous drugs shall be responsible to manage hazardous drug spills according to policies and procedures for each workplace.

(n) Pharmacies engaging in compounding of hazardous drugs shall locate spill kits and other cleanup materials in the immediate area where exposures may occur.

### SUBCHAPTER 13. PHARMACY SUPPORTIVE PERSONNEL

#### 535:15-13-4. Pharmacy technician qualifications and training

(a) A pharmacy technician must have satisfactorily completed a high school education, HiSet Examination, or G.E.D. equivalence, and shall be of good moral character, be non-impaired (e.g. alcohol or drugs) and have adequate education to perform assigned duties.

(b) A pharmacy manager employing a currently permitted technician must document training of that technician within 10 days of hire.

(c) The pharmacy technician must, at a minimum, satisfactorily complete a pharmacy technician on-the-job training (OJT) program described in 535:15-13-13.

(d) To be eligible for a pharmacy technician permit, an applicant must maintain compliance with the requirements in this Title, 535.25 and 535:15.

#### 535:15-13-6. Duties

(a) The following tasks may be performed by auxiliary supportive personnel:

- (1) retrieval tasks such as retrieving prescriptions or files as necessary;
- (2) clerical tasks such as data entry, typing labels and maintaining patient profiles;
- (3) secretarial tasks such as telephoning, filing, and typing;
- (4) accounting tasks such as record keeping, maintaining accounts receivables, third party billing and posting;
- (5) inventory control tasks including monitoring, pricing, dating, invoicing, stocking pharmacy, and preparation of purchase orders; and
- (6) help maintain a clean and orderly pharmacy.

(b) The following tasks may be performed by pharmacy technicians:

- (1) count and/or pour medications;
- (2) prepackage (e.g. unit dose) and properly label medications;
- (3) affix the prescription label to the proper container;
- (4) affix auxiliary labels to the container as directed by the pharmacist;
- (5) reconstitution of medications (i.e. liquid antibiotics);
- (6) bulk compounding, including such items as non-sterile topical compounds, sterile bulk solutions for small volume injectables, sterile irrigation solutions and products prepared in relatively large volume for internal or external use. Documentation of a system of in-process



and final checks and controls must be developed or approved by the certifying pharmacist and carefully and systematically enforced;

(7) Technician training and requirements for technician participation in non-sterile compounding is described in 535:15-10-3 (a) - (h).

(8) Technician training and requirements for technician participation in sterile compounding is described in 535:15-10-52 (a) - (h).

(9) any duties auxiliary personnel are allowed to perform;

(10) assist the pharmacist in the annual CDS inventory. The pharmacist remains responsible for completeness and accuracy; and,

(11) take verbal authorizations from licensed prescriber or licensed prescriber's authorized agent (when allowed) for refill of non-controlled prescriptions with no changes to strength or directions and,

(12) fill "Modified unit dose distribution systems", "Automated dispensing systems" and/or "Unit dose distribution systems".

**SUBCHAPTER 16. PHARMACY EMERGENCY MEDICATION KITS FOR USE IN A FACILITY**

**535:15-16-3. Licensing requirements**

(a) The Oklahoma licensed pharmacy shall maintain a separate pharmacy emergency medication kit permit for each emergency medication kit maintained at each facility remote site for an annual fee for each set by the Board.

(b) The Oklahoma licensed pharmacy shall contact DEA and OBN and comply with any registration or requirements for each remote site prior to providing a controlled dangerous substance in the emergency medication kit.

(c) The permit for the medication kit will expire at the same time as the license of the pharmacy.

**535:15-16-4. Policies and procedures for use of emergency medication kit drugs**

(a) The drugs in the emergency medication kits shall remain the property of an Oklahoma licensed pharmacy.

(b) Only one Oklahoma licensed pharmacy may provide emergency medication kits to each facility.

(c) Emergency medication kits maintained by an Oklahoma licensed pharmacy within the facility shall be approved by the medical director of the facility and the facility's consultant pharmacist on at least an annual basis.

(d) Medications may be administered from the facility's emergency medication kit only upon a prescriber's order for the emergency medication; and must be administered by a licensed nurse, physician, or physician's assistant.

(e) The facility licensed nurse shall

(1) verbally transmit the order for an emergency drug requiring access to the emergency medication kit to an Oklahoma licensed pharmacist who is an employee of

the Oklahoma licensed pharmacy and is physically located within the ~~50~~ United States at the time the order is transmitted prior to the removal of a medication from the emergency medication kit,

(2) or may electronically transmit the order to an Oklahoma licensed pharmacy and located within the ~~50~~ United States following all federal and state regulations and rules only if the Oklahoma licensed pharmacy is utilizing technology which requires the Oklahoma licensed pharmacist to release the medication from the emergency medication kit by electronic means.

(f) The facility and Oklahoma licensed pharmacy shall have a written agreement that clearly states these drugs should not be used for routine use, but for emergency use and the need of the patient for urgent care.

(1) This written agreement shall contain a policy for record keeping of medications removed from the emergency medication kit.

(2) The Oklahoma licensed pharmacy shall require the facility to maintain a readily retrievable log of usage from the emergency medication kit which shall include for each dose administered from the emergency medication kit, at a minimum:

- (A) Name of ordering prescriber
- (B) Date and time of order,
- (C) Facility resident's name,
- (D) Medication name and strength,
- (E) Name of person administering medication, and date and time administered,
- (F) Such log shall be maintained in the facility and the Oklahoma licensed pharmacy and shall be available for Board inspection.

(3) The facility and Oklahoma licensed pharmacy shall document the nature of the emergency.

(4) Name of person verbally notifying the Oklahoma licensed pharmacy shall be recorded by the Oklahoma licensed pharmacy,

(5) The agreement shall document the protocol for handling and storage of these drugs by authorized employees and shall be approved by the Oklahoma licensed pharmacy manager.

(6) The Oklahoma licensed pharmacy shall review the agreement, recordkeeping and drug storage and handling at a minimum of annually.

(7) The facility and Oklahoma licensed pharmacy shall have a policy on replacement of medication in a timely manner.

(A) Replacement of controlled dangerous substances (CDS) in the emergency medication kit in a facility may be done by a licensed nurse employed at the facility or an authorized licensed or permitted employee of the Oklahoma licensed pharmacy.

(B) Replacement of the non-controlled drugs from the licensed Oklahoma pharmacy in the emergency medication kit may be done by a licensed nurse, ~~employed at the facility or an agent of the Oklahoma licensed pharmacy, licensed or permitted~~ employee of the Oklahoma licensed pharmacy.

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(g) The Oklahoma licensed pharmacy shall maintain the following records for each facility remote site where an emergency medication kit is maintained:

- (1) A log of ~~which facilities for which~~ the Oklahoma licensed pharmacy provides emergency medication kits~~medications for~~;
  - (2) A log of medications stored in each emergency kit at each facility;
  - (3) The Oklahoma licensed pharmacy shall require the facility to maintain a log of usage from the emergency medication kit; and,
  - (4) The log of usage from the emergency medication kit shall be auditable and maintained in a readily retrievable manner by the facility.
- (h) Expired medications shall be removed from emergency supply by a licensed nurse employed at the facility or an~~licensed or permitted~~ employee of the Oklahoma licensed pharmacy; and shall not be dispensed or administered.
- (i) Controlled Dangerous Substances (CDS) may be maintained only in a medication kit that is separate from Non-Controlled Dangerous Substances or within an electronic medication dispensing machine, if allowed, in accordance with Oklahoma Bureau of Narcotics and the federal Drug Enforcement Administration laws and rules.
- (j) Emergency medication kits that do not contain controlled dangerous substances may be maintained in an electronic system or in a secure emergency medication kit. A list of drugs in the emergency medication kit shall be attached to the same.
- (k) A record of transactions involving the controlled substance emergency medication kit shall be maintained for two (2) years in a readily retrievable manner by the Oklahoma licensed pharmacy and facility. This transaction record is separate from the prescription record which must be maintained for a minimum of 5 years.

### 535:15-16-5. Security

- (a) Emergency medication kits shall have adequate security and procedures to:
- (1) Prohibit unauthorized access;
  - (2) Comply with federal and state law and regulations; and
  - (3) Maintain patient confidentiality.
- (b) The emergency medication kit shall be sealed with a tamper-evident seal; or,
- (1) It shall be locked or sealed in a manner that obviously reveals when the kit has been opened or tampered with; or,
  - (2) An electronic system may be used, which notifies the Oklahoma licensed pharmacy when the kit has been accessed.
  - (3) Paper or tape seals are unacceptable.
- (c) If an electronic system is utilized, the Oklahoma licensed pharmacy and facility must maintain a written procedure for how the kit can be accessed in the event of downtime.
- (d) The emergency medication kit shall be properly sealed, stored, and accessible only to authorized personnel.
- (e) The emergency medication kit shall be securely locked in a sufficiently well-constructed cabinet or cart maintained

in the medication room, and access to the cabinet or cart shall be available only to the nurse or nurses as determined by the pharmaceutical services committee or its equivalent.

(f) Access to the controlled substances in the emergency medication kit shall be limited to a licensed nurse employed at the facility or an authorized licensed or permitted employee of the Oklahoma licensed pharmacy.

(g) Access to non-controlled drugs in the emergency medication kit shall be limited to a licensed nurse employed at the facility, or an agent of the Oklahoma licensed pharmacy, licensed or permitted employee of the Oklahoma licensed pharmacy.

### 535:15-16-6. ~~Drug categories~~ Drugs allowed in emergency medication kits

(a) An Oklahoma licensed pharmacy and its pharmacists shall be responsible for timely provision of a facility resident's routine drug needs. ~~The drugs listed below are to ensure that such drugs are available to each resident of a facility in need of emergency medications.~~

~~(b) The following categories of drugs are acceptable for emergency medication kits in a facility:~~

- (1) ~~Analgesic oral:~~
  - (A) ~~Non-CDS—Limit 2;~~
  - (B) ~~Plus CDS, (CII-CV)—Limit 4 medications; of which Only 2 may be CII [Only if approved by Oklahoma Bureau of Narcotics (OBND) and the Federal Drug Enforcement Administration (DEA)]~~
- (2) ~~Antipsychotic—Limit 4~~
- (3) ~~Anti epileptic—Limit 2~~
- (4) ~~Anti diarrheal—Limit 1~~
- (5) ~~Antinauseant—Limit 2~~
- (6) ~~Antibiotic~~
  - (A) ~~Oral—Limit 6~~
  - (B) ~~Injectable (IM or IV)—Limit 2~~
- (7) ~~Antihistamine/allergic reactions—Limit 4~~
- (8) ~~Anti hypertensive—Limit 4 (may include nitroglycerin, clonidine, nifedipine)~~
- (9) ~~Anti asthmatic—Limit 2~~
- (10) ~~Anti anxiety—Limit 4 (scheduled and non-scheduled, injectable and oral)~~
- (11) ~~Diabetic Medications—Limit 4 (may include medications for hypoglycemia)~~
- (12) ~~Diuretic—Limit 2~~
- (13) ~~Sterile compounded preparations intravenous fluid:~~
  - (A) ~~Isotonic—Limit 1 bag;~~
  - (B) ~~Hypotonic—Limit 1 bag; and,~~
  - (C) ~~Hypertonic solution—Limit 1 bag.~~
- (14) ~~Steroid—Limit 3~~
- (15) ~~Misc. non CDS medications—Limit 6~~

(b) The drugs allowed in the emergency medication kit, both Controlled Dangerous Substances (CDS) and Non-Controlled dangerous substances (Non-CDS) shall be determined by the medical director of the facility and an Oklahoma licensed pharmacist employed by the Oklahoma licensed pharmacy providing the kit.

(1) The quantity of each Non-CDS drug shall be of sufficient quantity to meet the needs of the patients in that facility.

(2) The quantity of each CDS drug shall not exceed the limit allowed in 59 O.S. Section 367.8 (D) (1).

(c) Before placing ~~miscellaneous~~ Non-CDS non-controlled or CDS medications in an emergency medication kit ~~listed in b (4) (15) above~~ the Oklahoma licensed pharmacy and facility must have a written policy indicating what ~~these~~ drugs are included; and the reason for their need. This written policy must be available for Board inspection. The Oklahoma licensed pharmacy and the facility must be in compliance ~~comply~~ with the rules and laws of the Oklahoma Bureau of Narcotics and the Federal Drug Enforcement Administration.

(d) All injectable medications shall be considered a single dose vial; any remainder shall be destroyed as required under Oklahoma or federal law and rules.

### SUBCHAPTER 17. NUCLEAR PHARMACY

#### 535:15-17-7. Minimum equipment

(a) A nuclear pharmacy shall be exempt from the physical requirements in Section 535:15-3-4, Subsections (3), (6) and (7) through (8) and (10) through (11).

(b) The professional area of the pharmacy shall have at least the following equipment:

- (1) Radionuclide Dose Calibrator;
- (2) Refrigerator;
- (3) Single or multiple channel scintillation counter with solid state detector (e.g. NaI(Tl) or Ge(Li));
- (4) Radiochemical fume hood and filter system with suitable air sampling equipment when dispensing or preparing volatile radiopharmaceuticals;
- (5) Area survey meter;
- (6) At least two GM survey meters (including one high-range meter);
- (7) Microscope and hemacytometer, when dispensing or preparing particle size dependent radiopharmaceuticals;
- (8) Laminar airflow hood and appropriate supplies to ensure sterile practices for sterile compounded preparation solutions;
- (9) Syringe and vial radiation shields;
- (10) Appropriate shielded drawing station;
- (11) Decontamination supplies;
- (12) Appropriate supplies to perform quality assurance testing;
- (13) Appropriate transport shields for syringes and vials; and
- (14) Transport containers which meet the U.S. Department of Transportation regulations, and other labels and supplies for shipping radioactive materials.

[OAR Docket #22-613; filed 7-13-22]

## TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY

### CHAPTER 20. MANUFACTURERS, REPACKAGERS, OUTSOURCING FACILITIES, WHOLESALERS, THIRD-PARTY LOGISTICS PROVIDERS, AND MEDICAL GAS SUPPLIERS AND DISTRIBUTORS

[OAR Docket #22-614]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 6. Outsourcing Facilities  
535:20-6-6. Personnel [AMENDED]

#### AUTHORITY:

Oklahoma State Board of Pharmacy; Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 354, and 367.8; Title 51 OS 24A et seq.; Title 75 OS, Sec 2-201, 2-208, and 2-210.

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

November 9, 2021

#### COMMENT PERIOD:

December 1, 2021 through January 14, 2022

#### PUBLIC HEARING:

January 19, 2022

#### ADOPTION:

January 19, 2022

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

January 26, 2022

#### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

#### FINAL ADOPTION:

June 21, 2022

#### EFFECTIVE:

September 11, 2022

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### GIST/ANALYSIS:

The revision in 535:20-6-6 (d) through (i) describe the pharmacy and pharmacist in charge (PIC) requirements for Outsourcing Facilities. The Board revision in 535:20-6-6 (g) change "get Oklahoma licensed" to "obtain an Oklahoma license". A comma is added in the last sentence.

#### CONTACT PERSON:

Dr. Marty Hendrick, Executive Director, Oklahoma State Board of Pharmacy, 3812 N Santa Fe Ave Ste 300, Oklahoma City, OK 73118-8500 [temporary address], Phone number 405 521-3815

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 6. OUTSOURCING FACILITIES

#### 535:20-6-6. Personnel

(a) Outsourcing facilities shall establish and maintain for Board inspection a list of each partner, limited liability company member or corporate officer and corporate director, as

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well as designated representatives and facility managers, including a description of their duties and a summary of their qualifications.

(b) Each outsourcing facility shall designate, in writing on a Board-approved form, a person to serve as the designated facility manager of the outsourcing facility for each location licensed.

(c) Each outsourcing facility shall designate, in writing on a Board-approved form, a person to serve as the PIC who is a pharmacist licensed by the Board.

(d) No pharmacist may serve as the PIC for more than one outsourcing facility and/or pharmacy at a time unless they are located at the same physical address and are dually licensed with the Board.

~~(d) No outsourcing facility shall have as an owner, designated representative, facility manager, or pharmacist-in-charge anyone convicted of any felony for conduct relating to compounding prescription drugs, any felony for violation of 21 U.S.C. § 331(i) or (k) or any felony for violation of 18 U.S.C. § 1365 relating to product tampering. No outsourcing facility shall have as an owner, designated representative, facility manager or pharmacist-in-charge anyone who has violated federal or state requirements for licensure that presents a threat of serious adverse health consequences or death to humans.~~

(e) The PIC shall be present and practicing at the outsourcing facility for which he holds the PIC position no less than 20 hour per week during the outsourcing facility's ordinary course of business. In the event the outsourcing facility's normal hours of business are less than 40 hour per week the PIC shall be present and practicing at least 50 percent of the normal business hours.

(f) A PIC shall work sufficient hours in the outsourcing facility to exercise control and meet the responsibilities of the PIC.

(g) A non-resident outsourcing facility registrant may request, in writing, that the Board allow additional time for a new pharmacist-in-charge to obtain an Oklahoma license in emergency or urgent situations. If the Board determines circumstances warrant it, the Board may grant up to a 90-day extension.

(h) No outsourcing facility shall have as an owner, designated representative, facility manager, or pharmacist-in-charge anyone convicted of any felony for conduct relating to compounding prescription drugs, any felony for violation of 21 U.S.C. § 331(i) or (k) or any felony for violation of 18 U.S.C. § 1365 relating to product tampering.

(i) No outsourcing facility shall have as an owner, designated representative, facility manager or pharmacist-in-charge anyone who has violated federal or state requirements for licensure that presents a threat of serious adverse health consequences or death to humans.

*[OAR Docket #22-614; filed 7-13-22]*

## TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

*[OAR Docket #22-615]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Applicants, Registrants, and Applications

535:25-3-8. Requirements for licensees [AMENDED]

Subchapter 9. Violations of the rules of registrant conduct

535:25-9-13. Auto refills [AMENDED]

### **AUTHORITY:**

Oklahoma State Board of Pharmacy; Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 353.26 - 354, and 367.8; Title 51 OS 24A et seq.; Title 75 OS, Sec 2-201, 2-208, and 2-210.

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

November 9, 2021

### **COMMENT PERIOD:**

December 9, 2021 through January 14, 2022

### **PUBLIC HEARING:**

January 19, 2022

### **ADOPTION:**

January 19, 2022

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

January 26, 2022

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

### **FINAL ADOPTION:**

June 21, 2022

### **EFFECTIVE:**

September 11, 2022

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

The changes in rule 535:25-3-8 (d) clarify that a licensee representative shall sign the pharmacy Board inspection report upon completion and shall be responsible to assure that issues noted, if any, are resolved. The revision in 535:25-9-13 requires registrants to document the patient or patient's agent authorization to do prescription auto refills.

### **CONTACT PERSON:**

Dr. Mary Hendrick, Executive Director, Oklahoma State Board of Pharmacy, 3812 N Santa Fe Avenue Ste 300, Oklahoma City, OK 73118-8500 [temporary address], Phone number 405 521-3815

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **SUBCHAPTER 3. APPLICANTS, REGISTRANTS, AND APPLICATIONS**

#### **535:25-3-8. Requirements for Licensees**

(a) Licensees shall sell, ship, deliver, etc. only to the address listed on the receiving licensee's license.

(b) Licensees that store, ship, sell, deliver, or handle drugs shall not operate from a place of residence.

(c) Licensees shall not receive drugs at other than the address listed on their license.

(d) A licensee representative shall sign the Pharmacy Board inspection report upon completion. The licensee representative shall be responsible to assure that issues noted, if any, are resolved.

**SUBCHAPTER 9. VIOLATIONS OF THE RULES OF REGISTRANT CONDUCT**

**535:25-9-13. Auto refills**

A registrant shall not do auto refills of a prescription unless authorized to do so by the patient or the patient's agent. The registrant shall document the authorization to do auto refills of a prescription.

[OAR Docket #22-615; filed 7-13-22]

**TITLE 540. PHYSICIAN MANPOWER TRAINING COMMISSION  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #22-508]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 540:1-1-2 [AMENDED]
- Subchapter 3. Organization
- 540:1-3-1 [AMENDED]
- 540:1-3-3 [AMENDED]
- 540:1-3-5 [AMENDED]
- Subchapter 5. Rulemaking and Individual Proceedings
- 540:1-5-1 [AMENDED]
- 540:1-5-2 [AMENDED]

**AUTHORITY:**

Physician Manpower Training Commission; 70 O.S., § 625.13 and 625.4.

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

January 25, 2022

**COMMENT PERIOD:**

January 25, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 21, 2022

**ADOPTION:**

March 24, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The Board of Commissioners of the Physician Manpower Training Commission, has adopted the proposed changes to the approved changes to

specific Administrative Operations rules for compliance with current statutory requirements and modernization of operations.

The changes reflect recent revisions to 75 O.S., § 305 with regard to how the Commission will handle petitions to adopt, amend, or repeal rules. Additional changes to Commission membership and Ex-officio membership are made to reflect statutory changes made through S.B. 1276, 57th Leg, 2d Reg. Sess. (Okla. 2020). Additional changes reflect current agency programs, procedures, and principal office location.

These changes have no fiscal impact to the agency. The proposed changes for Chapter 1 are an effort to align with current statute and modernize operations.

**CONTACT PERSON:**

Janie Thompson, Executive Director (405), 604-0020, Janie.Thompson@PMTTC.ok.gov. For legal questions, contact Maria Maule, Assistant Attorney General, (405) 522-0055, maria.maule@oag.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**540:1-1-2. Interpretation of rules**

(a) The rules of this chapter shall be given a fair and impartial construction. The rules of this chapter shall be cumulative to the Oklahoma Administrative Procedures Act, 75 O.S., ~~1984 SS §§ 301-250-323 et. seq., as amended.~~

(b) The rules of this chapter shall govern all formal proceedings of the Oklahoma Physician Manpower Training Commission. Informal proceedings may be held by agreement between the Commission or its agents and any party.

(c) ~~The effective date of the rules of this chapter shall be twenty days after they have been published in the Register.~~ Rules become effective ten (10) calendar days after publication in "The Oklahoma Register," unless the Commission designates a later date in the rule or the agency rule report, or a later date is required by statute. [75:304]

(d) The provisions of this chapter herein contained are severable and the repeal, amendment, or invalidity of any provision hereof shall not serve to repeal or invalidate the remaining provisions of this chapter.

**SUBCHAPTER 3. ORGANIZATION**

**540:1-3-1. Membership**

(a) **Governing Commission.**

(1) As stated in Section 697.3 of ~~70 O.S. Supp. 1983~~ Title 70 of the Oklahoma Statutes, the Commission shall be composed of seven (7) members appointed by the Governor with the advice and consent of the Senate. Three members shall be practicing allopathic physicians, two three shall be practicing osteopathic physicians, and two one shall not be a physician physician. The membership shall be appointed from diverse geographic areas of the state. [70:697.3] Quorum shall consist of a majority of the appointed voting members present.

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- (2) *Three members of the Commission shall be appointed for ~~one year~~ one-year terms, two members shall be appointed for ~~three year~~ three-year terms and two members shall be appointed for ~~five year~~ five-year terms, and at the expiration of the initial terms, succeeding terms of office shall be five (5) years in duration. [70:697.3]*
- (b) **Ex-officio members.** *There shall be also twelve additional ~~non-voting~~ nonvoting ~~ex-officio~~ ex officio members of the Commission who shall serve in an advisory capacity only and include [70:697.3] the following:*
- (1) *Dean of the University of Oklahoma College of Medicine or designee,*
  - (2) *Dean of the University of Oklahoma College of Medicine-Tulsa or designee,*
  - (3) *Chair of the Department of Family Medicine of the University of Oklahoma Health Sciences Center or designee,*
  - (4) *Chair of the Department of Family ~~[70:697.3] Medicine~~ Practice of the University of Oklahoma College of Medicine-Tulsa or designee,*
  - (5) *President of the Oklahoma Academy of Family Physicians or designee,*
  - (6) *Chair of the Department of ~~[70:697.3] Family Medicine~~ of General Practice of the Oklahoma ~~[70:697.3] State University~~ College of Osteopathic Medicine and Surgery or designee,*
  - (7) *President of the Oklahoma State Medical Association or designee,*
  - (8) *President of the Oklahoma State Osteopathic Association or designee,*
  - (9) *President of the Oklahoma Hospital Association or designee,*
  - (10) *Provost of the University of Oklahoma Health Sciences Center or designee,*
  - (11) *Dean of the Oklahoma ~~[70:697.3] State University~~ College of Osteopathic Medicine and Surgery or designee,*
  - (12) *~~Chair of the State Board~~ State Commissioner of Health or designee. [70:697.3]*

### 540:1-3-3. Powers, duties, and responsibilities of Commission

As defined in Section 697.5 of Title 70 of the Oklahoma Statutes ~~O.S. 1981, the Physician Manpower Training Commission, in order to perform its official function in establishing and administering physician training programs [70:697.5] to meet the physician and health manpower needs in Oklahoma, shall have the following specific powers, duties, and responsibilities: [70:697.5]~~

- (1) *To review all available data on physician manpower in Oklahoma in order to determine the current and projected distribution of physicians by geographic location and by type of practice. ~~To, and, to accomplish this review, the Commission may~~ shall obtain information from and work in conjunction with the State Department of Health and all other agencies which gather data and evaluate health manpower needs. [70:697.5(1)] The*

Commission shall fully utilize the resources of its Physician Manpower Databank.

- (2) *To serve as an agent to advise hospitals, clinics, and communities on setting up and planning internship and residency programs which emphasize the provision of additional primary ~~medical~~ care physicians to service the rural areas of Oklahoma with primary ~~medical~~ care specialties to be defined to include training in the area of internal medicine, obstetrics and gynecology, pediatrics, emergency trauma, and family practice or general practice. [70:697.5(3)]*

- (3) *To administer and determine the specific level of funding and the priorities used for granting state support to approved hospitals and clinical situations, in cooperation with the University of Oklahoma College of Medicine, ~~the University of Oklahoma College of Medicine-Tulsa, and the Oklahoma College of Osteopathic Medicine and Surgery of Oklahoma State University~~ for approved hospital physician training programs for interns and residents and to recommend to the Governor and the Oklahoma Legislature the total funds needed to carry out the ~~Internship and Residency Programs~~ purpose of this program. [70:697.5(8)]*

- (4) *To administer and determine the level of funding to be requested for the following programs of the Physician Manpower Training Commission:*

- (A) *the Oklahoma Community Physician Education Scholarship Program Fund, [70:625.11]*
- (B) *the Community Match Rural Scholarship Incentive Program, [70:625.13]*
- (C) *the program of physician and health manpower placement services, [70:697.5(12)] ~~and~~*
- (D) *the Nursing Student Assistance Program, [70:697.17]*
- (E) *the Physician Assistant Scholarship Program, [70:697.21] and*
- (F) *the Oklahoma Medical Loan Repayment Program. [63:1-2721]*

- (5) *To negotiate and enter into agreements or contracts with local, state, or federal agencies or institutions or other instrumentalities as may be authorized by statute or as necessary for performance of duties.*

- (6) *To employ a director and any staff personnel required to administer the funding of ~~all approved programs approved by the Physician Manpower Training Commission~~ physician training programs and to contract with other state agencies and institutions to conduct and to perform specified services, functions and aspects in administering state funds. [70:697.5(9)]*

### 540:1-3-5. Principal office; office hours; availability of records

- (a) *The principal office of the Physician Manpower Training Commission ("PMTC") is ~~1140 Northwest 63rd Street, Suite 302~~ located in Oklahoma City, Oklahoma 73116 at the address listed on the PMTC website, [oklahoma.gov/pmtc.html](http://oklahoma.gov/pmtc.html).*

- (b) Office hours shall be from 8:00 A.M. to 4:30 P.M., Monday through Friday, excepting legal holidays established by statute or proclamation of Governor.
- (c) All rules and regulations and statements of policy adopted by the Commission shall be available for inspection at the principal office during regular business hours.

**SUBCHAPTER 5. RULEMAKING AND INDIVIDUAL PROCEEDINGS**

**540:1-5-1. Individual proceedings**

- (a) In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.
  - (1) Notice of hearing shall be mailed to the last known address of all parties by registered mail at least fifteen (15) calendar days in advance of the hearing.
  - (2) The notice shall include the time, date, location and statement of the matters asserted.
  - (3) The notice shall also include a statement of the legal authority and jurisdiction under which the hearing is to be held and a reference to the particular sections of the statutes and rules involved.
- (b) Hearings will be conducted by one of the following methods, as determined by the Commission:
  - (1) By the Commission; or
  - (2) By a hearing officer designated by the Commission.
- (c) The hearing authority may require the furnishing of information; the attendance of witnesses; and the production of books, records, papers or other objects as may be necessary and proper for the purposes of the hearing.
- (d) Any party to a proceeding may take depositions of witnesses in the same manner as provided by law in civil actions before courts of record and such depositions may be admitted into evidence subject to the right of objection at the time of the hearing in accordance with the law.
- (e) The hearing shall be conducted in an orderly manner by the hearing examiner or Chairman of the Commission. The order of procedure will follow that which applies in civil proceedings of law. However, the rules of evidence shall be those specified by Article II of the Oklahoma Administrative Procedures Act.
- (f) The Chairman of the Commission, or hearing examiner, shall rule upon the admissibility of evidence and objections thereto, and shall rule upon other motions or objections arising in the course of the hearing.
- (g) A record of the hearing, by means of tape recording or shorthand notes, will be made of all hearings conducted, unless the hearing authority designates otherwise. A transcript of the proceeding shall not be transcribed except upon written application and a cash deposit provided by the requesting party sufficient to pay for having the record transcribed.
- (h) The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Executive Director in counsel with the Chairman of the Commission.
- (i) At any individual hearing not heard by a majority of the members of the Commission, the decision, if adverse to a party

to the proceeding, shall not be made until a proposed order is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present brief and oral argument to the Commission. The proposed order shall be accompanied by a statement of the reasons therefore and for each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing, or by one who has read the record. Exceptions must be filed with the Executive Director of the Commission within ten (10) calendar days of mailing the proposed order to the ~~complainant~~ complainant. If exceptions are filed, the Executive Director shall set the time and the place for the Commission to consider the proposed order and the exceptions to it, and cause notice of such time and place to be mailed to the ~~complainant~~ complainant. Such time shall not be less than twenty (20) calendar days after such notice is mailed. Briefs in support of exceptions ~~are~~ must be filed with the Commission at least seven (7) calendar days before such hearing. The ~~complainant~~ complainant may personally or through counsel, be present and present oral argument to the Commission in support of the exceptions. If no exceptions are filed, the Commission will consider the proposed order at its next regular or special meeting, or at such other time as is convenient to the Commission.

- (j) A final order adverse to a party in an individual proceeding shall be in writing or stated in the record. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of the order shall be mailed forthwith to each party.
- (k) All hearings before the Commission or its designated hearing officer shall be conducted in accordance with the Oklahoma Administrative Procedures Act, 75 O.S., §§ 250-323 1981, SS 301 et. seq.

**540:1-5-2. Procedures applicable to adoption, amendment, and repeal of rules**

- (a) The Commission may promulgate, amend, or repeal a rule of his own initiative, and may promulgate, amend, or repeal a rule at the request of the Chairman.
- (b) Any interested person may petition the Commission, requesting the promulgation, amendment, or repeal of a rule. All such petitions shall be in writing, and be filed with the Executive Director of the Commission at the principal office. The petition shall state, clearly and concisely, all matters pertaining to the requested action and the reasons for the request. The request must also state whether there is someone known to the petitioner who is concerned with the subject of the request and should be notified of the hearing.
- (c) ~~Petitions concerning rules will be considered by the Commission. Within thirty (30) calendar days of submission of a petition, at its next regularly scheduled meeting or at a special meeting. The Commission shall initiate rulemaking proceedings or provide a written response explaining why rulemaking proceedings were not initiated. [75:305] The Commission may, in its discretion, postpone the discussion and ruling on the petition until the next regular or special meeting and shall notify all parties of such postponement.~~

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Upon hearing the petition, the Commission will notify the petitioner within twenty days whether the Commission will consider rule-making action.

(d) The Physician Manpower Training Commission may, of its own motion, conduct hearings on proposed rules, amendments to or repeal of rules, and shall conduct such hearings when so directed by the Commission.

(e) Unless otherwise specified, and stated in the notice of hearing, all hearings, shall be conducted in the offices of the Commission.

(f) Any person who is interested or affected by a proposed action may appear at the hearing. An appearance may be made individually, by an attorney, or by an authorized agent.

(g) Prior to the adoption, amendment, or repeal of a rule the Commission shall afford any interested person a reasonable opportunity to submit data, views, and arguments, either oral or written, concerning such proposed action. If the rule under consideration is one which affects the substantive rights of any person, the Commission shall grant any person or association a reasonable opportunity to submit data, views, and arguments, either oral or written, concerning such proposed action. If the rule under consideration is one which affects the substantive rights of any person, the Commission shall grant any person or association a reasonable opportunity to participate in an oral hearing, when so requested in writing by the person or association. Oral argument on such a rule shall also be granted when requested by a subdivision or agency of government. If no substantive rights of the person, association, or governmental entity are affected by or involved in the rule to be considered, the Commission may, in its discretion, refuse to hear oral argument and require such matters to be submitted in writing. The Commission, in the exercise of its sound discretion, shall determine whether the proposed action affects any such substantive rights.

[OAR Docket #22-508; filed 6-29-22]

## TITLE 540. PHYSICIAN MANPOWER TRAINING COMMISSION CHAPTER 15. INTERNSHIP AND RESIDENCY PROGRAM

[OAR Docket #22-509]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

540:15-1-2 [AMENDED]

540:15-1-3 [AMENDED]

540:15-1-4 [AMENDED]

### AUTHORITY:

Physician Manpower Training Commission; 70 O.S., § 625.13 and 625.4.

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

January 25, 2022

### COMMENT PERIOD:

January 25, 2022 through March 18, 2022

### PUBLIC HEARING:

March 21, 2022

### ADOPTION:

March 24, 2022

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

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The Board of Commissioners of the Physician Manpower Training Commission, has adopted the proposed changes to its rules for the administration of the Internship and Residency Program to make the rules comply with current statute. (S.B. 1276, 57th Leg, 2d Reg. Sess. (Okla. 2020)).

The changes establish that residents and interns will allocate the time spent in rural programs in accordance with primary care specialty accreditation standards.

These changes have no fiscal impact to the agency. The proposed changes are an effort to bring rules in compliance with statute.

### CONTACT PERSON:

Janie Thompson, Executive Director (405), 604-0020, Janie.Thompson@PMTc.ok.gov. For legal questions, contact Maria Maule, Assistant Attorney General, (405) 522-0055, maria.maule@oag.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

#### 540:15-1-2. Statutory administration of program

Section 697.2 of Title 70 ~~O.S. 1981~~ of the Oklahoma Statutes provides that *the Physician Manpower Training Commission shall be authorized to establish and administer ~~cost sharing~~ cost-sharing programs for internship and residency physician training.* [70:697.2]

#### 540:15-1-3. Terms and conditions of assistance

Section 697.2 of ~~70 O.S. Supp. 1983~~ Title 70 of the Oklahoma Statutes states that financial assistance for internship and residency training shall be provided to Oklahoma allopathic and osteopathic institutions engaged in postgraduate training on a cost sharing basis as follows:

(1) ~~Salaries (or a portion thereof), Salary, fringe benefits, training and program administrative expenses may be provided for administration of the internship interns and residency residents as may be arranged by contract for reimbursement with an programs at accredited and approved hospital and accredited clinical programs throughout the state approved by the Physician Manpower Training Commission.~~ [70:697.2]

(2) The Commission shall conduct the coordination and selection of internship and residency programs to assure the effective operation of these programs.

(3) *Not less than ~~fifty~~ seventy-five percent (75%) of the subsidy for these programs shall be used in the training of primary ~~medical~~ health care and family/general practice physicians for the rural and medically underserved areas*



of the state [70:697.2]; the subsidy to a given training institution shall not exceed any maximum or minimum amount which may be prescribed by law or as determined by the Commission.

(4) *No less than forty percent (40%) of all participating residents and interns in each school year must participate in a rural program outside the Oklahoma City and Tulsa metropolitan areas. [70:697.6]Residents and interns shall allocate the time spent in rural programs outside the Oklahoma City and Tulsa metropolitan areas in accordance with primary care specialty accreditation standards. Time allocations spent by residents and interns outside the Oklahoma City and Tulsa metropolitan areas will be in accordance with primary care specialty accreditation standards. [70:697.6]*

**540:15-1-4. Contractual arrangements**

*The Physician Manpower Training Commission is . . . authorized to enter into contractual arrangements with ~~any qualified training institution~~ residency training programs at the University of Oklahoma College of Medicine, University of Oklahoma-Tulsa Medical College, or the Oklahoma College of Osteopathic Medicine and Surgery. [70:697.7] Copies of all contracts are filed in the office of the Commission.*

[OAR Docket #22-509; filed 6-29-22]

**TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #22-574]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Organization of Board  
550:1-3-4. Election of Board Members [AMENDED]

**AUTHORITY:**

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

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

November 23, 2021

**COMMENT PERIOD:**

December 15, 2021 - January 14, 2022

**PUBLIC HEARING:**

January 19, 2022

**ADOPTION:**

January 19, 2022

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

January 24, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendment to OAC 550:1-3-4 will improve the delivery accuracy of ballots, increase voting turnout and reduce costs associated with hand counted ballots.

**CONTACT PERSON:**

Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. ORGANIZATION OF BOARD**

**550:1-3-4. Election of Board members**

(a) ~~Election Procedures~~ Voting procedures for active members. The following procedures shall govern voting for the election of Board members by the active members:

(1) Active members eligible to vote will be notified via email of an upcoming election at least one week prior to the date the election period will begin.

(2) On the date the election period begins, an active member, upon logging on to the System's website, will be directed to a separate electronic member services voting application until the member has voted. The voting application shall include a list of eligible nominees for the Board and instructions on how to vote and submit the vote.

(3) Active members will have three weeks from the date the election period begins to submit a vote. Weekly email reminders shall be sent by the System to the active members during the election period.

(b) Voting procedures for retired members. The following procedures shall govern voting for the election of Board members by the retired members:

(1) Eligible nominees will be placed on the election ballot.

(2) ~~Members~~ Retired members eligible to receive election ballots and their mailing addresses will be determined at least one week prior to the date the election ballot is to be mailed.

(3) The ballot will be mailed at least three weeks prior to the date the completed ballot must be received by the System's certified public accounting firm. This ballot will instruct voters to return their ballot directly to the certified public accounting firm and will specify the date by which the certified public accounting firm must receive the ballot in order for it to be counted. Self-addressed, postage-paid envelopes will be enclosed to return the ballots. The ballot and return envelope will be placed in individual envelopes addressed to each ~~active~~retired member separately in care of their mailing address on file with the System. The envelopes will be mailed First Class to the retired member. Mailings to retired members will be made to the address

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used to mail year-end tax notices (1099R). The System shall make no attempt to forward/resend any mailing returned by the United States Postal Service as undeliverable unless it is found that the mailing was sent to an incorrect address due to an administrative error on the part of the System.

(4) Ballots will be pre-numbered and require the individual signature of the voter to be counted. Ballots will be printed on the certified public accounting firm letterhead or watermarked paper.

(5) ~~The nominee receiving the highest number of votes, even if this constitutes less than 50% of the total votes cast, will be elected to serve on the Board.~~

(6) Votes cast for members other than the nominees contained on the ballot will not be counted.

(7) ~~Ballots returned to the Oklahoma Police Pension and Retirement System or some location other than the certified public accounting firm's office will not be counted.~~

(8) Ballots received after the deadline will not be counted.

(9) Ballots with more than one vote will not be counted.

(10) Ballots which are not signed will not be counted.

(b) Certified public accounting firm procedures.—A for voting by retired members. The certified public accounting firm shall:

(1) Review ballots before mailing. Judgmentally select members listed on the district mailing list and verify that they are to receive a ballot. Judgmentally select ballots and verify that members are listed on correct district mailing list.

(2) Accumulate responses and total results.

(3) Exclude any ballots not received by the certified public accounting firm by the cut-off date, or other spoiled ballots.

(4) Provide the total number of votes cast for each nominee and total available votes to the Oklahoma Police Pension and Retirement Board.

(d) Electronic member services voting application procedures for active members. The electronic member services voting application shall:

(1) Provide a list of eligible nominees and instructions on how to vote and submit the vote.

(2) Accumulate the voting responses based on one vote for each active member.

(3) Close the voting process at the end of the three week election period so that no further votes may be submitted.

(4) Provide a report with the total number of votes cast for each nominee to the Oklahoma Police Pension and Retirement Board.

(e) Oklahoma Police Pension and Retirement System procedures.—The

(1) For active members, the Oklahoma Police Pension and Retirement System shall:

(A) Create and maintain an electronic member services voting application for the election process.

(B) Send an email notice to each active member regarding the upcoming election at least one week prior to the date the election period begins.

(C) Send weekly email reminders to each active member to vote during the election period.

(2) For retired members, the Oklahoma Police Pension and Retirement System shall:

(1A) ~~Prepare the ballot for each district holding an election. Include each nominee's biographical sketch. Photocopy and/or print the ballot on the certified public accounting firm letterhead or watermarked paper.~~

(2B) ~~CopyPost a copy of the ballot to be posted in the office of the Oklahoma Police Pension and Retirement System for public view during regular office hours not less than seven business days before the ballot is to be mailed.~~

(3C) ~~Pre-Number each ballot sequentially.~~

(4D) ~~Obtain mailing list for each district conducting an election. The mailing list should contain the name and mailing address of each retired member in the district eligible to receive an election ballot.~~

(5E) ~~Apply the name and mailing address of each retired member on district mailing list on a ballot and place the ballot and a self-addressed return envelope in window envelopes.~~

(6F) ~~After certified public accounting firm has audited the ballots, mail a package to each retired member on district mailing list.~~

(7) ~~Send notification of election results to nominees via certified mail.~~

(f) Results of vote.

(1) The System shall combine results provided by the certified public accounting firm and the electronic member services voting application and send notification of election results to nominees via certified mail.

(2) The nominee receiving the highest number of votes, even if this constitutes less than 50% of the total votes cast, will be elected to serve on the Board.

(g) Tie votes. Should two nominees tie for the most votes received, the election will be conducted again between the two nominees.

(h) Election challenge. A nominee has 10 days from the date ~~they receive~~ the nominee receives notice of the election results to provide the System with written notice of ~~their desire to~~ a challenge to the results.

(1) Should the election results be timely challenged by a nominee, procedures for determining the winning nominee will be established by the Oklahoma Police Pension and Retirement Board and could include but are not limited to:

(A) Verification of a sample or all of the signatures on the ballots or certification of data collected through the electronic member services voting application.

(B) Re-perform the election with notarized ballots and electronic votes.

(2) The Board may order a new election if the Board, in its discretion, finds that the previous election and/or result

was affected by some material impropriety. The new election will be conducted in the same manner as provided by rules with the exception that the Board may establish a revised time frame for the new election.

[OAR Docket #22-574; filed 7-7-22]

**TITLE 575. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS  
CHAPTER 10. LICENSURE OF PSYCHOLOGISTS**

[OAR Docket #22-665]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

575:10-1-2. Requirements to become licensed as a psychologist [AMENDED]

575:10-1-3. Private Practice Under Supervision [AMENDED]

575:10-11. Telepsychology [NEW]

**AUTHORITY:**

Oklahoma State Board of Examiners of Psychologists; 59, O.S., 2001, Section 1352.1(8).

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

January 25, 2022

**COMMENT PERIOD:**

February 18, 2022, through March 21, 2022

**PUBLIC HEARING:**

March 25, 2022

**ADOPTION:**

March 25, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendments outline the standards for applicants who are completing their postdoctoral experience in a non-traditional setting to meet the Health Service Psychologist requirements, include all parts of the national exam, and the number of times an applicant may take the licensure exams while practicing under supervision. Additionally, "Licensing by reciprocity" will be changed to "Licensing by endorsement" to be consistent with the statutes, and "Disqualifying offenses" will be added pursuant to 59 O.S. § 4000.1. Last, the addition of 575:10-1-11, provides rules regarding the practice of telepsychology.

**CONTACT PERSON:**

Teanne Rose, Executive Officer, Oklahoma State Board of Examiners of Psychologists, 421 N.W. 13<sup>th</sup> Street, Suite 180, Oklahoma City, OK 73103, 405-522-1333.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**575:10-1-2. Requirements to become licensed as a psychologist**

(a) **Application.** Persons desiring licensure as a psychologist may obtain official application information from either the Board office or the Official Board Website. Applicants are required to submit a non-refundable four hundred dollar (\$400.00) application fee in the form of a personal or certified check or acceptable money order. A minimum of three references from licensed psychologists shall be required for each applicant. Board members shall not serve as references for applicants except to verify portions of completed training or experience.

(b) **Consideration of application.** The Board may appoint a committee to consider and approve, the request of each applicant to take the examination for licensure as a psychologist under 59 O.S., Section 1362(1). In instances where the applicant fails to complete the requirements for licensure within five years of the date of approval, the Board may destroy the application and all related documents.

(c) **Doctoral programs.** Applicants for licensure shall have completed a doctoral program in psychology that is accredited by the American Psychological Association (APA), unless the doctoral program meets any of the following exceptions:

(1) Areas where no accreditation exists. This exception applies to doctoral programs, within the United States, that are in specialty areas of professional psychology that are not accredited by the APA.

(2) New specialty areas of professional psychology. When a new specialty of professional psychology is recognized as being within the accreditation scope of the APA, doctoral programs within that specialty will be afforded a maximum transition period of eight (8) years from the first class of students to the time of accreditation. To be eligible for this exception the program must have a pending application for accreditation with the APA at the time of the applicant's application for licensure.

(3) New doctoral programs in specialty areas currently within the scope of APA accreditation. This exception is available to new doctoral programs developed in APA accredited specialty areas of professional psychology. A doctoral program is only eligible for this exception during a maximum transition period of eight (8) years from the first class of students to the time of accreditation. To be eligible for this exception the program must have a pending application for accreditation with the APA at the time of the applicant's application for licensure.

(4) Applicants trained in institutions outside the United States shall have completed a doctoral program in psychology that is accredited by the Canadian Psychological Association or that is deemed the equivalent of a program accredited by the APA by the Board in its sole discretion. The Board shall consider, but is not limited to, determinations made by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or from a recognized foreign credential evaluation service approved by the Board.

(d) All doctoral programs in 575:10-1-2(c) shall meet all of the following criteria:

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- (1) The doctoral program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train psychologists.
  - (2) The psychology program must stand as a recognizable coherent organizational entity within the institution.
  - (3) There must be clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
  - (4) The program must be an integrated, organized sequence of study.
  - (5) The program must have an identifiable psychology faculty and a psychologist responsible for the program.
  - (6) The program must have an identifiable body of students who are matriculated in that program for a degree.
- (e) **Practica and internship required.** The assessment of mental, emotional, or behavioral disorders and/or the treatment of individuals, couples, families, or groups with such disorders, by psychologists, requires a doctoral degree from an academic program designed to train psychologists to provide these services which integrates coursework and other experiences toward the goal of training psychologist practitioners. Practica and an internship experience are required.
- (f) **Evaluating doctoral programs.** The doctoral program shall be documented in writing to the Board. The institution is to document the name of the department granting the degree, the date of completion of the degree requirements, and the major program of study such as, but not limited to, clinical, counseling, developmental, educational, experimental, industrial-personnel, psychometrics, school, or social-personality, unless this information is indicated on the applicant's official transcript. A certified letter from the Registrar may be submitted as documentation of the date of completion of the degree requirements. Applicants trained in institutions outside the United States, besides those accredited by the Canadian Psychological Association, shall submit an evaluation of their doctoral program as described in 575:10-1-2(c)(4). All doctoral programs submitted for review under this subsection will be evaluated by the following criteria:
- (1) Except in school psychology, the three academic years leading to the doctoral degree must include a minimum of two years of full-time, on campus, graduate study (excluding internship). In school psychology, the three academic years leading to the doctoral degree must include a minimum of one year of full-time postmaster's graduate study as defined by the institution (excluding internship).
  - (2) At least forty-two (42) hours of the specified course work must be primarily psychological in content. The applicant must have a minimum of three (3) or more graduate semester hours in each of the following substantive content areas, for a total of twenty-one (21) hours:
    - (A) scientific and professional ethics and standards,
    - (B) research design and methodology,
    - (C) statistics and psychometrics,
    - (D) biological bases of behavior [e.g. physiological psychology, comparative psychology, neuropsychology, sensation, psychopharmacology].
    - (E) cognitive-affective bases of behavior [e.g. learning, memory, perception, cognition, thinking, motivation, emotion].
    - (F) social bases of behavior [e.g. social psychology, cultural, ethnic, and group processes, sex roles, organization and systems theory], and
    - (G) individual behavior [e.g. personality theory, human development, individual differences, abnormal psychology].
- (3) The remaining twenty-one (21) hours of specified course work may be in the foregoing basic areas or in courses pertaining to the specific program of study.
- (g) **Doctoral degree in area related to psychology not sufficient.** The possession of a doctoral degree from an area related to psychology does not qualify one for licensure as a psychologist. This includes, but is not limited to, applicants with degrees in special education, pastoral psychology (or counseling), counseling and guidance, speech and hearing, and counselor education.
- (h) **Supervised experience.** An applicant for licensure as a psychologist must have two years of supervised experience satisfactory to the Board. Supervisors may not be members of the psychologist's immediate family or other individuals with whom the necessary level of objectivity cannot be maintained. This will include, but is not limited to, spouses, children, siblings, and parents or anyone with whom the psychologist has an emotionally or sexually intimate relationship. Any experience gained under such supervision will be disallowed. This two years of experience must be as a psychologist and in line with the applicant's major program of study for the doctoral degree as determined according to the procedure stated in 575:10-1-2(e). Applicants in the areas of clinical, counseling, and school psychology must have an internship experience. Applicants from psychology programs other than clinical, counseling, or school psychology, who assert the program's purpose to be the training of individuals to provide professional psychological services to the public, must have an internship experience. Internships of applicants from psychology programs with titles other than clinical, counseling, or school psychology programs will be evaluated using the same rules as those used to evaluate applicants with degrees from either clinical, counseling, or school psychology programs, depending upon which the Board deems is the most appropriate corollary based upon the program's training goals and objectives. A predoctoral internship may be used to partially fulfill the two-year experience requirement for licensure. Under no circumstances may more than one year of predoctoral experience as an intern be accepted. The internship must be consistent with the major program of study in the doctoral program which was documented in writing to the Board by the accredited institution [see 575:10-1-2(e)]. Internships in clinical psychology require a full-time experience (40 hours per week) either for one calendar year, or for two years of half-time experience. Counseling and school psychology internships require either a full-time experience (40 hours per

week) for one calendar year or one academic contract year or a half-time experience for two calendar years or two academic contract years. An academic contract year means the school year of the elementary or secondary school setting in which an intern is fulfilling the internship requirement. If the counseling or school psychology internship is completed in other than an elementary or secondary school setting, the one calendar year requirement shall apply.

(i) **General requirements for internships.** Internships must be designed to provide a planned, programmed sequence of training experience. The primary focus and purpose of the internship must assure breadth and quality of training. An internship is an organized program of planned experiences in contrast to simply supervised experience or on-the-job training. The internship must provide training in a range of assessment and treatment activities conducted directly with patients or clients seeking psychological services. At least 25 percent of the trainee's time must be in direct patient or client contact. Internship training is at the post-coursework, post candidacy, post-clerkship, post-practicum, post-externship level. A written statement or brochure must be available which describes the goals and content of the internship, states clear expectations for the quantity and quality of trainee's work, and is furnished to prospective interns.

(j) **Supervision in internships.** A clinical or counseling psychology internship agency must have a clearly designated staff psychologist, who is responsible for the integrity and quality of the training program and who is licensed. In a counseling or clinical psychology internship, the basic supervision must be conducted by a staff psychologist who is trained in the applicant's major program of doctoral study, or a closely related program, and who is licensed. While additional experience with professionals in other disciplines is highly desirable, it is required that clinical and counseling psychology interns have experience with multiple (three or more) supervisors who are licensed as psychologists. Supervision of counseling and clinical psychology interns shall consist of an average of at least 10 percent of the full-time or half-time intern's week. At least half of the supervision of clinical and counseling psychology interns must be regularly scheduled, formal, face-to-face, individual supervision by one or more licensed psychologists with the intent of dealing with psychological services rendered directly by the intern. The remaining half of the supervision may be conducted individually or in a group by licensed psychologists or by other licensed professionals as appropriate to the internship experience. The counseling or clinical psychology internship agency should ordinarily have a minimum of two interns at the internship level of training during the applicant's training period.

(k) **School psychology internships.** School psychology internships must have a clearly designated psychologist who is responsible for the integrity and quality of the training program and who is licensed. In a school psychology internship, the basic supervision must be conducted by a psychologist who is trained in the applicant's major program of doctoral study, or a closely related program, who is licensed, and who may be employed in a setting other than the school district in which the internship is situated. While additional experience

with professionals in other disciplines is highly desirable, it is required that school psychology interns have experience with multiple (two or more) supervisors who are licensed as psychologists. Supervision of school psychology interns shall consist of an average of at least 10 percent of the full-time or half-time intern's week. At least half of the supervision of school psychology interns must be regularly scheduled, formal, face-to-face, individual supervision by one or more licensed psychologists with the intent of dealing with psychological services rendered directly by the intern. The remaining half of the supervision may be conducted individually or in a group by licensed psychologists or by other licensed professionals as appropriate to the internship experience.

(l) **Postdoctoral experience.** At least one year of the two-year experience requirement must be postdoctoral experience as a psychologist and in line with the applicant's major program of doctoral study as determined according to the procedure stated in 575:10-1-2(e).

(1) Except in school psychology, the postdoctoral experience must be a total of 2000 hours of appropriate experience. The postdoctoral experience must either be full time (40 hours per week) for at least one calendar year (50 weeks), or part-time for a period not to exceed three years.

(2) The postdoctoral experience in school psychology must be full time (40 hours per week) for at least one calendar year (50 weeks) or one academic contract year, or a total of 2000 hours (or the number of hours in an academic contract year) of appropriate experience, or equivalent, for a period not to exceed three years.

(3) The postdoctoral experience must be under the supervision of a licensed psychologist(s) who was trained in the applicant's major program of doctoral study, or a closely related program, and who is currently engaged in rendering psychological services relevant to that training.

(4) Applicants must have received and accumulated 75 hours of regularly scheduled, formal, face-to-face, individual supervision from his/her supervisor(s) reasonably distributed throughout each 12 months of the postdoctoral experience.

(5) The postdoctoral experience does not have to be in a private setting.

(6) Applicants completing their postdoctoral experience in an academic or clinical research setting, a minimum of two-years is required to fulfill the Health Service Psychologist requirements. An applicant is required to spend 50% of his/her time performing the following activities:

(A) Direct service/multiple client contacts per week (minimum of five clients) including service in an agency or university-based clinic, or in a private practice under supervision. Minimum for applicants in an academic or clinical research setting is 250 hours per year, for a minimum of two years, over the course of the postdoctoral supervision experience.

(B) Academic or clinical research setting applicants may also perform any of the following activities:

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- (i) Modeling and demonstrating clinical techniques, including assessment and therapy.
  - (ii) Supervision of clinical services, wherein the faculty supervisor assumes direct responsibility for supervisee's clinical work.
  - (iii) Conducting workshops or community groups or public presentations on mental health related topics.
- (67) The postdoctoral experience of applicants who desire a Health Service Psychologist designation must also meet the requirements of 575:10-1-6(b)(5)(B).
- (m) **Examination process.** The full examination for licensure shall consist of two component examinations:
- (1) **Objective examination.** An objective examination in basic psychology, known as the Examination for Professional Practice in Psychology ("EPPP"), all parts of the exam, as required by the Board.
  - (2) **Jurisprudence examination.** A jurisprudence examination based on the Rules of the Board, Psychologists Licensing Act, Code of Ethics and applicable Oklahoma Mental Health Law.
- (n) **Passing scores on examinations.** An applicant is deemed to have passed the objective examination if he/she has obtained at least the minimum pass point designated by the developer of the examination. An applicant is deemed to have passed the jurisprudence examination if he/she has 70 percent of the total items correct.
- (o) **Notification of results.** All applicants will be notified by mail of the results of each component examination within 30 days of the examination date. At the request of the applicant, specific information about his/her performance on any component examination will be provided to the extent the integrity of the exam is not violated.
- (p) **Re-examination.** If either of the two component examinations is failed a total of four times, the application process shall cease. The former applicant may reapply for licensure by submitting a new application for consideration by the Board in accordance with the requirements to become licensed as a psychologist.
- (q) **Waiver of portion of examination or re-examination.** Failure on either portion of the licensing examination will be considered failure of the entire examination for purposes of licensing; however, satisfactory performance on the objective examination or jurisprudence examination will be grounds for waiver of that portion of the examination for future re-examination.
- (r) **Confidentiality of exam scores.** Exam results shall be kept confidential by the Board.
- (s) **Licensing by reciprocity endorsement.** Applicants for licensure under the reciprocity provisions of this act by endorsement may only be licensed if they meet the requirements in 59 O.S. Section 1366(2).
- (t) **Post-Military Service Applicants.**
- (1) The Board shall consider the equivalent education, training and experience completed by an applicant while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any

state, and apply it in the manner most favorable toward satisfying the qualifications for licensure.

(2) While examining the education, training and experience completed by an applicant while the applicant was a member of the military as described in the preceding paragraph, the Board may consider, but is not limited to, determinations made by institutions of higher education based on the Guide to the Evaluation of Educational Experiences in the Armed Services, published by the American Council on Education.

(u) **Disqualifying offenses.** Pursuant to 59 O.S. § 4000.1, the Oklahoma State Board of Examiners shall maintain a list of offenses under Oklahoma law that could disqualify a person from obtaining a license under the Oklahoma Psychologists Licensing Act (59 O.S. § 1351-1376).

(1) The offenses included on the list substantially relate to the practice of psychology and pose a reasonable threat to public safety. The list of disqualifying offenses is available on the Board's website or by contacting the Board office and requesting the current list. The Board may modify the list as needed to protect the public health and safety.

(2) Individuals may request an initial determination from the Board regarding whether the individuals' criminal history would disqualify that individual from obtaining a license. Such request must be in writing and directed to the Board. The individual must submit a copy of their criminal history and any related documents and court records that specify the criminal history of the individual. A ninety-five dollar (\$95.00) fee shall accompany any request for initial determination. The fee shall be collected by the Board office prior to the determination.

(3) If an individual has a criminal history that includes offenses from another state or federal law violations, the offenses will disqualify an individual if the conduct would also be a crime under Oklahoma law.

(4) The individual may appeal the Board's initial determination of disqualification by submitting a request in writing of the circumstances the individual would like the Board to consider. The Board may discuss the individual appeals at any scheduled meeting of the Board. The individual may be allowed to address the Board during public comment by signing in at the beginning of the meeting at which the appeal may be on the agenda.

### 575:10-1-3. Private Practice Under Supervision

(a) **Purpose.** The purpose of this provision is to provide an opportunity for individuals to fulfill the experience requirements for licensure in psychology in other than academic, governmental, or institutional settings. The applicant for such approval is considered to be requesting entrance into the established practice of a licensed psychologist for the purpose of gaining supervised experience.

(b) **Not an independent practitioner.** The applicant, if approved to conduct Private Practice Under Supervision, is not authorized to represent him/herself as an independent practitioner of psychology to the public.

(c) **Application; eligibility; approval.** Application for approval to Practice Psychology Under Supervision shall be made in the same manner, and on the same forms that are used to apply for licensure. A statement, signed by both the applicant and proposed supervisor, must be submitted with the application. The statement shall contain an explicit statement indicating that the supervisor agrees to supervise the practice of psychology of the applicant, and that the supervisor has read, understands and agrees to the provisions of the law with respect to practice under supervision, 59 O.S., Section 1353(d) to wit, that the supervisor accepts complete and full responsibility for the psychological activities and services of the applicant. Permission to practice under supervision will be granted only after the applicant has completed all requirements for the doctorate and the Board has been so notified by the university awarding the degree. Approval will be extended only to those whose training and experience would qualify them for licensure after completion of the experience requirements of the law, except for the second year of supervised experience as required in 575:10-1-2(g), and has been approved by the Board or a committee selected by the Board to sit for examination. Approval for practice under this provision shall be for a period of one calendar year dating from the date of approval by the Board of the application for Private Practice Under Supervision or until date of licensure. Extension of this approval shall be considered only upon written request of the supervisee and such request must be received prior to the end of the one-year period of previous approval.

(d) **Written agreement between applicant and supervisor.** Applications for approval to engage in Private Practice Under Supervision shall include a written agreement, co-signed by the applicant and his/her supervisor, describing the terms of the supervisory arrangement. Said terms must include supervision time amounting to at least 90 minutes weekly and a statement of fees charged for supervisory time, the extent of the applicant's services rendered to the public while practicing under supervision, and an evaluation of the quality of the applicant's professional and interpersonal skills for rendering services to the public.

(e) **Notice of decision.** The individual applicant for approval for Private Practice Under Supervision shall be notified in writing as to the decision of the Board or committee with respect to said application.

(f) **Preparation and distribution of certain announcements forbidden.** Persons approved for the private practice under supervision are not authorized to represent themselves as independent practitioners of psychology. Preparation or distribution of announcements of practice, independent telephone listings, or other such notices shall be in violation of the authorization to practice under supervision and will lead to automatic revocation of the approval for practice under supervision.

(g) **Terminate responsibilities and obligations.** Any individual practicing psychology under supervision must take the Examination for Professional Practice in Psychology (EPPP) and Jurisprudence Examination no later than one calendar year after the day permission to practice under supervision is granted. Failure to take the examination within the designated

time period shall result in automatic revocation of the approval to practice under supervision. An individual approved for Private Practice Under Supervision who fails all or part of the examination for licensure, may be granted an extension of the approval for Private Practice Under Supervision; however, such approval shall be automatically revoked if the individual does not attempt re-examination within one calendar year from the date of the completion of the last part of the examination which was previously attempted. Under unusual circumstance, such as military service or major illness, an applicant may be granted an extension of the approval to practice until the next examination which the supervisee might reasonably be expected to attempt. If the applicant fails any of ~~the three portions of the~~ licensing examination ~~three~~four times, then approval for practice under supervision will automatically be revoked.

(h) **Requirements for supervisors.** Permission to practice psychology under supervision shall be granted to applicants who otherwise qualify, only if the supervisor for their practice is:

- (1) A psychologist who has been licensed for two years and in good standing.
- (2) Trained in the same major program of study as the applicant's doctoral training and who will supervise the candidate in work consistent with that major program of study.
- (3) Currently engaged in a private practice rendering psychological services to the public on at least a 10-hour weekly basis.
- (4) Is not a member of the psychologist's immediate family nor an individual with whom the necessary level of objectivity can be maintained. This will include, but is not limited to, a spouse, children, siblings, and parents or anyone with whom the psychologist has an emotionally or sexually intimate relationship.

(i) **Supervisor's responsibility.** As per 59 O.S., Section 1353(6), the supervising psychologist accepts full and complete responsibility for all professional conduct of the supervisee; all professional responsibility resides with the supervisor, not with the supervisee. The supervisee will be considered to have joined the practice of the supervisor. The supervisory psychologist will normally be expected to accept no more than three supervisees under the provision of this section. Exceptions to this limit may be approved by the Board if the Board determines that adequate supervision will be provided by the proposed relationship.

### **575:10-1-11. Telepsychology**

(a) **"Telepsychology"** means the practice of psychology as defined 59 O.S. § 1352, including psychological and school psychological supervision, by distance communication technology such as but not necessarily limited to telephone, email, Internet-based communications, and videoconferencing.

(b) **"Resident"** means any individual who is or has been present in Oklahoma for other than a temporary or transitory purpose, or who is domiciled in Oklahoma.

(c) **"Domicile"** means the place where an individual voluntarily establishes themselves and their family, not merely for

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a special or limited purpose, but with a present intention of making it their true, fixed, permanent home and principal establishment.

(d) In order to practice telepsychology in the state of Oklahoma, one must hold a current, valid license issued by the Oklahoma State Board of Examiners of Psychologists ("Board"), or be currently credentialed through the Psychology Interjurisdictional Compact (also known as PSYPACT), set forth in 59 O.S. § 1377 et seq. Psychological technicians, interns, and post-doctoral candidates approved by the Board to practice under the supervision of an Oklahoma licensed psychologist may also provide telepsychology services.

(e) Telepsychology providers must comply with all other provisions of the statutes and rules that govern the practice of psychology while engaging in telepsychology.

(f) The recipient of telepsychology services must be a resident or domiciled in Oklahoma, unless otherwise allowed by law. Those that provide telepsychology services bear responsibility for complying with all applicable laws, rules, and/or policies that govern the practice of telepsychology (for example, HIPAA regulations).

(g) Telepsychology providers recognize that telepsychology is not appropriate for all psychological problems and clients, and decisions regarding the appropriate use of telepsychology are made on a case-by-case basis.

(h) Telepsychology providers will document an emergency plan in the service recipient's record. The plan will specify the procedure for dealing with emergencies that will in an effective and timely way, provide for the service recipient's welfare.

(i) Telepsychology providers shall obtain and document informed consent for the provision of psychological health care services via telepsychology from the client. Such consent shall cover concerns unique to the receipt of psychological health care services via telepsychology, including risks to confidentiality and security, data storage policies and procedures specific to telepsychology, the possibility of disruption and/or interruption of service due to technological failure, insurance coverage considerations, and other issues that can reasonably be anticipated regarding the non-comparability between psychological health care services delivered in person and those delivered via telepsychology.

(j) Telepsychology providers shall establish an agreement relative to the client's access to face-to-face emergency services in the client's geographical area, in instances such as, but not necessarily limited to, the client experiencing a suicidal or homicidal crisis.

(k) Telepsychology providers shall ensure the security and confidentiality of communications and records created and maintained during telepsychology services, and must comply with all applicable laws, rules, and/or policies that govern the practice of telepsychology.

(l) Telepsychology providers using telepsychology for testing must ensure that the identity of service recipients remains secure, that test security is maintained, that test-taking conditions are conducive to quiet and private test administration, and that the parameters of the test(s) are not compromised.

(m) Telepsychology providers will explain to service recipients the potential limitations of conclusions and recommendations drawn from the results of testing and will document these limitations in the findings or report.

(n) Before delivering telepsychology services to recipients across state, territorial, and international boundaries, providers should familiarize themselves and ensure that they comply with all applicable laws.

[OAR Docket #22-665; filed 7-21-22]

## TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 25. DEFERRED COMPENSATION

[OAR Docket #22-554]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 7. Investment of Deferred Amounts

590:25-7-1. Investment Contracts [AMENDED]

Subchapter 9. Benefits

590:25-9-5. Late Retirement [AMENDED]

590:25-9-8. Death prior to January 1, 2022 [AMENDED]

590:25-9-17. Rollovers to other plans [AMENDED]

590:25-9-23. Death after December 31, 2021 [NEW]

590:25-9-24. Discontinuance of 2020 required minimum distributions [NEW]

### AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Section 1701.

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

December 6, 2021

### COMMENT PERIOD:

January 5, 2022 - February 16, 2022

### PUBLIC HEARING:

February 17, 2022

### ADOPTION:

February 17, 2022

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

February 23, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded Rules:

Subchapter 7. Investment of Deferred Amounts

590:25-7-1. Investment contacts [AMENDED]

### Gubernatorial Approval:

December 3, 2021

### Register Publication:

39 OK Reg 348

### Docket Number:

#21-916

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

OPERS is adding two rules and amending four rules in Chapter 25: The amendment to 590:25-7-1 adds separate accounts to the types of investment vehicles that can be included in the Plan's investment options. The amendment to 590:25-9-5 amends the required minimum distribution age to comply with federal legislation. The amendment to 590:25-9-8 adds an effective date for



this rule. The amendment to 590:25-9-17 adds SIMPLE IRAs to the list of plan types that can accept rollovers from SoonerSave. New rule 590:25-9-22 is required for compliance with the SECURE Act. The SECURE Act provides that upon the death of a plan participant, the designated individual beneficiary is required to take distributions of his or her entire inherited account within ten years, regardless of whether the RMDs had begun prior to the participant's death. The 10-year rule will not apply to an "eligible designated beneficiary." New rule 590:25-9-23 is required to comply with federal legislation related to 2020 RMD payments that were suspended by the CARES Act.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 7. INVESTMENT OF DEFERRED AMOUNTS**

**590:25-7-1. Investment contracts**

The deferred amount shall be delivered by the Employer to the Board to be invested in one or more of the following types of contracts or accounts issued or made available by a company or companies approved by the Board:

- (1) Make deposits through a savings account in an institution or institutions as determined by the Board;
- (2) Make deposits to a deferred fixed interest contract or other type of investment;
- (3) Make deposits to a deferred variable interest contract or other type of investment;
- (4) Make deposits to a mutual fund, ~~or~~ common trust fund, or separate account;
- (5) Make deposits to any combination of the investment options in subparagraphs (1) through (4) of this Section may be selected by the employee.

**SUBCHAPTER 9. BENEFITS**

**590:25-9-5. Late retirement**

If the Participant continues his employment after attaining 72 years of age or such other date as may be permitted by the federal Internal Revenue Code, all benefits payable under the Plan may be deferred until the Participant retires, terminates his employment, dies or when the Participant is faced with an unforeseeable emergency. If the Participant is not an active State employee, the payment of benefits must begin no later than April of the calendar year following the calendar year in which the Participant attained age 72 or such other date as may be permitted by the federal Internal Revenue Code. No additional deferral under this Plan may be made by the Participant after termination of employment.

**590:25-9-8. Death prior to January 1, 2022**

This Section shall be effective for Participant deaths prior to January 1, 2022. If the Participant dies prior to receiving Plan benefits, the benefits payable under this Plan shall be paid to his or her designated beneficiary in accordance with the distribution option selected by the designated beneficiary. If the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated beneficiary in accordance with the distribution option selected by the Participant unless the beneficiary selects a different distribution option in accordance with Plan provisions.

**590:25-9-17. Rollovers to other plans**

(a) Effective January 1, 2002, notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) As used in this section:

(1) "Eligible retirement plan", for purposes of a direct rollover, shall mean a qualified trust described in Section 401(a) of the Code, an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, or a Roth individual annuity (if the individual is eligible for a Roth rollover) described in Section 408(A)(e) for distributions made after December 31, 2007, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 18, 2015, an eligible retirement plan includes a SIMPLE IRA as described in Code § 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Code § 408(p)(2), as described in Code § 72(t)(6). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

(2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the designated

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beneficiary of the distributee, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); or (iv) any amount that is distributed on account of hardship.

(3) "Distributee" includes a Participant or a Participant's surviving spouse, or for the limited purposes set forth in paragraph (c) of this section, a non-spouse beneficiary.

(c) Effective January 1, 2007, a non-spouse beneficiary pursuant to Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in Section 408(a) of the Code, or an individual retirement annuity described in Section 408(b) of the Code, established for the purpose of receiving the distribution. A rollover pursuant to this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of Section 402(c) of the Code.

(d) Except as otherwise provided, this section shall apply to distributions made after December 31, 2001.

### **590:25-9-23. Death after December 31, 2021**

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70  $\frac{1}{2}$ ) (age seventy-two (72)

with respect to a Participant who would have attained age seventy and one-half (70  $\frac{1}{2}$ ) after December 31, 2019). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either:

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:25-9-22.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

(A) the surviving spouse of the Participant;

(B) a child of the Participant who has not reached the age of majority;

(C) disabled within the meaning of Code Section 72(m)(7);

(D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or

(E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) above shall cease to be an eligible designated Beneficiary as of the date he or she reaches the age of majority.

### **590:25-9-24. Discontinuance of 2020 required minimum distributions**

(a) Notwithstanding any other provisions of this Chapter, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021

for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code § 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either 1) equal to the 2020 RMDs or 2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs") will receive those distributions for 2020 unless the Participant or Beneficiary chooses to not receive such distributions.

(b) For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

[OAR Docket #22-554; filed 7-6-22]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 35. DEFERRED SAVINGS INCENTIVE PLAN

[OAR Docket #22-555]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 13. Benefits and Distributions
590:35-13-5. Death prior to January 1, 2022 [AMENDED]
590:35-13-8. Plan-to-plan transfers [AMENDED]
590:35-13-9. Rollovers to eligible retirement plan [AMENDED]
590:35-13-13. Death after December 31, 2021 [NEW]
590:35-13-14. Discontinuance of 2020 required minimum distributions [NEW]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Section 1707.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 6, 2021

COMMENT PERIOD:

January 5, 2022 - February 16, 2022

PUBLIC HEARING:

February 17, 2022

ADOPTION:

February 17, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 23, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amendment to 590:35-13-5 adds an effective date for this rule. The amendment to 590:35-13-8 removes language requiring Board action on plan-to-plan transfers. The amendment to 590:35-13-9 adds SIMPLE

IRAs as a plan types that can accept rollovers from SoonerSave. New rule 590:35-13-13 is required for compliance with the SECURE Act. The SECURE Act provides that upon the death of a plan participant, the designated individual beneficiary is required to take distributions of his or her entire inherited account within ten years, regardless of whether the RMDs had begun prior to the participant's death. The 10-year rule will not apply to an "eligible designated beneficiary." New rule 590:35-13-14 is required to comply with federal legislation related to 2020 RMD payments that were suspended by the CARES Act.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 13. BENEFITS AND DISTRIBUTIONS

590:35-13-5. Death prior to January 1, 2022

(a) This Section shall be effective for Participant deaths prior to January 1, 2022.

(ab) If the Participant dies prior to receiving Plan benefits, or the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated Beneficiary of the Participant in accordance with the distribution option selected by the Participant or the Beneficiary.

(bc) Distributions must be made primarily for the benefit of the Participant (or former Participant). Therefore, distribution which begins prior to the death of a Participant must be in a form such that the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated Beneficiary. Any amount not distributed to the Participant during his or her lifetime shall be distributed after the death of the Participant at least as rapidly as under the method of distribution used as of the date of his or her death. In addition, if the Participant dies prior to the commencement of distributions, the Participant's Account shall be distributed to the Beneficiary, commencing within one year of the employee's death, over the life of such Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary) but not to exceed 15 years; provided however if such Beneficiary is the surviving spouse of the Participant, then

(1i) such distributions shall, in all events, commence no later than December 31 of the calendar year in which the Participant would have attained age 70 1/2 (or such other date as may be permitted under applicable Treasury Regulations), and

(2ii) benefits payable to such spouse shall be completed during a period not in excess of such spouse's life expectancy. Life expectancies will not be recalculated annually.

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### 590:35-13-8. Plan-to-plan transfers

This Plan, ~~at the Board of Trustee's discretion~~, may make or receive plan-to-plan transfers to or from other qualified plans, provided the requirements of ~~Code Section 414(1) federal law~~ are met.

### 590:35-13-9. Rollovers to eligible retirement plan

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) As used in this section:

(1) **"Eligible rollover distribution"** means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income, except to the extent provided by paragraph (c) of this section; and effective for distributions made after December 31, 2001, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(2) **"Eligible retirement plan"** means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a qualified trust described in Code Section 401(a), or Roth individual annuity (if the individual is eligible for a Roth rollover) described in Code Section 408(A)(e) for distributions made after December 31, 2007, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 18, 2015, an eligible retirement plan includes a SIMPLE IRA as described in Code § 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Code § 408(p)(2), as described in Code § 72(t)(6). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under

a qualified domestic relation order, as defined in Code Section 414(p).

(3) **"Distributee"** means a Participant. In addition, the Participant or the Participant's surviving spouse are distributees with regard to the interest of the spouse. For the limited purposes set forth in paragraph (d) of this section, distributee means a non-spouse beneficiary.

(4) **"Direct rollover"** means a payment by the Plan to the eligible retirement plan specified by the distributee.

(c) A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such a portion may be transferred only to an individual retirement account or an individual retirement annuity described in section Code Section 408(a) or (b) of the Code, a qualified plan described in section Code Sections 401(a) or 403(a) of the Code, or to an annuity contract described in section Code Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(d) Effective January 1, 2007, a non-spouse beneficiary pursuant to section Code Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in section Code Section 408(a) of the Code, or an individual retirement annuity described in section Code Section 408(b) of the Code, established for the purpose of receiving the distribution. A rollover pursuant to this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of section Code Section 402(c) of the Code.

### 590:35-13-13. Death after December 31, 2021

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of

the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 1/2) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70 1/2) after December 31, 2019). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either:

- (i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or
- (ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:35-13-13.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

- (A) the surviving spouse of the Participant;
- (B) a child of the Participant who has not reached the age of majority;
- (C) disabled within the meaning of Code Section 72(m)(7);
- (D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or
- (E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B)

above shall cease to be an eligible designated Beneficiary as of the date he or she reaches the age of majority.

**590:35-13-14. Discontinuance of 2020 required minimum distributions**

(a) Notwithstanding any other provisions of this Chapter, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code § 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either 1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs") will receive those distributions for 2020 unless the Participant or Beneficiary chooses to not receive such distributions.

(b) For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

[OAR Docket #22-555; filed 7-6-22]

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM  
CHAPTER 40. DEFINED CONTRIBUTION SYSTEM**

[OAR Docket #22-556]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 7. Defined Contribution 401(A) Plan
- Part 7. Investments
- 590:40-7-25. Investment contracts [AMENDED]
- Part 9. Benefits and Distributions
- 590:40-7-34. Death prior to January 1, 2022 [AMENDED]
- 590:40-7-36. Rollovers to eligible retirement plan [AMENDED]
- 590:40-7-39. Death after December 31, 2021 [NEW]
- 590:40-7-40. Discontinuance of 2020 required minimum distributions [NEW]
- 590:40-7-41. Plan-to-plan transfers [NEW]
- Subchapter 9. Defined Contribution 457(B) Plan
- Part 5. Investments
- 590:40-9-20. Investment contracts [AMENDED]
- Part 7. Benefits
- 590:40-9-28. Late retirement [AMENDED]
- 590:40-9-31. Death prior to January 1, 2022 [AMENDED]
- 590:40-9-39. Rollovers to other plans [AMENDED]
- 590:40-9-44. Death after December 31, 2021 [NEW]
- 590:40-9-45. Discontinuance of 2020 required minimum distributions [NEW]

**AUTHORITY:**

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Section 909 and 935.3.

# Permanent Final Adoptions

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

December 6, 2021

## COMMENT PERIOD:

January 5, 2022 - February 16, 2022

## PUBLIC HEARING:

February 17, 2022

## ADOPTION:

February 17, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 23, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded Rules:

Subchapter 7. Defined Contribution 401(a) Plan

Part 7. Investments

590:40-7-25. Investment contracts [AMENDED]

Subchapter 9. Defined Contribution 457 (b) Plan

Part 5. Investments

590:40-9-20. Investment contracts [AMENDED]

## Gubernatorial Approval:

December 3, 2021

## Register Publication:

39 OK Reg 349

## Docket Number:

#21-917

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The amendment to 590:40-7-25 adds separate accounts to the types of investment vehicles that can be included in the Plan's investment options. The amendment to 590:40-7-34 adds an effective date for this rule. The amendment to 590:40-7-36 adds SIMPLE IRAs to the list of plan types that can accept rollovers. New rule 590:40-7-39 is required for compliance with the SECURE Act. The SECURE Act provides that upon the death of a plan participant, the designated individual beneficiary is required to take distributions of his or her entire inherited account within ten years, regardless of whether the RMDs had begun prior to the participant's death. The 10-year rule will not apply to an "eligible designated beneficiary." New rule 590:40-7-40 is required to comply with federal legislation related to 2020 RMD payments that were suspended by the CARES Act. New rule 590:40-7-41 allows plan-to-plan transfers. The amendment to 590:40-9-20 adds separate accounts to the types of investment vehicles that can be included in the Plan's investment options. The amendment to 590:40-9-28 amends the required minimum distribution age to comply with federal legislation. The amendment to 590:40-9-31 adds an effective date for this rule. The amendment to 590:40-9-39 adds SIMPLE IRAs to the list of plan types that can accept rollovers from Pathfinder. New rule 590:40-9-43 is required for compliance with the SECURE Act. The SECURE Act provides that upon the death of a plan participant, the designated individual beneficiary is required to take distributions of his or her entire inherited account within ten years, regardless of whether the RMDs had begun prior to the participant's death. The 10-year rule will not apply to an "eligible designated beneficiary." New rule 590:40-9-44 is required to comply with federal legislation related to 2020 RMD payments that were suspended by the CARES Act.

## CONTACT PERSON:

Kristi Ice, General Counsel, Oklahoma Public Employees Retirement System, 5400 N. Grand Boulevard, Suite 400, Oklahoma City, Oklahoma 73112, 405-858-6737

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 7. DEFINED CONTRIBUTION 401(A) PLAN

### PART 7. INVESTMENTS

#### 590:40-7-25. Investment contracts

Employer and Participant contributions shall be delivered by the Employer to OPERS to be invested in one or more of the following types of contracts or accounts issued or made available by a company or companies approved by the Board:

- (1) savings account in an institution or institutions as determined by the Board;
- (2) deferred fixed interest contract or other type of investment;
- (3) deferred variable interest contract or other types of investment;
- (4) mutual fund, ~~or~~ common/collective trust fund, or separate account;
- (5) any combination of the investment options in paragraphs (1) through (4) of this Section.

### PART 9. BENEFITS AND DISTRIBUTIONS

#### 590:40-7-34. Death prior to January 1, 2022

(a) This Section shall be effective for Participant deaths prior to January 1, 2022.

~~(a)~~ **Payment to beneficiary.** If the Participant dies prior to receiving Plan benefits, or the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated Beneficiary of the Participant in accordance with the distribution option selected by the Participant or the Beneficiary.

~~(b)~~ **Distribution method.** Distributions must be made primarily for the benefit of the Participant (or former Participant). Therefore, distribution which begins prior to the death of a Participant must be in a form such that the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated Beneficiary. Any amount not distributed to the Participant during his or her lifetime shall be distributed after the death of the Participant at least as rapidly as under the method of distribution used as of the date of his or her death. In addition, if the Participant dies prior to the commencement of distributions, the Participant's Account shall be distributed to the Beneficiary, commencing within one year of the employee's death, over the life of such Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary) but not to exceed 15 years; provided however if such Beneficiary is the surviving spouse of the Participant, then

- (1) such distributions shall, in all events, commence no later than December 31 of the calendar year in which the Participant would have attained age 70  $\frac{1}{2}$  (or such other date as may be permitted under applicable Treasury Regulations), and
- (2) benefits payable to such spouse shall be completed during a period not in excess of such spouse's life

expectancy. Life expectancies will not be recalculated annually.

**590:40-7-36. Rollovers to eligible retirement plan**

(a) **Election to rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by OPERS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) **Definitions.** As used in this section:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income, except to the extent provided by paragraph (c) of this section; and any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(2) "Eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a qualified trust described in Code Section 401(a), or Roth individual annuity (if the individual is eligible for a Roth rollover) described in Code Section 408(A)(e), that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 18, 2015, an eligible retirement plan includes a SIMPLE IRA as described in Code § 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Code § 408(p)(2), as described in Code § 72(t)(6). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(3) "Distributee" means a Participant. In addition, the Participant or the Participant's surviving spouse are distributees with regard to the interest of the spouse. For the

limited purposes set forth in paragraph (d) of this section, distributee means a non-spouse beneficiary.

(4) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.

(c) **After-tax contributions.** A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such a portion may be transferred only to an individual retirement account or an individual retirement annuity described in section Code Section 408(a) or (b) of the Code, a qualified plan described in section Code Sections 401(a) or 403(a) of the Code, or to an annuity contract described in section Code Section 403(b) of the Code, that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(d) **Non-spouse beneficiary.** A non-spouse beneficiary pursuant to section Code Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in section Code Section 408(a) of the Code, or an individual retirement annuity described in section Code Section 408(b) of the Code, established for the purpose of receiving the distribution. Such account or annuity shall be treated as an "inherited" individual retirement account or annuity. A rollover pursuant to this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of Code Section 402(c).

**590:40-7-39. Death after December 31, 2021**

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later

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of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70  $\frac{1}{2}$ ) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70  $\frac{1}{2}$ ) after December 31, 2019). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:35-13-13.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

(A) the surviving spouse of the Participant;

(B) a child of the Participant who has not reached the age of majority;

(C) disabled within the meaning of Code Section 72(m)(7);

(D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or

(E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) above shall cease to be an eligible designated Beneficiary as of the date he or she reaches the age of majority.

### **590:40-7-40. Discontinuance of 2020 required minimum distributions**

(a) Notwithstanding any other provisions of this Chapter, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code § 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either 1) equal to the 2020 RMDs or 2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs") will receive those distributions for 2020 unless the Participant or Beneficiary chooses to not receive such distributions.

(b) For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

### **590:40-7-41. Plan-to-plan transfers**

This Plan may make or receive plan-to-plan transfers to or from other qualified plans, provided the requirements of federal law are met.

## **SUBCHAPTER 9. DEFINED CONTRIBUTION 457(B) PLAN**

### **PART 5. INVESTMENTS**

#### **590:40-9-20. Investment contracts**

The deferred amount shall be delivered by the Employer to OPERS to be invested in one or more of the following types of contracts or accounts issued or made available by a company or companies approved by the Board:

- (1) savings account in an institution or institutions as determined by the Board;
- (2) deferred fixed interest contract or other type of investment;
- (3) deferred variable interest contract or other type of investment;
- (4) mutual fund, ~~or~~ common/collective trust fund, or separate account;
- (5) any combination of the investment options in paragraphs (1) through (4) of this Section.

### **PART 7. BENEFITS**

#### **590:40-9-28. Late retirement**

If the Participant continues employment after attaining 72 years of age or such other date as may be permitted by the federal Internal Revenue Code, all benefits payable under the



Plan may be deferred until the Participant retires, terminates employment, dies, or when the Participant is faced with an unforeseeable emergency. If the Participant is not an active Employee, the payment of benefits must begin no later than April 1 of the calendar year following the calendar year in which the Participant attained age 72 or such other date as may be permitted by the federal Internal Revenue Code. No additional deferrals under this Plan may be made by the Participant after termination of employment.

### **590:40-9-31. Death prior to January 1, 2022**

This Section shall be effective for Participant deaths prior to January 1, 2022. If the Participant dies prior to receiving Plan benefits, the benefits payable under this Plan shall be paid to his or her designated beneficiary under the distribution option selected by the designated beneficiary. If the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated Beneficiary under the distribution option selected by the Participant unless the Beneficiary selects a different distribution option under Plan provisions.

### **590:40-9-39. Rollovers to other plans**

(a) **Election to rollover.** Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and the manner prescribed by OPERS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) **Definitions.** As used in this section:

(1) **"Eligible retirement plan"** shall mean a qualified trust described in Section 401(a) of the Code, an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, or a Roth individual annuity (if the individual is eligible for a Roth rollover) described in Section 408(A)(e) that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 18, 2015, an eligible retirement plan includes a SIMPLE IRA as described in Code § 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Code § 408(p)(2), as described in Code § 72(t)(6). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

(2) **"Eligible rollover distribution"** means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the designated beneficiary of the distributee, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; or any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code Section 457 or any distribution that is reasonably expected to total less than \$200 during the year.

(3) **"Distributee"** includes a Participant or a Participant's surviving spouse, or, for the limited purposes set forth in paragraph (c) of this section, a non-spouse beneficiary as described in (c) below, as defined by Code Section 401(a)(9)(E).

(4) **"Direct rollover"** means a payment by the Plan to the eligible retirement plan specified by the Distributee.

(c) **Non-spouse beneficiary.** A non-spouse beneficiary pursuant to Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in Section 408(a) of the Code, or an individual retirement annuity described in Section 408(b) of the Code, established for the purpose of receiving the distribution. Such account or annuity shall be treated as an "inherited" individual retirement account or annuity. A rollover under this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of Section 402(c) of the Code.

### **590:40-9-44. Death after December 31, 2021**

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

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(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70  $\frac{1}{2}$ ) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70  $\frac{1}{2}$ ) after December 31, 2019). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either:

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:35-13-13.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

(A) the surviving spouse of the Participant;

(B) a child of the Participant who has not reached the age of majority;

(C) disabled within the meaning of Code Section 72(m)(7);

(D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or

(E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) above shall cease to be an eligible designated Beneficiary as of the date he or she reaches the age of majority.

## **590:40-9-45. Discontinuance of 2020 required minimum distributions**

(a) Notwithstanding any other provisions of this Chapter, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code § 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either 1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs") will receive those distributions for 2020 unless the Participant or Beneficiary chooses to not receive such distributions.

(b) For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

[OAR Docket #22-556; filed 7-6-22]

## **TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY**

[OAR Docket #22-672]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 15. Sale and auction of surplus and forfeited property

595:1-15-1. Purpose [AMENDED]

595:15-1-4. Auction of surplus and forfeited property [AMENDED]

Subchapter 19. Oklahoma State Award Program

595:1-19-1. Definitions [AMENDED]

595:1-19-2. Order of precedence [AMENDED]

595:1-19-4. Criteria for eligibility [AMENDED]

595:1-19-5. Criteria for proper wear of the Oklahoma Medal of Valor and the Oklahoma Purple Heart, and the Oklahoma Distinguished Meritorious Service Medal [AMENDED]

### **AUTHORITY:**

47 O.S. §2-108.5 and 47 O.S. §2-123; Department of Public Safety

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

January 25, 2022

### **COMMENT PERIOD:**

Expired March 17, 2022

### **PUBLIC HEARING:**

March 18, 2022

### **ADOPTION:**

April 1, 2022

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

April 1, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 19. Oklahoma State Award Program
- 595:1-19-1. Definitions [AMENDED]
- 595:1-19-2. Order of precedence [AMENDED]
- 595:1-19-4. Criteria for eligibility [AMENDED]
- 595:1-19-5. Criteria for proper wear of the Oklahoma Medal of Valor and the Oklahoma Purple Heart, and the Oklahoma Distinguished Meritorious Service Medal [AMENDED]

**Gubernatorial approval:**

December 10, 2021

**Register publication:**

39 Ok Reg 571

**Docket number:**

22-31

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions allow for third party auction companies to conduct auctions on behalf of the agency. The proposed rules provide for procedures related to third party administered auctions, including advertising, payment, and viewing of auctioned property. The proposed OSAP rules make accommodation for the Oklahoma Meritorious Service Medal, as provided by SB365 passed in the 2021 legislative session

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 15. SALE AND AUCTION OF SURPLUS AND FORFEITED PROPERTY**

**595:1-15-1. Purpose**

The purpose of this subchapter is to establish procedures the Department of Public Safety will use for [47 O.S. § 2-123(C)]:

- (1) the sale by the Department of surplus property, and
- (2) the auction by the Department of surplus and forfeited property, and
- (3) online auctions of surplus or forfeited property, and
- (4) auctions by third party vendors on behalf of the Department.

**595:1-15-4. Auction of surplus and forfeited property**

(a) **General.** All auctions are open to the public. Any person or agency may purchase surplus or forfeited property at an auction conducted by the Department. The Department may conduct any auction exclusively on its website, or contract with a third-party vendor to conduct an auction on its behalf,

or conduct an auction in conjunction with the Office of Management and Enterprise Services in accordance with State surplus procedures.

(b) **Limitations.**

(1) **Property is considered obligated.** When surplus and forfeited property has been determined by the ~~department~~ Department to be included in an auction and has been obligated as such, no person or agency may request to purchase, nor will the Department sell, any of that property outside of the auction.

(2) **Property reserved for sale to agencies.** Surplus equipment may be reserved for sale only to agencies.

(3) **Property withdrawn from auction.** Notwithstanding any prior notice or published list of property to be sold at auction, vehicles, vessels, and motors which have been tampered with will be withdrawn from the auction.

(4) **Property not sold.** Any unsold surplus or forfeited property may be held by the Department to be sold at a subsequent auction conducted by the Department.

(c) **Information regarding surplus and forfeited property to be auctioned.**

(1) **Auction dates.** The Department shall determine auction dates as needed from time to time to dispose of surplus and forfeited property.

(2) **Notice of auction.** Notice to the public of an auction to be conducted by the will be by publication in newspapers throughout Oklahoma. However, announcements made the day of the sale supercede any prior terms stated in such publications. Any interested party may contact the Director regarding the auction dates.

- (3) **Contact.** The Director may be contacted by:
  - (A) Telephone: (405) 425-2122
  - (B) Mail: Department of Public Safety, Director of Transportation, P.O. Box 11415, Oklahoma City, OK 73136-0415.
  - (C) Fax: (405) 425-2304

(4) **Viewing surplus and forfeited property.** Surplus and forfeited property which is to be auctioned may be viewed from 12 p.m. (noon) until 2:00 p.m. on the day of the auction at the location published in the notice of auction.

(d) **Participation in an auction.** Any person or agency wishing to bid at an auction must register to bid on the day of the auction. A unique bidder's registration number will be assigned to each registrant. No person or agency may bid unless the person or agency has registered and been issued a bidder's registration number.

(e) **Pricing.** As in any auction, prices are dependent upon the condition of and the interest in each particular property for sale. However, the Department reserves the right to set a minimum bid. In addition, the auctioneer reserves the right to reject any or all bids.

(f) **Payment.**

(1) **Payment to be made at auction.** Successful bidders shall appear before the cashier at the auction and make payment-in-full of the successful bid price, plus sales tax if applicable, or make arrangements for payment-in-full

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with the Director of Finance of the Department or the Director's designee. Proper identification will be required. Property will not be released by the Department to the successful bidder until payment-in-full is confirmed. Failure to appear at the cashier may result in the Department nullifying the successful bid and in the loss of right to the property by the successful bidder.

(2) **Form of payment from a person.** Acceptable forms of payment from any person are:

(A) Cash.

(B) Personal or business check accompanied by a notarized letter of credit from the financial institution's president or vice president guaranteeing funds are available in the account to cover the check.

(C) Cashier's check.

(E) Personal or business check not accompanied by a notarized letter of credit [see (g)(6) of this Section regarding release of property].

(3) **Forms of payment from an agency.** Acceptable forms of payment from an agency are:

(A) Agency purchase order. The purchase order shall be on a form adopted by the purchasing agency and signed by an agency employee authorized to do so.

(B) Agency check, claim, or warrant.

(g) **Terms of sale.**

(1) Surplus and forfeited property is sold "as is - where is" with no warranty implied or given by the Department.

(2) Surplus and forfeited property which has been purchased ~~can not~~ cannot be returned to the Department.

(3) If requested, the Department will provide the successful bidder with invoice. The Department will provide the purchaser with a receipt upon payment. If the surplus or forfeited property purchased is or includes a vehicle, vessel, or motor, the Department will also provide the title to the vehicle, vessel, or motor. For an operable vehicle, the Department will provide a letter which will give authority for the purchaser to drive the vehicle from the Department to another location without a license plate [47 O.S. § 1132(B)]. No title will be provided until payment-in-full is confirmed. The purchaser is responsible for transfer of title of any vehicle, vessel, or motor purchased.

(4) All sales will be transacted in good faith. Payment-in-full on an agency's purchase order is due within forty-five (45) days of the sale. Failure to pay authorizes the Department to repossess any surplus or forfeited property for which the payment-in-full has not been received.

(5) Prior to sale, all identifying decals and insignias on a patrol vehicle will be removed by the Department. No patrol vehicle shall be sold with the intent that the vehicle represent the Oklahoma Highway Patrol.

(6) Surplus or forfeited property paid for by personal or business check without an accompanying notarized letter of credit will not be released until the check has cleared the financial institution on which it is drawn. To obtain earlier release of the property, a personal or business check may be replaced with another form of payment, as described

in (f)(2)(A) through (f)(2)(D) of this Section, presented at the Finance Division of the Department during regular business hours (8am to 4:30pm) on the business day immediately following the auction.

(7) Sales tax will be charged, as applicable and required by law, and collected from the successful bidder on any surplus or forfeited property purchased.

(8) Any surplus or forfeited property purchased shall be picked up within forty-eight (48) hours after confirmation of payment unless other arrangements have been made with the Director. If the property is not picked up as required by this paragraph, the property may be impounded by the Department. The purchaser shall be responsible for any towing and/or storage fees associated with the impoundment of any vehicle or vessel.

(9) The Director will be the final authority in resolving any discrepancy, dispute, or financial arrangement.

(h) **Transportation of vessels and inoperable vehicles.** The purchaser shall be responsible for safe removal and transportation of any vessel or inoperable vehicle.

(i) **Third party vendors.** The Department may contract, in accordance with the Central Purchasing Act, with third party vendors to conduct auctions of surplus and forfeited property on its behalf. The third-party vendor, in accordance with the contract with the Department, will set the terms of the auction with regard to:

(1) Dates and times of auction;

(2) Notification of the auction;

(3) Viewing property offered at the auction;

(4) Payment terms;

(5) Terms of sale.

## SUBCHAPTER 19. OKLAHOMA STATE AWARD PROGRAM

### 595:1-19-1. Definitions

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

**"Advisory board"** means an advisory board formed at the discretion of the OSAP Committee chair comprised of a designee from each of the nine members of the OSAP Committee to collect, review, and make initial award recommendations to the Committee.

**"Oklahoma Distinguished Meritorious Service Medal"** means a medal or medals awarded by the Governor, in the name of the Oklahoma, to any person who has demonstrated meritorious achievement or has shown distinguished meritorious service to the state over an extended period of time while performing or actively engaged in public service activities.

**"Oklahoma Medal of Valor"** means a medal or medals awarded by the Governor, in the name of the State of Oklahoma to any person, living or deceased, in recognition of extraordinary acts of valor by public safety members and other citizens whose actions display great moral strength and personal

courage in the face of fear, danger or difficulty while actively engaged in public service activities.

**"Oklahoma Purple Heart"** means a medal or medals awarded by the Governor in the name of the State of Oklahoma, exclusively to public safety members, living or deceased, who while serving under competent authority and acting within the legal and justified scope of their position suffers life-threatening injuries or injury resulting in a loss of limb, serious body impairment, deformity, loss of life or any injury resulting in the public safety member's service related retirement.

**"OSAP Committee"** means the Oklahoma State Award Program Committee, also referred to as the "OSAP Committee".

**"Public Safety Member"** means a person acting within the legal scope of duty and serving in any full time, part time, volunteer or reserve capacity as a law enforcement officer, correctional officer, firefighter, paramedic or emergency medical technician of any jurisdictional authority.

**"Public Service Activity"** means activities, individual actions, and any other personal act directly related to the aid of another person or persons without consideration of compensation or recognition.

**595:1-19-2. Order of precedence**

(a) The Oklahoma Medal of Valor is recognized as the highest award of honor presented to a member of a public safety agency or a member of the public. Award recipients are selected by the OSAP Committee and awarded by the Governor on behalf of the State of Oklahoma.

(b) The Oklahoma Purple Heart is recognized as the second highest award of honor presented to a member of a public safety agency. Award recipients are selected by the OSAP Committee and awarded by the Governor on behalf of the State of Oklahoma.

(c) The Oklahoma Distinguished Meritorious Service Medal is recognized as the third highest award of honor presented to a member of a public safety agency or a member of the public. Award recipients are selected by the OSAP Committee and awarded by the Governor on behalf of the State of Oklahoma.

**595:1-19-4. Criteria for eligibility**

(a) The criteria for eligibility to receive the Oklahoma Medal of Valor for meritorious service includes any person, living or deceased, who, while performing a legal act:

- (1) demonstrates an extraordinary act of valor; or
- (2) demonstrates a distinct act of moral strength; or
- (3) demonstrates great personal courage in the face of mortal fear, danger, or difficulty, regardless of their personal safety; and
- (4) was actively engaged in public service activities.

(b) The criteria for eligibility to receive the Oklahoma Purple Heart for serious line of duty injuries includes any public safety member, living or deceased, who, while performing a legal act,

(1) suffers a life-threatening injury as determined by the OSAP Committee; or

(2) suffers any injury resulting in a loss of limb, serious body impairment, deformity; loss of life; or

(3) suffers any injury resulting in the public safety member's permanent service-related retirement.

(c) The criteria for eligibility to receive the Oklahoma Distinguished Meritorious Service Medal for exemplary service to the state, includes any public safety member, living or deceased, who, served the State of Oklahoma in a public safety capacity for an extended period of time, and exhibited:

(1) Professionalism,

(2) Expertise,

(3) Dedication, and

(4) Selflessness.

(d) Recipients may, at the discretion of the Governor and based on the recommendation of the OSAP Committee, receive more than one award for any specific act that meets the criteria for eligibility.

**595:1-19-5. Criteria for proper wear of the Oklahoma Medal of Valor ~~and~~ the Oklahoma Purple Heart, and the Oklahoma Distinguished Meritorious Service Medal**

(a) The proper uniform wear of the Oklahoma Medal of Valor and the Oklahoma Purple Heart will be at the discretion of the recipient's individual public safety agency.

(b) If no agency policy exists, the recipient will wear a uniform medal centered above the right breast pocket or approximate location, at least one (1) inch above the upper seam of the pocket.

(c) Uniform award ribbons will be predominately worn, centered, one-half inch above their right breast pocket or approximate location.

(d) Award medals will be worn by lanyard from the recipient's neck depending on the award or appurtenance design at the time the medal was awarded.

(e) The Medal of Valor will be the predominately displayed award with no other medals, ribbons or awards worn above or to the right of the award.

(f) The Purple Heart will be the predominately displayed award with no other medals, ribbons, or awards worn above or to the right of the award, other than the Medal of Valor.

(g) The Oklahoma Distinguished Meritorious Service Medal will be the predominately displayed awarded with no other medals, ribbons, or awards worn above or to the right of the award, other than the Medal of Valor and the Purple Heart.

(h) Civilian or non-uniformed recipients will wear or display the award or other appurtenances in the manner it was awarded.

[OAR Docket #22-672; filed 7-21-22]

# Permanent Final Adoptions

## TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 25. WRECKERS AND TOWING SERVICES

[OAR Docket #22-675]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
595:25-1-2. Definitions [AMENDED]  
Subchapter 3. Wrecker License  
595:25-3-2. Applications [AMENDED]  
595:25-3-3. Renewal [AMENDED]  
Subchapter 5. All Wrecker Operators  
595:25-5-3. Operation [AMENDED]  
Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements  
595:25-9-2. Operator requirements [AMENDED]

### AUTHORITY:

Department of Public Safety; 47 O.S. §952, HB 2741 (2021)

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

January 25, 2022

### COMMENT PERIOD:

Expired March 17, 2022

### PUBLIC HEARING:

March 18, 2022

### ADOPTION:

April 1, 2022

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

April 1, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revisions increase fees for an initial wrecker license and increase the fees for the annual renewal of a wrecker license, pursuant to legislative enactments effective November 1, 2021. The proposed revisions provide for additional methods of payment of fees. The proposed revisions provide guidance on methods of releasing vehicles to next of kin or personal representatives. The proposed rules provide guidance on the release of vehicles when the vehicle in question has been damaged to the point of being unidentifiable.

### CONTACT PERSON:

Latosha Carrillo, Administrative Programs Officer III, Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136, 405-425-2077, latosha.carrillo@dps.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 595:25-1-2. Definitions

Any reference to "this Act" means 47 O.S. § 951 et seq. unless otherwise specified. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Call**" means each request for service of an operator resulting in an operator being able to receive compensation for these services.

"**Commissioners Designee**" means the authorized individual such as a director or administrative officer of the division.

"**Class AA wrecker operator**" or "**AA truck wrecker operator**" means any wrecker operator who also meets all the requirements of 47 O.S. § 952(D) for towing for law enforcement agencies. Class AA may also be used for private property towing and consent towing. Class AA must have the ability to tow, recover and haul.

"**Class AA Wrecker Support Vehicle**" or "**Support Vehicle**" means a general class wrecker capable of assisting and supporting the towing and recovery at the scene of an incident.

"**Commission**" means the Oklahoma Corporation Commission.

"**Commissioner**" means the Commissioner of Public Safety, as defined by 47 O.S. § 1-109 and as described in 47 O.S. § 2-102.

"**Department**" means the Department of Public Safety.

"**DPS number**" means a permanent number assigned to a wrecker operator, by the Department which is personal and unique to the wrecker service.

"**GVWR**" means gross vehicle weight rating.

"**IM categories**" means the severity of the incident.

(A) Minor incident is any incident which can be mitigated within thirty (30) minutes or less with limited traffic interference;

(B) Intermediate incident is any incident in which mitigation is thirty (30) to sixty (60) minutes in length and one or more vehicle lanes of travel are affected; and

(C) Major incident is any incident in which mitigation is greater than sixty (60) minutes in length and one or more lanes of travel are affected and the potential for special equipment may be needed and utilized for IM.

"**Incident Management (IM)**" means any on or off roadway incident in which traffic flow is significantly reduced, delayed or stopped as a result of vehicle collisions, cargo/content spills, visibility/weather conditions, or any other hazards associated with severe reductions of vehicular speed and movement within a traffic lane or lanes.

"**Inspection Officer**" means the individual that has been trained and certified by the Department to inspect wrecker vehicles and wrecker facilities.

"**Junk vehicle**" means a vehicle which is ten (10) years old or older and worth less than three hundred dollars (\$300.00) [42 O.S. §91].

"**Law enforcement tow**" means a tow of a vehicle made by an operator when a law enforcement officer compels a vehicle be towed or makes a request for a tow using a law

enforcement rotation log and to which the rates and fees as prescribed by the Corporation Commission shall apply.

**"Nonconsensual tow"** means the transportation of a vehicle without the consent or knowledge of the vehicle's owner, possessor, agent, insurer, lien holder, or any other person in possession of or in charge of any vehicle and includes the transportation or towing of the vehicle under lawful circumstances or necessity for the public interest including removing from the roadway for public safety or public convenience, or accidents, by any law enforcement officer or property agent or removal from public or private property as a result of abandonment or unauthorized parking by the property owner, agent, possessor, or other legal entity for the property owner. [47 O.S. § 951(10)]

**"Officer"** means any peace officer.

**"Operator"** means any person or legal entity owning or operating a licensed wrecker vehicle or a licensed wrecker or towing service and any employee thereof.

**"Owner request tow"** means a tow of a vehicle made by an operator at the request of the owner, or authorized agent of the owner ~~and which regardless whether the tow is not~~ compelled or required by a law enforcement officer.

**"Principal Place of business"** or **"Business location"** means a permanent structure, not mounted on wheels, occupied by the wrecker operator at the physical address of the wrecker service, as shown on the wrecker license, with a publicly listed telephone number and functioning utilities including but not limited to electricity and water, where normal business is transacted and all wrecker records are maintained. Effective January 1, 2005, the place of business shall be located in Oklahoma. The principal business full address, including county, must be verified by documentation, such as company letterhead, business card, tax documents, or other official business documents. The facility must be capable and large enough to conduct business, storage of records and all transactions of business. Any additional location or locations within twenty-five (25) miles of the principal place of business will be considered an extension location and will not be made to meet the requirements of the primary/principal business office but shall meet all storage requirements. All business transactions including, but not limited to, invoicing, ticketing, receipting, releasing, and collecting payment, will be conducted at the location in which the vehicle is stored.

**"Private Property Tow"** means a tow of a vehicle which is made from private property by an operator at the request of the owner, legal possessor, or authorized agent in control of the real property, which shall be towed under the provisions of 47 O.S. § 954A and to which the rates and fees as prescribed by the Corporation Commissioner shall apply.

**"Rotation log"** means a list for each Highway Patrol Troop of the Department of current Class AA wrecker operators, meeting the qualifications of Class AA truck wrecker services, whose place of business are within the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA-TL truck wrecker operators only.

**"Tow/Towing"** means the use of a wrecker vehicle to lift, pull, move, haul or otherwise transport any other vehicle by means of: (a) attaching the vehicle to and pulling the vehicle with the wrecker vehicle, or (b) loading the vehicle onto and transporting the vehicle upon the wrecker vehicle". [47 O.S. § 951(3)]

**"Traffic tie-up"** means any situation in which any officer deems it necessary to control the orderly flow of traffic.

**"Truck wreckers"** means every motor vehicle properly designed and equipped according to Department of Public Safety specifications with wrecker body and winch or lifting apparatus suitably designed to safely move, pull or tow wrecked, damaged or disabled trucks, truck-tractors, road tractors, trailers, semi-trailers, buses and/or other vehicles and conveyances that use the highways of the state of Oklahoma. The designation as a truck wrecker shall be used for Class AA-TL wrecker vehicles only.

**"Truck wrecker rotation log"** means a list for each Highway Patrol Troop of the Department of current Class AA wrecker operators, meeting the qualifications of Class AA truck wrecker services, whose places of business are within the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA-TL truck wrecker operators only.

**"Wrecker dolly"** means a wheeled device which is used to support one end of a motor vehicle for towing.

**"Wrecker license"** means the wrecker license as provided by 47 O.S. § 951, et seq.

**"Wrecker operator"** means any operator who is licensed under this chapter and the laws of this state and who meets all requirements of the rules of this Chapter, pertaining to wrecker vehicles as defined in this Chapter.

**"Wrecker or towing service", "wrecker service", or "towing service"** means engaging in the business of or performing the act of towing or offering to tow any vehicle, except: (a) where the operator owns the towed vehicle and displays on both sides of the wrecker vehicle in plainly visible letters not less than two (2) inches in height the words "NOT FOR HIRE", (b) where the service is performed by a transporter as defined in [47 O.S.] section 1-181 of this title, (c) where service is performed in conjunction with the transportation of household goods and property, (d) where the wrecker vehicle is owned or operated by the United States government, the State of Oklahoma, or any department or political subdivision thereof, or (e) where the service is performed by an out-of-state wrecker service at the request of the vehicle owner or operator, and the vehicle is being towed: (1) in either direction across the border between Oklahoma and a neighboring state, or (2) through Oklahoma in transit to another state; provided, the out-of-state wrecker service shall comply with all other requirements regarding interstate commerce as set forth in law. [47 O.S. § 951(6)]

**"Wrecker" or "wrecker vehicle"**, as defined by 47 O.S. § 951, et. seq., means any vehicle, other than a transport as defined in 47 O.S. §1-181, equipped with a winch, cable or other device designed to lift, pull or move a disabled vehicle

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incapable of self-propulsion. (Does not include a vehicle with a push bumper only.)

(A) Class AA - Any wrecker vehicle not less than nine thousand pounds (9,000 lbs.) GVWR and meeting minimum requirements as established for Class AA wreckers in this Chapter.

(B) Class AA-TM - Any wrecker vehicle not less than twenty-four thousand pounds (24,000 lbs.) GVWR and meeting minimum requirements as established for Class AA-TM Wreckers in this Chapter.

(C) Class AA-TL - Any wrecker vehicle not less than forty-four thousand pounds (44,000 lbs.) GVWR and meeting minimum requirements as established for Class AA-TL Wreckers in this Chapter.

(D) Class G (General) - All other wrecker vehicles as defined by 47 O.S. § 951, et. seq., provided a Class G wrecker shall also be considered a wrecker support vehicle for the purposes of 47 O.S. § 12-218.1. If a Class G wrecker service provides storage, it must meet the same facilities, storage, and insurance as a Class AA wrecker service. If the Class G wrecker service does not provide storage, it will not be required to meet the facilities, storage and insurance requirements as a Class AA wrecker service. Class G wreckers services must meet the Class G vehicle requirements and must have a verified primary business location.

### SUBCHAPTER 3. WRECKER LICENSE

#### 595:25-3-2. Applications

(a) Every applicant shall file with the Department a written application on a form prescribed by the Department and shall tender with the application a fee of ~~One Hundred Dollars (\$100.00) by check or money order pursuant to 47 O.S. §953 in the form of cash, check (business, personal, or cashier), money order, or debit/credit card. Checks and money orders should be made payable to the Department of Public Safety.~~ The application shall be completed using the ~~applicant's~~ applicant's legal name and include every alias and nickname by which the applicant is or has been known. Every applicant shall submit with the application a current original Oklahoma State Bureau of Investigation (O.S.B.I.) criminal record check for each individual, partner or corporate officer as shown on the application. If any owner, partner or officer has not lived in Oklahoma for the immediately preceding five (5) years, he or she shall submit a criminal record check from the agency responsible for keeping criminal history in the state or states of residence for the immediately preceding five (5) years. Upon the return of any dishonored check the application shall be canceled.

(b) Upon receipt and approval of the application, the Department shall assign to the operator a permanent identification number for all matters relating to the approved wrecker and towing service. The Wrecker Services Inspector/Trooper

will issue a contact report for the operator to present to the Oklahoma Tax Commission or a motor license agent for the purpose of being issued a wrecker license plate pursuant to 47 O.S. §1134.3.

(c) The filing of an application for a license does not authorize wrecker or towing service operations by the applicant. Operation may commence only after all requirements have been met and proper authorization has been issued by the Department.

(d) The application shall be an affidavit containing the following information together with any additional information the Department may require.

(1) The trade name (business name) of the wrecker service. If the business name is registered with the Oklahoma Secretary of State, such registered name shall be used. A copy of the Certificate of Limited Liability Company, a Certificate of Authority, a Certificate of Limited Partnership or a Certificate of Incorporation from the Secretary of State must be submitted with the application.

(2) The name of the individual (owner/applicant) or, in the event of a legal entity such as a corporation, limited liability company, partnership or limited partnership, the names of any two of the following:

(A) President,

(B) Vice-President,

(C) Another officer, such as a Secretary or the name of the person responsible for the day-to-day operation of the legal entity. The legal entity shall notify DPS immediately in the event any officer or the person responsible should change.

(3) A statement substantially as follows: "Under oath, I affirm the information submitted in this application is true and I further affirm that I have read the rules of the Department of Public Safety and hereby agree in good faith to abide by the applicable laws and rules governing the wrecker and towing services for which this application is made."

(4) Date of application.

(5) Signature of the individual applicant or of each company officer, as named on the application.

(6) For each driver, the name, date of birth and driver license number.

(7) *If an officer of the Department of Public Safety or a law enforcement officer of any political subdivision may have an interest, financial or otherwise, in or may be employed by a wrecker or towing service, the wrecker service shall affirm that its sole purpose and only business is to perform repossessions of vehicles which are subject to lien and are being repossessed by the lien holder of record [47 O.S. §956(C)].* If a determination is made that the wrecker service performs services other than repossessions, it shall be grounds for revocation of the wrecker license.

(e) If, within ninety (90) days of receipt of an application, the Department is unable to verify all information as required by these rules, the application shall be denied. Such applicant may reapply.



(f) It is within the Department's discretion to disallow the licensing of a wrecker operator should it appear, by a preponderance of the evidence, that the identity of the business is substantially the same as that of one that is currently under suspension by the Department.

**595:25-3-3. Renewal**

- (a) Title 47 O.S. §953, provides that—the wrecker license shall expire on the 31<sup>st</sup> day of December of each year. The renewal shall be truthfully and completely filled out.
- (b) The operator shall complete and submit a renewal application with a ~~Fifty Dollar (\$50.00)~~ the renewal fee prescribed in 47 O.S. §953 in the form of cash, check (business, personal, or cashier), money order, or debit/credit card, to the Department not later than December 31 of the same year. Checks and money orders should be made payable to the Department of Public Safety.
- (c) Any Class AA wrecker service which fails to renew its wrecker license on or before December 31 shall be removed from the rotation log on the immediately following January 1.
- (d) Any wrecker service which fails to renew its wrecker license on or before December 31 shall be considered cancelled, revoked, or suspended. An application for an original or reinstatement license may be submitted, but not be effective until on or after February 1 with all procedures and fees to apply.

**SUBCHAPTER 5. ALL WRECKER OPERATORS**

**595:25-5-3. Operation**

All operators using the public roads and highways within the State of Oklahoma shall comply with the following:

- (1) All operators shall require each driver of a wrecker vehicle be proficient in the operation thereof and be properly licensed for the type of vehicle operated.
- (2) No operator shall knowingly permit any operator of a wrecker vehicle to consume beer, wine, intoxicating beverages, drugs or other stimulants or depressants while subject to call nor knowingly permit any operator to come on duty after having inhaled or consumed any such beverage, drug or other stimulants or depressants.
- (3) No operator shall proceed to the scene of a collision or traffic tie-up without being requested to do so by a law enforcement agency or the owner or driver of a vehicle involved.
- (4) Any operator traveling on the roads and highways of the State of Oklahoma during the normal course of his business may, upon arriving at the scene of a collision or traffic tie-up, stop and assist in rendering emergency aid. However, the operator shall not solicit business directly or indirectly from the owner or drivers at the scene.
- (5) An operator at the scene of a collision or traffic tie-up is subject to the same traffic-control directions issued by an officer to the motoring public.
- (6) An operator shall not use the rotating or flashing light while traveling on the roadway en route to any location. The use of the flashing or rotating light is authorized

only in the vicinity of hook-up or at the scene of an incident to protect the scene and the vehicle involved. Only amber flashing lights may be used when leaving the scene of a wrecker service call for the purpose of warning the operators of other vehicles to exercise care in approaching, overtaking or passing. [47 O.S. §12-218.1]

- (7) Each operator must be a person of good moral character and reputation in his community, as determined by the Commissioner of Public Safety, and conduct the operation of the storage facilities and towing service in a responsible manner so as not to endanger the public safety of persons or property of others in the custody of the operator.
- (8) No operator shall tow a vehicle when the combined weight of the wrecker vehicle and the wrecker supported weight of the towed vehicle exceeds the factory gross vehicle weight rating of the wrecker vehicle, regardless of the weight for which the wrecker vehicle is licensed.
- (9) No wrecker service shall suspend, or abandon said service without prior written notice to this Department of such intent and returning of all wrecker licenses issued.
- (10) Wrecker services and operators shall be responsible for the removal of any glass or other injurious substances dropped upon the highway or highway right-of-way at the location of an accident as required by title 47 O.S. §11-1110(C).
- (11) Upon payment of the reasonable cost of removal, and storage of a stored vehicle, whether stored at the request of law enforcement or a private property owner and recorded by the wrecker service as provided in OAC 595:25-5-5(b), the vehicle shall be released to:

- (A) the owner, upon presentation of one (1) of each of the following: proof of ownership, identification and insurance (if required by law): Evidence of ownership may be:
  - (i) A valid certificate of title, to show proof of purchase and ownership to include tribal and other state titles; or
  - (ii) Registration Receipt (Digital or Electronic verification shall be accepted); or;
  - (iii) Title properly assigned by the seller, dated, notarized (if required on title) and the owner 's name filled out on the title; or;
  - (iv) Written verification from a local law enforcement agency as to the identity of the owner; or;
  - (v) Other appropriate documentation sufficient to establish ownership. Proof of identification may be:
    - (~~v~~i) Oklahoma driver license; or;
    - (~~v~~ii) Oklahoma identification card; or;
    - (~~v~~iii) Other state driver license; or;
    - (~~v~~iiii) Other state or federally issued photo identification; or
    - (~~ix~~vi) Other documentation sufficient to establish identity. Proof of Insurance may be: (Insurance may not be in owner's name, as required in Title 47 955A.); or

(~~xvii~~) Valid insurance verification form, not expired with VIN of vehicle listed; or

(~~xviii~~) Valid insurance policy not expired with VIN of vehicle listed; or

(~~xix~~) Valid affidavit of non-use and vehicle cannot be driven from facility (Digital or Electronic verification shall be accepted).

(B) a person representing the owner, upon presentation of, a notarized letter from the owner permitting said person to act on behalf of the owner, with year, make, model and vehicle identification number of the vehicle and proof as listed in paragraph A.

(C) a lien holder or a duly authorized agent of a lien holder, upon presentation to the wrecker operator proof of being a lien holder [47-904.1], hold harmless letter and a notarized letter from the lien holder permitting said person to act on behalf of the lien holder that includes year, make, model and vehicle identification number; or

(D) the insurer of or the representative of the insurer accepting liability for or purchasing a motor vehicle as provided in 47 O.S., Section 904, 953.1, or 953.2, must provide a hold harmless letter and a letter from the insurer permitting said person to act on behalf of the insurer that includes year, make, model and vehicle identification number.

(E) a legal representative or family member within the first or second degree of consanguinity or affinity upon presentation of a notarized affidavit describing the relationship between the legal representative or family member and the owner, in the event the owner is incapacitated or deceased.

(12) Personal property, which shall include everything in a stored vehicle except the vehicle and its attached or installed equipment, vehicle keys, or devices to start and unlock the vehicle, and the spare tire and tools to change the tire, shall be released, upon request, to the owner or owner's representative, upon showing of proof as described in (11) of this section. Wrecker operators shall allow the vehicle owner or owner's representative to have access to the vehicle for the sole purpose of retrieving ownership documentation, such as title or registration. [47 O.S. §955 E] Personal property shall not be removed from the vehicle unless the operator has a written company policy or procedure for the intended safekeeping of any personal property removed from a vehicle. Personal property may not be removed from vehicles with law enforcement investigative holds for evidence or vehicles with biohazards. Personal property stored at the operator's business office must be secured under lock and key or with an attendant on duty 24 hours per day. Any personal property removed from the vehicle shall be released, to the owner or owner's representative, upon showing of proof as described in (11) of this section.

(13) Each operator shall require each wrecker driver to maintain the appropriate driver license for the type of vehicle being operated.

(14) Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the premises of the place of business or any storage facility of the wrecker service.

(15) Each operator shall secure vehicles on roll back wreckers with four (4) point tie down. Other wrecker vehicles shall secure vehicles in accordance with wrecker vehicle chassis recommendations.

(16) A wrecker operator or driver responding to the scene of a motor vehicle collision in the capacity of a first responder, fireman, or volunteer fireman shall not respond to the scene in a wrecker vehicle.

(17) Operator shall not take photos of a crash scene that would include bodies, personal information of anyone or any personal identifiers, including but not limited to, license plates or names on vehicles. Any photo of a crash scene that includes bodies, personal information, or any identifiers of any person must not be posted on any form of social media.

### **SUBCHAPTER 9. OKLAHOMA HIGHWAY PATROL ROTATION LOG - ADDITIONAL REQUIREMENTS**

#### **595:25-9-2. Operator requirements**

Operators on the Rotation Log shall comply with the following:

(1) When more than one (1) vehicle is towed on one (1) call, each tow shall be counted as another call to that operator.

(2) When an operator receives a request for services from the Oklahoma Highway Patrol and no services are rendered, the operator shall not lose position on the Rotation Log.

(3) If an operator has received a request for services, but does not respond to the scene within a reasonable length of time, including but not limited to such factors as distance from the scene, weather, and nature of the collision or traffic tie-up, the Oklahoma Highway Patrol may request the services of the next operator on the Rotation Log. Under these circumstances, the operator who receives the first request shall lose position on the Rotation Log.

(4) When an emergency condition exists, the Oklahoma Highway Patrol reserves the right to request the services of any appropriately equipped and licensed wrecker service best able to handle the emergency and can reach the scene in the shortest time, regardless of the operator's position on the Rotation Log. Said call shall count as a call on the Rotation Log.

(5) Only one (1) wrecker service shall be approved for Highway Patrol rotation at any one place of business and/or storage facility, unless otherwise approved by the Commissioner.

(6) Wrecker services shall respond to Highway Patrol requests only in a wrecker vehicle licensed to the

requested wrecker service, unless otherwise approved by the Commissioner.

(7) Every wrecker service on the Highway Patrol Rotation Log shall maintain twenty-four (24) hour service.

(8) A wrecker service called from the Highway Patrol Rotation Log shall not accept a request for services unless the operator has a vehicle immediately available to perform the requested service.

(9) Each operator shall require each driver responding to a request to maintain the appropriate driver license for the type vehicle being operated.

(10) Each operator shall require each driver to obey in good faith the rules of the road.

(11) Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the premises of the place of business or any storage facility of the wrecker service.

(12) Every operator shall accept each Oklahoma Highway Patrol call unless there exists a valid reason for refusal. Upon acceptance of a call an operator shall advise dispatch of their current location and estimated time of arrival.

(13) Each operator shall provide service for a minimum of seventy-five (75%) percent of the requests made by the Highway Patrol to be computed on a quarterly basis. Failure to meet this standard for any reason shall be grounds for removal from the Oklahoma Highway Patrol Rotation Log.

(14) Any Class AA wrecker operator who uses an answering service as a means of dispatch and who fails to properly respond in a timely manner, as determined by the Commissioner 's designee of the Wrecker Services Division, to a rotation call request may have the Class AA license revoked for failure to properly respond to rotation call requests. The operator shall not be licensed as a Class AA wrecker service while utilizing the same answering service as a means of dispatch.

(15) Persons responding to calls must be able to speak and understand the English language.

(16) A wrecker operator shall respond to law enforcement agencies ' wrecker service requests with a wrecker vehicle and operator capable of efficiently uprighting an overturned vehicle, pulling or winching a vehicle back onto the roadway, lifting a vehicle off a victim, or assisting with opening a vehicle to extricate a victim. In addition, the wrecker vehicle shall be equipped to remove a disabled vehicle without inflicting further damage to the disabled vehicle.

(17) If two or more vehicles are involved in a collision and two or more wrecker services are called the following shall apply:

(A) The first wrecker service arriving at the scene will tow the vehicle causing the greatest traffic hazard, which shall be determined by the investigating officer.

(B) If a requested wrecker service is first on scene, said wrecker service will assist in removing the vehicle causing the traffic hazard from roadway, then will

proceed to pick up the vehicle it has been requested to tow.

(18) Any wrecker service having a wrecker vehicle with major or critical mechanical failure or failing to meet equipment requirements, which does not have another wrecker vehicle of the same classification approved for rotation, shall become temporarily unavailable for rotation until the wrecker vehicle has been approved to return to service or a new wrecker vehicle of the same classification has been inspected, if necessary, and approved by the Department.

(19) A wrecker service shall become temporarily unavailable for rotation if there is no approved Certificate of Insurance (WA) filing on file with the Department for the wrecker service or wrecker vehicles approved for rotation.

(20) Any wrecker service with a wrecker vehicle displaying an expired tag, which does not have another wrecker vehicle of the same classification approved for rotation, shall become temporarily unavailable for rotation until the wrecker license plate has been renewed and is properly displayed on the wrecker vehicle.

(21) When a request for service has been cancelled by Oklahoma Highway Patrol dispatch, the operator shall not continue to the scene of the requested service. The operator shall not lose its position on the rotation log.

[OAR Docket #22-675; filed 7-21-22]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY  
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT**

[OAR Docket #22-676]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 595:35-1-3. General [AMENDED]
- 595:35-1-4. Adoption by reference [AMENDED]
- 595:35-1-8. Administrative penalty and notice of claim [AMENDED]
- 595:35-1-9. Hearings [AMENDED]
- 595:35-1-10. Administrative penalty assessment guidelines [AMENDED]
- 595:35-1-11. Intrastate compliance reviews [AMENDED]
- 595:35-1-12. Department of Public Safety port of entry officers [AMENDED]

**AUTHORITY:**

Department of Public Safety; 47 O.S. § 2-108 and 47 O.S. §230.4

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

January 25, 2022

**COMMENT PERIOD:**

Expired March 17, 2022

**PUBLIC HEARING:**

March 18, 2022

**ADOPTION:**

April 1, 2022

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

April 1, 2022

# Permanent Final Adoptions

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed revisions clarify contact information for the Oklahoma Highway Patrol. The proposed revisions clarify options to obtain copies of the Federal Motor Carrier Safety Regulations (FMCSR) and eliminate superfluous citations to the FMCSR. The proposed rules include an additional adoption by reference for Part 380 of the FMCSR - Special Training Requirements. Amendments to 595:35-1-8 clarify the notice and payment provisions applicable to hearings under this section. The proposed rules include a complete revision of the hearing process under these rules to streamline and clarify the roles of specific actors in the hearing process, specifically clarifying the Commissioner has final decision-making authority regarding contested orders. The proposed revisions include clarifications of violations that may result in a civil penalty and clarification of the maximum possible civil penalties per violation. The proposed rules clarify contact and notice provisions related to Intrastate compliance reviews. The proposed rules clarify references to the Act in relation to port of entry officers and clarify the authority of port of entry officers to place drivers and/or vehicles out of service.

## CONTACT PERSON:

Latosha Carrillo, Administrative Programs Officer III, Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136, 405-425-2077, latosha.carrillo@dps.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 595:35-1-3. General

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

(b) Any violation of the rules of this Chapter or of the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act may result in the assessment of an administrative penalty. See 47 O.S. §§ 230.6 and 230.9.

(c) Interested parties may obtain information or make submission related to this Chapter by contacting: Commercial Vehicle Enforcement Section, Troop S, Department of Public Safety, ~~200 NE 38th Terrace, Oklahoma City, Oklahoma 73105, Phone: (405) 521-6060~~ through the contact information found on the Troop S website: <https://www.ok.gov/oh-pcmve/>.

### 595:35-1-4. Adoption by reference

The Department of Public Safety adopts by reference the United States Department of Transportation regulations pertaining to motor carrier safety and hazardous materials transportation, as contained in Title 49 of the Code of Federal Regulations ~~(49 CFR) [47 O.S. § 230.5(2)]~~ as specifically set forth below. Information relative to this adoption is available

~~through various sources, such as the~~ These regulations may be found on the Federal Motor Carrier Safety Administration website, <https://www.fmcsa.dot.gov/regulations> and the Labelmaster publication, "Federal Motor Carrier Safety Regulations," and print copies of these regulations are commercially available. Copies of this publication are available by contacting the Oklahoma Trucking Association at (405) 525-9488. Those regulations pertaining to motor carrier safety and hazardous materials transportation adopted by reference under this Section are: Each of the following regulations, found in Title 49 of the Code of Federal Regulations, are adopted by reference and made enforceable pursuant to 47 O.S. § 230.4(2).

(1) Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs.—~~[49 CFR § 40.1 et seq.]~~

(2) Part 107 Hazardous Materials Programs and Procedures.—~~[49 CFR § 107.1 et seq.]~~

(3) Part 171 Hazardous Materials Regulations...General Information, Regulations, and Definitions.—~~[49 CFR § 171.1 et seq.]~~

(4) Part 172 Hazardous Materials Tables and Hazardous Material Communication Regulations and Emergency Response Information Requirements.—~~[49 CFR § 172.1 et seq.]~~

(5) Part 173 Shippers-General Requirements for Shipments and ~~Packagings~~ Packaging's.—~~[49 CFR § 173.1 et seq.]~~

(6) Part 177 Carriage by Public Highway.—~~[49 CFR § 177.800 et seq.]~~

(7) Part 178 Shipping Container Specifications.—~~[49 CFR § 178.0 et seq.]~~

(8) Part 180 Continuing Qualification and Maintenance of ~~Packagings~~ Packaging's.—~~[49 CFR § 180.00 et seq.]~~

(9) Part 382 Controlled Substances and Alcohol Use and Testing.—~~[49 CFR § 382 et seq.]~~

(10) Part 383 Commercial Driver's License Standards; Requirements and Penalties—~~[49 CFR § 383.1 et seq.]~~, in so much as it does not conflict with state law.

(11) Part 385 Safety Fitness Procedures.—~~[49 CFR § 385.1 et seq.]~~

(12) Part 386 Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.—~~[49 CFR § 386.1 et seq.]~~

(13) Part 380 Special Training Requirements.

~~(14)~~ Part 390 Federal Motor Carrier Safety Regulations: General.—~~[49 CFR § 390.1 et seq.]~~

~~(15)~~ Part 391 Qualifications of Drivers.—~~[49 CFR § 391.1 et seq.]~~

~~(16)~~ Part 392 Driving of Motor Vehicles.—~~[49 CFR § 392.1 et seq.]~~

~~(17)~~ Part 393 Parts and Accessories Necessary for Safe Operation.—~~[49 CFR § 393.1 et seq.]~~

~~(18)~~ Part 395 Hours of Service of Drivers.—~~[49 CFR § 395.1 et seq.]~~

~~(19)~~ Part 396 Inspection, Repair, and Maintenance.—~~[49 CFR § 396.1 et seq.]~~

(4920) Part 397 Transportation of Hazardous Materials; Driving and Parking Rules. [49 CFR § 397.1 et seq.]

**595:35-1-8. Administrative penalty and notice of claim**

The Commissioner or the Commissioner's representative may assess an administrative penalty against a person or entity that the Commissioner or the representative has determined violated the Act. See 47 O.S. §§ 230.6 and 230.9.

(1) Where the Commissioner or the representative has determined that a minor violation or violations exist which may be readily corrected by the person involved, the Commissioner or the representative may informally notify such person by mail or telephone of the minor violation within a specified period of time. If the person does not correct the violation within the specified time, the Commissioner or the representative may then assess the administrative penalty with the procedure specified. However, whether the violation is one justifying an administrative penalty or a request for compliance is a decision purely within the discretion of the Commissioner or the representative.

(2) When the Commissioner or the representative has determined that a violation justifying the imposition of an administrative penalty has taken place, the Department shall send a Notice of ~~claim~~ Claim to the ~~respondent~~ Respondent at the ~~respondent's~~ Respondent's last known address. The Notice of ~~claim~~ Claim shall contain:

- (A) the amount of the administrative penalty that the Commissioner or the representative has assessed;
- (B) a statement of the maximum civil penalty for which the ~~respondent~~ Respondent may be liable, and
- (C) a description of the manner in which the ~~respondent~~ Respondent makes payment of the penalty to the Department

(3) Pursuant to 47 O.S. § 2-116, the giving of notice by mail is complete upon the expiration of ten (10) days after deposit of said notice in the United States mail in an envelope with first class postage prepaid, addressed to such person at the address as shown by the records of the Department. The administrative penalty shall be due and owing within twenty-five (25) days after of the date the Notice of ~~claim~~ Claim was sent mailed, unless the concerned party requests a hearing as provided in 595:35-1-9 which shall include the ten (10) days specified by 47 O.S. § 2-116. The payment deadline shall be stayed if the Respondent timely requests a hearing as provided in 595:35-1-9.

**595:35-1-9. Hearings**

(a) In responding to the Notice of Claim, the respondent may submit to the official who issued the notice written explanations, information, or arguments in response to the allegations or the amount of the assessed penalty set forth in the Notice of Claim. The contents of the informal response will be reviewed by the Commissioner's representative who may choose to amend, dismiss, or let the Notice of Claim remain as issued. If the Commissioner's representative does not dismiss the administrative penalty in whole, the respondent shall be notified

as soon as reasonably possible. The respondent shall then be given either the longer of the twenty five (25) days still outstanding or at least ten (10) days to pay the penalty. Should a proposed settlement be rejected by the respondent, the amount of the assessed penalty set forth in the Notice of Claim shall be reinstated.

(b) Any request for a hearing must be filed by the respondent with the Department of Public Safety, Troop S, 200 NE 38th Terrace, Oklahoma City, OK 73105 within twenty five (25) days after the Notice of Claim was sent.

- (c) The request for a hearing must be in writing and must:
- (1) state the name and address of the respondent and of the person submitting the request if different from the respondent,
  - (2) state which allegations of violations, if any, are admitted,
  - (3) state generally the issues to be raised by the respondent at the hearing, but issues not raised in the written request are not barred from presentation at the hearing, and
  - (4) be addressed to the official who issued the notice.

(d) If the hearing is timely requested, such hearing shall be scheduled either at the Department or by telephone.

(e) The Commissioner shall designate the hearing officer. Each party shall be afforded the opportunity to respond and present evidence and argument on all issues involved. Either party may make application for a continuance of the hearing. The granting or denial of such a continuance is within the reasonable discretion of the hearing officer.

(f) The Commissioner or the hearing officer will determine, at his discretion, whether the hearing will be conducted in person or telephonically. Where a telephonic hearing is designated, the procedure specifically applicable to telephonic hearings will be provided to the respondent and the respondent's attorney, if designated, along with the notice letter confirming that the hearing has been scheduled.

(1) Within ten (10) days after receiving notice that the hearing is being held telephonically, the respondent must provide to the Department:

- (A) the name, mailing address, and phone number of the respondent's attorney, if the respondent is being represented by an attorney,
- (B) the name, mailing address(es), and telephone numbers of any witnesses on the respondent's behalf who the respondent desires to have present, and
- (C) the telephone number at which the respondent will be available.

(2) If the respondent, the investigating officer, or a witness desires to have additional exhibits or documentary evidence included in the hearing, the exhibits or evidence must be delivered to the Department's Legal Division at least ten (10) days prior to the hearing. The hearing officer may consider documentary evidence if it is received in time for the hearing. The materials shall be mailed to: Department of Public Safety, Troop S MCSAP Hearing Officer, 200 NE 38th Terrace, Oklahoma City, OK 73105.

(3) At or near the time scheduled for the hearing, the hearing officer will call all parties to the hearing at the telephone number(s) provided. If the telephone line for any of

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the parties is busy, or a party fails to answer, the hearing officer will call again approximately three (3) minutes later.

(A) All parties will be sworn in prior to testimony.

(B) If the rule of sequestration is invoked pursuant to 12 O.S. §2615, the appropriate witness will be disconnected from the conference call by the hearing officer and reconnected prior to testimony.

(4) When the respondent or the designated attorney fails to provide a telephone number or to answer the telephone number provided to the Department, or the line is busy after the hearing officer has attempted a second call after the three (3) minutes as provided in (3) of this subsection, the hearing officer will not call again and an order of default will be entered. It is the responsibility of the respondent to keep the line(s) open to receive the call from the hearing officer.

(5) Should a necessary witness adverse to the licensee, such as an officer, fail to provide a telephone number or to answer or the line is busy, after the procedure provided in (3) of this subsection has been followed, the case will be set aside.

(g) The hearing officer shall render a proposed order based upon the law and the evidence presented. Each party shall be notified of the proposed order either personally or by mail.

(h) The proposed order shall become the final order twenty (20) days from the date of entry.

(i) By written stipulation the respondent may waive compliance with 75 O.S. §311, in accordance with 75 O.S. §311. If not waived the respondent may make written exceptions to the proposed order requesting the opportunity to present briefs and oral argument to the Commissioner. Such a request must:

(1) be in writing, and

(2) be received within twenty (20) days of the entry of the proposed order.

(j) If the respondent fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter a final order reflecting the effective date of twenty five (25) days after the date of the Notice of Claim in lieu of the decision and final order as described in (h) of this Section.

(k) If the representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order dismissing the administrative penalty action, with prejudice. The parties shall be notified that the department action has been dismissed with prejudice. However such a dismissal affects only those violations listed in the Notice of Claim and does not affect the same or other violations occurring at another time.

(l) A party aggrieved with the final order may file an appeal with the Commissioner requesting a rehearing, reopening, or reconsideration of the case in accordance with 75 O.S. §317. Such an appeal must:

(1) be in writing,

(2) be within ten (10) days of the entry of the final order, and

(3) state the grounds for the appeal and include all arguments and information pertinent to the grounds for appeal.

(m) Where a timely written exceptions to the proposed order or request for a rehearing, reopening, or reconsideration of the case is received, the administrative penalty will be stayed until a final order has been entered. Grounds for rehearing, reopening, or reconsideration are limited to those in the Administrative Procedures Act [75 O.S. §317].

(n) The administrative penalty assessed shall be due immediately upon issuance of the final order. If, within twenty five (25) days after the issuance of a final order, the concerned party does not comply with the terms of the order by paying any administrative penalty assessed the case may be prosecuted by the Commissioner or the representative for enforcement through the Oklahoma County District Court.

(o) A respondent aggrieved with both the hearing officer's and the Commissioner's decisions may file an appeal with the Oklahoma County District Court.

(p) At any time prior to the Commissioner or the representative bringing an action in Oklahoma County District Court for enforcement of the final order, either the respondent or the Commissioner's representative, whose names appears on the Notice of Claim, may recommend a compromise of the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise shall be submitted to the representative who may, after consultation with the Troop S Commander, accept or reject it.

(1) A compromise offer stays the running of any response period then outstanding.

(2) Any compromise agreed to by the parties is also subject to approval by the hearing officer. If a compromise is agreed to by the parties and approved by the hearing officer, the respondent will be notified in writing. Upon receipt of payment by the Department, the respondent will be notified in writing that acceptance of the payment is in full satisfaction of the administrative penalty proposed or assessed, and the Department closes the case with prejudice to the respondent.

(3) If a compromise cannot be agreed to, the respondent will be notified, either personally or by mail, and shall be given ten (10) days or the amount of time remaining in the then outstanding response period, whichever is longer, to respond to whatever action has been taken by Troop S or any other representative authorized to enforce the provisions of the Act.

(q) The administrative penalty is not a substitute for compliance and is not intended to preclude injunctive relief or other non-duplicative remedies, particularly if the Commissioner has determined an order requiring compliance is necessary under the circumstances. Money penalties are not fees allowing the concerned party to continue to operate in violation of the Act or of any rules adopted to carry out the Act. [47 O.S. §230.9(F)]

(a) Any person assessed an administrative penalty pursuant to 47 O.S. §§ 230.6, 230.9, may:

(1) Remit payment in full of the assessed administrative penalty specified on the Notice of Claim, or

(2) Contact Troop S to inquire about the availability of a settlement, or

- (3) Admit the finding of violation and request a hearing to challenge only the amount of the administrative penalty, or
- (4) Request a hearing to challenge the finding of violation and the assessment of penalty.
- (b) If the Respondent remits payment in full of the assessed administrative penalty specified on the Notice of Claim, such payment shall constitute full satisfaction of the administrative penalty, and the Department shall close the case with prejudice to the Respondent. The payment in full shall constitute a binding waiver and forfeiture of a right to hearing. If Respondent remits payment in full after having requested a hearing, the Department shall cancel any scheduled hearing and notify Respondent that the hearing has been canceled and the case has been closed.
- (c) The Department has authority, in its sole discretion, to compromise, negotiate a settlement, or agree to a payment plan for any Notice of Claim.
- (d) Pursuant to 47 O.S. § 2-116, the giving of notice by mail is complete upon the expiration of ten (10) days after deposit of said notice in the United States mail in an envelope with first class postage prepaid, addressed to such person at the address as shown by the records of the Department. If a Respondent elects to request a hearing, the request for hearing must be addressed to the Troop S Administrative Hearing Officer, and must be received within twenty-five (25) days of the date the Notice of Claim was mailed, which shall include the ten (10) days specified by 47 O.S. § 2-116. A hearing request may be submitted online, by mail at the address reflected on the Troop S website, or via hand delivery at the address reflected on the Troop S website. See <https://www.ok.gov/ohpcmv/>.
- (e) The request for hearing must be submitted through the online form or in writing and must:

  - (1) state

    - (A) the name, address, phone number and email address of the Respondent,
    - (B) if the Respondent will be represented by an attorney, the name, address, phone number and email address of the attorney,
    - (C) the commercial vehicle examination report number, and
    - (D) the DOT Number;
  - (2) state whether the Respondent

    - (A) intends to challenge the finding of violation and the assessment of penalty, or
    - (B) admits the finding of violation and intends only to challenge the amount of the administrative penalty assessed.
- (f) All hearings shall be conducted by a designated hearing officer (which may include the Commissioner) in compliance with 75 O.S. §§ 310, 315. Each party shall be afforded the opportunity to respond and present evidence and argument on all issues involved. Either party may make application for a continuance of the hearing. The granting or denial of such a continuance is within the reasonable discretion of the hearing officer.
- (g) If a hearing is timely requested, such hearing shall be scheduled, in the discretion of the hearing officer, either at

- the Department for in-person hearing or for telephonic hearing. Where a telephonic hearing is designated, the procedure specifically applicable to telephonic hearings will be provided to the Respondent and the Respondent's attorney, if designated, along with a notice of hearing confirming that the hearing has been scheduled.
- (1) Within fifteen (15) days, which shall include the ten (10) days specified by 47 O.S. § 2-116, after receiving notice that the hearing is being held telephonically, the Respondent must provide to the Department:

    - (A) the name, mailing address, and phone number of the Respondent's attorney, if the Respondent is being represented by an attorney,
    - (B) the name, mailing address(es), and telephone number(s) of any witness(es) who the Respondent desires to have present, and
    - (C) the telephone number at which the Respondent will be available.
  - (2) If the Respondent, the investigating officer, or a witness wishes to present exhibits or documentary evidence during the hearing, the exhibits or evidence must be received by the Department, at least ten (10) days prior to the hearing, and must be submitted in accordance with the instructions provided by Troop S in the notice of hearing.
  - (3) At or near the time scheduled for the hearing, the hearing officer will call all parties to the hearing at the telephone number(s) provided. If the telephone line for any of the parties is busy or a party fails to answer, the hearing officer will call again approximately three (3) minutes later.

    - (A) All parties will be sworn in prior to testimony.
    - (B) If the rule of sequestration is invoked pursuant to 12 O.S. § 2615, the appropriate witness will be disconnected from the conference call by the hearing officer and reconnected prior to testimony.
  - (4) When the Respondent or the designated attorney fails to provide a telephone number or to answer the telephone number provided to the Department, or the line is busy after the hearing officer has attempted a second call after the three (3) minutes as provided in paragraph (3) of this subsection, the hearing officer will not call again and an order of default will be entered. It is the responsibility of the Respondent to keep the line(s) open to receive the call from the hearing officer.
  - (5) Should a necessary witness adverse to the Respondent, such as an officer, fail to provide a telephone number or to answer, or if the line is busy, after the procedure provided in (3) of this subsection has been followed, the case will be set aside.
  - (h) The hearing officer shall render a proposed order, in compliance with 75 O.S. § 311, based upon the law and the evidence presented. The proposed order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The proposed order shall be served on the parties either personally or by certified mail, return receipt requested.

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- (1) Within twenty (20) days of the date the proposed order was served on the parties, which shall include the ten (10) days specified by 47 O.S. § 2-116, any party may object to the proposed order by submitting written exceptions and briefs to the Commissioner. The objecting party may also include a request to present oral argument to the Commissioner. Any such objections shall be submitted through the address reflected on the Troop S website and addressed to the Troop S Administrative Hearing Officer. The Commissioner will render a decision on the proposed order in accordance with 75 O.S. §§ 311, 312.
- (2) If no party objects, the proposed order shall become the final agency order twenty (20) days after it was served on the parties.
- (i) If the hearing was conducted by the Commissioner, the Commissioner shall issue a final agency order, which shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. See 75 O.S. § 312(A). Parties shall be notified of any final agency order either personally or by certified mail, return receipt requested, or as otherwise specified in 75 O.S. § 312(B).
- (j) If the Respondent fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter a final order reflecting the effective date of twenty-five (25) days after the date the Notice of Claim was mailed.
- (k) If the Department representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order dismissing the administrative penalty action, with prejudice. The parties shall be notified the Notice of Claim has been dismissed with prejudice. Such a dismissal affects only those violations listed in the Notice of Claim and does not affect the same or other violations occurring at another time.
- (l) A party aggrieved by the final agency order may file an application requesting a rehearing, reopening, or reconsideration of the case. Grounds for rehearing, reopening, or reconsideration shall be limited to those recognized by 75 O.S. § 317.
- (1) Such an application must:
- (A) be in writing, submitted through the address reflected on the Troop S website, and addressed to the Troop S Administrative Hearing Officer.
- (B) be received by the Department within twenty (20) days of the date the agency order becomes final, which includes the ten (10) days specified by 47 O.S. § 2-116.
- (C) state all grounds for the application and include all arguments and information pertinent to the grounds for application, and
- (D) comply with the provisions of 75 O.S. § 317.
- (2) The Commissioner will issue an order on the application. If the Commissioner grants rehearing, reconsideration or review, the order of the agency shall set forth the grounds which justify such action. If rehearing, reconsideration or review is granted, the matter may be heard by the Commissioner, or the Commissioner may refer the matter

to a hearing officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered.

(m) A party aggrieved by the final agency order may also seek judicial review to the extent permitted by, and according to the provisions of, 75 O.S. § 318.

(n) Where timely written exceptions to the proposed order or request for a rehearing, reopening, or reconsideration of the case are received, the administrative penalty will be stayed until a final order has been entered.

(o) The administrative penalty assessed shall be due immediately upon the agency order becoming final pursuant to subsections (h) or (i). If, within twenty-five (25) days of the date the Notice of Claim becomes due and owing, which includes the ten (10) days specified by 47 O.S. § 2-116, the concerned party does not comply with the terms of the order by paying any administrative penalty assessed, the Department may seek to recover the penalty through any mechanism authorized by 47 O.S. § 230.9(G).

(p) The administrative penalty is not a substitute for compliance and is not intended to preclude injunctive relief or other non-duplicative remedies, particularly if the Commissioner has determined an order requiring compliance is necessary under the circumstances. Monetary penalties are not fees allowing the concerned party to continue to operate in violation of the Act or of any rules adopted to carry out the Act.

### **595:35-1-10. Administrative penalty assessment guidelines**

(a) **General.** The Act does not recommend or suggest specific penalties for violation of the Act or any rules adopted to carry out the Act. Instead, the Act lists certain elements which the Commissioner or the Commissioner's representative may take into account in assessing penalties and establishes the maximum penalty for categories of violations. These guidelines serve to ensure the public and the respondent that assessment decisions will be made rationally and objectively on the merits of each case. †See generally 47 O.S. §§ 230.6 and 230.9‡.

(1) These guidelines are not meant to be used to determine when enforcement action will be taken, nor are they meant to be a rigid requirement. Instead, they are meant to assist the Commissioner or the representative in assessing each administrative penalty based on the seriousness of the underlying offense. For example, the fine for violations such as stop light violations or horn or other similar equipment failure violations would not exceed that authorized by statute if adjudged in a court of competent jurisdiction. However, repeated violations of this nature would evidence a pattern of safety violations which would fall within one of the categories set forth in (b) of this Section.

(2) If a hearing is necessary, the hearing officer may eventually assess an administrative penalty which is different than the original administrative penalty imposed in the Notice of Claim.

(3) Because of the volume of violations, the examples in this section are not all inclusive; they are only intended



to serve as a guide for the types of violation categories. ~~The Code of Federal Regulations incorporated by reference contains the complete listing of all violations covered by this Act.~~ OAC 595:35-1-4 contains a complete listing of all violations that may be enforced through an administrative penalty assessment issued pursuant to 47 O.S. §§ 230.6 and 230.9.

(b) **Categories of violations.** The Act separates the types of violations into the following four categories:

(1) **Record keeping violations.** ~~{See 47 O.S. § 230.9(B)(1)}.~~ These are violations of the administrative requirements of the Act, including failure to make, require, or keep records, or the falsification of entries in the records required by the Department of Transportation regulations pertaining to motor carrier safety as adopted and contained in Title 49 of the Code of Federal Regulations (CFR).

(A) ~~The Act provides for a penalty not to exceed one hundred dollars.~~ One Hundred Dollars (\$100.00) for each record keeping offense, provided that the total of all administrative penalties assessed against any violator for all record keeping offenses related to any single violation shall not exceed Five Hundred Dollars (\$500.00).

(B) ~~The Act further provides that each day of a violation shall constitute a separate violation/offense against any respondent, provided that the total penalties for all offenses relating to any single violation shall not exceed five hundred dollars (\$500.00).~~

(C) Some examples of record keeping violations include:

- (i) Failure to properly maintain complete driver qualification files on each driver employed. ~~{See 49 CFR § 391.51}.~~
- (ii) Record of duty status violations. ~~{See 49 CFR § 395.8}.~~
- (iii) Failure to keep maintenance and inspection records. ~~{See 49 CFR § 396.3}.~~
- (iv) Failure to prepare or retain driver's vehicle inspection reports. ~~{See 49 CFR § 396.11}.~~

(2) **Serious pattern of safety violations.** ~~{See 47 O.S. § 230.9(B)(2)}.~~ The Act provides for a fine of Two Hundred Dollars (\$200.00) for each offense not to exceed One Thousand Dollars (\$1,000.00) for each serious pattern of safety violation. The Commissioner or the representative may find a serious pattern of safety violations exists if the respondent has repeatedly violated equipment and operational requirements of the Act, and such violations are of a nature which indicates they are not the result of isolated human error but are of a tolerated pattern which the respondent could have detected and corrected if he or she wanted to meet his or her full safety responsibility to the public. Although any single violation may not by itself have a high probability of causing an accident, the violations taken as a whole may collectively demonstrate the respondent's unwillingness to exercise proper safety supervision or control which will eventually lead to accidents. Examples of some violations which may be included in a serious pattern of safety violations are:

- (A) Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed. ~~{see 49 CFR § 392.6}.~~
- (B) Light violations. ~~{see 49 CFR § 393.11}.~~
- (C) Failure to cover a battery. ~~{see 49 CFR § 393.30}.~~
- (D) Failure to protect or support electrical wiring. ~~{see 49 CFR § 393.28}.~~
- (E) Making detachable wiring connections by twisting together wires. ~~{see 49 CFR § 393.32}.~~
- (F) Failure to maintain a motor vehicle windshield free of prohibited damage, or using prohibited vision reducing matter upon windshield or windows. ~~{see 49 CFR § 393.60}.~~
- (G) Failure to mark push out or escape windows. ~~{see 49 CFR § 393.63}.~~
- (H) Sleeper berth violations. ~~{see 49 CFR § 393.76}.~~
- (I) Heater violations. ~~{see 49 CFR § 393.77}.~~
- (J) Failure to maintain a motor vehicle with:
  - (i) a defroster. ~~{see 49 CFR § 393.79}.~~
  - (ii) two rear vision mirrors. ~~{see 49 CFR § 393.80}.~~
  - (iii) an operative horn. ~~{see 49 CFR § 393.81}.~~ or
  - (iv) an operable speedometer. ~~{see 49 CFR § 393.82}.~~
- (K) Failure to mark bus emergency exits. ~~{see 49 CFR § 393.92}.~~
- (L) Violations of the driver's requirements including:
  - (i) hours of service violations. ~~{see 49 CFR § 395.3}.~~ or
  - (ii) failure to maintain a log book. ~~{see 49 CFR § 395.8}.~~
- (M) Inspection violations as per 49 CFR §396.3(A)(2), §396.9.

(3) **Substantial health or safety violations.** ~~{See 47 O.S. § 230.9(B)(3)}.~~ The Act provides for a penalty not to exceed One Thousand Dollars (\$1,000.00) per violation/offense. This category includes any violation which, if allowed to continue, would result in accidents, deaths, injuries, and public property damage act or acts which evidences that a substantial health or safety violation exists or has occurred which could reasonably lead to or has resulted in serious personal injury or death. Acts which are substantial health or safety violations are of a nature so blatant that no carriers or drivers could have operated vehicles on the public highway without knowing the defects existed, and therefore chose to disregard public safety. ~~Substantial health or safety violations are listed in the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria such that they have been found to be of sufficient magnitude that they require taking the driver, vehicle or container out of service. Examples and include but are not limited to the following:~~

- (A) Using a driver lacking training or experience to determine if the cargo or baggage has been properly

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located or secured, ~~§ 49 CFR § 391.11(b)(4) or (5)~~, or a physically unqualified or disqualified driver, ~~§ 49 CFR § 391.11(b)(6) and (9)~~.

(B) Brake violations:

- (i) failure to maintain motor vehicle with adequate parking brake, ~~§ 49 CFR § 393.41~~,
- (ii) brake hose or tubing violation, ~~§ 49 CFR § 393.45; § 393.46~~,
- (iii) failure to maintain motor vehicle with operative brakes, ~~§ 49 CFR § 393.48~~,
- (iv) failure to maintain motor vehicle with adequate brake linings, ~~§ 49 CFR § 393.47~~, or
- (v) failure to securely attach air or vacuum reservoir to motor vehicle, ~~§ 49 CFR § 393.50~~.

(C) Fuel tank violations: Failure to securely attach fuel tank to motor vehicle, ~~§ 49 CFR § 393.65~~.

(D) Violations and defects of lower and upper fifth wheels and certain safety devices, ~~§ 49 CFR § 393.70~~.

(E) Violations of coupling devices and tow away methods, ~~§ 49 CFR § 393.71~~.

(F) Tire violations, ~~§ 49 CFR § 393.75~~.

(G) Exhaust system violations, ~~§ 49 CFR § 393.83~~.

(H) Failure to load or equip vehicle so as to prevent shifting or falling of cargo, ~~§ 49 CFR § 393.100~~.

(I) Failure to maintain vehicle with a header board or similar structure to prevent load shifting, ~~§ 49 CFR § 393.106~~.

(J) Failure to obey any hazardous material regulation, ~~§ 49 CFR § 397.2~~, or

(K) Violations which would normally fall within the "serious pattern" category but which may be of such a severe nature that they constitute a substantial health or safety violation.

(4) **Gross negligence or reckless disregard.** ~~§ 47 O.S. § 230.9(D)~~. The Act provides that, except for record keeping violations, an employee shall not be liable for a violation of the Act unless the Commissioner determines that such actions of the employee constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for an administrative penalty not to exceed One Thousand Dollars (\$1,000.00). Gross negligence exists where the employee acts in such a way which indicates complete disregard or indifference to the safety of other people's property or welfare.

(5) **Certain misuses of vehicles or containers.** ~~§ 47 O.S. § 230.6~~. The Act provides for a civil penalty assessed to an employee of not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00). The Act also provides for a civil penalty assessed to an employer of not less than Two Thousand Seven Hundred and Fifty Dollars (\$2,750.00) nor more than Twenty-Five Thousand Dollars (\$25,000.00). Some examples of certain misuses of vehicles or containers are:

(A) Operating, or requiring or permitting the operation of, a motor vehicle or container declared out of

service before all required corrections are made, ~~§ 49 CFR § 396.9 (c)(2)~~.

(B) For a driver who is declared out of service, operating, or requiring or permitting the driver to operate, a motor vehicle before prescribed off duty or sleeper berth time has been accumulated, ~~§ 49 CFR § 395.13(c)~~.

(c) **Factors.** The Act requires that the Commissioner or the representative take into account the following factors, ~~§ 47 O.S. § 230.9(E)~~:

(1) **Nature of the violation.** A consideration of the appropriate category of the violation.

(2) **Circumstances of the violation.** A broad consideration which includes both aggravating as well as mitigating factors known to the Commissioner or the representative at the time of the assessment.

(3) **Extent of the violation.** Requires the Commissioner or the representative to consider the magnitude, scope, frequency, and range of a violation. This is a major factor where there are numerous violations involving a large number of vehicles or employees of the respondent. It indicates that the respondent has a greater magnitude, frequency, and range of violations.

(4) **Gravity of the violation.** An evaluation of the seriousness of the violation. The seriousness is to be measured by the likelihood of the occurrence of the event, and the severity of the event if it occurred or were to occur. The gravity is not to be measured abstractly, but on a case-by-case basis taking into account all relevant factors.

(5) **Culpability.** The quality of the respondent's awareness of his or her actions, and the degree to which he or she was responsible for averting such violations. In determining the culpability of a respondent, ignorance is no excuse. Instead, culpability will be determined on the basis of whether the respondent knew or should have known of the violation, and to what extent the respondent had control of the violation.

(6) **History of prior offenses.** The Commissioner or representative will consider the respondent's performance record in terms of prior Notices of Claim, prior warnings, citations, and prior compliance efforts of the respondent. Both similar violations and different types of violations in the past should be taken into account, but the similar past violations should be given more weight.

(7) **Ability to pay and ability to do business.** The Commissioner or the representative may consider the respondent's inability to pay or whether the payment of such a penalty would affect the respondent's ability to do business.

(8) **Such other matters as justice and public safety may require.** These are other matters, not specifically covered by one of the other factors, which can be either aggravating or mitigating factors and ~~should~~ may be taken into account by the Commissioner or the representative in setting the penalty if, in the interests of justice and public safety, a reduction or an increase in the amount of the assessment is required in order to achieve the purposes of the Act. Other matters might be either positive or negative,

such as: cooperation or lack of cooperation; general attitude towards compliance; equities; institution or revision of a safety director or safety consultant; comprehensiveness of corrective action, such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern; compliance or noncompliance by the date set in the notice of claim; speed of compliance; and other matters. These matters, both negative and positive, are to be considered together, and they may cancel out one another.

**595:35-1-11. Intrastate compliance reviews**

(a) Intrastate safety rating system.

(1) The ~~department~~Department may issue a safety rating to a motor carrier subject to the provisions of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in Oklahoma.

(2) The ~~department~~Department shall use the safety standards and rating criteria in 49 C.F.R. Part 385 in issuing a safety rating.

(3) A motor carrier may request the ~~department~~Department to conduct an administrative review if it believes the ~~department~~Department has committed an error in assigning its proposed or final safety rating. The request and administrative review shall comply with the procedures in 49 C.F.R. §385.15 except that the request shall be submitted to: ~~OHP Troop S, Compliance Review, 200 NE 38th Terrace, Oklahoma City, OK 73105~~ through the contact information found on the Troop S website: <https://www.ok.gov/ohpcmve/>.

(4) A motor carrier that has taken action to correct deficiencies may request the ~~department~~Department to change its proposed or final safety rating at any time. The request and determination shall comply with the procedures in 49 C.F.R. §385.17 except that the request shall be submitted to: ~~OHP Troop S, Compliance Review, 200 NE 38th Terrace, Oklahoma City, OK 73105~~ through the contact information found on the Troop S website: <https://www.ok.gov/ohpcmve/>.

(5) Safety fitness information.

(A) Final ratings shall be made available to other state and federal agencies in writing, telephonically, or by remote computer access.

(B) The final safety rating assigned to a motor carrier shall be made available to the public pursuant to the Oklahoma Open Records Act [~~Title 51 O.S. Section 24A.1 et. al.~~], 51 O.S. § 24A.1 et seq. Any person requesting the rating shall provide the ~~department~~Department with the motor carrier's name, principal office address, and if known, the ~~Oklahoma DOT number~~USDOT number.

(C) Requests shall be addressed to: ~~OHP Troop S, Compliance Review, 200 NE 38th Terrace, Oklahoma City, OK 73105~~ through the contact information found on the Troop S website: <https://www.ok.gov/ohpcmve/>.

(b) Penalties.

(1) For violations by motor carriers in intrastate commerce resulting from an investigation, the ~~department~~Department shall apply the system of administrative penalties and procedures in 49 U.S.C. §521(b) and the U.S. Department of Transportation Uniform Fine Assessment program, subject to the provisions of this administrative regulation.

(2) A ~~respondent~~Respondent shall be liable to the ~~department~~Department for any civil penalty assessed by the Department in a Notice of Claim. Pursuant to 47 O.S. § 2-116, the giving of notice by mail is complete upon the expiration of ten (10) days after deposit of said notice in the United States mail in an envelope with first class postage prepaid, addressed to such person at the address as shown by the records of the Department. Unless the Respondent requests a hearing as provided in OAC 595:35-1-9, ~~the~~ administrative penalty shall be due and owing twenty-five (25) days after the date the Notice of Claim was ~~sent~~mailed, unless the concerned party requests a hearing as provided in 595:35-1-9 which shall include the ten (10) days specified by 47 O.S. § 2-116. The payment deadline shall be stayed if the Respondent timely requests a hearing as provided in OAC 595:35-1-9.

(3) A ~~respondent~~Respondent who does not pay the penalty or fails to arrange and abide by an acceptable payment plan for the penalty shall not operate in intrastate commerce beginning on the 91st day after the specified payment date.

(c) Appeals process. A ~~respondent~~Respondent may ~~ask for review of the assessed penalty by the Department~~request a hearing of the penalty assessed in the Notice of Claim. The request for hearing shall be made in accordance with OAC 595:35-1-9.

**595:35-1-12. Department of Public Safety port of entry officers**

(a) ~~The legislature amended 47 O.S. § 14-116 in 2016 to provide funding for Department of Public Safety port of entry officers (DPS POE officers) and directing the Department to promulgate rules specifying the powers and duties of DPS POE officers. DPS POE officers~~Department of Public Safety port of entry officers (DPS POE officers) are DPS commissioned inspectors or DPS civilian inspectors assigned to Troop S to work only at and around port of entry locations. See generally 47 O.S. § 14-116.

(b) In accordance with 47 O.S. §2-117 any officer designated and commissioned by the Commissioner is declared to be a peace officer of the State of Oklahoma and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of the state.

(c) The Commissioner shall designate and commission DPS POE officers. The Commissioner may also appoint civilian DPS POE officers. All DPS POE officers shall only be assigned to and supervised by Troop S.

(d) The Commissioner has the authority to authorize any officer, employee, or agent of the Department to conduct the activities necessary to administer the ~~Oklahoma Motor Carrier~~

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~~Safety and Hazardous Material transportation Act through Act.~~  
See 47 O.S. § 230.4.

(e) Commissioned DPS POE officers shall have the powers and authority now and hereafter vested by law in other peace officers, including the right and power of search and seizure, except the serving or execution of civil process, and the right and power to investigate and prevent crime and to enforce the criminal laws of this state. However, the duties of the DPS POE officers and civilian DPS POE officers shall be limited to:

(1) Enforce all or any portions of the federal motor carrier safety regulations and the hazardous materials regulations of the United States Department of Transportation, as now or hereafter amended, as adopted by reference;

(2) Conduct investigations; make reports; require the production of relevant documents, records and property; demonstration and training activities;

(3) Enter upon, inspect and examine at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to motor carrier safety or the transportation or shipment of hazardous materials in commerce, and to inspect and copy records and papers of carriers and other persons to carry out the purposes of the ~~Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act~~;

(4) Stop and inspect any driver or commercial motor vehicle for any violation of the ~~Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act~~ or rules and regulations issued pursuant thereto;

(5) Declare and mark any transport vehicle or container as out of service if its condition, filling, equipment or protective devices would be hazardous to life or property during transportation, or if records thereof reflect such hazard, or if required records are incomplete;

(6) Prohibit any commercial driver from transporting hazardous materials if such driver is unqualified or disqualified under any federal or department regulation;

(7) Declare or mark any driver, vehicle or container out of service pursuant to the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria;

(8) Administer and enforce the provisions of the ~~Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act~~ and any rules and regulations issued pursuant thereto ~~and~~;

(89) ~~All~~ Exercise all power and authority vested by law in other peace officers regarding law violations committed in the presence of the commissioned DPS POE officer at and around port of entry locations.

(f) All commissioned DPS POE officers shall be CLEET certified peace officers. To become qualified for designation as peace officers, DPS POE officers shall meet the training and screening requirements conducted by the Department and certified by the Council on Law Enforcement Education and Training within six (6) months of employment.

(g) Only CLEET certified peace officers shall carry a weapon.

(h) DPS POE officers are not and shall not be considered Oklahoma Highway Patrol Troopers.

(i) The powers and duties conferred upon said commissioned DPS POE officers shall in no way limit the powers and duties of sheriffs or other peace officers of the state, or any political subdivision thereof.

(j) No state official, other than members of the Department, shall have any power, right, or authority to command, order, or direct any DPS POE officer to perform any duty or service. DPS POE officers shall not be commanded, ordered, or directed to perform any duty or service outside the limitations of (e).

[OAR Docket #22-676; filed 7-21-22]

## TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 65. OKLAHOMA TRAFFIC COLLISION REPORT

[OAR Docket #22-678]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

595:65-1-2. Collision report forms [AMENDED]

595:65-1-3. Collision report instructions [AMENDED]

595:65-1-4. Collisions resulting in deaths [AMENDED]

### AUTHORITY:

Department of Public Safety; 47 O.S. §40-101, et. seq.

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

January 25, 2022

### COMMENT PERIOD:

Expired March 17, 2022

### PUBLIC HEARING:

March 18, 2022

### ADOPTION:

April 1, 2022

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

April 1, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revisions update information, correct grammatical errors, and establishes continuity among rules in this section by utilizing "agency" as opposed to "officer".

### CONTACT PERSON:

Latosha Carrillo, Administrative Programs Officer III, Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136, 405-425-2077, latosha.carrillo@dps.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

595:65-1-2. Collision report forms

(a) All motor vehicle accidents and collisions shall be reported by the investigating law enforcement agency on the "Official Oklahoma Traffic Collision Report". The latest version of blank forms are available from the Department of Public Safety:

- (1) Material Management Division, PO Box 11415, Oklahoma City, OK 73136, or
(2) on its website: http://www.dps.state.ok.us/oter/ at https://oklahoma.gov/dps/forms/handwritten-collision-report-form.html.

(b) All completed forms shall be submitted by the investigating law enforcement agency to the Department of Public Safety, Records Management Division, PO Box 11415, Oklahoma City, OK 73136.

595:65-1-3. Collision report instructions

An investigating officerThe investigating agency shall use the latest version of the "Official Oklahoma Traffic Collision Report Instruction Manual" when completing and submitting a collision report. The latest version of the instruction manual is available from the Department of Public Safety on its website: http://www.dps.state.ok.us/oter/ at https://oklahoma.gov/content/dam/ok/en/dps/docs/oklahoma\_collision\_report\_form\_instruction\_manual\_updated\_5-8-2019\_otcrim2011.pdf.

595:65-1-4. Collisions resulting in deaths

(a) It shall be the responsibility of the investigating law enforcement agency to appropriately report collisions resulting in death, whether the death occurs at the scene of the collision or the death is a delayed fatality. A delayed fatality is a death which occurs at any time after the person who died has been removed from the scene of collision but no more than thirty (30) days after the date of the collision.

(b) When a delayed fatality occurs, a medical examiner will investigate the death as provided in 63 O.S., § 931 et seq. After which [c]opies of reports shall be furnished by the Chief Medical Examiner to investigating agencies having official interest therein [63 O.S., § 942].

(c) If a delayed fatality occurs after a collision report has already been submitted to the Department of Public Safety by the investigating law enforcement agency, the investigating agency shall submit to the Department a revised collision report documenting the death.

[OAR Docket #22-678; filed 7-21-22]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #22-649]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

- Subchapter 11. Purchasing
610:1-11-3. Definitions [AMENDED]
610:1-11-12. Purchases \$2,500\$5,000 or less [AMENDED]
610:1-11-13. Purchases between \$2,501\$5,001 and \$25,000 [AMENDED]
610:1-11-14. Purchases in excess of \$25,000 [AMENDED]
610:1-11-20. Purchasing Authority for OneNet Statewide contracts [AMENDED]
610:1-11-23. Higher Education Purchasing Consortium [NEW]

AUTHORITY:

Oklahoma Constitution Article XIII-A §§ 1-4; 70 O.S. §3206; Oklahoma State Regents for Higher Education

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 25, 2022

COMMENT PERIOD:

February 15, 2022, through March 17, 2022

PUBLIC HEARING:

None

ADOPTION:

March 24, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 31, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These revisions to the purchasing rules of the Oklahoma State Regents for Higher Education will allow for competitive bidding and economy-of-scale to be achieved in shared purchasing models for the State System of Higher Education as a whole. The revisions expand the consortium model beyond the existing rules for OneNet to allow for general contracting powers through the State Regents on behalf of the State System. The revisions also include but are not limited to edits, clarification of terminology, and other proposed changes to modernize the rules.

CONTACT PERSON:

Matt Stangl, General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, (405) 225-9129, mstangl@osrhe.edu.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 11. PURCHASING

610:1-11-3. Definitions

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

"Acquisition" means all type of purchases and rental necessary to perform the duties assigned to the Oklahoma State Regents for Higher Education, whether bought or leased by contract or otherwise, and includes every means by which the Oklahoma State Regents for Higher Education obtains any materials, supplies, service or equipment.

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**"Award"** means when the Authority, Chief Executive Officer, department, Purchasing Director, or other person authorized to make the acquisition, agree on a suitable vendor for a competitive bid and the Purchasing Director, or designee, notifies the successful vendor.

**"Bidders list"** means a list of individuals or business entities that desire notification of solicitations for specified commodity codes.

**"Chancellor"** means the Chief Executive Officer at the Oklahoma State Regents for Higher Education.

**"Commodity Code"** means a group of like products or services.

**"Competitive Bidding"** means a process of acquisition wherein bidders submit bids to the Purchasing Director pursuant to terms, conditions and other requirements of a solicitation.

**"Days"** means calendar days unless otherwise specified.

**"Department"** means a department within the Oklahoma State Regents for Higher Education

**"EEOC"** means Equal Employment Opportunity Commission.

**"Emergency acquisition"** means an acquisition made by the Purchasing Director without seeking competitive bids to relieve an unforeseen condition believed to endanger human life or safety or pose imminent danger to significant property.

**"Equipment"** means all personal property acquired for the Oklahoma State Regents for Higher Education's use which is in the nature of a tool, device, or machine and shall be deemed to include all personal property used or consumed by The Oklahoma State Regents for Higher Education and is not included within the category of materials and supplies.

**"Fiscal Year"** means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

**"Goods"** means products, material, supplies and includes all property except real property acquired by the Oklahoma State Regents for Higher Education for its use or consumption, except equipment.

**"Invitation to Bid"** or **"ITB"** means a document issued which describes the goods or services for which offers are being solicited.

**"Professional Services"** means services which are predominantly advisory or intellectual in character, or involve support rather than supplying equipment, supplies or other merchandise. Professional services include those services requiring special, usually advanced education or skill.

**"Purchasing"** means the Purchasing Department of the Oklahoma State Regents for Higher Education.

**"Purchasing Director"** means the Purchasing Director of the Oklahoma State Regents for Higher Education.

**"Request for proposal"** or **"RFP"** means a type of solicitation the Purchasing Director sends to suppliers requesting submission of proposal for acquisitions.

**"Request for quotation"** or **"RFQ"** means a simplified written or oral solicitation the Purchasing Director sends to suppliers requesting submission of a quote.

**"Services"** means labor rendered by a person to another as distinguished from providing tangible goods. It shall include any type of personal or professional service, employment or

undertaking except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and is regularly use.

**"Solicitation"** means a request or invitation by the Purchasing Director for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or request for quotation.

**"State Regents"** means the Oklahoma State Regents for Higher Education.

**"Vendor registration"** means a process a supplier uses to register with the Purchasing Division to receive solicitations for specified commodities for a specified period of time.

### **610:1-11-12. Purchases ~~\$2,500~~\$5,000 or less**

Purchases ~~\$2,500~~\$5,000 or less are not subject to competitive bidding and may be made from vendors capable of providing the required good(s) or services(s) in a quality and timely manner.

### **610:1-11-13. Purchases between ~~\$2,501~~\$5,001 and \$25,000**

Purchases between ~~\$2,501~~\$5,001 and \$25,000 may be made on the basis of an informal bid process. Purchases made on this basis require price solicitations from a minimum of three (3) vendors, with a ~~minimum of two (2) price quotations being received.~~ All price quotations must be supported by documentation of emailed solicitations and responses, telephone solicitations or facsimile transmission from the vendors.

### **610:1-11-14. Purchases in excess of \$25,000**

Purchases in excess of \$25,000 must be reported to the Budget & Audit Committee. These purchases shall be made on the basis of one of the following processes:

- (1) Formal Solicitation process.
- (2) Alternatives to the formal bid process. Purchases may be made from purchase orders or purchase contracts or at a price equivalent to purchase order or purchase contracts that have been awarded to a vendor(s) on the basis of competitive bids by any of the following entities:
  - (A) ~~Oklahoma Department of Central Services~~The Office of Management and Enterprise Services;
  - (B) Colleges, universities, and other entities within the state system;
  - (C) General Services Administration; and
  - (D) ~~Educational purchasing~~Purchasing consortia.

### **610:1-11-20. Purchasing Authority for OneNet Statewide contracts**

(a) ~~The Department of Central Services~~The Office of Management and Enterprise Services shall recognize as a statewide contract an unencumbered contract consummated in behalf of the telecommunications network known as OneNet by the Oklahoma State Regents for Higher Education or any other state entity assigned responsibility for OneNet, ~~provided, said recognition shall require recommendation by the Information Services Division of the Office of State Finance.~~ The

~~Department of Central Services~~Office of Management and Enterprise Services shall not subject purchases pursuant to said contracts to any quantity limit. ~~[74 O.S., §85.9E. A.]~~[62 O.S. §34.20.1.A]

(b) The Oklahoma State Regents for Higher Education and any other state entity assigned responsibility for OneNet are authorized to negotiate for education or government discounts from published price listings and to make contracts at such prices subject to adjustment for price increases nationally published. ~~[74 O.S., §85.9E. C.]~~[62 O.S. §34.20.1 C]

**610:1-11-23. Higher Education Purchasing Consortium**

The Oklahoma State Regents for Higher Education shall have the authority to issue competitive solicitations on behalf of the Oklahoma State System of Higher Education including institutions, centers, or other constituent agencies of The Oklahoma State Regents for Higher Education in an effort to obtain the maximum value and savings for the Oklahoma State System of Higher Education.

*[OAR Docket #22-649; filed 7-20-22]*

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

*[OAR Docket #22-650]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 7. Oklahoma Tuition Aid Grant Program
- 610:25-7-1. Program purpose [AMENDED]
- 610:25-7-2. Legislative authority [REVOKED]
- 610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds [AMENDED]

**AUTHORITY:**

70 O.S. § 626.1 et seq.; 70 O.S. § 3206(i) and (o); Oklahoma State Regents for Higher Education

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

January 25, 2022

**COMMENT PERIOD:**

February 15, 2022, through March 17, 2022

**PUBLIC HEARING:**

None

**ADOPTION:**

March 24, 2022

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

March 31, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These rule revisions address the following items: Incorporating statutory changes authorized by HB 1821; allowing greater flexibility in the awarding of the grants; removing restrictions on the State Regents' authority to set maximum award amounts; identifying priority factors that may be used in awarding the grants; deleting obsolete language referring to federal legislation and programs that are no longer in effect; and deleting text citing the state legislative history of the program.

**CONTACT PERSON:**

Matt Stangl, General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, (405) 225-9129, mstangl@osrhe.edu.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 7. OKLAHOMA TUITION AID GRANT PROGRAM**

**610:25-7-1. Program purpose**

(a) The purpose of the Oklahoma Tuition Aid Grant Program is to provide need-based grant assistance to eligible Oklahoma resident students and to serve the state's most needy students in a fair and equitable fashion using funds made available pursuant to the Oklahoma Higher Education Tuition Aid Act and ~~in conjunction with the Leveraging Educational Assistance Partnership Program administered by the U.S. Department of Education.~~

(b) The Oklahoma Tuition Aid Grant Program was established to assist Oklahoma college students with demonstrated financial need to meet the cost of attendance at postsecondary institutions in Oklahoma through reimbursement of a portion of their costs of attendance. ~~Congress amended the Higher Education Act of 1965 to provide incentive grants to states for the implementation or expansion of state grant programs. Accordingly, the purpose of the Leveraging Educational Assistance Partnership Program (LEAP) is to provide matching funds to encourage operation of state grant programs to improve student access and choice in higher education. States pay all administrative costs and match federal allotment dollars from non federal resources. Funds not used by one state may be reallocated to others in proportion to their higher education enrollments.~~

**610:25-7-2. Legislative authority [REVOKED]**

(a) ~~Federal. Leveraging Educational Assistance Partnership Program is authorized under Title IV, Part A, Subpart 3 of the Higher Education Act of 1965, as added by P.L. 92 318, and amended by P.L. 94 482, P.L. 95 43, P.L. 95 566, P.L. 95 96, P.L. 96 374, P.L. 97 35, and P.L. 105 244.~~

(b) ~~State. The 1971 Oklahoma Legislature enacted Senate Bill No. 191 authorizing the establishment of a Tuition Aid Grant Program to be administered by the Oklahoma State Regents for Higher Education. Senate Bill No. 400 of the 1982 Legislature amended O.S. 1981, Title 70, Sections 626.1~~

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~~through 626.10 related to tuition aid grants. Senate Bill No. 770 of the 1990 Legislature amended O.S. 1981, Title 70, Section 626.2 related to tuition aid grants and Section 626.7 related to student eligibility qualifications and amount of grant. House Bill No. 1075 of the 1995 Legislature amended O.S. 1991, Title 70, Section 626.6 related to student eligibility qualifications. Senate Bill No. 196 of the 1999 Legislature amended O.S. 1991, Title 70, Sections 626.4 and 626.7 related to student eligibility requirements and the awarding of grants.~~

### **610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds**

(a) ~~A college tuition aid grant shall~~may be awarded annually to each eligible, qualified full-time or part-time undergraduate or graduate student enrolled in a curriculum leading to a degree or certificate in an institution of collegiate grade or postsecondary institution providing a program of training to prepare students for employment in a recognized occupation in Oklahoma approved or accredited by the Oklahoma State Regents for Higher Education or appropriate postsecondary agency in accordance with the following [70 O.S. § 626.7]:

#### (1) Eligibility.

(A) Each full-time or part-time resident student's financial eligibility will be based on their Expected Family Contribution (EFC) calculated for federal Title IV student financial aid eligibility. A resident student is one who meets the current Policy on Residence Status of Enrolled Students in the Oklahoma State System of Higher Education. ~~Full time and part time status will be defined in accordance with the current definition for full time or half time enrollment status for federal Title IV student financial aid eligibility.~~

(B) ~~The Oklahoma State Regents for Higher Education shall determine by rules and regulations the maximum number of semesters a student may be eligible for grants.~~ [70 O.S. § 626.7] An otherwise eligible undergraduate student can continue to receive awards as long as they are eligible for funding from the federal Pell grant program. Graduate students can receive a maximum of eight full-time disbursements.

(C) ~~No student shall be eligible for grants unless he maintains such minimum standards of academic performance as are required by the institution in which the student is enrolled.~~ [70 O.S. § 626.7] The minimum standards of academic performance shall be those required by the institution for federal Title IV financial aid recipients.

(D) Students who are incarcerated are not eligible to receive tuition aid grants. Incarceration will be defined in accordance with the current definition for federal Pell grant eligibility.

(E) Students must be enrolled in a postsecondary institution eligible to participate in the federal Title IV student financial aid programs.

(F) Students must meet all general eligibility requirements for recipients of federal Title IV student

financial aid. The school of attendance will report each student's completed application status through a reporting system provided by the Oklahoma State Regents for Higher Education.

(G) ~~In the event a student for any reason ceases to continue to be enrolled during the course of an academic year, the student shall cease to be eligible for tuition aid.~~ [70 O.S. § 626.7]

#### (2) Amount of grant.

(A) ~~The amount of tuition aid grant to any student under this act [70 O.S. § 626.1 et seq.] for any semester shall represent a percentage not greater than seventy-five percent (75%) of the previous year's tuition and enrollment fees normally charged to residents of the State of Oklahoma by the institution of attendance.~~ [70 O.S. § 626.7] ~~The tuition and enrollment fees used in calculating the award will be based on standards as follows: full time undergraduate—30 credit hours per academic year; part time undergraduate and graduate—12 credit hours per academic year; full time graduate—18 credit hours per academic year; full time career technology—at least 900 clock hours; and part time career technology—at least 450 clock hours. If the Oklahoma State Regents for Higher Education determine that funds are available to offer awards for summer enrollments, institutions will be notified. At the time of the notification, summer award amounts will be announced.~~

(B) ~~The percentage of aid awarded shall be based on a need analysis system that is consistent with federal student financial aid regulations.~~ [70 O.S. § 626.7] ~~The percentage of aid awarded shall be based on the student's Expected Family Contribution (EFC) calculated for federal Title IV student financial aid eligibility. The Oklahoma State Regents for Higher Education will issue an annual award payment schedule identifying the maximum eligible EFC and identifying the percentage of aid to be awarded according to EFC ranges.~~

(C) ~~The Oklahoma State Regents for Higher Education shall determine by rules the annual maximum award based on an annual assessment of funds availability. The State Regents shall not increase the annual maximum award amount unless funding is sufficient to serve at least the same number of students as the previous academic year.~~ [70 O.S. § 626.7]

(D) The minimum amount of grant to be awarded is \$200 per academic year or \$100 per semester or other enrollment period.

(E) The award must be included in the student's financial aid package managed by the institution. If the inclusion of the tuition aid grant award results in the student receiving more financial assistance than is needed to meet their cost of education as determined by the institution, the institution will resolve the over-award in accordance with federal Title IV student financial aid regulations. The institution may



reduce or revoke the award if necessary to resolve the over-award.

(3) *Application procedures and deadlines. The Oklahoma State Regents for Higher Education may adopt rules and regulations, prescribe and provide appropriate forms for application and employ such persons, contract for such services and make such additional expenditures as may be necessary or appropriate for effectuating the provisions of this act. [70 O.S. § 626.7]*

(A) Students will apply for tuition aid grant award consideration by completing the federal student financial aid application. A separate application may be provided for students eligible for state financial aid under 70 O.S. § 3242. The Oklahoma State Regents for Higher Education will receive application data from the federal Title IV student financial aid application system for those students who indicate their legal state of residence is Oklahoma. Applications with at least one eligible Oklahoma institution selected by the student will be processed for tuition aid grant award consideration.

(B) If necessary, the ~~The~~ application receipt deadline will be reflected in the application document provided annually by the federal Title IV student financial aid application system.

(4) Disbursement of funds.

(A) Funds will be disbursed to students after the institution confirms enrollment status and eligibility in each ~~the fall and spring semesters~~ semester or other enrollment period. ~~For standard fall and spring semester enrollment, one half of the award will be disbursed in the fall semester, and one half of the award will be disbursed in the spring semester. For non-standard enrollment, disbursements will be made consistent with federal Pell Grant regulations.~~

(B) Funds for eligible students will be delivered to the institution for disbursement to students in accordance with the institution's student financial aid disbursement policies.

(b) The Oklahoma State Regents for Higher Education are hereby authorized to determine priorities for participation in this tuition aid program ~~by full-time, part-time, undergraduate and graduate students based on factors including, but not limited to, full-time or part-time enrollment status, undergraduate or graduate enrollment status, unmet financial need, continuous enrollment, nearness to completion of a degree or certificate, state employment needs, eligibility for other state or institutional student financial aid and available state funding. [70 O.S. § 626.8]~~

[OAR Docket #22-650; filed 7-20-22]

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

[OAR Docket #22-651]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 23. Oklahoma Higher Learning Access Program
- 610:25-23-2. Eligibility of participants [AMENDED]
- 610:25-23-4. Program requirements [AMENDED]
- 610:25-23-7. Payment of awards; policies and limitations [AMENDED]
- 610:25-23-8. Administrative responsibilities [AMENDED]
- 610:25-23-9. "Heroes Promise" [AMENDED]

**AUTHORITY:**

70 O.S. § 626.1 et seq.; 70 O.S. § 3206(i) and (o); Oklahoma State Regents for Higher Education

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

January 25, 2022

**COMMENT PERIOD:**

February 15, 2022, through March 17, 2022

**PUBLIC HEARING:**

None

**ADOPTION:**

March 24, 2022

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

March 31, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These revisions are necessary to incorporate statutory changes made by Senate Bill 132 passed during the 2021 legislative session which extended the application period for the program to the 11th grade effective beginning in Fall 2021. Students may now apply at any time during the 8th -11th grade. For homeschool students the bill extended the application period to age 16, allowing homeschool student to apply between the ages of 13 and 16;

Current statutes require students in the program to complete high school curriculum requirements that are based on college admission requirements for state system colleges and universities. The revisions incorporate recent changes to the admission curricular requirements; and

Legislation passed in 2017 deleted references to "cooperative agreements." The revisions remove this obsolete text from the rules.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM**

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### 610:25-23-2. Eligibility of participants

Eligibility to participate in the program must be established by both the student and his/her parent(s), custodial parent(s), or guardian(s). Students enrolled in the eighth, ninth ~~or tenth grade~~, tenth, or eleventh grade at a public or private school and whose parents' income meets the financial need criteria are eligible to apply to become a program participant. Students educated by other means who are between the ages of thirteen (13) and ~~fifteen (15)~~ sixteen (16) are eligible to apply to become a program participant. Eligibility requirements to participate in the program include the following:

- (1) The student must be a resident of the state of Oklahoma or be enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes; and
- (2) The student's parent(s), custodial parent(s), or guardian(s) must establish financial need.

(A) To meet the program's financial need criteria, the income of the student's parent(s) from taxable and nontaxable sources shall not exceed \$50,000 per year at the time the student applies for participation in the program. Beginning in 2017-2018, the federal adjusted gross income of the student's parent(s) shall not exceed \$55,000 per year at the time the student applies for participation in the program. Beginning in 2021-2022, the federal adjusted gross income of the student's parent(s) shall not exceed \$60,000 per year at the time the student applies for participation in the program. A student who was adopted while in the permanent custody of the Department of Human Services, in the court-ordered custody of a licensed private nonprofit child-placing agency, or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall not be subject to the determination of financial qualification at the time the student applies for participation in the program.

(B) Parents of students making application to the program must use one of the following options to establish financial need eligibility:

(i) Documentation of their most recent calendar (tax) year income. Parents of ~~tenth grade~~ eleventh grade applicants may use the calendar (tax) year income that coincides with the spring semester of the ~~tenth grade~~ eleventh grade if the application is submitted by the required deadline; or

(ii) Documentation of current yearly income from an officially approved application for free or reduced-price school meals or other state or federal means-tested programs as determined by the State Regents. The State Regents may limit use of this option to pilot projects as determined by the State Regents. If requested by the State Regents, parents may be required to provide additional documentation of income.

(iii) The Oklahoma State Regents for Higher Education shall review the determination of financial need eligibility of the student as set forth in section (2)(A) above if the income from taxable and nontaxable sources of the student's parent(s) includes income received from nontaxable military benefits or income received from the federal Social Security Administration due to the death or disability of the student's parent(s). If the income of the student's parent(s), excluding income received from nontaxable military benefits or income received from the federal Social Security Administration due to the death or disability of the student's parent(s), does not exceed the limitations set forth in section (2)(A) above, the student shall be determined to have met the financial need eligibility [70 O.S. § 2605(D)(6)]

(C) For students that are subject to court-ordered joint custody arrangements, the OSRHE shall use guidelines consistent with regulations for federal Title IV student financial aid programs to determine which parent(s) shall meet the financial need criteria.

### 610:25-23-4. Program requirements

(a) Students shall agree to abide by the following provisions throughout the remainder of their school years or educational program:

(1) Attend school regularly and to do homework regularly, meaning the student was in attendance at least eighty percent (80%) of each school year, excluding absences excused by the school;

(2) Refrain from substance abuse, meaning the student was not adjudicated delinquent as a juvenile nor convicted of a crime as an adult by a court of law for an offense involving a controlled dangerous substance, as defined by 63 O.S. § 2-101(8);

(3) Refrain from commission of crimes or delinquent acts, meaning the student was not adjudicated delinquent as a juvenile nor convicted of a crime as an adult by a court of law;

(4) Have school work and school records reviewed by mentors designated pursuant to the program;

(5) Provide information requested by the Oklahoma State Regents for Higher Education [OSRHE] or the State Board of Education; and

(6) Participate in program activities. [70 O.S. § 2605]

(b) The student's parent(s), custodial parent(s), or guardian(s) shall witness the student's agreement and further agree to:

(1) Assist the student in achieving compliance with the agreements;

(2) Confer, when requested to do so, with the school contact person, other school personnel, and program mentors;

(3) Provide information requested by the OSRHE or the State Board of Education; and

(4) Assist the student in completing forms and reports required for program participation, making application

to institutions and schools of higher learning, and filing applications for student grants and scholarships. [70 O.S. § 2605]

(c) Students must complete the following 17-unit core curriculum with a minimum 2.50 grade-point-average (GPA) on a 4.00 grading scale, by the time they graduate from high school. For the purpose of calculating the required core curriculum GPA, core courses in English, lab science, mathematics, history and citizenship skills, foreign or non-English language, computer technology, or "additional" subject areas must be transcribed with a letter grade that has a corresponding numerical value. If the school district assigns a course a grade of "pass" without a numerical value, the OSRHE will assign a letter grade of "D" or the lowest passing grade that the high school assigns to courses. If the required one unit, year, or set of competencies in fine arts (music, art, or drama) or speech is fulfilled on a pass/fail or competency basis, the course(s) will be accepted and excluded from the required core curriculum GPA calculation. The Chancellor may approve exceptions to the grading policy for pass/fail courses for extraordinary circumstances.

- (1) Four units, or years, of English (grammar, composition, literature; should include an integrated writing component);
- (2) Three units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);
- (3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, pre-calculus, statistics and probability [must have completed geometry and Algebra II], calculus, Advanced Placement Statistics);
- (4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture);
- (5) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);
- (6) One additional unit, or year, of subjects listed above, or any Advanced Placement course, psychology, sociology, or any concurrent liberal arts and sciences course at a State System institution that is not being used to fulfill any curricular requirement previously listed. ~~any Advanced Placement course except AP courses in applied fine arts (art history and music theory will count; studio art courses will not count);~~
- (7) One unit, year, or set of competencies of fine arts (music, art, or drama) or speech.

(d) The program curricular requirements for English, science, mathematics, history and citizenship skills are identical with the curricular requirements for college admission set by the OSRHE. Any change by the OSRHE to the curricular

requirements for college admission shall also apply to the program curricular requirements.

- (e) Advanced students who complete core courses in earlier grades will not be required to take additional courses for purposes of the requirements of this program.
- (f) Strict parameters regulate the substitution of applied courses (OSRHE policy on Institutional Admission and Retention).
- (g) Exceptions to the required core curriculum will be considered according to the following:

(1) Students attending schools, or homeschool students participating in other educational programs, which do not offer all the core curriculum courses will be allowed to satisfy the requirements subject to the following provisions:

(A) Core curriculum requirements which are also required for regular college admission (OSRHE policy on Institutional Admission and Retention) will be subject to the OSRHE Policy on Remediation and Removal of High School Curricular Deficiencies.

(B) Any other core curriculum requirements must be satisfied during the first twenty-four (24) hours of college coursework. Any exceptions to the twenty-four (24) hour limitation must be requested in writing and shall be subject to approval by the Chancellor.

(2) Students who have documented proficiency in a non-English language equivalent to at least two (2) units of high school study may be exempted from the requirement of two (2) units of a foreign or non-English language.

(3) Any other requests for exceptions to the core curriculum requirement must be submitted in writing to the Chancellor. Upon approval of the exception, the student may be eligible for program benefits; provided, such approval may require the satisfaction of any core curriculum requirements omitted in high school or other educational program.

(h) Students must attain a minimum 2.50 cumulative GPA on a 4.00 grading scale for all work attempted in grades nine through twelve.

(i) Homeschool students and students graduating from a high school not accredited by the State Board of Education must achieve a composite score of 22 or higher on the ACT test or the equivalent SAT test score. Only ACT scores reported by ACT for tests administered prior to the student's high school graduation will be considered. Beginning September 1, 2020, all test scores reported by ACT, including "superscores" as defined by ACT, will be considered. Scores from ACT residual tests will not be considered except under extraordinary circumstances as determined and approved by the Chancellor. SAT test scores will be considered in a manner comparable to ACT test scores.

**610:25-23-7. Payment of awards; policies and limitations**

(a) Eligible students enrolled at an institution in The Oklahoma State System of Higher Education shall have an award equivalent to their undergraduate resident nonguaranteed tuition paid to the institution on the student's behalf by an

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allocation from the Oklahoma Higher Learning Trust Fund [70 O.S. § 3953.1];

(b) Eligible students enrolled in a duly accredited private Oklahoma institution of higher education [70 O.S. § 4103] shall have awards paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund in an amount equivalent to the average undergraduate resident nonguaranteed tuition if the student were enrolled in a comparable institution of The Oklahoma State System of Higher Education. Comparability of institutions shall be determined by the OSRHE;

(c) Eligible students enrolled in a postsecondary career technology program that meets the requirements to be eligible for federal student financial aid and is offered by a technology center school supervised by the State Board of Career and Technology Education ~~through a cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education~~ shall have an award equivalent to tuition paid, not exceeding the average amount the student would have received for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education, to the school or institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund;

(d) Funds shall be transferred by the OSRHE from the Oklahoma Higher Learning Access Trust Fund to the institution in which the student is enrolled. No funds shall be paid directly to the student;

(e) Payment will not be allowed for courses taken in excess of those required for a baccalaureate degree;

(f) Beginning with students graduating high school in 2017-2018 and thereafter, payment will be limited to 129 semester credit hours, or the equivalent, except as provided in the following. Students enrolled in a baccalaureate degree program that requires in excess of 129 semester credit hours or the equivalent, may receive payment for the number of semester credit hours required by the degree program. Students without a baccalaureate degree who are enrolled in a first professional degree program that does not require completion of a baccalaureate degree and that requires in excess of 129 semester credit hours or the equivalent, may receive payment for the number of semester credit hours required by the degree program up to a maximum of 150 semester credit hours or the equivalent. The Chancellor may approve exceptions to the limit for extraordinary or hardship circumstances including, but not limited to, sickness and injury.

(g) Students will be eligible for the benefits outlined in this policy for five (5) years from the first date of postsecondary enrollment. The Oklahoma State Regents for Higher Education may award the Oklahoma Higher Learning Access Program benefits for courses of postsecondary units taken more than five (5) years after the student's first semester of postsecondary enrollment only in hardship circumstances; provided, however, no Oklahoma Higher Learning Access Program participant may receive benefits beyond a cumulative time period of five (5) years [70 O.S. § 2604]. Hardship circumstances may include, but are not limited to, sickness, injury, required military

service, or service required by the student's religious or cultural traditions;

(h) There will be no limit to the number of awards other than the amount of funds available or the number of eligible students. If sufficient funds are not available to provide awards for all eligible applicants, the OSRHE shall make awards on the basis of need;

(i) Students who have previously received awards shall have priority over students applying for initial awards;

(j) The Oklahoma State Regents for Higher Education shall take into consideration other grants and scholarships received by an eligible applicant when making awards [70 O.S. § 2604]. Award recipients may not receive financial aid in excess of his/her cost of attendance as determined by the institution in which the student is enrolled. The cost of attendance determined by the institution shall be consistent with regulations for federal Title IV student financial aid programs. If necessary, an award shall be reduced by an amount which makes the student's total financial aid equivalent to the student's identified cost of attendance.

(k) Beginning with the 2018-2019 academic year, an award shall not include payment for non-credit remedial courses.

(l) If a student withdraws from a class in which he or she has received an award from the Oklahoma Higher Learning Access Program, the awarded funds shall be returned to the Oklahoma Higher Learning Access Program. This provision shall only apply to awarded funds when the student withdraws prior to the end of the add/drop period for the session in which the student is enrolled.

### **610:25-23-8. Administrative responsibilities**

The Oklahoma Higher Learning Access Act established administrative roles and responsibilities for the Oklahoma State Regents for Higher Education (OSRHE) and the State Board of Education.

(1) Every public school district shall designate at least one contact person at each Oklahoma public school site in which eighth, ninth- ~~or tenth grade~~, tenth- or eleventh-grade classes are taught. When requested by the OSRHE, the State Board of Education shall assist the OSRHE to ensure the designation of contact persons. Private schools shall also designate at least one school official as a contact person. For students who are educated by other means, a parent or guardian or other person approved by the OSRHE shall be designated as the contact person. [70 O.S. § 2605]

(A) The contact person shall be responsible for processing student applications for the program according to the rules and regulations established by the OSRHE.

(B) The contact person shall maintain the agreements, which shall be executed on forms provided by the OSRHE.

(C) The local contact person shall:

(i) monitor the student's compliance with the terms of the agreement;

(ii) document transfer out of state, death, and other conditions; and

- (iii) report on circumstances of noncompliance to the OSRHE.
- (D) Compliance or noncompliance with the program requirements for attending school regularly [610:25-23-4(a)(1)], refraining from substance abuse [610:25-23-4(a)(2)], and refraining from criminal or delinquent acts [610:25-23-4(a)(3)] shall be reported to the OSRHE by the local school district.
- (E) The local district contact person shall report program participants who transfer into or out of the district to the OSRHE and identify the local education agency (LEA) and site from which or to which the student transferred.
- (F) Beginning in April of the student's year of graduation, the local contact person shall gather from the program participants and his/her records, information which substantiates whether or not the program requirements have been met.
- (G) The student's program verification form should be completed, signed, dated, and forwarded to the OSRHE as soon after the student's graduation as possible.
- (2) The local school district where an Oklahoma Higher Learning Access Program student is attending when the student begins participation in the program and any subsequent school district where the student attends shall forward information regarding the student's participation in the program to a school to which the student transfers upon the school's request for the student's records. [70 O.S. § 2605]
- (3) The Oklahoma State Regents for Higher Education shall:
  - (A) designate personnel to coordinate tracking of program records for the years when students participating in the program are still in the public schools, provide staff development for contact persons in the public schools, and provide liaison with the State Board of Education and local organizations and individuals participating in the program [70 O.S. § 2605];
  - (B) coordinate and develop policies and procedures to implement the Oklahoma Higher Learning Access Act;
  - (C) coordinate the publication and distribution of program awareness information and materials;
    - (i) Each school year, every fifth- through ~~ninth-grade~~eleventh-grade student in the public and private schools of Oklahoma and students educated by other means who are in the equivalent of the fifth through ~~ninth~~eleventh grade shall be apprised, together with his/her parents, custodial parent, or guardian, of the student's opportunity for access to higher learning under the Oklahoma Higher Learning Access Program [70 O.S. § 2605];
    - (ii) The OSRHE and the State Board of Education shall develop, promote, and coordinate a public awareness program to be utilized in making students and parents aware of the program [70 O.S. § 2605];

- (D) coordinate the provision of technical assistance to local school districts and individual participants;
- (E) administer the Oklahoma Higher Learning Access Trust Fund;
- (F) process applications submitted directly to the OSRHE;
- (G) determine final eligibility for the program award.

**610:25-23-9. "Heroes Promise"**

HB 1343 of the 2011 Oklahoma legislative session amended the Oklahoma Higher Learning Access Act to authorize certain persons to participate in the Oklahoma Higher Learning Access Program and to qualify for the program benefits. This category of program participation shall be referred to as the "Heroes Promise" program. Except as otherwise provided in this section, the administrative rules of the Oklahoma Higher Learning Access Program shall apply to participants in the Heroes Promise program.

- (1) Eligibility: A student shall be eligible to participate in the Heroes Promise program if the student meets the following criteria:
  - (A) The student is a child of any person killed after January 1, 2000, in the line of duty in any branch of the United States Armed Forces or who died after January 1, 2000, as a result of an injury sustained while in the line of duty in any branch of the United States Armed Forces and the person who was killed or died filed an individual or joint Oklahoma income tax return for the tax year prior to the year during which the person was killed or died.
  - (B) The student is a resident of Oklahoma or is enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes.
  - (C) The student executes an agreement to participate in the program.
- (2) Application and Enrollment:
  - (A) Eligible students enrolled in a public or private school in the ~~eighth-, ninth-, or tenth-grade~~, tenth-, or eleventh-grade and eligible students educated by other means between the ages of thirteen (13) and ~~sixteen (16)~~seventeen (17) may apply to participate in the program.
  - (B) Eligible students who have completed the ~~tenth~~eleventh grade or who have reached age ~~sixteen (16)~~seventeen (17) shall be given the opportunity to apply to participate in the program prior to reaching the age of twenty-one (21).
  - (C) An eligible student shall not be required to establish financial need as described in 610:25-23-2(2).
  - (D) To apply, the student and/or their parent, custodial parent, or guardian shall submit appropriate documentation of eligibility including, but not limited to:
    - (i) A copy of an individual or joint Oklahoma income tax return filed by the parent of the student

for the tax year prior to the year during which the parent was killed or died.

(ii) Documentation of the parent's death after January 1, 2000 while in the line of duty or as a result of injury sustained while in the line of duty in any branch of the United States Armed Forces.

(iii) Documentation that the student is a resident of Oklahoma or is enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes.

(3) Exemption from Oklahoma Higher Learning Access Program Requirements: Students eligible for the Heroes Promise program shall not be subject to the program requirements contained in 610:25-23-4 (Program requirements).

(4) Securing Program Benefits: An eligible student may qualify for a Heroes Promise award which includes payment of an amount equivalent to resident tuition or other tuition pursuant to Section 2604 of Title 70 of the Oklahoma Statutes for the first semester or other academic unit of postsecondary enrollment if the student meets the following criteria:

(A) The student has satisfied admission standards as determined by the Oklahoma State Regents for Higher Education for first-time-entering students for the appropriate type of institution, or, if attending a private institution, has satisfied admission standards as determined by the private institution. No student participating in the Heroes Promise program shall be admitted into an institution of higher education by special admission standards.

(B) The student has secured admission to, and, prior to reaching the age of twenty-one (21), has enrolled in an institution which is a member of The Oklahoma State System of Higher Education, a postsecondary career technology program that meets the requirements to be eligible for federal student financial aid and is offered by a technology center school supervised by the State Board of Career and Technology Education, or a private institution of higher learning located within this state and accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes. The Oklahoma State Regents for Higher Education may award the Heroes Promise benefit for a student's first semester or other academic unit of postsecondary enrollment taken after the student turns twenty-one (21) years of age if the student is a member of the Armed Forces of the United States, the Reserve Corps of the Armed Forces of the United States, or the Oklahoma National Guard, and is ordered to active duty or active duty for special work or training and due to the duty commitment the student is unable to enroll before the student reaches twenty-one (21) years of age. The period of the extension shall be the length of the term of duty.

(C) Except as otherwise provided in this section, students eligible for the Heroes Promise award benefits shall not be subject to the provisions of 610:25-23-5 (Securing Program benefits).

(D) Except as otherwise provided in this section, the payment of Heroes Promise award benefits shall be subject to the provisions of 610:25-23-7 (Payment of awards; policies and limitations).

(E) A student that qualifies for the Oklahoma Higher Learning Access Program benefit based on both their Heroes Promise eligibility and completion of the regular program requirements shall only receive a single program benefit.

(5) Retaining Eligibility in Postsecondary Education: To retain eligibility for the Heroes Promise award while pursuing a program of higher learning at an eligible Oklahoma institution, the student must maintain compliance with the provisions of 610:25-23-6 (Retaining eligibility in postsecondary education).

[OAR Docket #22-651; filed 7-20-22]

## TITLE 610. STATE REGENTS FOR HIGHER EDUCATION

### CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #22-652]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 37. Chancellor Glen D. Johnson Scholarship in Leadership and Public Service [NEW]

610:25-37-1 [NEW]

610:25-37-2 [NEW]

610:25-37-3 [NEW]

610:25-37-4 [NEW]

#### AUTHORITY:

Oklahoma Constitution Article XIII-A §§ 1-4; 70 O.S. § 3206(i) and (o); Oklahoma State Regents for Higher Education

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

January 25, 2022

#### COMMENT PERIOD:

February 15, 2022, through March 17, 2022

#### PUBLIC HEARING:

None

#### ADOPTION:

March 24, 2022

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

March 31, 2022

#### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

#### FINAL ADOPTION:

June 21, 2022

#### EFFECTIVE:

September 11, 2022

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

**GIST/ANALYSIS:**

These rules are needed in order to establish and administer the Chancellor Glen D. Johnson Scholarship in Leadership and Public Service.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 37. CHANCELLOR GLEN D. JOHNSON SCHOLARSHIP IN LEADERSHIP AND PUBLIC SERVICE**

**610:25-37-1. Purpose**

The Chancellor Glen D. Johnson Scholarship in Leadership and Public Service honors Chancellor Johnson's commitment to increasing the number of college graduates in Oklahoma to meet the state's current and future workforce needs in today's knowledge-based, global economy. The scholarship is awarded each year to outstanding college students attending one of Oklahoma's public colleges or universities who demonstrate strong leadership potential, a significant commitment to community engagement activities, and interest in pursuing a career in public service.

**610:25-37-2. Eligibility Requirements**

Recipients of the Chancellor Glen D. Johnson Scholarship in Leadership and Public Service shall meet the following eligibility requirements:

- (1) Oklahoma resident.
- (2) Enrolled full-time (minimum of 12 credit hours per semester) at a public institution within the Oklahoma State System of Higher Education.
- (3) In good academic standing with a minimum GPA of 3.0 at the time of nomination.
- (4) Completed at least 30 hours of college coursework/credits and will be classified as a sophomore, junior, or senior for the academic year in which the scholarship will be received.

**610:25-37-3. Award Process**

(a) Number of Scholarships Awarded Annually. Each year, a total of six scholarships will be awarded through the Chancellor Glen D. Johnson Scholarship in Leadership and Public Services as follows:

- (1) Two (2) scholarships to students attending Oklahoma's public two-year colleges;
- (2) Two (2) scholarships to students attending Oklahoma's public regional universities (including the University of Science and Arts of Oklahoma); and

(3) Two (2) scholarships to students attending Oklahoma's public research universities.

(b) Selection Process. Recipients of the award will be selected from nominations received from Oklahoma's state system institutions.

(c) Call for Nominations. A call for nominations and application materials will be sent to institutions no later than November 30th each year. Nominations must be received by the Oklahoma State Regents for Higher Education by February 28th each year.

(d) Institutional Submissions.

(1) Two-year community colleges and regional universities may submit only 1 nomination each year. Nominations must be submitted by the institution's president.

(2) Oklahoma State University and the University of Oklahoma may submit up to 2 nominations each for the 2 scholarships to be awarded to the research institutions.

(e) Evaluation Criteria. Recipients will be selected from the nominations received from Presidents by a committee appointed by the State Regents based on the following criteria:

- (1) Leadership experience;
- (2) Demonstrated interest in public service, community engagement and civic participation;
- (3) A short essay on the importance and value of public service; and
- (4) A letter of recommendation from an individual who can attest to the student's leadership potential and commitment to public service (e.g., professor, dean, advisor, president, community leader, etc.).

**610:25-37-4. Fiscal Aspects of the Program**

(a) Fund Establishment. The State Regents are allocating one-time funds in the amount of \$100,000 to establish the Chancellor Glen D. Johnson Scholarship in Leadership and Public Service fund.

(b) Donations. Private donations to the Chancellor Glen D. Johnson Scholarship in Leadership and Public Service will be added to the fund's corpus.

(c) Award Amount. Each year, the scholarship award amount will be determined by the State Regents based on prior year's investment earnings from the Chancellor Glen D. Johnson Scholarship fund.

(d) Disbursement. Funds made available to the student as part of the Chancellor Glen D. Johnson Scholarship in Leadership and Public Service will be paid directly to the student's institution on behalf of the student. Disbursement of funds will occur the first week of August, prior to the start of the fall semester.

[OAR Docket #22-652; filed 7-20-22]

# Permanent Final Adoptions

## TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #22-468]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 15. Department Manual, Rules, and Declaratory Rulings  
612:1-15-3. Petitions for rule changes and declaratory rulings  
[AMENDED]

### AUTHORITY:

Commission for Rehabilitation Services; 74 O.S. § 166.2

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

December 2, 2021

### COMMENT PERIOD:

December 2, 2021 through February 7, 2022

### PUBLIC HEARING:

February 7, 2022

### ADOPTION:

March 14, 2022

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

March 22, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Revisions to Chapter 1 consist of revisions to comply with the APA.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 15. DEPARTMENT MANUAL, RULES, AND DECLARATORY RULINGS

#### 612:1-15-3. Petitions for rule changes and declaratory rulings

(a) **Petition for rule changes.** An interested person may petition the Department requesting the promulgation, amendment, or repeal of a rule. Any such petition must be submitted to the Director in writing, clearly stating the requested action. If the petition is for an amendment or repeal of a rule, it must specify the rule by the OAC designation. The petition must also state the reasons for the requested change, including any

adverse impact such change or lack of change would have on individuals or organizations the rule affects.

(b) **Response to petition for rule changes.** Upon receipt of a petition as described in Subsection (a) of this Section, the Director will initiate study of the requested change through whatever means he or she deems appropriate. ~~If the Department formally acts upon the petition, the petitioner will be advised of the action in writing as specified by the Director.~~ In accordance with 75 O.S. 305, ~~if the Department does not initiate rulemaking proceedings within 30 calendar days of the petitioner's submission, the petition shall be deemed to have been denied within thirty (30) days after submission of the petition, either:~~

(1) the Department will initiate rulemaking proceedings, or

(2) the Director will provide the petitioner a written response and explain why such proceedings were not initiated.

(c) **Petition for declaratory ruling.** Any person, agency, or organization may ask for a declaratory ruling as to the applicability of a rule or group of rules, or of an order, made by the Department. Such a request is submitted to the Director of DRS in writing. The request will specify the rule(s) in question by OAC designation. A description of the circumstances, rule, policy, or procedure believed to be affected by the DRS rule(s) is given in enough detail to make a reasonable judgement as to the rule's effect and applicability. The request should also include a description of the effect or applicability of the DRS rule(s) as seen by the petitioner, if possible.

(d) **Response to a request for declaratory ruling.** Upon receipt of a petition as described in Subsection (c) of this Section, the Director will initiate study of the requested declaratory ruling through whatever means he or she deems appropriate. A response to the request, including a possible refusal to issue a declaratory ruling, will be prepared at the Director's order no later than 90 days after receipt of the request. The response will inform the petitioner of the right to a judicial review in the manner provided for in 75 O.S., Section 317 through 323.

[OAR Docket #22-468; filed 6-24-22]

## TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND SERVICES FOR THE BLIND AND VISUALLY IMPAIRED

[OAR Docket #22-469]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
612:10-1-2. Definitions [AMENDED]  
Subchapter 3. Client Participation in Cost of Services  
612:10-3-3. Participation of individuals in cost of services based on financial need [AMENDED]  
Subchapter 7. Vocational Rehabilitation and Services for the Blind and Visually Impaired  
Part 3. Case Processing Requirements



- 612:10-7-22.1. Processing referrals and applications [AMENDED]
- 612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]
- 612:10-7-24.2. Assessment for determining eligibility [AMENDED]
- Part 5. Case Status and Classification System
- 612:10-7-51. Individualized Plan for Employment [AMENDED]
- 612:10-7-57. Services interrupted, Service-I [NEW]
- 612:10-7-58. Closed Rehabilitated [AMENDED]
- 612:10-7-62. Post-Employment services [AMENDED]
- Part 11. Physical and Mental Restoration Services
- 612:10-7-98. General guidelines for physical and mental restoration services [AMENDED]
- Part 13. Supportive Services
- 612:10-7-130. Maintenance [AMENDED]
- Part 15. Training
- 612:10-7-142. General guidelines for training services [AMENDED]
- 612:10-7-150. Continued eligibility for college or university training [AMENDED]
- 612:10-7-164. Personal and work adjustment training [AMENDED]
- 612:10-7-171. Credential Attainment and Measurable Skill Gains for Post-Secondary Training Programs [NEW]
- Part 19. Special Services for Individuals Who Are Blind, Deaf, or Have Other Significant Disabilities
- 612:10-7-196. Interpreter services [AMENDED]
- 612:10-7-205. Services to persons who are deaf-blind [AMENDED]
- Part 21. Purchase of Equipment, Occupational Licenses and Certificates
- 612:10-7-216. Tools, occupational equipment, initial stocks and supplies [AMENDED]
- 612:10-7-220. Vehicle modification services [AMENDED]
- 612:10-7-221. Housing Modification [AMENDED]
- Part 23. Self-Employment Programs and Other Services
- 612:10-7-230. Self-employment programs [AMENDED]
- 612:10-7-230.2. Self-Employment Guidelines [REVOKED]
- 612:10-7-230.3. Self-Employment/Business Plans [REVOKED]
- 612:10-7-230.4. Agency financial contribution to self-employment/purchasing [REVOKED]
- 612:10-7-230.5. DRS Monitoring [REVOKED]
- Part 25. Transition from School to Work Program
- 612:10-7-245. Definitions [AMENDED]
- 612:10-7-250. Reporting Credential Attainment and Skill Gains for High School Transition Students [NEW]
- Subchapter 9. Rehabilitation Teaching Services
- Part 5. Services
- 612:10-9-34.3. Other adaptive skills [REVOKED]
- Subchapter 13. Special Services for the Deaf and Hard of Hearing
- Part 3. Certification of Interpreters
- 612:10-13-22. Grievance procedures [AMENDED]
- 612:10-13-23. Formal hearing [AMENDED]

**AUTHORITY:**

Commission for Rehabilitation Services; 74 O.S. § 166.2

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

December 2, 2021

**COMMENT PERIOD:**

December 2, 2021 through February 7, 2022

**PUBLIC HEARING:**

February 7, 2022

**ADOPTION:**

March 14, 2022

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

March 22, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Revisions to Chapter 10 consist of language revisions to comply with Workforce Innovation and Opportunity Act (WIOA).

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**612:10-1-2. Definitions**

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case a review of existing data to determine if an individual is eligible for vocational rehabilitation services; and to assign priority for an order of selection described in 34 CFR 361.36 in the States that use an order of selection; and to the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment.

"Assistive technology" means technology designed to be utilized in an assistive technology device or service.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

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**"Assistive technology service"** means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

**"Best correction"** refers to the use of standard eyeglasses or contact lenses and does not include the use of bioptic telescopic systems or specialized lenses which cannot be worn by the individual on a sustained basis.

**"Blind"** means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

**"Client"** means an individual found eligible and receiving services under the Act.

**"Community rehabilitation program"** (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

**"Comparable services and benefits"** means services that are provided or paid for in whole or in part by other Federal, state or local public agencies, health insurance or employee benefits, and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with 34 CFR 361.53, and commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency. For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

**"Compensatory training"** means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

**"Competitive integrated employment"** means full or part-time work that is compensated at or above minimum wage, offers an individual with a disability benefits and opportunities for advancement comparable to those offered to employees in similar positions, and is performed in a setting where the individual with a disability interacts with persons without disabilities to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons. Specific criteria defining competitive integrated employment are detailed in 34 CFR 361.5(c)(9).

**"Consumer Independence Support Services" (CISS)** are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist individuals with severe disabilities in achieving independence.

**"Continuity of Services"** means once an individual is selected for services in accordance with administrative rules, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

**"Counselor"** means the qualified vocational rehabilitation professional, who is an employee of the designated state

unit, and who has primary responsibility for the management of an individual's rehabilitation services record of service, including determination of eligibility, service planning and management, counseling and guidance, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as VR/SBVI Specialist and VR/SBVI Coordinator.

**"Credential attainment"** means the percentage of those clients enrolled in an education or training program (excluding those in OJT and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one year after exit from the program. Under the WIOA, workforce agencies are required to report this percentage during participation in or within one year after closure of the case. This is based on the sub-regulatory guidance related to the implementation and operation of the performance accountability system under section 116 of WIOA and the implementing regulations in 34 CFR parts 361 subpart E.

**"Customized employment"** means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the unique strengths, needs and interests of the individual; designed to meet the specific abilities of the individual and the business needs of the employer; and carried out using flexible strategies such as those detailed in 34 CFR 361.5(c)(11).

**"Department"** unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

**"DRS"** means the Department of Rehabilitation Services.

**"DVR"** means the Division of Vocational Rehabilitation.

**"DSBVI"** means the Division of Services for the Blind and Visually Impaired.

**"Electronic Case Management System"** means a "system of records" which is a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**"Eligible individual"** means an applicant for vocational rehabilitation services who meets the eligibility requirements of 34 CFR 361.42(a).

**"Employment and Retention" (E&R)** means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

**"Employment outcome"** means, with respect to an eligible individual, entering, advancing in, or retaining full-time or part-time competitive integrated employment as defined in 34 CFR §361.5(c) (9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in 34 CFR §361.5(c) (53), that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (Note: As specified in federal rule, a designated State unit may continue services to individuals with uncompensated employment goals on their approved individualized plans for employment prior to the effective date of the

final federal regulations until June 30, 2017, unless a longer period of time is required based on the needs of the individual with the disability, as documented in the individual's service record.)

**"Extended employment"** means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

**"Extended period of time"** means, with respect to duration of vocational rehabilitation, services that are expected to extend at least 6 months from eligibility.

**"Extended services"** means ongoing support services provided to individuals with the most significant disabilities, including youth with the most significant disabilities, after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE, except that DRS may provide and pay for extended services for youth with the most significant disabilities for a period not to exceed 4 years or extend beyond the date when the youth reaches age 25.

**"Extreme medical risk"** means a risk of substantially increasing functional impairment or risk of death if medical services including mental health services, are not provided expeditiously.

**"Family member"** means for purposes of receiving vocational rehabilitation services in accordance with 34 CFR 361.48(b)(9), means an individual who either is a relative or guardian of an applicant or eligible individual; or lives in the same household as an applicant or eligible individual; who has a substantial interest in the well-being of that individual; and whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

**"Functional capacities"** means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

**"Functional limitations"** means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

**"Higher education"** means universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

**"Highly challenged"** describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

**"IEP"** means Individualized Education Program as required by the Individuals with Disabilities Education Act.

~~**"Independent Living (IL) Core Services"** is defined as information and referral services; independent living skills training; peer counseling; individual and systems advocacy;~~

~~and services that facilitate the transition of individuals with significant disabilities from institutions to community based residences, assist individuals at risk of entering institutions to remain living in the community, and assist the transition to postsecondary life for youth with significant disabilities who were eligible for special education and are no longer in school.~~

~~**"Independent Living Services"** as defined in the Rehabilitation Act, 29 USC Section 705 (17) and (18), include IL core services and counseling, housing procurement and modifications, personal assistance, mobility training, rehabilitation technology, life skills training, interpreters, readers, transportation, community integration, supported living, physical rehabilitation, aids and devices, social and recreational opportunities, and other services that are necessary and not inconsistent with the Act's provisions related to independent living.~~

**"Individual with a disability"** means an individual who has a physical or mental impairment; whose impairment constitutes or results in a substantial impediment to employment; and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

**"Individual with a severe disability"** means with respect to eligibility for the state's Optional Program for Hiring Applicants with Disabilities, an individual who has a physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

**"Individual with a significant disability"** means an individual with a disability:

(A) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

**"Individual with the most significant disability"** means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in 34 CFR 361.36(d)(1) and (2):

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(A) who has a severe physical or mental impairment that seriously limits three or more functional capacities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

**"Individual's representative"** means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

**"Integrated setting"** means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

**"Intercurrent (acute) conditions"** means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

**"IPE"** means the Individualized Plan for Employment.

**"Job Club"** is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

**"Job Coach/Employment Training Specialist"** means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

**"Long-term treatment"** means medical or psychological treatment that is expected to last more than three months.

**"Maintenance"** means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

**"Measurable Skill Gains" or "(MSG)"** means a measure of the documented progress (academic, technical, occupational, or other) that a client makes in a training or education program toward obtaining a recognized postsecondary credential. This progress is reported throughout the life of the case. Examples of a valid skill gain would be the documented completion of a high school semester or a minimum of 12 college hours successfully completed over a one year period.

**"Milestones"** means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

**"Multiple services"** means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

**"Natural supports"** means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

**"Occupational license"** means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

**"OMES-DCAM"** means Office of Management & Enterprise Services-Division of Capital Assets Management, which sets thresholds for State Purchasing guidelines.

**"Ongoing support services"** means services specified in the IPE according to individual need, which support and maintain an individual with the most significant disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural

supports, following transition throughout the individual's term of employment.

**"Other Qualified Rehabilitation Personnel"** means qualified rehabilitation personnel who, in addition to rehabilitation counselors, are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual (Section 100(a)(3)(E) of the Act.) Other qualified rehabilitation personnel include, but are not limited to, rehabilitation teachers of the blind who are certified at the national level.

**"Package of services"** means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

**"Personal assistance services"** means a range of services including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons, that are designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services are also designed to increase the individual's control in life and ability to perform everyday activities on or off the job; necessary to the achievement of an employment outcome; and provided only while the individual is receiving other vocational rehabilitation services.

**"Physical and mental restoration services"** means corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment.

**"Physical or mental impairment"** means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder such as intellectual disability organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**"Post-employment services"** means one or more of the services identified in 34 CFR 361.48(b) that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**"Pre-employment transition services"** means the required activities and authorized activities specified in 34 CFR 361.48(a)(2) and (3).

**"Prior approval"** refers to the receipt of approval from the granting authority prior to issuing the authorization for the purchase of goods and services.

**"Record of Service"** means any item, collection, or grouping of information about an individual that is maintained

by an agency, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual.

**"Rehabilitation Act"** means the Rehabilitation Act [29 USC 701 et seq.].

**"Rehabilitation engineering"** means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

**"Rehabilitation technology"** means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

**"SBVI"** means the Division of Services for the Blind and Visually Impaired, depending upon the context.

**"Section 504 Plan"** is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

**"Small business enterprises"** means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

**"Sole local agency"** means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.

**"Student with a disability"** means, in general, an individual with a disability in a secondary, postsecondary, or other recognized education program who meets the requirements set forth in 34 CFR 361.5(c)(51).

**"Substantial impediment to employment"** means that a physical or mental impairment (in the light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining

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employment consistent with the individual's abilities and capabilities.

**"Supplemental Wage Record"** means wage information used to determine both employment status and wages within a reporting period. This information is required when wage information cannot be obtained through other means such as the Oklahoma Employment Security Commission. The requirement to make the effort to obtain this supplemental wage information is necessary to carry out the accountability requirements under Section 116 of the Workforce Innovation and Opportunity Act.

**"Support Service Providers" (SSP)** means a Support Service Provider, commonly referred to as an SSP, is a specially trained individual who provides access to the community for people who are deaf-blind. The SSP is responsible for human guide assistance and facilitation of communication for the deaf-blind person.

**"Supported employment" (SE)** means competitive integrated employment, including customized employment, or employment in an integrated work settings in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities who meet the requirements set forth in 34 CFR 361.5(c)(53).

**"Supported employment services"** means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are:

- (A) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;
- (B) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;
- (C) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and
- (D) Following transition, as postemployment services that are unavailable from an extended services provided and that are necessary to maintain or regain the job placement or advance in employment.

**"Transition services"** means, for a student or a youth with a disability, a coordinated set of activities designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation. Transition services (1) are based upon the individual student's

or youth's needs, preferences and interests; (2) include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation; (3) promote or facilitate the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and (4) include outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

**"Transportation"** means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation services, including expenses for training in the use of public transportation vehicles and systems.

**"Vocational rehabilitation services"**, if provided to an individual, means those services listed in 34 CFR 361.48; and if provided for the benefit of groups of individuals, means those services listed in 34 CFR 361.49.

**"VR"** means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

**"Youth with a disability"** means an individual with a disability who is not younger than 14 years of age; or older than 24 years of age. Youth with disabilities means more than one youth with a disability.

## SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES

### 612:10-3-3. Participation of individuals in cost of services based on financial need

(a) DRS has chosen to consider the financial need of eligible individuals or individuals who are receiving services through the trial work experiences under 34 CFR 361.42 (e) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (c) in this section according to the criteria set forth in 34 CFR 361.54 (b) (1-2).

(b) DVR and DSBVI requires the client to participate in the cost of some vocational rehabilitation services if the client and/or client's family income exceeds the established basic living requirement for the applicable family size. Any client whose available family income exceeds the applicable basic living requirements is required to apply the monthly surplus to the cost of services during each 30 day period services are provided.

(c) A basic living requirement has been established for different size family groups. A family member is an individual who is a relative or guardian of an applicant or eligible individual. Basis living requirements are based on 200% of the Federal poverty level adjusted annually for family size. The standard is intended to cover only the necessities of food, shelter, utilities, clothing, transportation, and incidentals to give the counselor some criteria by which to measure the financial need of a client. To qualify as independent from the family group, the client must meet on of the following criteria:

- (1) Beneficiary of Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI);
  - (2) At least 24 years of age and single;
  - (3) A ward of the court and in custody of DHS;
  - (4) Married and maintaining a separate household;
  - (5) Meets the criteria for temporary housing as described (7) of this section or;
  - (6) The counselor ~~verifies~~ has adequate documentation to verify the client has the financial resources to demonstrate self-sufficiency and ~~the client declares that~~ no family contributions are available.
  - (7) An eligible individual whose disability has resulted in the need to live with family or friend, and as appropriate the individual's spouse and dependent children, will be considered as a separate household regardless of living arrangements.
    - (A) Verification of family membership should be based upon whatever available information most accurately documents family membership according to the definition given in this administrative rule.
    - (B) Examples of acceptable verification include the latest Federal income tax return, payroll information, insurance policies, client report, and/or counselor observation.
- (d) The client can be provided services not based on financial needs, the following services do not require a determination of financial need status:
- (1) services provided to assess eligibility and priority for services (services which would require the individual's participation in cost under an IPE will also require the individual's participation in cost during an evaluation of the individual's ability to benefit from VR services);
  - (2) counseling and guidance including information and support services to assist an individual in exercising informed choice;
  - (3) referral and other services to secure needed services from other agencies, including other components of the statewide workforce development system;
  - (4) on-the-job training, work experience, internships and apprenticeships;
  - (5) personal or vocational adjustment training;
  - (6) personal assistance services;
  - (7) job-related services including job search and placement assistance, job retention services, follow-up services and follow-along services; under 34 CFR 361.48 (b) (12);
  - (8) compensatory training;
  - (9) Supported employment, employment and retention; or
  - (10) any auxiliary aid or service (e.g., interpreter services, reader services) that an individual with a disability require under Section 504 of the Act or the American with Disabilities Act (42 U.S.C. 12101, et seq.) or regulations implementing those laws, in order for the individual to participate in the VR program.
- (e) Any client who does not have a surplus is not required to participate in the cost of services. Financial need does not exempt the client from required use of comparable benefits.
- If a payment is required of the client, it will be made to the vendor.
- (f) The counselor will re-evaluate the client's financial situation at least annually and any time there is a change in the financial situation of the client or family. The amount of client participation in cost is based upon the most recent determination of client's financial needs at the time the IPE or amendment. If applicable, the extent of the individual's participation in paying for the cost of services is identified on the IPE service (e.g. Family monthly income surplus will be exhausted prior to agency financial contribution).
  - (g) The client's financial needs must be verified when an IPE includes service which require client participation in costs of services.
  - (h) Determination of income and liabilities will be verified and documented by the counselor in the record of service when services in the IPE and amendments require client participation in cost. If the individual refuses to provide the requested information, DRS resources will not be used to purchase services which require client participation in cost of the services.
    - (1) Income.
      - (A) Income generated from salaried wages will be calculated by gross earnings minus federal taxes, state taxes and social security deductions.
      - (B) Income generated from business or profession will be calculated by adjusted gross minus additional federal and state taxes divided by 12 to determine a monthly amount.
      - (C) Income received from unearned sources, such as pensions, public assistance, interest, dividends, royalties, trust fund, or money payments of any kind will be counted. Educational grants, stipends, or loans will not be included in the calculation. If a yearly income is available, it will be divided by 12 to calculate a monthly amount.
    - (2) Liabilities. When the client is making payments on any areas of liability listed below, payments will be itemized. If payments are not being made on a debt, an expense cannot be shown for this item.
      - (A) Medical. Out-of-pocket medical payments not covered by insurance, including medication and supplies, can be used as a medical expense. Monthly premiums for health insurance can be included.
      - (B) Disability related expenses. Disability related expenses beyond the basic living requirements may be considered, if not funded by DRS.
      - (C) Other. Court order commitments, including child support, can be counted as a liability.
      - (D) Education expenses. Costs for any family member incurred only for tuition, books, and fees, toward post-secondary educational expenses, not included in the IPE or paid by grants, scholarships, fee waivers, etc., can be counted as a liability. Only the amount of the payments can be counted as a liability.
- (i) Case recording requirements. A statement regarding the re-evaluation of financial needs must be included in the record of service. The financial review may be included in the IPE review if they occur at the same time.

## SUBCHAPTER 7. VOCATIONAL REHABILITATION AND SERVICES FOR THE BLIND AND VISUALLY IMPAIRED

### PART 3. CASE PROCESSING REQUIREMENTS

#### 612:10-7-22.1. Processing referrals and applications

(a) **Referrals.** DRS must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the one-stop service delivery systems under section 121 of the Workforce Innovation and Opportunity Act. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(1) Processing incoming referrals. All referrals to DVR and DSBVI will be contacted by the VR counselor and appropriate action taken within 30 days, after receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to referrals who are deaf or non-English speaking. In situations where the individual cannot be personally contacted, correspondence will be mailed to the individual for informational purposes.

(2) Referrals to rehabilitation teachers. All individuals who are legally blind, whether being served by a DVR counselor or a DSBVI counselor, will be referred to a rehabilitation teacher. Rehabilitation teachers may also receive counselor referrals and provide services for individuals who are not legally blind but have functional limitations due to vision loss and have potential to benefit from rehabilitation teaching services.

(b) **Application.** Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under section 121 of the Workforce Innovation and Opportunity Act (WIOA), an eligibility determination must be made within 60 days, unless exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and counselor and the individual agree to a specific extension of time; or meets the other criteria under 34 CFR 361.41

(b) (1) (i-ii).

(1) In those instances of exceptional and unforeseen circumstance beyond the control of DRS, where the eligibility determination is unable to be completed within the time frame identified in (b) of this section. The QVRC, utilizing the electronic case management system, will complete the Extension of Eligibility form documenting the date the eligibility form was completed, the date of expected eligibility determination; along with documentation of the date of when the client and counselor agreed to the extension; unless a decision was made to conduct a Trial Work Experience.

(c) **Social Security Administration (SSA) Beneficiaries' Verification.** During the initial interview, the VR counselor shall advise applicants for the VR program that individuals who are SSI/SSDI beneficiaries are generally presumed eligible for VR and that verification of the applicant's benefit status is needed. Verification may include a copy of an award letter from SSA, or a Ticket-to-Work as found in 34 CFR 361.42 (a) (3) (i-ii).

(d) **Application Status.** While the client is in this status, the counselor will secure sufficient information to make a determination of eligibility and priority group assignment, determine ineligibility for vocational rehabilitation services, or to make a decision to conduct a Trial Work Experience or an Extended Evaluation. The VR Professional Qualified Vocational Rehabilitation Counselor will determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days from the date of application.

(e) **Necessary information.** The minimum information necessary to initiate an assessment to determine eligibility and priority for services consists of:

- (1) individual's name;
- (2) reported disability;
- (3) individual's address, with finding directions when needed;
- (4) individual's social security number, if available; and
- (5) availability of documentation of the reported disability.

(f) **General Health Checklist.** The general health checklist (GHC) is a survey tool used to determine what diagnostic information will be needed to assess an applicant's eligibility or ineligibility. A general health checklist will be completed for each applicant. The counselor/teacher in consultation with the client will decide if purchasing a medical examination is necessary when the GHC indicates the presence of any condition. This decision will be based upon availability of existing medical records, and the reported degree of limitation to employment caused by the condition.

(g) **Informed Choice.** VR and DSBVI staff must assure that applicants or, as appropriate, their representatives are provided information and support services to assist applicants and recipients of services in exercising informed choice throughout the rehabilitation process in accordance with 34 CFR 361.52.

(1) Informed choice and the provision of vocational rehabilitation services require that communications with persons with disabilities are effective.

(2) DVR staff informs each applicant and recipient of services through appropriate modes of communication about the availability of and opportunities to exercise informed choice. Individuals with cognitive or other disabilities who require assistance in exercising informed choice will be notified that support services are available.

(h) **Case recording requirements.** Pertinent information from the initial interview and applicant information forms is recorded in a narrative that is placed in the record of service.

(1) Documentation of the process of providing informed choice information and use of appropriate modes of communication is included in the record of service.



- (2) The record must document that the applicant or representative was provided an explanation of their due process rights, their rights and responsibilities as an applicant, and given a copy of the CAP handout and approved client handbook.
- (3) The record must document that the applicant was given the opportunity to register to vote or change registration when applying for or receiving services, in accordance with the requirements of the National Voter Registration Act of 1993.

**612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services**

- (a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:
  - (1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;
  - (2) is determined by a qualified vocational rehabilitation counselor to require vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment; and
  - (3) can benefit in terms of an employment outcome from vocational rehabilitation services.
- (b) The agency presumes that an applicant with a physical or mental impairment that constitutes or results in a substantial impediment to employment can benefit from vocational rehabilitation services in terms of an employment outcome, unless the agency demonstrates, based on clear and convincing evidence, that the individual is incapable of benefiting from rehabilitation services due to the severity of the individual's disability.
- (c) An individual who has a disability or is blind as determined pursuant to Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) shall be:
  - (1) considered to have a significant disability under the order of selection; and
  - (2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.
- (d) Eligibility requirements shall be applied without regard to:
  - (1) duration of residence in the state,
  - (2) type of disability,
  - (3) age, except that in serving eligible individuals below working age, the client must be expected to reach working age by the time the IPE is completed, and DRS will not provide services that are the responsibility of the public school system.
  - (4) gender, race, color or national origin,
  - (5) type of expected employment outcome,

- (6) source of referral, or
- (7) the particular service needs or anticipated cost of services required by an applicant or applicant's family.
- (e) **Disabled veterans.** Disabled veterans are eligible for vocational rehabilitation services on the same basis as other individuals with disabilities subject to the following restrictions:
  - (1) Disabled veterans are not provided services which can be secured from the Veterans Administration (VA), unless use of VA services will cause a substantial delay of services.
  - (2) Veterans receiving additional benefits under the G. I. Bill or the War Orphan Act may be provided services if such services do not duplicate those being received from the VA.
- (f) **Applicants who are employed.** Employed persons who meet basic eligibility requirements may be provided vocational rehabilitation services to advance in or retain employment, or when the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities.
- (g) **Citizenship.** Participation in the VR program is available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees and parolees, and other immigrants authorized to work in the United States.
- (h) **Criteria.** Some conditions have unique criteria that must be considered when determining eligibility.
  - (1) **Alcoholism/Drugs.** Individuals may be eligible for vocational rehabilitation services based on a substance abuse diagnosis that may be made by a qualified professional. Clients must be willing to undergo random alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. Documentation from qualified Drug and Alcohol treatment professionals indicating that the client is presently substance-free, maintaining sobriety, and actively participating in a treatment or maintenance program if recommended by the treating professional must be filed in the case record upon IPE development.
  - (2) **Allergies/Asthma.** Allergies/asthmatic conditions that require continuous or intermittent medical intervention and result in a substantial impediment to employment will be considered eligible for services.
  - (3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below, as performed by a ~~qualified audiologist or other qualified professional~~ licensed audiologist as determined by the Department. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual. The licensed audiologist will do a Comprehensive Hearing Evaluation (CHE) with written recommendations for treatment. The CHE will include the type of hearing aids needed with a treatment plan to maintain the maximum rehabilitation for the hearing loss.
  - (4) A CHE or recommendation for hearing aids and treatment from a Hearing Instrument Specialist (HIS) is

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not acceptable and should not be considered by the rehabilitation professional in addressing the rehabilitation needs.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (i) through (iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(v) **Only a licensed audiologist can determine the speech discrimination or word recognition and articulation index score.** The Vocational Rehabilitation Counselor will utilize these scores in determining eligibility and identification of the functional barriers to employment.

(I) A Consultation by the Rehabilitation Counselor for the Deaf (RCD) that the applicant has hearing loss that constitutes a physical or mental impairment and the physical or mental impairment constitutes or results in a substantial impediment to employment; and

(II) A Consultation by a Rehabilitation Counselor for the Deaf (RCD) that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individuals unique strengths, resources, priorities, concerns, abilities, capabilities, interest and informed choice.

(B) **Severity of Hearing Loss.** All individuals who qualify as having a severe hearing loss or, who

are culturally Deaf and/or use Manual Communication, will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (~~RCD~~) (RCD for a consultation on severity of loss and functional limitations) The RCD then will determine whether the case needs to be assigned to an RCD. Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form. ~~On receipt of a referral, the RCD will contact the client and make a determination of potential for Deaf and Hard of Hearing services. The referring counselor will be informed in writing of the RCD's findings.~~

(i) **Severe Hearing Loss.** Average hearing loss, as calculated above, is considered severe when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or

(II) The hearing loss in each ear is 55 dB or greater.

(ii) **Severe Speech Recognition Threshold (SRT).** An individual is considered to have severe disability when;

(I) The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or

(II) The SRT in each ear is 55 dB or greater.

(iii) **Severe Speech Discrimination or word recognition score.** An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.

(4) **Diabetes.** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone or whose condition does not result in a substantial impediment to employment will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year. Diabetes management training will be incorporated into the IPE unless the client shows that he/she has previously completed diabetes management training. When recommended by a physician, diabetes management training will be incorporated into the IPE regardless of past diabetes education received by the individual.

(5) **Facial and Disfigurement Conditions.** When these conditions result in an impediment to employment an individual may be eligible for VR services.

(6) **Learning Disabilities.** Learning disabilities is a general term that refers to a group of disorders manifested by significant difficulties in the attainment and use of listening, speaking, reading, writing, reasoning, or mathematical abilities. Learning disabilities are identified when there are difficulties learning and using academic skills, as indicated by at least one of the following occurring even with interventions: Inaccurate or slow reading, difficulty understanding the meaning of what is read, difficulties

with spelling, difficulties with written expression, difficulties mastering numbers sense, facts or calculation, and difficulties with mathematical reasoning. Also, academic skills are significantly below those expected for the student's chronological age and causes issues with academic and occupational performance. Academic areas include, impairment in reading, impairment in written expression, and impairment in mathematics.

(7) **Mental Disorders.** Individuals may be eligible for vocational rehabilitation services based on a mental health diagnosis made by a qualified professional (612:10-7-98 (17)(A)(1-5)). Documentation must be filed from a qualified professional indicating the client is participating in a treatment plan and in compliance with all medication as prescribed. Treatment must be incorporated as a service in the IPE for individuals with a mental disorder.

(8) **Intellectual Disability.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. Individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the intellectual disability range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the intellectual disability range of ability.

(9) **Height.** To be eligible, a person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be considered obese according to a recognized medical classification protocol and the impairment must constitute or result in a substantial impediment to employment. Some type of weight loss plan or treatment for obesity must be included as a service in the IPE.

(11) **Visual.** Any of the following conditions may provide a basis for eligibility due to visual disability:

(A) **Blindness.** A central visual acuity of 20/200 or less in the better eye with best correction, or a limitation in the field of vision in the better eye so that the widest diameter of the visual field subtends an angle of 20 degrees or less. "Best correction" refers to the use of standard eyeglasses or contact lenses, and does not include use of bioptic telescopic systems or any specialized lenses which cannot be worn by the individual on a sustained basis.

(B) **Visual impairment.** A central visual acuity of 20/60 or less in the better eye with best correction, or other visual condition which, for the individual, results in functional limitations and constitutes a barrier to employment. Other visual conditions which may result in functional limitations include, but are not limited to, limited peripheral vision, extreme light

sensitivity, loss of depth perception, loss of stereopsis, diplopia (double vision), aphakia, total absence of color discrimination or red-green deficiency, blurred vision, eye muscle and movement conditions, and cortical visual impairment.

(C) **Progressive eye disease.** Diagnosis of a progressive sight threatening disease or condition that has resulted in functional limitations for the individual or is expected to progress rapidly. Progressive eye diseases which may result in significant vision loss include, but are not limited to, retinitis pigmentosa, diabetic retinopathy, glaucoma and macular degeneration.

(12) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

**612:10-7-24.2. Assessment for determining eligibility**

(a) To determine whether an individual is eligible for vocational rehabilitation services:

(1) the counselor will use to the maximum extent possible and appropriate existing data including counselor observations, education records, information provided by the individual or the individual's family, and determinations made by officials of other agencies; and

(2) to the extent necessary provide appropriate assessments, including provision of goods and services during the assessment, to obtain additional documentation necessary to make the determination of eligibility and priority group assignment. The counselor will carefully evaluate the need to provide assistive technology devices and services or worksite assessments.

(b) The ~~counselor~~ Qualified Vocational Rehabilitation Counselor (QVRC) will determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days after the individual has submitted an application for services. This time period may be extended only when unforeseen and exceptional circumstances beyond the control of the Department preclude completing the determination of eligibility within the 60 days and the individual agrees a specific extension of time is warranted as documented on the Need for Extension of Time to Determine Eligibility form; or a trial work period ~~or an extended evaluation~~ is needed to determine the individual's ability to benefit from VR services.

(c) Documentation that the individual has a disability which constitutes or results in an impediment to employment must come from qualified professionals.

(d) Eligibility determinations will be expedited for applicants who have been determined eligible for vocational rehabilitation services by an American Indian Vocational Rehabilitation Services (AIVRS) Program. Counselors will work cooperatively with the applicable American Indian VR Program to obtain pertinent diagnostic and other documentation, and utilize such documentation, as appropriate, in making eligibility decisions that are prompt or, whenever feasible, immediate.

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(e) A qualified rehabilitation professional may proceed with a determination of eligibility if there is an obvious and/or observable disability that results in an impediment to employment. The VR specialist will document observations pertaining to the applicant's disability. After making the determination of eligibility the VR specialist may authorize any assessments and services necessary to further document eligibility, establish priority group placement and determine rehabilitation needs for development of the Individualized Plan for Employment.

(f) Diagnosis and evaluation are to be provided only for determination of eligibility for VR services, priority group placement, and determination of VR service needs. DVR and DSBVI funds are not to be used to assist an individual in establishing eligibility for other programs.

(g) When necessary, diagnostic evaluations may be purchased at any time during the life of the case.

(h) If an individual is determined eligible, the VR counselor will notify the individual in writing. If the individual is determined to be ineligible, the counselor will notify the applicant and provide information on further options in accordance with DRS policy on ineligibility decisions.

(i) Eligibility for supported employment. The counselor may not find an individual ineligible for supported employment services because a resource for providing extended services cannot be identified. In this instance, the counselor will:

- (1) accept the individual as eligible for VR services;
- (2) plan VR services as appropriate, including the expected availability of extended services; and
- (3) seek out and/or help in developing the needed extended services resource.

(iii) information on the availability of assistance in completing DVR/DSBVI forms required in developing the IPE;

(iv) For cases involving Diabetes, Mental Disorders, and Obesity, treatment must be incorporated as a service in the IPE, in accordance with DRS policy rules.

(D) a copy of a DRS publication addressing client's rights and responsibilities.

(2) For cases in an open priority group, the IPE must be completed and signed as soon as possible, consistent with the needs of the individual, but not more than 90 calendar days following the eligibility determination, unless the individual or the authorized representative and the VR or SBVI counselor jointly agree to an extension of time of a specific duration. The 90-day time frame for development of the IPE will be applied from the date a closed priority group is reopened.

(b) **Vocational objective.** The primary purpose in providing vocational rehabilitation services is to assist an eligible individual obtain appropriate competitive employment in an integrated setting consistent with the individual's informed choice. The choice of a vocational objective for an individual receiving vocational rehabilitation services must be based primarily upon the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities, consistent with the general goal of competitive integrated employment.

(1) **Informed choice.** The vocational objective is to be chosen with the full participation of the client. The client's interests and informed choice determine his or her vocational goal to the extent these factors are consistent with the client's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(2) **External conditions.** Factors such as the local labor market or local economy must also be taken into consideration. However, in most cases these factors cannot be used as the only basis upon which to determine whether a vocational objective is appropriate.

(c) **General requirements for the Individualized Plan for Employment.**

(1) The IPE documents the client's chosen employment goal, and the planning of vocational rehabilitation services which are necessary to achieve a successful employment outcome. The client will be a full participant in the development of the IPE or any amendments consistent with Federal and State regulations, laws, and statutes. The eligible individual must be given the opportunity to exercise informed choice in selecting an employment outcome, the specific VR services to be provided under the plan, the service providers, and the methods for service delivery. For cases in an open priority group, the IPE must be agreed to and signed by the eligible individual or authorized representative, approved by a VR counselor and, as appropriate, other administrators employed by DVR or DSBVI within 90 days of determination of eligibility, unless the individual or the authorized representative of the individual and the VR or SBVI counselor jointly agree to an extension of time of a specific duration. To the maximum extent

### PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

#### 612:10-7-51. Individualized Plan for Employment

(a) **Options for developing the Individualized Plan for Employment (IPE).** The VR counselor will provide the eligible individual, or the individual's authorized representative, in writing and in appropriate mode of communication, with information on the individual's options for developing the IPE.

(1) The required information will include the following:

(A) information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, or authorized representative, from a qualified VR counselor in developing all or part of the IPE, and the availability of technical assistance for this purpose;

(B) a description of the required content of the IPE;

(C) as appropriate:

(i) an explanation of agency requirements for client participation in cost of services;

(ii) additional information requested by the individual or authorized representative;

possible, the IPE is to be provided in the native language or mode of communication of the individual or, as appropriate, of a parent, family member, guardian, advocate, or authorized representative. It is also required the client receive a copy of the plan and any subsequent amendments.

(2) The IPE is subject to continuous development and change. Substantial changes to the IPE are documented as amendments. A substantial change is broadly defined as any change in the employment objective, or in service needs or available resources not accounted for in the original IPE or existing amendment(s). The amount of any client participation in the cost of a service will be based upon the determination of client's financial status completed at the time the relevant IPE or amendment is written, and is to be stated in the IPE or amendment. If services based upon financial status are included in the original IPE and/or in the amendment, a new Financial Status Determination form will be completed when the IPE is amended. A copy of any Amendment to an Individualized Plan for Employment will be given to the client, or client's authorized representative, as appropriate.

(3) Diagnosis related to eligibility or the IPE can be provided at any time it is necessary during the life of the case.

(4) An IPE is not considered in effect until all required approvals have been obtained in accordance with Department policy.

(5) Plan reviews are comprehensive reviews of the entire IPE. A plan review can be done at any time, but must be done at least annually. The client must be given the opportunity to review the plan and, if necessary, participate in its redevelopment and agree to its terms. A financial status determination will be completed at the time of plan review when the IPE includes services based upon client's financial status.

(d) **Content of the Individualized Plan for Employment.** The Individualized Plan for Employment must include:

(1) a description of the specific employment outcome that is chosen by the client consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice consistent with the general goal of competitive integrated employment (except that in the case of a student or a youth with a disability, the description may be a description of the individual's projected post-school employment outcome), and the estimated timeframe for the achievement of the employment outcome;

(2) a description of the specific VR services that are:  
(A) needed to achieve the employment outcome including as appropriate, the provision of assistive technology services and devices, and personal assistance services, including training in the management of such services;  
(B) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the client; and  
(C) timelines for the achievement of the employment outcome and for the initiation of services.

(3) a description of the service provider chosen by the client or authorized representative, and the methods of services delivery;

(4) a description of the criteria that will be used to evaluate progress toward achieving the employment outcome;

(5) the terms and conditions of the IPE including as appropriate:

- (A) the responsibilities of DVR or DSBVI;
- (B) the responsibilities of the client, including:
  - (i) the client's responsibilities for the employment outcome;
  - (ii) the client's participation in paying the cost of VR services; and
  - (iii) the client's responsibility to apply for, accept, and use comparable services and benefits to defray in whole or in part the cost of VR services.

(6) for an IPE that includes supported employment services, information identifying:

- (A) the extended services needed by the client; and
- (B) the source of the extended services, including natural supports, or an explanation concluding there is a reasonable expectation a source will become available; and
- (C) the weekly work goal.

(7) if it appears they will be necessary, a statement of needed post-employment services.

**612:10-7-57. Services interrupted, Service-I**

(a) Circumstances may arise that prevent a client from participating in the established IPE. These circumstances may therefore require a temporary interruption of services. A case is placed in Service-I when the client is unable to participate in the IPE because of circumstances beyond their control or the participant has not fulfilled requirements identified by the VR agency. Service-I may be used when planned services will be interrupted and there is an assumption that services may resume within a reasonable period of time. Cases should not remain in interrupted status for more than 9 months.

(b) The Rehabilitation Counselor will perform the following actions to a case placed in Service-I status:

- (1) Contact client at least every 30 days to determine status of interruption.
- (2) Review circumstances periodically with Supervisor to determine whether the record of services should remain open or be closed, as appropriate to the individual case.
- (3) Change status when appropriate.

**612:10-7-58. Closed Rehabilitated**

(a) **Use of Closed Rehabilitated status.** A case is closed as rehabilitated because the client has achieved an employment outcome as a result of vocational rehabilitation services. Cases closed as rehabilitated must as a minimum meet the requirements in (1) through (5) of this Subsection:

(1) the provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

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- (2) the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
  - (3) the employment outcome is in an integrated setting, consistent with the individual's informed choice;
  - (4) the individual has maintained the employment outcome for a period of at least 90 days; and
  - (5) at the end of the appropriate period under Paragraph (4) of this Section, the individual and the VR Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.
- (b) **Out of state.** Clients who move out of state after services have been completed are closed in rehabilitated status if the requirements in Subsection (a) of this Section can be met. If those requirements cannot be met the case will be closed, not rehabilitated.
- (c) **Successful closure prior to completion of IPE.** If employment is secured before completion of the IPE, a counselor must document the conditions of substantial services and suitable employment were met. If planned services are interrupted prior to achieving the originally planned vocational goal, and services provided have directly contributed to the employment outcome for the individual or to job retention, an IPE amendment is not needed to revise the vocational goal prior to closure. A plan amendment is required when there is a substantial deviation from the original employment goal.
- (d) **Cases closed from supported employment.** An individual with the most significant disabilities who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for a minimum of 90 days beyond stabilization. In addition to the criteria for "suitably employed", the counselor must document that the individual has met or has made substantial progress toward meeting the weekly work goal defined in the IPE, the client is satisfied with the job, the employer is satisfied with the client's job performance, extended services are in place, all supported employment requirements have been met, and the case is ready for closure. The closure documentation will address any significant differences in the ultimate work week achieved as compared with the predicted goal.
- (e) **Cases closed from employment and retention.** An individual with severe disabilities who is receiving employment and retention services is considered to be successfully rehabilitated when the client maintains employment for a minimum of 90 days after placement, or for a minimum of 4 weeks plus 90 days if the individual required the "4 Weeks Job Support" Milestone.
- (f) **Case recording requirements.** The client, or the client's authorized representative as appropriate, will be a full participant in the decision to close the case. The last discussion of the closure decision with the client, or the client's authorized representative, will be held ~~within 30~~at the end of the required 90 days of the closure, and will be documented in a case narrative. The client will be notified in writing of the closure and advised of the availability of Post-Employment Services.
- (g) **Documentation at Successful Closure.** Prior to closure, a copy of the current pay stub identifying the individual's

competitive hourly wage and hours to determine weekly earnings. If the current pay stub is not available, then the following is acceptable:

- (1) An individual's written report of employment information and required wage information documented on an authorized DRS form (DRS-C-065) with their dated signature; or
- (2) A detailed case note identifying the individual's employment information including the current competitive hourly wage and work hours in a typical week that is based on the counselor's conversation with the actual employer. Prior to calling an employer, the individual shall be informed that information provided and gathered is limited to what is necessary to document and verify employment. This provides the individual the opportunity to discuss preferences and options for obtaining required documentation. A signed Release of Information should be in the case file.
- (3) If verification as stated above is not forthcoming and all efforts to obtain acceptable verification are documented, then the following is acceptable: a detailed case note identifying the individual's employment information including the current competitive hourly wage and work hours in a typical week, the date the final employment verification was received with justification for the individual not providing formal documentation.
- (4) Individuals who are self-employed are required to provide wage documentation of competitive integrated self-employment.

### 612:10-7-62. Post-Employment services

- (a) **Use of Post-Employment services.** Post-employment services may be provided to assist rehabilitated clients to retain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.
- (1) The need for post-employment services will be assessed at initiation of the IPE. Ongoing assessment continues during case services, is documented as needed, and is reassessed just prior to case closure.
  - (2) Post-employment services may also be provided for needs that were not anticipated in the original IPE or prior to case closure. Post-employment services can be provided to individuals who receive Supported Employment Services if such services are needed to maintain the supported employment placement and those services are not available from an extended services provider.
  - (3) Post-employment services are not to be used in instances of underemployment when extensive retraining is needed.
  - (4) Cases reopened on a post-employment basis do not require re-establishment of eligibility. New diagnosis is needed only if there has been a change in the client's physical or mental condition. Any vocational rehabilitation service or combination of services necessary to assist the individual retain, regain, or advance in employment may be provided if the service(s) does not involve a complex

or comprehensive effort. If comprehensive services are indicated, a new application is taken.

(5) Federal regulations forbid the setting of arbitrary time limits on the provision of post-employment services. If the client has been employed for a long period of time, the counselor must carefully review the client's situation before making the decision to provide post-employment services as opposed to opening a new case.

(b) **Other considerations.** Other considerations in determining a client's eligibility for post-employment services are:

(1) **Financial Needs.** A new financial need determination must be made if services requiring consideration of client participation in the cost of services are to be provided.

(2) **Emergency conditions.** Treatment of an emergency condition will not be considered as a post-employment service.

(3) **Upgrading.** Post-employment services are provided to help the individual advance in employment only when the nature of the individual's impediment to employment makes advancement the most appropriate post-employment outcome consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) **Transfer of cases.** Clients needing post-employment services who have moved to another area of the state will have their cases transferred. When a rehabilitant who has moved out of state requests post-employment services, the counselor will refer the individual to the rehabilitation program in the state where the individual resides. Upon receipt of a release signed by the client, copies of the requested information from the closed record of service will be forwarded to the receiving state agency. If an individual who was a rehabilitant in another state requests post-employment services from our state, information must be requested from the state where services were previously provided. All requests must include a specific release of confidential information signed by the applicant. The case will be processed as a new referral, but will be served and documented as a post-employment case.

(d) **Criteria for terminating post-employment services.** Decisions to terminate post-employment services must be made on an individual basis in consultation with the client.

(e) **Case recording requirements.** The same principles of client involvement are required in the IPE for Post-Employment Services as are required under any other IPE. Case recording will be made at significant times during the process, including assessment of progress, the decision to conclude services and the results achieved at the completion or termination of services.

~~(f) **Use of Post-Employment services completed.** The case can be closed as soon as the services in the Post-Employment Services amendment have been completed insofar as possible and the client has been consulted regarding the closure decision.~~

~~(g) **Case recording requirements.** Closure from post-employment status is documented in the case record and in a closure letter given to the client.~~

## PART 11. PHYSICAL AND MENTAL RESTORATION SERVICES

### 612:10-7-98. General guidelines for physical and mental restoration services

(a) To the extent that assistance is not readily available from a source other than DVR or DSBVI, diagnosis and treatment of physical and mental impairments may be provided to assist the individual with a disability in preparing for, securing, retaining or regaining employment. Physical or mental restoration services are provided only when the condition is stable, or slowly progressive. A slowly progressive condition is one in which the client's functional capacity is not expected to diminish so rapidly as to prevent successful completion of vocational rehabilitation services, and/or employment for a reasonable period of time. The individual is liable for services he or she arranged which were not planned and initiated under the auspices of DVR and DSBVI. DVR and DSBVI will not pay for hospitalization or treatment occurring prior to initiation of an Individualized Plan for Employment (IPE). DVR and DSBVI will not pay for emergency hospitalization or treatment needed at the time of referral. However, diagnostic examinations or information may be paid from DVR and DSBVI funds for use in eligibility determination, priority group placement, or determination of vocational rehabilitation needs. Physical and/or mental restoration services will be purchased only from licensed or board certified health professionals unless otherwise specified in DRS policy. Payment will be made in accordance with the established fee schedule of the Department.

(b) Temporary conditions with sudden onset do not fall within the definition of impairment for eligibility purposes. Emergency treatment of remediable conditions will not be purchased by DVR and DSBVI except under intercurrent illness policy. When the staff is in doubt as to the effect of such a condition upon the outcome of the IPE objectives, a medical consultation may be requested.

(c) DVR and DSBVI do not provide long-term or ongoing physical or psychological treatment. DVR and DSBVI funds cannot be used to initiate treatment that is reasonably anticipated to last more than three months unless supervisory approval has been obtained for a three month extension. Additional three month extensions may be approved if the client maintains reasonable progress toward achieving the vocational goal. Persons needing long-term or ongoing treatment are to be referred to other medical assistance sources if available.

(d) Payment from DVR and DSBVI funds may be planned and authorized only after applicable third party pay sources provide verification of the expense they will cover, and not cover, associated with the physical or mental restoration services in question. When DVR and DSBVI funds are used to supplement a third party pay source, planned services and the authorization will be limited to those expenses that fall within the scope of the program and that do not exceed the difference between what the third party pay source will pay and the Department's established payment schedule.

(e) Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for

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purchase of services other than those related to the required treatment.

(f) Physical and mental restoration services may include but are not limited to:

- (1) Braces and orthotic devices.
- (2) Chiropractic services. A chiropractor providing treatment must be duly licensed to practice his profession in Oklahoma, have a current provider/vendor agreement with DRS, and following evaluation of the client's needs, must provide a treatment plan with goals, time frames and the estimated number of treatments required to meet the goals. Treatment may not be extended beyond three months unless progress toward treatment goals can be determined.
- (3) Dental services. Dental services may be provided to treat or correct dental conditions that constitute an impediment to employment or participation in the rehabilitation process, produce health problems or aggravate an existing disability. Dental services with a projected cost over \$5,000.00 require review by the DRS dental consultant and supervisory approval.
- (4) Dialysis and treatment for end-stage-renal-disease. DVR and DSBVI may assist with the cost of Medicare deductible, co-insurance, and services not covered by Medicare if documentation states other resources are not available and the client is actively participating in an IPE with treatment as part of the plan. Requests for kidney transplants must be approved by the medical consultant.
- (5) Prescription drugs and prescribed medical supplies. Prescription drugs and/or prescribed medical supplies may be purchased when required for proper diagnosis, for post-operative treatment, or to stabilize a documented disability. The need for the drugs and/or medical supplies must be documented in a physician's report. Payment will be made for generic type drugs unless the physician specifically requests a brand name drug.
- (6) Hearing aids and audiological services.
- (7) Hospitalization when recommended by a physician and the client is to receive medical treatment or surgery. Hospitalization may also be authorized for diagnostic services upon recommendation of a physician.
- (8) Treatment for intercurrent illness. Intercurrent illness is an illness or injury which occurs during the course of an individual's vocational rehabilitation and, if not treated, will complicate or significantly delay achievement of the client's employment outcome. DVR and DSBVI will purchase treatment for intercurrent illness or injuries if the client is not covered by health insurance or eligible for comparable services and benefits, or when the provision of services through comparable services and benefits would significantly interrupt or delay treatment for an individual at extreme medical risk, jeopardize a job placement or impair the individual's progress in achieving the planned employment outcome.
- (9) Laboratory work and x-rays if required by the physician to complete his examination or in conjunction with diagnosis or treatment.

- (10) Low vision services.
- (11) Medical examinations, when necessary to determine eligibility, achieve a goal in the IPE or when related to an intercurrent illness.
- (12) Nursing services can be provided for a client who is convalescing from physical restoration services if recommended by the doctor of treatment. Either Registered Nurses or Licensed Practical Nurses may be used to provide this service when a current medical vendor agreement is on file with the Department. Volunteers may be used if less technical care is needed and if approved by the client's physician.
- (13) Physical and occupational therapy may be provided on either an in-hospital or outpatient basis if recommended by the attending physician.
- (14) Post-operative care of cataract patients.
- (15) Prosthetic eyes, glasses and other optical aids.
  - (A) Glasses and other visual aids and services may be prescribed or provided by either an ophthalmologist or an optometrist. Other optical aids recommended by optical aid clinics are purchased upon the recommendation of the specialist(s) in one or more such clinics. Prosthetic eyes are provided, upon the recommendation of an ophthalmologist.
  - (B) Lenses and frames for glasses purchased by DRS will be authorized at fee schedule prices. The vendor may add a service charge not to exceed the established fee. An additional code and fee may be added for tinting if it has been prescribed by the physician or optometrist that performed the eye examination with written medical/vocational justification.
  - (C) The fee that has been established for frames will only cover the cost of plain sturdy frames. Clients do not have the option of selecting more expensive frames and paying the difference between the vendor's price and the amount authorized. If the vendor accepts payment from the client or a representative of the client and also files a claim with the Department for the same services, a violation of the Provider Agreement has occurred and the vendor would be subject to sanctions.
  - (D) If a client selects special frames and has sufficient resources to purchase them, the frames should not be included on the authorization and the client would be responsible for the entire cost of the frames.
- (16) Prosthetic limbs.
  - (A) Prosthetic limbs may be provided if the prosthesis is recommended by a physician. The client who has successfully worn a prosthesis will not be required to see an orthopedist or physiatrist, or attend an amputee clinic unless some other disorder is apparent.
  - (B) An individual who has never worn a prosthesis must be seen by a physician before the prosthesis is provided. The client must agree to training in its use. Gait training is considered Personal Adjustment Training and does not require client participation in cost. However, physical therapists providing the



training are recognized as medical vendors and require authorizations completed on a Medical Service Authorization.

(C) Persons with multiple amputations must have the special examination and training.

(D) The counselor may authorize for a prescribed standard prosthesis without further review. The choice of prosthesis must be closely related to its intended use in a work setting, or in relation to reasonable independent living goals. Non-standard prostheses (i.e., myoelectric) will not be purchased with DRS funds unless medically justified and/or required for a specific employment, or independent living, outcome. When a prosthesis other than a standard prosthesis is prescribed the counselor will request a consultation from the appropriate medical consultant. Justification for the non-standard prosthesis must be documented in the case record.

(17) Psychiatric and psychological treatment.

(A) Psychotherapy may be provided for emotional conditions which may be expected to respond within a reasonable period of time. Psychotherapy can be provided only by the sources in (1) - (5) of this Subsection.

(i) Psychiatrists certified by the American Board of Psychiatry and Neurology or completed the required training and are "Board Qualified", or who have spent a major portion of their time in a particular specialty for at least two years and are recognized as specialists in the local community (same criteria as applied to other medical specialists).

(ii) Licensed Doctors of Medicine or Doctors of Osteopathy who have received specific training for and are experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(iii) Psychologists with a doctorate in clinical or counseling psychology who hold a valid license to practice psychology.

(iv) Psychologists with a doctorate in clinical or counseling psychology who are employed by governmental agencies exempt from the licensing law.

(v) Other licensed clinicians or those employed by governmental agencies who have received administrative approval to provide this treatment service.

(B) Upon receipt of a written report from the therapist, the supervisor may approve additional three-month periods of therapy. Clients needing long-term or ongoing psychiatric or psychological treatment will be referred to the appropriate community mental health center.

(C) Personal Adjustment Counseling may be provided for those persons with emotional conditions who may benefit from counseling to bring about a more adequate social adjustment, alleviate superficial anxiety, and to create more effective interpersonal

relationships. Personal Adjustment Counseling may be provided by: those individuals listed in (17) (A) of this Subsection.

(18) Speech therapy/training as recommended in a speech evaluation. Speech therapy, although provided by recognized speech-language pathologists (SLP) therapists, is considered Personal Adjustment training and is not based on financial status. The providers of speech therapy are classified as medical vendors.

(19) Surgery and medical treatment.

(A) Surgery and complex or unusual medical treatment may be provided when recommended by a specialist. Medical consultant approval will be obtained prior to planning and authorizing a diagnostic procedure which could lead to immediate surgical treatment. The medical consultant will give conditional approval for the possible surgery if deemed necessary. Normal post-operative care is an integral part of the surgery; therefore, no post-operative charges are to be paid above the approved surgical fee.

(B) Specified outpatient surgical services are approved for payment when provided in qualified outpatient surgical facilities. Qualified facilities include Medicare certified free standing ambulatory surgical centers, Medicare certified hospitals offering outpatient surgical services, and hospitals which have an agreement with DRS.

(C) The counselor will advise the client he/she may be liable for any balance due when payment by private insurance exceeds the Department allowable rate.

(20) Weight loss treatment. A weight loss plan or treatment are included as a service in the IPE for individuals who are eligible on the basis of obesity. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency. Surgery for weight loss is not provided unless medically recommended as treatment for morbid obesity, a second confirming medical opinion is obtained, the surgery is approved by the DRS medical consultant and supervisory approval is obtained. Before approving DRS provision of surgery for treatment of morbid obesity, the supervisor shall consider the individual's past experience with standard weight loss protocols, and medical and behavioral factors that may impact the individual's ability to obtain long-term benefit from the surgery.

(21) Wheelchairs and other durable medical equipment when prescribed by a physician or recommended by an occupational therapist, physical therapist, assistive technology specialist or person with equivalent qualifications. Power mobility devices may be purchased for individuals when necessary to assist the client in achieving IPE goals.

(A) The client, and/or client's authorized representative, will participate in choosing from which vendor the wheelchair or durable medical equipment will be purchased. Wheelchairs and other durable medical equipment will be authorized at the agency approved fee.

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(B) The client, or client's family or authorized representative as appropriate, is responsible for maintaining wheelchairs or other durable medical equipment in good working order. DVR and DSBVI will pay for repairs to wheelchairs or other durable medical equipment during the life of the case unless there is clear evidence the equipment has been damaged due to client abuse or neglect. An agency-purchased wheelchair will be returned to the agency if the client becomes unable to use it.

(C) Wheelchair rental may be authorized for a period not to exceed six months when necessary to assist the client with mobility. An exception can be made if it is documented that rental is more cost effective than purchase.

### PART 13. SUPPORTIVE SERVICES

#### 612:10-7-130. Maintenance

(a) **General guidelines.** Maintenance means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(1) Maintenance is a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. The provision of maintenance as a supportive service is not synonymous with general assistance payments. It is not intended to pay for those living costs that exist irrespective of the individual's status as a DVR and DSBVI client.

(2) Maintenance, including payments, may not exceed the cost of documented expenses to the individual resulting from service provision. Authorizations for maintenance will not be issued to pay the cost, or part of the cost, for any other service or expense.

(b) **Provision of maintenance.** To receive maintenance, an individual must be either an eligible DVR or DSBVI client or an applicant for vocational rehabilitation services undergoing diagnostic evaluation and testing. For an accepted client, maintenance must be a supportive service and will be provided in combination, with another VR service listed in the Individualized Plan for Employment. The costs of the maintenance may not exceed the amount of increased expenses that the IPE causes for the individual or his/her family. Maintenance cannot substitute for or supplement income assistance payments.

(1) **Maintenance for diagnostic and evaluation services.** Maintenance payments for individuals receiving diagnostic or evaluation services may be authorized for overnight care, short-term lodging and/or meals.

(2) **Maintenance for physical restoration services.** Maintenance for physical restoration services is paid to

the client until he/she is able to work. The client must be in his/her own home and the covered period of convalescence is to be 60 days or less. For convalescent periods in excess of 60 days, the counselor will refer the client to other sources for assistance (public assistance, SSI). In no instance will medical maintenance be paid while the client is hospitalized.

(3) **Maintenance for training.** Maintenance can be authorized for full time vocational school students or college students. Maintenance can be authorized for a client granted an exception to the full-time attendance requirement under 612:10-7-150(a). DRS will not pay for assistance with room and board expenses if there is a state funded vocational school, college or university within 40 miles of the client's official residence. In addition, DRS will only sponsor room and board expenses related to on-campus housing options with the lowest cost. DRS will only sponsor hotel costs associated with pre-vocational or personal and work adjustment training if the total cost of the hotel stay and per diem is less than the total cost of transportation to and from the hotel. Exceptions to this administrative rule may be granted due to issues such as disability requirements. All exceptions must be approved by the Programs Manager and thorough justification must be documented in the case. If DRS is to assist with summer room and board costs or rental assistance for summer semester at any level, there will be a requirement to participate in a minimum of 6 hours.

(4) **Maintenance for job search services.** Maintenance for job search services requires an IPE with major services directed toward the goal of employment.

(5) **Maintenance for job relocation.** Maintenance may be paid to a client for assistance in relocating to a new job site. Maintenance services for this purpose must be identified on the IPE.

(c) **Clothing expenses.** Clothing and/or uniforms can be purchased when needed to begin training or enter employment. Everyday clothing needs of the client are considered as part of the basic living requirements. Any clothing purchased for the client must be:

- (1) required by the training facility;
- (2) necessary to participate in job search or begin employment; or
- (3) necessary to begin a training program that requires clothing standards beyond the client's means.

(d) **Day care expenses.** Day care expenses will be paid for from DVR and DSBVI funds only when necessary to participate in the IPE, and it is fully documented that no other resources are available for this service, including family members and friends.

(e) **Case Recording.**

(1) Maintenance payments will be provided and carefully tied to the achievement of specific VR outcomes which must be stated and documented in the case record and the IPE to justify such payments.

(2) Documentation as appropriate that justifies room and board expenses off campus related to on-campus housing options with the lowest cost.

(3) Documentation that other resources are not available to assist in day care expense, including family and friends.

**PART 15. TRAINING**

**612:10-7-142. General guidelines for training services**

(a) **Types of training.** Training provided by DVR and DSBVI may include:

(1) Vocational. Vocational and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business); books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training. Vocational training provides the knowledge and skills necessary for performing the tasks involved in an occupation. Such knowledge and skills may be acquired through training from an institution, on-the-job, by tutors or through a combination of these methods. Vocational training may be provided for any occupation.

(A) For the first 60 credit hours or during the completion of an Associate's degree, DRS will only sponsor up to the cost of tuition and fees charged by the local state funded community college or state university within 40 miles of the client's official place of residence. If the client chooses to attend a different training site, DRS will only sponsor an amount equivalent to the amount that would be sponsored if attending the local college/university. Additional transportation or maintenance costs related to attending another training site will not be sponsored by DRS.

(B) For the completion of a Bachelor's degree, DRS will only sponsor up to the cost of tuition and fees charged by the state funded college or university closest to the client's official place of residence that offers a program to reach the vocational objective. Additional transportation or maintenance costs related to attending another training site will not be sponsored by DRS.

(C) Exceptions to the policies for college/university training must be approved by the Programs Manager through justification and must be documented in the record of service. Possible exceptions include but are not limited to:

(i) The need to attend a school outside of the 40 mile limit is due to disability related factors such as the need for accessible on campus housing.

(ii) The degree major approved by the DRS Counselor for the client is not available at the local college or university.

~~(D) Training is provided in those colleges and universities which are accredited by the appropriate accrediting agency, whose credits will be given full recognition by other accredited colleges and universities, and which are under contract. Private and denominational colleges and universities may be used for the training of DRS clients, provided they are accredited and under contract.~~

~~(i) The Department will sponsor only the number of semester hours or remaining hours required for a specific degree. Exceptions may be approved by the counselor.~~

~~(ii) Previously completed credit hours which are applicable to the degree requirements will be incorporated in the development of the IPE. When a client changes majors, DVR and DSBVI funding will be limited to the number of credit hours needed for the new major minus the number of DVR and DSBVI funded credit hours lost due to the change in majors, unless the change in majors results from circumstances beyond the client's control.~~

(2) Prevocational. Prevocational training includes any form of academic or basic training provided for the preparatory skills needed for entrance into a vocational training program or employment. Prevocational training is initiated to enhance occupational knowledge or skills or to remove an educational deficiency interfering with employment.

(3) Personal or work adjustment. Personal or work adjustment training includes any training given for one or a combination of the reasons given in (A) - (D) of this paragraph.

(A) To assist the individual in developing personal habits, attitudes, and skills enabling the individual to function effectively in spite of disability.

(B) To develop or increase work tolerance prior to engaging in prevocational or vocational training or in employment.

(C) To develop work habits and to orient the individual to the world of work.

(D) To provide skills or techniques enabling the individual to compensate for a disability such as the loss of a body part or the loss of a sensory function.

(b) Continued eligibility for college or university training. Training may be provided for clients who:

(1) DVR or DSBVI clients in college or university training will be expected to attend classes regularly and make continuous progress toward graduation; and are mentally, physically and/or emotionally capable of pursuing a course of training to completion;

(2) Maintain an overall 2.0 grade point average (GPA), based on a four point (4.0) scale; and require training to achieve an employment outcome or other goals established in the Individual Plan for Employment (IPE); and

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- (3) Carry the minimum number of semester hours determined to be full time at the school attended. Exceptions may be granted by the counselor, based on severity of disability, scheduling problems, or other valid reasons determined to have a reasonable opportunity for obtaining employment in the chosen vocation.
- (4) Full-time requirement for DRS graduate sponsorship would equal the required minimum of hours per semester. (I.e. 9 hours during the regular semester and 4 hours in the summer).
- (c) **Continued eligibility.** A client in training at a vocational school will be based on the client's performance in respect to grades, progress and attendance. The minimum standards used by the training facility for satisfactory progress in respect to grades and attendance will be utilized by DVR and DSBVI staff in determining the progress of the client. Clients attending vocational technical schools who withdraw or fail course work will be required to pay for a like number of credit or clock hours during the following enrollment period. Decisions related to training are based on the individual needs and informed choices of the client as identified in the IPE.
- (d) **Withdrawals and failures.** Clients who withdraw or fail college or university courses paid by DVR and DSBVI will be required to pay for a like number of hours during the following enrollment period subject to the guidelines in (b) section. When a client fails to meet the requirements for continued sponsorship the guidelines in (A-C) of this Subsection are to be followed: A client failing to meet the grade point requirement may continue to receive services not based on financial need. DVR and DSBVI will only pay tuition and fees for courses which count toward requirements consistent with the vocational goal of the IPE. Training of DVR and DSBVI clients is provided by colleges, universities, private business and trade schools, state supported vocational schools, employers in the form of on-the-job training, sheltered workshops, and other approved training facilities with valid contracts.
- (1) Payment of training services based on client's financial need will not be provided if the client's grades fall below 1.8 overall GPA.
- (2) Training services may be paid for a client having an overall GPA between 1.8 and 1.9 for the first semester that grades fall below 2.0 overall GPA. Subsequent enrollments can only be paid if the student's overall GPA shows progress.
- (3) A client failing to meet grade point requirements may be approved by the counselor if there are extenuating circumstances beyond the client's control.
- (e) **Public institutions of higher learning.** Tuition and fees for DVR and DSBVI clients attending public colleges and universities will be paid at the rate set for resident students by the Oklahoma Regents for Higher Education and within limits prescribed by the Legislature. DVR and DSBVI will pay those fees charged to all students and special fees associated with required courses in the student's major field of study. Federal regulations require a search for comparable services and benefits with the results documented before payment can be

made for training in the following institutions: colleges, universities, community/junior colleges, public or private vocational/technical schools, or hospital schools of nursing. PELL grants and other available Federal/State student aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to consideration of the expenditure of DRS funds.

(f) **Private institutions of higher learning.** Tuition and fees for students in attendance at accredited private or denominational schools will be paid at the same rate as that paid at state supported colleges or universities of equal rank. Advanced standing test for college students: DRS can pay the fee for advanced standing tests. Proof of a passing grade is required prior to payment. Training costs will not be authorized beyond the first DVR and DSBVI sponsored enrollment until proof of the availability of comparable benefits is received by the counselor.

(g) **Public or private vocational schools.** Schools that have a valid purchasing agreement with DRS, those training costs may be purchased, after use of available comparable benefits such as PELL grants and other federal/state student aid (excluding merit awards). Once training has begun, the client is expected to progress toward the vocational objective at a steady rate. This requires the client to attend training on a regular basis, and maintain a full-time load unless an exception is granted by the counselor due to severity of disability, scheduling problems or other valid reasons. Training progress reports or other methods of reporting (i.e., grade reports, transcripts) are utilized to document training progress. Sporadic attendance and reduced training loads causing a delay in the completion of training must be reviewed by the counselor. The client is responsible for advising the counselor of problems encountered during the training program.

(h) **Out-of-state training.** Out-of-state training may be approved when one or more of the following applies, and the case record documents the basis for this determination: All types of institutional, technical, personal adjustment or employment training are purchased by an authorization issued by the counselor.

- (1) The course of training is not available within the state;
- (2) The out of state training program is no more expensive than in-state training; or
- (3) There are specific considerations based on severity of the disability which preclude the use of in-state facilities.

(A) Tuition for a student who attends an out-of-state college or university will be paid at the same rate paid at Oklahoma colleges or universities of equal rank. Payment for textbooks and training tools and supplies can be provided for clients in out-of-state training, in accordance with DRS administrative rules.

(B) Prior to client's enrollment at a facility located in another state, an approved Justification for Out-of-State Training form must be submitted to the DRS State Office.

(C) The DRS Contracts Unit must complete renewal of contracts no less than two months prior to present contract expiration date to ensure continuation of services. When a contract lapses because renewal was not completed within time frames, the Department cannot pay the institution's claim.

(i) **Training for individuals in custody of the Department of Corrections.** DVR and DSBVI funds are not used to defray the cost of training for individuals in the custody of the Department of Corrections. This does not apply to individuals who meet the criteria set forth within a joint memorandum of understanding between DRS and the Department of Corrections.

(j) **Distance Education.** Distance education may include but is not limited to internet training, correspondence training and talkback TV.

(1) Distance education may be provided if the client needs training which may be obtained most practically by distance education.

(2) Tuition for college and/or vocational distance education cannot exceed the State rate for comparable training.

(3) Distance educational programs will only be approved if institution has recognized accreditation.

(k) **Tutorial training.** Tutorial training may be provided for clients with significant disabilities who cannot receive training by another method or who may need assistance to complete a formal training course satisfactorily. Persons chosen to provide tutorial training for clients must have the necessary skills to provide assistance to the client and be willing to provide the training at a time and place suitable to the client. Examples of proof of necessary skills are the following:

- (1) Letter of recommendation from college or university
- (2) Teaching certificate
- (3) Transcripts
- (4) Other documentation of knowledge, skills or ability to instruct in the designated subject.

(l) **Personal or vocational adjustment.** Personal or vocational adjustment training includes any training given for one or a combination of the reasons given in (1) – (3) of this paragraph.

(1) Training includes but is not limited to conditioning activities for developing work tolerance, work therapy, occupational therapy, speech training and speech correction, auditory training, gait training, diabetes management courses, driver's training, and mobility training. It may also include development of personal habits, attitudes, and work habits necessary to orient the individual to the world of work.

(2) To develop or increase work tolerance prior to engaging in prevocational or vocational training or in employment.

(A) Vocational training provides the knowledge and skills necessary for performing the tasks involved in an occupation. Such knowledge and skills may be acquired through training from an institution, on the job, by tutors or through a combination of

these methods. Vocational training may be provided for any occupation.

(B) Prevocational training includes any form of academic or basic training provided for the preparatory skills needed for entrance into a vocational training program or employment. Prevocational training is initiated to enhance occupational knowledge or skills or to remove an educational deficiency interfering with employment.

(3) To provide skills or techniques enabling the individual to compensate for a disability such as the loss of a body part or the loss of a sensory function. High school students eligible for this service must be at least 16 years of age and may not participate for more than 18 months unless client and counselor determine additional time is needed.

(m) **Federal/State student aid.** Federal regulations mandate a search for comparable services and benefits with the results documented before payment can be made for training in the following institutions: colleges, universities, community/junior colleges, public or private vocational/technical schools, or hospital schools of nursing. PELL grants and other available Federal/State student aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to consideration of the expenditure of DRS funds, regardless of whether the student is attending a vocational, trade, public or private institution of higher education.

(n) **Payment of training costs.** DVR and DSBVI will only pay tuition and fees for courses which count toward requirements consistent with the vocational goal of the IPE. Training of DVR and DSBVI clients is provided by colleges, universities, private business and trade schools, state supported vocational schools, employers in the form of on the job training, and other approved training facilities with valid contracts.

(1) Training costs will not be authorized until proof of the availability of comparable benefits is received by the counselor.

(2) After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(3) Each client is responsible for providing the counselor a copy of the college or university's current semester costs before the designated "Drop and Add" date.

(o) **Case Recording Requirements.**

(1) The record of service will contain testing and/or supportive data to substantiate the reasonable expectation for successful completion of a training program.

(2) Clients approved for college or university training will exhibit the ability to do college work. The counselor will have evidence in the record of service indicating the client's ability to do college work before a program is developed calling for training at the college or university level.

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(3) Training progress reports or other methods of reporting (i.e., grade reports, transcripts) are utilized to document training progress.

(4) Documentation will state why the particular out-of-state provider is being used in terms of specific clients, and address the issues of, selection of vocational objective, projected starting and completion dates, breakdown of costs, and extent of comparable services and benefits.

(5) Case notes are necessary when an authorization is completed to include a description of services being provided (i.e. tuition and fees) and the date of service on all direct authorizations. Include number of hours enrolled, what semester, date of service.

### **612:10-7-150. Continued eligibility for college or university training**

(a) **Requirements for continued eligibility.** DVR or DSBVI clients in college or university training will be expected to attend classes regularly and make continuous progress toward graduation.

(b) **To continue assistance with college or university training,** the client must maintain a cumulative 2.0 grade-point average (GPA), based on a four point (4.0) scale.

(c) **The client must maintain at a minimum the cumulative GPA required by the Institution for the client's major field of study.** If the client is unable to consistently maintain the minimum cumulative GPA for their chosen field of study, the Counselor will reassess the justification for continued training and whether a change in vocational goal is necessary.

(d) **The client must carry the minimum number of semester hours determined to be full time at the school attended.** Exceptions may be granted by the counselor, based on severity of disability, scheduling problems, or other valid reasons.

(e) **When a client fails to meet the requirements for continued sponsorship the guidelines in (1) - (5) of this Subsection are to be followed:**

(1) Payment of training services based on client's financial status will not be provided if the client's grades fall below 1.5 cumulative GPA.

(2) Training services may be paid for a client having a cumulative GPA between 1.5 and 1.9 for the first semester that grades fall below 2.0 cumulative GPA. Subsequent enrollments can only be paid if the student's cumulative GPA shows progress.

(3) A client failing to meet the grade point requirement may continue to receive services not based on financial status.

(4) A client failing to meet grade point requirements may be approved by the counselor if there are extenuating circumstances beyond the client's control.

(5) A client failing to meet grade point requirements will be contacted as soon as appropriate to complete a program review to determine if a change in services, vocational goal, or objectives is needed. A client failing to meet chosen goals will not have his/her case closed until the counselor has provided counseling and guidance and determined that a change in the IPE is inappropriate. The

counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.

(f) **Withdrawals and failures.** Clients who withdraw or fail courses paid by DVR and DSBVI will be required to pay for a like number of hours during the following enrollment period subject to the guidelines in (a) of this Section.

(g) **Changes in training program.** Client will be required to sponsor a like amount when there is a change in the planned training, and coursework previously sponsored by DRS cannot be applied to the new training program. This will not be applied when the change is required due to the disability.

### **612:10-7-164. Personal and work adjustment training**

(a) Personal and/or work adjustment training is provided by facilities and schools having valid contracts with the Department.

(b) Personal or work adjustment training is the provision of skills or techniques for the purpose of enabling the individual to compensate for a disability such as the loss of a member of the body or the loss of sensory function.

(1) ~~Personal or work~~ Work adjustment training includes but is not limited to:

(A) conditioning activities for developing work tolerance,

(B) work therapy,

(C) occupational therapy,

(D) lip reading,

(E) ~~speech training and speech correction~~ therapy,

(F) auditory training,

(G) gait training,

(H) ~~diabetes management courses~~ education training,

(I) driver's training, and

(J) mobility training.

(2) ~~Personal adjustment training~~ may also include:

(A) development of personal habits,

(B) attitudes, and

(C) work habits necessary to orient the individual to the world of work.

(3) This service does not require client participation in cost of services. High school students eligible for this service must be at least 16 years of age and may not participate for more than 18 months unless client and counselor determine additional time is needed.

### **612:10-7-171. Credential attainment and measurable skill gains for post-secondary training programs**

(a) **Recognized Postsecondary Credentials:** A Recognized Postsecondary Credential is defined as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree, as well as graduate degrees for purposes of the VR program as required by section 103(a)(5) of the Rehabilitation Act of 1973, as amended by Title IV of WIOA.

A recognized postsecondary credential is awarded in recognition of an individual's attainment of measurable technical or industry/occupational skills necessary to obtain employment or advance within an industry/occupation. These technical or industry/occupational skills generally are based on standards developed or endorsed by employers or industry associations.

(b) Credential Attainment: Under the WIOA, workforce agencies are required to report the percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who attained a recognized postsecondary credential during participation in or within one year after closure of the case. This is based on the sub-regulatory guidance related to the implementation and operation of the performance accountability system under section 116 of WIOA and the implementing regulations in 34 CFR parts 361 subpart E.

(c) In addition, agencies are expected to report documented progress (academic, technical, occupational, or other) that a participant makes in a training or education program toward obtaining a recognized postsecondary credential. This progress is reported throughout the life of the case and are referred to as Measurable Skill Gains (MSG).

(d) Reporting credential attainment and Measurable Skill Gains: The goal to achieve a credential through a recognized education or training program must be included on the IPE in order to properly report Credential Attainments and MSGs. No Credentials or MSG's are reported on cases that have not reached Service status or higher. It is expected that Participants assist with obtaining the required documentation and staff are to use DRS electronic case management system to record credential attainments and MSGs, as soon as documented proof has been obtained. Credential attainment can be reported up to one year after case closure. Measurable Skill Gains are only reported prior to case closure.

**PART 19. SPECIAL SERVICES FOR INDIVIDUALS WHO ARE BLIND, DEAF, OR HAVE OTHER SIGNIFICANT DISABILITIES**

**612:10-7-196. Interpreter services**

~~(a)~~ **Interpreter services.** Interpreter services are sign language or oral interpretation services for individuals who are deaf or hard of hearing and tactile interpretation services for individuals who are deaf-blind. Specially trained individuals perform sign language or oral interpretation. Interpreter services also include real-time captioning services for persons who are deaf or hard of hearing as found in 34 CFR 361.5 (c) (10) and 361.48 (b) (10).

- (1) Does not include spoken language interpretation.
- (2) Interpreter services do not require client participation in cost of services.
- (3) The interpreter will submit a claim at the end of each specified time period.

~~(b) Deaf-Blindness Specialist.~~ To promote and coordinate appropriate services for persons with dual losses of vision and hearing, the Division of Services for the Blind and Visually Impaired employs a Deaf-Blindness Specialist. This specialist

works with counselors, rehabilitation teachers and others who provide services directly to clients who are deaf blind. A major role served by this specialist is coordinating services and ensuring dialogue among schools, programs, agencies and organizations serving the deaf and blind.

~~(1) Due to the overwhelming impact upon the individual with a combination disability of deafness and blindness, a multiple disciplinary approach is needed to adequately serve these individuals. Unique problems in mobility and communication can cause severe social, recreational, academic deprivation and long term prevocational training may be necessary.~~

~~(2) Persons who are deaf blind are capable of competitive employment and the counselor will carefully evaluate expected employment outcomes.~~

~~(e) Case Recording.~~ In training situations, the counselor must document that interpreter services are not available through the training facility or other sources before interpreter services are provided.

**612:10-7-205. Services to persons who are deaf-blind**

(a) **Overview of services.** Because of the overwhelming impact upon the individual with a combination disability of deafness and blindness, a multiple disciplinary approach is needed to adequately serve these individuals. Unique problems in mobility and communication can cause severe social, recreational, academic deprivation and long term prevocational training may be necessary. Persons who are deaf-blind are capable of competitive employment and the counselor will carefully evaluate expected employment outcomes.

(b) **Deaf-Blindness Specialist.** To promote and coordinate appropriate services for persons with dual losses of vision and hearing, the Division of Services for the Blind and Visually Impaired employs a Deaf-Blindness Specialist. This specialist works with counselors, rehabilitation teachers and others who provide services directly to clients who are deaf-blind. A major role served by this specialist is coordinating services and ensuring dialogue among schools, programs, agencies and organizations serving the deaf and blind.

(c) Support Service Providers. Support Service Providers (SSPs) promote independence by providing deaf-blind individuals with visual and auditory access to the environment. SSPs facilitate interpersonal communication and provide environmental information and sighted guide services to deaf-blind individuals during assessment for eligibility determination and IPE-related activities as requested by DRS. IPE related activities may include, but not be limited to, all contacts with the DRS, IPE related activities may include, contacts with DRS staff including meetings; job interviews, job site orientation, non-emergency medical appointments (scheduled or authorized by DRS) and community events pertaining to the client's vocational goal, such as job fairs, networking events, community-based training, filling out job applications or other paperwork. Services may include driving client to the IPE related activity and home again, reading client's mail and transmitting it in a mode that is accessible to the client. DRS should not be involved in payment for SSP services that are arranged without agency knowledge, or are used for purposes

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not directly connected with the client's DRS case including assessment for eligibility determination, IPE-connected services or job readiness or placement activities.

## **PART 21. PURCHASE OF EQUIPMENT, OCCUPATIONAL LICENSES AND CERTIFICATES**

### **612:10-7-216. Tools, occupational equipment, initial stocks and supplies**

(a) Tools, occupational equipment and supplies will be provided to eligible clients to the extent necessary to achieve their vocational goal providing the client has adequate resources available for the proper maintenance and upkeep of such tools and equipment. The client, or client's family or authorized representative as appropriate, is responsible for maintaining tools, occupational equipment, initial stocks, and supplies in good working order. DVR and DSBVI will not pay for repairs to tools, occupational equipment, initial stocks and supplies purchased with DVR and DSBVI funds once title has been released to the client. DVR and DSBVI will not pay for repairs before title is released when there is clear evidence that the damage resulted from abuse or neglect.

(b) The client will retain possession and control of articles while engaging in the job or occupation for which articles were provided, or when title is released to client. Occupational tools, occupational equipment, and initial stocks and supplies are defined as follows:

(1) Occupational tools are considered to be those minimum tools required for a designated trade, necessary to the employment of the individual, and not furnished by the employer. DRS will NOT purchase operable firearms even if required for employment. Counselor will assist the individual in finding resources to help in this purchase if necessary.

(2) Occupational equipment is equipment required to meet the minimum needs of an individual in starting and conducting a business of his or her own.

(3) Initial stocks and supplies are those materials and merchandise necessary for the client to become operational in a business.

(c) Purchase of occupational tools, equipment and initial stocks and supplies will be made in accordance with current DRS purchasing rules. If the client is required to participate in cost of services, the payment will be made to the nonmedical vendor. When the equipment is received and/or installed, the appropriate rehabilitation professional completes the Receipt for Equipment and Title Agreement. If the purchase total is \$5,000 or more, the rehabilitation professional then signs the vendor's invoice and routes it to DRS state office.

(d) Used tools or equipment may be purchased when it is evident considerable savings may be affected. Used equipment or tools are to be appraised piece-by-piece by at least three shop owners or managers in the same type of work, and who are not acquainted with the vendor.

(e) If the counselor, after a thorough check of the tools or equipment, finds they are not being used for the purpose for

which they were purchased, the counselor is to repossess the tools or equipment by executing the Release or Receipt of Equipment form.

~~(f) Occupational licenses are those licenses required by law to obtain and practice a particular profession or trade. Fees for such licenses and teacher certification tests may be provided for DRS clients. The training facility may arrange for necessary certification and it may be included as a separate item on the training authorization. If training is not involved, the license fee is authorized upon evidence of a skill. Clients will be responsible for renewal of licenses purchased by DRS.~~

### **612:10-7-220. Vehicle modification services**

(a) Vehicle modification services may be provided as needed to enable a Vocational Rehabilitation client to prepare for, enter or retain employment. Vehicle modifications include the range of modifications and special equipment needed by a person with an impairment to drive or be a passenger in a vehicle. Vehicle modifications above the State Capitalization rate are subject to the Prior Approval from RSA in accordance with 2 CFR 200.439.

(b) Vehicle modification services provided to an individual in the Vocational Rehabilitation program may include:

(1) purchase and installation of adaptations or devices in a vehicle;

(2) assistance with payment of the portion of the cost attributable to modifications pre-installed in a new or used vehicle purchased from a dealer;

(3) evaluation of an individual's ability to operate a motor vehicle;

~~(4) prescription of required devices specific to both the individual's needs and the vehicle; and required devices recommended by AT Specialist specific to both the individual needs and the vehicle. The AT report must not be older than six months at a time of purchase of recommended devices.~~

(5) training in the operation of the vehicle.

(c) Vehicle modifications which are projected to cost the amount of the ~~DCAMOMES~~ authority order limit or less will be made in accordance with 612:10-1-7. Vehicle modifications projected to cost more than the ~~DCAMOMES~~ authority order limit will require additional processing by DRS Central/Departmental Services after the process is completed by the counselor as outlined in Categories A through C below. Clients purchasing new vehicles shall apply for any mobility equipment rebate available from the vehicle manufacturer and the amount of any such rebate shall be assigned to DRS.

(1) Category A: New or used vehicle with structural modifications: In this process, the vehicle will be purchased by client choice and not obtained through a bid process. The client will be responsible for the purchase of the vehicle and DRS will be responsible for the costs attributable to the structural modifications.

(2) Category B: New or used vehicle with structural modifications and accessibility modifications additions: In this process, the vehicle will be purchased by client choice and not obtained through a bid process. The client will be responsible for the purchase of the vehicle and



DRS will be responsible for the costs attributable to the structural modifications and the accessibility modification additions. DRS will participate in this method only if the client obtains warranty from the mobility aids vendor. A copy of the warranty agreement will be obtained by the counselor and maintained in the case file.

(3) Category C: Any modifications to a new or used vehicle not purchased as part of the vehicle package with a cost greater than the ~~DCAMOMES~~ authority order limit will require additional processing by C/DS after the bid process is completed by the counselor in accordance with 612:10-1-7.

(d) The qualifications in (1) - (9) of this Subsection apply to all vehicle modifications.

(1) The client or individual providing the transportation must have a current, valid driver's license. If the client will be driving the vehicle and does not yet have a driver's license, he/she must be legally permitted to drive or participate as a driving student.

(2) The name of the client must appear on the title to the vehicle and current vehicle registration. The client may be listed as a co-owner on these documents.

(3) The client must agree to maintain the vehicle for the predictable life of the equipment and is responsible for maintaining special equipment in good working order. DRS may pay for repairs to such equipment during the life of the case unless there is clear evidence that the special equipment has been damaged due to client abuse or neglect as determined by the dealer, vendor or Assistive Technology Specialist.

(4) The client must maintain full vehicle coverage (both collision and comprehensive) insurance on the vehicle, including the equipment to include special equipment and any other vehicle modifications. All potential and/or additional drivers permitted to drive the vehicle must be insured and the appropriate insurance documentation provided to OKRS.

(5) The vehicle must be evaluated by an Assistive Technology Specialist or person with equivalent qualifications (Driver Rehabilitation Instructor, Occupational Therapist, Rehab Engineer, etc.) for identification of the appropriate adaptive equipment and assessment of the compatibility of the vehicle with recommended adaptive equipment.

(6) A used vehicle must be inspected by an ASE or manufacturer certified mechanic to assure it is mechanically and structurally sound before equipment can be installed. This inspection may be authorized by the counselor if necessary. If the ASE or manufacturer certified mechanic recommends it, a separate inspection related to structural soundness will be completed. This inspection may be authorized by the counselor.

(7) Existing modifications on a new or used vehicle shall be inspected for the appropriateness of the adaptive equipment for the ~~consumer's~~ client's needs by the Assistive Technology Specialist or other qualified person. DRS also requires documentation that existing modifications on a used vehicle have been inspected by the mobility

equipment dealer/vendor to determine efficiency, quality and fair market value of the modification or adaptive equipment. This documentation may be obtained directly from the mobility equipment dealer/vendor or from the lender when such documentation has been required for loan approval.

(8) DRS will not pay the expense of replacing the equipment unless the equipment no longer meets the needs of the client as determined through review of current medical reports and assistive technology evaluation indicating replacement is required to meet the IPE goals.

~~(9) Certain types of vehicle modification equipment are considered "transferable" by design: i.e., hand controls, left foot accelerator, and hitch lift systems for wheelchairs/scooters. DRS may assist with the cost of transferring this type of equipment to meet the IPE goals. These modifications are categorized as non-structural modifications.~~ DRS will not provide comprehensive structural modifications to include vertical, butterfly, or gull-wing doors for any vehicle types.

~~(10) When vehicle modifications are completed, installation is to be inspected by an Assistive Technology Specialist or person with equivalent qualifications, to determine if the authorized equipment conforms to prescribed standards, is properly installed and meets the functional needs of the client. The counselor must obtain a statement of satisfaction from the client.~~ Certain types of vehicle modification equipment are considered "transferable" by design: i.e., hand controls, left foot accelerator, and hitch lift systems for wheelchairs/scooters. DRS may assist with the cost of transferring this type of equipment to meet the IPE goals. These modifications are categorized as non-structural modifications.

~~(11) When vehicle modifications are completed, installation is to be inspected by an Assistive Technology Specialist or person with equivalent qualifications, to determine if the authorized equipment conforms to prescribed standards, is properly installed and meets the functional needs of the client. The counselor must obtain a statement of satisfaction from the client.~~

(12) Once a vehicle modification is complete, an Assistive Technology Specialist will conduct the inspection, and if required, a Driving Rehabilitation Instructor (DRI) to determine if the authorized equipment conforms to prescribed standards, is properly installed, and meets the functional needs of the client. The modified vehicle is not to be released to the client until after the inspection process is complete. This includes the Assistive Technology Specialist obtaining the following: valid driver's license, vehicle title, insurance verification, client's signed statement of satisfaction, and vehicle modification pictures. Counselor will not release final payment until all items are received and reviewed.

**612:10-7-221. Housing Modification**

(a) Modification of a residence may include installation of ramps, widening of doors, installation of grab bars and other accessibility modifications when such modifications are

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necessary to support the consumer/client in achievement of an employment outcome. Major DRS will not provide major structural modifications such as elevators, room additions or major wall removal will not be provided by DRS without supervisor approval. Housing modifications that will cost more than the DCAMOMES authority order limit require supervisor approval. All housing modifications are subject to the Prior Approval from RSA in accordance with 2 CFR 200.439.

(b) In all situations where housing modification is to be done, the owner of the house must provide proof of ownership, sign a written release form, and be current on mortgage payments. DRS will not provide permanent modification to rental properties but may assist with portable/removable modifications. In those situations where the consumer is a renter, the renter/consumer/renter/client is responsible for obtaining the written release prior written permission from the owner for any portable/removable modifications. The counselor must make a referral to the Assistive Technology (AT) Specialist who will then make the evaluation of evaluate the residence and recommend the recommending modifications needed to make the residence accessible and usable for the consumer/client. After modifications have been completed the counselor will contact the AT Specialist for inspection of the home, to ensure the modifications conform to prescribed standards and meet the consumer/client's accessibility needs. The AT Specialist will provide a report to the counselor that will contain pictures of the completed work and the counselor must get a signed statement of satisfaction from the consumer/client.

### PART 23. SELF-EMPLOYMENT PROGRAMS AND OTHER SERVICES

#### 612:10-7-230. Self-employment programs

(a) Self-employment is not a vocational goal itself but a method of achieving employment. Self-employment programs may be divided into Contract Labor and Self-Employment.

(1) **Contract Labor.** Employment is contract labor when the client has a contract or on-going business with a company or person to provide a specific product or service for a fee. The service or product is produced to meet the vendor's specifications and needs. The purchasing company often supervises the work.

(2) **Self-Employment.** In Self-Employment, the consumer/client owns, manages and operates a business selling goods or services for the purpose of making a profit, ex: (Business Enterprise Program). Self-Employment ranges from sole proprietorships and independent contractors to multi-employee companies and independent franchise operations.

(A) The client must have the proper skills and managerial ability to succeed in the trade or occupation for which the services are provided; and

(B) The client must have adequate resources available for the proper maintenance and upkeep of the required tools, equipment, and stocks. The client is responsible for the maintenance and repair of any tools, equipment, and stocks.

(b) Agency Role. The role of the VR Agency is not to serve as the sole funding source for self-employment endeavors. Other funding resources must be researched and utilized when available. DRS may participate in partially funding small business start-up or the retention of an existing client owned and operated business but does not have a capital or loan program for the establishment businesses. These investment resources must come from other sources. DRS will assist the client in making informed decisions, reduce or eliminate the barriers created by the disability(ies), training regarding small business development/self-employment, and assisting the individual in identifying possible funding resources.

(c) DRS will not assist with services to maintain or expand an existing self-employment business. However, services can be offered which might address changes brought on by a disabling condition that limits or interferes with a person's ability to continue to operate their business independently. These services might include but are not limited to such things as AT assessment for changes in worksite or job tasks; recommendations for purchase of adaptive equipment; worksite or vehicle modifications that are needed for a person to continue operating their business; or training in the use of required adaptive equipment or techniques. Before consideration will be given to assisting with an existing business the client must provide copies of the most recent two years of profit and loss statements and/or tax returns showing business profitability. DRS will not support businesses that have failed to demonstrate profit sufficient to support the individual financially.

(d) When to Consider Self-employment. The counselor may consider self-employment when all of the following guidelines have been met.

(1) The income derived from a self-employment plan is to be the primary source of support.

(2) Is the client's informed choice consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities and interests.

(3) When a client expresses interest in self-employment, the individual will be required to participate in a vocational assessment with focus on self-employment potential. The assessment will include a self-evaluation completed by the client.

(4) The counselor will document, as appropriate, in the comprehensive assessment that the client has the academic, communication and managerial skills to manage their own business and the resources to demonstrate a likelihood of success.

(e) Once it has been determined by DRS that self-employment is a feasible goal, an IPE will be written to further assist the self-employment concept and the client is sent to training for developing a business plan.

(f) Certain individuals may require on-going supports or services for a business plan to be successful. The counselor will assist the individual in identifying and securing these support services. DRS cannot be responsible for funding these supports following successful employment outcomes.

(g) Clients who are receiving SSI/SSDI will be referred to a DRS Benefits Planner to review how profits from self-employment will affect their benefits prior to the completion of an Individualized Plan for Employment.

(h) The agency may provide some financial assistance toward self-employment plans that have met the requirements as specified in policy. The counselor will determine the client's financial status and any required financial participation by the client. The client's contribution may come from personal resources, property, loans, PASS plan funds or small business start-up grants from other assistance programs. A client who is receiving SSI/SSDI must submit a Plan to Achieve Self-sufficiency to SSA for review and consideration before any DRS funds can be expended toward a self-employment start up business.

(i) Any required client financial participation is applied to the cost of planned services.

(j) The agency's contribution to a self-employment plan will not exceed \$5,000 without supervisory approval.

(k) The Agency will consider three-tiers of support for self-employment.

(1) Tier 1 is for self-employment plans that are considered low cost, simple and considered low risk. These cases will be limited to DRS financial contribution up to \$5,000. DRS will cover 100% of costs minus any required client financial contributions. In Tier 1 cases the client is required to provide the Basic Business Plan which includes the following items:

- (A) Business feasibility study.
- (B) Monthly personal and living expenses worksheet.
- (C) Business start-up expenses worksheet.
- (D) Projected monthly cash flow worksheet showing business profits versus cost of operations.

(2) Tier 2 is for self-employment businesses with anticipated costs from \$5,000 up to \$10,000. In these cases the client is responsible for providing 25% of the anticipated costs. Client contribution can come in many forms including the use of existing equipment or home/office space which the client owns: bank loans; PASS Plans, or any other Agency approved financial contribution. All IPE's included in Tier 2 with planned expenses over \$5,000 must be reviewed and approved by the Programs Manager. In Tier 2 self-employment cases the client is required to provide the Comprehensive Business Plan that includes:

- (A) Detailed description of the proposed business.
- (B) Market research.
- (C) Sales Plan.
- (D) Management Plan.
- (E) Business License and City Zoning regulations.
- (F) Supporting documents will include:
  - (i) List of identified vendors.
  - (ii) Items requested to be paid by DRS.
  - (iii) Items and resources provided by client.
  - (iv) Credit Report.
  - (v) Copy of the client's last two years of tax returns if they were required to file.

(vi) A 100 form completed and signed by the client to be submitted to the Oklahoma Tax Commission for disclosure of tax information.

(3) Tier 3 self-employment cases are those with an anticipated cost which exceeds \$10,000. Tier 3 cases will require the same supporting documentation as Tier 2. In Tier 3 the client will be required to contribute a minimum of 50% of the anticipated costs exceeding \$10,000. All Tier 3 self-employment cases require review and approval by the Field Coordinator.

(4) Tier 2 and Tier 3 self-employment proposals will be required to have their Business Plan reviewed and approved by Agency designated staff and/or Review Panels.

(l) Items that the agency will not approve for funding include:

- (1) Construction or purchase of real estate.
- (2) Businesses that are speculative in nature such as stocks, bonds or other investments or considered speculative by the Better Business Bureau.
- (3) Businesses that are organized as not for profit.
- (4) Businesses organized as hobbies.
- (5) Purchase of vehicles including farming, ranching and construction vehicles.
- (6) Refinancing of existing debt.
- (7) Business plans that are not developed as the primary source of support.
- (8) A business endeavor that does not have an agency approved business plan.
- (9) Any business activity related to the Marijuana business including the production, distribution and/or sale of marijuana products.
- (10) DRS will not assist with the purchase of a franchise business or any type of pyramid business arrangement.
- (11) The purchase of domestic animals or livestock.

(m) Purchases and support services. All Agency purchases for a plan with a goal of self-employment will be in accordance with established purchasing policy regarding the competitive bid process and referrals to the State Office Purchasing Unit. Any requests for assistance with maintenance or transportation will be required to meet established policy guidelines for these support services.

(n) The counselor will continue to be available for technical assistance upon completion of approved purchases. Counselor will review with client every 3 months the progress of the business. This will include copies of the businesses profit and loss statements and record of business performed. The purpose of these reviews is to determine if the involvement in self-employment is allowing the client to substantially increase his/her earnings to achieve self-employment success and be able to meet on-going financial obligations of the business. Should the business not be showing an increase in the income of the client, the counselor will review, with the client, the client's business plans to try to increase the business income. If necessary, the client may be referred to the small business development center or similar program for technical assistance in making changes in business operation to achieve a business profit.

(o) As stated in the IPE, this case would be agreed upon as a successful closure if the business is stable after 90 days and

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has met the specified level of performance. At the time of case closure, title for all goods purchased by the agency will be released to the client.

(p) As stated on the IPE the Counselor will discuss with the client at time of successful case closure that the client will be expected to furnish the Agency with income verification for the first year after successful case closure for reporting purposes as required under WIOA. This income verification can come in the form of self-employment worksheets signed and attested to by program participants or other approved Agency forms of verification.

## 612:10-7-230.2. Self-Employment Guidelines

[REVOKED]

(a) **Agency Role.** The role of the VR Agency is not to become the funding source for self-employment endeavors. DRS may participate in partially funding small business start up or the retention of an existing consumer owned and operated business, but does not have a capital or loan program for the establishment or retention of businesses. These investment resources must come from other sources. DRS will assist the consumer in making informed decisions, reduce or eliminate the barriers created by the disability(ies), training regarding small business development/self-employment, and assisting the individual in identifying possible funding resources.

(b) **When to Consider Self-employment.** The counselor may consider self-employment as an employment goal when all of the following guidelines have been met:

(1) The income derived from a self-employment plan is to be the primary source of support.

(2) It is the consumer's informed choice consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities and interests.

(3) When a consumer expresses interest in self-employment, the individual will be required to participate in a vocational assessment with focus on self-employment potential. The assessment will include a self-evaluation completed by the client.

(4) The counselor will document, as appropriate, in the comprehensive assessment that the client has the academic, communication and managerial skills to manage their own business and the resources to demonstrate a likelihood of success.

(e) Once it has been determined that self-employment is a feasible goal, an IPE will be written to further assist the self-employment concept and the client is sent to training for developing a business plan.

## 612:10-7-230.3. Self-Employment/Business Plans

[REVOKED]

(a) Each individual, requesting Agency assistance with self-employment, is required to complete and submit a business plan that details at a minimum the following:

(1) Complete description of the proposed business.

(2) Business objectives.

(3) Ownership.

(4) Market Analysis.

(5) Marketing Plan.

(6) Financial Management Plan including personal finance sheets, projected expenses and income for at least 2 years.

(7) Specific listing of needed start-up costs and equipment, not including assistive technology devices.

(8) Specific listing of the type and amount of assistance the consumer is requesting from the State VR Program.

(9) Information regarding cost and coverage of insurance policies to cover liability, inventory, and equipment.

(b) Counselors will refer individuals to the local Small Business Development Center for assistance in developing a business plan. As appropriate the counselor may utilize other technical assistance services to aid the consumer in developing the business plan. After the plan is completed, the business plan will be reviewed by the appropriate DRS personnel.

(c) If the individual has submitted a viable business plan and the cost of the business plan to the agency, is \$10,000.00 or less the counselor may approve the request. If the agency's cost will exceed \$10,000 the counselor will refer the request to their immediate supervisor for approval.

(d) Certain individuals may require on-going supports or services for a business plan to be successful. The counselor will assist the individual in identifying and securing these support services. DRS cannot be responsible for funding these supports following successful employment outcomes.

## 612:10-7-230.4. Agency financial contribution to self-employment/purchasing

[REVOKED]

(a) The agency may provide some financial assistance toward self-employment plans that have met the requirements as specified in policy. The counselor will determine the client's financial status and any required financial participation by the client. The client's contribution may come from personal resources, property, loans, PASS plan funds or small business start up grants from other assistance programs.

(b) Any required client financial participation is applied to the cost of planned services.

(c) The agency's contribution to a self-employment plan will not exceed \$10,000.00 without supervisory approval.

(d) Items that the agency will not approve for funding include:

(1) Construction or purchase of real estate.

(2) Businesses that are speculative in nature such as stocks, bonds or other investments or considered speculative by the Better Business Bureau.

(3) Businesses that are organized as not for profit.

(4) Businesses organized as hobbies

(5) Purchase of vehicles

(6) Refinancing of existing debt.

(7) Business plans that are not developed as the primary source of support.

(8) A business endeavor that does not have an agency approved business plan.

(e) **Purchases and support services.** All Agency purchases for a plan with a goal of self-employment will be in accordance with established purchasing policy regarding the competitive

bid process and referrals to the State Office Purchasing Unit. Any requests for assistance with maintenance or transportation will be required to meet established policy guidelines for these support services.

**612:10-7-230.5. DRS Monitoring [REVOKED]**

(a) ~~The counselor will continue to be available for technical assistance upon completion of approved purchases. Counselor will review with consumer every 3 months the progress of the business. This will include copies of the businesses profit and loss statements and record of business performed. The purpose of these reviews is to determine if the involvement in self employment is allowing the consumer to substantially increase his/her earnings to achieve self employment success and be able to meet on going financial obligations of the business. Should the business not be showing an increase in the income of the consumer, the counselor will review, with the consumer, the consumer's business plans to try to increase the business income. If necessary, the consumer may be referred to the small business development center or similar program for technical assistance in making changes in business operation to achieve a business profit.~~

(b) ~~Stated in the IPE, this case would be agreed upon as a successful closure if the business is stable after 90 days and has met the specified level of performance. At the time of case closure, title for all goods purchased by the agency will be released to the consumer.~~

**PART 25. TRANSITION FROM SCHOOL TO WORK PROGRAM**

**612:10-7-245. Definitions**

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

"Employer Work Study (EWS)" allows students with disabilities employment experience in part-time jobs in the community with the employers paying the wages/salary(ies). In this instance, the students are employees of the community employers, and DRS does not reimburse the employers for the wages/salary(ies).

"FLSA" means the Fair Labor Standards Act which sets forth labor standards and protections as enforced by the U.S. Department of Labor.

"IDEA" means the Individuals with Disabilities Education Act, P.L. 101-476 which ensures the rights and protections of children with disabilities and their parents being served by public education agencies through special education services and on an individualized education program (IEP).

"IEP" means Individualized Education Program. This is an educational document developed on an annual basis that documents the educational and transition goals students are working toward each year in grades PK-12.

"LEA" means Local Educational Agency, or local school district.

"School Work Study (SWS)" allows students with disabilities to work on the school campus. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working on campus.

"SDE" means State Department of Education.

"SECTION 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under the IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Teacher coordinator" means a teacher employed by a school who is released as part of her work day and responsible for working with DVR/SBVI counselors and students eligible for the Transition from School to Work Program.

~~"Work Adjustment Training (WAT)" is provided on a work site, in a school, or in an approved Community Rehabilitation Program having valid contracts with DRS. WAT may also include (but is not limited to) activities aimed toward work tolerance, development of personal habits, attitudes, and work habits necessary to orient the individual to the world of work. High school students eligible for this service must be at least 16 years of age and may not participate for more than 18 months unless determined necessary by the counselor and client.~~

~~"School Work Study (SWS)" allows students with disabilities to work on the school campus. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working on campus.~~

~~"Trial Work/Extended Evaluation"~~ "Trial Work" has the meaning given these terms in DRS policy and federal law/rules.

"Work Adjustment Training (WAT)" is provided on a work site, in a school, or in an approved Community Rehabilitation Program having valid contracts with DRS. WAT may also include (but is not limited to) activities aimed toward work tolerance, development of personal habits, attitudes, and work habits necessary to orient the individual to the world of work. High school students eligible for this service must be at least 16 years of age and may not participate for more than 18 months unless determined necessary by the counselor and client.

"Work Site Learning (WSL)" allows students with disabilities to work in the community. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working off campus.

~~"Employer Work Study (EWS)" allows students with disabilities employment experience in part time jobs in the community with the employers paying the wages/salary(ies). In this instance, the students are employees of the community employers, and DRS does not reimburse the employers for the wages/salary(ies).~~

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## **612:10-7-250. Reporting Credential Attainment and Skill Gains for High School Transition Students**

- (a) Under the WIOA, workforce agencies are required to report the percentage of those participants enrolled in secondary education who attained a recognized credential during participation in or within one year after closure of the case. This is based on the sub-regulatory guidance related to the implementation and operation of the performance accountability system under section 116 of WIOA and the implementing regulations in 34 CFR parts 361 subpart E.
- (b) For reportable high school students, the recognized Secondary Credential is the achievement of a High School Diploma, recognized by the State of Oklahoma. Progress toward completing requirements for a diploma is reported as a Measurable Skill Gain (MSG).
- (c) In order to properly report credentials and skill gains, the high school education goal must be included on the IPE for any Student With Disability (SWD) for whom a plan is developed while still enrolled in high school. It is expected that staff will use the DRS electronic case management system to record enrollments (educational goals), and document credential attainments and skill gains. Supporting documents proving the credential or skill gain must be entered into the system as well. Timely reporting of these attainments and skill gains is critical. The Participant is expected to assist with obtaining the required documentation. Credential attainment can be reported up to one year after case closure. MSG's are only reported prior to case closure.

## **SUBCHAPTER 9. REHABILITATION TEACHING SERVICES**

### **PART 5. SERVICES**

#### **612:10-9-34.3. Other adaptive skills [REVOKED]**

~~Consumers who lose vision need to learn adapted techniques which will allow them to participate in a variety of leisure activities. The teacher can provide instruction in the following:~~

- ~~(1) Special reading services~~
- ~~(2) Arts and crafts activities~~
- ~~(3) Parlor games~~

## **SUBCHAPTER 13. SPECIAL SERVICES FOR THE DEAF AND HARD OF HEARING**

### **PART 3. CERTIFICATION OF INTERPRETERS**

#### **612:10-13-22. Grievance procedures**

- (a) Individuals who are dissatisfied with certification testing procedures or performance of a certified interpreter may file a written complaint with the designated Oklahoma interpreter

certification program official, Department of Rehabilitation Services, within thirty (30) days of the grieved incident.

(b) The Department will accept jurisdiction only for those incidents directly related to the evaluation and certification of interpreters for the deaf in Oklahoma and those incidents involving the performance of State Certified Interpreters that allege a specific violation of interpreting standards or ethical behavior.

(c) ~~Each~~ complaint must be in writing and must ~~set forth~~ provide:

- (1) The date of the incident;
- (2) The ~~names~~ name(s) of the person(s) involved;
- (3) The location of the incident;
- (4) A description of the specific action or actions in question; and
- (5) The specific policy or procedure ~~or the Code of Professional Conduct ethical tenet(s) and/or Federal law in question~~ possible violation.

(d) Upon receipt of a properly executed complaint, the Department will review the complaint and within thirty (30) days notify the ~~respondent~~ parties that a complaint has been filed. The respondent will have thirty (30) days from the date ~~he or she~~ they receive receive the grievance notification to respond in written form.

(e) Upon the receipt of a written response, the designated Oklahoma interpreter certification program official and Department will review the information presented and make an initial decision regarding the merit of the complaint based on facts presented. The designated Oklahoma interpreter certification program official has thirty (30) days from the ~~submittal~~ submission of the grievance to ~~make the~~ provide a decision. All parties concerned will be notified of the decision in writing. If there has not been sufficient information provided, from either party, the Oklahoma Interpreter Certification program official can request more information, in writing, to make a determination.

(f) ~~If it is determined that a violation of either rules governing interpreter evaluations or standards and ethical behavior for interpreters may have occurred, the complaint will be referred to the grievance board.~~ The Department can seek the assistance from a merit panel to determine if there is a direct violation against (c)(5).

(1) The function of the merit panel is to assist the Department in determining if there is founded merit to the claimed violation (s) set forth in (c)(5). The names of the parties will be anonymous when presented to the merit panel. The panel can recommend a course of action.

(2) Possible course of action(s) are set forth as defined in 612:10-13-23 in (1) through (8) of that subsection.

(g) If it is determined that no violation of rules related to evaluation and certification of interpreters for the deaf or violation of interpreting standards and ethical behavior has occurred, the involved parties will be notified, and the complaint will be dismissed. If the complaint is dismissed, the complainant or respondent may appeal and request a formal hearing. The appeal must be in written form and submitted within thirty (30) days of receiving the notification. The request for formal hearing must be in writing and addressed

to the designated Oklahoma interpreter certification program official at the Department of Rehabilitation Services.

**612:10-13-23. Formal hearing**

(a) A formal hearing may be requested by the complainant or respondent by contacting the designated Oklahoma interpreter certification program official by written form. The hearing will be scheduled at a time and place convenient to all parties concerned. All parties will receive two weeks' notice of the hearing date.

(b) The complainant and/or respondent may invite a representative (including legal) to assist during the proceedings. Either party may present witnesses, affidavits or other written documentation related to any relevant aspect of the charge or defense. Parties must provide name of witnesses and other written documentation two weeks prior to the scheduled hearing date to the designated Oklahoma interpreter certification program official.

(c) The hearing will be conducted by a grievance board panel selected by the Oklahoma interpreter certification program Advisory Committee and the Department. With effort, at least one member must be deaf or hard of hearing, and must be either a former or current Oklahoma interpreter certification test evaluator and/or knowledgeable and adhering to a form of Code of Ethics; with effort, one member must be an interpreter holding national or Oklahoma State Level V/V/V certification; with effort, one member will be selected at the discretion of DRS Department and may be from a profession other than interpreting for the deaf, but must be knowledgeable of interpreter skills. Code adhering to a form of Ethics. The grievance board panel will review information presented and make a determination based on the facts. Based upon this determination, the grievance board panel will can make recommendations for a course of appropriate action to the Oklahoma interpreter certification program should take official. Possible actions are set forth in (1) through (8) of this Subsection.

- (1) The complaint be dismissed;
- (2) A written warning be issued;
- (3) A written reprimand be issued indicating unsatisfactory performance;
- (4) Probation a trial period for a specific length of time during which the interpreter is required to fulfill a set of conditions to improve work performance or work behavior;
- (5) ~~Supervision~~ Suspension - removal of the individual from the list of certified interpreters for a specified period of time, not to exceed six (6) months;
- (6) Revocation - removal of the individual from the list of certified interpreters for an extended period or permanently;

(A) It must be determined and proven there was a severe violation against Code of Professional Conduct tenets, and/or

(B) ICRC Level of Limitations, and/or

(C) a malicious intent of harm, and/or

(D) disregarding or violation of any governing State or Federal Laws before a certification can be revoked.

(7) The complainant may be retested using a different evaluation team at no cost to the individual; and

(8) A recommended change in policy or procedures in the interpreter evaluation process.

~~(d) The recommended decision course of action of the Oklahoma interpreter certification program grievance board submitted by the selected panel will be reviewed by the designated interpreter certification program official. The Oklahoma interpreter certification program official who will notify all parties involved in writing of the decision within thirty (30) days. If a party is dissatisfied with the outcome of a formal hearing, an appeal may be made to the Director of the Department of Rehabilitation Services. The Director shall have forty five (45) days to render a decision. The Director's decision shall be final.~~

(e) If a party is dissatisfied with the outcome of a formal hearing, an appeal may be made to the Director of the Department of Rehabilitation Services, within fifteen (15) days of receiving the recommended decision. The Director shall have forty-five (45) days to render a decision. The Director's decision shall be final.

*[OAR Docket #22-469; filed 6-24-22]*

**TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES  
CHAPTER 25. BUSINESS ENTERPRISE PROGRAM**

*[OAR Docket #22-470]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 2. General Provisions
- 612:25-2-5. Definitions [AMENDED]
- 612:25-2-7. State and Federal Assurances Policy of non-discrimination [AMENDED]
- 612:25-2-8. Accessibility of written materials [AMENDED]
- Subchapter 4. The State Licensing Agency
- Part 1. Organization and General Operation Standards
- 612:25-4-1. Organization of the State Licensing Agency [AMENDED]
- Part 3. Business Enterprise Program Training
- 612:25-4-14. Training for new or potential licensed managers [AMENDED]
- Part 5. State Licensing Agency Responsibility for Business Enterprise Operations
- 612:25-4-25. Management of BEP equipment and fixtures [AMENDED]
- 612:25-4-27. Initial inventory and supplies [AMENDED]
- Part 9. Assignment of Licensed Managers
- 612:25-4-53. Assignment, and transfer [AMENDED]
- 612:25-4-55. Qualifications [AMENDED]
- 612:25-4-57. Applicant Selection Committee [AMENDED]
- 612:25-4-58. Annual and Performance Evaluations [AMENDED]
- 612:25-4-59. Interview, Selection Process and Scoring [AMENDED]
- 612:25-4-61. Satellite business enterprise locations [AMENDED]
- Subchapter 6. Licensed Managers and Business Enterprise Operation
- Part 1. Licensed Managers
- 612:25-6-1. Licensing requirements for managing a business enterprise [AMENDED]
- 612:25-6-2. Standards for licensed managers [AMENDED]

# Permanent Final Adoptions

612:25-6-2.1. Probation [AMENDED]  
612:25-6-3. Grounds for suspension or termination of a license [AMENDED]  
612:25-6-4. Use of service animals [AMENDED]  
612:25-6-5. Motor vehicle operation [REVOKED]  
Part 3. Business Enterprises  
612:25-6-15. Setting aside of funds [AMENDED]  
612:25-6-16. Criteria to establish a business enterprise [AMENDED]  
612:25-6-18. Establishing ~~new~~ licensed managers in business enterprises [AMENDED]  
612:25-6-19. Employees of the licensed manager [AMENDED]  
612:25-6-20. Closing a business enterprise [AMENDED]  
612:25-6-22. Monthly reports [AMENDED]  
Part 5. The Elected Committee of Licensed Managers  
612:25-6-32. The Elected Committee of Licensed Managers [AMENDED]  
612:25-6-33. Organization and operation of the Elected Committee of Licensed Managers [AMENDED]

## **AUTHORITY:**

Commission for Rehabilitation Services; 74 O.S. § 166.2

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

December 2, 2021

## **COMMENT PERIOD:**

December 2, 2021 through February 7, 2022

## **PUBLIC HEARING:**

February 7, 2022

## **ADOPTION:**

March 14, 2022

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

March 22, 2022

## **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 11, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

n/a

## **INCORPORATIONS BY REFERENCE:**

n/a

## **GIST/ANALYSIS:**

Due to state and federal audits, changes to the Business Enterprise rules must be made as well as updating language.

## **CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## **SUBCHAPTER 2. GENERAL PROVISIONS**

### **612:25-2-5. Definitions**

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

**"Act"** means the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as Amended by Public Law 83-565 and Pub Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

**"Active participation"** means a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which govern the duties, supervision, transfer, promotion and financial participation of licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

**"Annual Evaluation"** means an evaluation conducted on a yearly basis of a manager. This evaluation will be performed at the end of each calendar year.

**"BEP"** means the Business Enterprise Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

**"BEP Operations Coordinator"** means the person who has responsibility for the operation of the Business Enterprise Program in the State.

**"Blind person"** means a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

**"Board"** or **"Commission"** means the governing body for the State Licensing Agency.

**"Business Consultant (BC)"** means an individual who provides consultative and management services to those business enterprises and licensed managers of the State to which the consultant is assigned.

**"Business Enterprise"** means an approved business administered by the State Licensing Agency. See definition of "Vending Facility."

**"Business Enterprise Program (BEP)"** means the Business Enterprise Program services available to establish business enterprises for persons who are blind.

**"Cafeteria facility"** means a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

**"Client or Consumer"** means any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

**"Commissioner"** means the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

**"Committee"** means the Elected Committee of Licensed Managers.



**"Contract"** means a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise in cafeterias.

**"Contract labor"** means a person or company that performs duties or services not a part of the regular duties of the business enterprise.

**"Counselor"** means Division of Vocational Rehabilitation or Division of Visual Services counselors assigned to the State Licensing Agency's program of vocational rehabilitation.

**"Director"** or **"Executive Director"** means the chief administrator of the State Licensing Agency.

**"Displaced licensed manager"** means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

**"Dry/Wet facility"** means any business enterprises providing manual dispensing of prepackaged articles, refreshments, and services.

**"Elected Committee of Licensed Managers (ECM)"** means the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

**"Emergency"** means ~~an unforeseen~~ a serious, unexpected and/or dangerous circumstance that calls for immediate action. ~~When a piece of equipment is out of order it is not normally considered an emergency unless it will harm/destroy lives, other equipment or property.~~

**"Employee"** means an individual who receives compensation for services rendered to a licensed manager.

**"Equipment, expendable"** means items having a relatively small cost per item and having a relatively short life expectancy.

**"Equipment, non-expendable"** means all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

**"Extenuating Circumstances"** means circumstances which are sudden, unexpected, significantly disruptive and beyond control.

**"Federal property"** means any building, land or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

**"Federal regulations"** means the regulations issued pursuant to the Randolph-Sheppard Act.

**"Grantor"** means a Federal, State, County, Parish, city government, private corporation, company, partnership or individual, who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

**"Grantor's agreement"** means a written document between a Grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

**"Gross receipts"** means all revenue from a business enterprise, including sales tax.

**"Gross Sales"** means the grand total of all sales transactions reported in a period without any deductions included in the figure, not including sales tax.

**"Inactive Licensee"** means a licensed individual who is not currently working in the Business Enterprise Program.

**"Initial stock and supplies"** means those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

**"License"** means a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

**"Licensed employee"** means a licensed individual who is currently working for a licensed manager.

**"Licensed Manager (LM)"** means a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard business enterprise under the supervision of the State Licensing Agency.

**"Licensee"** means a person who is blind and holds a valid BEP license.

**"Licensing agency"** means the State Licensing Agency (SLA), which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

**"Management"** means the personal supervision of the day-to-day operation of the assigned business enterprise facility by the assigned manager.

**"Management services"** means inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers. Management services does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

**"Manager's agreement"** means an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

**"Mail"** is a method of distributing information that includes, but is not limited to, the U.S. Postal System, email, fax, or Federal Express.

**"Merchandise Loan"** means the total dollar value of the initial stocks of suitable merchandise provided to a licensed manager that will be repaid in monthly installments of no less than two percent of gross sales to pay loan balance in full.

**"Net earnings"** or **"Net profits"** means gross profit after deducting operating expenses and set-aside collected.

**"Net proceeds"** means the amount remaining from the sale of articles or services of business enterprises and any vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set-aside charges required to be paid by the licensed managers.

**"Net sales"** means the sum total of sales, excluding sales tax.

**"Nominee"** means a nonprofit agency or organization designated by the State Licensing Agency through a written agreement to act as its agent in the provision of services to

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licensed managers under the State's Business Enterprise Program.

**"Other income"** means money received by a licensed manager from sources other than over the counter and machine sales.

**"Other property"** means property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

**"Performance Evaluation"** means an evaluation conducted to determine if a manager is eligible to apply for a facility or to be awarded a permanent BEP license.

~~**"Permanent BEP License"** means a license issued on a permanent basis to a BEP manager who has successfully completed all probationary requirements.~~

**"Permit"** means the official approval given a State Licensing Agency by a department, agency, or instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

~~**"Probationary BEP License"** means a license issued to an individual on their first day as manager of an Oklahoma BEP facility.~~

~~**"Probationary Licensee"** means a person who has received a certificate of completion of the Business Enterprise Program training and has not completed their six (6) month probationary period.~~

**"Purveyor"** means an approved source of supply for food, beverages, supplies, or services.

**"Randolph-Sheppard Act"** means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

**"Retained vending machine income"** means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or received from vending machines on State or other property in excess of the amounts eligible to accrue to licensed managers.

**"Routine preventive maintenance"** means the regular care, upkeep, and cleaning of equipment used in a business enterprise.

**"Rules and regulations"** means the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprise Program. A copy of the document granting approval of the rules and regulations from RSA, will be mailed to each licensed manager.

**"Saleable stock/merchandise"** means products comprising the merchandise available for sale to the public and determined by the SLA to be from an approved source in the original container, in date, consistent with the needs of the customers for a particular business enterprise.

**"Satellite business enterprise"** means a business enterprise assigned to a licensed manager on a temporary basis.

**"Satellite Manager"** means a licensed manager appointed to manage a business enterprise on a temporary basis.

**"Satellite Performance Evaluation"** means an evaluation conducted to determine a manager's eligibility to continue operating a satellite to be performed at the 180 day satellite review.

**"Satisfactory site"** means an area determined by the BEP Operations Coordinator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

**"Secretary"** means the United States Secretary of Education.

**"Set-aside funds"** means funds which accrue to a State Licensing Agency from an assessment against the net proceeds of each business enterprise in the State's business enterprise Program and any income from vending machines on Federal property which accrues to the SLA.

**"Snack bar business enterprise"** means a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

**"State Licensing Agency (SLA)"** means the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

**"State property"** means lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

**"Statewide average manager earnings"** means the average annual manager earnings (after set-aside) as calculated each year for the RSA-15 Report.

**"Teaming Partner Agreement"** means an arrangement between a Licensed Manager and a company as a contractual relationship or joint venture to perform a specific federal, state, county or other contract with the exclusion of automated vending machines. Such agreements are intended for large complex operations such as food services on a military base.

**"Temporary Variance"** means an instrument used to allow a business enterprise to install alternate vending operations on a temporary basis when a determination has been made by the SLA that a blind operated vending facility is not viable at time of survey.

**"Third Party Vendor"** means a separate individual or organization, other than a Teaming Partner, that operates and/or manages a BEP business enterprise facility and pays a fee or commission to the licensed manager.

**"Timely submission"** means the receipt of an accurate monthly report and correct payment, if applicable, on or before the due date in the BEP office.

**"Trainee"** means a qualified client of the Division of Visual Services, who when referred to the Business Enterprise Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

**"Training program"** means the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

**"Vending facility"** means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products,

foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of chances for any lottery authorized by State Law and conducted by an agency of a State within such State. [CFR 34, Part 395.1(X)]

"Vending machine" means any machine, operated using currency or other medium of exchange, which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

"Vending machine facility" means an automated business enterprise which dispenses a variety of food and refreshment items and services from vending machines. Included in this category would be interstate highway locations and vending machine routes.

"Vocational Rehabilitation Services" means those services as defined in the Rehabilitation Act. [29 USC 701 et seq.]

"Volunteer" means an individual who works in a business enterprise and receives no compensation.

**612:25-2-7. State and Federal Assurances Policy of non-discrimination**

(a) The SLA will assure compliance with all State and Federal Rules and Regulations applicable to the Randolph Sheppard Act.

(b) The State Licensing Agency assures that it shall not exclude from participation, deny the benefits of the program, or otherwise subject any person to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation in accordance with the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act of 1990 and any other federal and state non-discrimination statutes.

(c) Every licensed manager of a business enterprise shall operate the business enterprise in such a manner that no person shall be subject to discrimination under any federal or state statute because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation whether that person is a present or prospective purveyor, customer, employee or other individual who might come into contact with the business enterprise.

(d) Confidentiality and requests for information. Policies on confidentiality of client records in the BEP will apply also to licensed managers in the BEP and to those who apply for training. Such information will be limited to purposes directly connected with the administration of the BEP and may not be released either directly or indirectly for any other purpose without the consent of the licensed manager/applicant or his/her legal representative. While the SLA complies with the Freedom of Information Act, protection of confidential information takes precedence. When information is requested that is not clearly of a public nature, the information will be treated as confidential unless and until ruled otherwise by the

general counsel for the SLA. The SLA may charge reasonable fees for copies of information.

**612:25-2-8. Accessibility of written materials**

Upon advance request, all written materials will be provided to each licensed manager, licensed employee, or licensee in a format accessible to that licensed manager, licensed employee, or Licensee to the extent practicable. It is the responsibility of the licensed manager, licensed employee, or licensee to inform the SLA of the accessible format needed.

**SUBCHAPTER 4. THE STATE LICENSING AGENCY**

**PART 1. ORGANIZATION AND GENERAL OPERATION STANDARDS**

**612:25-4-1. Organization of the State Licensing Agency**

(a) **Governing board.** The Oklahoma Department of Rehabilitation Services (DRS) is the designated State Licensing Agency (SLA) for administration of Oklahoma's vending facility program for the blind under the Randolph-Sheppard Act. The governing board of the SLA is the Oklahoma Commission for Rehabilitation Services. The Director of DRS reports directly to the Commission.

(b) **Business Enterprise Program administration.** The Business Enterprise Program (BEP) is located in the Division of Vocational Rehabilitation Services Services for the Blind & Visually Impaired of DRS, and is administered by the Business Enterprise Program Operations Coordinator who reports to the Visual Rehabilitation Services Services for the Blind & Visually Impaired Division Administrator.

(c) **BEP staff.** The SLA, with consultation from the Elected Committee of Licensed Managers, determines staffing requirements for administration of the BEP and provision of services to achieve the mission, goals and objectives of the Program.

(d) **Licensed managers.** The individual enterprises established by the Business Enterprise Program are managed by licensed managers. Licensed managers are subject to the policies and procedures of the Business Enterprise Program, but are not employees of the program, the SLA, or the State of Oklahoma. They do, however, have a contractual relationship with the SLA and are required to manage the business enterprise in accordance with established rules and regulations.

**PART 3. BUSINESS ENTERPRISE PROGRAM TRAINING**

**612:25-4-14. Training for new or potential licensed managers**

(a) **Overview of Licensed Manager Training.** The Business Enterprise Program (BEP) provides individuals who are blind with training that leads to potential employment as a

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Licensed Manager of a vending facility or related business in the Business Enterprise Program. The training program includes but is not limited to training in laws and regulations affecting the Business Enterprise Program, state and federal tax reporting, food service operations, sanitation, inventory control, money management, staffing of personnel, safety procedures, business management principles and techniques, and preparation of reports required by the State Licensing Agency. The licensed manager training program will be based on a curriculum developed and periodically reviewed through consultation with appropriate business representatives, trainers, BEP experts, and the Elected Committee of Licensed Managers. Additional training required by the licensed manager trainee to adjust to blindness, learn assistive technology skills or improve the trainee's opportunity to succeed as a licensed manager may be arranged through coordination with the DRS Division of Visual Services and DRS Division of Vocational Rehabilitation.

(b) **Application process.** Applications for BEP training shall include the following information which shall be obtained from the individual's counselor:

- (1) current eye examination, documenting blindness;
- (2) documentation for United States citizenship;
- (3) documentation the client is at least 18 years of age; and
- (4) completion of any rehabilitation training prerequisites established by the BEP in consultation with the ECM to better optimize the successful employment outcome;

(c) **Acceptance for training.** Applicant qualifications will be reviewed by BEP staff who will report any training-related recommendations to the individual's DVS/DVR counselor and BEP operations coordinator. An individual's application must be approved by the BEP operations coordinator prior to acceptance into the training program.

(d) **Notice regarding criminal background record and Oklahoma sales tax background check.** Before entering training, BEP applicants will be informed that a criminal background investigation and an Oklahoma sales tax background check will be performed and may prevent their being licensed to manage some BEP facilities.

(e) **Duration of training.** To be eligible for licensure as a BEP facility manager an individual must complete the full BEP manager training program, unless the BEP operations coordinator, in consultation with the Chair of the Elected Committee of Licensed Managers, determines an exception is justifiable.

(f) **Completion of training.** Each trainee who completes the BEP manager training program is issued a certificate certifying that the trainee has met all the training criteria to be a licensed manager in the Business Enterprise Program. Upon assuming management of their first facility, a certified graduate shall be issued a ~~temporary BEP license and begin a six (6) month probationary period. During this period, the probationary manager will receive benefits afforded all other managers, along with accruing seniority. Upon completion of their probationary period, the BEP Operations Coordinator, in consultation with the ECM Chair, will review their progress and if determined appropriate will issue their permanent BEP Manager License.~~

(g) **Failure to complete training.** If it appears that a trainee will not be able to successfully complete training, the BEP operations coordinator, in consultation with the ECM Chair, will review the individual's training record before making a decision to terminate training. The BEP operations coordinator will notify the trainee and their DVS or DVR counselor of any BEP decision to terminate training.

(h) **Post-training interview.** Upon completion of a new manager's ~~probationary period training~~, they will be interviewed by a representative of the Elected Committee of Licensed Managers, normally the chairperson, to evaluate the effectiveness of the training program. The interviewer formulates recommendations and comments regarding the training program and provides them to the BEP Operations Coordinator.

(i) **Acceptance of out-of-state licenses.** The BEP Operations Coordinator will evaluate the skills and knowledge of BEP applicants who were licensed managers in other states. Training will be provided to correct any noted deficiencies and acquaint the applicant with Oklahoma's program. After qualifications are met, the applicant is issued a training completion certificate.

(j) **Seniority.** Seniority in the Oklahoma Business Enterprise Program will only accrue when managing an Oklahoma BEP facility.

(k) **Licensed Manager Benefits.** Benefits such as insurance will begin the same date the Licensed Manager signed the manager's agreement.

### PART 5. STATE LICENSING AGENCY RESPONSIBILITY FOR BUSINESS ENTERPRISE OPERATIONS

#### 612:25-4-25. Management of BEP equipment and fixtures

(a) The SLA will provide each business enterprise with fixtures and equipment in such quantity and quality so as to give reasonable assurance of successful operation by the licensed manager. The SLA retains the right, title, and interest to all BEP equipment and fixtures. The SLA has the authority to direct, control, transfer and dispose of such equipment as it deems necessary. All capital equipment is purchased, inventoried, and disposed of in accordance with Department of Rehabilitation Services policy.

(b) Equipment for new locations will be determined by the BEP Operations Coordinator and staff ~~in consultation with an Elected Committee of Licensed Managers (ECM) member specified by the ECM Chairperson~~ pursuant to 612:25-6-16 Criteria to establish a business enterprise.

(c) The licensed manager may make additions, deletions or modifications to the business enterprise and its operation, in the form of equipment, fixtures or facilities, by obtaining written authorization from the BEP. The licensed manager may not remove any state-owned equipment from the facility.

**612:25-4-27. Initial inventory and supplies**

(a) **Initial inventory.** A licensed manager may acquire initial merchandise for resale by purchasing it with his/her own funds, utilizing ~~self employment assistance~~ start-up assistance/client services that may be available from DRS or other public and private sources, or use of a merchandise loan provided by the State Licensing Agency (SLA). When the SLA provides the manager a merchandise loan for initial merchandise, the manager is not allowed to utilize DRS start-up assistance for same purpose.

(b) **Merchandise loan.** When necessary to enable a licensed manager to acquire initial merchandise inventory, the SLA may extend a merchandise loan subject to the following terms:

(1) The amount of the loan will be determined by the SLA in consultation with the licensed manager and based on an assessment of merchandise necessary to initiate sales and the availability of funds.

(2) The total amount of the loan will not exceed the average of the prior year's inventories without approval from the BEP operations coordinator. This means the prior year's inventories will be summed and then divided by twelve to obtain the average.

(3) All merchandise purchased and placed on a merchandise loan must have prior approval by the SLA. The SLA will not make multiple purchases from any purveyor.

(4) The incoming licensed manager, BEP business consultant and BEP operations coordinator will determine what may be purchased from the existing stock of the outgoing facility manager. Only salable merchandise may be purchased. ~~The BEP business consultant and Operations Coordinator will also assist the out going manager in selling any remaining salable merchandise and its interim storage.~~

(5) A merchandise loan must be repaid to the SLA by a licensed manager in monthly installments ~~equaling two percent (2%) of monthly gross sales~~ of no less than two percent of gross sales to pay loan balance in full. A licensed manager shall not allow the facility inventory level to fall below that of the balance of the merchandise loan and are subject to disciplinary action should this occur. Managers receiving loans will sign a merchandise security agreement that will be retained on file by DRS and released to the manager when loan repayment is complete along with a letter from the BEP Operations Coordinator officially notifying the licensed manager of their full repayment of the loan.

(6) When a merchandise loan is secured by stock, a licensed manager may not permit the ownership of the stock to vest in any person or organization other than the SLA.

(7) When a licensed manager leaves a business enterprise, any remaining merchandise loan balance (and other unmet obligations to the SLA) will be subtracted from the ending inventory to determine the manager's equity in the ending stock.

(8) Merchandise loans are not allowed for satellite facilities unless extenuating circumstances prevail and only

after approval of BEP Operations Coordinator in consultation with the ECM chair person.

(9) Merchandise loans for existing managers currently operating an "A" or "B" classified facility as their primary may be granted at the discretion of the BEP Operations Coordinator in consultation with the ECM chair person.

(c) **Failure of licensed manager to repay loan.**

(1) If a licensed manager's merchandise loan payment is not received in the BEP office within five days after the due date, the licensed manager will be placed on probation and is not eligible to make application into the selection process. Merchandise loan payments are due at the time monthly reports and set-aside payments are due. (612:25-6-22)

(2) If a licensed manager's merchandise loan payment remains delinquent through the succeeding month and is not received in the BEP office within five days after the succeeding month's due date, the BEP operations coordinator will recommend suspension or termination of the operator's agreement by the SLA director unless an alternate repayment schedule has been approved by the SLA. The SLA will initiate action to collect a remaining merchandise loan balance when a loan payment is two months overdue.

(3) When a licensed manager leaves the program for any reason, the merchandise loan is due in full unless arrangements are made with the SLA to divide the balance into twelve (12) equal payments that will be due on the first day of each month.

(d) **Second merchandise loan.**

(1) Under documented extreme circumstances, a licensed manager who has paid off his/her previous merchandise loan may receive a second merchandise loan for the same facility when it has been determined that the loan is necessary to allow the licensed manager to remain in his/her facility.

(2) If a licensed manager requires a second merchandise loan while the first loan is still outstanding, other than for the expansion of his/her facility, he/she will be placed on probation until one of the loans is paid in full.

(3) Second merchandise loans for the purpose of facility expansion will be limited to 50% of the cost of additional salable merchandise needed.

(e) It is the incoming ~~manager's~~ Licensed Manager's choice to ~~procure any~~ accept or reject any and or all merchandise or personal property from the out-going ~~manager~~ Licensed Manager, however, a merchandise loan cannot be used to purchase property. If this condition occurs, the outgoing manager must be given a one week notice prior to the facility turnover to the new manager. The incoming Licensed Manager must notify the Business Consultant and the outgoing Licensed Manager of his/her intent of purchasing outgoing manager's inventory seven (7) days prior to the day of the inventory count.

(f) If the incoming manager rejects all of the outgoing manager's merchandise, the outgoing manager may be allowed two weeks to reduce his/her inventory, before transfer of facility. This two week period must be approved by the BEP Operations Coordinator in consultation with the ECM chair.

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(g) In order to expedite the processing of merchandise loans, the outgoing manager must provide a merchandise price list to the business consultant and incoming manager seven (7) days before the day of the inventory count.

### PART 9. ASSIGNMENT OF LICENSED MANAGERS

#### 612:25-4-53. Assignment and transfer

(a) **Assignment.** The State Licensing Agency (SLA) administers a competitive selection process to accomplish the assignment of primary facilities to qualified individuals. The selection process established by the SLA provides that the Elected Committee of Licensed Managers (ECM) is an active participant in the selection of facility managers.

(b) **Transfer.** The SLA, in consultation with the ECM board, may transfer a qualified licensed manager to a different location of similar complexity and income potential when it appears to be in the best interest of the licensed manager and/or the BEP. The SLA notifies the licensed manager and the ECM Chairboard, in writing, by registered or certified mail of the transfer and the grounds for the transfer. The transfer policy cannot be used to circumvent the competitive selection process.

#### (c) **Displaced Licensed Manager.**

(1) A Displaced Licensed manager will have up to one (1) year to make application for a BEP facility that is comparable to his or her displaced facility.

(2) A Displaced Licensed Manager will be given 15 bonus points in the next interview selection for a permanent placement in a BEP facility that is relatively comparable in complexity, financially and if possible, geographically.

(3) A Displaced Licensed Manager could accept a satellite assigned facility that is not comparable to their recent displaced facility without surrendering their displaced bonus points and status.

(4) Should the Displaced Licensed Manager elect to accept the assigned satellite as his or her primary placement facility, then that Displaced Licensed Manager would surrender the displacement status with the agreement from the SLA and ECM.

(5) The SLA will consult with the ECM Chair to determine beginning and expiration date of eligibility of the Displaced Licensed Manager and provide notice in the Licensed Managers preferred format.

#### 612:25-4-55. Qualifications

(a) In order to apply for manager placement in a Classification "A" or "B" facility in the Business Enterprise Program (BEP), an individual must hold a permanent license issued by the State Licensing Agency (SLA). In addition, the SLA requires experience in the program before an individual will be considered eligible to apply for "A" or "B" classification business enterprises with the exception of (b) of this section. Certified graduates of the BEP Training Program are only eligible to apply for Classification "C" or "D" facilities with

the exception of (b) of this section. A location new to the BEP program is to be classified "C" for the initial 90 days of operation. The BEP Operations Coordinator, in consultation with the ECM Chairperson, will determine the need for any experience requirements.

(b) Applicants who qualify for the next lower classification will be considered for interview when no qualified applicants apply for a classification "A" or "B" facility announcement when it is deemed appropriate to do so by the BEP Operations Coordinator in consultation with the ECM Chairperson.

(c) Experience requirements for each classification are:

(1) Classification A. Applicants will be restricted to individuals who have a minimum of three (3) years total experience in an Oklahoma Business Enterprise including a minimum of one (1) year of management experience.

(2) Classification B. Applicants will be restricted to individuals who have a minimum of two (2) years total experience in an Oklahoma Business Enterprise, including a minimum of six (6) months of management experience.

(3) Classification C. No experience required, except on new locations as deemed appropriate by the BEP Operations Coordinator in consultation with the ECM Chairperson.

(4) Classification D. No experience required.

(d) The BEP Operations Coordinator, in consultation with the ECM Chairperson, may require additional BEP experience on applications for any facility. Verified BEP experience from another state may be considered.

(e) Applicants will not be eligible to apply for a business enterprise facility if any of the following conditions exist:

(1) The licensed manager applicant's cumulative total days off on probation is sixty (60) or more days in the most recent twelve (12) months or the SLA has initiated suspension/termination proceedings against the licensed manager.

(2) The applicant is not current with their merchandise loan payments.

(3) The applicant is not current with his/her set-aside owed to the SLA.

(4) ~~Applicants who have a permanent license~~ have not scored at least an 80 on their performance evaluation.

(5) Conditions 1-4 will not apply to new BEP training graduates.

(f) Applicants must be eligible to obtain an Oklahoma Tax Permit and be in good standing with the Oklahoma Tax Commission (OTC) for assigned, transferred or satellite business enterprises. Along with each application, the applicant is to provide a signed OTC form A 100 to determine their standing in relation to Sales Tax and Employee Withholding. The OTC form A 100 will be used on a one-time basis for a tax inquiry in relation to that announcement application only.

#### 612:25-4-57. Applicant Selection Committee

**Selection Committee.** The Selection Committee shall be established and convened by the SLA. The Selection Committee will consider applicants for assignment. The Selection Committee shall make recommendation(s) to the BEP Operations Coordinator or designee. The BEP selection committee

is chaired by the BEP Operations Coordinator or designee. Members include two members of the SLA staff, the area member of the ECM or alternate and the chairperson of the ECM or alternate (vice-chair or secretary or another member of the ECM, in order). If no member of the ECM can serve in either capacity the BEP Operations Coordinator shall poll ~~from the ECM chairs outside of State of Oklahoma~~ the licensed managers to complete the committee. No person can serve on the selection committee who has a conflict of interest or is related to an applicant.

**612:25-4-58. Annual and Performance Evaluations**

(a) The BEP will conduct an annual evaluation of each licensed manager at the end of each calendar year. Performance evaluations will be conducted when a manager applies for a facility or when a probationary period ends. All evaluations will be based on data collected from the manager's primary assigned facility and will consist of the previous twelve (12) working ~~months~~ month's information. If a Licensed Manager does not have a primary facility, the satellite facility will be used (in accordance with BEP 612:25-4-53(c)(1-5). The Licensed Manager will be advised of the results of any evaluation in writing. The manager will be evaluated in the following areas:

- (1) Tasks/responsibilities
  - (A) Timely submission and accuracy of all required monthly reports and payments (set-aside and merchandise loan payments, if applicable).
  - (B) Accurately calculated gross profit percentage reported on monthly reports.
  - (C) Accurately calculated net profit percentage reported on monthly reports.
  - (D) Maintenance of an acceptable level of merchandise inventory (including preventing the merchandise levels from falling below any outstanding merchandise loan balance).
  - (E) Attendance at Agency and other certified training.
  - (F) Attendance at Quarterly ECM Meetings.
- (2) Work Habits
  - (A) Provides preventive maintenance and appropriate cleaning/sanitation.
  - (B) Merchandise displayed, rotated and stocked sufficiently.
  - (C) Maintains required insurances.
  - (D) Maintains agreed upon hours of operation.
  - (E) Maintains professional relationships with customers and grantors.

(b) When a Licensed Manager applies for a facility a performance evaluation will be conducted to determine their eligibility to apply. To be eligible the manager must score at least 80 of the available 100 points. Any score above 80 will accrue to the benefit of the licensed manager in that selection process by adding it to their total score. If there is a second interview conducted, these points will not be added to the total points of the second interview.

**612:25-4-59. Interview, Selection Process and Scoring**

- (a) All eligible applicants will be referred by the SLA to the Selection Committee for a personal interview.
- (b) All personal information made available to the Selection committee and all information discussed in the course of a selection is held confidential. Information will not be released to any other individual, agency, or organization by Selection Committee members, unless they are advised in writing by the SLA's legal counsel to release information.
- (c) An applicant not present at the appointed time for their interview will have his/her name removed from consideration for this location unless due to reasonable extenuating circumstances make them unable to appear and a majority vote of the selection committee agrees to allow a change of the interview time.
- (d) Following every interview, each Selection Committee member will complete a score sheet on the applicant. Members of the Selection committee must complete their own score sheets before assisting another member. After each interview, the scores from all score sheets on the applicant will be totaled. Selection Committee members may not change their scores for an applicant after scores for the applicant have been tabulated. The total scores for all applicants will then be ranked.
- (e) Any candidate not scoring a minimum of 50 percent of the available points, not including seniority, performance evaluation, or displaced manager points, will be deemed not qualified to manage the facility being considered.
- (f) The score of the Chairperson of the Selection Committee's score will not be added into the ranking unless it is a tie.
- (g) Any agreement made to the Selection Committee by a selected candidate will be transferred to an addendum in the manager's agreement by the BEP Operations Coordinator.
- (h) After all applicants' scores from the initial interview have been tabulated; a second interview will be given to the top scorer and any applicant whose total score is within 5 points of the top score. The SLA will have the responsibility of convening the same Selection Committee and notifying all eligible applicants of the time and place of the second interview. The second interview will be governed by the same process rules as the initial interview described above.
- (i) To determine the final rankings of the applicants, combine the personal interview points from the second interview to the combined point total of the first interview.
- (j) The initial interview scoring shall be based on the following factors:
  - (1) Personal interview;
  - (2) Business Plan;
  - (3) Performance evaluation points accrued over 80;
  - (4) Seniority; and
  - (5) Displaced ~~manager~~ Licensed Manager points, ~~if applicable. A displaced licensed manager will have 15 points added in the selection process for the first comparable business enterprise announced, including type and gross sales, for one year from the date of displacement.~~
- (k) Once a selection is made, all individual applicants who received a personal interview will be immediately notified of their result. This notification will be in writing with an attempt to be contacted by phone.

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### 612:25-4-61. Satellite business enterprise locations

(a) A business enterprise facility will be considered a satellite and may be assigned to a licensed manager on a temporary basis when:

- (1) the regular selection process does not produce a permanent licensed manager,
- (2) a licensed manager has been removed by the SLA, or
- (3) ~~when a business enterprise is vacated on short notice by a licensed manager~~ when a business enterprise is vacated by a Licensed Manager without giving the SLA at least 30 days notice.
- (4) when notification of a new business enterprise is received by the SLA from a federal, state, county or private entity with less than a 30 day notice.

(b) The BEP Operations Coordinator, in consultation with the Chairperson of the Elected Committee of Licensed Managers, may assign a licensed manager to a satellite business enterprise. The length of the agreement for a temporary assignment will be until the regular selection process can generate a permanent licensed manager, but not less than 180 days, unless a shorter period is agreed upon by the satellite manager. In order to achieve an equitable distribution of satellite business enterprises, a licensee that currently operates a satellite location will not be eligible for an additional satellite unless there are no other qualified licensed managers interested. Licensed Managers who only qualify for lower facility classifications than the satellite under consideration may be assigned when it is deemed appropriate by the BEP Operations Coordinator, in consultation with the ECM Chairperson.

(c) Satellite locations will be reviewed by the SLA, in consultation with the ECM board through consultation with the ECM chair person, every ~~180 days~~ 10 months for possible advertisement of permanent assignment, adding in whole or in part to another business enterprise facility, continue the satellite assignment, or ~~closure~~ issuing Grantor a temporary variance. The satellite manager will be kept informed when this will occur and the result of the review.

(d) The licensed manager may resign the satellite agreement with 30 days written notice.

(e) The satellite business enterprise will be managed as a separate business location for all purposes except for insurance and the tax permit. It is the licensed manager's responsibility to notify the Oklahoma Tax Commission and his or her insurance carrier of the addition and when the satellite manager agreement has ended.

(f) If a satellite is to be continued by the current licensed manager after review, the manager must:

- (1) Score at least an 80 on the satellite performance evaluation.
- (2) Be current with all BEP monthly reports and payments.

(g) Merchandise loans are not allowed for satellite facilities unless extenuating circumstances prevail and only after approval of BEP Operations Coordinator in consultation with the ECM chair person.

## SUBCHAPTER 6. LICENSED MANAGERS AND BUSINESS ENTERPRISE OPERATION

### PART 1. LICENSED MANAGERS

#### 612:25-6-1. Licensing requirements for managing a business enterprise

(a) **Issuance and conditions of a license.** A license shall be issued by the SLA in accordance with Federal regulations making the individual eligible to operate a business enterprise. ~~The~~ This license will be issued upon successful completion of the SLA training program. ~~The~~ This license shall be prominently displayed in the licensed manager's business enterprise. Licensed Managers whose facility consists of only vending machines, must carry their BEP license with them. ~~The~~ This license remains effective for an indefinite length of time, unless terminated, or suspended, ~~or~~ revoked by the SLA in accordance with State and Federal regulations. A license issued to a qualified individual is non-transferable.

(b) **Termination of agreement or removal from a business enterprise.** The SLA may terminate a manager's agreement and/or immediately remove the licensed manager from operation of a business enterprise for cause shown. Termination of a manager's agreement or removal from operation of a business enterprise does not necessarily mean that the manager's license will be suspended or terminated. The licensed manager has the right to a full evidentiary hearing when dissatisfied with any State Licensing Agency action in accordance with BEP, State, and Federal regulations.

(c) **Reinstatement of suspended or terminated license.** Reinstatement of a BEP license for an individual can be accomplished by formally requesting the SLA reinstate the BEP License within a two year period.

(d) **Termination of license.** A license automatically expires when the licensed manager is no longer a U.S. citizen, no longer meets the definition of legal blindness, surrenders his or her license, resigns, retires, or dies. A license may be terminated or suspended by the SLA, after affording the licensed manager an opportunity for a full evidentiary hearing in accordance with State and Federal regulations in accordance with BEP Rule 612:25-6-3.

(e) **Continuation of Benefits.** If a Licensed Manager has not worked in the program for 1 year the Licensed Manager has the option of paying for his or her own benefits to continue coverage and not DRS.

#### 612:25-6-2. Standards for licensed managers

(a) The licensed manager will agree to the terms of the licensed manager's agreement, rules and regulations governing the Business Enterprise Program, and the permit or contract governing the specific business enterprise.

(b) The licensed manager will operate the business enterprise in accordance with all applicable health laws and regulations, safety regulations and other federal, state, county, and municipality laws and regulations applicable to the business enterprise.



- (c) The licensed manager will work cooperatively with authorized representatives of the SLA in connection with their official responsibilities.
- (d) The licensed manager will take proper care of the equipment and fixtures to minimize repair and replacement costs. The licensed manager will be responsible for repair or replacement costs when caused by the negligence of the licensed manager or his or her employees, when repair cost is below \$25.00 or when repairs are not authorized by the BEP. In the event of withdrawal from the business enterprise for any reason, the licensed manager will leave all SLA-owned equipment to the disposal of the SLA.
- (e) The licensed manager will collect and pay sales tax as required.
- (f) The licensed manager will be responsible for substitute operation.
- (g) The licensed manager will not take action inconsistent with the paramount right, title, and interest of the SLA to business enterprise equipment.
- (h) The licensed manager will accept the agreement and any modifications subject to the policies, rules, and regulations of the SLA as they exist or are modified.
- (i) The licensed manager will keep ~~daily~~ records of gross sales, merchandise purchased, and other financial transactions for the business enterprise.
- (j) The licensed manager will complete and submit all necessary Federal and State reports and payments as required for each individual business enterprise.
- (k) The licensed manager will convey a positive public image.
- (l) The licensed manager will maintain appropriate professional relationships with purveyors, customers, and building officials as in (1) through (3) of this Subsection.
  - (1) **Relationships with purveyor.** The licensed manager is free to choose the purveyor from whom he/she is to make purchases, provided, however, that such purveyor is established and reputable.
  - (2) **Relationships with customers.** To serve the best interest of the public, the licensed manager and his/her employees will provide prompt, ~~cheerful~~ and courteous service to all customers.
  - (3) **Relationships with building officials.** The licensed manager will comply with all reasonable requests concerning the operation of a business enterprise that may be made by officials of the building in which the enterprise is located, provided that such requests do not conflict with the agreement and the rules and regulations issued by the SLA as contained herein. If differences should arise between the licensed manager and the grantor, the licensed manager shall bring the matter to the immediate attention of the BEP business consultant for appropriate action.
- (m) The licensed manager will supervise employees in a manner that promotes quality customer service.
- (n) The licensed manager will maintain and display current licenses and permits, including BEP license, in the business enterprise or in the case of a facility of only vending machines, carried with the Licensed Manager.

- (o) The licensed manager will comply with all regulations and laws governing the possession and/or use of firearms, weapons, alcohol and other drugs.
- (p) When a licensed manager starts or buys a similar business, the licensed manager must make assurances to the SLA that the two businesses will not intermingle in any manner and the merchandise of the two businesses will be in separate locations. At no time will state owned equipment be used in the private business.

**612:25-6-2.1. Probation**

- (a) **Scope.** A licensed manager who is not meeting all of the requirements or qualifications set forth in the BEP rules and regulations, or a licensed manager who is not managing the business enterprise in a proper manner, may be placed on probation by the BEP Coordinator along with notification to the ECM Chair. Intensive review/consultation will be provided during the probationary period. The period of the probation will be used to focus on specific problem areas and attempts will be made to improve the licensed manager's performance. This is the first step in the disciplinary process. If proper results are not achieved, suspension or termination of the BEP License ~~may~~will be necessary.
- (b) **Initiation of probation procedure.** The BEP Operations Coordinator will place licensed managers on probation through a probation letter. The business consultant will deliver, read and explain the letter of probation to the licensed manager. The business consultant and licensed manager will then sign the probation letter. The original is given to the licensed manager, in his or her preferred format, one copy returned to the BEP Operations Coordinator, and one copy mailed to the Chairperson of the Elected Committee of Licensed Managers.
- (c) **Probationary letter.** The probationary letter will specify the cause(s) for placing the manager on probation and rules that have been violated. It will clearly state the terms of the probation, including the length of the probationary period, the remedial action required and the consequences of failure to take remedial action. A statement will be included which indicates it has been read and understood by the licensed manager, followed by a space for the licensed manager's and business consultant's signature, and the date. This acknowledgement does not imply that the licensed manager agrees with the issues identified, but rather, that he/she understands the terms of his/her probation. Refusal to sign does not invalidate the letter.
- (d) **Probationary periods.** Probationary periods are usually 30 to 90 days, at the discretion of the BEP Operations Coordinator, but may be longer or shorter as circumstances warrant. The exact period of probation will be specified in the probationary letter.
- (e) **Consequences.** The Licensed Manager or the business consultant may submit a request to the BEP Operations Coordinator that the licensed manager be taken off probation whenever the licensed manager's performance improves to a satisfactory level. If remedial action does not result in improved performance within the time specified, the BEP Operations Coordinator, will notify the ECM Chair, and may recommend that:

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- (1) the SLA Director transfer the licensed manager to a more suitable business enterprise;
- (2) the probationary period be extended; and/or
- (3) the SLA Director terminate the Managers Agreement and suspend/terminate the licensed manager's BEP license.

### **612:25-6-3. Grounds for suspension or termination of a license**

(a) A BEP license may be suspended or terminated for the reasons set forth in (1) through ~~(13)~~(15) of this Subsection.

- (1) Failure to open the assigned business enterprise as stated in the permit/contract with the grantor agency, without prior proper approval from the SLA (abandonment of business enterprise).
- (2) Defrauding any agency of the government (including the SLA) or any purveyor or failure to pay monies due including taxes, fees, or assessments to any governmental entity or purveyor.
- (3) Failure to file required monthly reports with the SLA or failure to comply/cooperate with audits conducted by the SLA or other State or Federal agencies.
- (4) Failure to maintain the required insurance coverage.
- (5) The business enterprise is not being operated in accordance with the rules and regulations, terms and conditions of the permit with the grantor agency, or the terms and conditions of the business enterprise manager's agreement.
- (6) Intentional abuse, neglect, unauthorized use or removal of the business enterprise equipment; or failure to properly maintain the equipment in a clean and operating manner within the scope of the licensed manager's level of maintenance authorization.
- (7) Substance abuse (alcoholic beverages, illegal drugs, etc.) while operating the business enterprise; or other substance abuse that interferes with the operation of a business enterprise.
- (8) Operation of a business enterprise in such a way that the SLA's interest in retaining the contract for the location is obviously endangered.
- (9) Failure to comply with all Federal and State laws prohibiting discrimination and failure to provide services without regard to race, gender, color, national origin, religion, age, political affiliation, or disability.
- (10) Determination by the SLA that the licensed manager no longer has the necessary skills and abilities for effectively managing a business enterprise.
- (11) Use of the business enterprise to conduct unlawful activities.
- (12) Failure to personally operate and manage the business enterprise in accordance with the manager's agreement. Management means the personal supervision of the day-to-day operation of the assigned BEP facility by the assigned manager.
- (13) ~~Does not actively work as a licensed manager or licensed employee in the Business Enterprise Program for 2 years~~Use of a third-party vendor to operate the assigned business enterprise facility.

(14) Operating a motor vehicle. Under federal law, only individuals who meet the legal definition of blindness may be licensed to participate in the vending facility program under the Randolph-Sheppard Act [20 USC 107a(b) and 107e(1)]. Under Oklahoma driver licensing rules established by the Oklahoma Department of Public Safety, individuals who are blind are not eligible to be licensed to operate motor vehicles.

(15) Intentionally representing one's self as an agent of the SLA or as an SLA official. The licensed manager is not allowed to negotiate or act on behalf of the SLA.

- (b) When the BEP Operations Coordinator determines that a BEP license should be suspended or terminated, the BEP Operations Coordinator will notify the ECM Chair and shall make a written recommendation to the Division Administrator. The Division Administrator shall then recommend to the SLA Director for action. The licensed manager shall be notified in ~~writing~~his or her preferred format if action is to be taken. The BEP license may only be suspended or terminated after affording the licensed manager an opportunity for a full evidentiary hearing in accordance with BEP Rule 612:25-4-73. The licensed manager may be immediately removed from the operation pursuant to BEP Rule 612:25-6-1(c) pending the outcome of the evidentiary hearing.

### **612:25-6-4. Use of service animals**

Service Animal and/or Guide Dog Teams will comply with all regulatory Laws and Ordinances that govern the use of a Service Animal and/or Guide Dog.

- ~~(a) A licensed manager, licensed employee, or trainee may house a service animal in designated areas other than food preparation and food serving areas. Each business enterprise will be surveyed and a service animal area designated as needed.~~
- ~~(b) The service animal will be kept in a suitable kennel provided by SLA and screened from customers' view to provide maximum security for the service animal.~~
- ~~(c) It is the service animal owner's responsibility to keep the service animal, kennel and kennel area neat, clean and odor free at all times.~~
- ~~(d) After leaving the kennel area, any licensed manager, licensed employee or trainee must immediately wash his/her hands before returning to work.~~
- ~~(e) This Section will not in any way prohibit customers with service animals from access to business enterprises.~~

### **612:25-6-5. Motor vehicle operation [REVOKED]**

~~No individual who obtains or possesses a valid driver's license or who lawfully or unlawfully operates a motor vehicle on any public street or highway shall be eligible to participate in the Business Enterprise Program as a licensed manager, licensed employee or trainee. If it is determined that a licensed manager, licensed employee or trainee of a business enterprise has violated this provision, his/her licensed manager's agreement and/or BEP license will be subject to suspension or termination.~~

PART 3. BUSINESS ENTERPRISES

612:25-6-15. Setting aside of funds

(a) Set-aside charges paid by the licensed manager will be placed in a revolving account maintained by the SLA. Set-aside charges will be re-evaluated yearly by the SLA, and the Elected Committee of Licensed Managers and RSA. Adjustments will be made accordingly in the appropriate classification, with allowances for reasonable charges for improving services, fluctuation of costs, and for program expansion.

(b) Funds will be set aside only for the purpose of:

- (1) maintenance and replacement of equipment;
(2) the purchase of new equipment;
(3) management services;
(4) assuring a fair minimum of return to licensed managers; or
(5) the establishment and maintenance of retirement or pension funds and health insurance contributions.

(c) The licensed manager's set-aside charges will be on a sliding scale of 0% to not more than 12% of the net proceeds of the business enterprise during any one month. The sliding scale will be in four classifications: Class A, B, C, and D (based on prior year's performance).

- (1) Class A - 12% of net proceeds, \$60,000 and above.
(2) Class B - 10% of net proceeds, \$25,000 to \$59,999.
(3) Class C - 6% of net proceeds, \$10,000 to \$24,999.
(4) Class D - 0% of net proceeds, \$9,999 and below.

(d) A licensed manager will submit his/her set-aside payment to the BEP office on or before the 25th of the current calendar month. If the 25th falls on a weekend, the payment is due in the BEP office no later than the close of business on the last business day prior to the 25th. Set-aside payments may be mailed to the BEP office. To be considered on time, they must be postmarked by the 21st of the month for regular mail or the 22nd for overnight mail. If these dates fall on a day where the post office is closed, they must be postmarked the day before. If the set-aside payment is late the SLA shall notify the manager by phone on the next business day following the due date. If the accurate set-aside payment is not received in the BEP office within five calendar days after by the due date, the licensed manager will be placed on probation and assessed a \$50 late charge. If the licensed manager's overdue set aside payment is not received in the BEP office within five calendar days after by the due date in the succeeding month (i.e. is over one month and five calendar days late), the manager is assessed another \$50 late fee. If the first and second payments are not received by the time the third report is due, the licensed manager's agreement will be cancelled and the BEP licenses will be suspended, unless an alternate payment schedule has been approved in advance by the SLA. Failure to pay monthly set-aside in a timely manner three or more times within any twelve month period will result in formal disciplinary action.

(e) If a business enterprise should show a marked change in net proceeds, a request for reclassification may be made by the licensed manager or the SLA after 90 days. Each licensed manager will be notified of changes in set-aside charges, and the new percentage of net proceeds will be effective at the beginning of the first business month due at the time of the next

monthly report due date, following the mailing of notice to the licensed manager. The licensed manager will start paying the higher or lower percentage of set-aside with the second next report due following notification.

(f) All new business enterprises will be placed in class C for 90 days, at which time the SLA will review the business enterprise for reclassification and notify the licensed manager of changes in set-aside charges and the new percentage of net proceeds shall be effective at the beginning of the first business month following the mailing of notice to the licensed manager.

612:25-6-16. Criteria to establish a business enterprise

A decision to establish a business enterprise will be made by the State Licensing Agency (SLA) in consultation with the ECM board through consultation with ECM chair person based on the Business Enterprise Program (BEP) calculation of potential business profitability, estimated installation costs, available SLA resources and the BEP's recommendation. Information used for calculation of business profitability will be obtained by BEP staff using a site survey that will include:

- (1) building population;
(2) number of visitors;
(3) competition in the immediate area;
(4) building security;
(5) average salary of prospective customers;
(6) estimated installation cost to provide required services;
(7) stability of number of prospective customers;
(8) longevity of potential facility;
(9) geographic location; and
(10) additional information as determined necessary.

612:25-6-18. Establishing new licensed managers in business enterprises

Business Enterprise Program (BEP) staff will provide consultation and assistance to accomplish installation of licensed managers in business enterprises. Steps in the installation process will include the following:

- (1) BEP staff will orient the new licensed manager to the business enterprise as needed.
(2) An inventory of the outgoing manager's Licensed Manager's merchandise that will be transferred to acquired by the incoming manager Licensed Manager will be performed by the outgoing and incoming licensed managers with assistance oversight from by the BEP. The outgoing licensed manager or designee, incoming licensed manager or designee, and a representative from the BEP must be present when merchandise is counted. The outgoing Licensed Manager must provide a merchandise price list to the BEP and incoming Licensed Manager or their designee (7) seven days before the day the merchandise is counted. The completed merchandise inventory is signed by both outgoing and incoming licensed managers, accepting the count of merchandise. All items not being transferred to acquired by the incoming Licensed Manager must be removed from the facility prior to

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the incoming Licensed Manager ~~manager~~ taking responsibility for the facility. The outgoing licensed manager or their designee and the incoming licensed manager or their designee is responsible for removing and counting all currency prior to the date of the merchandise inventory count. The BEP Operations Coordinator shall develop and implement equipment and merchandise inventory procedures. These procedures will be read by the business consultant to the outgoing and incoming managers prior to the actual physical inventory to ensure that both the outgoing and incoming managers understand these procedures.

(3) The BEP will assist the incoming licensed manager in procuring initial merchandise for sale and will arrange for the licensed manager to obtain a merchandise loan as necessary and in accordance with agency policy.

(4) An equipment inventory is completed and the incoming licensed manager signs the inventory sheet and assumes responsibility for the equipment.

(5) The BEP will assist the incoming licensed manager in filling out any insurance or retirement enrollment or change forms as necessary.

(6) The BEP will verify that workers compensation and liability insurance on the business enterprise are in effect. The business enterprise will not be opened by the new licensed manager until this is verified.

(7) The BEP will provide the incoming licensed manager with a copy of the permit/contract in effect for the business enterprise.

(8) The BEP will provide the incoming licensed manager with a supply of the forms required by the SLA relative to the business enterprise operation.

(9) The incoming licensed manager must read and sign a licensed manager's agreement before assuming the operation of any business enterprise. If needed, BEP staff will read the agreement to the manager and/or provide the agreement in the accessible format required by the manager.

### 612:25-6-19. Employees of the licensed manager

(a) The BEP has no direct responsibility over the employees of licensed managers. If a complaint is filed by a customer or grantor against an employee of a licensed manager, or an employee-related problem is brought to the attention of BEP staff, the business consultant will bring the complaint/problem to the attention of the licensed manager. A business consultant may make suggestions as to the action that needs to be taken, however the responsibility lies with the licensed manager as to disciplinary action toward the business enterprise employee.

(b) In the event the grantor requests an employee of a licensed manager be terminated/suspended, the information will be presented to the licensed manager immediately by personal contact or phone call followed by written memorandum indicating the reason for the requested suspension or termination.

(c) The business consultant will immediately notify the SLA state office by memorandum for insurance and retirement purposes when a ~~licensee/licensed employee~~ licensee starts to work for another licensed manager or quits.

(d) Licensed managers are to take affirmative action to employ and advance qualified individuals with disabilities in accordance with applicable federal and state laws.

(e) Volunteer labor is permitted in a business enterprise; however the volunteer must be covered by insurance in the event of injury. This insurance coverage will be documented in the SLA state office prior to the individual's actual work in a business enterprise.

### 612:25-6-20. Closing a business enterprise

(a) A business enterprise may be closed immediately by the SLA, the grantor, any government agency or the licensed manager when an emergency situation occurs such as: a life threatening situation, health or safety hazard exists. Notice of the closing should be made as soon as possible to the SLA and the grantor.

(b) The business enterprise will also be closed immediately for failure to have proper insurance verification for liability and workers' compensation insurance.

(c) The business enterprise may be closed for short periods of time with prior written approval from the SLA and the grantor.

(d) The SLA's policy is to operate business enterprises that have the potential to produce net profit returns for licensed managers which will enable them to live self sufficiently and with dignity within their communities. Additional consideration is given to the amount of return on investment as related to expenditures for capital outlay, management services overhead, and other expenses of operation. Anytime a licensed manager vacates a business enterprise, the business consultant will re-evaluate the business enterprise if it generates revenue below the program net profit objective. A business enterprise that lacks the potential to meet the SLA's net profit objective will be ~~closed~~ issued a temporary variance or added to another location.

### 612:25-6-22. Monthly reports

(a) **Content and when due.** Licensed managers must submit monthly business enterprise financial reports to the SLA. Reports will contain data on gross sales, merchandise purchases, payroll expense, business expense and other information determined necessary to reflect business financial status and calculate licensed manager set-aside, retirement and/or merchandise loan payments. The monthly reports shall be for ~~one of the two~~ the following time periods: 1) the sixteenth (16th) day of the previous calendar month to the fifteenth (15th) day of the current calendar month; ~~or 2) the twenty first (21st) day of the previous calendar month to the twentieth (20th) day of the current calendar month.~~ The licensed manager may choose either period, but must notify the business consultant which option is chosen by September 30th of each year. The licensed manager shall use the same option throughout the federal fiscal year. Monthly reports and payments due, if required, are due in the BEP office on or before the 25th of the current calendar month. If the 25th falls on a weekend, the monthly report is due in the BEP office no later than the close of business on the last business day prior to

the 25th. Monthly reports may be mailed to the BEP office. To be considered on time, they must be postmarked by the 21st of the month for regular mail or the 22nd for overnight mail. If these dates fall on a day where the post office is closed, they must be postmarked the day before. The BEP shall notify the manager ~~by phone~~ on the first business day following the 25th if the report is not received. The BEP will review each monthly report for mathematical errors, correct loan payment, correct set-aside payment, approved business expenses, and other factors that will affect the accuracy of the report. The business consultant will sign the report indicating that the report is correct, correct payments are attached (if required), and all items in question have been discussed with the licensed manager.

(b) **Failure to file in a timely manner.** If the accurate monthly report and correct payment due, if applicable, is not received in the BEP office ~~within five days after~~ by the due date, the licensed manager will be placed on probation. If the 1st and second reports are not received by the time the 3rd report is due, the licensed manager's agreement will be canceled and the BEP licenses will be suspended. Failure to file monthly reports in a timely manner three or more times within any twelve month period will result in formal disciplinary action.

(c) **Fee for reports.** The Agency maintains records for its use and may charge a reasonable fee to supply copies of records to individuals. The agency will supply copies of lost reports or other documents at 25 cents per page.

(d) **Timely submission.** Receipt of an accurate monthly report and correct payment, if applicable, on or before the due date in the BEP office.

(e) **Returned Checks.** An insufficient fund check will be assessed a \$50.00 fee.

**PART 5. THE ELECTED COMMITTEE OF LICENSED MANAGERS**

**612:25-6-32. The Elected Committee of Licensed Managers**

(a) Authority for Establishing an Elected Committee of Licensed Managers (ECM) is found in Section 107-B1 of Chapter 6A of Title 20 U.S., commonly referred to as the Randolph-Sheppard Act.

(b) Paragraphs (1) and (2) of this Subsection provide guidance in approaching the degree of participation by the ECM.

(1) Active participation means a process of good faith negotiations involving the ECM and the SLA. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers.

(2) The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

(c) Functions of the Elected Committee of Licensed Managers include:

(1) Actively participate with the SLA in the major administrative, policy, and program development decisions affecting the overall administration of the Business Enterprise Program.

(2) To receive and transmit to the SLA grievances at the request of licensed managers and serve as advocates for such managers in connection with such grievances.

(3) To actively participate with the SLA in the development and administration of a State system for the transfer and promotion of licensed managers.

(4) To participate with the SLA in developing training and retraining programs for licensed managers.

(5) To sponsor, with the assistance of the SLA, meeting and instructional conferences for licensed managers.

(6) To participate in setting out the method of determining the charge for each of the purposes listed in (A) through (D) of this Paragraph.

(A) Maintenance and replacement of equipment;

(B) The purchase of new equipment;

(C) Management services;

~~(D) The establishment and maintenance of retirement or pension funds, health insurance contributions, if it is so determined by a majority vote of licensed managers, after the SLA provides to each licensed manager information on all matters relevant to such proposed purposes. [34 CFR 395.9(b) and (c)]~~

~~(E) Assuring a fair minimum of return to vendors;~~

(E) The establishment and maintenance of retirement or pension funds, health insurance contributions, if it is so determined by a majority vote of licensed managers, after the SLA provides to each licensed manager information on all matters relevant to such proposed purposes. [34 CFR 395.9(b) and (c)]

(d) The ECM will be composed of licensed ~~managers blind vendors and licensed employees~~. There will be an executive committee with their duties and terms of office specified in the bylaws of the ECM.

(e) The SLA shall provide for the election of an Elected Committee of Licensed Managers which shall be fully representative of all licensed managers in the BEP. [34 CFR 395.14]

**612:25-6-33. Organization and operation of the Elected Committee of Licensed Managers**

(a) **Organization.** The ECM will be organized in accordance with its bylaws.

(b) **Nominations and elections.** The procedures set forth in (1) through (3) of this Subsection shall be used to nominate and elect members of the committee.

(1) The Chairperson of the Committee of Licensed Managers presides over the election of Committee members.

(2) The SLA presents a list of eligible voters and candidates. The Chairperson will call for nominations from the floor for ECM members. Nominees must give consent to be nominated.

(3) The SLA or designee and the ECM or designee are responsible for the collection and tallying of votes.

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(c) **Operation.** The Elected Committee of Licensed Managers shall operate according to (1) through (3) of this Subsection.

(1) The Elected Committee of Licensed Managers will convene at least once each year at the licensed manager's training conference, the time and place of joint meetings to be scheduled by SLA staff and the Elected Committee of Licensed Managers. Requests for meetings by the ECM committee will be made in writing to the SLA for prior approval of financial assistance.

(2) The ECM members will be notified of matters within its purview that are being considered for decision. The ECM committee members will have the opportunity to initiate subjects for consideration by it and the SLA. Recommendations by the ECM members will be in writing and given serious consideration by the SLA.

(3) The SLA has the ultimate responsibility for the administration of the Business Enterprise Program. If the SLA does not adopt the views and positions of the Elected Committee of Licensed Managers it will notify the ECM Committee in writing of the decision reached or the action taken and the reasons therefore.

(d) **Materials.** The SLA will supply the necessary materials for the function of the Elected Committee of Licensed Managers upon written request to the SLA.

(e) ~~**Travel Expenses.** ECM members on committee business will be reimbursed for travel expenses at the same rates and conditions as state employees.~~

*[OAR Docket #22-470; filed 6-24-22]*

## TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 1. OSRC OPERATIONS [REVOKED]

*[OAR Docket #22-640]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

630:1-1-1 [REVOKED]  
630:1-1-2 [REVOKED]  
630:1-1-3 [REVOKED]  
630:1-1-4 [REVOKED]  
630:1-1-5 [REVOKED]  
630:1-1-6 [REVOKED]  
630:1-1-7 [REVOKED]  
630:1-1-8 [REVOKED]

### AUTHORITY:

Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B), 82 O.S. 2016 § 896.1

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

December 21, 2021

### COMMENT PERIOD:

January 19, 2022 through February 18, 2022

### PUBLIC HEARING:

March 1, 2022

### ADOPTION:

March 9, 2022

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

March 21, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Effective July 1, 2016, the Scenic Rivers Commission created pursuant to Section 1461 of Title 82 of the Oklahoma Statutes was terminated. On the same date, the rights and authorities of the Scenic Rivers Commission were transferred to the Grand River Dam Authority. Some of the above rules have been revised and are being proposed for promulgation as new Chapter 40 Scenic Rivers Rules under Title 300 Grand River Dam Authority.

### CONTACT PERSON:

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16<sup>th</sup> Street, Tulsa, OK 74128.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 630:1-1-1. Purpose; construction of rules [REVOKED]

~~The rules of this chapter are adopted pursuant to Title 82 O.S. Section 1451-1471. They are adopted as standards guiding the practice and procedures of the Oklahoma Scenic Rivers Commission ("OSRC") and for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating the administration of the Scenic Rivers Area for the Flint Creek and the Illinois River Scenic River Areas and those portions of Barren Fork Creek within Cherokee County. To the end that these objectives be obtained, the rules of this chapter shall be given a fair and impartial construction and under no circumstances shall they be construed to deprive or limit the commission of any powers, duties and jurisdiction otherwise conferred by law.~~

### 630:1-1-2. Severability of rules; rules cumulative; cooperation with other agencies [REVOKED]

~~Nothing within the rules of this chapter shall be read, interpreted, understood, or applied so as to affect the validity and enforceability of any additional requirements, rules, or regulations of any other governmental entity, public agency, or instrumentality which may be otherwise applicable to those transactions, conduct, and facilities regulated herein. The rules of this chapter shall be deemed cumulative and supplemental to all other applicable rules and regulations authorized by law. In the enforcement of the rules of this chapter, the Oklahoma Scenic Rivers Commission shall work in cooperation with all other interested or concerned state and federal agencies to the extent to which they may be officially interested.~~

**630:1-1-3. Revising rules [REVOKED]**

The Commission may adopt, amend or repeal a rule of its own initiative, at the request of the Administrator or upon a rulemaking petition, all pursuant to the Oklahoma Administrative Procedures Act (the "APA," 75 O.S. § 250 et seq.).

**630:1-1-4. Rulemaking petitions [REVOKED]**

(a) Anyone may petition the OSRC requesting the promulgation, amendment, or repeal of an OSRC rule. Rulemaking petitions shall be in writing, shall identify the text of the particular rule(s) involved, include a brief statement of the issues raised by the rulemaking which cause the request to be made, include a statement of the petitioner's personal interest in the rulemaking, describe how the request would affect those interests and the interests of others, and describe any communications with OSRC members or employees about the rulemaking.

(b) The Administrator shall provide a copy of the petition to the Commissioners with a recommendation. Properly filed petitions shall be placed on the agenda for the next regularly scheduled Commission meeting that is at least two weeks after the petition is filed.

(c) Should any petition be granted in the discretion of the Commission, in whole, or in part, the petition as granted shall be referred to the Administrator and thereafter be treated as in the case of all rule making and the rulemaking procedures of the APA shall apply.

**630:1-1-5. Rulemaking hearings [REVOKED]**

(a) **Conduct.** A Commissioner, the Administrator or his designee may conduct a rulemaking hearing when required by the APA. Notice shall be given as provided in the APA. A rulemaking hearing may be conducted separately from, or as part of, any meeting of the Commission. Rulemaking hearings shall be informal, but conducted in an orderly manner.

(b) **Comments.** Members of the public may comment orally at the hearing or submit written comments by the close of a specified comment period, or both. The person conducting the hearing may set reasonable time limits on oral presentations, may exclude repetitive or irrelevant comments, and shall keep a record of the proceeding.

(c) **Summary of comments.** If the rulemaking hearing is not part of a Commission meeting, then the person conducting the rulemaking hearing shall prepare a fair and accurate summary of relevant comments received, and provide the summary to the Commission before the Commission takes final action on the proposed rules.

(d) **Continuation.** The person conducting the rulemaking hearing or the Commission may continue the hearing. Any continuation shall be announced orally at the rulemaking hearing and shall not require publication.

**630:1-1-6. Minimum local government standards [REVOKED]**

The OSRC is authorized to prepare and establish minimum standards for the planning and other ordinances and rules of local government agencies whose political boundaries cross

scenic rivers or lands adjacent and contiguous to scenic rivers. See, 82 O.S. § 1461, paragraph G.

(1) Before taking comment on, adopting or recommending any local government planning standard, the OSRC shall give notice of the proposed action to the public and to each local government agency that may be affected by such standard, and shall generally follow the procedures for rulemaking hearings (OAC 630-1-1-5) insofar as they may be applicable.

(2) Minimum local government standards, while not rules of the Commission, may be adopted by the Commission and may be treated procedurally as if they were rules and subject to petitions for rulemaking and for declaratory rulings. The OSRC shall notify any local government agency that may be affected of the filing of such a petition and allow the agency to comment and intervene if the OSRC convenes an individual hearing.

**630:1-1-7. Notice of violation [REVOKED]**

Whenever the OSRC has reason to believe a person may be in violation of its rules, or its minimum local government standards, the OSRC may give notice of the violation to the person, describe the specific rules or standards involved, describe the acts or omissions that are in violation, and request compliance with the rules or standards within 15 days or some stated schedule of compliance. Except in an emergency, the OSRC shall not commence an individual hearing on the matter if compliance, or a schedule of compliance to correct the violation, has been made within the stated compliance period.

**630:1-1-8. The OSRC [REVOKED]**

(a) **The agency.** The OSRC is an agency of the State of Oklahoma, consisting of a seven to fifteen member governing body of Commissioners (the Commission), an Administrator, support staff and River Rangers. The OSRC implements the Oklahoma Scenic Rivers Act, 82 O.S. Section 1451 and following.

(1) **Officers.** At its first regular meeting each year, the Commissioners shall elect a chair, a vice chair and a secretary. Officers may succeed themselves once to serve two consecutive years, as provided in the Oklahoma Scenic Rivers Act.

(2) **Commissioner attendance.** As required by the Oklahoma Scenic Rivers Act, any commissioner who misses three regular meetings in succession, without absence excused by the chair, is subject to replacement. The OSRC will look to the appointing authority for the commissioner being replaced to provide the replacement.

(b) **Principal office.** The principal office of the OSRC is 15971 Highway 10, Tahlequah 74464 (which is 2 miles northeast of Tahlequah on State Highway #10). Its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292, and its office hours are 8 to 4:30, Monday through Friday except state holidays.

(c) **Communicating with OSRC.** Communications to the OSRC shall be directed to the Administrator. Communications to the Commission may be made through the Administrator.

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(d) ~~Meetings.~~ The Commission meets at such times and places as it deems necessary, with a regular meeting at least once each quarter of each calendar year. Meetings of the Commissioners are open to the public except as provided in the Oklahoma Open Meetings Act, 25 O.S. Sections 301 and following.

(1) ~~Regular meetings.~~ The OSRC must notify the Secretary of State by December 15th of each year of the date, time and place of regularly scheduled meetings for the following calendar year.

(2) ~~Special meetings.~~ Special meetings may be called by the chair or the vice chair in their discretion, and if three commissioners so request. The OSRC must, at least 48 hours in advance, notify the Secretary of State, and mail to each person who has made a written request to be notified of OSRC meetings and has paid any applicable fees.

(3) ~~Agendas.~~ Meeting agendas are to provide factual explanation of matters to be taken up, and shall reserve time during the meeting for public comments on agenda action items. Agendas shall be developed by the Administrator with the advice of the Chair. Time permitting, an agenda shall be sent to each Commissioner in advance of a regularly scheduled meeting. The Commissioners may, by majority vote during a meeting, continue an agenda item or specify a new agenda item for another meeting. The chair may set reasonable time limits on oral comment and may accept written submittals. An agenda is to be posted at the OSRC or other place of meeting at least 24 hours in advance, not including weekends and state holidays.

(4) ~~Minutes.~~ Minutes or a record shall be made of all Commission proceedings to show members present and absent, matters considered, actions taken and the vote of each member on each action.

(e) ~~Open records.~~ Records of the OSRC shall be open to any person for inspection or copying pursuant to the Oklahoma Open Records Act, 52 O.S. Section 24A.5 and following.

(f) ~~Committees.~~ The Commission may appoint ad hoc committees to assist the OSRC for any lawful purpose.

[OAR Docket #22-640; filed 7-19-22]

## TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 3. ELECTION PROCEDURES [REVOKED]

[OAR Docket #22-641]

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- 630:3-1-1 [REVOKED]
  - 630:3-1-2 [REVOKED]
  - 630:3-1-3 [REVOKED]
  - 630:3-1-4 [REVOKED]
  - 630:3-1-5 [REVOKED]
  - 630:3-1-7 [REVOKED]
  - 630:3-1-9 [REVOKED]
  - 630:3-1-10 [REVOKED]
  - 630:3-1-13 [REVOKED]

- 630:3-1-16 [REVOKED]
- 630:3-1-17 [REVOKED]
- 630:3-1-18 [REVOKED]
- 630:3-1-21 [REVOKED]

**AUTHORITY:**

Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B), 82 O.S. 2016 § 896.1

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

December 21, 2021

**COMMENT PERIOD:**

January 19, 2022 through February 18, 2022

**PUBLIC HEARING:**

March 1, 2022

**ADOPTION:**

March 9, 2022

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

March 21, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Effective July 1, 2016, the Scenic Rivers Commission created pursuant to Section 1461 of Title 82 of the Oklahoma Statutes was terminated. On the same date, the rights and authorities of the Scenic Rivers Commission were transferred to the Grand River Dam Authority. Some of the above rules have been revised and are being proposed for promulgation as new Chapter 40 Scenic Rivers Rules under Title 300 Grand River Dam Authority.

**CONTACT PERSON:**

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16<sup>th</sup> Street, Tulsa, OK 74128.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**630:3-1-1. Purpose [REVOKED]**

The rules of this Chapter are adopted pursuant to paragraph D of 82 O.S. Section 1461. They establish the election procedures for elected commissioners, the costs of which are borne by OSRC.

**630:3-1-2. Notice of filing period [REVOKED]**

(a) The OSRC shall publish notice of the filing period for elected commissioner candidates as follows:

(1) by publishing once, during the last week in October or the first week in November, in a legal newspaper of the county (i.e., qualified to publish legal notices, see Title 25 O.S. Section 106), serving the respective counties affected; and

(2) by posting copies of such notice in at least five (5) public places within each county affected by the elections, and electronically by posting on the OSRC website and by email to the last registered address of qualified voters.



(b) The notice of the filing period shall also include information about the voter qualifications and affidavit requirement as described in rule 630:3-1-7 below.

**630:3-1-3. Filing by candidates [REVOKED]**

Candidates shall file at the principal office of the OSRC a completed "Declaration of Candidacy" form provided by the OSRC between 8:00 a.m. and 4:30 p.m., Monday through Wednesday of the third week in November in the year that positions become available.

**630:3-1-4. Notice of election [REVOKED]**

If there are two or more candidates for an office, the OSRC shall publish notice of elections once in a legal newspaper of the county, serving the respective counties affected by the elections, and also electronically in the manner described in rule 630:3-1-2 above. The notice shall list the names of the candidates, registration deadline, voting hours, election date, and voting locations. If there is no candidate the Commission may then decide whether and when to conduct a special election.

**630:3-1-5. Date and place of election [REVOKED]**

Elections for non-appointed members of the Commission shall be held on the first Tuesday in December, from 7 a.m. to 7 p.m., as said positions become available. The OSRC shall provide at least one polling place in each of the counties affected by the election.

**630:3-1-7. Qualification for voting in election [REVOKED]**

To qualify to vote in commissioner elections, all registered voters who also wish to vote for a candidate must reside, own real property or own a residential structure within 660 feet of a Scenic River, as specified in Title 82, Section 1461. To qualify, each registered voter must sign an OSRC affidavit for voter qualifications in person or by mail with the OSRC at least 7 days before an election commences. Once qualified, by submitting a ballot, voters certify that they remain eligible to vote on election day and may also update their contact information and email addresses for future notifications.

**630:3-1-9. Special election [REVOKED]**

Should an elected commissioner vacancy occur with more than 90 days remaining in its term, the OSRC may conduct a special election to fill the remainder of the vacant term.

- (1) The OSRC shall publish notice of a special election, the filing period (which shall be the second week after the week in which notice was first published) and the location in the same manner as described in rule 630:3-1-2, above.
- (2) Candidates shall file during the week specified in the notice in the same manner as described in rule 630:3-1-3, above.
- (3) The OSRC shall publish notice of the special election, which shall be held on the third Tuesday following

the end of the filing period, in the same manner as described in rule 630:3-1-4, above.

**630:3-1-10. Loyalty Oath and Oath of Office for new members [REVOKED]**

Newly elected members of the Commission shall receive an Oath of Office and Loyalty Oath to be administered at the next Commission meeting following the election.

**630:3-1-13. Prohibitions [REVOKED]**

- (a) Absentee voting shall not be permitted in Commission elections.
- (b) Except for OSRC staff and notices, no person shall campaign, post campaign literature or poll voters within 300 feet of any ballot box during voting hours.

**630:3-1-16. Counting of votes [REVOKED]**

- (a) Ballots shall be collected, counted and delivered to the principal office of the OSRC by the first Wednesday after the election.
- (b) In the event of a tie vote for the winner, the Administrator shall notify each candidate of that fact and of the date and time for a recount. Each candidate, or their designee, may be present and observe the recount. If the recount yields a tie, the Administrator will select the winner by lot.
  - (1) The Administrator shall, in full view of those present, clearly write or print the name of each tied candidate on a separate piece of paper of equal size. The papers shall be folded in half one time so that the written names are not visible and then placed into a container chosen by the Administrator.
  - (2) The Administrator shall draw, or may designate an OSRC staff member to draw, one paper, and the name of the person appearing on the first drawn paper shall be declared the winner.
- (c) At the conclusion of the ballot counting, the Administrator shall notify each candidate of the results, including the numbers of ballots cast for each candidate, and post the results at the principal office.

**630:3-1-17. Election challenges [REVOKED]**

- (a) Any candidate whose name appeared on an election ballot may, at any time before 4:30 p.m. on the second Friday after an election, contest the announced results of the election by filing a written petition with the OSRC, and mailing a copy to each candidate. The petition shall be treated under rule 630:4-1-6 as for an interpretive opinion about the results of the election. Nothing in this rule shall be construed to prohibit any proceedings in district court, which are otherwise authorized by law, alleging irregularities or fraud in an election.
- (b) If the petition seeks a recount, the Administrator shall, within five days after the petition is filed, conduct the recount, post the results at the principal office and notify the candidates and the Commission in writing. Ties shall be processed as in paragraph (b) of rule 630:3-1-16, above.

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~~(c) If the petition alleges some fraud or other irregularity, the Commission may order a new election only if the Commission finds, based on the record of the hearing, that fraud or a procedural irregularity materially affected the outcome of the election.~~

## **630:3-1-18. Certification of results [REVOKED]**

~~(a) If no petition is filed by the second Friday after an election, then the Administrator shall certify the results to the Commission.~~

~~(b) If a petition challenging the election is timely filed, then the Commission shall certify the results after determination under rule 630:4-1-6.~~

~~(c) Notice of the certified results shall be posted in public view at the OSRC principal office and mailed to the candidates within 24 hours after certification.~~

## **630:3-1-21. Spoiled ballots [REVOKED]**

~~Should a voter spoil any ballot, the voter shall write "spoiled" and print and sign his or her name on the ballot and return it to the clerk to exchange for a fresh ballot. Spoiled ballots shall not be counted.~~

*[OAR Docket #22-641; filed 7-19-22]*

## **TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 4. HEARING PROCEDURES, PRACTICES, AND APPEALS [REVOKED]**

*[OAR Docket #22-642]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1. General Provisions [REVOKED]

630-4-1-1 [REVOKED]

630-4-1-2 [REVOKED]

630-4-1-3 [REVOKED]

630-4-1-4 [REVOKED]

630-4-1-5 [REVOKED]

630-4-1-6 [REVOKED]

630-4-1-7 [REVOKED]

Subchapter 5. Individual Hearings [REVOKED]

630-4-5-1 [REVOKED]

630-4-5-2 [REVOKED]

630-4-5-3 [REVOKED]

630-4-5-4 [REVOKED]

630-4-5-5 [REVOKED]

630-4-5-7 [REVOKED]

630-4-5-8 [REVOKED]

630-4-5-9 [REVOKED]

630-4-5-10 [REVOKED]

630-4-5-11 [REVOKED]

630-4-5-12 [REVOKED]

630-4-5-14 [REVOKED]

630-4-5-15 [REVOKED]

630-4-5-16 [REVOKED]

630-4-5-17 [REVOKED]

### **AUTHORITY:**

Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B), 82 O.S. 2016 § 896.1

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

December 21, 2021

### **COMMENT PERIOD:**

January 19, 2022 through February 18, 2022

### **PUBLIC HEARING:**

March 1, 2022

### **ADOPTION:**

March 9, 2022

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

March 21, 2022

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

### **FINAL ADOPTION:**

June 21, 2022

### **EFFECTIVE:**

September 11, 2022

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

Effective July 1, 2016, the Scenic Rivers Commission created pursuant to Section 1461 of Title 82 of the Oklahoma Statutes was terminated. On the same date, the rights and authorities of the Scenic Rivers Commission were transferred to the Grand River Dam Authority. Some of the above rules have been revised and are being proposed for promulgation as new Chapter 40 Scenic Rivers Rules under Title 300 Grand River Dam Authority.

### **CONTACT PERSON:**

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16th Street, Tulsa, OK 74128.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## **SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]**

### **630:4-1-1. Purpose [REVOKED]**

~~The rules of this Chapter are adopted pursuant to Title 82 O.S. Sections 1451 B-1471. They are adopted as standards guiding the practice and procedures of the Oklahoma Scenic Rivers Commission ("OSRC") and for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating administration of the Scenic Rivers Area for the Flint Creek and the Illinois River and those portions of Barren Fork Creek within Cherokee County.~~

### **630:4-1-2. Scope [REVOKED]**

~~The rules of this chapter govern all hearing proceedings for individual hearings before the OSRC. Exhaustion of these proceedings is required prior to resort to relief of the Oklahoma state district courts.~~

### **630:4-1-3. Authority [REVOKED]**

~~Individual hearings in the name of the Commission are conducted pursuant to Article II of the Oklahoma Administrative Procedures Act (75 O.S. Sections 308a and following, the~~

"APA"), to the rules of this chapter and, where additional guidance is needed, generally to the civil procedures followed by the Oklahoma district courts.

**630:4-1-4. Hearing sites [REVOKED]**

Unless the act requires otherwise, hearings shall be held in a location established by the hearing examiner or the Commission. However, due regard shall be given to the convenience of the parties or their representatives and witnesses.

**630:4-1-5. Computation of time [REVOKED]**

Except as otherwise provided in the regulations of this chapter, computation of time is based upon the following:

- (1) Except as otherwise provided by order, computation of time is based upon calendar days.
- (2) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the OSRC is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.
- (3) Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period or prescribed time is seven (7) days or less.

**630:4-1-6. Interpretive opinion about a rule or order [REVOKED]**

Any person who alleges that any OSRC rule or order interferes with or impairs, or threatens to interfere with or impair, their legal rights may petition the OSRC to request a declaratory ruling about the applicability of the rule or order. The Administrator shall provide a copy of the petition to the Commissioners with a recommendation. Properly filed petitions shall be placed on the agenda for the next regularly scheduled Commission meeting that is at least two weeks after the petition is filed.

- (1) **Form and content of petition.** Petitions for a declaratory ruling shall be in writing, shall identify the particular rule(s) involved, include a brief statement of the issues raised by the rule(s) which cause the request to be made, include a statement of the petitioner's personal interest in the ruling, describe any communications with OSRC members or employees about the issues, and pose the specific question(s) to be answered and the relief sought.
- (2) **Determination.** To address a petition for declaratory ruling, the Commission may rule on the petition, refer the petition to a hearing examiner or decline to rule on the petition. Rulings shall state the findings of fact and conclusions of law upon which they are based. If the OSRC does not make a ruling or begin an individual proceeding on the petition within 90 days after the petition is filed, the petition shall be deemed to have been denied. If the OSRC begins an individual proceeding on the petition, it

shall offer an opportunity for a hearing to the petitioner. After the OSRC issues a ruling or a final order, the OSRC shall mail a copy of the ruling or final order to the petitioner by certified mail, return receipt requested.

(3) **Judicial review.** A declaratory ruling or refusal to issue such ruling shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the APA, 75 O.S. ' 307.

**630:4-1-7. Conduct and record of individual hearings [REVOKED]**

(a) **Open to public.** The Commission or a designated hearing examiner shall conduct every individual hearing before the OSRC. All hearings shall be open to the public unless a protective order is entered to uphold confidentiality laws; however, upon motion of a party, the Commission or the hearing examiner may exclude from the hearing room any witness not at that time under examination. Neither a party nor their attorney may be excluded.

(b) **Record.** All testimony shall be taken on the record unless otherwise designated by the Commission or the hearing examiner. The OSRC shall make an electronic recording of the hearing proceedings that shall be the official record. The recording will not be transcribed as a matter of course. Copies of the recordings shall be provided to a party on written request. The cost of transcription, if done, shall be borne by the party having the recording transcribed.

(c) **Court reporter.** A party may have the proceeding transcribed by a court reporter at the expense of the party. The original transcript shall be filed with the OSRC. Each party requesting copies shall make arrangements for such with the reporter, and pay the costs.

(d) **Maintenance of the record.** The record of a hearing and the file containing the notices and the pleadings will be maintained by the OSRC. All pleadings, motions, orders and other papers submitted for filing in an individual proceeding shall be stamped with the date filed by the Commission or the hearing examiner upon receipt.

(e) **Designation on appeal.** On an appeal to district court, the parties may designate and counter-designate portions of the record to save costs, following the procedures in the APA.

**SUBCHAPTER 5. INDIVIDUAL HEARINGS [REVOKED]**

**630:4-5-1. "Individual hearing" defined [REVOKED]**

Individual hearings are hearings held on matters directly affecting the interests of an individual person or persons and resulting in the issuance of an Order. An individual hearing is an "individual proceeding" as defined in the APA, 75 O.S. ' 250.3 (7). Examples of individual hearings include hearings on revocation of licensing and violations of OSRC rules.

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### 630:4-5-2. Appointment of hearing examiner [REVOKED]

The Administrator may appoint hearing examiners to conduct individual hearings from the OSRC staff or retain local or government counsel.

### 630:4-5-3. Filing of documents [REVOKED]

(a) Any initial pleadings in a proceeding to be conducted or being conducted by a hearing examiner under these rules shall be filed, by hand or by mail, with the OSRC.

(b) Any person filing initial pleadings with the OSRC or a notice of appeal shall furnish an original and one copy. Any person filing other documents with the OSRC shall furnish only an original.

(c) Any person who has initiated an individual hearing under these rules before the OSRC or filed a notice of appeal shall file proof of service with the same in the form of a return receipt where service is by registered or certified mail, or an acknowledgement by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by party in any proceeding.

(d) The effective filing date for documents initiating proceedings shall be the date the document is received by the OSRC.

### 630:4-5-4. Petition, service and request for hearing [REVOKED]

(a) **Petition.** If the Administrator or the Commission determines that action should be taken to enforce the rules or minimum local government standards of the OSRC, the Administrator may initiate an individual hearing pursuant to the APA by filing a petition with the OSRC and by serving the petition on each respondent. The petition shall include a statement of the legal authority and jurisdiction under which the action is taken, reference to the statutes and rules involved, a short and plain statement of the matters asserted and the relief requested. The petition may allege facts by attaching and incorporating a document by reference. The petition shall provide that the action shall commence and become effective fifteen (15) calendar days after receipt of the petition by the Respondent, unless the Respondent timely files a written request for a hearing with the OSRC.

(b) **Service.** The petition shall be served on each respondent personally or by registered or certified mail, return receipt requested. Substitute service of a petition may be completed after personal and mail service are attempted with the filing of an affirmation of the attempted service and that the petition were then mailed first class mail to the last known address of the respondent. All subsequent documents shall be served personally or by first class mail. Service shall thereafter be made on attorneys who have entered an appearance for a party. Service of a petition is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.

(c) **Request for hearing.** A request for hearing must set forth objections to the petition and will be timely filed if said

request is in writing and postmarked or hand delivered to the OSRC within fifteen (15) calendar days of the date the party received the petition. If a timely written request for a hearing is not filed by the Respondent, the allegations in the petition shall be deemed confessed by the Respondent and the action will become final as set forth herein. If the written request for hearing is timely filed, such hearing shall be scheduled before the Commission or a hearing examiner at least fifteen (15) days after the date said request is filed, and the parties shall be notified of the date, time and place of the hearing. If an emergency exists, a hearing may be conducted without the filing of a petition and without waiting fifteen (15) days.

### 630:4-5-5. Intervention [REVOKED]

(a) Any person may petition for leave to intervene at any stage of a proceeding before the OSRC.

(b) A petitioner seeking leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and how the interest is or may be adversely affected.

(c) The hearing examiner or the OSRC shall grant intervention where the petitioner:

(1) Has a statutory right to initiate the proceeding in which he wishes to intervene; or

(2) Has a protected interest which is or may be adversely affected by the outcome of the proceeding or the proceeding involves minimum local government standards under OAC 630:1-1-6.

(d) If neither (1) or (2) of subsection (c) of this section apply, the hearing examiner shall consider the following in determining whether the intervention is appropriate:

(1) The nature of the issues;

(2) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(3) The ability of the petitioner to present relevant evidence and argument; and

(4) The effect of intervention on the OSRC's implementation of its statutory mandate.

(e) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing examiner.

### 630:4-5-7. Motions [REVOKED]

(a) Except for oral motions made in proceedings on the record, or where the hearing examiner otherwise directs, each motion shall be in writing and shall contain a concise statement of supporting grounds.

(b) Unless the hearing examiner orders otherwise, any party to a proceeding in which a motion is filed shall have fifteen (15) days from service of the motion to file a response.

(c) Failure to make a timely motion or to file a response may be construed as a waiver of objection.

(d) The hearing examiner shall rule on all motions as expeditiously as possible.

**630:4-5-8. Waiver of right to hearing [REVOKED]**

Any person entitled to a hearing before a hearing examiner may waive such right in writing.

**630:4-5-9. Powers of hearing examiners [REVOKED]**

(a) Under the regulations of this subchapter, a hearing examiner may:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas;
- (3) Issue appropriate orders relating to discovery;
- (4) Rule on procedural requests or similar matters;
- (5) Hold conferences for settlement or simplification of the issues;
- (6) Regulate the course of the hearing and govern the conduct of participants;
- (7) Rule on offers of proof, receive relevant, material and non-repetitious evidence, and make inquiries of parties and witnesses to develop fairly the facts and issues;
- (8) Take other actions authorized by these regulations and the act;
- (9) Require or allow the filing of briefs, proposed findings of fact and conclusions of law by the parties;
- (10) Issue final orders for parties in default, for withdrawals of petitions and for settlements; and
- (11) Make or recommend decisions, issue proposed orders and close the record.

(b) A hearing examiner may order a prehearing conference:

- (1) To simplify and clarify issues;
- (2) To receive stipulations and admissions;
- (3) To explore the possibility of agreement disposing of any or all of the issue in dispute; and
- (4) For such other purposes as may be appropriate.

(c) Except as otherwise provided in the regulations of this subchapter, the jurisdiction of the hearing examiner shall terminate upon:

- (1) The filing of a notice of appeal from an initial decision or other order dispositive of the proceeding;
- (2) The issuance of an order of the Commission granting a petition for review; or
- (3) The expiration of the time period within which a petition for review or an appeal to the Commission may be filed.

**630:4-5-10. Notice of hearing [REVOKED]**

A hearing examiner shall give notice in writing to the parties of the time, place, and nature of any hearing.

**630:4-5-11. Certification on interlocutory ruling [REVOKED]**

Upon motion or upon the initiative of the hearing examiner, the examiner may certify to the Commission a ruling which does not finally dispose of the case if the ruling presents a controlling question of law and an immediate appeal would materially advance the ultimate disposition by the examiner.

**630:4-5-12. Summary decisions [REVOKED]**

(a) At any time after a proceeding has begun, a party may move for summary decision of the whole or part of the case.

(b) The moving party under this section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(c) A hearing examiner may grant a motion under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions and affidavits show that:

- (1) There is no disputed issue as to any material fact; and
- (2) The moving party is entitled to summary decision as a matter of law.

(d) If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the hearing examiner shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

**630:4-5-14. Orders and decisions by hearing examiner [REVOKED]**

(a) Except as may otherwise be required by the APA, the OSRC has the burden of going forward to make a prima facie case for the petition, and issues are decided by substantial evidence.

(b) An order or decision rendered by a hearing examiner disposing a case shall be delivered or mailed to each respondent, and shall incorporate:

- (1) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law and discretion presented on the record;
- (2) An order granting or denying relief; and
- (3) A notice that the order or decision of the hearing examiner will be issued as a final order unless, within 15 days after the date it was mailed to them, they mail or deliver to the OSRC a written request for review by the Commission. The appeal to the Commission must state facts, reasons and the specific relief requested.

**630:4-5-15. Effect of order or decision by hearing examiner [REVOKED]**

(a) An order or decision by the hearing examiner shall be made final if that order or decision is not timely appealed to the Commission. If not timely appealed to the Commission, then the Administrator shall sign the order or decision by the hearing examiner as a Final Order and mail a copy to each respondent by certified mail, return receipt requested.

(b) If an order or decision by a hearing examiner is timely appealed to the Commission, then the Commission shall at its next meeting take up the matter, and allow each party an opportunity to present arguments why the order or decision should not become a final order.

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(c) After hearing arguments, the Commission may affirm the order or decision of the hearing examiner, or may for good cause modify the decision or order of the hearing examiner and issue a revised order with findings of fact and conclusions of law, or may refer the order or decision back to the hearing examiner for a hearing on specific matters. The Administrator shall mail a copy of a Final Order by the Commission to each respondent by certified mail, return receipt requested.

(d) A party may appeal a Final Order as provided in the APA.

## 630:4-5-16. Certification of record [REVOKED]

~~Within five (5) days after an order or decision by a hearing examiner has been rendered, the hearing examiner shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing to the OSRC. The tape of the hearing shall not be transcribed unless an appeal of the order or decision is made to the Commission pursuant to Subchapter 13 of this chapter.~~

## 630:4-5-17. Discovery [REVOKED]

~~Following the initiation of a proceeding and with permission of the hearing examiner the parties may initiate discovery at any time so long as it does not interfere with the conduct of the hearing. Discovery shall generally be conducted according to the Oklahoma Discovery Code, 12 O.S. § 3224 and following.~~

*[OAR Docket #22-642; filed 7-19-22]*

## TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 10. LICENSING AND USE PERMITS [REVOKED]

*[OAR Docket #22-643]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions and Licensing [REVOKED]

630:10-1-1 [REVOKED]

630:10-1-2 [REVOKED]

630:10-1-3 [REVOKED]

630:10-1-5 [REVOKED]

630:10-1-6 [REVOKED]

630:10-1-7 [REVOKED]

630:10-1-9 [REVOKED]

Subchapter 2. Public Access Areas [REVOKED]

630:10-2-1 [REVOKED]

630:10-2-2 [REVOKED]

630:10-2-3 [REVOKED]

630:10-2-4 [REVOKED]

Subchapter 3. Boater Safety [REVOKED]

630:10-3-1. [REVOKED]

630:10-3-2. [REVOKED]

### AUTHORITY:

Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B), 82 O.S. 2016 § 896.1

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

December 21, 2021

### COMMENT PERIOD:

January 19, 2022 through February 18, 2022

### PUBLIC HEARING:

March 1, 2022

### ADOPTION:

March 9, 2022

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

March 21, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

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### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS AND LICENSING [REVOKED]

### 630:10-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to establish a system for licensing of commercial float operations and commercial flotation devices and the collection of commercial and private fees to preserve the scenic rivers in their natural state and to preserve the health and safety of the patrons.~~

### 630:10-1-2. Authority [REVOKED]

~~The rules and regulations set forth in this chapter are adopted pursuant to the authority granted the Oklahoma Scenic Rivers Commission (OSRC) in 82 O.S. 1981 Section 1451, et. seq., as amended.~~

### 630:10-1-3. Definitions [REVOKED]

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

~~"Commercial float operators (or operations)" means any person or business that rents or leases flotation devices commercially to the public for use upon scenic rivers within the jurisdiction of the OSRC.~~

~~"Flotation device" means a canoe, boat, kayak, raft, inner tube, or other similar device suitable to transport one or more individuals on a scenic river.~~

"Scenic rivers" means the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County, which are within the jurisdiction of the Scenic Rivers Commission ("OSRC") pursuant to 82 O.S. § 1461(B).

**630:10-1-5. Commercial licensing procedures, requirements, and annual use fees [REVOKED]**

- (a) ~~The statutory annual river use license fee per commercially owned and operated flotation device shall be paid at the time of licensing.~~
- (b) ~~The license required on commercial operations shall be an annual license covering a calendar year. Licenses shall be properly displayed on each flotation device prior to its use on the river.~~
- (c) ~~Applications for new float licenses may be filed with the OSRC in January of each year. Commercial float operators shall file applications to renew their existing licenses during the month of September each year.~~
  - (1) ~~Any commercial float operator that fails to submit a renewal application in September shall only be entitled to renew 85% of the previous number of licenses, and the other 15% shall be released in January of the following year as new licenses. No renewal application shall be accepted after November.~~
  - (2) ~~Any commercial float operator that applies to renew his licenses must pay the statutory annual use fees, and pay or complete any outstanding OSRC obligations, by the last working day of December or the application shall be denied and the number of licenses released as new licenses in January.~~
  - (3) ~~Any person may apply in January for new commercial flotation device licenses which may be available, up to the number provided in 630:10-1-7. The OSRC shall process the applications, divide the numbers of licenses among the proper applications and issue them in February.~~
  - (4) ~~Except for temporary licenses, new licenses shall not be issued unless the number of licenses renewed in the previous year was below the number authorized in 630:10-1-7.~~
  - (5) ~~Use of public access areas owned or controlled by the OSRC may be denied by the Administrator based on expected adverse impacts to the public use areas, on historical usage and regulatory compliance considerations and on the user's cooperation with other users.~~
- (d) ~~Application for such licenses shall be made on the form prescribed by the OSRC which shall include:~~
  - (1) ~~The name and address of the commercial float operation;~~
  - (2) ~~The name and address of the owner or owners thereof;~~
  - (3) ~~A description of lands owned or leased, and/or intended for use in the operation, including the launch and retrieval points;~~
  - (4) ~~An inventory of usable flotation devices;~~

- (5) ~~A description of how the requirements of paragraph (h) of this section will be met; and~~
- (6) ~~An agreement to abide by all State laws and all OSRC rules and regulations.~~
- (e) ~~Licenses shall be issued in such form as is prescribed by the Administrator, and shall be displayed on the right front (starboard bow) of flotation devices that have bows, or conspicuously on the outside surface area above the water line of flotation devices without a discernable bow.~~
- (f) ~~Licenses granted by this Chapter shall be transferable only after application to and approval by the Administrator upon a finding that the transfer will not exceed the float area restrictions of the scenic rivers as described in 630:10-1-7.~~
- (g) ~~The number of flotation devices to be licensed for commercial use shall be limited as provided in 630:10-1-7.~~
- (h) ~~All commercial float operators must maintain clean and sanitary facilities, maintain in good working order their flotation devices offered for use, and also:~~
  - (1) ~~Provide access to toilet facilities to the floating public.~~
  - (2) ~~Provide trash bags and disposal information to all customers.~~
  - (3) ~~Conspicuously post on business premises and at launch points warnings against tying flotation devices together, about trespass and safety, to carry trash bags for their trash, that flotation devices and ice chests are subject to random inspection by River Rangers, that alcoholic spirits (hard liquor such as bourbon, gin, rum, tequila, whiskey, etc.) are prohibited on the Scenic Rivers and in public access areas at all times, and that drunk and disorderly conduct is cause for arrest.~~
  - (4) ~~All signs placed along the river corridor shall be informational in nature and shall comply to standards established by the OSRC.~~
  - (5) ~~Display on each flotation device used the name of the enterprise and an identification number at least three (3) inches high and two (2) inches wide on both the right and left sides (port and starboard sides), or once if it has no sides.~~
  - (6) ~~Provide reasonable assistance in river clean up and navigational hazard removal in his float area at least once each week during all weeks his flotation devices are operated on the river.~~
  - (7) ~~Provide, in each flotation device used, at least one wearable personal flotation device in good and serviceable condition for each person on board so placed as to be readily accessible and of a size suitable to the person who is or will be wearing it.~~
  - (8) ~~The OSRC can better protect the river and deploy its resources with knowledge of how many people are floating the river during various times. Accordingly, each operator shall track and annually report to the Administrator on a per month basis the number of their customers per commercial float area from May through September. These reports are due by December 31 each year on the forms provided by the OSRC.~~

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(i) Non-profit youth organizations may elect to obtain temporary licenses for their flotation devices as commercial flotation devices provided they do not exceed the float area restrictions of the scenic rivers as described in 630:10-1-7.

### 630:10-1-6. Suspend or revoke license [REVOKED]

(a) The OSRC retains the right to suspend or revoke the licenses or permits, in whole or in part, of any commercial float operation after the OSRC makes a finding that:

- (1) The operation has engaged in a pattern of willful violation of OSRC rules and regulations;
- (2) The ecosystem of the river section within which the particular flotation device is authorized to float is, or is in danger of being, harmed by the number of flotation devices authorized and it is necessary for the protection of that section of the river to revoke a certain number of licenses;
- (3) The health and safety of individuals floating on the river is threatened by the number of flotation devices currently licensed to float on a particular section of the river; or
- (4) The commercial operator has failed to comply with licensing requirements of rule 630:10-1-5.

(b) Except in case of emergency as provided in the Oklahoma Administrative Procedures Act, the OSRC may make such a finding only after the commercial float operation has been given notice and the opportunity for a hearing.

### 630:10-1-7. Limitation on licensing of flotation devices [REVOKED]

(a) It is the intent of the OSRC in issuing commercial flotation licenses to protect the ecosystem and environment and the aesthetic, scenic, historic, archaeologic, and scientific features of the scenic river areas as well as the public health and safety of individuals using the scenic river areas.

(b) It is the determination of the OSRC that at this time the scenic rivers cannot assimilate the damages to their ecosystems, environments, aesthetic, scenic, historic, archaeologic, and scientific features if more than 3,900 licenses are issued. Further, the protection of public health and safety requires that the OSRC not grant additional licenses.

(c) The OSRC recognizes the current interests and property rights of persons with respect to flotation devices presently available for hire within its jurisdiction subject to the OSRC Commercial Float Area limitations provided hereinafter. The number of such devices shall be set at a maximum of 3,900 for the combined scenic river areas.

(d) Any licensing of flotation devices in excess of said 3,900 shall be subject to approval of the OSRC if the applicant reasonably demonstrates there will not be an adverse impact on the waterways within the jurisdiction of the OSRC. Such additional licensing shall be determined on the basis of density of current usage, number of licenses requested, and other considerations necessary for river protection.

(e) In the event the OSRC determines that the requested licenses may harm the ecosystem, environment, aesthetic, scenic, historic, archaeologic or scientific features of the

section of the river for which the licenses are sought, so that the health and safety of individuals floating on the river may be threatened by the addition of new flotation devices, the OSRC shall deny the number of licenses requested over 3,900 that it deems to be necessary to protect the scenic rivers. Any license issued above 3,900 in any calendar year shall be temporary, for a stated period of time, and shall not be renewed during the annual licensing process.

(f) Since May 1, 1987, the Illinois River scenic river area has been divided into the following sections for commercial flotation operation and licensing purposes:

- (1) From the Arkansas-Oklahoma state boundary (Illinois River mile 0) southward to Round Hollow Public Access Area (Illinois River mile 27.7) shall be known as OSRC Commercial Float Area One (OSRC CFA One).
- (2) From Round Hollow Public Access Area (Illinois River mile 27.7) southward to the Comb's Bridge (Illinois River mile 36.1) shall be known as OSRC Commercial Float Area Two (OSRC CFA Two).
- (3) From Comb's Bridge (Illinois River mile 36.1) southward to and including the confluence of the Barren Fork Creek with the Illinois River shall be known as OSRC Commercial Float Area Three (OSRC CFA Three).

(g) During weekends and holidays in May through September only commercial float devices licensed for OSRC CFA Two may float in OSRC Commercial Float Area Two. However, upon customer request commercial float operations without licenses for OSRC CFA Two may allow up to 20 of their commercial flotation devices during such times to combine a float in Commercial Float Area Two with their licensed area.

(h) The operation of a commercial flotation device within an OSRC Commercial Flotation Area in violation of 630:10-1-7, shall subject that commercial float operation to a fine not to exceed One Hundred Dollars (\$100.00). [82 O.S. Supp. 1991, Section 1470(A)].

### 630:10-1-9. Non-commercial fee procedures [REVOKED]

(a) Private, non-commercial flotation devices and persons who use them are subject to such statutory fees that are in effect while they are floating on state-designated scenic rivers.

(b) The Administrator shall develop forms and procedures for the collection and administration of non-commercial fees.

(c) Businesses and commercial float operations ("collectors") may, on behalf of the OSRC, collect non-commercial fees and issue receipts or usage indicators when they are approved by the Administrator and use the current forms and procedures of the OSRC. Collectors shall remit the non-commercial fees they collect to the OSRC using the current forms and procedures. Collectors may retain a percentage of statutory non-commercial fees for administering the non-commercial fee process in the amount that is currently designated by the Commission but not more than 10%.

(d) River Rangers and the Administrator may require anyone using a non-commercial flotation device on or leaving the waters of a scenic, who does not establish that they are exempt



from statutory fees, to either show a receipt for or pay the statutory non-commercial fee.

**SUBCHAPTER 2. PUBLIC ACCESS AREAS  
[REVOKED]**

**630:10-2-1. Definitions [REVOKED]**

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

**"Camping"** means any method used for remaining overnight in a public access area which includes, but is not limited to tents, vehicles, cots, and sleeping bags.

**"Campsites"** means a single site located within a public access area which has been designated as open to camping by the Administrator.

**"Public Access Areas"** means an area within the jurisdiction of the Commission which has been designated by the Administrator as open for use by the public for camping and day use activities under the terms and conditions of this subchapter.

**630:10-2-2. Camping fees [REVOKED]**

(a) Camping shall only be allowed in campsites that are located within Public Access Areas and are designated by the Administrator.

(b) Camping fees shall be the same as the camping rates charged by the Oklahoma Tourism and Recreation Department. The OSRC shall post the current fee schedule. See, 82 O.S. § 1470(C).

- (c) The regular camping fee shall be discounted 50%:
  - (1) where one or more campers are 62 years of age or older, as documented by a valid driver's license, state-issued identification card, or passport;
  - (2) where one or more campers are certified as totally (100%) disabled or blind, as documented by a Medicare card or other federal or state-issued instrument; or
  - (3) for youth groups that provide at least 25 hours each year of beneficial service to the environment such as tree planting, refuse clean up or wildlife habitat improvement, as approved by the Administrator.

(d) The Administrator may waive or suspend camping fees for certain periods in the public interest.

**630:10-2-3. Time limits and extensions [REVOKED]**

(a) The duration of the authorized camping shall be noted on each camping receipt, based on the number of days paid for in advance.

(b) Camping within the same campsite or public access area for longer than 7 consecutive days is prohibited without prior written approval from the Administrator.

(c) The Administrator may grant extensions beyond the 7 consecutive day limit in writing after consideration of the extent of public access area use, the particular recreation season, and anticipated holiday or weekend occupancy.

- (1) Persons receiving extended camping privileges shall be limited to specific campsites.
- (2) Extensions shall be requested at least 48 hours prior to the date on which the extension would commence.
- (d) Persons with a medical disability, who can verify that they are currently under a physician's care for such disability, may maintain the same campsite for periods longer than 7 days with prior written approval from the Administrator.

**630:10-2-4. Use of public access areas [REVOKED]**

(a) No person shall camp in a campsite under the jurisdiction of the OSRC without paying the fee established by this section.

(b) Camping fee receipts shall be retained by campers for the duration of their stay and shall be available for review upon request of the Administrator, a Camp Host or a River Ranger.

(c) Camping fees receipts entitle the named holder to use a campsite for the duration indicated on the receipt under the conditions set forth in this section. All camping fee receipts are non-transferable.

(d) The daily camping fee covers use of campsites from 5:00 p.m. on the day of payment until 5:00 p.m. on the following day. Occupants shall vacate the campsite by removing their personal property from the campsite prior to 5:00 p.m. on the day they are scheduled to leave.

(e) The following activities are prohibited in all public access areas:

- (1) Excavation or leveling of the ground.
- (2) Hanging a propane or gas operated lantern on any tree or plant.
- (3) Leaving refuse or human waste at a campsite after departure.
- (4) Camping within 25 feet of a water hydrant or within 100 feet of a stream, river or body of water, except where otherwise designated.
- (5) Creating or sustaining unreasonable noise at a campsite as determined by the Administrator or a River Ranger considering the nature and purpose of the actor's conduct, the impact on other users, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.
- (6) Constructing permanent camping facilities or dwellings.
- (7) Camping or parking vehicles outside of campsites and parking areas designated by the Administrator.
- (8) Parking a vehicle in, blocking access to, or occupying any designated campsites without having first paid camping fees for that campsite.
- (9) Using the utility services in a campsite or public access area without having first paid campsite or utility fees.
- (10) Connecting more than one water, electrical or sanitary connection per campsite or connecting to a utility which exceeds its manufactured design or capacity.
- (11) The placing or parking of 2 or more vehicles on any site not designed for more than one vehicle.
- (12) Camping longer than duration of stay noted on the camping receipt or exceeding the time limits set forth in

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~~this subchapter without prior written approval from the Administrator.~~

~~(13) Entering or remaining in a public access area for any purpose other than camping or authorized day use activities, except fishing.~~

~~(14) Possession or use of fireworks or firearms in public access areas. The Administrator may authorize fireworks on the 4th of July.~~

~~(15) Fires may only be built in fire pits or cookers established by the Commission.~~

~~(f) Day use of public access areas for general recreational activities, such as swimming, picnicking, fishing, and boat launching is permissible without charge only during open hours as defined and posted by the Administrator.~~

~~(g) Entering or remaining in a day use area during closed hours is prohibited for any purpose, except lawful fishing.~~

~~(h) Possession of an open container, or consumption, of alcohol (including Spirits, wine, beer and light or 3.2 beer) is prohibited in seven public access areas: Round Hollow, Todd, US 62 Bridge Access on the Illinois River, US 412 Bridge Access on Flint Creek, Lake Francis Dam Public Access Site, US 59 Illinois River Bridge Crossing Access Area, and Carnes Ford Area.~~

~~(i) Commercial operators who use a public access area to launch and retrieve flotation devices shall police the area and its gravel bars for litter after each use.~~

~~(j) Violations of OSRC regulations or state law may result in the suspension or revocation of camping authorization or day use privileges. Other penalties prescribed by law may also apply.~~

## SUBCHAPTER 3. BOATER SAFETY [REVOKED]

### 630:10-3-1. Life jackets [REVOKED]

~~All persons in a flotation device on a Scenic river must possess a U.S. Coast Guard approved personal flotation device that is appropriately sized and in good working order. All children 12 years of age and younger must wear their personal flotation device at all times while floating on a Scenic river.~~

### 630:10-3-2. Alcoholic beverages [REVOKED]

~~The Scenic Rivers Commission has found that drunk and disorderly conduct on the Scenic rivers and in public access areas is a danger to the public and to the rivers, and is therefore a public nuisance for which the public has demanded abatement.~~

~~(1) Possession of any beverage defined as "Spirits" in the Oklahoma Alcoholic Beverage Control Act is prohibited on the Scenic rivers and in public access areas at all times. The Oklahoma Alcoholic Beverage Control Act defines "Spirits" to mean, in part, any beverage other than wine, beer or light beer, which contains more than one half of one percent (1/2 of 1%) alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall~~

~~not include any alcohol liquid completely denatured (2015 Title 37 O.S. Section 506).~~

~~(2) Wine, beer and light beer in the original, non glass packaging may be possessed and consumed by persons 21 years of age or older while floating on scenic rivers and in the Stunkard, Peavine, Edmondson, New Combs Bridge, No Head and Echota public access areas.~~

[OAR Docket #22-643; filed 7-19-22]

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

[OAR Docket #22-644]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

630:15-1-1 [REVOKED]

630:15-1-6 [REVOKED]

630:15-1-7 [REVOKED]

630:15-1-13 [REVOKED]

630:15-1-14 [REVOKED]

630:15-1-15 [REVOKED]

630:15-1-16 [REVOKED]

### AUTHORITY:

Grand River Dam Authority; 82 O.S. 2019 § 861A(B)(1), 82 O.S. 2019 § 863.2(B), 82 O.S. 2016 § 896.1

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

December 21, 2021

### COMMENT PERIOD:

January 19, 2022 through February 18, 2022

### PUBLIC HEARING:

March 1, 2022

### ADOPTION:

March 9, 2022

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

March 21, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Effective July 1, 2016, the Scenic Rivers Commission created pursuant to Section 1461 of Title 82 of the Oklahoma Statutes was terminated. On the same date, the rights and authorities of the Scenic Rivers Commission were transferred to the Grand River Dam Authority. Some of the above rules have been revised and are being proposed for promulgation as new Chapter 40 Scenic Rivers Rules under Title 300 Grand River Dam Authority.

### CONTACT PERSON:

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16<sup>th</sup> Street, Tulsa, OK 74128.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

**630:15-1-1. Purpose [REVOKED]**

The purpose of this Chapter is to establish standards for the Oklahoma Scenic Rivers Commission ("OSRC") to protect the natural resources of the scenic rivers located within its current operating area, which includes the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County (referred to in this Chapter as "scenic rivers").

**630:15-1-6. Recreational vehicles [REVOKED]**

No vehicle shall drive upon the scenic river streambeds for purposes of enjoyment or recreation.

**630:15-1-7. Glass and Styrofoam containers prohibited [REVOKED]**

Containers made of glass or Styrofoam (bottles, jars, plates, etc.) and jello shot containers are not allowed on scenic rivers; except, however, that prescription medicine and the contents of trash containers from river cleanups are exempt.

**630:15-1-13. Gravel mining operations prohibited [REVOKED]**

(a) When used in this section, the following definitions apply:

(1) The term "river bank" means the area lying directly adjacent to the river bed with a width of 100 feet on either side of the river bed.

(2) The term "river bed" means any area of the river lying below the ordinary high water mark.

(b) Gravel mining operations which remove gravel from the river beds of scenic rivers are prohibited and are declared a public nuisance.

(c) Gravel mining operations are prohibited and declared a public nuisance where such operations remove gravel from the banks of scenic rivers if such removal negatively impacts the river by causing turbidity, erosion, pollution, or otherwise damages the scenic river environment.

(d) This section shall apply to restrict state permits to mine gravel that are pending as of April 20, 1993 or new permit applications submitted after that date. The Administrator may authorize site specific exemptions for good cause, such as to remove gravel that was deposited above the ordinary high water mark by floods.

**630:15-1-14. Ice chest restriction [REVOKED]**

To prevent littering, no flotation device shall contain an ice chest that does not have a secured lid to prevent spilling its contents or is larger than 48 quart capacity on a scenic river.

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

To minimize environmental damage to the stream and river banks, no person shall tie or otherwise connect two or more flotation devices together on scenic rivers except during rescue and retrieval.

**630:15-1-16. Vessel Restrictions [REVOKED]**

Except for OSRC and law enforcement personnel, and during OSRC authorized search and rescue training and operations, no person shall:

(1) operate a commercial flotation device on Flint Creek in Delaware County or on those portions of Barren Fork Creek in Cherokee County;

(2) operate a jet ski, airboat, hovercraft or similar water craft on a scenic river; or

(3) operate a vessel with a motor of more than 10 horsepower on a scenic river. Provided, however, that vessels with up to 25 horsepower may be used by anyone gigging during gigging season defined by the Oklahoma Department of Wildlife Conservation, and by commercial flotation device operators to rescue floaters, retrieve vessels and to clean the river and remove navigable obstructions in their flotation areas.

[OAR Docket #22-644; filed 7-19-22]

**TITLE 655. SECRETARY OF STATE  
CHAPTER 1. ADMINISTRATIVE  
OPERATIONS**

[OAR Docket #22-575]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
655:1-1-5 [AMENDED]  
655:1-1-6.1 [AMENDED]  
655:1-1-8 [AMENDED]  
655:1-1-9 [AMENDED]  
655:1-1-16 [REVOKED]

**AUTHORITY:**  
Secretary of State; 75 O.S., Section 302; Executive Order 2020-03  
**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
December 8, 2021

**COMMENT PERIOD:**  
January 3, 2022 through February 2, 2022

**PUBLIC HEARING:**  
None held or requested

**ADOPTION:**  
March 10, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
Amendments to Chapter 1 of the Secretary of State's administrative rules [OAC 655:1] remove outdated and unnecessary language, as required by Executive Order 2020-03, and provide current information regarding agency operations.

**CONTACT PERSON:**  
Chris Coffman, Rules Liaison, 405-521-4911 or  
chris.coffman@sos.ok.gov

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

## 655:1-1-5. Availability of documents

(a) Documents ~~placed on file~~recorded in the Office of the Secretary of State shall not be removed from the Office unless they are transferred to the Oklahoma Department of Libraries, or unless otherwise provided by Oklahoma Statutes. Documents may be stored at additional off-site storage facilities as determined by the Secretary of State or his or her designee.

(b) Except as otherwise specifically provided in this Title, public records filed in the Office of the Secretary of State are available pursuant to the following:

(1) ~~Record~~Records must be requested requests made in the office must be made no later than ~~4:30~~5:00 p.m.

(2) ~~Requests for documents to be viewed will be limited to no more than five (5) records. A customer presenting a request for an amount greater than five (5) will need to leave a list and return for the information at a specified time.~~Record requests made electronically may be made at any time.

(c) Documents required to be ~~filed~~recorded in the Office of the Secretary of State are public record. Except as otherwise specifically provided in this Title, Certificates of Fact and copies of all documents on ~~file~~record may be obtained by placing an order ~~twenty four hours in advance~~ between the hours of 8:00 a.m. and ~~4:30~~5:00 p.m., Monday - Friday in the office and by payment of fees required by 28 O.S., Section 111.A.(3). ~~Orders placed after 4:30 p.m. and before 5:00 p.m. will be available by 11:00 a.m. on the second business day following the day the order was received. Certificates of Fact must be paid for in advance.~~Orders may also be obtained by placing an order electronically and by payment of fees required by 28 O.S., Section 111.1(3).

(d) Copies of documents must be made only from the original document ~~or the official microfilmed copy of said document on file~~record in the Office of the Secretary of State.

(e) Access to documents transferred to the Oklahoma Department of Libraries or off-site storage facilities will be coordinated by Secretary of State personnel and will be limited to the Office of the Secretary of State.

(f) The procedures in (a) through (e) of this Section protect the integrity and organization of the records and prevent excessive disruption of the essential functions of the Secretary of State's Office.

## 655:1-1-6.1. Form of payment

(a) Payment for products and services of the Secretary of State's Office may be made in cash, personal or business check, certified or cashier's check, money order, credit card approved for state use or electronic fund transfer. All checks or money orders must be made payable to the Secretary of State. Acceptance of credit cards by some divisions of the Office may be affected by internal control requirements.

~~(b) The Secretary of State's Office maintains a minimal cash change fund.~~

~~(e)~~ Payment for certificates.

(1) Authentication certificates (apostille, certificate of signature and affidavit of signature) must be paid for in advance by cash, currently dated money order, cashier's check or business check, ~~or~~ credit card, or automated clearing house (ACH) approved for state use.

(2) Certificates of Fact, which includes status, must be paid for in advance by any of the forms of payment listed in (a) of this Section.

(3) Certificates of Transcript and copies, except for copies of documents maintained by the Office of Administrative Rules, must be paid at the time of service.

## 655:1-1-8. Returned checks

(a) Notification either by letter or email is sent to the client when a check or electronic fund transfer is returned without payment by the issuing bank/financial institution for any reason is cause for voiding the transaction for which the payment was issued, advising the client that the funds must be replaced within thirty (30) days. On the day a returned check is received, the transaction for which the check was issued will be voided at the close of that business day. A letter will be mailed to the customer as notification of the voided transaction. If the client fails to resubmit the fee within the time limit, the document shall be revoked and deleted from the Secretary of State's records. The client shall be notified of such revocation action by letter.

~~(b) Any document voided/revoked due to lack of payment of the fee pursuant to subsection (a) of this section must be refiled. Payment for any document refiled pursuant to this section must be made in advance by cash or currently dated money order, or cashier's check, or credit card.~~

~~(c) Any customer who notifies the Secretary of State's Office that a check or electronic fund transfer presented for a transaction will be returned unpaid prior to receipt of the returned check by the Secretary of State's Office may pay the amount of the returned check in cash or currently dated money order or cashier's check or electronic fund transfer within one business day of receipt of the returned check by the Secretary of State's Office. Payment for checks expected to be returned unpaid will not be accepted until the returned check is received by the Secretary of State's Office. Any transaction paid for by a returned check which is redeemed pursuant to this subsection shall not be voided.~~

~~(d)~~ Any customer presenting three returned checks or electronic fund transfers during a twelve-month period will be required to pay for future transactions in cash or by certified or cashier's check, or money order for a probationary period of twelve months. Any further returned checks presented for payment of transactions may result in the permanent revocation of a customer's privilege to pay for transactions with checks. Any such customer shall be so notified in person or by mail at their last known address.

655:1-1-9. Refunds

- (a) A refund may be made in accordance with 74 OS §664.1, Refund of erroneous collections.
(b) In all cases, the product for which the refund is made must be returned to the Secretary of State's Office at the expense of the person requesting the refund.

655:1-1-16. Forms and instructions [REVOKED]

- (a) All forms and instructions available from the Office of the Secretary of State may be obtained in quantities not to exceed five (5) copies each.
(b) Forms obtained from this Office may be photocopied.
(c) The following is a partial list of forms and instructions issued by the agency for use by the public. Additional forms and instructions can be located under each individual chapter. Subsequent forms and instructions may be developed for public use when deemed necessary by the Secretary of State or statute.

- (1) Fee list
(2) Loyalty Oath
(3) Oath of Office
(4) Manual signature
(5) Manual signature authorization
(6) Claim to successor in interest
(7) Charitable organization registration and instructions
(8) Charitable organization annual report
(9) Professional fund raiser registration and instructions
(10) Professional solicitor registration
(11) Professional fund raiser bond
(12) Trademark application and instructions (new, renewal and assignment)

[OAR Docket #22-575; filed 7-11-22]

TITLE 655. SECRETARY OF STATE
CHAPTER 10. ADMINISTRATIVE RULES
ON RULEMAKING

[OAR Docket #22-576]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 10. Administrative Rules on Rulemaking [AMENDED]

AUTHORITY:

Secretary of State; 75 O.S., Sections 250 et seq; SB 913 (2021)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 8, 2021

COMMENT PERIOD:

January 3, 2022 through February 2, 2022

PUBLIC HEARING:

None held or requested

ADOPTION:

March 10, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Chapter 10. Administrative Rules on Rulemaking [AMENDED]

Gubernatorial approval:

September 10, 2021

Register publication:

39 Ok Reg 31

Docket number:

21-726

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Amendments and additions to Chapter 10 of the Secretary of State's administrative rules [OAC 655:10] implement changes made to the Administrative Procedures Act (APA) in SB 913 (2021).

CONTACT PERSON:

Chris Coffman, Rules Liaison, 405-521-4911 or chris.coffman@sos.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

655:10-1-1. Purpose

The rules in this Chapter establish procedures and standards for filing and publishing rules, rulemaking notices, Governor's declarations, and executive orders in The Oklahoma Register and The Oklahoma Administrative Code as authorized under the provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq., and reflect rule review requirements enacted in Executive Order 2013-34.

655:10-1-2. Definitions

In addition to terms defined in 75 O.S., Section 250.3, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"APA" means the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

"ARR" means the Administrative Rules on Rulemaking, OAC 655:10.

"Adopted rule" means a proposed emergency [or preemptive] rule that which has been adopted approved by the agency but has not been approved or disapproved by the Governor . . . , or a proposed permanent rule that has been adopted approved by the agency but and has not been approved or disapproved by the Legislature or [approved] by declaration of the Governor pursuant to [75 O.S., Section 303(A)(6)], but has not been finally approved or disapproved by the Legislature or the Governor [75:250.3(2)] as provided by

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~~75 O.S., Sections 308 and 308.3(D).~~ [See also definitions of "proposed rule" and "Governor's declaration" in this Section].

**"Agency"** means *any constitutionally or statutorily created state board, bureau, commission, office, authority, public trust in which the state is a beneficiary, or interstate commission* [75:250.3(3)] with authority for rulemaking. Except, "agency" does not include *the Legislature or any branch, committee or officer thereof, and . . . the courts* [75:250.3(3)]. [See also definition of "rulemaking entity" in this Section]

**"Amendment"** means a revision which adds, modifies, or deletes characters, numbers, letters, words, phrases, sentences, spaces, or punctuation in an existing section.

**"Appendix"** means a division of the OAC which contains one or more "graphics" (as defined in this Section). Appendices are placed at the end of a Chapter. [See 655:10-3-37]

**"Attestation"** means certification by an agency as to *the correctness of copies of any rule . . . and that such rules were made and adopted if the rules are emergency* [or preemptive] *rules or finally adopted if the rules are permanent rules in substantial compliance with the Administrative Procedures Act* [75:254]. [See 655:10-7-16 (relating to attestations)]

**"Chapter"** means a division of the OAC which designates a broad area of regulatory control within an agency's Title. [See also 655:10-3-22 (relating to Chapter numbers and headings)]

**"Code"** means the publication authorized in 75 O.S., Section 256 and known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S., Section 256(A)(1)(a) and maintained in the OAR. [See also definition of "OAC" in this Section]

**"Codification date"** means the date a rule was accepted for inclusion in the first official compilation of codified rules authorized by 75 O.S., Section 256(A)(1)(a); except, the date of codification for subsequently promulgated new rules is the effective date of the permanent rulemaking action which establishes the rules.

**"Docket number"** means the identification number assigned to a document upon its receipt in the OAR. [See 655:10-15-4 (relating to docket numbers)]

**"Document"** means the total body of information required by the APA and ARR to be submitted for each rule-making action, Governor's declaration, or executive order to be published in the Register. [See also Part 9 of Subchapter 7 of this Chapter (relating to scope of a document)]

**"Document heading"** means the two-part heading required at the beginning of each notice document or rule document submitted to the OAR. [See 655:10-7-3 (relating to document headings)]

**"Emergency rule"** means a "rule," as defined in the APA, which must be approved by the Governor under the special provisions of 75 O.S., Section 253 prior to promulgation of the rule.

**"Enacting clause"** means the portion of a rule document which proclaims the agency's rulemaking action and introduces the finally adopted (if permanent) or adopted (if emergency or preemptive) regulatory text. [See 655:10-7-13 (relating to enacting clauses)]

**"Existing rule"** means an effective rule.

**"Expedited repeal"** means *the procedure utilized by a rule-making agency as specified in 75 O.S., Section 303a [75:250.6(6)] to revoke a rule under the expedited repeal provisions of the APA.* [See also 655:10-7-11.1 (relating to expedited rule repeal documents) and 655:10-7-26.1 (relating to notices of expedited repeal requests)]

**"Final legislative adoption"** or **"final legislative approval"** means approval by the Legislature of a request for expedited repeal of rules, as set forth in 75 O.S., Section 303a. These two terms are used in 75 O.S., Section 303a(C) to describe the same legislative action. [See also definitions of **"legislative adoption"** and **"legislative approval"** in this Section].

**"Finally adopted"** or **"final adoption"** means the approval of a proposed permanent rule upon the occurrence of one of the following:

~~(A) legislative approval of the rule by omnibus joint resolution, provided that the resolution has either been approved by the Governor pursuant to OKLA. Const. Art. 6, § 11 or the Governor's veto has been overridden by the Legislature.~~

~~(BA) legislative approval of the rule by joint resolution, provided that the resolution has either been approved by the Governor pursuant to OKLA. Const. Art. 6, §Section 11 or the Governor's veto has been overridden by the Legislature. [75:250.3(7)(a)]~~

~~(CB) gubernatorial veto of a joint or omnibus joint resolution disapproving the rule, provided that the veto has not been overridden by the Legislature. [75:250.3(7)(d)]~~

~~(DC) gubernatorial approval of the rule by Governor's declaration [see definition of "Governor's declaration" in this Section and 75:250.3(7)(b)].~~

**"Governor's declaration"** means an action the Governor may take to declare the approval and final adoption, or disapproval, of proposed permanent rules that were:

~~(A) disapproved by an omnibus joint resolution, but the Governor finds that the necessity [for the rules] does exist, and that the agency has the authority to make the rules [75:308.3(D)(3)];~~

~~(B) submitted to the Legislature on or before April 1, but the Legislature has failed to pass an omnibus joint resolution approving/disapproving rules prior to sine die adjournment of the Legislature [75:308.3(D)(4)]; or~~

~~(A) submitted to the Legislature and Governor on or before April 1 and not subject to a joint resolution passed by Legislature and signed by the Governor prior to sine die adjournment [75:303.8(C)]; or~~

~~(CB) approved by the Legislature in an omnibus joint resolution, but the omnibus joint resolution has been found by the Governor to have a technical legal defect [75:308.3(D)(4)(C)]. [See also definition of "Technical legal defect" in this Section]~~

**"Graphics"** means tabular material, forms, illustrations, diagrams, maps, charts, graphs, figures, or other pictorial material. [See 655:10-3-37 (relating to graphics and appendices)]

**"Joint committee"** means the Joint Committee on Administrative Rules, as created by 75 O.S., Section 307.1, for year-round joint review of proposed rules by the Oklahoma House of Representatives and the Oklahoma Senate. [75:307.1]

**"Legislative adoption" or "legislative approval"** means approval by the Legislature of a request for expedited repeal of rules, as set forth in 75 O.S., Section 303a. These two terms are used in 75 O.S., Section 303a(C) to describe the same legislative action. [See also definitions of **"final legislative adoption"** and **"final legislative approval"** in this Section].

**"Notice document"** means a "document," as defined in this Section, which contains one of the following notices:

- (A) Notice of rulemaking intent [75:303(A),(B),(C)].
- (B) Notice of cancelled hearing or comment period [655:10-7-27].
- (C) Notice of continued hearing or comment period [655:10-7-28].
- (D) Statement of submission of permanent rules to Governor and Legislature [75:303.1(C)].
- (E) Notice of legislative disapproval of rules [75:308(C) and 655:10-7-32].
- (F) Notice of withdrawn rules [75:308(F) and 655:10-7-33].
- (G) Notice of error in published document [655:10-7-35].
- (H) Notice of expedited repeal request [655:10-7-26.1].

**"OAC"** means the publication authorized by 75 O.S., Section 256 and known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S., Section 256(A)(1)(a) and maintained in the OAR. [See also definition of "Code" in this Section]

**"OAC number"** means a Title, Chapter, Subchapter, Part, or Section number, or Appendix letter designation.

**"OAR"** means the Office of Administrative Rules. [See also definition of "Office of Administrative Rules" in this Section]

**"Office of Administrative Rules"** means the office, created pursuant to 75 O.S., Section 250.9 within the Office of the Secretary of State, with the *primary responsibility for publishing "The Oklahoma Register" and the "Oklahoma Administrative Code" and otherwise implementing the provisions of Article I of the Administrative Procedures Act* [75:250.9]. [See also definition of "OAR" in this Section]

~~**"Omnibus joint resolution" or "omnibus resolution"** means a joint resolution identifying disapproved permanent rules and declaring all other permanent rules submitted to the Legislature as of a certain date, as identified in the resolution, to be approved. [75:308.3]~~

**"Paragraph"** means the second level of subdivision in a Section; a paragraph is a subdivision of a subsection in a Section. [See 655:10-3-25 (relating to Section subdivisions)]

**"Part"** means a division of the OAC which contains a group of Sections related to the same subject within a Subchapter. [See also 655:10-3-23 (relating to Part numbers and headings)]

**"Permanent rule"** means a "rule," as defined in the APA, which must be reviewed by the Governor and the agency's Cabinet Secretary prior to adoption pursuant to ~~Executive Order 2013-3475~~ O.S., Section 303(6), and finally adopted pursuant to 75 O.S., Sections 250.3(15)(7) and 308(E) prior to promulgation of the rule. [See also 655:10-7-10 (relating to types of rules)]

**"Preamble"** means the portion of a rule document that summarizes the rule(s) and the history of the rulemaking action, cites legal authority, and functions as a preface to the rule(s). [See 655:10-7-11 (relating to preambles)]

**"Preemptive rule"** means a "rule," as defined in the APA, which is adopted by the Commission for Human Services and which must be approved by the Governor under the special provisions of 75 O.S., Section 250.6 prior to promulgation of the rule.

**"Proposed rule"** means an emergency or preemptive rule prior to approval by the Governor, or a permanent rule prior to final adoption as defined in 75 O.S., Section 250.3(5)(7) and this section, or an expedited rule repeal prior to approval by the Legislature as set forth in 75 O.S., Section 303a.

**"Register"** means the publication authorized in 75 O.S., Section 255 and known as The Oklahoma Register, successor publication to The Oklahoma Gazette.

**"Regulatory text"** means the language of any "rule," as defined in 75 O.S., Section 250.3(17)(19) and this Section; any text, including graphics, which requires promulgation.

**"Repeal"** means "revoke," as used in this Chapter and as defined in this Section. The term "repeal" is used in 75 O.S., Section 303a to describe an "expedited repeal" of rules; however, the term "revoke" is used in the Register and Code publications to describe the repeal of a rule, including the expedited repeal of a rule.

**"Revocation" or "revoke"** means the repeal of an existing rule (i.e., Section or Appendix) in its entirety. [See also definition of **"repeal"** in this Section.]

**"Rule"** means a Section or Appendix [see also definition of "rule" in 75 O.S., Section 250.3(17)(19)].

**"Rule document"** means a "document," as defined in this Section, which contains new rules or amendments to or revocations of existing rules adopted by emergency or preemptive action or finally adopted by permanent action, or expedited repeals that have received final legislative approval [see definition of **"final legislative adoption"** or **"final legislative approval"** in this Section].

**"Rulemaking action"** means any procedure, act, or occurrence, except executive orders, which must be announced in or published in the Register or Code under APA or ARR provisions, including:

- (A) Notice of rulemaking intent [75:303(A),(B),(C)].
- (B) Notice of expedited repeal request [75:303a]
- (C) Notice of cancelled hearing or comment period [655:10-7-27].
- (D) Notice of continued hearing or comment period [655:10-7-28].
- (E) Final adoption of a permanent rule(s) [75:250.3(7), 75:308(E), and 75:308.3(C)].

(F) Final legislative adoption of an expedited rule repeal [75:303a].

(~~E~~G) Promulgation of an emergency rule(s) [75:253].

(~~F~~H) Promulgation by the Commission for Human Services of a preemptive rule(s) [75:250.6].

(~~G~~I) Submission of an adopted permanent rule(s) to Governor, ~~and~~ Legislature, ~~and~~ Joint Committee on Administrative Rules [75:303.1(A)].

(~~H~~J) Disapproval of a rule(s) by the Legislature [75:308 (B) and 75:308.3(~~C~~)(B)].

(~~K~~L) Withdrawal of a proposed rule from the rulemaking process [75:308(F), 75:253(K), and 655:10-7-33].

(~~J~~L) Notice of error in a published document [655:10-7-35].

(~~K~~M) Governor's declaration [75:308.3(~~D~~)(C)].

**"Rulemaking entity"** means the board, commission, officer, or other person or entity legally authorized to adopt and promulgate "rules," as defined in 75 O.S., Section 250.3(~~17~~)(19).

**"Section"** means a "rule," as defined in 75 O.S., Section 250.3(~~17~~)(19); a division of the OAC which contains an agency statement(s) about a specific regulatory topic within a Chapter, Subchapter, or Part. [See 655:10-3-24 (relating to Section numbers and taglines)]

**"Section subdivision"** means any one of five possible levels into which a Section may be separated. A maximum of five levels of Section subdivisions may be used in a Section [see 655:10-3-25 (relating to Section subdivisions)]:

- (A) Subsections
- (B) Paragraphs
- (C) Subparagraphs
- (D) Units
- (E) Subunits

**"Section text"** means the "regulatory text" (as defined in this Section) which follows the Section number and tagline in a Section.

**"Source note"** means the record of rulemaking history which follows a Section, an Appendix, or a Subchapter or Chapter table of contents in the Code. Source notes track the administrative history of a rule. [See 655:10-17-6 (relating to Chapter, Subchapter, and Section/Appendix source notes)]

**"Strikeout"** means a solid, ~~or dashed~~ horizontal line through deleted regulatory text.

**"Subchapter"** means a division of the OAC which contains a group of Sections related to the same general subject area within a Chapter. [See 655:10-3-23 (relating to Subchapter numbers and headings)]

**"Subparagraph"** means the third level of subdivision within a Section; a subparagraph is a subdivision of a paragraph in a Section. [See 655:10-3-25 (relating to Section subdivisions)]

**"Subsection"** means the first level of subdivision in a Section. [See 655:10-3-25 (relating to Section subdivisions)]

**"Subunit"** means the fifth level of subdivision within a Section; a subunit is a subdivision of a unit in a Section; it is the

smallest possible subdivision of a Section. [See 655:10-3-25 (relating to Section subdivisions)]

**"Technical legal defect"** means an error [in a joint resolution approving and/or disapproving proposed permanent rules, as set forth in 75 O.S., Section 308.3(C)] that would otherwise invalidate an action by a court of law [75:250.3(23)]

**"Title"** means the broadest division of the OAC; a Title contains the rules of one agency. [See 655:10-3-21 (relating to Title numbers and headings)]

**"Unit"** means the fourth level of subdivision within a Section; a unit is a subdivision of a subparagraph in a Section. [See 655:10-3-25 (relating to Section subdivisions)]

**"Working day"** means any day except Saturday, Sunday, or a legal holiday for state employees as proclaimed by the Governor.

## SUBCHAPTER 3. CODIFICATION OF RULES

### PART 1. INTRODUCTORY PROVISIONS

#### 655:10-3-1. Function; scope

(a) This Subchapter describes the codification scheme for inclusion of rules in the Oklahoma Administrative Code and its supplements. Inclusion of a rule in the OAC requires prior publication in the Register as a finally adopted permanent rule, ~~or as an adopted preemptive rule that has been approved by the Governor, or an expedited rule repeal that has been approved by the Legislature.~~ Emergency rules are not added to the OAC or its supplements. However, emergency rules are published in the Register. They are part of the history of a Section or Appendix as referenced in Section/Appendix source notes in the OAC, and must be prepared pursuant to the codification scheme.

(b) Unless otherwise specifically noted, the rules of this Subchapter apply to permanent, emergency, and preemptive rules, and to expedited rule repeals.

#### 655:10-3-3. Rulemaking after publication of first OAC

After publication of the first OAC, any rulemaking actions undertaken by an agency shall be prepared as additions, revocations, or amendments to the OAC, as follows:

(1) **Amendments; revocations.** All amendments or revocations shall bear the proper OAC numbers and shall amend or revoke OAC text. The OAR shall not accept for Register or Code publication an amendment to or revocation of any rule unless the regulatory text being amended or revoked:

(A) appears in the most recent published Code or Code supplement, or

(B) appears as finally adopted regulatory text in an issue of the Register published after the closing date for publication in the most recent published Code or Code supplement, or

(C) appears as an expedited rule repeal in an issue of the Register published after the closing date



for publication in the most recent published Code or Code supplement.

(2) **New rules.** Prior to the adoption of a new Chapter, the agency shall contact the OAR for assignment of a new Chapter number pursuant to 655:10-3-22. If the agency proposes a new Subchapter, Part, Section, or Appendix, the agency shall assign the new OAC number or numbers pursuant to 655:10-3-23 through 655:10-3-24.1 and proceed with the rulemaking process. The OAR may not accept a new rule for Register or Code publication unless the rule is prepared pursuant to the requirements of this Subchapter and Subchapters 5 and 7 of this Chapter.

**PART 5. CODE NUMBERING, HEADINGS, AND TAGLINES**

**655:10-3-25. Section subdivision numbers/letters and taglines**

(a) **Section subdivision numbers/letters.**

(1) **Structure.** Sections may be subdivided according to the following structure, in the order shown, subject to the provisions of (2) through (4) of this subsection.

(A) A subsection is designated by a lower-cased letter of the alphabet enclosed in parentheses [e.g., (a), (b), (c)].

(B) A paragraph is designated by an arabic numeral enclosed in parentheses [e.g., (1), (2), (3)].

(C) A subparagraph is designated by an upper-cased letter of the alphabet enclosed in parentheses [e.g., (A), (B), (C)].

(D) A unit is designated by a lower-cased roman numeral enclosed in parentheses [e.g., (i), (ii), (iii), (iv)].

(E) A subunit is designated by an upper-cased roman numeral enclosed in parentheses [e.g., (I), (II), (III), (IV)].

(2) **Tabulation.** Tabulation is a device for arranging the structure of Section subdivisions. With the exception of an "implied subsection (a)" [see 655:10-3-26(b)], subsections begin at the left margin. Paragraphs are indented approximately 1/4 inch; subparagraphs are indented approximately 1/2 inch; units are indented approximately 3/4 inch; subunits are indented approximately 1 inch. If the text of a subdivision exceeds one line, the second and any succeeding lines are aligned under the first parenthesis of the subdivision number or letter.

(3) **Designation.** If only one subsection exists in a Section, it is not designated as a subsection. The same policy applies to all other Section subdivision levels. For example, agencies may not use (a) without (b), or (1) without (2), etc. [See also 655:10-3-26(b) (relating to use of "implied (a)")]

(4) **Definitions.** Definitions of specific terms in a Definitions Section shall be formatted in an alphabetical listing and shall not be structured according to (1) through (3) of this subsection. [See 655:10-5-10 (relating to definitions Sections)]

(b) **Section subdivision taglines.** A tagline that briefly describes a Section subdivision's contents may be used [see also 655:10-5-15 (relating to writing taglines)], with the following exceptions:

(1) If the subdivision is an "implied subsection (a)," a tagline may not be used, as exemplified by 655:10-3-10 and 655:10-7-12. [See also 655:10-3-26(b) (relating to "implied (a)")]

(2) If a Section subdivision does not contain at least one complete sentence, or does not begin a sentence which is completed in lower-level subdivisions, a tagline may not be used, as exemplified by 655:10-15-5(a)(1)(A) through ~~(O)~~(P).

(3) If a tagline is used for any one subdivision, taglines must be used in all its corresponding subdivisions, as exemplified by taglines used throughout this Chapter.

(4) When taglines are used at a subdivision level, taglines must be used at any higher level subdivisions within the Section, except when the higher level subdivision is an "implied subsection (a)."

(5) If a subdivision is itself subdivided, and if no text precedes its subdivisions, it must be assigned a tagline, as exemplified by (c) of this Section.

(c) **Location; format; subdivision text.**

(1) A Section subdivision tagline is located on the same line as, and immediately following, the subdivision's number or letter [see (a) of this Section].

(2) The number/letter and the tagline are separated by approximately two spaces.

(3) The tagline is immediately followed on the same line by a period, two spaces, and the Section subdivision's text. The second line of text, and all succeeding lines within the subdivision, begin directly below the first parenthesis of the subdivision number or letter.

(4) The Section subdivision tagline is bolded; the subdivision number or letter is not bolded.

(5) The first letter of the first word of the tagline is capitalized; the remaining words of the tagline are typed in lowercase letters unless the word itself is a proper noun or otherwise requires capitalization.

(6) For examples of provisions in (1) through (5) of this subsection, see Section subdivision taglines used throughout this Chapter.

(d) **Assignment; promulgation.** Section subdivision numbers/letters and taglines are assigned by the adopting agency and reviewed by the OAR prior to publication in the Register and Code. Section subdivision numbers/letters and taglines must be promulgated as part of the regulatory text.

**PART 7. REGULATORY TEXT**

**655:10-3-35. Placement of Sections and Section text**

(a) **Placement of Sections.** In a rule document (emergency, permanent, ~~or~~ preemptive, or expedited repeal), affected Sections (i.e., Sections that are being added or revised in some way) follow the enacting clause [see 655:10-7-14 (relating to

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regulatory text)]. Sections should be separated by one or two blank lines.

(b) **Placement of Section text.** The text of a Section, referred to as "Section text," begins on the first line below the Section number and tagline, as follows:

(1) **No subdivisions used.** If the Section contains no subdivisions, the first line of text is ~~indented~~tabbed approximately 1/4 inch, and the second and succeeding lines of text begin at the left margin.

(2) **Subdivisions used.**

(A) **"Implied (a)" used.** If the Section begins with an "implied (a)" [see 655:10-3-26], the first line of text is ~~indented~~tabbed approximately 1/4 inch, and the second and succeeding lines of text begin at the left margin. Subdivisions of the "implied (a)" are formatted pursuant to 655:10-3-25.

(B) **Subsections used.** If the Section is divided into subsections, the first line of text begins with the subsection designation [i.e., (a)] at the left margin. The text of the subsection begins approximately two spaces following its tagline, if used, or approximately two spaces following its letter designation, if a tagline is not used. For formatting subsequent subsections [i.e., (b), (c), etc.] and further subdivisions, see 655:10-3-25.

## SUBCHAPTER 5. RULE DRAFTING REQUIREMENTS

### 655:10-5-6. Superseded emergency actions; expired emergency rules

(a) **Text affected.**

(1) **Superseded amendments.** When an emergency amendment is superseded by a permanent action, ~~or~~ another emergency action, or an expedited repeal which affects the same Section or Appendix, the later action must be prepared as an amendment to or revocation of the last promulgated permanent text in that Section or Appendix (i.e., prior to any emergency action). The previous emergency action is superseded by the later action upon the effectiveness of the later action.

(2) **Superseded new Section/Appendix.** When an emergency enactment of a new Section or Appendix is superseded by a permanent enactment of the Section/Appendix, or another emergency enactment of the Section/Appendix, each action must be prepared as the enactment of new language. Although the agency may alter the language of the earlier emergency action, the agency does not identify changes (through the use of strikeouts and underscoring) to the earlier emergency rule text. Emergency rule text is never amended, but is superseded by later rulemaking actions. The earlier emergency rule is superseded upon the effectiveness of the later rule.

(3) **Superseded revocations.** When an emergency revocation is superseded by a permanent or emergency revocation or an expedited repeal of the same Section or Appendix, the later revocation must be prepared as a

revocation of the last promulgated permanent text of that Section or Appendix.

(b) **Expiration date of superseding emergency actions.** When an emergency action is superseded by another emergency action or actions, the expiration date of the later action(s) must retain the same expiration date as the first emergency action [see 75:253(H)].

(c) **Preamble statement.** When the rules in a rule document will supersede existing emergency rules, the agency shall identify the superseded emergency rules under the heading **SUPERSEDED EMERGENCY ACTIONS** in the preamble [see 655:10-7-11(b)~~(5)~~(15)] and 655:10-7-11.1(c)(3)(H) of the rule document.

(d) **Expired emergency actions.** Agencies must notify the OAR in writing when an emergency action on a Section or Appendix expires without being superseded by a permanent or preemptive action. Agencies should notify the OAR upon the expiration of the emergency rule. The OAR will document the existence and expiration of the emergency language in the next available annual supplement by publishing a source note that cross references to the Register publication of the emergency action.

## SUBCHAPTER 7. PREPARATION OF DOCUMENTS

### PART 1. GENERAL PROVISIONS

#### 655:10-7-1. Types of documents; inclusion in Code; excluded documents

(a) **Rulemaking documents.** Notice and rule documents published in the Register are legal instruments through which a rulemaking entity revises its existing rules, or enacts new rules.

(1) **Notice documents.** Notice documents announce an agency's intention to adopt rules or the agency's compliance with certain other steps in the rulemaking process. Notice documents are published in the Register but are not included in the Code. [See Part 5 of this Subchapter (relating to notice documents)]

(2) **Rule documents.** Rule documents announce final adoption of permanent rules [75:250.3~~(5)~~(7); 75:308.1(A)], ~~or~~ adoption of emergency or preemptive rules [75:253; 75:250.6], or legislative adoption of expedited repeals of rules [75:303a]. [See also Part 3 of this Subchapter (relating to rule documents)]

(A) **Permanent, preemptive rules; expedited repeals.** Inclusion of a rule in the Code requires prior publication in a rule document in the Register as a finally adopted permanent rule or as an adopted preemptive rule that has been approved by the Governor or as an expedited repeal that has been approved by the Legislature.

(B) **Emergency rules.** Emergency rules are published in the Register but are not included in the Code.

(b) **Miscellaneous documents, including executive orders and gubernatorial declarations.** In addition to rulemaking

documents, executive orders, gubernatorial declarations as described in 75 O.S., Section 308.3, and other miscellaneous documents expressly required by law [see (c) of this section] are published in the Register. Executive orders are published in both the Register and the Code.

(c) **Excluded documents.** Notices or other documents which are not expressly required by law to be published in the Register or the Code shall not be published in the Register or the Code.

**655:10-7-6. Transmittal sheet; liaison verification**

(a) **Use; format.**

(1) A transmittal sheet must accompany each document submitted to the OAR and each emergency rule document submitted to the Governor and the Legislature. The transmittal sheet is not published.

(2) The transmittal sheet must include the headings and information described in (b) of this Section, formatted pursuant to the following:

- (A) Begin each heading at the left margin.
- (B) Begin the contents required for each heading on the first line below the heading.
- (C) ~~Indent~~ Tab the first line of the contents, but do not ~~indent~~ tab subsequent lines of the contents.

(b) **Content.** The transmittal sheet must be prepared pursuant to the style required in (a)(2) of this Section and must include the following headings and information:

(1) **Name of agency.** Under the bolded heading "NAME OF AGENCY:", type the name exactly as it appears in the agency's assigned Title heading in the OAC.

(2) **Type of document.** Under the bolded heading "TYPE OF DOCUMENT:", identify the type of document by typing one of the following:

- (A) Final adoption of permanent rules.
- (B) Final legislative adoption of expedited repeals.
- (C) Adoption of emergency rules.
- ~~(D)~~ Adoption of preemptive rules.
- ~~(E)~~ Notice of rulemaking intent.
- (F) Notice of expedited repeal request.
- ~~(G)~~ Notice of cancelled hearing or comment period.
- ~~(H)~~ Notice of continued hearing or comment period.
- ~~(I)~~ Statement of submission to Governor and Legislature.
- ~~(J)~~ Notice of legislative disapproval.
- ~~(K)~~ Notice of withdrawn rules.
- ~~(L)~~ Notice of errors in published document.

(3) **Liaison verification.** Under the bolded heading "LIAISON VERIFICATION:", include the following signed statement: "I verify that I have reviewed the attached document and that it substantially conforms to filing and format requirements of the APA and the rules of the Secretary of State. Additional information may be obtained by contacting me at (telephone number)." The statement must be followed by the liaison's signature, typed name, and job title, and the date the liaison signs the verification.

**PART 3. RULE DOCUMENTS**

**655:10-7-10. Types of rules and rule documents; rule document components; transmittal sheets**

(a) **Types of rules and rule documents.** A rule document contains either permanent, emergency, or preemptive rules, or expedited repeals of rules.

(1) A permanent rule document contains finally adopted permanent rules.

(2) An emergency rule document contains adopted emergency rules.

(3) A preemptive rule document contains adopted preemptive rules.

(4) An expedited rule repeal document contains rules that meet the criteria and have been approved by the Legislature for repeal through the expedited process set forth in 75 O.S., Section 303a.

(b) **Rule document components.** A rule document consists of the following components, in the following order:

(1) Document heading [see 655:10-7-3].

(2) Preamble [see 655:10-7-11 and 655:10-7-11.1].

(3) Summary of the rules (if rules are too lengthy to publish in the Register) [see 655:10-7-12].

(4) Enacting clause [see 655:10-7-13].

(5) Regulatory text [see 655:10-7-14].

(6) Supplemental information (if applicable) [see 655:10-7-15].

(7) Attestation [see 655:10-7-16].

(c) **Rule document scope.** See 655:10-7-51 for information about the scope of a rule document.

(d) **Transmittal sheet.** Each rule document submitted to the OAR shall be accompanied by a transmittal sheet prepared pursuant to 655:10-7-6.

**655:10-7-11. Preamble for permanent, emergency, and preemptive rule documents**

(a) **Use; location; format.**

(1) **Use; exception.** With the exception of expedited rule repeal documents [see 655:10-7-11.1], each rule document submitted for Register publication, and each emergency or preemptive rule document submitted to the Governor and the Legislature (and later submission to the OAR for Register publication), must begin with a document heading [see 655:10-7-3], followed by a preamble prepared pursuant to this Section. ~~The preamble is followed by the enacting clause [see 655:10-7-13] except, if the text of the rules exceeds 75 pages, the preamble is followed by the summary [see 655:10-7-12]. [See also 655:10-7-51 (relating to rule document scope)]~~

(2) **Location.** The preamble begins two single spaces below the document heading [see 655:10-7-3]. The preamble is followed by the enacting clause [see 655:10-7-13], or the summary if the text of the rules exceeds 75 pages [see 655:10-7-12].

(3) **Format.**

(A) The preamble must be single-spaced.

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- (B) The preamble must include the headings and information required in (b) of this Section, formatted pursuant to the following:
- (i) Begin each heading and subheading at the left margin.
  - (ii) Begin the contents required for each heading and subheading on the first line below the heading or subheading.
  - (iii) ~~IndentTab~~ the first line of the contents, but do not ~~indenttab~~ subsequent lines of the contents; except, when listing rules under the heading **RULES** [see (b)(2) of this Section], begin each rule number on a separate ~~indented~~tabbed line under the heading.
- (b) **Content.** The preamble must be prepared in the style described in (a)(3) of this Section and must contain the following headings and information:
- (1) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type one of the following:
    - (A) If permanent rules, type "PERMANENT final adoption."
    - (B) If emergency rules, type "EMERGENCY adoption."
    - (C) If preemptive rules, type "PREEMPTIVE adoption."
  - (2) **Rules.** Under the bolded heading "**RULES:**", identify adopted rules (if emergency or preemptive) or finally adopted rules (if permanent) pursuant to the following:
    - (A) **Less than 30 Sections/Appendices affected.** If less than 30 Sections and/or Appendices are added, amended, revoked, renumbered, and/or reserved:
      - (i) cite each Section and Appendix, followed by the word [NEW], [AMENDED], [REVOKED], [RENUMBERED], [AMENDED AND RENUMBERED], or [RESERVED]. If consecutive Sections or Appendices are added, amended, revoked, renumbered, or reserved, they may be grouped together (e.g., 10:10-1-5 through 10:10-1-9 [AMENDED]; 10:10-1-10 and 10:10-1-11 [REVOKED]; 10:10-1-15 through 10:10-1-17 [NEW]; Appendix C through Appendix G [NEW]), and
      - (ii) include all applicable Subchapter and Part numbers and headings, and add [NEW] or [REVOKED] following the headings of Subchapter and Parts that are added or revoked. If a heading is being amended, identify the changes using strikeouts and underscoring as described in 655:10-5-3(b).
    - (B) **30 or more Sections/Appendices affected.** If 30 or more Sections and/or Appendices are added, amended, revoked, renumbered, and/or reserved:
      - (i) cite the Chapter number and heading, rather than citing each Section and Appendix, and:
      - (ii) identify whether the Chapter itself is new, amended, or revoked, as follows:
        - (I) **New Chapter.** If the Chapter is a new Chapter, add the word [NEW] following the Chapter number and heading.
        - (II) **Revoked Chapter.** If the entire Chapter is revoked (i.e., every Section and Appendix in the Chapter, except those previously reserved, renumbered, or revoked, is being revoked), add the word [REVOKED] following the Chapter number and heading.
        - (III) **Amended Chapter.** If an existing Chapter is amended (i.e., Sections/Appendices are added, amended, revoked, renumbered, and/or reserved), add the word [AMENDED] following the Chapter number and heading. If the Chapter heading is being amended, identify the changes using strikeouts and underscoring as described in 655:10-5-3(b).
  - (3) **Authority.** Under the bolded heading "**AUTHORITY:**":
    - (A) identify the rulemaking entity, as defined in 655:10-1-2, and
    - (B) cite the statute or other legal instrument which authorizes the promulgation of rules for this area of control, or the statute or other legal instrument which authorizes the rules. Do not cite APA statutes which authorize rulemaking procedures except when promulgating "required rules" pursuant to 655:10-5-7.
  - (4) **Submission of proposed rules to Governor and Cabinet Secretary.**
    - (A) **Permanent rules.** If the rules are permanent rules, under the bolded heading "**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**", cite the date the proposed rules were submitted to the Governor and the agency's Cabinet Secretary for review, as required by ~~Executive Order 2013-3475 O.S., Section 303(A)(6).~~
    - (B) **Emergency, preemptive rules.** If the rules are emergency or preemptive rules, do not include this heading or the information described in this paragraph.
  - (5) **Comment period.** Under the bolded heading "**COMMENT PERIOD:**", cite one of the following:
    - (A) **Permanent rules.** If the rules are permanent rules, cite the beginning date and ending date of the comment period announced in the published Notice of Rulemaking Intent.
    - (B) **Emergency, preemptive rules.** If the rules are emergency or preemptive rules AND if a comment period was announced in a published Notice of Rulemaking Intent, cite the beginning date and ending date of the comment period. **Do not include** this heading or this information if no comment period was held or announced in the Register for the emergency or preemptive rules.
  - (6) **Public hearing.** Under the bolded heading "**PUBLIC HEARING:**", cite one of the following:
    - (A) **Permanent rules.** If the rules are permanent rules, cite one of the following:
      - (i) the date of the public hearing, if one was announced in a published Notice of Rulemaking Intent, or

- (ii) "None held or requested" if a public hearing was not scheduled and not demanded pursuant to 75 O.S., Section 303(C).
- (B) **Emergency, preemptive rules.** If the rules are emergency or preemptive rules AND if a public hearing was announced in a published Notice of Rulemaking Intent, cite the date of the public hearing. **Do not include** this heading or this information if no public hearing was held or announced in the Register for the emergency or preemptive rules.
- (7) **Adoption.** Under the bolded heading "**ADoption**:", cite the date the rules were adopted by the rulemaking entity.
- (8) **Submission of adopted rules to Governor and Legislature.**
  - (A) **Permanent rules.** If the rules are permanent rules, under the bolded heading "**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE**:", cite the date the adopted permanent rules were submitted to the Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate, and Joint Committee pursuant to 75 O.S., Section 303.1(A).
  - (B) **Emergency, preemptive rules.** If the rules are emergency or preemptive rules, do not include the heading or information described in this paragraph.
- (9) **Legislative approval.**
  - (A) **Permanent rules.** If the rules are permanent rules AND if the rules were approved by a ~~joint or omnibus~~ joint resolution AND if the resolution was either approved by the Governor pursuant to OKLA. Const. Art. 6, §Section 11 or the Governor's veto was overridden by the Legislature, under the bolded heading "**LEGISLATIVE APPROVAL**:", type "Approved [effective date of joint ~~or omnibus~~ resolution approving the permanent rule(s)] by [number of joint ~~or omnibus~~ resolution]." The effective date is the day the resolution was either approved by the Governor pursuant to OKLA. Const. Art. 6, §Section 11 or the Governor's veto was overridden by the Legislature.
  - (B) **Emergency, preemptive rules.** If the rules are emergency or preemptive rules, do not include the heading or the information described in this paragraph.
- (10) **Legislative disapproval.**
  - (A) **Permanent rules.** If the rules are permanent rules AND the rules were disapproved by an ~~omnibus~~ joint resolution AND the resolution was either approved by the Governor pursuant to OKLA. Const. Art. 6, §Section 11 or the Governor's veto was overridden by the Legislature, under the bolded heading "**LEGISLATIVE DISAPPROVAL**:", type "Disapproved [effective date of ~~omnibus~~ joint resolution disapproving the permanent rule(s)] by [number of ~~omnibus~~ joint resolution]." The effective date is the day the resolution was approved by the Governor or the Governor's veto was overridden by the Legislature.
  - (B) **Emergency, preemptive rules.** If the rules are emergency or preemptive rules, do not include the heading or the information described in this paragraph.
- (11) **Approval by Governor's declaration.**
  - (A) **Permanent rules.** Under the bolded heading "**APPROVED BY GOVERNOR'S DECLARATION**:", type "Approved by Governor's declaration on (date of Governor's declaration)" if the rules are permanent rules AND the rules were:
    - (i) ~~approved by a Governor's declaration AFTER being disapproved by an omnibus joint resolution that was either approved by the Governor pursuant to OKLA. Const. Art. 6, § 11 or the Governor's veto was overridden by the Legislature [75:308.3(D)(3)], or~~
    - (ii) filed with the Legislature on or before April 1 AND the rules were *not subject to a joint resolution passed by both houses of the Legislature and signed by the Governor* ~~approved by Governor's declaration AFTER the Legislature failed to pass an omnibus joint resolution prior to sine die adjournment of the Legislature~~ AND the rules were approved by a Governor's Declaration [75:308.3(D)(4)(C)], or
    - (iii) filed with the Legislature on or before April 1 AND the rules were approved by a Governor's declaration AFTER being approved by an ~~omnibus~~ a joint resolution that was found by the Governor to have a *technical legal defect preventing approval of administrative rules intended to be approved by the Legislature* [75:308.3(D)(4)(C)].
  - (B) **Emergency, preemptive rules.** If the rules are emergency or preemptive rules, do not include the heading or the information described in this paragraph.
- (12) **Final adoption.**
  - (A) **Permanent rules.** If the rules are permanent rules, under the bolded heading "**FINAL ADOPTION**:", cite the date of final adoption. The final adoption date is the date that one of the following occurs:
    - (i) the date the Governor approves a ~~joint or omnibus~~ joint resolution approving the rules, or the date the Governor's veto of the resolution is overridden by the Legislature [see OKLA. Const. Art. 6, §Section 11 (relating to gubernatorial actions on legislation)];
    - (ii) the date the Governor vetoes a joint ~~or omnibus~~ joint resolution disapproving the rules, provided the veto is not overridden by the Legislature; or
    - (iii) the date the rules are approved by a Governor's declaration as described in (11)(A) of this subsection. [See also definition of "final adoption" in 655:10-1-2 and 75:250.3(7)]

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- (B) **Emergency, preemptive rules.** If the rules are emergency or preemptive rules, do not include the heading or information described in this paragraph.
- (13) **Effective.** Under the bolded heading "**EFFECTIVE:**", cite one of the following:
- (A) **Permanent rules.** If the rules are permanent, cite an effective date that is at least ten days after the date the rules will be published in the Register [see 655:10-9-3 (relating to Register publication dates and filing deadlines)]. Do not cite "ten days after publication in the Register."
- (B) **Emergency rules.** If the rules are emergency, cite one of the following:
- (i) **Effective immediately upon Governor's approval.** If the emergency rules will be effective immediately upon approval by the Governor, type "Immediately upon Governor's approval";
- (ii) **Contingent effective date.** If the emergency rules will be effective on a specific date that falls within the Governor's 45 calendar-day review period, but is contingent upon whether or not the Governor has already approved the rules, type "Immediately upon Governor's approval or (specific date), whichever is later"; or
- (iii) **Later effective date.** If the emergency rules will be effective on a specific date that follows the completion of the Governor's 45 calendar-day review period, type the specific effective date [see 75:253(F)(1)].
- (C) **Preemptive rules.** If the rules are preemptive, cite one of the following:
- (i) **Effective immediately upon Governor's approval.** If the preemptive rules will be effective immediately upon approval by the Governor, type "Immediately upon Governor's approval";
- (ii) **Contingent effective date.** If the preemptive rules will be effective on a specific date that falls within the Governor's 28 calendar-day review period, but is contingent upon whether or not the Governor has already approved the rules, type "Immediately upon Governor's approval or (specific date), whichever is later"; or
- (iii) **Later effective date.** If the preemptive rules will be effective on a specific date that follows the completion of the Governor's 28 calendar-day review period, type the specific effective date [see 75:250.6(B)(6)].
- (14) **Expiration.**
- (A) **Emergency rules.** If the rules are emergency rules, under the bolded heading "**EXPIRATION:**", cite one of the following:
- (i) **Latest possible expiration date.**
- (I) **Effective on or before first day of session.** If the emergency rules will be *in effect on the first day of the session* and therefore will be null and void on September 15 immediately following *sine die adjournment of the Legislature* [75:253(H)(3)(a)], type "Effective through September 14, (same year), unless superseded by another rule or disapproved by the Legislature."
- (II) **Effective after first day of session.** If the emergency rules will become effective after the first day of the session and therefore will not be null and void until September 15 following *sine die adjournment of the next legislative session*, type "Effective through September 14, (next year), unless superseded by another rule or disapproved by the Legislature."
- (ii) **Earlier expiration date.** If the emergency rules will expire on a date that is earlier than the latest possible expiration date for the rules, as described in (i)(I) and (II) of this subparagraph, type "Expires (date), unless superseded by another rule or disapproved by the Legislature."
- (B) **Permanent, preemptive rules.** If the rules are permanent or preemptive rules, do not include the heading or information described in (A) of this paragraph.
- (15) **Superseded emergency actions; expired emergency rules.**
- (A) **Superseded emergency actions.** Under the bolded heading "**SUPERSEDED EMERGENCY ACTIONS:**", cite one of the following:
- (i) **Rules that do NOT supersede emergency rules.** If the rules are permanent, emergency, or preemptive rules and do not supersede any emergency rules, type "n/a."
- (ii) **Rules that DO supersede emergency rules.** If the rules are permanent, emergency, or preemptive rules and do supersede an emergency action, include the information in (I) through (IV) of this unit. If more than one emergency action is being superseded, repeat (I) through (IV) for each action.
- (I) **Superseded rules.** Under the bolded subheading "**Superseded rules:**", identify the superseded emergency rules by citing each Section and Appendix being superseded, followed by the word [NEW], [AMENDED], [REVOKED], [RENUMBERED], [AMENDED AND RENUMBERED], or [RESERVED], to identify the emergency status of the Section or Appendix being superseded.
- (II) **Gubernatorial approval.** Under the bolded subheading "**Gubernatorial approval:**", cite the date the superseded emergency rules were approved by the Governor.
- (III) **Register publication.** Under the bolded subheading "**Register publication:**", include the full citation to the Register publication of the superseded emergency rules. [see 655:10-15-6 (relating to citing the Register)]
- (IV) **Docket number.** Under the bolded subheading "**Docket number:**", cite the docket

number assigned to the rule document which contains the superseded emergency rule(s).

(B) **Expired emergency rules.** If a Section or Appendix was added, revoked, amended, reserved, or renumbered by emergency rulemaking and will not be superseded by a permanent or preemptive action prior to its expiration, the agency must notify the OAR pursuant to 655:10-5-6(d).

(16) **Incorporations by reference.** Under the bolded heading "**INCORPORATIONS BY REFERENCE:**", cite one of the following:

(A) **Rules that do NOT incorporate by reference.** If the rules do not incorporate any standards or rules by reference, type "n/a." [See 75:251(D) and 655:10-5-15 relating to incorporations by reference]

(B) **Rules that DO incorporate by reference.** If the rules incorporate by reference the published standards or rules of nationally recognized organizations and technical societies, other state agencies, or federal agencies pursuant to 75 O.S., Section 251(D) and 655:10-5-15, include the information in (i) through (iii) of this subparagraph.

(i) **Incorporated standards.** Under the bolded subheading "**Incorporated standards:**", identify the incorporated standards by the proper title, edition, volume number, date, etc.

(ii) **Incorporating rules.** Under the bolded subheading "**Incorporating rules:**", identify the Section(s) or Appendix(ces) which incorporates the standards by reference.

(iii) **Availability.** Under the bolded subheading "**Availability:**", cite the hours when and the place where the standards are *readily available to the public for examination at the administrative offices of the agency* [75:251(D)].

(17) **Finding of emergency.**

(A) **Emergency rules.** If the rules are emergency rules, under the bolded heading "**FINDING OF EMERGENCY:**", include *substantial evidence that the rule is necessary as an emergency measure* [75:253(A)(1)], based on criteria set out in 75 O.S., Section 253(A).

(B) **Permanent, preemptive rules.** If the rules are permanent or preemptive rules, do not include the heading or information described in this paragraph.

(18) **Gist/Analysis.** Under the bolded heading "**GIST/ANALYSIS:**", *prepare, in plain language, a statement of the gist of the rules and an analysis of new or amended rules* [75:251(B)(2)(f)]. *The analysis shall include but not be limited to:*

(A) *a reference to any statute that the rule interprets, any related statute or any related rule* [75:251(B)(2)(f)], and

(B) *a reference to any rule requiring a new or revised form* [75:251(B)(2)(e)].

(19) **Contact person.** Under the bolded heading "**CONTACT PERSON:**", include the name and phone number

of a contact person for information regarding the rulemaking action. Additional contact information, such as email address or fax number, may also be included under this heading.

(20) **Additional information.** Under the bolded heading "**ADDITIONAL INFORMATION:**", cite any additional information determined by the agency to be pertinent. The use of this category is optional.

**655:10-7-11.1. Preamble for expedited rule repeal documents**

(a) **Use.** Upon final legislative adoption [75:303a] of a proposed expedited repeal of rules, the agency must file a document, as set forth in this Section, with the OAR for publication in the Register.

(b) **Document heading.** The expedited rule repeal document must begin with a document heading, as set forth in 655:10-7-3.

(c) **Content of preamble.** The document heading must be followed by a preamble prepared pursuant to this Section.

(1) **Location.** The preamble begins two single spaces below the document heading. The preamble is followed by the enacting clause [see 655:10-7-13], or the summary if the text of the rules exceeds 75 pages [see 655:10-7-12].

(2) **Format.**

(A) The preamble must be single-spaced.

(B) The preamble must include the headings and information required in (b) of this Section, formatted pursuant to the following:

(i) Begin each heading and subheading at the left margin.

(ii) Begin the contents required for each heading and subheading on the first line below the heading or subheading.

(iii) Tab the first line of the contents, but do not tab subsequent lines of the contents; except, when listing rules under the heading **REPEALED RULES** [see (c)(3)(B) of this Section], begin each rule number on a separate tabbed line under the heading.

(3) **Content.** The preamble must be prepared in the style described in (c)(2) of this Section and must contain the following headings and information:

(A) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type "EXPEDITED rule repeals."

(B) **Repealed rules.** Under the bolded heading "**REPEALED RULES:**", identify repealed rules pursuant to the following:

(i) **Less than 30 Sections/Appendices affected.** If less than 30 Sections and/or Appendices are repealed:

(1) cite each Section and Appendix, followed by the word [REVOKED]. If consecutive Sections or Appendices are repealed, they may be grouped together (e.g., 10:10-1-5 through 10:10-1-9 [REVOKED]; 10:10-1-15 through

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10:10-1-17 [REVOKED]; Appendix C through Appendix G [REVOKED]), and

(II) include all applicable Subchapter and Part numbers and headings, and add [REVOKED] following the Subchapter and Part headings if all the Sections in that Subchapter or Part are being repealed.

(ii) **30 or more Sections/Appendices affected.** If 30 or more Sections and/or Appendices are repealed:

(I) cite the Chapter number and heading, rather than citing each Section and Appendix, and;

(II) identify whether the entire Chapter is repealed (i.e., every Section and Appendix in the Chapter, except those previously reserved, renumbered, or revoked, is being repealed), and add the word [REVOKED] following the Chapter number and heading.

(C) **Authority.** Under the bolded heading "**AUTHORITY:**":

(i) identify the rulemaking entity, as defined in 655:10-1-2, and

(ii) cite "75 O.S., Section 303a," which is the statute that sets out the criteria allowing for the expedited repeal of rules.

(D) **Comment period.** Under the bolded heading "**COMMENT PERIOD:**", cite the beginning date and ending date of the comment period announced in the published Notice of Expedited Repeal Request [see 655:10-7-26.1].

(E) **Submission of proposed repeals to Legislature.** Under the bolded heading "**SUBMISSION OF PROPOSED REPEALS TO LEGISLATURE:**", cite the date the Notice of Expedited Repeal Request was submitted to the Speaker of the House of Representatives, President Pro Tempore of the Senate, and Joint Committee pursuant to 75 O.S., Section 303a.

(F) **Legislative adoption.** Under the bolded heading "**LEGISLATIVE ADOPTION:**", type "Approved [effective date of joint resolution approving the expedited repeal of the rules] by [number of joint resolution]." The effective date of the resolution is the date the resolution was either approved by the Governor pursuant to OKLA. Const. Art. 6, Section 11 or the Governor's veto was overridden by the Legislature.

(G) **Effective.** Under the bolded heading "**EFFECTIVE:**", cite the specific effective date of the expedited repeals. The effective date may not be earlier than the effective date of the resolution approving the expedited repeal of the rules, as identified in (F) of this paragraph.

(H) **Superseded emergency actions.** Under the bolded heading "**SUPERSEDED EMERGENCY ACTIONS:**", cite one of the following:

(i) **Rules that do NOT supersede emergency rules.** If the expedited repeals do not supersede

emergency rules that are in effect on the effective date of the expedited rule repeals, as cited in (c)(3)(G) of this section, type "n/a."

(ii) **Rules that DO supersede emergency rules.** If the rules do supersede emergency rules that are in effect on the effective date of the expedited rule repeals, as cited in (c)(3)(G) of this section, include the information in (I) through (IV) of this unit. If more than one emergency action is being superseded, repeat (I) through (IV) for each action.

(I) **Superseded rules.** Under the bolded subheading "**Superseded rules:**", identify the superseded emergency rules by citing each Section and Appendix being superseded, followed by the word [NEW], [AMENDED], [REVOKED], [RENUMBERED], [AMENDED AND RENUMBERED], or [RESERVED], to identify the emergency status of the Section or Appendix being superseded.

(II) **Gubernatorial approval.** Under the bolded subheading "**Gubernatorial approval:**", cite the date the superseded emergency rules were approved by the Governor.

(III) **Register publication.** Under the bolded subheading "**Register publication:**", include the full citation to the Register publication of the superseded emergency rules. [see 655:10-15-6 (relating to citing the Register)]

(IV) **Docket number.** Under the bolded subheading "**Docket number:**", cite the docket number assigned to the rule document which contains the superseded emergency rule(s).

(I) **Gist/analysis.** Under the bolded heading "**GIST/ANALYSIS:**", prepare, in plain language, a statement of the gist of the [rule repeals] and an analysis of the rule repeals. [75:251(B)(2)(f)]

(J) **Contact person.** Under the bolded heading "**CONTACT PERSON:**", include the name, email address, and phone number of a contact person for information regarding the expedited repeals.

(K) **Additional information.** Under the bolded heading "**ADDITIONAL INFORMATION:**", cite any additional information determined by the agency to be pertinent. The use of this category is optional.

### 655:10-7-13. Enacting clause

Beginning two single spaces below the preamble [see 655:10-7-11], or the summary as set forth in 655:10-7-12 (if required) [see 655:10-7-12] the text of the rules won't be published in the Register due to length), type an enacting clause pursuant to this Section. Type the enacting clause in uppercase letters beginning at the left margin.

(1) **Permanent rules.** If the rules are permanent rules, type the following enacting clause: PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS



SET FORTH IN 75 O.S., SECTIONS 250.3(5)(7) AND 308(E), WITH AN EFFECTIVE DATE OF (date):

(2) **Emergency rules.** If the rules are emergency rules, type one of the following enacting clauses:

(A) **Effective upon Governor's approval.** If the effective date cited by the agency in the preamble of the emergency rule document is "Immediately upon Governor's approval" [as described in 655:10-7-11(b)(13)(B)(i)], type the following enacting clause: PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

(B) **Contingent effective date.** If the effective date cited by the agency in the preamble of the emergency rule document is "Immediately upon Governor's approval or (date), whichever is later" [as described in 655:10-7-11(b)(13)(B)(ii)], type the following enacting clause: PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR (date), WHICHEVER IS LATER:

(C) **Later effective date.** If the effective date cited by the agency in the preamble of the emergency rule document is a specific date that follows the completion of the Governor's review period [as described in 655:10-7-11(b)(13)(B)(iii)], type the following enacting clause: PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF (date):

(3) **Preemptive rules.** If the rules are preemptive rules, type one of the following enacting clauses:

(A) **Effective upon Governor's approval.** If the effective date cited by the agency in the preamble of the preemptive rule document is "Immediately upon Governor's approval" [as described in 655:10-7-11(b)(13)(C)(i)], type the following enacting clause: PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PREEMPTIVE RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 250.6(B)(6):

(B) **Contingent effective date.** If the effective date cited by the agency in the preamble of the preemptive rule document is "Immediately upon Governor's approval or (date), whichever is later" [as described in 655:10-7-11(b)(13)(C)(ii)], type the following enacting clause: PURSUANT TO THE ACTIONS

DESCRIBED HEREIN, THE FOLLOWING PREEMPTIVE RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 250.6(B)(6), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR (date), WHICHEVER IS LATER:

(C) **Later effective date.** If the effective date cited by the agency in the preamble of the preemptive rule document is a specific date that follows the completion of the Governor's review period [as described in 655:10-7-11(b)(13)(B)(iii)], type the following enacting clause: PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PREEMPTIVE RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 250.6(B)(6), WITH A LATER EFFECTIVE DATE OF (date):

(4) **Expedited rule repeals.** If the rules are expedited repeals, type the following enacting clause: PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE REPEALED UNDER THE EXPEDITED REPEAL PROVISIONS SET FORTH IN 75 O.S., SECTION 303a, WITH AN EFFECTIVE DATE OF (date):

**655:10-7-14. Regulatory text**

Beginning two single spaces below the enacting clause described in 655:10-7-13, include the text of the adopted Sections and Appendices (if emergency or preemptive), or the finally adopted Sections and Appendices (if permanent), or the revoked Sections and Appendices (if expedited repeals), including any applicable Subchapter and Part numbers and headings, ~~identifying.~~ Identify all revisions and additions to the text with strikeouts and underscoring, as required by 75:251(B)(2)(c) and 655:10-5-2 through 655:10-5-4.

**655:10-7-15. Supplemental information**

(a) **Use; publication.** Supplemental information in a rule document may only contain, when applicable, *brief notes, illustrations, findings of facts, and references to digests of Supreme Court cases, other court decisions, or Attorney General's opinions, and other explanatory material* [75:251(B)(2)(g)]. The text of supplemental information is not considered regulatory text. Supplemental information is not published but is maintained in the official Register/Code files.

(b) **Location; heading.** Agencies shall begin supplemental information on a separate sheet of paper in the rule document. Supplemental information shall follow the ~~Register pages of~~ regulatory text [see 655:10-7-14] and precede the attestation [see 655:10-7-16]. Agencies shall type a heading on the first page of the supplemental information, as follows:

(1) Type "SUPPLEMENTAL INFORMATION" centered on a line approximately one inch from the top of the page.

(2) Beginning two single spaces below the information required in (1) of this subsection, type a centered,

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single-spaced heading which is identical to the document heading [see 655:10-7-3].

## 655:10-7-16. Attestations

(a) **Use.** Agencies shall include an attestation in each rule document submitted to the OAR for Register publication, and in each emergency and preemptive rule document submitted to the Governor and the Legislature (and ~~subsequent~~subsequently to the OAR for Register publication). Such attestation shall be prepared as set forth in this Section and 75 O.S., Section 254. The attestation is not published in the Register or the Code, but is maintained with the official rule document in the official files.

(b) **Location.** Prepare the attestation on a separate page in the document. The attestation follows regulatory text [see 655:10-7-14], or supplemental information if applicable [see 655:10-7-15].

(c) **Original signature.** ~~At least one copy of the~~ The attestation in permanent rule documents submitted to the OAR must contain an original or electronic signature of an authorized attestation officer [see 655:10-1-6 (relating to agency representatives)]. Attestations in emergency and preemptive rule documents submitted to the OAR may be ~~photocopied~~an electronic copy of the signed attestation previously filed with the Governor and Legislature for review.

(d) **Authorized signatures.** Pursuant to 655:10-1-6, the rulemaking entity must report to the OAR the name of each person who is authorized by the rulemaking entity to sign attestations for rules. The OAR will not accept a rule document for publication unless the name or names of the person or persons signing the attestation have been reported in writing to the OAR pursuant to this subsection and 655:10-1-6(d).

(e) **Contents.** Attestations for rule documents must ~~contain the following two paragraphs and~~ be worded as follows, and contain an authorized signature:

### (1) **Permanent, emergency, preemptive rules.**

(A) **First paragraph.** The language of the first paragraph must read: (I, We), the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of (amendments to, additions to, revoked, new) (Chapter number), (Chapter heading) which (was, were) (adopted, considered finally adopted) by (title of rulemaking entity) on (date) under (emergency, preemptive, permanent) rulemaking provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

(~~2B~~) **Second paragraph.** The language of the second paragraph must read: (I, We), the undersigned, do hereby attest that such (rule, rules) (was, were) (adopted, finally adopted) in substantial compliance with the Administrative Procedures Act.

(2) **Expedited repeals.** The language of the attestation for expedited rule repeals must read as follows: (I, We), the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of the expedited repeal of (a rule, rules) in (Chapter number), (Chapter heading) of Title (Title number), which (was, were) adopted by

the Legislature on (date) under the expedited repeal procedures set forth in 75 O.S., Section 303a.

(3) **Authorized signature.** The attestation must be signed by an attestation officer [see 655:10-1-6]. The signature is followed by<sup>7</sup> the typed name and title of the attestation officer, and the date the attestation is signed.

## PART 5. NOTICE DOCUMENTS

### 655:10-7-25. Notice document types; transmittal sheet

(a) **Types of notices.** Notice documents announce various types of rulemaking actions, as follows:

(1) Notice of rulemaking intent.

(2) Notice of expedited repeal request.

(~~23~~) Notice of cancelled hearing or comment period.

(~~34~~) Notice of continued hearing or comment period.

(~~45~~) Statement of submission of permanent rules to Governor and Legislature.

(~~56~~) Notice of legislative disapproval of rules.

(~~67~~) Notice of withdrawn rules.

(~~78~~) Notice of error in published document.

(b) **Transmittal sheet.** Each notice document submitted to the OAR shall be accompanied by a transmittal sheet prepared pursuant to 655:10-7-6.

### 655:10-7-26. Notices of rulemaking intent

(a) **Use.** See 655:10-7-26.1 and 75 O.S., Section 303a for separate requirements for Notices of Expedited Repeal Requests.

(1) **Permanent rules.** Prior to adoption of a permanent rule, the agency must publish in the Register a notice describing the intended rulemaking action. The notice of rulemaking intent must be prepared pursuant to this Section. The agency must allow a minimum 30-day comment period following publication of the notice before adopting the rules. [75:303(A)-(C)]

(2) **Emergency and preemptive rules.** Although an agency is not required to publish a notice of rulemaking intent prior to adoption of an emergency or preemptive rule, the agency may publish a notice of rulemaking intent that announces a full or abbreviated comment period and/or a hearing. If the agency elects to publish a notice of rulemaking intent, the notice must be prepared pursuant to this Section. [75:253(J) and 75:250.6(D)]

(b) **Format; document heading.** The notice of rulemaking intent begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (c) of this Section, formatted pursuant to the following:

(1) Begin each heading at the left margin.

(2) Begin the contents required for each heading on the first line below the heading.

(3) ~~Indent~~Tab the first line of the contents, but do not ~~indent~~tab subsequent lines of the contents; except, when listing rules under the heading **PROPOSED RULES** [see (c)(2) of this Section], begin each rule number on a separate ~~indented~~tabbed line under the heading.

(c) **Content.** A notice of rulemaking intent must be prepared pursuant to the style required in (b) of this Section and must contain the following headings and information:

(1) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type one of the following:

(A) If permanent rulemaking is proposed, type "Notice of proposed PERMANENT rulemaking."

(B) If emergency rulemaking is proposed, type "Notice of proposed EMERGENCY rulemaking."

(C) If preemptive rulemaking is proposed, type "Notice of proposed PREEMPTIVE rulemaking."

(D) If permanent and emergency rulemaking are simultaneously proposed (i.e., the agency is announcing a comment period/hearing to consider adopting the proposed rules as both permanent and emergency rules), type "Notice of proposed PERMANENT and EMERGENCY rulemaking."

(2) **Proposed rules.** Under the bolded heading "**PROPOSED RULES:**", identify the proposed rulemaking action. It is the agency's responsibility to determine how specific its identification of the proposed rules should be. However, the agency must comply with the following:

(A) If the agency elects not to identify each affected Section and Appendix, the agency must at a minimum identify whether the Chapter itself is being added, amended, or revoked by typing the Chapter number and name followed by [NEW], [AMENDED], or [REVOKED].

(B) If the agency elects to identify each affected Section, Appendix, Part, and Subchapter, the agency must identify whether the Sections, Appendices, Parts, and/or Subchapters are [NEW], [AMENDED], [REVOKED], [RESERVED], [RENUMBERED], or [AMENDED AND RENUMBERED]. If headings or taglines are included, identify any proposed amendments to a heading or tagline through the use of strikeouts and underscoring. [See also 655:10-7-11(b)(2) (relating to identifying rules in preambles)]

(3) **Summary.** Under the bolded heading "**SUMMARY:**", explain the proposed action by including, at a minimum, the following statutory requirements:

(A) *in simple language, a brief summary of the rule[s].* [75:303(B)(1)]

(B) *the proposed action[s] being taken.* [75:303(B)(2)]

(C) *the circumstances which created the need for the rule[s].* [75:303(B)(3)]

(D) *the intended effect of the rule[s].* [75:303(B)(5)].

(4) **Authority.** Under the bolded heading "**AUTHORITY:**",

(A) identify the rulemaking entity, as defined in 655:10-1-2, and

(B) cite the *specific legal authority, including statutory citations, authorizing the proposed rule* [75:303(B)(4)]. The "specific legal authority" is the statute or other legal instrument which authorizes the promulgation of rules for this area of control, or

the statute or other legal instrument which authorizes the rules. Do not cite APA statutes which authorize rulemaking procedures except when promulgating "required rules" pursuant to 655:10-5-7.

(5) **Comment period.** Under the bolded heading "**COMMENT PERIOD:**", cite the time when, the place where, and the manner in which interested persons may *submit data, views or arguments, orally or in writing* [75:303(A)(2)]. The agency must allow a minimum 30-day comment period from the date the notice will be published in the Register.

(6) **Public hearing.** Under the bolded heading "**PUBLIC HEARING:**", cite one of the following:

(A) If the agency schedules a hearing, cite the date, time and place of such hearing, and *the manner in which interested persons may present their views* [75:303(B)(7)]. The hearing *may not be held earlier than thirty (30) days after notice of the hearing is published* [75:303(C)(2)] in the Register.

(B) If the agency does not schedule a hearing, cite *the time when, the place where, and the manner in which persons may demand a hearing* [75:303(B)(9)]. The agency must allow a minimum of 30 days from the date the NRI is published for persons to demand a hearing. [75:303(C)(1)]

(7) **Requests for comments from business entities.** Under the bolded heading "**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES,**" identify whether any of the proposed rules affect business entities, as follows:

(A) *If the agency determines that the rule[s] affects business entities, include a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs . . . and indirect costs . . . , or other costs expected to be incurred by a particular entity due to compliance with the proposed rule[s]* [75:303(B)(6)]; or

(B) If the agency determines that the rule(s) does not affect business entities, as described in (A) of this paragraph and in 75 O.S., Section 303(B)(6), type "n/a."

(8) **Copies of proposed rules.** Under the bolded heading "**COPIES OF PROPOSED RULES:**", cite *where copies of the proposed rules may be obtained for review by the public* [75:303(B)(10)]. Other information about the proposed rules, such as copying charges, may also be included.

(9) **Rule impact statement.** Under the bolded heading "**RULE IMPACT STATEMENT:**"

(A) *state if the agency intends to issue a rule impact statement . . . and where copies of such impact statement may be obtained for review by the public* [75:303(B)(8)]. Do not include the rule impact statement itself. The rule impact statement must be issued *prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption* (i.e., the Notice of Rulemaking Intent)

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[75:303(D)(1)]. See 75 O.S., Section 303(D)(2) for required contents of a rule impact statement.

(B) If the agency has received a waiver in writing from the Governor pursuant to 75 O.S., Section 303(D)(3), cite "Waived by Governor on (date)."

(10) **Contact person.** Under the bolded heading "**CONTACT PERSON:**", include the name and phone number of a contact person for information regarding the proposed rulemaking.

(11) **Additional information.** Under the bolded heading "**ADDITIONAL INFORMATION:**", cite any additional information determined by the agency to be pertinent to the notice. The use of this category is optional.

### **655:10-7-26.1. Notices of expedited repeal request**

(a) **Use.** When an agency initiates a request for expedited rule repeal, the agency shall submit a notice of expedited repeal request pursuant to this Section and 75 O.S., Section 303a.

(b) **Format; document heading.** The notice of expedited repeal request begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (c) of this Section, formatted pursuant to the following:

(1) Begin each heading at the left margin.

(2) Begin the contents required for each heading on the first line below the heading.

(3) Tab the first line of the contents, but do not tab subsequent lines of the contents; except, when listing rules under the heading **EXPEDITED REPEALS REQUESTED** [see (c)(2) of this Section], begin each rule number on a separate tabbed line under the heading.

(c) **Content.** A notice of expedited repeal request must be prepared pursuant to the style required in (b) of this Section and must contain the following headings and information:

(1) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type the following: Notice of EXPEDITED repeal request.

(2) **Rules for expedited repeal.** Under the bolded heading "**EXPEDITED REPEALS REQUESTED:**", identify the rules submitted for expedited repeal as described in 655:10-7-11(b)(2).

(3) **Summary.** Under the bolded heading "**SUMMARY:**", explain the proposed action by including, at a minimum, a summary of the requested expedited repeals, including a statement indicating the repeal request complies with, and meets the criteria set out in, 75 O.S., Section 303a.

(4) **Authority.** Under the bolded heading "**AUTHORITY:**":

(A) identify the rulemaking entity, as defined in 655:10-1-2, and

(B) cite "75 O.S., Section 303a," the statute that sets out the criteria allowing for the expedited repeal of rules.

(5) **Comment period.** Under the bolded heading "**COMMENT PERIOD:**", cite the time when, the place where, and the manner in which interested persons may

submit comments. The agency must allow a minimum 10-day comment period from the date the notice will be published in the Register [75:303a(B)(4)].

(6) **Copies of proposed repeals.** Under the bolded heading "**COPIES OF PROPOSED RULE REPEALS:**", cite where copies of the proposed rule repeals may be obtained for review by the public. Other information about the proposed rules, such as copying charges, may also be included.

(7) **Contact person.** Under the bolded heading "**CONTACT PERSON:**", include the name and phone number of a contact person for information regarding the proposed rulemaking.

(8) **Additional information.** Under the bolded heading "**ADDITIONAL INFORMATION:**", cite any additional information determined by the agency to be pertinent to the notice. The use of this category is optional.

### **655:10-7-27. Notices of cancelled hearing or comment period**

(a) **Use.** When an agency cancels a hearing or comment period announced in a Notice of Rulemaking Intent or Notice of Expedited Repeal Request, the agency shall submit a Notice of Cancelled Hearing or Comment Period pursuant to this Section. [See also 655:10-7-52 (relating to notice document scope)]

(b) **Publication.**

(1) When the Notice of Cancelled Hearing or Comment Period is received by the OAR prior to the filing deadline for the Register issue in which the Notice of Rulemaking Intent or Notice of Expedited Repeal Request will be published, the Notice of Rulemaking Intent or Notice of Expedited Repeal Request is not published and the Notice of Cancelled Hearing or Comment Period is not published. Both notices are maintained in the official files.

(2) When the Notice of Cancelled Hearing or Comment Period is received by the OAR after the filing deadline for the Register issue in which the Notice of Rulemaking Intent or Notice of Expedited Repeal Request will be published, the cancellation notice is published in the next possible issue of the Register.

(c) **Format; document heading.** The Notice of Cancelled Hearing or Comment Period begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (d) of this Section, formatted pursuant to the following:

(1) Begin each heading at the left margin.

(2) Begin the contents required for each heading on the first line below the heading.

(3) ~~indent~~ Tab the first line of the contents, but do not ~~indent~~ tab subsequent lines of the contents; except, when listing rules under the heading **PROPOSED RULES** [see (d)(2) of this Section], begin each rule number on a separate ~~indented~~ tabbed line under the heading.

(d) **Content.** A Notice of Cancelled Hearing or Comment Period must be prepared pursuant to the style required in (c)

of this Section and must contain the following headings and information:

- (1) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type the following: "Cancelled (comment period, public hearing, comment period and public hearing) relating to a proposed (PERMANENT, EMERGENCY, PERMANENT/EMERGENCY, EXPEDITED REPEAL) rulemaking action."
- (2) **Proposed rules/expedited repeals.** Under the bolded heading "**PROPOSED RULES:**", type the same information included under the heading "**PROPOSED RULES**" in the Notice of Rulemaking Intent [see 655:10-7-26(c)(2)] or under the heading "**EXPEDITED REPEALS REQUESTED**" in the Notice of Expedited Repeal Request [see 655:10-7-26.1(c)(2)].
- (3) **Register publication of Notice.** Under the bolded heading "**REGISTER PUBLICATION OF NOTICE:**", type the following: "The (Notice of Rulemaking Intent, Notice of Expedited Repeal Request) for this action was published at (Register cite)." [See 655:10-15-6 (relating to citing the Register)]
- (4) **Cancelled comment period.** Under the bolded heading "**CANCELLED COMMENT PERIOD:**" (if cancelling a comment period), cite the beginning date and ending date of the cancelled comment period. Do not include this heading or this information unless a comment period is being cancelled.
- (5) **Cancelled public hearing.** Under the bolded heading "**CANCELLED PUBLIC HEARING:**" (if cancelling a public hearing), cite the date, time and place of the cancelled public hearing. Do not include this heading or this information unless a public hearing is being cancelled.
- (6) **Additional information.** Under the bolded heading "**ADDITIONAL INFORMATION:**", cite any additional information determined by the agency to be pertinent to the notice. The use of this category is optional.

**655:10-7-28. Notices of continued hearing or comment period**

- (a) **Use.** If an agency continues a hearing or comment period announced in a published Notice of Rulemaking Intent or Notice of Expedited Repeal Request, the agency may submit a Notice of Continued Hearing or Comment Period to the OAR. [See also 655:10-7-52 (relating to notice document scope)]
- (b) **Publication.** If the hearing or comment period is continued to a date which is earlier than five days after the expected publication date of the Notice of Continued Hearing or Comment Period, the Notice of Continued Hearing or Comment Period is not published, but is maintained in the official Register files.
- (c) **Format; document heading.** The Notice of Continued Hearing or Comment Period begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (d) of this Section, formatted pursuant to the following:

- (1) Begin each heading and subheading at the left margin.
- (2) Begin the contents required for each heading and subheading on the first line below the heading or subheading.
- (3) ~~Indent~~<sup>Tab</sup> the first line of the contents, but do not ~~indent~~<sup>tab</sup> subsequent lines of the contents; except, when listing rules under the heading **PROPOSED RULES** or **EXPEDITED REPEALS REQUESTED** [see (d)(2) of this Section], begin each rule number on a separate ~~indented~~<sup>tabbed</sup> line under the heading.

(d) **Content.** A Notice of Continued Hearing or Comment Period must be prepared pursuant to the style required in (c) of this Section and must contain the following headings and information:

- (1) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type the following: "Continued (comment period, public hearing, comment period and public hearing) relating to a proposed (PERMANENT, EMERGENCY, PERMANENT/EMERGENCY, EXPEDITED REPEAL) rulemaking action."
- (2) **Proposed rules/expedited repeals.** Under the bolded heading "**PROPOSED RULES:**", type the same information included under the heading "**PROPOSED RULES**" in the Notice of Rulemaking Intent [see 655:10-7-26(c)(2)] or under the heading "**EXPEDITED REPEALS REQUESTED**" in the Notice of Expedited Repeal Request [see 655:10-7-26.1(c)(2)].
- (3) **Register publication of Notice.** Under the bolded heading "**REGISTER PUBLICATION OF NOTICE:**", type the following: "The (Notice of Rulemaking Intent, Notice of Expedited Repeal Request) for this action was published at (Register cite)." [See 655:10-15-6 (relating to citing the Register)]
- (4) **Continued comment period.**
  - (A) Under the bolded heading "**CONTINUED COMMENT PERIOD:**" (if continuing a comment period), include the following:
    - (i) **Original comment period.** Under the bolded subheading "**Original comment period:**", cite the beginning and ending dates of the original comment period.
    - (ii) **Continued to.** Under the bolded subheading "**Continued to:**", cite the time when, the place where, and the manner in which interested persons may *submit data, views or arguments, orally or in writing* [75:303(A)(2)] for the comment period which continues the original comment period.
  - (B) Do not include this heading or this information unless a comment period is being continued.
- (5) **Continued public hearing.**
  - (A) Under the bolded heading "**CONTINUED PUBLIC HEARING:**" (if continuing a public hearing), include the following:
    - (i) **Original public hearing.** Under the bolded subheading "**Original public hearing:**", cite the date, time, and place of the original public hearing.

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- (ii) **Continued to.** Under the bolded subheading "Continued to:", cite the date, time, and place of the hearing which continues the original public hearing.
- (B) Do not include this heading or this information unless a public hearing is being continued.
- (6) **Requests for comments from business entities.**
- (A) **Permanent, emergency, or preemptive rules.** Under the bolded heading "REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES," identify whether any of the proposed rules affect business entities, as follows:
- (Ai) *If the agency determines that the rule[s] affects business entities, include a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs . . . and indirect costs . . . , or other costs expected to be incurred by a particular entity due to compliance with the proposed rule[s]* [75:303(B)(6)]; or
- (Bii) If the agency determines that the rule(s) does not affect business entities, as described in (A)(i) of this paragraph, and in 75 O.S., Section 303(B)(6), type "n/a."
- (B) **Expedited repeals.** Do not include this heading or this information if continuing a comment period or an optional public hearing for a request for the expedited repeal of rules.
- (7) **Copies of proposed rules.** Under the bolded heading "COPIES OF PROPOSED RULES:", cite *where copies of the proposed rules may be obtained for review by the public* [75:303(B)(9)].
- (8) **Rule impact statement.**
- (A) **Permanent, emergency, or preemptive rules.** Under the bolded heading "RULE IMPACT STATEMENT:", state if the agency has issued or intends to issue a rule impact statement . . . and where copies of such impact statement may be obtained for review by the public [75:303(B)(8)].
- (B) **Expedited repeals.** Do not include this heading or this information if continuing a comment period or an optional public hearing for the expedited repeal of rules.
- (9) **Additional information.** Under the bolded heading "ADDITIONAL INFORMATION:", cite any additional information determined by the agency to be pertinent to the notice. The use of this category is optional.

### 655:10-7-29. Statements of submission of adopted rules to Governor and Legislature

(a) **Use.** This Section does not apply to emergency rules, preemptive rules, or requests for expedited rule repeals. Within 10 days after adoption of permanent rules, the agency must submit the rules to the Governor and the Legislature, pursuant to 75 O.S., Section 303.1. Upon submission of the rules, the agency shall also submit to the Office of Administrative Rules for publication in *The Oklahoma Register*, a statement

that the adopted rules have been submitted to the Governor and the Legislature [75:303.1(C)]. [See also 655:10-7-52 (relating to notice document scope)] As required by 74 O.S., Section 464, agencies must submit the rules to the Governor and Legislature via the State Online Filing System; provided, [i]f for any reason the person required to file such document determines that it cannot be filed electronically, the person shall file a printed copy in lieu of such electronic filing and shall include an explanation of the reason that the document could not be filed electronically [74:464].

(b) **Format; document heading.** The Statement of Submission of adopted permanent rules to Governor and Legislature begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (c) of this Section, formatted pursuant to the following:

- (1) Begin each heading at the left margin.
- (2) Begin the contents required for each heading on the first line below the heading.
- (3) ~~Indent Tab~~ the first line of the contents, but do not ~~indent~~ subsequent lines of the contents; except, when listing rules under the heading **RULES** [see (c)(2) of this Section], begin each rule number on a separate ~~indented~~ tabbed line under the heading.

(c) **Content.** A Statement of Submission must be prepared pursuant to the style required in (b) of this Section and must contain the following headings and information:

- (1) **Rulemaking action.** Under the bolded heading "RULEMAKING ACTION:", type the following: "Submission to Governor and Legislature."
- (2) **Rules.** Under the bolded heading "RULES:", identify the submitted rules as described in 655:10-7-11(b)(2).
- (3) **Submitted to Governor and Legislature.** Under the bolded heading "SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:", cite the date the rules were submitted to the Governor and Legislature.

### 655:10-7-32. Notices of legislative disapproval

(a) **Use.** The agency must submit notice of legislative disapproval of rules to the OAR for publication in the Register, ~~as required by 75 O.S., Section 308(C)~~, if:

- (1) a permanent rule is disapproved by joint resolution of the Legislature pursuant to 75 O.S., Section 308(B) ~~and (C) or omnibus joint resolution pursuant to 75 O.S., Section 308.3~~ AND the resolution is either approved by the Governor pursuant to OKLA. Const. Art. 6, §~~Section~~ 11 or the Governor's veto is overridden by the Legislature;
- (2) a proposed or promulgated emergency rule is disapproved by joint resolution of the Legislature pursuant to 75:O.S., Section 253(H)(2)(a), and the resolution is either approved by the Governor pursuant to OKLA. Const. Art. 6, §~~Section~~ 11 or the Governor's veto is overridden by the Legislature; ~~or~~
- (3) a proposed expedited repeal of rules is disapproved by joint resolution of the Legislature pursuant to 75 O.S., Section 308(B) and (C), and the resolution is either approved by the Governor pursuant to OKLA. Const. Art.

6, Section 11 or the Governor's veto is overridden by the Legislature.

(b) **Format; document heading.** The Notice of Legislative Disapproval of Rules begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (c) of this Section, formatted pursuant to the following:

- (1) Begin each heading and subheading at the left margin.
- (2) Begin the contents required for each heading and subheading on the first line below the heading or subheading.
- (3) ~~Indent~~Tab the first line of the contents, but do not ~~indent~~tab subsequent lines of the contents; except, when listing rules under the heading **RULES** or **EXPEDITED REPEALS REQUESTED** [see (c)(2) of this Section], begin each rule number on a separate ~~indented~~tabbed line under the heading.

(c) **Content.** A Notice of Legislative Disapproval of Rules must be prepared pursuant to the style required in (b) of this Section and must contain the following headings and information:

- (1) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type one of the following:
  - (A) If the disapproved rules are permanent, type "Legislative disapproval of PERMANENT rules."
  - (B) If the disapproved rules are emergency, type "Legislative disapproval of EMERGENCY rules."
  - (C) If the disapproved rules are preemptive, type "Legislative disapproval of PREEMPTIVE rules."
  - (D) If the disapproved rules are expedited repeals, type "Legislative disapproval of EXPEDITED REPEAL of rules."
- (2) **Rules.** Under the bolded heading "**RULES:**" or "**EXPEDITED REPEALS REQUESTED:**", identify the disapproved rules as described in 655:10-7-11(b)(2) or 655:10-7-11.1(c)(3)(B).
- (3) **Legislative disapproval.** Under the bolded heading "**LEGISLATIVE DISAPPROVAL:**", type "(These rules were, This rule was) disapproved by the Legislature in (number of joint or ~~omnibus~~ joint-resolution), effective (date)." The effective date is the date the resolution disapproving rules was approved by the Governor pursuant to OKLA. Const. Art. 6, §Section 11, or the date the Governor's veto was overridden by the Legislature.
- (4) **Emergency rules terminated.** Under the bolded heading "**EMERGENCY RULES TERMINATED:**", type the following if the disapproved rules are permanent or preemptive rules which are based on effective emergency rules [75:253(H)(2)(c)]: "The following emergency rules are also terminated by this disapproval:"
  - (A) **Rules.** Under the bolded subheading "**Rules:**", identify each emergency rule terminated as a result of the disapproval.
  - (B) **Gubernatorial approval.** Under the bolded subheading "**Gubernatorial approval:**", cite the date or dates of emergency approval by the Governor.

(C) **Register publication.** Under the bolded subheading "**Register publication:**", type the docket number and the full citation to the Register publication of the emergency rules. [see 655:10-15-4 (relating to docket number) and 655:10-15-6 (relating to citing the Register)]

**655:10-7-33. Notices of withdrawn rules**

(a) **Withdrawal of permanent rules.** As set forth in 75 O.S., Section 308(F), an agency may withdraw a permanent rule prior to its final adoption, as defined in 75 O.S., Sections 250.3~~(5)(7)~~ and OAC 655:10-1-2. When an agency withdraws a permanent rule after its adoption but prior to its final adoption, the agency must submit a Notice of Withdrawn Rules pursuant to this Section, except as provided in ~~(e)~~(d) of this section.

(b) **Withdrawal of emergency rules.** An agency may withdraw an emergency rule prior to its approval by the Governor pursuant to 75 O.S., Section 253(K). When an agency withdraws an emergency rule after its submission to the Governor but prior to its approval by the Governor, the agency must submit a Notice of Withdrawn Rules pursuant to this Section, except as provided in ~~(e)~~(d) of this section.

(1) If the agency published a Notice of Rulemaking Intent for the withdrawn emergency rule, the OAR will publish the Notice of Withdrawn Rules in the Register.

(2) If the agency did not publish a Notice of Rulemaking Intent for the withdrawn emergency rule, the OAR will not publish the Notice of Withdrawn Rules, but will retain the Notice in the official files.

(c) **Withdrawal of expedited repeal.** As set forth in 75 O.S., Section 303a(C), an agency may withdraw an expedited repeal request "prior to final legislative adoption." When an agency withdraws an expedited repeal request prior to its final legislative adoption, the agency must submit a Notice of Withdrawn Rules pursuant to this Section. [See also 75:303a and 655:10-7-26.1]

(ed) **Filing exception for "resubmitted rules."**

(1) **Criteria for "resubmitted rules."** When an agency discovers an error in a filing that has been submitted to the Governor and Legislature via the State Online Filing System ("System"), the System allows the agency to "resubmit" that filing, but only if:

(A) the agency resubmits the filing within 10 calendar days after the rules were adopted, and

(B) the agency first withdraws the original submission in the System. The System requires a Notice of Withdrawn Rules to be prepared pursuant to this section. The agency may include information under the heading "**ADDITIONAL INFORMATION:**", as described in ~~(e)(3)(D)~~(f)(3)(A)(iv) of this section, to explain that the rules, although withdrawn, are being resubmitted.

(2) **Filing with OAR not required.** When an agency withdraws and resubmits a filing on the System within 10 days after the rules were adopted, as described in (1)(A) of this subsection, the agency should not submit a copy of the Notice of Withdrawn Rules required by (1)(B) of

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this subsection to the OAR. If submitted, the OAR will not publish the Notice of Withdrawn Rules, but will retain the Notice in the official files.

(~~d~~e) **Format; document heading.** The Notice of Withdrawn Rules begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (~~e~~)(~~f~~) of this Section, formatted pursuant to the following:

- (1) Begin each heading and subheading at the left margin.
- (2) Begin the contents required for each heading and subheading on the first line below the heading or subheading.
- (3) ~~Indent~~Tab the first line of the contents, but do not ~~indent~~tab subsequent lines of the contents; except, when listing rules under the heading **WITHDRAWN RULES** [see (~~e~~)(~~f~~)(2) of this Section], begin each rule number on a separate ~~indented~~tabbed line under the heading.

(~~e~~)~~f~~) **Content.** A Notice of Withdrawn Rules must be prepared pursuant to the style required in (~~d~~)(~~e~~) of this Section and must contain the following headings and information:

- (1) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type one of the following:
  - (A) If the withdrawn rules are permanent, type "Withdrawal of PERMANENT rulemaking."
  - (B) If the withdrawn rules are emergency, type "Withdrawal of EMERGENCY rulemaking."
  - (C) If the withdrawn rules are expedited repeals, type "Withdrawal of EXPEDITED repeal request."
- (2) **Withdrawn rules.** Under the bolded heading "**WITHDRAWN RULES:**", identify the withdrawn rules as described in 655:10-7-11(b)(2).
- (3) **Dates.** Under the bolded heading "**DATES:**", identify any of the following dates which apply to the rulemaking action prior to withdrawal.

(A) **Withdrawal of permanent/emergency rules.** If the agency is withdrawing proposed permanent or emergency rules, use the following format:

- (~~A~~i) **Adoption.** Under the bolded subheading "**Adoption:**", cite the date the rules were adopted.
- (~~B~~ii) **Submission of adopted rules to Governor and Legislature.** Include this subheading and information if rules are withdrawn after submission of the adopted rules to the Governor and Legislature. Under the bolded subheading "**Submission of adopted rules to Governor and Legislature:**", cite the date the rules were submitted to the Governor and Legislature.
- (~~C~~iii) **Withdrawn.** Under the bolded subheading "**Withdrawn:**", cite the date the rules were withdrawn from the rulemaking process. This date is the date withdrawal notice is given to the Governor, the Speaker of the House of Representatives, ~~and~~ the President Pro Tempore of the Senate, and the Joint Committee.

(~~D~~iv) **Additional information.** Under the bolded heading "**ADDITIONAL INFORMATION:**", cite any additional information determined by the agency to be pertinent. The use of this category is optional.

(B) **Withdrawal of expedited repeal request.** If the agency is withdrawing an expedited repeal request, use the following format:

(i) **Submission of expedited repeal request to Legislature.** Include this subheading and information if the expedited repeal request is being withdrawn after submission of the request to the Legislature and "prior to final legislative adoption" [75:303a(C)]. Under the bolded subheading "**Submission of expedited repeal request to Legislature:**", cite the date the repeal request was submitted to the Legislature.

(ii) **Withdrawn.** Under the bolded subheading "**Withdrawn:**", cite the date the expedited repeal request was withdrawn from the expedited repeal process. This withdrawal date is the date the withdrawal notice is given to the Speaker of the House of Representatives, President Pro Tempore of the Senate, and Joint Committee.

(iii) **Additional information.** Under the bolded heading "**ADDITIONAL INFORMATION:**", cite any additional information determined by the agency to be pertinent. The use of this category is optional.

### 655:10-7-35. Notices of errors in published documents

(a) **Use.** When an agency discovers certain errors in certain documents, as specified in 655:10-13-3, after publication of such documents in the Register, the agency may submit to the OAR a Notice of Error in Published Document prepared pursuant to this Section. [See also 655:10-7-52 (relating to notice document scope)]

(b) **Format; document heading.** The Notice of Error in Published Document begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (c) of this Section, formatted pursuant to the following:

- (1) Begin each heading and subheading at the left margin.
- (2) Begin the contents required for each heading and subheading on the first line below the heading or subheading.
- (3) ~~Indent~~Tab the first line of the contents, but do not ~~indent~~tab subsequent lines of the contents;

(c) **Content.** A Notice of Error in Published Document must be prepared pursuant to the style required in (b) of this Section and must contain the following headings and information:

- (1) **Action.** Under the bolded heading "**ACTION:**", type "Notice of error in published document."
- (2) **Document corrected.** Under the bolded heading "**DOCUMENT CORRECTED:**", identify the document being corrected as follows:



(A) **Document type.** Under the bolded subheading "**Document type:**", identify the type of document corrected by typing one of the following:

- (i) Permanent rule document (preamble).
- (ii) Expedited rule repeal document (preamble)
- (iii) Permanent rule document (enacting clause).
- (iv) Expedited rule repeal document (enacting clause).
- (~~iii~~v) Notice of Rulemaking Intent. [See restrictions in 655:10-13-3]
- (vi) Notice of Expedited Repeal Request. [See restrictions in 655:10-13-3]
- (~~iv~~vii) Notice of Cancelled Comment Period/Hearing. [See restrictions in 655:10-13-3]
- (~~v~~viii) Notice of Continued Comment Period/Hearing. [See restrictions in 655:10-13-3]
- (~~vi~~ix) Statement of Submission to Governor and Legislature.
- (~~vii~~x) Notice of Legislative Disapproval of Rules.
- (~~viii~~xi) Notice of Withdrawn Rules.

(B) **Rules.** Under the bolded subheading "**Rules:**", identify the rules affected pursuant to 655:10-7-11(b)(2), or 655:10-7-11.1(c)(3)(B) if applicable.

(C) **Register publication.** Under the bolded heading "**Register publication:**", include the full citation to the Register publication of the document being corrected. [see 655:10-15-6 (relating to citing the Register)]

(D) **Docket number.** Under the bolded heading "**Docket number:**", cite the docket number assigned by the OAR to the document being corrected.

(3) **Corrections.** Under the bolded heading "**CORRECTIONS:**", explain each correction by clearly citing the information being corrected, followed by the information as it should be stated. For example, "Information cited under the heading ADOPTION was incorrect and should read as follows: October 1, 1989."

**PART 7. MISCELLANEOUS DOCUMENTS**

**655:10-7-47. Governor's declarations**

Governor's declarations [75: 308.3(~~D~~)(C)] are submitted to the OAR in the same format as they are issued by the Governor.

**PART 9. DOCUMENT SCOPE**

**655:10-7-50. Combined category documents**

The OAR may not accept a document for publication if it combines material that must appear in different categories of the Register [see 655:10-15-5(~~b~~)(a)] (relating to Register

categories)]. For example, a document may not contain both a permanent rule and an emergency rule, or a notice of rulemaking intent and a notice of gubernatorial approval.

**655:10-7-51. Rule document scope, limitations**

(a) **Multiple Sections/Appendices in one Chapter.** An agency ~~should~~may combine, in one rule document, all new, amended, revoked, reserved, and renumbered Sections and Appendices in ~~at the same~~ the same Chapter when the Sections and Appendices are:

- (1) finally adopted on the same date if the rules are permanent rules, or
- (2) adopted on the same date if the rules are emergency or preemptive rules, or
- (3) approved by the Legislature in the same joint resolution if the rules are expedited repeals, as set forth in 75 O.S., Section 303a.

(b) **Restrictions.** An agency may not combine, in one rule document, any of the following:

- (1) Sections or Appendices from different Chapters.
- (2) Permanent rules that are finally adopted on different dates.
- (3) Emergency or preemptive rules that are adopted on different dates.
- (4) Expedited rule repeals that are approved by the Legislature in different joint resolutions.

**655:10-7-52. Notice document scope, limitations**

(a) **Multiple Sections/Appendices in one Chapter.** An agency ~~should~~may announce, in one notice document, rulemaking actions occurring on the same date if the affected Sections or Appendices are part of the same Chapter, unless otherwise restricted pursuant to this Section.

(b) **Restrictions.**  
 (1) **Notices of rulemaking intent; continued or cancelled comment periods/hearings.**

(A) Agencies may not announce, in one notice of rulemaking intent, notice of expedited repeal request, notice of continued hearing or comment period, or notice of cancelled hearing or comment period, proposed rules that are in different Chapters.

(B) Agencies may announce more than one comment period or more than one hearing in a single notice of rulemaking intent, notice of expedited repeal request, notice of continued hearing or comment period, or notice of cancelled hearing or comment period only when **each** comment period or hearing applies to all proposed rules.

(2) **Notices of expedited repeal requests.**  
 (A) Agencies may not announce, in one notice of expedited repeal request, the proposed repeal of rules that are in different Chapters.

(B) Agencies may announce more than one comment period in a single notice of expedited repeal request, only when **each** comment period applies to all proposed repeals.

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(3) **Statements of submission.** Agencies may announce submissions of more than one Section or Appendix in a single Statement of Submission to Governor and Legislature only when the rules are:

- (A) submitted to the Governor on the same date,
- (B) submitted to the Legislature on the same date, and
- (C) in the same Chapter.

(34) **Notices of legislative disapproval.** Agencies may announce legislative disapproval of more than one Section or Appendix in a single Notice of Legislative Disapproval of Rules only when the rules are:

- (A) disapproved on the same date, and
- (B) in the same Chapter.

(45) **Notices of withdrawn rules.**

(A) **Permanent and emergency rules.** Agencies may announce withdrawal of more than one Section or Appendix in a single Notice of Withdrawn Rules for proposed permanent or preemptive rules only when the rules are:

- (A*i*) adopted on the same date,
- (B*ii*) submitted to the Governor on the same date,
- (C*iii*) submitted to the Legislature on the same date,
- (D*iv*) withdrawn on the same date, and
- (E*v*) in the same Chapter.

(B) **Expedited rule repeals.** Agency may announce withdrawal of more than one Section or Appendix in a single Notice of Withdrawn Rules for proposed expedited repeals only when the rules are:

- (i) submitted to the Legislature on the same date.
- (ii) withdrawn on the same date, and
- (iii) in the same Chapter.

(56) **Notices of errors.** Agencies may report, in a single Notice of Errors in Published Document, more than one error only when the errors occurred in the same published document.

(i) **Permanent rules.** Within 30 calendar days after final adoption of permanent rules, submit ~~two~~ (2) an electronic copy of the permanent rule ~~documents~~ document to the OAR. [See also (c) of this Section]

(ii) **Emergency rules.** Upon approval by the Governor of emergency rules, submit ~~two~~ (2) copies an electronic copy of the emergency rule document and the Governor's approval to the OAR. [See also (c) of this Section]

(iii) **Preemptive rules.** Upon approval by the Governor of preemptive rules, submit ~~two~~ (2) copies an electronic copy of the preemptive rule document and the Governor's approval to the OAR [75:250.6(B)(3)]. [See also (c) of this Section]

(iv) **Expedited rule repeals.** Upon approval by the Legislature of expedited rule repeals, submit an electronic copy of the expedited rule repeal document to the OAR. [See also (c)(3) of this Section]

(B) **Notice documents.** Submit ~~one~~ (1) an electronic copy of notice documents to the OAR. [75:303(B)]

(C) **Extra copies.** ~~If an agency wishes to receive a stamped copy noting receipt and/or acceptance of a document, the agency should submit additional copies pursuant to 655:10-9-5 and 655:10-11-3.~~

(2) **Electronic copies.** ~~Documents must also be submitted to the OAR in electronic form, as set forth in this paragraph; except, Appendices, attestations, and supplemental information (in rule documents) and transmittal sheets are NOT submitted in electronic form.~~

(A) **Media options.** ~~Submit documents on a compact disc (CD), digital versatile disc (DVD), or other media approved for use by the OAR.~~

(B) **Labeling disks.** ~~Label each CD or DVD. The label must identify the Title, Chapter, and type of filing of each document on the CD/DVD.~~

(2) **Electronic submission.** Submit documents electronically in electronic format, as required by this Section, via email, or by web submission if available.

(3) **Inaccessible records.** ~~If a record submitted to the OAR is inaccessible~~ the OAR is unable to access a document (e.g., due to a faulty CD/DVD, a corrupt, or incompatible file, etc.), the OAR will notify the agency as soon as possible. The agency must resubmit the file on another CD or DVD electronically in a format that is accessible by the OAR.

(c) **Special treatment of rule documents.**

(1) **Emergency and preemptive rules.** Upon approval by the Governor of an emergency or preemptive rule document, the agency shall submit the rule document ~~in paper and~~ in paper and electronic form to the OAR, as set forth in ~~(b)~~ of this Section, and pursuant to the following:

(A) Submit ~~two~~ (2) paper copies an electronic copy of the entire rule document, ~~including attestation.~~ The rule document submitted must include any corrections needed to bring the document into substantial

## SUBCHAPTER 9. SUBMISSION OF DOCUMENTS

### 655:10-9-1. ~~Number of paper copies; electronic~~ Electronic copies and submissions; special treatment of rule documents

(a) **Electronic preparation of documents.** All documents must be prepared using word processing software, as required by 655:10-7-2(1)(A).

(b) **Submission of documents.** When submitting a document to the OAR for publication in the Register, agencies shall submit the document as set forth in this subsection. [See also (c) of this Section for special treatment of rule documents and 655:10-7-2 655:10-7-10 for rule document components.]

(1) ~~Paper copies.~~ Electronic copies.

(A) **Rule documents.**

compliance with this Chapter, including any that were identified by the OAR in its review of the document during the Governor's review period [75:253(C)(2) and 250.6(B)(2)].

(B) ~~Submit two (2) paper copies~~ an electronic copy of the Governor's approval.

(C) ~~Submit a CD or DVD containing a copy of all parts of the rule document except the attestation, transmittal sheet, appendices (if any), and supplemental information (if any).~~

(~~D~~C) Submit the electronic copy of the red-marked pages or format-approved pages that were—was\_ returned to the agency by the OAR after reviewing the rules during the Governor's review period.

(2) **Permanent rules.** Within 30 calendar days after final adoption of permanent rules, the agency must submit a permanent rule document to the OAR [75:308.1(A)] in ~~paper and~~ electronic form, as set forth in (b) of this Section, and pursuant to the following:

(A) ~~Submit two (2) paper copies~~ an electronic copy of the entire rule document, ~~including attestation.~~ The rules included in the permanent rule document must include any corrections necessary to bring the rules into substantial compliance with this Chapter, including any that were reported to the agency by the OAR at earlier stages of the rulemaking process.

(B) ~~Submit a CD or DVD containing a copy of all parts of the rule document except the attestation, transmittal sheet, appendices (if any), and supplemental information (if any).~~

(~~C~~B) Submit the electronic copy of the red-marked pages or format-approved pages that were—was\_ returned to the agency by the OAR after reviewing the rules during the Legislature's review period.

(3) **Expedited rule repeals.** Upon approval by the Legislature of a request for expedited repeal of rules, the agency must submit an expedited rule repeal document to the OAR in electronic form, as set forth in (b) of this Section.

**655:10-9-2. Filing hours; location [REVOKED]**

(a) ~~Agencies may file documents with the Office of Administrative Rules by hand delivering between 9:00 a.m. and 4:30 p.m. Monday through Friday, or by sending through interagency mail or postal service.~~

(b) ~~The Office of Administrative Rules strongly recommends that agencies hand deliver documents when possible. A document which is received through postal or interagency mail service is not officially filed until the document is assigned a docket number. If interagency mail or postal service is used, the agency may verify receipt by calling the Office of Administrative Rules or by submitting extra copies for acknowledgements of receipt and acceptance pursuant to 655:10-9-5 and 655:10-11-3.~~

**655:10-9-5. Acknowledgement of receipt**

~~If the agency wishes to receive notification of a document's receipt, the agency must submit an extra copy of the document. The OAR will acknowledge receipt of a document as follows:~~

(1) ~~If the document is hand delivered, the OAR will note the date of receipt and the docket number on the extra copy and immediately return it to the agency.~~

(2) ~~If the document is mailed, the OAR will note the date of receipt and the docket number on the extra copy and will return the copy to the agency via postal or interagency mail service. Upon receipt of a filing, OAR will note the date of receipt and the docket number on the electronic document and will return the copy to the agency via email, or by web transmission if available.~~

**SUBCHAPTER 11. REVIEW OF DOCUMENTS**

**655:10-11-3. Acknowledgement of acceptance**

~~If the agency wished to receive notification of document's acceptance pursuant to 655:10-11-1, the agency must submit an extra copy of the document, in addition to the extra copy submitted for acknowledgement of receipt set forth in 655:10-9-5. After review and acceptance by the OAR, the OAR will acknowledge acceptance of a document by noting the date of acceptance and the docket number on the extra copy document and return returning it to the agency via email, or by web transmission if available.~~

**SUBCHAPTER 13. CORRECTION OF ERRORS**

**655:10-13-2. Errors prior to Register publication**

In the event an agency discovers an error in a document after submission to the OAR but prior to its publication in the Register, the agency may contact the OAR for a determination as to whether the OAR is able to accept the corrections, based on the following:

(1) **Timeliness.** The timeliness of the agency's request to correct an error(s) in a document filed with the OAR but not yet published will determine the OAR's ability to accept corrections on any document filed. This determination will be based on how far the OAR has progressed in its processing of that document at the time the request is received, as well as the impact a correction would have on the OAR's ability to complete the production and distribution of the applicable Register issue by the publication date.

(2) **Qualifying errors.** If the OAR determines the corrections to be timely, as described in (1) of this Section, the OAR will use the following additional criteria to determine if the errors may be corrected:

(A) **Notice documents.** Errors discovered in notice documents may be corrected prior to publication.

(B) **Permanent rule documents.** Errors discovered in permanent rule documents may be corrected

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prior to publication, unless the correction would cause a conflict with the following statutory provisions:

- (i) *[T]he text of the rule submitted for publication shall be the same as the text of the rule that has been finally adopted* [75:308.1(B)], and
- (ii) The agency may *change the format of . . . rules . . . to comply with the standard provisions established by the Secretary. . . so long as there is no substantive change to the rule* [75 O.S., Section 251(B)(2)(i)].

(C) **Emergency rule documents.** Emergency rule documents may not be corrected after approval by the Governor; except, the agency may change the format to comply with the ARR, as described in 75 O.S., Section 251(B)(2)(i). If these errors are discovered after the agency has filed the emergency rule document with the OAR [see 655:10-9-1(c)(1) (relating to filing emergency rule documents)] but prior to publication, the agency may correct these errors.

(D) **Preemptive rule documents.** Preemptive rule documents may not be corrected after approval by the Governor; except, the agency may change the format to comply with the ARR, as described in 75 O.S., Section 251(B)(2)(i), before filing the preemptive rule document with the OAR. If these errors are discovered after the agency has submitted a preemptive rule document to the OAR [see 655:10-9-1(c)(1) (relating to filing preemptive rule documents)] but prior to publication, the agency may correct the errors.

(E) Expedited rule repeal documents. Expedited rule repeal documents may not be corrected after final legislative adoption; except, the agency may change the format to comply with the ARR before filing the expedited rule repeal document with the OAR [see 655:10-9-1(c)(3) (relating to filing expedited rule repeal documents)]. If these errors are discovered after the agency has submitted the expedited rule repeal document to the OAR but prior to publication, the agency may correct the errors.

## 655:10-13-3. Errors after Register publication

### (a) Rule documents.

#### (1) Permanent rule documents and expedited rule repeal documents.

(A) **Regulatory text.** In the event an agency discovers an error in regulatory text in a permanent rule document or expedited rule repeal document after publication in the Register, the agency may correct the error through ~~emergency, preemptive, or permanent~~ rulemaking procedures only.

#### (B) **Other than regulatory text.**

(i) **Published pages.** When an agency discovers an error in the preamble (except effective date) or enacting clause (except effective date) in a permanent rule document or expedited rule repeal document after publication in the Register, the agency may submit a Notice of Error in Published Document pursuant to 655:10-7-35.

(ii) **Non-published pages.** When an agency discovers an error in the unpublished attestation or supplemental information pages of a permanent rule document or expedited rule repeal document after publication in the Register, the agency may submit the corrected page or pages to the OAR. Upon review and acceptance of the corrected pages, the OAR will add the corrected pages to the official files.

(2) **Emergency and preemptive rule documents.** Emergency and preemptive rule documents may not be corrected by an agency after publication in the Register.

### (b) Notice documents.

(1) **Corrections allowed.** When an agency discovers an error in one of the following types of notice documents after publication in the Register, the agency may correct such error by submitting a Notice of Error in Published Document [see 655:10-7-35]:

- (A) Statement of Submission to Governor and Legislature.
- (B) Notice of Legislative Disapproval of Rules.
- (C) Notice of Withdrawn Rules.

(2) **Corrections not allowed.** When an agency discovers an error in a notice document which announces an action affecting the public's direct participation in the rulemaking process (as identified in (A) through ~~(C)~~(D) of this paragraph), the agency may not correct the notice document after publication in the Register. The agency may submit a new notice document and, if applicable, publish a Notice of Cancelled Hearing or Comment Period; however, the new document acquires a new "publication date" for purposes of compliance with APA time restrictions (e.g., minimum 30-day comment period). Notice documents which may not be corrected with a Notice of Error in Published Document include the following:

- (A) Notice of Rulemaking Intent.
- (B) Notice of Expedited Rule Repeal Request.
- (C) Notice of Cancelled Hearing or Comment Period.
- ~~(D)~~ Notice of Continued Hearing or Comment Period.

## SUBCHAPTER 15. THE OKLAHOMA REGISTER

### 655:10-15-5. Register contents

#### (a) Register categories.

(1) Documents published in the Register are arranged by document type, as follows:

- (A) Notices of Rulemaking Intent.
- (B) Notices of Expedited Repeal Requests.
- (C) Cancelled Hearings or Comment Periods.
- ~~(D)~~ Continued Hearings or Comment Periods
- ~~(E)~~ Submissions for Review.
- ~~(F)~~ Legislative Disapprovals.
- ~~(G)~~ Withdrawn Rules.
- (H) Governor's Declarations.
- ~~(I)~~ Emergency Adoptions.

- (HJ) Preemptive Adoptions.
- (HK) Permanent Final Adoptions.
- (L) Expedited Rule Repeals.
- (JM) Executive Orders.
- (KN) Errors in Published Documents.
- (LO) Editor's Notices.
- (MP) Miscellaneous.

(2) Within each category listed in (1)(A) through ~~(H)(G)~~ and ~~(K)(I)~~ through (L), and (N) of this subsection, documents are arranged by Title and Chapter number.

(b) **Table of contents.** Each issue of the Register contains a ~~table of contents~~ an agency/action/subject index arranged alphabetically by agency, as well as a table of contents arranged by Register category, as set out in (a)(1) of this Section. Each agency's listing in the ~~table of contents~~ agency/action/subject index also identifies the types of rulemaking actions published for the agency in that issue, as well as the Chapter numbers affected by each of those rulemaking actions.

(c) **Rules Affected Index.** Each issue of the Register published after publication of the first Code contains a Rules Affected Index that identifies each Section and Appendix that is being promulgated (added, amended, revoked, renumbered, or reserved) in that issue, as well as each Section and Appendix that was promulgated in previous issues of that volume of the Register [see 655:10-15-2 regarding Register volumes].

(d) **Other user aids.** At its discretion, the OAR may publish additional user and finding aids in the Register.

[OAR Docket #22-576; filed 7-11-22]

**TITLE 655. SECRETARY OF STATE  
CHAPTER 15. CENTRAL FILING SYSTEM  
FOR AGRICULTURAL LIENS**

[OAR Docket #22-577]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 655:15-1-4 [AMENDED]
- 655:15-1-6 [AMENDED]
- 655:15-1-12 [AMENDED]
- Subchapter 3. Effective Financing Statement (EFS)
- 655:15-3-2 [AMENDED]
- Subchapter 5. Master List and Buyer Registration
- 655:15-5-2 [AMENDED]
- Subchapter 7. Disclosure of Information
- 655:15-7-1 [AMENDED]

**AUTHORITY:**

Secretary of State; 12A O.S., § 1-9-320.6; Executive Order 2020-03

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

December 8, 2021

**COMMENT PERIOD:**

January 3, 2022 through February 2, 2022

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

March 10, 2022

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

March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendments to Chapter 15 of the Secretary of State's administrative rules [OAC 655:15] remove outdated and unnecessary language, as required by Executive Order 2020-03, and provide current information regarding division operations.

**CONTACT PERSON:**

Chris Coffman, Rules Liaison, 405-521-4911 or chris.coffman@sos.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**655:15-1-4. Fees**

Fees related to the Central Filing System for Agricultural Liens are set forth in 28 O.S. § 111. The annual fee to receive the master list on computer disk is \$250. The annual fee for Internet access to master list records is \$200.00. A \$50.00 Annual Registration fee is due each year in addition to the annual fee to receive the master list, as set forth in 28 O.S., § 111.

**655:15-1-6. Forms**

(a) Forms to be utilized in the Central Filing System are as follows:

- (1) EFS-1 (original filing).
- (2) EFS-2 (amendment, assignment, continuation, partial release or termination).
- (3) Buyer Registration Form.
- (4) Registration Agreement Form.
- (5) Information Request Form.
- (6) Debtor Complaint Form
- (7) Update Secured Party Information

(b) All EFS filings must be submitted on forms approved by the Oklahoma Secretary of State. ~~A list of companies who distribute EFS forms will be provided upon request.~~ EFS, Buyer Registration and Information Request forms are available ~~upon request from the Central Filing System Office~~ or from the Secretary of State website, ~~www.sos.state.ok.us~~ www.sos.ok.gov, Agricultural Liens section.

**655:15-1-12. Farm product codes**

Oklahoma legislation defines farm products as *an agricultural commodity such as wheat, corn, or soybeans, or a species of livestock such as cattle, hogs, sheep, horses, or*

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poultry used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state (such as ginned cotton, wool-clip, maple syrup, milk and eggs), that is in the possession of the person engaged in farming operations [12A:1-9-320.2(e)]. The product code table is updated as necessary. To receive a current product code listing, county code listing, or to add a new product to the list, contact the Central Filing System Office. The lists of Oklahoma Counties and codes as well as products covered by the Central Filing System and their related codes are also available from the companies who distribute EFS forms from the Secretary of State website, [www.sos.ok.gov](http://www.sos.ok.gov), Agricultural Liens section.

## SUBCHAPTER 3. EFFECTIVE FINANCING STATEMENT (EFS)

### 655:15-3-2. UCC filing requirements

The filing of the EFS with the Secretary of State is in addition to the UCC filing requirements for perfection provided in Title 12A, Oklahoma Statutes Section 1-9-501. [12A:1-9-320.6(6)(5)]

## SUBCHAPTER 5. MASTER LIST AND BUYER REGISTRATION

### 655:15-5-2. Buyer, Commission Merchant and Selling Agent registration

(a) **Registration form.** Each buyer registration form must be properly completed, signed and submitted with the correct fee before it can be accepted for filing.

(b) **Registration Agreement Form.** A properly completed and signed Registration Agreement form is also required as a part of the registration.

(c) **Protection.** Protection of buyers of farm products, commission merchants and selling agents afforded by the Central Filing System is addressed in [12A:1-9-320.4] and [12A:1-9-320.6(d)].

(d) **Effective date of registration.** All buyer registrations accepted for filing within the Office of the Secretary of State on or before the 20th day of each month will begin their registration that month. All buyer registrations received in the Office of the Secretary of State after the 20th day of the month will be registered to begin receiving the master lists distributed the next month. These deadlines are necessary in order to ensure system capture of registrants and ample time for preparation and distribution of information.

(e) **Duration of registration.** The registration is effective for twelve months. Registrants must file a buyer registration form annually and pay the required fee to continue receiving lien information. Registrants are responsible for the timely renewal of their registrations.

(f) **Amendment of registration.** Registrants wishing to change the products and/or counties requested from the master list must file an amendment to their buyer registration.

(g) **Legislative conflicts.** Conflicts between the Oklahoma and Federal legislation have been brought to the attention of registrants by inclusion of the following statement on buyer registration forms: "Oklahoma law at present purports to limit the right of secured parties to give direct notification to buyers, commission merchants, and selling agents of a security interest. These provisions conflict with the provisions for direct notification in 7 U.S.C. 1631, as to matters in interstate commerce or otherwise subject to Federal jurisdiction. Therefore, until there is a clarification of the law, if you disregard direct notification, you do so at your own risk."

## SUBCHAPTER 7. DISCLOSURE OF INFORMATION

### 655:15-7-1. Oral and written inquiries for confirmation of record

Inquiries to the Central filing System may be made orally or in writing. Written inquiries may be submitted on the Agricultural Lien Information Request Form or in the form of a letter and may be submitted by mail, electronic mail, fax, or the lien search may be requested using the form available from the Secretary of State website, [www.sos.ok.gov](http://www.sos.ok.gov), Agricultural Liens section.

[OAR Docket #22-577; filed 7-11-22]

## TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES

[OAR Docket #22-504]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

660:2-1-3. Definitions [AMENDED]

Subchapter 3. Organization

660:2-3-1. Organization [AMENDED]

Subchapter 11. Procedures for Inspecting and/or Copying Public Records

660:2-11-2. Definitions [AMENDED]

660:2-11-3. Record Custodians [AMENDED]

660:2-11-4. Hours of inspection [AMENDED]

Subchapter 13. Declaratory Rulings and Interpretive Opinions

660:2-13-1. Opinions [AMENDED]

### AUTHORITY:

Administrator, Oklahoma Department of Securities; 71 O.S. §§1-605, 1-608; 71 O.S. §662; and 71 O.S. §816

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

January 25, 2022

### COMMENT PERIOD:

February 15, 2022 through March 18, 2022

### PUBLIC HEARING:

March 24, 2022

### ADOPTION:

March 29, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 29, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed rule amendments rename the title of a record custodian, set the hours for inspection of public records, clarify the procedures for requesting interpretive opinions, and correct grammatical and citation errors.

**CONTACT PERSON:**  
Gerri Kavanaugh, General Counsel, Oklahoma Department of Securities,  
(405) 280-7721

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**660:2-1-3. Definitions**

Unless the context clearly indicates otherwise, terms used in this Chapter, if defined in the Oklahoma Uniform Securities Act of 2004, the Oklahoma Land Sales Code, or the Oklahoma Business Opportunity Sales Act shall have the meanings set forth in such acts. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Administrator"** means the Administrator of the Department.

**"Business Opportunity Act"** means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.

**"Commission"** means the Oklahoma Securities Commission.

**"Department"** means the Oklahoma Department of Securities.

**"Deputy Administrator"** means the Deputy Administrator of the Department.

**"Director of Corporate Finance"** means the Department employee who leads the division responsible for the registration of securities, business opportunities, and subdivided lands as well as any exemption from such registration requirements.

**"Director of Enforcement"** means the Department employee who leads the division responsible for the investigation and enforcement of persons who violate the Securities Act, the Business Opportunity Act, and the Land Sales Act.

**"Director of Compliance of Securities Professionals Professional Registrations and Compliance"** means the Department employee who leads the division responsible for the registration and examination of broker-dealers, agents, investment advisers, and investment adviser representatives.

**"Hearing Officer"** means a person who has been duly designated by the Administrator to hold hearings and, as required, render proposed orders.

**"Land Sales Act"** means the most recent codification of the Oklahoma Subdivided Land Sales Code in Title 71 of the Oklahoma Statutes.

**"Securities Act"** means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

**SUBCHAPTER 3. ORGANIZATION**

**660:2-3-1. Organization**

(a) The Department shall be organized in accordance with Section 1-601 of the Securities Act. It shall be the purpose of the Department to implement the policies of the Commission and to enforce the Securities Act, the Business Opportunity Act, and the Land Sales Act in an efficient and effective manner.

(b) The Department shall be organized in the following divisions:

- (1) registration of broker-dealers, agents, investment advisers, and investment adviser representatives;
- (2) registration of securities, business opportunities, and subdivided lands;
- (3) investigation and enforcement; and
- (4) investor education.

(c) The Department shall have as its chief officer an Administrator who shall be charged with the duty of administering and enforcing the acts under the supervision of the Commission and in accordance with its policies.

**SUBCHAPTER 11. PROCEDURES FOR INSPECTING AND/OR COPYING PUBLIC RECORDS**

**660:2-11-2. Definitions**

The following words and terms, when used in this Subchapter have the following meaning, unless the context clearly indicates otherwise:

**"Open Records Act"** means the Oklahoma Open Records Act, 51 O.S., Sections 24A1 through 24A19 et seq.

**660:2-11-3. Record Custodians**

(a) **Authority of record custodians.** The persons designated below serve as Record Custodians for purposes of the Open Records Act and are hereby charged with responsibility for compliance with that Act pursuant to the procedures set forth in this Section and elsewhere in this Subchapter.

(b) **Appointment of Record Custodians.** The following officials of the Department are hereby appointed as Record Custodians for the designated records and as such shall have all the powers and duties set forth in this Subchapter and in the Open Records Act:

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- (1) Administrator - all records of the Department
- (2) Deputy Administrator - all records of the Department
- (3) Director of Enforcement - all enforcement records of the Department
- (4) Director of Corporate Finance - all product registration and exemption records of the Department
- (5) Director of ~~Compliance of Securities Professionals~~ Professional Registrations and Compliance - all registration of securities professionals and examination records of the Department.

(c) **Substitute Record Custodians** ~~record custodians~~. Each of the Record Custodians appointed in subsection (b) of this Section is hereby authorized to designate any other employee of the Department to serve as Record Custodian in the place of the designated Record Custodian. Such substitute Record Custodian will have the same duties and powers as the Record Custodian set forth above and wherever the term "Record Custodian" is used herein, it includes any such substitute Record Custodian. Whenever a Record Custodian appoints another person as a substitute Record Custodian he or she is to give notice to the Administrator of such designation and the Administrator will maintain a register of all such designations.

(d) **Duties.** All Record Custodians will protect the public records of the Department from damage and disorganization; prevent excessive disruption of the essential functions of the Department; provide assistance and information upon request; ~~insure~~ ensure efficient and timely action and response to all applications for inspection and/or copying of public records; and carry out the procedures adopted by this Department for inspecting and/or copying public records.

(e) **Direction of requests to custodians.** All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Open Records Act are to address their requests to the Record Custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.

for formal interpretive opinions relating to a specific factual circumstance and no-action positions, including consideration of waivers, where appropriate and in the public interest, on the basis of facts stated and submitted in writing, with respect to the provisions of the Securities Act or any rule or statement of policy adopted thereunder, provided such requests satisfy and conform to the following requirements:

(1) Such requests shall be in writing and shall include or be accompanied by all information and material required by any statute, rule, or statement of policy under which an exception or exemption may be claimed, including but not limited to, copies of prospectuses or offering circulars if applicable or appropriate.

(2) ~~An original and one copy of the~~ The request letter ~~itself shall be submitted and~~ include the name of the entity for whom the request is being made ~~along with~~ and the specific subsection of the particular statute or the particular rule or statement of policy to which the letter pertains shall be indicated in the upper right-hand corner of the letter.

(3) The letter should contain a brief narrative of the fact situation and should set out all of the facts necessary to reach a conclusion in the matter; however, such narratives should be concise and to the point.

(4) The names of the company or companies, organization or organizations, and all other persons involved should be stated and should relate and be limited to a particular factual circumstance. Letters relating to unnamed companies, organizations, or persons or to hypothetical situations will not warrant a formal response.

(5) Every such request shall include or be accompanied by a ~~manually~~ signed opinion of legal counsel which briefly and concisely states counsel's understanding, counsel's opinion in the matter, which may be expressed tentatively or conditioned upon concurrence by the Administrator, and the basis for such opinion.

(6) Each request for a no-action position and/or interpretive opinion letter shall be accompanied by payment of a fee in the amount specified in Section 1-612 of the Securities Act.

## 660:2-11-4. Hours of inspection

All public records of the Department ~~shall~~ will be available for inspection during the regular business hours of the Department. Such hours ~~shall~~ will be ~~8:00~~ 8:30 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

[OAR Docket #22-504; filed 6-28-22]

## TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

[OAR Docket #22-505]

### SUBCHAPTER 13. DECLARATORY RULINGS AND INTERPRETIVE OPINIONS

#### 660:2-13-1. Opinions

The Administrator and/or Commission may honor requests from interested persons for interpretive opinions and as to the applicability of any rule or order, if it be shown that an actual case, controversy or issue is in contemplation and that unreasonable hardship, loss or delay would result if the matter were not determined in advance. The Administrator in his discretion may honor requests from interested persons

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 5. Broker-Dealers and Agents

Part 3. Licensing Procedures

660:11-5-11. Initial registration [AMENDED]

660:11-5-15. Categories of registration [AMENDED]

660:11-5-16. Qualification examination requirements [AMENDED]

Part 7. Record Keeping and Ethical Standards

660:11-5-42. Standards of ethical practices for broker-dealers and their agents [AMENDED]



660:11-5-45. Financial statements for non-FINRA broker-dealers [AMENDED]  
 Subchapter 7. Investment Advisers and Investment Adviser Representatives  
 Part 1. General Provisions  
 660:11-7-2. Definitions [AMENDED]  
 Part 3. Licensing Procedures  
 660:11-7-11. Initial registration [AMENDED]  
 660:11-7-13. Qualification examination requirements [AMENDED]  
 660:11-7-21. Errors and omissions coverage [AMENDED]  
 Part 5. Reporting Requirements  
 660:11-7-31. Post-registration reporting requirements [AMENDED]  
 Part 7. Record Keeping and Ethical Standards  
 660:11-7-41. Record keeping requirements [AMENDED]  
 660:11-7-42. Standards of ethical practices [AMENDED]  
 660:11-7-44. Financial statements for investment advisers [AMENDED]  
 660:11-7-46. ~~Information security~~ Written policies and procedures [AMENDED]  
 660:11-7-49. Investment adviser representative continuing education requirements [NEW]  
 Subchapter 11. Exemptions from Securities Registration  
 Part 5. Exempt Transactions  
 660:11-11-54. Intrastate offering exemption [NEW]

**AUTHORITY:**

Administrator, Oklahoma Department of Securities; 71 O.S. §§1-605, 1-608

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 25, 2022

**COMMENT PERIOD:**

February 15, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 24, 2022

**ADOPTION:**

March 29, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 29, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 15, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules and amendments clarify examination requirements for agents and investment adviser representatives, conform investment adviser regulations relating to time and price discretion and written policies and procedures to model rules and federal law, require investment advisers to give notice of branch office locations, clarify the financial statements required to be reported by broker-dealers and investment advisers, clarify that changes in federal law relating to advertising are not applicable to state-registered investment advisers, require investment adviser representatives to complete continuing education annually, make permanent a temporary rule that created a new exemption from registration for intrastate offerings, correct statutory cites and terminology, and clarify existing law and changing regulatory procedures.

**CONTACT PERSON:**

Gerri Kavanaugh, General Counsel, Oklahoma Department of Securities, (405) 280-7721

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2022:**

**SUBCHAPTER 5. BROKER-DEALERS AND AGENTS**

**PART 3. LICENSING PROCEDURES**

**660:11-5-11. Initial registration**

(a) **Broker-dealer.** Each broker-dealer applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) who is contemporaneously applying for FINRA membership or who is a FINRA member:

- (A) shall file with the CRD:
  - (i) a completed Form BD, including Schedules A-E; and
  - (ii) the filing fee specified in Section 1-612 of the Securities Act;

(B) shall provide proof of registration with FINRA and with the jurisdiction where the broker-dealer's principal office is located; and

(BC) shall file with the Department, within 60 days of becoming registered, a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma.

(2) who is not a current FINRA member shall file with the Department:

- (A) a completed Form BD, including Schedules A-E;
- (B) the filing fee specified in Section 1-612 of the Securities Act;
- (C) financial statements as required by 660:11-5-45, or if the broker-dealer has not commenced operating, an engagement letter with an accounting firm to prepare the audited financial statements required by 660:11-5-31;
- (D) documentation of compliance with the minimum capital requirement set forth in Section 1-406.E of the Securities Act and 660:11-5-17;
- (E) designation, qualification and registration of a principal as defined in 660:11-5-2 pursuant to (c) of this Section;
- (F) a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma;
- (G) a copy of the written supervisory procedures of the broker-dealer; and
- (H) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(b) **Broker-dealer agent.**

(1) **Required documents.** Each broker-dealer agent applying for initial registration pursuant to Section 1-406 of the Securities Act shall file:

- (A) a completed Form U4;
- (B) the filing fee specified in Section 1-612 of the Securities Act;
- (C) proof of successful completion of the applicable examinations specified in 660:11-5-16;

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- (D) proof of applicant's approved status of registration or licensure in a jurisdiction in which he has an office of employment when such registration is required; and
- (E) any additional documentation, supplemental forms and information as the Administrator may deem necessary.
- (2) **Where to file.** An agent applying for registration with a FINRA member shall file the documentation required by (1)(A) through (C) of this subsection with the CRD and shall file any additional documentation with the Department. Agents applying for registration with a non-FINRA broker-dealer shall file the required documentation with the Department.
- (c) **Broker-dealer principal.**
- (1) **Required documents.** Each person applying for initial registration under the Securities Act as a principal of a broker-dealer who is not a member of FINRA shall file with the Department:
- (A) a completed Form U4;
- (B) a \$50.00 filing fee;
- (C) proof of successful completion of the applicable examinations specified in 660:11-5-16; and
- (D) any additional documentation, supplemental forms and information as the Administrator may deem necessary.
- (2) **Effect of Registration.** Registration under the Securities Act as a principal of broker-dealer shall constitute registration as an agent.
- (d) **Issuer agent.** Agents of issuers applying for initial registration in the state of Oklahoma pursuant to Section 1-406 of the Securities Act shall file the following with the Department:
- (1) a completed Form U4;
- (2) the fee specified in Section 1-612 of the Securities Act;
- (3) proof of successful completion of the applicable examinations specified in 660:11-5-16;
- (4) an executed Applicant/Management Certification Form; and
- (5) any additional documentation, supplemental forms and information as the Administrator may deem necessary.
- (e) **Requirement for continued registration.** 660:11-5-42, adopted pursuant to Sections 1-411.D.13 and 1-605.A.2. of the Securities Act, sets forth the standards of ethical practices for broker-dealers and their agents. Paragraph (22) of said rule requires that each broker-dealer establish, maintain and enforce written procedures that will enable it to supervise properly the activities of each registered agent to assure compliance with applicable securities laws, rules, regulations and statements of policy. Therefore, the initial and continued registration of a broker-dealer that is not a FINRA member is conditioned upon the designation, qualification and registration of a principal who shall be responsible for the supervision of all agents of the broker-dealer who are registered under the Securities Act. A broker-dealer applicant or registrant may apply for registration of more than one person as a principal of said broker-dealer.

### 660:11-5-15. Categories of registration

- (a) **Broker-dealers.** The Administrator ~~shall~~may register broker-dealers in accordance with the following categories:
- (1) General securities - an applicant whose activities in the securities business are not limited.
- (2) Investment company and variable contracts products - an applicant whose activities in the securities business are limited to the solicitation, purchase and/or sale of investment company and variable contracts products.
- (3) Direct participation programs - an applicant whose activities in the securities business are limited solely to marketing, on behalf of the issuer, direct participation programs.
- (4) Options - an applicant whose activities in the securities business include transactions in put or call options with the public.
- (5) Municipal securities - an applicant whose activities in the securities business are limited solely to effecting transactions in municipal securities.
- (6) Multiple categories - an applicant may be registered in more than one category if qualified to be so registered.
- (b) ~~Principals and agents.~~Broker-dealer agents. The Administrator ~~shall~~may register ~~principals of broker-dealers and broker-dealer agents~~ in accordance with the ~~following~~following categories of registration ~~as applicable of the broker-dealer with whom they are associated.~~ An agent may be registered in more than one category provided the agent is qualified to be so registered. An agent qualified solely within one category of registration shall not be qualified to transact business as an agent in any are not prescribed by said category.
- ~~(1) General securities principal or agent - an applicant representing a broker-dealer whose activities in the securities business are not limited.~~
- ~~(2) Investment company and variable contracts products principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to the solicitation, purchase and/or sale of investment company and variable contracts products.~~
- ~~(3) Direct participation programs principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to marketing, on behalf of the issuer, direct participation programs.~~
- ~~(4) Options principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to transactions in put or call options with the public.~~
- ~~(5) Municipal securities principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to effecting transactions in municipal securities.~~
- ~~(6) Limited agent - corporate securities - an applicant representing a general securities broker-dealer in the solicitation, purchase, and/or sale of a security, as that term is defined in Section 1-102.32 of the Securities Act, however, such person's activities do not include activities with respect to the following securities unless such person is separately qualified and registered in the category or categories of registration related to these securities:~~

- (A) Municipal securities;
  - (B) Option securities;
  - (C) Redeemable securities of companies registered pursuant to the 1940 Act, except for money market funds; and/or,
  - (D) Direct participation programs.
- (c7) **Issuer agent agents.** ~~The Administrator may register an applicant whose activities in the securities business are limited solely to effecting transactions for the benefit of an issuer as that term is defined in Section 1-102.19 of the Securities Act.~~
- (8) ~~Multiple categories—an applicant may be registered in more than one category provided he is qualified to be so registered. An applicant qualified solely within one category of registration shall not be qualified to transact business as an agent in any area not prescribed by said category.~~

**660:11-5-16. Qualification examination requirements**

- (a) **Examination requirement.** Proof of compliance with the examination requirements of this Section is prerequisite to a complete filing for registration under the Securities Act.
- (b) **Examination.** Each applicant for registration as a broker-dealer agent, ~~broker-dealer principal~~ or issuer agent must pass the applicable examinations for the desired category of registration. The examinations shall consist of a qualification examination(s) applicable to the category of registration applied for and a uniform state law examination. The Administrator adopts the examinations administered by FINRA as applicable to each individual registrant by category of registration as the required examinations.
- (c) **Limitations on licenses.** Without regard to the category of registration of one's broker-dealer, if any, the activities of each person registered as a ~~principal or an~~ agent are limited to the corresponding category for which they are qualified by examination, unless waived, and for which they are registered under the Securities Act.
- (d) **Examination categories.** Examination categories for agents are as follows:
- (1) General securities or government securities - FINRA Members:
    - (A) ~~Principals Series 7, 24; or such other examination(s) determined by the Administrator to be acceptable in lieu thereof, and Series 63 or 66.~~
    - (B) Agents - Securities Industry Essentials (SIE); Series 7; and Series 63 or 66
  - (2) General securities - Non-FINRA Members/Issuers
    - (A) ~~Principals Series 7, 24; or such other examination(s) determined by the Administrator to be acceptable in lieu thereof, and Series 63 or 66~~
    - (B) Agents - SIE; Series 7; and Series 63 or 66
  - (3) Investment company and variable contract products:
    - (A) ~~Principals Series 6, 26 and 63 or 66~~
    - (B) Agents - SIE; Series 6; and Series 63 or 66
  - (4) Direct participation programs:
    - (A) ~~Principals Series 22, 39 and 63 or 66~~
    - (B) Agents - SIE; Series 22; and Series 63 or 66

- (5) Options:
    - (A) ~~Principals Series 4 and 63 or 66; or Series 4, 62 and 63 or 66~~
    - (B) Agents Series 7 or 42; and Series 63 or 66
  - (6) Municipal securities:
    - (A) ~~Principals Series 52; 53 and 63 or 66~~
    - (B) Agents - Series 7; Series 52; and Series 63 or 66
  - (7) ~~Limited agent, corporate securities Series 62; and Series 63 or 66~~
  - (8) ~~Assistant agent, order processing Series 11; and Series 63 or 66~~
- (e) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply. ~~Effective October 1, 2018, FINRA is implementing a new Securities Industry Essentials examination (SIE) and revised agent level qualification examinations. At that point, it will be necessary for an applicant to pass the SIE for each examination category in (d)(1) through (4) of this Section in addition to the examinations listed in each of those categories. Also effective October 1, 2018, FINRA is retiring the Series 11, 42 and 62 and will no longer permit new registrations in the examination categories (d)(5) through (8) of this Section.~~

- (f) **Validity of prior examination scores.**
- (1) The Department will not recognize for purposes of qualification for registration under the Securities Act any FINRA examination score (other than the SIE) that predates an initial application for registration by more than two (2) years in the absence of registration as an agent, principal, broker-dealer, investment adviser or investment adviser representative since examination.
  - (2) The Department will not recognize for purposes of qualification for registration under the Securities Act the examination score(s) (other than the SIE) of any person whose most recent registration as an agent, principal, broker-dealer, investment adviser or investment adviser representative has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.
  - (3) With respect to the SIE, the time period for validity is four (4) years.
- (g) **Waiver of examination requirement.** The Administrator may waive the examination requirements on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

**PART 7. RECORD KEEPING AND ETHICAL STANDARDS**

**660:11-5-42. Standards of ethical practices for broker-dealers and their agents**

- (a) **Purpose.** This rule is intended to set forth the standards of ethical practices for broker-dealers and their agents. Any

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noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

(1) A broker-dealer and its agents, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and its agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

(2) **Recommendations**

(A) A broker-dealer and its agents shall have reasonable grounds for believing that a recommended transaction or investment strategy involving a security or securities is suitable for such customer based upon the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the customer or known to the broker-dealer or agent.

(B) A broker-dealer and its agents fulfill the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if (i) the broker-dealer or agent has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (ii) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the broker-dealer or agent's recommendations. Where an institutional customer has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(3) Charges, if any, for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

(4) In "over-the-counter" transactions, whether in "listed" or "unlisted" securities, if any broker-dealer or agent of a broker-dealer buys for their own account from their customer, or sells for their own account to their customer, they shall buy or sell at a price which is fair,

taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that they are entitled to a profit; and if they act as agent for their customer in any such transaction, they shall not charge their customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service they may have rendered by reason of their experience in and knowledge of such security and the market therefor.

(5) No broker-dealer or agent of a broker-dealer shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

(6) No broker-dealer or agent of a broker-dealer shall make an offer to buy from or sell to any person any security at a stated price unless such broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

(7) A broker-dealer, when a member of a selling syndicate or a selling group, shall purchase securities taken in trade at a fair market price at the time of purchase, or shall act as agent in the sale of such securities.

(8) A broker-dealer who in the capacity of paying agent, transfer agent, trustee, or any other similar capacity, has received information as to the ownership of securities, shall under no circumstances make use of such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.

(9) No broker-dealer or agent of a broker-dealer shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.

(10) A broker-dealer at or before the completion of each transaction with a customer shall give or send to each customer written notification disclosing:

(A) whether such broker-dealer is acting as a broker for such customer and some other person; and

(B) in any case in which such broker-dealer is acting as a broker for such customer or for both such

customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such broker-dealer in connection with the transaction.

(11) A broker-dealer or agent of a broker-dealer controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(12) A broker-dealer or agent of a broker-dealer who is acting as a broker for a customer or for both such customer and some other person, or a broker-dealer who is acting as a dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

(13) The following standards shall apply to discretionary accounts:

(A) No broker-dealer or agent of a broker-dealer shall effect with or for any customer's account in respect to which such broker-dealer or agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources of such customer and character of such account.

(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with (22) of this subsection.

(C) The broker-dealer or the person duly designated shall approve promptly, in writing, each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources of the customer and the character of the account.

(D) This section shall not apply to:

(i) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed, except that the

authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretions, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretions exercised in an institutional account, as defined in 660:11-1-3, pursuant to valid Good-Till-Cancelled instructions issued on a "not-held" basis. Any exercise of time and price discretion must be reflected on the order ticket;

(ii) bulk exchange at net asset value of money market mutual funds ("funds") utilizing negative response letters provided:

(I) The bulk exchange is limited to situations involving mergers and acquisitions of funds, changes of clearing members, and exchanges of funds used in sweep accounts;

(II) The negative response letter contains a tabular comparison of the nature and amount of the fees charged by each fund;

(III) The negative response letter contains a comparative description of the investment objectives of each fund and a prospectus of the fund to be purchased; and;

(IV) The negative response feature will not be activated until at least 30 days after the date on which the letter was mailed.

(14) A broker-dealer or agent of a broker-dealer who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, shall make no representation that such security is being offered to a customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer or agent, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer or agent.

(15) No broker-dealer or agent of a broker-dealer shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device, practice, plan, program, design, or contrivance.

(16) The following standards shall apply to the use of customer funds:

(A) No broker-dealer or person associated with a broker-dealer shall make improper use of a customer's securities or funds.

(B) No broker-dealer or agent of a broker-dealer shall lend, either to themselves or to others, securities carried for the account of any customer, unless such broker-dealer or agent shall first have obtained from the customer a separate written authorization permitting the lending of securities thus carried by

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such broker-dealer or agent; and, regardless of any agreement between the broker-dealer or agent and a customer authorizing the former to lend or pledge such securities, no broker-dealer or agent shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the customer, except such lending as may be specifically authorized under (C) of this paragraph.

(C) No broker-dealer or agent of a broker-dealer shall lend securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be loaned in view of the indebtedness of the customer, unless such broker-dealer or agent shall first have obtained from such customer a separate written authorization designating the particular securities to be loaned.

(D) No broker-dealer or agent of a broker-dealer shall hold securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be pledged in view of the indebtedness of the customer, unless such securities are segregated and identified by a method which clearly indicates the interest of such customer in those securities.

(E) No broker-dealer or agent of a broker-dealer shall guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent with or for such customer.

(F) No broker-dealer or agent of a broker-dealer shall share directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or agent or any other broker-dealer or agent, unless such broker-dealer or agent obtains written authorization from the broker-dealer carrying the account; and, a broker-dealer or agent shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the broker-dealer or agent. Exempt from the direct proportionate share limitation are accounts of the immediate family of such broker-dealer or agent. For purposes of this section, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or agent otherwise contributes directly or indirectly.

(17) The following standards shall apply to customer credit:

(A) No broker-dealer or agent of a broker-dealer shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer or for the sale of any security to the customer where payment for the security is to be made to the broker-dealer by the customer

over a period of time in installments or by a series of partial payments, unless:

(i) in the event such broker-dealer acts as an agent or broker in such transaction, it shall immediately, in the regular course of its business, make an actual purchase of the security for the account of the customer, and shall immediately, in the regular course of its business, take possession or control of such security and shall maintain possession or control thereof so long as it remains under obligation to delivery of the security to the customer;

(ii) in the event such broker-dealer acts as a principal in any such transaction, it shall, at the time of such transaction own such security and shall maintain possession or control thereof so long as it remains under obligation to deliver the security to the customer; and

(iii) the provisions of Regulation T of the Federal Reserve Board, if applicable to such broker-dealer, are satisfied.

(B) No broker-dealer, whether acting as a principal or agent, shall, in connection with any transaction referred to in this Standard, make any agreement with its customer under which such broker-dealer shall be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such broker-dealer.

(18) The following standards shall apply to books and records:

(A) Each broker-dealer shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Each broker-dealer shall keep and preserve in each office of supervisory jurisdiction, as defined in 660:11-5-2, either a separate file of all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and clear reference to the files containing the correspondence connected with such complaints as maintained in such office.

(19) A broker-dealer shall make available to inspection by any bona fide regular customer, upon request, the information relative to such broker-dealer's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such broker-dealer's usual practice or as required by the state or federal securities laws, or any rule or regulation promulgated thereunder.

(20) No broker-dealer or agent of a broker-dealer shall offer any security or confirm any purchase or sale of any security, from or to any person not actually engaged in the investment banking or securities business at any price which shows a concession, discount, or other allowance, but shall offer such security and confirm such purchase or sale at a net dollar or basis price.

(21) Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker-dealer registered under the Securities Act actually engaged in the investment banking or securities business; provided however, that nothing in this standard shall prevent any broker-dealer from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(22) The following standards shall apply to supervisory procedures:

(A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:11-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of FINRA. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.

(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transaction.

(D) Each broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and conduct at least an annual inspection of each office of supervisory jurisdiction.

(E) Each broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration under the Securities Act.

(23) The following standards shall apply to financial information:

(A) Each broker-dealer offering or selling securities not listed on a registered national securities exchange recognized by the Administrator shall have and furnish to customers, on request, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal

year preceding that date or the most recent year of operations, prepared in accordance with generally accepted accounting principles, the names of the issuer's proprietors, partners or officers, the nature of the enterprise of the issuer and any other available information reasonably necessary for evaluating the desirability or the lack of desirability of investing in the securities of the issuer.

(B) Each broker-dealer who, in computation of net capital includes securities not listed on a registered national securities exchange recognized by the Administrator shall also have the information provided for in (A) of this paragraph available and shall, upon request, furnish same to the Department.

(C) All transactions in such securities described in (A) and (B) of this paragraph shall comply with the provisions of Section 1-301 of the Securities Act.

(D) The provisions of (A) of this paragraph shall not be required in unsolicited transactions, except when numerous unsolicited transactions in a particular security are occurring, it shall be the duty and responsibility of the broker-dealer to make reasonable effort to secure and provide to customers upon their written request the information required by the provisions of (A) of this paragraph. Nothing contained in this Section shall be construed to limit the powers of the Administrator under Section 1-204 of the Securities Act.

(24) The following standards shall apply when a broker-dealer shares an office with an independent investment adviser that has an investment adviser representative who regularly conducts business in the office and is not registered as an agent of the broker-dealer.

(A) The broker-dealer and the independent investment adviser shall reduce any agreement between them to writing.

(B) The broker-dealer shall take appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship between the broker-dealer and the independent investment adviser when one does not otherwise exist.

(C) The broker-dealer shall comply with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from disclosure to the independent investment adviser and investment adviser representative.

**660:11-5-45. Financial statements for non-FINRA broker-dealers**

(a) ~~Audited~~**Required financial statements.** Applications for registration for non-FINRA member broker-dealers shall contain audited financial statements for the applicant as of the end of its last fiscal year. Applicants that have commenced operating, but have been in operation for less than twelve (12) months shall submit ~~audited~~ unaudited statement of financial condition as of a date within ninety (90) days of the date of the filing of the application and ~~audited~~ unaudited statement

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of income for the period beginning from the date of inception through the date as of which the statement of financial condition is prepared.

(b) ~~Unaudited interim financial statements.~~ If the audited financial statements required by (a) of this section are not current to within ninety (90) days of the date of filing of the application, additional unaudited financial statements shall be submitted covering the period from the beginning of the current fiscal year through a month ending within the 90 day time frame.

(e) ~~Net capital computation.~~ Financial Statements statements submitted by or on behalf of a broker-dealer shall include a statement of the amount of net capital required by the SEC for the broker-dealer and a schedule presenting a computation of net capital as of each statement of financial condition date. The computation of net capital shall be calculated according to the formula established by the SEC in 17 CFR 240.15c3-1.

(d) ~~Waiver.~~ The Administrator in his the Administrator's discretion may waive any of the requirements of this section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

## SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

### PART 1. GENERAL PROVISIONS

#### 660:11-7-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"Access person" means:

(A) any of the investment adviser's supervised persons:

- (i) who has access to the non-public information regarding any client's purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or
- (ii) who is involved in making securities recommendations to clients or who has access to such recommendations that are non-public.

(B) if providing investment advice is the investment adviser's primary business, all of its directors, officers, and partners are presumed to be access persons.

"Advisory affiliate" means an advisory affiliate as defined by the Glossary of Terms for the Form ADV.

"Beneficial ownership" means ownership that meets the requirements of section 16 of the 1934 Act (15 U.S.C. 78p) and the rules and regulations thereunder including 17 CFR 240.16a-1. Any report required by 17 C.F.R. 275.204A-1(b) may contain a statement that the report will not be construed

as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

"Chief compliance officer" means a supervised person with the authority and resources to develop and enforce an investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered in the chief compliance officer's home state as an investment adviser representative of the investment adviser and must have the background and skills appropriate for fulfilling the responsibilities of the position.

"Fund" means an investment company registered under the Investment Company Act of 1940.

"IARD" means the FINRA-operated Investment Adviser Registration Depository.

"Impersonal advisory services" means investment advisory services provided solely:

- (A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;
- (B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
- (C) any combination of the foregoing services.

"Initial public offering" means an offering of securities under the 1933 Act (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the 1934 Act (15 U.S.C. 78m or 78o(d)).

"Investment company contract" means a contract with an investment company registered under the 1940 Act that meets the requirements of Section 15(c) of that Act.

"Limited offering" means an offering that is exempt from registration under section 4(2) or section 4(5) of the 1933 Act (15 U.S.C. 77d(2) or 77(d)(5)) or sections 504, 505, or 506 of Regulation D of the Securities Act of 1933 (17 C.F.R. 230.504, 230.505, or 230.506.)

"Non-related person" means not a "Related person" as defined by the Glossary of Terms for the Form ADV.

"Office" means any location where an investment adviser and/or one or more of its investment adviser representatives regularly conduct business relating to provides investment advisory services, solicits, meets with, or otherwise communicates with clients or holds the location out to the general public as a place at which an investment adviser and/or one or more of its investment adviser representatives provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

"Reportable security" means a security as defined in section 202(a)(18) of the 1933 Act (15 U.S.C. 80b-2(a)(18)), except that it does not include:

- (A) direct obligations of the government of the United States;
- (B) banker's acceptances, bank certificates of deposit, commercial paper and high-quality short-term debt instruments, including repurchase agreements;
- (C) shares issued by money market funds;



(D) shares issued by open-end funds other than reportable funds; and

(E) shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

"**Solicitor**" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

"Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other persons acting on behalf of the investment adviser.

### PART 3. LICENSING PROCEDURES

#### 660:11-7-11. Initial registration

(a) **Investment adviser.** Investment advisers applying for initial registration pursuant to Section 1-406 of the Securities Act:

- (1) shall file with the IARD:
  - (A) ~~a completed~~ fully completed Parts I and II of Form ADV;
  - (B) a Form BR for each office located within the state of Oklahoma, and if the investment adviser's principal office is located in Oklahoma, all offices located elsewhere; and
  - ~~(C)~~ the filing fee specified in Section 1-612 of the Securities Act;
- (2) shall file with the Department:
  - ~~(A) a list of the addresses, telephone numbers and resident representatives of all branch offices located within the state of Oklahoma, and if the principal office of the investment adviser is located in Oklahoma, all branch offices located elsewhere;~~
  - ~~(B)~~ audited financial statements as required by 660:11-7-44 unless exempt therefrom;
  - ~~(C)~~ a copy of each form of investment advisory contract to be executed by Oklahoma clients and if the principal office of the investment adviser is located in Oklahoma, a copy of each form of investment advisory contract to be executed by any other clients;
  - ~~(D)~~ prior to the effective date of registration, proof that the applicant maintains an errors and omissions insurance policy in the amount of at least \$1 million per claim from an insurer authorized to transact insurance in the state of Oklahoma or from any other insurer approved by the Administrator according to standards established by 660:11-7-21; and
  - ~~(E)~~ any additional documentation, supplemental forms, and information as the Administrator may deem necessary; and

(3) if a natural person, must have passed the applicable examinations specified in 660:11-7-13.

(b) **Investment adviser representative.** Investment adviser representatives applying for initial registration under the Securities Act:

- (1) shall file with the CRD:
  - (A) a completed or updated Form U-4;
  - (B) the filing fee specified in Section 1-612 of the Securities Act;
  - (C) proof of applicant's approved status of registration or licensure in a jurisdiction in which he has an office of employment where such registration is required; and
  - (D) any additional documentation, supplemental forms, and information as the Administrator may deem necessary;
- (2) must have passed the applicable examinations specified in 660:11-7-13.

#### 660:11-7-13. Qualification examination requirements

(a) **Examination requirement.** Proof of compliance with the written examination requirements of this Section is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examinations.** Any natural person seeking registration as an investment adviser or investment adviser representative must pass the Series 65; or the Securities Industry Essentials (SIE) examination, both the Series 66, and Series 7, or such other examination(s) or certifications determined by the Administrator to be acceptable in lieu thereof. The Administrator adopts the examinations as administered by FINRA as the required examinations.

(c) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply. ~~Effective October 1, 2018, FINRA is implementing a new Securities Industry Essentials (SIE) examination and revised agent level qualification exams. At that point, it will be necessary for an applicant to pass the SIE in addition to the Series 66 and Series 7 as an alternative to passing the Series 65.~~

(d) **Validity of prior examination scores.**

(1) The Department will not recognize for purposes of qualification for registration under the Securities Act any FINRA examination score(s) that predates an initial application for registration by more than two (2) years in the absence of registration as an investment adviser representative, an investment adviser, agent, principal or broker-dealer since examination.

(2) The Department will not recognize for purposes of qualification for registration under the Securities Act the examination score(s) of any person whose most recent registration as an investment adviser, investment adviser representative, agent, principal or broker-dealer has been terminated for a period of two (2) years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.

(e) **Waiver of examination requirement.** The Administrator may waive the examination requirement on a case-by-case

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basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

### 660:11-7-21. Errors and omissions coverage

(a) Every investment adviser who is required to maintain an errors and omissions insurance policy under 660:11-7-11 must submit proof of an errors and omissions insurance policy to the Department as a condition of registration.

(b) Every investment adviser registered under Section 1-406 of the Securities Act must submit proof of an errors and omissions insurance policy annually as set forth in 660:11-7-31.

~~(c) If subject to For purposes of compliance with 660:11-7-11 and 660:11-7-31, proof of insurance may be demonstrated by submitting to the Department an attestation of compliance on a form available on the Department's website approved by the Administrator and a policy declaration page; or a certificate of liability coverage specifying errors and omissions coverage. For purposes of compliance with 660:11-7-31, proof of insurance may be demonstrated by submitting to the Department an attestation of compliance on a form available on the Department's website.~~

~~(1) An attestation must include:~~

~~(A) The name of the insurer;~~

~~(B) The policy number;~~

~~(C) Name of the insured; licensee; and~~

~~(D) Date of the policy period.~~

~~(2) For purposes of compliance with this Section, 660:11-7-11, and 660:11-7-31, a policy may not contain exclusions for investment management and advisory services performed in this state on behalf of the investment adviser or for persons performing investment management and advisory services in this state on behalf of the investment adviser unless the investment adviser and its representatives refrain from performing the excluded investment management and advisory services and disclose the limitations in the investment adviser's Form ADV Part 2A.~~

~~(3) The requirements for this insurance may be fulfilled by a policy provided through membership in a professional association so long as the requirements are otherwise met, or at the discretion of the Administrator.~~

~~(4) The requirements for this insurance may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.~~

(d) For purposes of this rule, policies written by admitted or authorized insurers, registered surplus lines insurers, and registered risk retention and purchasing groups will satisfy the errors and omissions requirement of 660:11-7-11 and 660:11-7-31.

(e) Every investment adviser registered under Section 1-406 of the Securities Act shall immediately notify the Department in writing if its errors and omissions insurance policy is cancelled, terminated, or substantially modified.

## PART 5. REPORTING REQUIREMENTS

### 660:11-7-31. Post-registration reporting requirements

(a) **Form ADV amendments.** Every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV each year by filing an annual updating amendment within 90 days of the end of its fiscal year. In addition, every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV by promptly filing additional amendments (other-than-annual amendments) if required by the written instructions to Form ADV.

(b) **Proof of errors and omissions coverage.** Every investment adviser registered under Section 1-406 of the Securities Act must submit proof of an errors and omissions insurance policy meeting the requirements of 660:11-7-11(a)(2)(D) to the Department each year within 90 days of the end of its fiscal year. The proof must be submitted in compliance with 660:11-7-21.

(c) **Financial reports.**

(1) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, every investment adviser registered under Section 1-406 of the Securities Act who has custody, as that term is defined in 660:11-7-48, of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of \$1,200.00 per client shall file a post-registration financial report with the Department each fiscal year.

(2) **Report content.** Financial reports shall contain the financial or operating report filing fee specified in Section 1-612 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.

(3) **Report filing dates.** Financial reports become due on the last day of the fiscal year to which they apply; however, a grace period is provided before a filing becomes delinquent. The filing must be made within 90 days of the end of the registrant's fiscal year.

(4) **Amendment.** If the information contained in a financial report is or becomes inaccurate or incomplete in a material respect, the investment adviser shall promptly file a correcting amendment.

~~(d) **Form BR amendments.** Every investment adviser registered under Section 1-406 of the Securities Act must file a Form BR prior to the use or operation of any office in this state. In addition, every investment adviser registered under Section 1-406 of the Securities Act must promptly amend its Form BRs as required by the written instructions to Form BR.~~

~~(e) **Incomplete or delinquent filings.** The Department will not accept incomplete or piecemeal filings. Failure to make a required filing before it becomes delinquent may result in the suspension or revocation of registration.~~

## PART 7. RECORD KEEPING AND ETHICAL STANDARDS

### 660:11-7-41. Record keeping requirements

(a) **General requirements.** Every investment adviser registered or required to be registered under the Securities Act shall

make and keep true, accurate and current the following books and records:

- (1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.
- (3) A record of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
- (5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.
- (6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period. The financial statements shall include a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation.
- (7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:
  - (A) any recommendation made or proposed to be made and any advice given or proposed to be given,
  - (B) any receipt, disbursement or delivery of funds or securities, or
  - (C) the placing or execution of any order to purchase or sell any security; provided, however:
    - (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
    - (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record

of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

- (8) A list or other record identifying all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.
- (9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.
- (10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.
- (11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.
- (12) When providing investment advice is the primary business of the investment adviser.
  - (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in (B) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor the advisory representative of the investment adviser has any direct or indirect influence or control, and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10)

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days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(13) When providing investment advice is not the primary business of the investment adviser:

(A) Notwithstanding the provisions of (12) of this subsection, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as defined in (C) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States.

(B) Each record required by (A) of this paragraph shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory

representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(C) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(iii) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived from such other business or businesses, on an unconsolidated basis, more than 50% of:

(I) its total sales and revenues, and

(II) its income (or loss) before income taxes and extraordinary items

(14) A copy of each brochure and brochure supplement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Section 1-410.F of the Securities Act, and a record of the dates that each brochure and brochure supplement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

- (A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;
- (B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and
- (C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgement, and solicitor disclosure statement will be considered to be in compliance with this paragraph if such documents are in compliance with Rule 275.206(4)-3 of the Advisers Act of 1940.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Recommendations.

(A) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(B) A record evidencing that the account record of each client consisting of the information described in (A) of this paragraph has been furnished by the investment adviser to the client within thirty days of the signing of an investment advisory contract, and thereafter at intervals no greater than thirty-six months. The account record shall include or be accompanied by prominent statements that the client should mark any corrections and return the account record to the adviser and that the client should notify the advisor of any changes to information contained in the account record as they occur in the future.

~~(19) Written compliance policies and procedures reasonably designed to prevent violations of the Securities Acts and the rules adopted by the Administrator under the Securities Act.~~

~~(20) Written procedures to supervise the activities of employees and investment adviser representatives that are~~

~~reasonably designed to achieve compliance with applicable securities laws and regulations. The following standards shall apply to supervisory procedures:~~

~~(A) Regardless of its size or complexity, every investment adviser registered or required to be registered under the Securities Act must adopt and implement supervisory procedures that are tailored specifically to their business and must address the activities of all its investment adviser representatives and associated persons. Supervisory procedures must be in writing and must be reasonably designed to achieve compliance with applicable securities laws and the rules adopted under the Securities Act. Ultimate responsibility for supervision rests with the investment adviser.~~

~~(B) Written supervisory procedures must identify who has supervisory responsibilities, a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible.~~

~~(C) All written supervisory procedures should specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.~~

~~(D) Every investment adviser must maintain a copy of each prior version of its written supervisory procedures for a minimum of five years.~~

~~(21) Proxy Voting.~~

~~(A) If the investment adviser has the authority to vote client securities, the investment adviser must:~~

~~(i) establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients, to include how the investment adviser addresses material conflicts that may arise between its interests and those of the investment adviser's clients;~~

~~(ii) disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities; and~~

~~(iii) describe to clients the investment adviser's proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.~~

~~(B) If the investment adviser does not have the authority to vote client securities, then disclose to clients that it does not have such authority.~~

~~(22) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.~~

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(2320) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(2421) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks drawn by clients and made payable to third parties within three business days of receipt, the adviser shall keep a ledger or other listing of all securities or funds held or obtained including the following information:

- (A) issuer;
- (B) type of security and series;
- (C) date of issue;
- (D) for debt instruments, the denomination, interest rate and maturity date;
- (E) certificate number, including alphabetical prefix or suffix;
- (F) name in which registered;
- (G) date received by the adviser;
- (H) date sent to client or sender;
- (I) form of delivery to client or sender, or copy of the form of delivery to client or sender; and
- (J) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(2522) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody in (c)(2) of 660:11-7-48, the adviser shall keep the following records:

- (A) a record showing the issuer or current transfer agent's name, address, phone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and
- (B) a copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(2623) A copy of the investment adviser's ~~Physical Security and Cybersecurity Policies and Procedures and Privacy Policy~~ written policies and procedures required by 660:11-7-46. In addition to the investment adviser's recordkeeping requirements under subsections (e) and (g) of this Section, the investment adviser shall maintain:

- (A) A current copy of these policies and procedures either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent on access to the investment adviser's computers or a network;
- (B) All records documenting the investment adviser's compliance with 660:11-7-46, including, but not limited to, evidence of the annual review of the policies and procedures; and

(C) A record of any violation of 660:11-7-46 and of any action taken as a result of the violation.

(2724) Copies of the brochures required by 660:11-7-43 including a list of all clients or prospective clients to whom the brochures were provided and the date the brochures were provided.

(b) **Special requirements due to type of custody.**

(1) **Custody as defined in 660:11-7-48.** If an investment adviser has custody, as that term is defined in 660:11-7-48, the records required to be made and kept under (a) of this Section shall include:

(A) a copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(C) a separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(D) copies of confirmations of all transactions effected by or for the account of any client.

(E) a record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) if applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) if applicable, evidence of the client's designation of an independent representative.

(2) **Adviser to pooled investment vehicle.** If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) true, accurate and current account statements;

(B) When the exception set forth in (c)(4) of 660:11-7-48 applies, the records required to be made and kept shall include:

- (i) the date(s) of the audit;

- (ii) a copy of the audited financial statements; and
  - (iii) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.
- (C) When the description set forth in (b)(5) of 660:11-7-48 applies to an investment adviser, the investment adviser is required to make and keep records to include:
- (i) a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.
  - (ii) copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.
- (c) **Managed accounts.** Every investment adviser subject to (b) of this Section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:
- (1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.
  - (2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each security held by the client, and the current amount or interest of the client.
- (d) **Client identity.** Any books or records required by this Section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (e) **Records retention.** Every investment adviser subject to (a) of this Section shall preserve the following records in the manner prescribed:
- (1) All books and records required to be made under the provisions of (a) to (c), inclusive, of this Section (except for books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.
  - (2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
  - (3) Books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years

in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

~~(4) Books and records required to be made under the provisions of (a)(17)-(22), inclusive, of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.~~

(5) Notwithstanding other record preservation requirements of this Section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under (a)(3), (a)(7)-(10), (a)(14)-(15), (a)(17)-(19), ~~(a)(24)-(25)~~, (b) and (c) inclusive, of this Section, and (B) the records or copies required under the provision of (a)(11) and (a)(16) of this Section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the applicable period described in this Subsection.

(f) **Ceasing business.** An investment adviser subject to (a) of this Section, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Section for the remainder of the period specified in this Section, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

(g) **Format and storage of records.**

(1) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved as the records are kept in their regular form for the required time, by an investment adviser on:

- (A) paper or hard copy form; or
- (B) micrographic media, including microfilm, microfiche, or any similar medium; or
- (C) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

- (A) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
- (B) provide promptly any of the following that the Administrator or his representatives may request:

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- (i) a legible, true, and complete copy of the record in the medium and format in which it is stored;
  - (ii) a legible, true, and complete printout of the record; and
  - (iii) means to access, view, and print the records; and
- (C) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.
- (3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:
- (A) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;
  - (B) to limit access to the records to properly authorized personnel and the Administrator and his representatives; and
  - (C) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.
- (h) **Investment supervisory services.** For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.
- (i) **Compliance with federal law.** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the 1934 Act, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Section, shall be deemed to be made, kept, maintained and preserved in compliance with this Section.
- (j) **Compliance with other state requirements.** Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements.

### 660:11-7-42. Standards of ethical practices

(a) **Purpose.** This Section is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. The standards set forth in this Section apply to federal covered investment advisers and investment adviser representatives only to the extent that application is permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). Any non-compliance with the standards set forth in this Section will constitute unethical practices in the securities business as the

same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.** Investment advisers and investment adviser representatives shall act in accordance with their fiduciary duty to their clients and shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known to the investment adviser or investment adviser representative.

(B) Institutional clients.

(i) An investment adviser or an investment adviser representative fulfills the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if

(I) the investment adviser or investment adviser representative has a reasonable basis to believe that the institutional client is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and

(II) the institutional client affirmatively indicates that it is exercising independent judgment in evaluating the investment adviser or investment adviser representative's recommendations.

(ii) Where an institutional client has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.



- (3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
- (4) Placing an order to purchase or sell a security for the account of a client without authority to do so.
- (5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.
- (6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.
- (7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or investment adviser representative.
- (8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or an investment adviser representative or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.
- (9) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing the source.
- (10) Charging a client an unreasonable advisory fee.
- (11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
  - (A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and
  - (B) Charging a client an advisory fee for rendering advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser or its employees or affiliated persons.
- (12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.
- (13) Publishing, circulating and distributing any advertisement which does not comply with Reg. A § 275.206(4)-1 under the Advisers Act as effective to May 3, 2021.
- (14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.
- (15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action does not comply with the requirements of Reg. A § 275.206(4)-2 under the Advisers Act as effective to May 3, 2021.
- (16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.
- (17) Entering into, extending or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:
  - (A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;
  - (B) remedies available to the client at law or equity or the jurisdiction or venue where any action shall be filed or heard; or
  - (C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.
- (18) Failing to adopt, implement, and follow written supervisory procedures that are tailored specifically to their business and that:
  - (A) address the activities of all its investment adviser representatives and associated persons;
  - (B) identify who has supervisory responsibilities, including a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible; and
  - (C) specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.
- (19) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act or any section thereunder.
- (20) Accessing a client's account by using the client's own unique identifying information such as username and password.
- (21) Failing to establish, maintain, and enforce required policies and procedures.
- (22) Knowingly selling any security to or purchasing any security from a client while acting as principal for its own advisory account, or knowingly effecting any sale or purchase of any security for the account of the client while

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acting as broker-dealer for a person other than the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(A) The prohibitions of this paragraph (22) shall not apply to any transactions with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(B) The prohibition of this paragraph (22) shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

- (i) by means of publicly distributed written materials or publicly made oral statements;
- (ii) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;
- (iii) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or
- (iv) any combination of the foregoing services.

(C) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Securities Act.

(D) The prohibition of this paragraph (22) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

- (i) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;
- (ii) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;
- (iii) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this subparagraph sends the client a written confirmation. The written confirmation shall include:
  - (I) A statement of the nature of the transaction;
  - (II) The date the transaction took place;
  - (III) An offer to furnish, upon request, the time when the transaction took place; and

(IV) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a tender offer, the written confirmation shall state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written consent.

(iv) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this subparagraph (D) send each client a written disclosure statement identifying:

- (I) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and
- (II) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during such period.

(v) Each written disclosure and confirmation required by this subparagraph (D) must include a conspicuous statement that the client may revoke the written consent required under (i) of this subparagraph (D) at any time by providing written notice to the investment adviser.

(vi) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(vii) Nothing in the subparagraph (D) shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act.

(E) Definitions for purposes of this paragraph (22).

(i) "Agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

- (ii) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.
  - (iii) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.
- (23) Sharing an office with a person who is not an advisory affiliate without:
- (A) reducing any agreement with the unaffiliated person to writing;
  - (B) taking appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship with the unaffiliated person when one does not otherwise exist; and
  - (C) complying with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from the unaffiliated person.

**660:11-7-44. Financial statements for investment advisers**

- (a) **Audited statements.** Applications for registration as investment advisers shall contain audited financial statements for the applicant as of the end of its last fiscal year. Applicants that have been in operation for less than twelve (12) months shall submit an unaudited statement of financial condition as of a date within ninety (90) days of the date of the filing of the application and an unaudited statement of income for the period beginning from the date of inception through the date as of which the statement of financial condition is prepared.
- (b) **Unaudited interim financial statements.** If the audited financial statements required in the preceding (a) are not current to within ninety (90) days of the date of filing, additional unaudited financial statements shall be submitted covering the period from the beginning of the current fiscal year through a month ending within the 90-day time frame.
- (c) **Sole proprietors.** Investment advisers who are individuals or sole proprietorships, in lieu of audited financial statements, may provide financial statements that have been prepared in accordance with generally accepted accounting principles and which have been reviewed and reported upon by independent accountants in accordance with the standards for the review of financial statements promulgated by the American Institute of Certified Public Accountants.
- (d) **Exemption.** The financial statement requirements specified in this section shall not apply to an investment adviser unless the investment adviser has custody or possession of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of \$500.00 per client.
- (e) **Waiver.** The Administrator in his discretion may waive any of the requirements of this section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

**660:11-7-46. ~~Information security~~Written policies and procedures**

(a) **Required written policies and procedures.** It is unlawful for an investment adviser registered or required to be registered under section 1-403 of the Securities Act to provide investment advice to clients unless the investment adviser establishes, maintains, and enforces written policies and procedures tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The written policies and procedures must provide for at least the following:

(1) **Compliance Policies and Procedures.** The investment adviser must establish, maintain, and enforce written compliance policies and procedures reasonably designed to prevent violations by the investment adviser of the Act and the rules that the Administrator has adopted under the Act;

(2) **Supervisory Policies and Procedures.** The investment adviser must establish, maintain, and enforce written supervisory policies and procedures reasonably designed to prevent violations by the investment adviser's supervised persons of the Act and the rules that the Administrator has adopted under the Act. The following standards shall apply to supervisory procedures:

(A) Regardless of its size or complexity, every investment adviser registered or required to be registered under the Securities Act must adopt and implement supervisory procedures that are tailored specifically to their business and must address the activities of all its investment adviser representatives and associated persons. Supervisory procedures must be in writing and must be reasonably designed to achieve compliance with applicable securities laws and the rules adopted under the Securities Act. Ultimate responsibility for supervision rests with the investment adviser.

(B) Written supervisory procedures must identify who has supervisory responsibilities, a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible.

(C) All written supervisory procedures should specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(3) **Proxy Voting.**

(A) If the investment adviser has the authority to vote client securities, the investment adviser must:

(i) establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients, to include how the investment adviser

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addresses material conflicts that may arise between its interests and those of the investment adviser's clients;

(ii) disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities; and

(iii) describe to clients the investment adviser's proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

(B) If the investment adviser does not have the authority to vote client securities, then disclose to clients that it does not have such authority.

**(4) Physical security and cybersecurity policies and procedures.** Every investment adviser registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

(A+) The physical security and cybersecurity policies and procedures must:

(iA) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(iiB) Ensure that the investment adviser safeguards confidential client records and information; and

(iiiC) Protect any records and information the release of which could result in harm or inconvenience to any client.

(B2) The physical security and cybersecurity policies and procedures must cover at least five functions:

(iA) Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities;

(iiB) Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;

(iiiC) Detect. Develop and implement the appropriate activities to identify the occurrence of an information security event;

(ivD) Respond. Develop and implement the appropriate activities to take action regarding a detected information and security event; and

(vE) Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that are impaired due to an information security event.

(C3) The investment adviser must review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

(5b) Privacy policy. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser, and to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

**(6) Code of Ethics.**

(A) The investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

(i) A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

(ii) Provisions requiring the investment adviser's supervised persons to comply with applicable State and Federal securities laws;

(iii) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically as provided below;

(iv) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

(v) Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

**(B) Reporting Requirements.**

(i) Holdings reports. The code of ethics must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements:

(I) Content of holdings reports. Each holdings report must contain, at a minimum, the title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

the name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and the date the access person submits the report.

(II) **Timing of holdings reports.** The investment adviser's access persons must each submit a holdings report no later than 10 days after the person becomes an access person, and the information must be current as of a date no more than 45 days prior to the date the person becomes an access person and at least once each 12-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than 45 days prior to the date the report was submitted.

(ii) **Transaction reports.** The code of ethics must require access persons to submit to the investment adviser's chief compliance officer or other persons designated in the investment adviser's code of ethics quarterly securities transactions reports that meet the following requirements:

(I) **Content of transaction reports.** Each transaction report must contain, at a minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership: the date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved; the nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition); the price of the security at which the transaction was effected; the name of the broker, dealer, or bank with or through which the transaction was effected; and the date the access person submits the report.

(II) **Timing of transaction reports.** Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

(iii) **Exceptions from reporting requirements.** The investment adviser's code of ethics need not require an access person to submit:

(I) any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

(II) a transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan;

(III) a transaction report if the report would duplicate information contained in broker trade confirmations or account statements that the investment adviser holds in its records so long as the investment adviser receives the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

(iv) **Pre-approval of certain investments.** The investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(v) **Small advisers.** If the investment adviser has only one access person, it is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering, if the investment adviser maintains records of all of its holdings and transactions that this section would otherwise require the investment adviser to report.

(e7) **Material Non-Public Information Policy and Procedures.** The investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

(8) **Business continuity and succession plan.** The investment adviser shall establish, maintain, and enforce written policies and procedures relating to a business continuity and succession plan that includes at least the following:

(A4) the protection, backup, and recovery of books and records.

(B2) alternate means of communications with clients; key personnel; employees; vendors; service providers, including third-party custodians; and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

(C3) office relocation in the event of temporary or permanent loss of a principal place of business.

(D4) assignment of duties of qualified responsible persons in the event of the death or unavailability of key personnel.

(E5) otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(b) **Annual review.** The investment adviser must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this Section and the effectiveness of their implementation.

(c) **Chief Compliance Officer.** The investment adviser must designate a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

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### **660:11-7-49. Investment adviser representative continuing education requirements**

(a) **Definitions.** For purposes of this Section, the following terms mean:

(1) **"Approved IAR Continuing Education Content"** means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this Section.

(2) **"Authorized provider"** means a person that NASAA or its designee has authorized to provide continuing education content required by this Section.

(3) **"Credit"** means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

(4) **"Home state"** means the state in which the investment adviser representative has its principal office and place of business.

(5) **"IAR Ethics and Professional Responsibility Content"** means Approved IAR Continuing Education Content that addresses an investment adviser representative's ethical and regulatory obligations.

(6) **"IAR Products and Practice Content"** means Approved IAR Continuing Education Content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(7) **"Investment adviser representative"** means an individual who meets the definition of "investment adviser representative" under the Securities Act and an individual who meets the definition of "investment adviser representative" under 17 CFR 275.203A-3.

(8) **"Reporting period"** means the calendar year. An investment adviser representative's initial reporting period commences the first day of the first full reporting period after the individual is registered or required to be registered under the Securities Act.

(b) **IAR continuing education.** Every investment adviser representative registered under the Securities Act must complete a total of twelve (12) credits of continuing education requirements each reporting period as follows:

(1) **IAR Ethics and Professional Responsibility requirement.** An investment adviser representative must complete six (6) credits of IAR Ethics and Professional Responsibility Content offered by an authorized provider, with at least three (3) credits covering the topic of ethics; and

(2) **IAR Products and Practice requirement.** An investment adviser representative must complete six (6) credits of IAR Products and Practice Content offered by an authorized provider.

(c) **Agent of FINRA-registered broker-dealer compliance.** An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with subsection

(b)(2) for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria:

(1) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.

(2) The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.

(3) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(d) **Credentialing organization continuing education compliance.** Credits of continuing education completed by an investment adviser representative who holds certifications determined by the Administrator to be acceptable in lieu of required examinations comply with subsection (b) of this Section provided all of the following are true:

(1) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period.

(2) The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential.

(3) The continuing education content provided by the credentialing organization during the relevant reporting period is Approved IAR Continuing Education Content.

(e) **IAR continuing education reporting.** Every investment adviser representative is responsible for ensuring that the authorized provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

(f) **No carry-forward.** An investment adviser representative who completes credits of continuing education in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(g) **Failure to complete or report.** An investment adviser representative who fails to comply with this Section by the end of a reporting period will renew under the Securities Act as "CE Inactive" at the close of the calendar year until the investment adviser representative completes and reports all required IAR continuing education credits for all reporting periods as required by this Section. An investment adviser representative who is "CE-Inactive" at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(h) **Discretionary waiver by the Administrator.** The Administrator may, in the Administrator's discretion, waive any requirements of this Section.

(i) **Home state.** An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's home state is considered to be in compliance with this rule provided that both of the following are true:

(1) The investment adviser representative's home state has continuing education requirements that are at least as stringent as the requirements of this Section.

(2) The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.

(j) **Unregistered periods.** An investment adviser representative who was previously registered under the Securities Act and became unregistered for non-compliance with this Section must complete the continuing education requirements required by this Section for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person applies to become registered again under the Securities Act unless the investment adviser representative takes and passes the required examinations or receives an examination waiver under 660:11-7-13 in connection with the subsequent application for registration.

## SUBCHAPTER 11. EXEMPTIONS FROM SECURITIES REGISTRATION

### PART 5. EXEMPT TRANSACTIONS

#### **660:11-11-54. Intrastate offering exemption**

(a) **Terms of the Exemption.** Under the authority of Section 1-202.25 of the Securities Act, transactions meeting the following conditions are exempt from Sections 1-301 and 1-504 of the Securities Act:

(1) **Intrastate offers and sales.** The issuer meets all of the requirements set forth in Section 1-202.25 of the Securities Act.

(2) **Minimum offering amount.** Investors shall receive a return of all their subscription funds if the minimum offering amount is not raised by the time stated in the disclosure document. Non-cash contributions from control persons or other insiders shall not be considered in fulfilling the minimum offering amount.

(3) **Initial notice filing.** The issuer, at least ten (10) business days prior to the first sale of the securities, shall file a notice of the proposed offering directly with the Department. The notice must include the following:

(A) the names and addresses of the issuer, all persons who will be involved in the offer or sale of securities on behalf of the issuer, and any bank or other depository institution in which investor funds will be deposited;

(B) a copy of the disclosure document to be provided to each prospective purchaser in connection with the offering within a reasonable period of time before the date of sale containing at least the following:

(i) the name, legal status, physical address, and website address of the issuer;

(ii) the names of the directors, officers, and any other control persons with descriptions of each person's background and qualifications;

(iii) a description of the business of the issuer and the anticipated business plan of the issuer;

(iv) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer, including compensation paid to any officer, director, or control person;

(v) the target offering amount and the deadline to reach the target offering amount, and any minimum amount required to close the offering if such minimum is less than the target offering amount;

(vi) the amount of commission or other remuneration to be paid to any broker-dealer or agent involved in the offer or sale of the securities;

(vii) financial information about the issuer, certified by the issuer's chief executive officer and chief financial officer, or other individual serving in a similar capacity, to be true and complete in all material respects, including:

(I) annual financial statements, unless the issuer is newly organized and has not reached its first fiscal year end, that are dated as of the end of the issuer's most recently completed fiscal year; are prepared in accordance with generally accepted accounting principles in the United States; include a balance sheet, statement of income, statement of cash flows, statement of changes in stockholders' equity and notes to the financial statements; and comply with the applicable standard set forth in (4) of this subsection; and

(II) interim financial statements including an unaudited balance sheet and statement of income for the issuer's most recently completed fiscal quarter, but only if the issuer is newly organized and has not reached its first fiscal year end or the date of the issuer's most recently completed fiscal year end is more than one hundred twenty (120) days prior to the date of filing.

(C) a description of any litigation, legal proceedings, or pending regulatory action involving the issuer, its officers, directors, or control persons;

(D) a statement that:

(i) sales will only be made to any one person in an amount up to \$5,000.00 unless the persons are accredited investors as that term is defined in Rule 501 of Regulation D of the Securities Act of 1933 (17 C.F.R. 230.501);

(ii) sales will only be made to residents of the state of Oklahoma at the time of the sale of the security;

(iii) the securities have not been registered with or approved by the state of Oklahoma and are being offered and sold pursuant to an exemption from registration and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law;

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- (iv) for a period of six (6) months from the date of the sale by the issuer of the securities, any resale of the securities (or the underlying securities in the case of convertible securities) shall be made only to persons resident within the state of Oklahoma; and
- (v) there is no ready market for the sale of the securities acquired from this offering and it may be difficult or impossible for a purchaser to sell or otherwise dispose of this investment;
- (E) a copy of the escrow agreement;
- (F) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and
- (G) the fee as set forth in Section 1-612 of the Securities Act.
- (4) **Annual financial statement standards.** The annual financial statements required in (3)(B)(vii)(D) of this subsection must meet the following applicable standard:
- (A) For offerings that have an aggregate offering amount of \$500,000 or less, the issuer may provide unaudited and unreviewed financial statements. However, if the issuer has obtained financial statements that have been compiled, reviewed, or audited by an independent certified public accountant, the issuer must provide those financial statements;
- (B) For offering that have an aggregate offering amount of more than \$500,000 but less than \$1,000,000, the financial statements must be compiled by an independent certified public accountant. However, if the issuer has obtained financial statements that have either been reviewed or audited by an independent certified public accountant, the issuer must provide those financial statements; or
- (C) For offerings that have an aggregate offering amount of \$1,000,000 or more, the financial statements must be reviewed by an independent certified public accountant. However, if the issuer has obtained financial statements that have been audited by an independent certified public accountant, the issuer must provide those financial statements.
- (5) **Continuing notice filings.** For offerings that continue beyond one year from the commencement date of the offering, the issuer shall file with the Department, no later than thirty (30) days after the end of each quarter, updated interim financial statements including an unaudited balance sheet and statement of income for the issuer's most recently completed fiscal quarter, certified by the issuer's chief executive officer and chief financial officer, or other individual serving in a similar capacity, to be true and complete in all material respects.
- (6) **Final notice filing.** The issuer shall file with the Department, no later than thirty (30) days after the termination of the offering, a final notice that the offering has been terminated. The final notice must include the following:
- (A) the Oklahoma exemption file number for the offering of securities to which the final notice relates;
- (B) the commencement date of the offering and the termination date of the offering;
- (C) a sales report that discloses the dollar amount of securities sold in Oklahoma in connection with the offering, in the following format:
- (i) Beginning offering amount;
- (ii) Minus: Amount sold during the offering;
- (iii) Balance unsold at the termination of the offering; and
- (D) If the offering did not achieve the minimum offering amount, the issuer shall provide written confirmation to the Department that all offering proceeds that were raised in the offering were returned to each purchaser and that each purchaser did receive their investment proceeds.
- (7) **Fees.** There are no fees required to be paid for the continuing notices or the final notice.
- (8) **Piecemeal filings.** Any notice required under this section is not considered filed if it is incomplete. Piecemeal filings shall not be accepted.
- (9) **Required legend.** The issuer shall, in connection with any securities sold by it under this Section, place a prominent legend on the certificate or other document evidencing the security stating that: "Offers and sales of these securities were made under an exemption from registration and have not been registered under the Securities Act of 1933 or the Oklahoma Uniform Securities Act of 2004. For a period of six months from the date of the sale by the issuer of these securities, any resale of these securities (or the underlying securities in the case of convertible securities) shall be made only to persons resident within the state of Oklahoma."
- (10) **Evidence from purchaser.** The issuer shall obtain from each purchaser a written representation of residency within the state of Oklahoma before a sale may be made. Such representation shall include an affirmation made by the purchaser that the purchaser is at least eighteen (18) years of age and purchasing the securities for investment. The issuer shall also obtain a copy of any one of the following from the purchaser:
- (A) valid Oklahoma driver's license or official identification card issued by the State of Oklahoma;
- (B) current Oklahoma voter registration card; or
- (C) county property tax records showing the individual owns and occupies property in Oklahoma as his or her primary residence.
- (b) **Application of NASAA Statements of Policy and guidelines.** The Department may apply the provisions of applicable Statements of Policy or guidelines adopted by NASAA to any offering of securities made pursuant to this exemption from registration. Failure to comply with any such provision may serve as the basis for withdrawing or further conditioning the exemption as to a particular offering.

[OAR Docket #22-505; filed 6-28-22]



**TITLE 690. BOARD OF EXAMINERS FOR  
SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY  
CHAPTER 10. LICENSURE AND FEES**

[OAR Docket #22-474]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Licensure of Speech-Language Pathologists and Audiologists

690:10-3-9. Telepractice [AMENDED]

Subchapter 7. Licensure of Speech-Language Pathology Assistants and Audiology Assistants

690:10-7-3. Supervision required [AMENDED]

690:10-7-9. Academic Requirements for assistants [AMENDED]

Subchapter 9. Fees

690:10-9-2. License renewal fee [AMENDED]

690:10-9-4. Certification License Verification fee [AMENDED]

**AUTHORITY:**

59 O.S., 2011 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 25, 2022

**COMMENT PERIOD:**

February 16, 2022- March 17, 2022

**PUBLIC HEARING:**

March 21, 2022

**ADOPTION:**

March 25, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 31, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

NA

**INCORPORATIONS BY REFERENCE:**

NA

**GIST/ ANALYSIS:**

The amendments to subchapter 3 of Chapter 10 clarifies that telepractice rules apply to Speech Assistants and Clinical Fellows. The proposed amendments to subchapter 7 changes the number of supervisees that can be supervised based on full time employees and calculating supervision time to be more consistent with ASHA rules, clean up language on defining full time and part time per week based on number of hours worked, adding reciprocity provision and cleaning up language on technical content.

The amendments to subchapter 9 is clean up language to change invalid to expire and certification to license verification.

**CONTACT PERSON:**

Amy McPeck, Director, 3700 N Classen Blvd. Ste. 248, Oklahoma City, OK 73118, 405-524-4955, amy.hall@obespa.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**690:10-3-9. Telepractice**

(a) Licensees may provide speech-language pathology and audiology services to clients in Oklahoma by utilizing

telepractice. Telepractice means the use of audio, video, or data communication to provide speech-language pathology and audiology services to clients who are not present at the same site as the licensee when the service is provided.

(b) Except as provided in 59 O.S. § 1604, no practitioner licensed in another state may deliver speech-language pathology and audiology services via telepractice to clients located in Oklahoma, unless licensed in Oklahoma.

(c) Telepractice must conform to the same standards of practice required when the client is present at the same site as the licensee when the service is provided.

(d) ~~Speech language pathologists and audiologists—~~Licensees providing services via telepractice must be trained in the use of telepractice equipment, and are responsible for ensuring that support persons who assist with service delivery at the site where the client is located are properly trained. The telecommunications technology used for service delivery must meet standards established by professional organizations recognized by the Board, and comply with applicable state and federal laws and regulations

(e) Telepractice must be an appropriate method of service delivery for the service delivery for the service provided and for the unique needs and abilities of each client.

**SUBCHAPTER 7. LICENSURE OF  
SPEECH-LANGUAGE PATHOLOGY  
ASSISTANTS AND AUDIOLOGY ASSISTANTS**

**690:10-7-3. Supervision required**

(a) The speech-language pathology assistant must be supervised by a speech- language pathologist who has been licensed for two years. Licensee as a clinical fellow does not count toward the two-year license requirement. Each supervisor shall accept no more than the equivalent of two FTE (full-time employee) assistants. ~~Licensee as a clinical fellow does not count toward the two year license requirement.~~ Each practitioner licensed in both speech-language pathology and audiology is likewise restricted to two FTE assistants in aggregate. Further, the total number of licensees supervised by a single supervisor shall not exceed two-two FTE.

(b) The supervising speech-language pathologist must have successfully completed at least six hours of Board approved training in clinical supervision within ten years prior to requesting approval to supervise. Three hours must include instruction in the knowledge and skills areas necessary for speech language pathology assistant's supervisors as identified by the American Speech- Language Hearing Association (ASHA), other organization or entity the Board deems acceptable. The remaining three hours may consist of other topics related to clinical supervision, including instruction specific to the supervision of clinical fellows. A speech-language pathologist who has completed six hours of training is eligible to supervise both clinical fellows and speech-language pathology assistants, provided that the six-hour training includes three hours, specific to supervision of clinical fellows and three hours specific to supervision of assistants.

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(c) For the first 90 ~~workdays~~calendar days following the first day of employment~~to ensure~~, a speech-language pathology assistant shall practice under a minimum of 20% direct supervision with a minimum of 8 indirect supervising activities per month. ~~For those speech language pathology assistants working less than 20 hours per week, a minimum of 4 indirect supervisory activities are required per month.~~ After successful completion of the first 90 workdays the amount of supervision may be adjusted if the supervising speech-language pathologist determines the speech-language pathology assistant has met the necessary competencies and skill levels with a variety of communication and related disorders. All supervision must include documentation of direct and/or indirect supervision provided by the supervising speech-language pathologist to each client/patient at least every 90 calendar days. For full-time speech-language pathology assistants (full-time is defined as 30 hours or more per week) a minimum of four hours of direct supervision per month and as much indirect supervision as needed to facilitate the delivery of quality services must be maintained. For part-time speech-language pathology assistants (part-time is defined as less than 30 hours per week) a minimum of two hours of direct supervision per month and as much indirect supervision as needed to facilitate the delivery of quality services must be maintained.calendar days, a minimum of 10% of direct supervision is required with a minimum of 8 indirect supervisory activities per month. For those speech language pathology assistants working less than 20 hours per week, a minimum of 4 indirect supervisory activities are required per month. The supervisor for a speech language pathology assistant who regularly practices twenty hours or less per week may request that the number of hours of supervision be calculated based on the assistant's total number of hours of practice in each month, rather than each week. The supervising speech-language pathologist must be always available in person or by electronic means when the speech-language pathology assistant is implementing a treatment program is performing clinical activities. The supervision must be documented on a supervision log signed by the supervisor and the assistant. Direct supervision must also be documented on the client/patient session note. Records of supervision are subject to inspection by the Board.

(1) ~~Direct supervision:~~Direct supervision includes in-view observation and guidance by a speech-language pathologist while the speech-language pathology assistant is providing an assigned clinical service to a patient. Realtime telesupervision is acceptable as it allows the supervising speech-language pathologist to provide immediate feedback. While directly supervising, the speech-language pathologist may not perform any clinical services unrelated to the client/patient receiving services from the speech-language pathology assistant.

(2) ~~Indirect supervision means the supervising speech language pathologist is engaged~~includes in supervisory activities other than direct supervision, observation, and guidance of the assistant while the assistant is providing an assigned clinical service to a patient. Indirect supervision activities performed by the supervising speech-language pathologist may include but are

not limited to demonstration, record review, review, and evaluation of audio or videotaped sessions, and interactive television and supervising conferences that may be conducted by telephone, email, or live webcam.

(d) The supervising speech-language pathologist is responsible for exercising his or her professional judgment to determine the appropriate level of supervision at or above the required minimum necessary to ensure that each client/patient receives competent services. The supervising speech-language pathologist should consider:

- (1) the individual speech-language pathology assistant's knowledge, experience, and competence;
- (2) the treatment setting;
- (3) the client/patient's diagnosis/prognosis; and
- (4) the nature of the assigned clinical service.

(e) For audiology assistants, direct supervision is required when the assistant is performing activities involving direct patient care. Direct supervision requires the supervising audiologist to be present on-site for supervision and guidance of the assistant. Indirect supervision of the audiology assistant is permissible when the audiology assistant is performing duties or activities that do not involve direct patient care. Indirect supervision requires the supervising audiologist to be available for instruction or guidance but does not require the supervising audiologist to be present on-site. The audiology assistant must be supervised by an audiologist who has been licensed for two years. Each supervisor shall accept no more than two assistants.

### 690:10-7-9. Academic Requirements for assistants

(a) **Academic requirements for speech-language pathology assistants.**

- (1) Each speech-language pathology assistant applicant shall hold not less than an associate degree, or its equivalent, with a major emphasis in speech-language pathology from an accredited academic institution.
- (2) Each speech-language pathology assistant applicant shall submit an ~~bona fide~~ official transcript(s) and verification of academic preparation and clinical experience reflecting a minimum of eighteen (18) semester credit hours in general education, a minimum of twenty semester credit hours in technical content, a minimum of twenty-five (25) hours of observation which precede a minimum of 100 clock hours of supervised clinical experience. The official transcript must come directly from the accredited academic institution, either by electronic means or by mail.

(A) **General education.** The general education component typically includes, but is not limited to, course work in oral and written communication, mathematics, computer applications, social sciences, and natural sciences.

(B) **Technical content.** The technical content component must include, but is not limited to the following areas:

- (i) ~~Normal processes of communication.~~Foundations of communication and overview of communication disorders

- (ii) ~~Overview of communication disorders. Professional standards for the SLPA (includes objectives for scope of practice, ethics, supervision, and professional practices)~~
- (iii) ~~Instruction in assistant level service delivery practices. Anatomy and physiology of speech and hearing mechanisms~~
- (iv) ~~Instruction in work place behaviors. Phonetics~~
- (v) ~~Cultural and linguistic factors in communication. Speech sound development and disorders~~
- (vi) ~~Observation experiences include direct on site observation of a licensed speech language pathologist. Additional observation experiences may include on site, video or digital observation of a licensed speech language pathologist. Language development and disorders. Language development and disorders~~
- (vii) Assistant-level service delivery practices or instructional methods for the SLPA
- (viii) Cultural and linguistic factors in communication
- (ix) Observation experiences include direct on-site, video, or digital observation of a licensed speech-language pathologist

(C) **Clinical experience.** Applicants must complete 100 clock hours of clinical experience supervised by a licensed speech-language pathologist. The clinical experience requirement must be completed through an accredited academic institution with a Board approved degree program.

**(b) Reciprocity**

The Board may issue a license for a speech-language pathology assistant to a person who holds a current speech-language pathology assistant license in another state or country according to the following conditions:

- (1) Payment of the Board's current fee for licensure; AND one of the following:
- (2) The applicant submits evidence of licensure in good standing from another other state or country which maintains a system and standard of qualifications and examinations for speech-language pathology assistants which meets or exceeds the current requirements for licensure in Oklahoma; OR
- (3) The applicant is currently certified as an American Speech-Language-Hearing Association (ASHA) speech-language pathology assistant.

**(bc) Academic requirements for audiology assistants**

Each audiology assistant applicant shall hold not less than a high school diploma or its equivalent.

**SUBCHAPTER 9. FEES**

**690:10-9-2. License renewal fee**

(a) The license renewal fee shall be eighty-five dollars (\$85.00) each calendar year. The renewal fee is due on or before December 31<sup>st</sup> of each year. Failure of any licensed

person to pay the renewal fee before the first day of January does not deprive the licensee of the right to renew the license, but the fee paid for renewal postmarked after December 31<sup>st</sup> shall be increased by 50% for each month or fraction thereof that the payment is delayed, up to a maximum of three times the renewal fee (\$255.00). Failure to pay the renewal fee by January 1<sup>st</sup>, however, shall render the license ~~invalid-expired~~ until renewed. Renewal of an ~~invalid-expired~~ license within the first year will result in an automatic audit of that licensee's continuing education activities for the preceding continuing education two-year reporting period. Failure to renew a license within the twelve month period following expiration, without otherwise placing the license(s) in question on inactive status (see 690:10-9-6), will render the license permanently invalid, requiring reapplication for licensure based on meeting all current requirements for licensure in the applicant's area of specialization. ~~The applicant whose license has been expired for less than five years may petition the Board to waive the clinical fellowship requirement and/or the examination requirement. If the license has been expired for a period of five (5) years or more, the licensee shall be required to demonstrate competence to practice by completion of one of the following requirements within the last two (2) years prior to submission of the application for relicensing:~~

- (1) ~~retake and pass the exam required for licensure:~~
- (2) ~~show proof of licensure and at least 520 hours of practice in another state:~~
- (3) ~~show proof of at least 520 hours or practice in a setting exempt from licensure pursuant to 59 O.S. § 1604;~~
- (4) ~~show proof of completion of an additional twenty hours of Continuing Education~~

(b) Any licensee whose license is active and in good standing; is a member of the Armed Forces of the United States; and is on active duty at the time of renewal is exempt from payment of the renewal fee. Upon receipt of notice of assignment to active duty from the licensee, the Board shall automatically renew the license without a fee each year thereafter of active duty military service, and for up to one year after the date of discharge from active duty.

**690:10-9-4. ~~Certification~~License verification fee**

A fee of five dollars (\$5.00) shall be charged ~~to the licensee the speech language pathologist or audiologist~~ who requests the Board to certify his licensure to another organization or persons.

*[OAR Docket #22-474; filed 6-27-22]*

**TITLE 690. BOARD OF EXAMINERS FOR  
SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY  
CHAPTER 15. RULES OF PRACTICE**

*[OAR Docket #22-475]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

# Permanent Final Adoptions

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## **RULES:**

690:15-1-3. Principles of ethics [AMENDED]

## **AUTHORITY:**

59 O.S., 2011 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.

## **SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 25, 2022

## **COMMENT PERIOD:**

February 16, 2022- March 17, 2022

## **PUBLIC HEARING:**

March 21, 2022

## **ADOPTION:**

March 25, 2022

## **SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 31, 2022

## **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 11, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

NA

## **INCORPORATIONS BY REFERENCE:**

NA

## **GIST/ ANALYSIS:**

The proposed amendments to 690:15-1-3 adds language regarding practicing while impaired.

## **CONTACT PERSON:**

Amy McPeck, Director, 3700 N Classen Blvd. Ste. 248, Oklahoma City, OK 73118, 405-524-4955, amy.hall@obespa.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### **690:15-1-3. Principles of ethics**

Six Principles serve as a basis for the ethical evaluation of professional conduct and form the underlying moral basis for the Code of Ethics. Individuals subscribing to this Code shall observe these principals as affirmative obligations under all conditions of professional activity.

(1) Licensees shall hold paramount the welfare of persons served professionally.

(A) Licensees shall use every resource available, including referral to other specialists as needed, to provide the best service possible.

(B) Licensees shall fully inform persons served of the nature and possible effects of the service.

(C) Licensees' fees shall be commensurate with services rendered.

(D) Licensees shall provide appropriate access to records of persons served professionally.

(E) Licensees shall take all reasonable precautions to avoid injuring person in the delivery of professional services.

(F) Licensees shall evaluate services rendered to determine effectiveness.

(G) Licensees shall not practice while impaired due to mental or physical health conditions or the use of alcohol or other substances. Impaired means the licensee is unable to practice the profession with reasonable skill and safety.

(2) Licensees shall maintain high standards of professional competence.

(A) Licensees engaging in clinical practice shall possess appropriate qualifications as defined in the Speech-Language Pathology and Audiology Licensing Act. 59 O.S. 1601, et. seq., as amended, and this Title.

(B) Licensees shall continue their professional development throughout their careers.

(C) Licensees shall identify competent, dependable referral sources for persons served professionally.

(D) Licensees shall maintain adequate records of professional services rendered.

(3) Licensees' statements to persons served professionally and to the public shall provide accurate information about the nature and management of communicative disorders and about the profession and services rendered by its practitioners.

(4) Licensees shall maintain objectivity in all matters concerning the welfare of persons served professionally. Licensees shall observe the following standards:

(A) Products associated with professional practice must be dispensed to the person served as a part of a program of comprehensive rehabilitative care.

(B) Fees established for professional services must be independent of whether a product is dispensed.

(C) Persons served must be provided freedom of choice for the source of services and products.

(D) Price information about professional services rendered and products dispensed must be made available to the person served upon request and must include a complete schedule of fees and charges which schedule differentiates between fees for professional services and charges for products.

(E) Products dispensed to the person served must be evaluated to determine effectiveness.

(5) Licensees shall honor their responsibilities to the public, their profession, and their relationships with colleagues and members of allied professions.

(6) Licensees shall uphold the dignity of the profession and its standards.

(A) Licensees shall inform the Board of violations of this Code of Ethics.

(B) Licensees shall cooperate fully with Board inquiries into matters of professional conduct related to this Code of Ethics.

[OAR Docket #22-475; filed 6-27-22]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #22-517]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Public Policy  
Part 11. Public Records  
710:1-3-70 [AMENDED]  
710:1-3-71 [AMENDED]  
710:1-3-73 [AMENDED]  
Subchapter 5. Practice and Procedure  
Part 3. Description of Administrative Review and Hearings  
710:1-5-15 through 710:1-5-17 [AMENDED]  
Part 8. Settlement of Tax Liability  
710:1-5-81 [AMENDED]  
Subchapter 13. Consumer Compliance Initiative  
710:1-13-3 [AMENDED]

**AUTHORITY:**

68 O.S. § 203; Oklahoma Tax Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 14, 2021

**COMMENT PERIOD:**

January 18, 2022 through February 22, 2022

**PUBLIC HEARING:**

March 7, 2022

**ADOPTION:**

March 15, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 18, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST / ANALYSIS:**

Section 710:1-5-81 has been amended to implement the provisions of Section 2 of HB 2780 [2021] which provides for personal liability for mixed beverage gross receipts tax levied pursuant to 37A O.S. § 5-105. This provision was also amended to strike the incorrect reference to use tax as a trust fund tax.

The amendments to Sections 710:1-3-70, 710:1-3-71, 710:1-3-73, 710:1-5-15, 710:1-5-16, 710:1-5-17, and 710:1-13-3, are to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. PUBLIC POLICY**

**PART 11. PUBLIC RECORDS**

**710:1-3-70. Records in general**

(a) **Confidentiality of records.** Generally, the law provides that the records and files of the Oklahoma Tax Commission are confidential except as specifically provided otherwise by statute. [See: 68 O.S. § 205]

(b) **Classes of exceptions to the general rule of non-disclosure.** Certain documents are available to the public by specific exception to the general law set out in (a) of this Section. In addition, some documents are considered public in nature, pursuant to the Open Records Act. [See: 68 O.S. §§ 205, 205.2, 205.5 and 205.6; 51 O.S. § 24A.4]

(c) **Records available under specific provisions of law.** By specific statutory mandate and by exceptions to the general rule of confidentiality set out in 68 O.S. § 205, there are a number of sources of information available to the public and maintained by the Commission.

(1) **List of income tax filers.** A list of persons who filed Oklahoma income tax returns is prepared annually and made available for inspection at the Taxpayer Resource Center, ~~123 Robert S Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

(2) **Register of tax warrants filed.** A register of current outstanding tax warrants issued is updated monthly and made available for inspection at the Taxpayer Resource Center, ~~123 Robert S Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

(3) **Oklahoma aircraft registry.** A list of aircraft registered with the state is maintained and available for public inspection at the Taxpayer Resource Center, ~~123 Robert S Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

(4) **Decedents' list.** A list of decedents within the state, county of probate, and probate number is maintained and available for public inspection at the Audit Services Division, ~~123 Robert S. Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, ~~Oklahoma,~~ OK 73102 during normal business hours.

(5) **Permits, licenses, exemptions.** Information regarding the issuance or revocation of licenses and permits and documents evidencing exemption are available for most applicable tax types. The elements or items of information available regarding permits, licenses and exemptions may vary by tax type. In addition, the format in which a particular record is available may be limited to that normally used by the agency. Items of permit-related information may include permit number, permittee name, name of business, and business address. Inquiries should be made to the Business Tax Services Division.

(d) **Limited disclosure in some instances.** Some records and information from records maintained by the Commission may be accessible only by certain persons, or for certain limited uses. In these instances, the release of information must be one permissible by statute. The Commission may require that the request be written and may require supporting documentation

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or identification, if the release of information sought is one statutorily limited in scope.

(e) **Requesting records; fees.** Where a person desires the Commission to make photocopies of public records, the request should be made in writing, specifying the record requested. The Commission may collect a fee for the copying of records, as well as other fees required by statute, and may structure the manner of response to requests so as to protect the normal business of the agency from undue disruption or delay. [For specific fee information, see Appendix A of this Chapter, Schedule of Fees.]

### 710:1-3-71. Rules of the Oklahoma Tax Commission

(a) **Rules described.** "Rules" of the Oklahoma Tax Commission are formal statements of policy which set out procedures to be followed in the administration of various tax levies and fees. Rules describe broad interpretations of the tax laws, often prescribe forms, and may set out informal and formal procedures for filing, remitting, registering and objecting to the various taxing provisions. Rules may also prescribe procedures for the granting, denial, suspension, renewal, or revocation of various permits and licenses administered by the Commission. Rules are subject to the provisions of Article I of the Oklahoma Administrative Procedures Act (APA), in Title 75 of the Oklahoma Statutes and must be promulgated under the terms of the APA before they are considered effective. Rules which have been promulgated have the full force and effect of law and continue in effect until amended or revoked under APA provisions.

(b) **Availability.** Current rules, both permanent and emergency, of the Oklahoma Tax Commission are available on the Oklahoma Tax Commission website at [www.tax.ok.gov](http://www.tax.ok.gov) or from the Taxpayer Resource Center, ~~123 Robert S. Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

### 710:1-3-73. Opinions and letter rulings

(a) **Opinions not issued by the Commission.** An "opinion" is a formal document, generally prepared by legal counsel, expressing conclusions that interpret or apply the law to a set of assumed facts. As so defined, the Oklahoma Tax Commission does not issue opinions. However, legal counsel may prepare such a document to advise the Commission or a taxing Division within the Commission.

(b) **"Opinion" defined.** Thus, an "opinion," with respect to the Oklahoma Tax Commission, means a written communication embodying formal legal advice, upon which the Commission may base, in whole or in part, administrative decisions, decisions in individual tax proceedings, or prospective policy decisions. Opinions, being advisory to the Commission, do not constitute authority by any party for challenging any matter pending before the Commission.

(c) **Opinion may impact policy, rulemaking.** To the degree that a policy of the Commission, based upon such a legal opinion, impacts broad segments of taxpayers and is to be given future effect by the Commission, such policy may be promulgated as a rule of the Commission.

(d) **Availability of opinions.** Such opinions as may be made available to the public, pursuant to the provisions of Section 302(A)(4) of Title 75, as further defined and limited by the terms of Section 24A.1, et seq. of Title 51, will be limited to those which are, or will be embodied in policy of the Commission.

(e) **"Letter ruling" described.** The Tax Policy and Research Division and the Office of the General Counsel may draft and issue letter rulings, which are informal written statements of policy or treatment of specific fact situations under Oklahoma tax law. Such a letter ruling may generally be relied upon only by the taxpayer to whom it is issued, provided that all facts have been accurately and completely stated, and that there has been no change in applicable law.

(f) **Requests for letter rulings.** Requests by individuals or groups of taxpayers for letter rulings will be honored by the Commission, at its discretion, and in consideration of the time and resources available to respond to such requests. Requests for letter rulings should be made to the Tax Policy and Research Division, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave~~, Oklahoma City, OK ~~73102-73194~~.

(g) **Letter ruling may initiate rulemaking.** To the degree that a letter ruling impacts broad segments of taxpayers and is to be given future effect by the Commission, such letter ruling may become the basis for a rule of the Commission.

(h) **Availability of letter rulings.** Letter rulings may be viewed at the Taxpayer Resource Center, ~~123 Robert S. Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

## SUBCHAPTER 5. PRACTICE AND PROCEDURE

### PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

#### 710:1-5-15. Requests for rulemaking action

(a) Any interested person may petition the Commission, requesting the adoption, amendment, or revocation of an existing rule of the Oklahoma Tax Commission. Such a request need not take any particular form, but must be written and include the following information:

- (1) The full text, or identifiable portion thereof, of a proposed rule or rules;
- (2) The identification and the full text, or identifiable portion thereof, of an existing rule or rules, as proposed to be amended, clearly indicating proposed changes;
- (3) The identification of the rule or rules for which repeal is sought;
- (4) A statement in support of the proposal made. This statement shall make reference to the statutory basis for the proposal, including, when appropriate, judicial and administrative interpretations of the statute or statutes in question. The supporting statement should include specific objections to existing rules, practices, or interpretations, and set forth the policy considerations which support adoption of the proposal; and,

(5) A statement describing in detail the interest of the petitioner in making the proposal. This description shall include a statement as to whether the proposal is intended to affect the tax consequences of any transaction or transactions entered into or contemplated by the petitioner, its vendors, customers, clients, or any person upon whose request or upon whose behalf the proposal is made, the taxability of which are known by the petitioner to be the subject of an inquiry, audit, refund, or assessment proceeding by the Commission and shall contain an explanation of the circumstances surrounding the inquiry, audit, refund, or assessment proceeding, if any.

(b) The Commission shall consider each request for rulemaking action which is filed in conformity with this Section and, at its discretion, direct that rulemaking proceedings be initiated in response thereto or deny the request. The Commission may also, at its discretion and with a view to agency resources, direct the rulemaking action be deferred until the next regularly scheduled rulemaking proceedings are commenced. If the rulemaking request is denied, the Commission shall timely so notify the requesting party, in writing, stating the reason(s) for denial. The determination of rulemaking requests shall be solely within the province of the Commission, and no individual proceeding shall be afforded any party in conjunction therewith.

(c) Pursuant to the terms of Section 305 of Title 75 (The Oklahoma Administrative Procedures Act, "APA") any petition for which rulemaking action has not commenced within 30 calendar days is deemed to be denied.

(d) Requests may be made to the Tax Policy and Research Division, ~~123 Robert S. Kerr Ave.~~ at Oklahoma Tax Commission, Oklahoma City, Oklahoma, 7310273194.

**710:1-5-16. Rulemaking procedure and hearings**

(a) **"Hearing" for rulemaking purposes defined.** Rulemaking hearings of the Oklahoma Tax Commission are a forum in which interested parties may express views, make suggestions, and generally have input into the process by which the Commission formulates policy set out in proposed rules. The "hearing" in a rulemaking action consists of:

- (1) a period for public comment, during which written submissions are accepted (will be "heard") by the Commission for the rulemaking actions previously announced; and,
- (2) a meeting at which interested persons may attend and express opinions, give views, make suggestions, or argue orally.

(b) **Who may appear.** Any persons interested in or affected by proposed rulemaking actions may appear at a rulemaking hearing. An appearance may be made individually, or by a representative.

(c) **Commencement of rulemaking.**

- (1) The Commission may commence action to promulgate, amend, or revoke a rule at any time on its own initiative.
- (2) The Commission may commence action to promulgate, amend, or revoke a rule pursuant to a Request or Petition for Rulemaking action described in 710:1-5-15.

(3) The Commission may commence action to promulgate, amend, or revoke a rule pursuant to applicable judicial or statutory mandate.

(d) **Applicable procedures.** Rulemaking procedure, as it applies to the Commission, is set out in general by the terms of the Oklahoma Administrative Procedures Act ("APA"), 75 O.S. §§ 250.1, et seq. Rulemaking hearings required by the APA will substantially conform to the provisions thereof. The following general provisions will apply to rulemaking hearings held by the Oklahoma Tax Commission:

(1) Unless expressly stated otherwise in a Notice of Rulemaking Intent, rulemaking hearings will be held at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma 73102.

(2) Unless expressly stated otherwise in a Notice of Rulemaking Intent, persons wishing to present views orally should notify the Commission in advance of the hearing. To assure efficient use of the forum, the Commission, in its discretion, may limit the amount of time available to each speaker.

(3) All written submissions and requests to be placed on the agenda to make oral submission shall be directed to the Oklahoma Tax Commission, Tax Policy and Research Division, ~~123 Robert S. Kerr Ave,~~ Oklahoma City, OK ~~7310273194.~~

(4) All persons in attendance at a rulemaking hearing, whether offering input or not, will be requested to identify themselves for the rulemaking record.

(5) All persons in attendance at a rulemaking hearing who desire to make oral comment will be requested to provide a name and mailing address for the rulemaking record.

(6) All persons in attendance at a rulemaking hearing will limit oral comments to the merits of the proposed rules for which the hearing is commenced, as announced by the applicable Notice of Rulemaking Intent.

(7) A rulemaking hearing being non-adversarial in nature, all persons in attendance at such hearing will offer input in such a fashion as to comport with the purpose of gathering effective and meaningful information for the guidance of the Commission in formulating policy.

(8) Summaries or audio recordings (or both) will be made of rulemaking hearings and maintained as a part of the rulemaking record. No transcript of the rulemaking hearing will be prepared. Should an interested party desire a transcription or recording of a rulemaking hearing, the taxpayer is directed to contact a certified court reporter, and make the necessary arrangements for the presence of the reporter at the hearing, and the cost thereof. The cost of transcribing will be borne by the party seeking such transcript, who must furnish the original of the transcript to the Commission.

(9) All records required to be kept pertaining to rulemaking will be maintained and may be viewed at the Oklahoma Tax Commission, Tax Policy and Research Division, ~~123 Robert S. Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, Oklahoma 73102, during normal business hours (7:30 a.m. to 4:30 p.m.). Interested persons may

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obtain copies of both current and proposed rules of the Commission from this source.

(10) Interested persons may request individual notice of proposed rulemaking intent by a written request to the Oklahoma Tax Commission, Tax Policy and Research Division, Rulemaking Liaison, ~~123 Robert S. Kerr Ave,~~ Oklahoma City, Oklahoma, ~~7310273194~~. Requests for individual notice should specify the area of tax or procedure for which notice is desired and must be renewed annually.

(e) **Attendance by Commission representatives; Commission review.** To ensure that public input will receive a meaningful hearing, all rulemaking hearings will be attended by a representative from the taxing Division of the Commission initiating the proposed rules. All submissions or summaries thereof, both written and oral, will be reviewed and considered by the Commission prior to the adoption or promulgation of any proposed rules.

### 710:1-5-17. Petitions for declaratory rulings

(a) **General provisions.** The Commission or its duly authorized agent may issue declaratory rulings, as to the applicability of any rule or principle of law embodied in a precedential decision of the Commission, which is requested by or on behalf of a person directly affected thereby, subject to the terms and conditions set forth in this Section.

(b) **Form of petition; where to file.** A declaratory ruling petition must be made in writing and sent in duplicate to the Secretary-Member, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave,~~ Oklahoma City, Oklahoma ~~7310273194~~.

(c) **Contents of a petition for a declaratory ruling.** A declaratory ruling petition must specifically state:

- (1) That a "declaratory ruling is requested pursuant to 710:1-5-17";
- (2) The petitioner's
  - (A) Name (the name of the person, partnership, corporation or entity to whom the facts presented in the petition apply);
  - (B) Address and phone number;
  - (C) Federal identification number, if applicable; and
  - (D) Appropriate OTC license, registration or identification number, where applicable.
- (3) The type of tax, fee, bond, registration, license, or permit at issue;
- (4) The issue(s) on which a declaratory ruling is requested, stated clearly and concisely;
- (5) A complete, clear and concise statement of all relevant facts on which the declaratory ruling is requested;
- (6) The petitioner's desired result and the legal basis for that result, including reference to the applicable statutes, rules, regulations, and case law;
- (7) Whether the issue, as it regards the petitioner, is presently under investigation or audit by the Commission or any of its agents. The term investigation or audit includes, but is not limited to, an inquiry, audit, refund, assessment, suspension or revocation proceeding by the Commission; and

(8) Whether the petitioner is presently pursuing any protest, litigation or negotiation on the issue with the Commission or any of its Divisions, as well as the name of any other person, partnership, corporation or entity whom the petitioner or a duly authorized representative knows is involved with the identical issue pending before or with the Commission.

(d) **Petition must bear authorized signature.** A petition for a declaratory ruling must be signed by the petitioner or an authorized agent of the petitioner.

(e) **Proposed draft may be offered.** The petitioner may provide a draft ruling for the Commission's consideration.

(f) **Commission may require additional information.** The Commission or its authorized representative may request additional information from the petitioner as deemed necessary to issue a declaratory ruling. Failure to provide the requested information shall result in denial of the petition to issue the declaratory ruling.

(g) **Effect of a declaratory ruling.** A declaratory ruling shall have the following effect:

- (1) The declaratory ruling shall apply only to the particular fact situation stated in the declaratory ruling petition;
- (2) The declaratory ruling shall apply only to the petitioner;
- (3) The declaratory ruling shall bind the Commission, its duly authorized agents and their successors only prospectively;
- (4) The declaratory ruling shall bind the Commission, its duly authorized agents and their successors as to transactions of the petitioner that occur within three (3) years after the date of the issuance of the declaratory ruling; and
- (5) The declaratory ruling may be revoked, altered, or amended by the Commission at any time.

(h) **Exceptions to binding effect of declaratory ruling.** The declaratory ruling shall cease to be binding if:

- (1) A pertinent change is made in the applicable law by the Legislature;
- (2) A pertinent change is made in the Commission's rules;
- (3) A pertinent change in the interpretation of the law is made by a court of law or by an administrative tribunal; or
- (4) The actual facts are determined to be materially different from the facts set out in the petitioner's declaratory ruling petition.

(i) **Issuance of a declaratory ruling.** The Commission will make a good faith effort to issue a declaratory ruling within ninety (90) days from date of receipt of a complete and proper petition unless, in the Commission's discretion, the issue is of such complexity or novelty that additional time is required.

(j) **Contents of a declaratory ruling.** A written response from the Commission or from any employee or agent of the Commission to an inquiry from a taxpayer may not be construed to be a declaratory ruling unless made in conformity with this Subsection. A declaratory ruling must contain:

- (1) A statement that: "This is a declaratory ruling issued by the Oklahoma Tax Commission pursuant to 75 O.S. § 307;" and



- (2) The signature of the Commission or any person duly authorized to issue declaratory rulings on its behalf.
- (k) **Denial of a petition for declaratory ruling.** The Commission, in its discretion, may deny a petition for declaratory ruling for good cause. In this instance, the Commission, in a letter, will indicate the reason(s) for refusing to issue the declaratory ruling. Good cause includes, but is not limited to, the following:
- (1) The petition does not substantially comply with the information required by this Section;
  - (2) The petition involves hypothetical situations or alternative plans;
  - (3) The petitioner requests the Commission to interpret or apply a statute, or requests a determination as to whether a statute is constitutional under the Oklahoma Constitution or the United States Constitution;
  - (4) The facts or issue(s) presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue the declaratory ruling;
  - (5) The issue about which the declaratory ruling is requested is primarily one of fact;
  - (6) The issue is presently being considered in a rule-making proceeding, protest proceeding or other agency or judicial proceeding that may definitively resolve the issue;
  - (7) The issue cannot be reasonably resolved prior to the issuance of rules;
  - (8) The petitioner is under investigation or audit relating to that issue, or the issue is the subject of investigation, audit, administrative proceeding or litigation;
  - (9) The issue relates to the application of the law to members of a business, trade, professional or industrial association or other similar group(s); or
  - (10) The petitioner is not identified or is anonymous.
- (l) **Withdrawal of a petition for declaratory ruling.** The petitioner may withdraw the petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling.
- (m) **Response when declaratory ruling inappropriate.** When a declaratory ruling petition requests the Commission to interpret or apply a statute or case law to a specific set of facts, the Commission will issue a letter ruling, as described in OAC 710:1-3-73, instead of a declaratory ruling.

## PART 8. SETTLEMENT OF TAX LIABILITY

### 710:1-5-81. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

**"Commission"** means the Oklahoma Tax Commission.

**"Final liability"** means:

- (A) The tax, penalty and interest due after the expiration of the statutory prescribed time within which to file a protest to a proposed assessment;
- (B) The amount due after the exhaustion of administrative remedies without appeal to the Supreme Court;

- (C) A tax amount admitted to be due by a taxpayer's report;
- (D) The amount found due after a final court decision concerning the existence or amount of the liability; or,
- (E) Other cases of liabilities where further administrative or judicial review is not available and the only consideration is collectibility.

**"Insolvency"** means:

- (A) The inability to pay debts as they fall due in the usual course of business; or,
- (B) Having liabilities in excess of the reasonable market value of assets held.

**"Person"** means any individual, partnership, corporation, limited liability company, association, or public or private organization of any character.

**"Settlement Agreement"** means a written agreement between a taxpayer and the Commission whereby the Commission agrees to abate all or a portion of an outstanding tax liability, including the interest or penalties accruing thereto, and the taxpayer agrees to pay the remainder of such liability, if any, as provided herein.

**"Tax Liability"** means and includes the total amount of Oklahoma tax, penalty, or interest due.

**"Taxpayer"** means:

- (A) Any person subject to or liable for any Oklahoma tax; or,
- (B) Any person required to file a return, or to pay or withhold and remit any tax required by the provisions of any Oklahoma tax law that is administered by the Commission.

**"Trust fund tax"** means Oklahoma Sales Tax levied pursuant to 68 O.S. §§ 1350 et seq., ~~Oklahoma Use Tax levied pursuant to 68 O.S. §§ 1406-1407~~ Oklahoma Gross Receipts Tax (AKA Mixed Beverage Tax) pursuant to 37A §§ 5-105-5-107, Oklahoma Income Tax withholding levied pursuant to 68 O.S. §§ 2385.2-2385.28, or Oklahoma Motor Fuel taxes levied pursuant to 68 O.S. §§ 500.1 et seq.

## SUBCHAPTER 13. CONSUMER COMPLIANCE INITIATIVE

### 710:1-13-3. Consumer Compliance Initiative

**Relief granted under Initiative.** Taxpayers who qualify under the Initiative will be granted a waiver of penalty, interest and other collection fees and the Tax Commission will refrain from assessing use tax for more than one year prior to the date the taxpayer registers to pay consumer use tax.

- (1) **Eligibility.** Only businesses that make regular purchases of tangible personal property outside the State of Oklahoma for their own use, storage or consumption in this state are eligible for the relief granted under the Initiative.
- (2) **Qualification.** To qualify for the relief granted under the Initiative the taxpayer must:

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(A) Voluntarily file delinquent use tax returns and pay the delinquent consumer use taxes reflected thereon; and

(B) Apply with the Oklahoma Tax Commission for an Oklahoma consumer use tax account to report and remit use tax on a monthly basis.

(i) ~~Complete the business registration application. Application is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, OK 73102, a completed Business Registration, Packet A available online at www.tax.ok.gov.~~

(ii) No fee is required to obtain the account.

(iii) Upon receipt and review of the application by the Tax Commission, a consumer use tax account will be assigned.

(3) **Exceptions.** The relief provided under the Initiative is not available to a taxpayer with respect to:

(A) Any matter or matters for which the consumer received notice of the commencement of an audit and which the audit is not yet finally resolved including any related administrative and judicial processes; and

(B) Use taxes already paid or remitted to the state.

(4) **Applicability.** The relief provided pursuant to the Initiative applies only to use taxes due from a taxpayer in its capacity as a buyer not to use taxes due from a taxpayer in its capacity as a seller.

[OAR Docket #22-517; filed 6-30-22]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #22-518]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

710:10-1-4 [AMENDED]

Subchapter 2. Business Personal Property Valuation Schedules

710:10-2-1 [AMENDED]

710:10-2-6 [NEW]

Subchapter 7. Manufacturing Facilities

710:10-7-2.2 [AMENDED]

Subchapter 14. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate

710:10-14-4 [AMENDED]

Subchapter 16. Unremarried Surviving Spouses of Persons Who Died in the Line of Military Duty

710:10-16-1 [AMENDED]

### AUTHORITY:

68 O.S. §§ 203 and 2902; Oklahoma Tax Commission

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 14, 2021

### COMMENT PERIOD:

January 18, 2022 through February 22, 2022

### PUBLIC HEARING:

March 7, 2022

### ADOPTION:

March 15, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 18, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST / ANALYSIS:

Section 710:10-1-4 has been amended to implement the provisions of House Bill 1009 which increased the income eligibility ceiling for additional homestead exemption qualification to gross household income not to exceed \$25,000 instead of the current \$20,000 limit and provided that gross household income shall not include the amount of any federal stimulus or relief payments related to the COVID-19 virus. [68 O.S. § 2890]

Section 710:10-2-6 has been updated to remove antiquated types of miscellaneous equipment.

Section 710:10-7-2.2 has been amended to implement the provisions of Senate Bill 609 which modified payroll and investment cost requirements and included custom manufacturers for purposes of eligibility and qualification for the five-year ad valorem manufacturing exemption. Additionally the amendment allows exemption qualification of replacement personal property for certain data processing facilities classified under NAICS 518210. [68 O.S. § 2902]

Section 710:10-14-4 has been amended to implement the provisions of House Bill 1990 which provides that a 100% disabled veteran owning a residence on leased land owned by a municipality, town, or city qualifies for the statutory homestead exemption from ad valorem taxes. [62:193]

Section 710:10-16-1 has been amended to implement the provisions of House Bill 1062 which provides that an unremarried spouse of a veteran killed in action owning a residence on leased land owned by a municipality, town, or city qualifies for the statutory homestead exemption from ad valorem taxes. [68 O.S. § 2888]

The amendment to Section 710:10-2-1 is to update contact information,

### CONTACT PERSON:

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 710:10-1-4. Limitation of the fair cash value on homestead property of qualified owners; and additional homestead exemption

(a) The procedures and requirements set out in this Section shall be used to implement the limitation of the valuation on homestead property of qualified owners for ad valorem purposes and the additional homestead exemption:

(b) For purposes of qualifying for the senior valuation limitation and/or the additional homestead exemption "**gross household income**" means the gross amount of income of every type, regardless of the source, received by all persons occupying the same household, whether such income was taxable or nontaxable for federal or state income tax purposes,

including pensions, annuities, federal Social Security, unemployment payments, public assistance payments, alimony, support money, workers' compensation, loss-of-time insurance payments, capital gains and any other type of income received, and excluding gifts. The term "gross household income" shall not include any veterans' disability compensation payments, or the amount of any federal stimulus or relief payments related to the COVID-19 virus.

(c) **"Senior valuation limitation"** means the implementation of Oklahoma Constitution, Article 10, Section 8C, which directed county assessors to limit the fair cash value of the homestead property of any qualified person who has made proper application. The applicant's property must be a valid homestead property, with proper evidence of a homestead or an application made in 1997 or subsequent years. As with any homestead, the general statutes for homestead qualification apply to the limitation. Only one homestead, and by extension, only one limitation is permitted in any one year. The limitation applies only to the occupied homestead property and may not be applied to non-homestead property. [See: 68 O.S. §§ 2888, 2889, 2890, 2893].

(1) **Relationship to exemptions and other programs.**

The senior valuation limitation is available to qualified owners in addition to participation in the circuit breaker and additional homestead exemption. Availability of the senior valuation limitation is not dependent upon the county's compliance status with the State Board of Equalization.

(2) **Qualified owner.** The taxpayer must be at least 65 the year before the senior valuation limitation is approved, and the applicant's total household annual income for the previous year must not exceed the amount as provided in the Oklahoma Constitution, Article 10, Section 8C. The income threshold for the gross household income from all sources for an individual head of household under this Section shall not exceed the amount determined by the United States Department of Housing and Urban Development to be the estimated median income for the preceding year for the county or metropolitan statistical area which includes such county. The Tax Commission shall provide this information to each county assessor each year, as soon as it is available.

(3) **Application; qualification; duties of assessor; right of appeal.** In order to be eligible for the senior valuation limitation, the individual must apply at the county assessor's office by completing form OTC 994, Application for Property Valuation Limitation and Additional Homestead Exemption. The application must be made between January 1 and March 15. The limitation will be in effect for the tax year in which the application is made and approved, based on the current year valuation.

(A) For the limitation to be valid, form OTC 994, Application for Property Valuation Limitation and Additional Homestead Exemption, must be completed in its entirety as to income, age, ownership, and other information.

(B) The county assessor has the right and duty to review the information provided, ask any necessary

questions, request documentation of age, income, or other information.

(C) The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Section.

(D) The county assessor may request assistance from the Oklahoma Tax Commission in determination of income qualifications under 68 O.S. § 2890.

(E) The taxpayer may appeal any denial of a senior valuation limitation application by the county assessor to the county board of equalization in the same manner as an appeal of the denial of a homestead exemption.

(4) **Review of valuation for error.** The county assessor should review the valuation of the property for clerical errors, incorrect physical characteristics, or other material error affecting valuation in order to protect the taxpayer. This review shall not include a revaluation of the property solely because it may be below fair cash value.

(5) **Physical improvements to property.** If a physical improvement is made to the property, such as a room addition, additional square footage, garage, out buildings, enclosed garage, or similar improvement, the improvement shall be valued in the same manner as these improvements are presently valued. This additional valuation shall be added to the limited value of the property before the construction occurred. If improvements are added to the property, the fair cash value shall be increased by the amount attributable to the addition. The new total value is then limited again, so long as the owner and property remain qualified. Physical additions or changes that are considered normal maintenance, such as normal repairs, minor re-modeling, roof repair or insulation, minor energy efficiency improvements, or retro fit improvements such as wheelchair ramps to provide access to the property, are not generally considered physical improvements affecting the valuation limitation.

(6) **Duration of, and conditions which terminate the limitation.** The senior valuation limitation is valid on the property as long as the taxpayer owns and occupies the property and title to the property is not transferred, changed, or otherwise modified. If the taxpayer fails to own and occupy the property or if title to the property is transferred, changed, or conveyed to another person, the senior valuation limitation shall expire. It is then the responsibility of the county assessor to value the property at fair cash value consistent with constitutional provisions, statutes and applicable rules. If the person's gross household income from all sources exceeds the amount provided in the Oklahoma Constitution, Article 10, Section 8C, the senior valuation limitation shall expire and the value of the property shall be subject to the three percent limitation increase for that year.

(7) **Instances in which tax amount may increase, despite limitation.** The senior valuation limitation applies to the valuation, however; tax increases may occur under the specific situations outlined as follows:

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(A) If an additional millage such as a bond issue or other levy is added;

(B) If judgment is rendered against the county and a judicial order directs an additional levy; or,

(C) If the county voters adopt a measure increasing the assessment percentage within the county under the authority of Section 8, Article 10, of the Oklahoma Constitution.

(8) **Additional homestead exemption.** "Additional homestead exemption" means an exemption in addition to the amount of the homestead exemption authorized and allowed in Section 2889 of this Title 68, to the extent of One Thousand Dollars (\$1,000.00) of the assessed valuation on each homestead of heads of households whose gross household income from all sources for the preceding calendar year did not exceed ~~Twenty~~ Twenty-Five Thousand Dollars (~~\$20,000.00~~)(\$25,000.00).

(A) To qualify for the additional homestead exemption, the individual must apply at the county assessor's office by completing form OTC 994, Application for Property Valuation Limitation and Additional Homestead Exemption.

(B) The application must be made on or before March 15 or within thirty (30) days of taxpayer's receipt of a County Assessor Notice of Increase in Valuation of Real Property form (OTC 926) whichever is later. [68 O.S. § 2890(C)].

## SUBCHAPTER 2. BUSINESS PERSONAL PROPERTY VALUATION SCHEDULES

### 710:10-2-1. General provisions

(a) **Purpose.** The provisions of this Subchapter have been adopted, pursuant to 68 O.S. § 2875(D)(4), to provide information regarding the schedules of values of personal property given to county assessors to assist in the assessment of personal property.

(b) **Schedules of values.** Schedules of values are intended only to provide the user with an approximation of value for the personalty "typical" for the class, not an absolute value.

(c) **Schedules of trending and depreciation.** Trending schedules are used to adjust historical cost to a current estimated replacement cost new. Depreciation schedules are used to estimate normal depreciation as applied to replacement cost new to estimate current value of the asset. The factors or percentages used are taken from *Marshall and Swift Valuation Service*, a national valuation service contracted by the Division to provide values and schedules of trending and depreciation for real and personal property. This service is updated on a monthly basis.

(d) **Caveat.** Nothing in this Subchapter, nor any other guidelines, procedures, or rates provided to assessors by the Oklahoma Tax Commission Ad Valorem Division ("Division") is intended to relieve property owners or assessing officials of their obligations by law to report, value, or assess personal property at its fair cash value. Though the schedule of values referred to in this Subchapter are typical values for business

personal property, actual value of any particular asset may be affected by conditions or use.

(e) **Disclosure.** A copy of the "Business Personal Property Valuation Schedule" may be obtained by accessing the Tax Commission website at [www.tax.ok.gov](http://www.tax.ok.gov).

(f) **Surveys.** Individuals and organizations who wish to participate in surveys conducted by the Ad Valorem Division may notify the Division by emailing [jbittner@tax.ok.gov](mailto:jbittner@tax.ok.gov) or [mandy.wilkerson@tax.ok.gov](mailto:mandy.wilkerson@tax.ok.gov).

### 710:10-2-6. Other equipment

(a) **Miscellaneous equipment.** "Miscellaneous equipment" means, but is not limited to, coin changers, food merchandisers, game machines, golf cars, and vending machines.

(b) **Sources.** The Division utilizes a national valuation service to provide tables of values for personal property, depreciation schedules, and trending tables for historical cost of the various industries. The current service prescribed by the Division is the *Marshall and Swift Valuation Service*. This service is contracted yearly and updated on a monthly basis.

## SUBCHAPTER 7. MANUFACTURING FACILITIES

### 710:10-7-2.2. Exemption requirements for qualified manufacturing and research and development facilities established, expanded or acquired

(a) **Definitions.** The following words and terms, when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) **Manufacturing facilities** means manufacturing facilities as defined in 68 O.S. § 2902(B)(1).

(2) **Facility or facilities** means except as otherwise provided by Section 2902 of Title 68 of the Oklahoma Statutes, and includes the land, building, structures, and improvements, used directly and exclusively in the manufacturing process. Effective January 1, 2022, and for each calendar year thereafter, for establishments which have received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of Title 68 of the Oklahoma Statutes, or facilities engaged in manufacturing activities defined or classified in the NAICS Manual under Industry Nos. 311111 through 339999, inclusive, but for no other establishments, facility and facilities means and includes the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process. [68 O.S. § 2902(B)(2)].

(3) **Research & development** means activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity. [68 O.S. § 2902(B)(3)].

(4) **Base payroll** means total payroll for the calendar year the construction, acquisition, or expansion assets are first placed in service and the subsequent four (4) calendar years of eligibility.

(5) **Initial payroll** means payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. In the event initial payroll is not comprised of a complete year's payroll, the amounts reported must be computed to arrive at an annual figure.

(b) **Qualification or statutory requirements.** ~~Except as otherwise provided in (6) and (7) of this subsection, To qualify for exemption facilities other than those discussed in subsections (c) and (d) must meet the requirements mandated by statute and summarized in (1) through (5) of this subsection:~~

(1) Facilities must satisfy the requirement of being new, expanded, or acquired.

(2) The investment cost of the construction, acquisition or expansion of the manufacturing facility must be Two Hundred Fifty Thousand Dollars (\$250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. The investment cost of the construction, acquisition or expansion of the manufacturing facility must be Five Hundred Thousand Dollars (\$500,000.00) or more with respect to assets placed into service during calendar year 2022. For subsequent calendar years, the investment required shall be increased annually by a percentage equal to the previous year's increase in the Consumer Price Index-All Urban Consumers ("CPI-U") and such adjusted amount shall be the required investment cost in order to qualify for the exemption authorized by 68 O.S. § 2902. The Oklahoma Department of Commerce shall determine the amount of the increase, if any, on January 1 of each year. The Oklahoma Tax Commission shall publish on its website at least annually the adjusted dollar amount in order to qualify for the exemption and shall include the adjusted dollar amount in any of its relevant forms or publications with respect to the exemption. Investment Cost shall not include the cost of direct replacement, refurbishment, repair or maintenance of existing machinery or equipment, except that "investment cost" shall include capital expenditures for direct replacement, refurbishment, repair or maintenance of existing machinery or equipment that qualifies for depreciation and/or amortization pursuant to the Internal Revenue Code of 1986, as amended, and such expenditures shall be eligible as part of an "expansion" that otherwise qualifies under this section.

(3) Base payroll for the calendar year the assets are placed in service must be increased over initial payroll by at least Two Hundred Fifty Thousand Dollars (\$250,000.00) if the facility is located in a county with a population of less than seventy-five thousand (75,000) persons according to the most recent federal decennial census or by at least One Million Dollars (\$1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census. For the subsequent four years of eligibility, base payroll must be maintained

in an amount equal to, or greater than, the base payroll amount established for the calendar year the assets are first placed in service. With respect to any entity making an application for the exemption authorized by this Section on or after January 1, 2023, the establishment making application for exempt treatment of real or personal property acquired or improved beginning January 1, 2022, and for any calendar year thereafter, the entity shall be required to pay new direct jobs, as defined by 68 O.S. § 3603 for purposes of the Oklahoma Quality Jobs Program Act, an average annualized wage which equals or exceeds the average wage requirement in the Oklahoma Quality Jobs Program Act for the year in which the real or personal property was placed into service. The Oklahoma Tax Commission may request verification from the Oklahoma Department of Commerce that an establishment seeking an exemption for real or personal property pays an average annualized wage that equals or exceeds the average wage requirement in effect for the year in which the real or personal property was placed into service. It shall not be necessary for the establishment to qualify for incentive payments pursuant to the Oklahoma Quality Jobs Program Act, but the establishment shall be subject to the wage requirements of the Oklahoma Quality Jobs Program Act with respect to new direct jobs in order to qualify for the exempt treatment authorized by this section.

(A) To determine initial and base payroll, the Tax Commission must verify all payroll information through the Oklahoma Employment Security Commission (OESC) utilizing reports filed with the OESC for the applicable calendar years. [See: 68 O.S. § 2902(C)(4)].

(B) The amount of increased payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility.

(C) A manufacturing facility shall have the option of excluding certain components from its payroll. Manufacturing facilities electing to exclude either of the options in (i) or (ii) of this subparagraph, shall document the election by an attached addendum to the application at time of filing which states in detail any payroll exclusions. (See: 68 O.S. § 2902(C)(4))

(i) Payments to sole proprietors, members of partnerships, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company, or stockholder employees of a corporation who own at least ten percent (10%) of the stock in the corporation may be excluded from payroll.

(ii) Nonrecurring bonuses, exercise of stock option or stock rights, or other nonrecurring, extraordinary items included in total payroll numbers

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as reported by the OESC may be excluded from payroll. Nonrecurring bonuses shall not include additional wages or other compensation paid on the basis of length of service.

(D) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Tax Commission, with the initial application year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for three (3) years, whichever occurs first, the establishment or expansion of the facility will result in a net increase of the required base payroll. When the increased payroll requirement is met, the affidavit will be considered satisfied and no longer in effect.

(4) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility. [See: 68 O.S. § 2902(C)(4)(b)] Calculation of the number of employees shall be made in the same manner as required pursuant to 68 O.S. § 2357.4 for an investment tax credit.

(5) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

~~(6) Effective January 1, 2017, an entity engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, shall not be defined as a qualifying manufacturing concern for purposes of the exemption authorized pursuant to Section 6B of Article X of the Oklahoma Constitution or qualify as a manufacturing facility as defined in this Section. While facilities which qualified for exemption pursuant to the filing of an exemption application before 2018 will be allowed to claim the exemption for any periods remaining in the five years provided all qualification requirements are met, no initial application for exemption shall be filed by or accepted from an entity engaged in electric power generation by means of wind on or after January 1, 2018.~~

~~(c7) **Distribution facilities; qualification requirements.** For applications received after November 1, 2007, establishments primarily engaged in distribution as defined under industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector Number 42 of the NAICS Manual latest revision, must meet all criteria required by statute and outlined in (4) and (5) of this subsection (b) and the following subparagraphs:~~

~~(1A) Initial capital investment of at least Five Million Dollars (\$5,000,000.00);~~

~~(2B) Employment of at least one hundred (100) FTE full-time equivalent employees, as certified by OESC;~~

~~(3C) Wages and salaries which equal or exceed equal to or exceeding one hundred seventy five percent (175%) of the federally mandated minimum wage; and the average wage requirements in the Oklahoma Quality Jobs Program~~

Act for the year in which the real property was placed into service; and

~~(4D)~~ Commencement of construction on or after November 1, 2007, to be completed within three (3) years from the date of commencement of construction. [See: 68 O.S. § 2902(B)(1)(e)].

(d) **Computer data processing, data preparation or information processing services provider; exemptions and qualification requirements.** Computer data processing, data preparation or information processing services providers classified in U.S. Industry Number 518210 of the North American Industrial Classification System (NAICS) Manual, 2017 revision, are eligible for exemption as outlined below:

(1) **Real and personal property exemption.** Except as otherwise provided by this subsection, any new, acquired, or expanded computer data processing, data preparation, or information processing services provider as described in subsection (d) of this Section may apply for real and personal exemptions under 68 O.S. § 2902 for each year in which new, acquired, or expanded capital improvements to the facility are made for assets placed in service not later than December 31, 2021.

(2) **Personal property exemption.** An establishment described by this subsection, the primary business activity of which is outlined in Industry No. 518210 of the NAICS Manual, 2017 revision, that has applied for and been granted an exemption for personal property at any time within five (5) years prior to November 1, 2021, may apply for exemption for items of eligible personal property to be located within improvements to real property and such real property and improvements having been exempt from ad valorem taxation prior to November 1, 2021 pursuant to 68 O.S. § 2902 if such personal property is placed in service not later than December 31, 2036. No additional personal property of such establishment placed in service after such date shall qualify for the exempt treatment otherwise authorized pursuant to this paragraph.

(3) **Exemption qualification requirements.** To qualify for exemption outlined in paragraphs (1) and (2) of this subsection, an eligible establishment as classified under this subsection must meet the following requirements:

(A) Net increase in annualized payroll of the applicant at any facility or facilities of the applicant in this state of at least Two Hundred Fifty Thousand Dollars (\$250,000.00), which is attributable to the capital improvements, or

(B) Net increase of Seven Million Dollars (\$7,000,000.00) or more in capital improvements, while maintaining or increasing payroll at the facility or facilities in this state which are included in the application, and

(C) the facility offers, or will offer within one hundred eighty (180) days of the date of employment of new employees attributable to the capital improvements, a basic health benefits plan to the full-time equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph

1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto.

(e) **Wind electric generation facility; exclusion as manufacturing facility.** Effective January 1, 2017, an entity engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, shall not be defined as a qualifying manufacturing concern for purposes of the exemption authorized pursuant to Section 6B of Article X of the Oklahoma Constitution or qualify as a manufacturing facility as defined in this Section. While facilities which qualified for exemption pursuant to the filing of an exemption application before 2018 will be allowed to claim the exemption for any periods remaining in the five (5) years provided all qualification requirements are met, no initial application for exemption shall be filed by or accepted from an entity engaged in electric power generation by means of wind on or after January 1, 2018.

(ef) **Review of facility eligibility.** To confirm eligibility, the Tax Commission may request any information from the applicant or require verification of any information as needed.

(eg) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [See: Art. 10, Section 6B, Okla. Const. and 68 O.S. § 2902(A)].

(eh) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

**SUBCHAPTER 14. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE**

**710:10-14-4. Qualified owner**

Applicants must be heads of households who have been honorably discharged from active service in a branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs (USDVA), or its successor, to have one hundred percent (100%) permanent disability sustained through military action or accident, or resulting from a disease contracted while in active service. The exemption extends to the surviving spouses of such veterans who are certified by the United States Department of Veterans Affairs to receive benefits under the terms of this Subchapter. Each applicant must provide to the county assessor, a current United States Department of Veterans Affairs benefits award letter from the USDVA office located in Muskogee, Oklahoma that certifies the one hundred percent service-related disability, or that the individual is in receipt of compensation at the one-hundred percent rate. One hundred percent (100%) disabled veterans or surviving spouses thereof owning and occupying a residence on leased land owned by a municipality, town, or city is considered a homestead for purposes of qualification

for the ad valorem exemption authorized pursuant to Article 10, Section 8E of the Oklahoma Constitution.

**SUBCHAPTER 16. UNREARRIED SURVIVING SPOUSES OF PERSONS WHO DIED IN THE LINE OF MILITARY DUTY**

**710:10-16-1. General provisions**

(a) The procedures and requirements set out in this Subchapter shall be used to implement the exemption for the full fair cash value of homestead property of qualified unremarried surviving spouses.

(b) The exemption for "unremarried surviving spouses of military personnel who died in the line of duty" refers to the implementation of an amendment added to the Oklahoma Constitution, Article 10 § 8F, by State Question 771, effective for the 2014 calendar year and years thereafter. The amendment directs county assessors to exempt the full amount of the actual fair cash value of the homestead property. The applicant's real property must be a valid homestead property with evidence of a homestead exemption or be eligible for homestead exemption. Only one homestead and by extension only one exemption, is permitted in any one year. The exemption applies only to owner-occupied homestead property and may not be applied to non-homestead property. [See: 68 O.S. §§ 2888, 2889, 2890, and 2893]

(c) The exemption provided by this Section may be transferred under circumstances where a qualifying spouse sells a homestead property previously exempted pursuant to this Section and acquires, in the same calendar year, a new homestead property in this state. The full fair cash value of the newly acquired property shall be exempt from ad valorem taxation. The exemption on the property sold will remain in effect through the end of the calendar year.

(d) An unremarried spouse of a veteran killed in action owning and occupying a residence on leased land owned by a municipality, town, or city qualifies as a homestead for purposes of qualification for the ad valorem exemption authorized pursuant to Article 10, Section 8F of the Oklahoma Constitution.

[OAR Docket #22-518; filed 6-30-22]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 15. AIRCRAFT**

[OAR Docket #22-519]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 2. Aircraft Dealer Licenses  
710:15-2-5 [AMENDED]

**AUTHORITY:**

68 O.S. § 203; Oklahoma Tax Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 14, 2021

# Permanent Final Adoptions

**COMMENT PERIOD:**

January 18, 2022 through February 22, 2022

**PUBLIC HEARING:**

March 7, 2022

**ADOPTION:**

March 15, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 18, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST / ANALYSIS:**

Section 710:15-2-5 has been amended to update the mailing address for aircraft dealer license applications.

**CONTACT PERSON:**

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 2. AIRCRAFT DEALER LICENSES

### 710:15-2-5. Application

(a) Application for ~~aan~~ Aircraft Dealer License may be made to the Business Tax Services Division, Oklahoma Tax Commission, ~~P.O. Box 2692026850~~, Oklahoma City, OK ~~73126-092073126-0850~~.

(b) All applications must be accompanied by the fee of \$250.00 which shall be refundable if the application is denied.

(c) The application shall be on the form prescribed by the Oklahoma Tax Commission and complete and correct in all material aspects.

(d) The application must be verified under the oath or affirmation of the applicant.

(e) Each application, whether for a new license or for renewal of an existing license must be accompanied by a listing of the aircraft owned by the applicant, as of the day the application is made, using the Aircraft Dealer Report form.

(f) Each applicant must timely submit an Aircraft Dealer Report form showing all subsequent purchases and sales, if any, during the time that the license is pending.

[OAR Docket #22-519; filed 6-30-22]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 25. COIN OPERATED VENDING DEVICES

[OAR Docket #22-520]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

710:25-1-2 [AMENDED]

**AUTHORITY:**

68 O.S. §§ 203 and 1504; Oklahoma Tax Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 14, 2021

**COMMENT PERIOD:**

January 18, 2022 through February 22, 2022

**PUBLIC HEARING:**

March 7, 2022

**ADOPTION:**

March 15, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 18, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST / ANALYSIS:**

The amendment to Section 710:25-1-2 is to implement Section 7 of HB 2780 [2021], effective November 1, 2021, which excludes from the coin-op fee and decal requirement any device dispensing tangible personal property or providing amusement where payment is made solely through the use of a credit or debit card or other electronic or digital payment process. [68:1501]

**CONTACT PERSON:**

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 710:25-1-2. Annual vending device fee in lieu of sales tax; exclusions

(a) **General provisions.** The annual fee paid for vending, music, amusement, and bulk-vending devices shall be in lieu of sales tax. An annual decal is required, depending on the type of device.

(b) **Exclusions.** Devices which are not subject to the fee or decal requirement include:

(1) Machines not used for the purpose of vending tangible personal property or for playing music or for amusement are not subject to the levy and need not bear a decal, and

(2) Beginning November 1, 2021, devices that dispense tangible personal property or provide amusement where payment is made solely through the use of a credit or debit



card or other electronic or digital payment process. The gross receipts associated with described sales made from these devices are subject to sales tax.

- (c) Examples of devices excluded. Examples of devices to which the levy does not apply are: (1) Pay telephones; (2) Newspaper vending machines; (3) Parking meters; (4) Gas and electric meters; and (5) Devices which vend only postage stamps. (d) Scope of listed exclusions. The list of examples set out in (c) of this Section is intended to be illustrative only and not all-inclusive.

[OAR Docket #22-520; filed 6-30-22]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 45. GROSS PRODUCTION

[OAR Docket #22-521]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions 710:45-1-3 [AMENDED]

AUTHORITY:

68 O.S. § 203; Oklahoma Tax Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 14, 2021

COMMENT PERIOD:

January 18, 2022 through February 22, 2022

PUBLIC HEARING:

March 7, 2022

ADOPTION:

March 15, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 18, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST / ANALYSIS:

Section 710:45-1-3 has been amended to clarify that bond reductions may occur only after the first year and are subject to review and approval by the Tax Commission. [68 O.S. §1010a]

CONTACT PERSON:

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

710:45-1-3. Security required

(a) Bond required generally. As a condition for assignment of a gross production tax purchaser reporting number and/or as a condition for approval to remit gross production taxes, a tax remitter must post a bond in an amount equal to an estimated three months' tax liability. The Tax Commission, in its discretion, may authorize a reduced bond amount.

(b) Adjustment of bond in applicable cases. At the end of one year, the tax remitter may reduce its bond to an amount equal to one month's tax liability, based upon a monthly average of the prior year's tax liability, provided that a reduction in the bond amount will be permitted only if the tax remitter has had no tax deficiencies or delinquencies in the prior year. Upon approval by the Tax Commission, the bond amount may be adjusted annually thereafter, depending upon fluctuations in the yearly tax liability of the tax remitter.

(c) Adjustment of bond for estimated payment. A tax remitter who has paid the one-time estimated gross production tax payment required by 68 O.S. § 1010a, will be permitted, upon request, to reduce the amount of surety bond required by the amount of the estimated payment. However, the one-time payment of gross production tax may not be reduced or refunded until the taxpayer is no longer required to remit gross production taxes.

(d) When bond is not required. Taxpayers who have an estimated liability of One Thousand Dollars (\$1,000.00) or less per year are not required to post a bond.

(e) Applicability. This Section does not apply to bond requirements for reclaimers and transporters which are governed by separate rules in this Chapter.

[OAR Docket #22-521; filed 6-30-22]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 50. INCOME

[OAR Docket #22-522]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Returns and Reports
Part 7. Other Required Reporting
710:50-3-53 [AMENDED]
710:50-3-54 [AMENDED]
Subchapter 9. Refunds
710:50-9-3 [AMENDED]
Subchapter 11. Intercept of Refunds
710:50-11-6 [AMENDED]
710:50-11-7 [AMENDED]
710:50-11-9 [AMENDED]
710:50-11-10 [AMENDED]
710:50-11-11 [AMENDED]
Subchapter 13. Estimated Tax
710:50-13-8 [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 7. Credits Against Tax
710:50-15-90 [AMENDED]

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710:50-15-109 [AMENDED]  
710:50-15-114 [AMENDED]  
710:50-15-115 [AMENDED]  
710:50-15-115.1 [NEW]  
Subchapter 17. Oklahoma Taxable Income for Corporations  
Part 1. General Provisions  
710:50-17-5 [AMENDED]  
Part 5. Determination of Taxable Corporate Income  
710:50-17-51 [AMENDED]  
Appendix A. [REVOKED]  
Appendix A. [NEW]

## AUTHORITY:

68 O.S. §§ 203, 205.2, and 2357.206; Oklahoma Tax Commission

## SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 14, 2021

## COMMENT PERIOD:

January 18, 2022 through February 22, 2022

## PUBLIC HEARING:

March 7, 2022

## ADOPTION:

March 15, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 18, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST / ANALYSIS:

The proposed amendment to Section 710:50-3-53 reflects changes to the individual income tax rate for tax year 2022. [68:2355]

The proposed amendment to Section 710:50-3-54 reflects changes to the individual income tax rate for tax year 2022 and changes to filing format for the Nonresident Member Withholding Exemption Affidavit; the format for filing the affidavit on CD will be in either a spreadsheet format (i.e. Excel) or a database format (i.e. dbf or Access) or a Delimited Text File. [68:2355]

The proposed amendment to Section 710:50-9-3 implements the provisions of Senate Bill 601 which provides that if an income tax refund is not paid to the taxpayer within a certain number of days after the income tax return is filed or due, whichever is later, the Tax Commission must pay interest on the refund. [68:217]

The proposed amendments to Subchapter 11. Intercept of Refunds implement the provisions of Senate Bill 343 which clarifies that a qualified entity seeking to collect unpaid municipal and district court fines and costs from an individual who has filed a state income tax return, may file a claim with the Tax Commission requesting that the amount owed be deducted from the individual's state income tax refund. [68:205.2]

The proposed amendment to Section 710:50-13-8 implements the provisions of Senate Bill 601 which provides that the period of underpayment be consistent with 68 O.S. § 2368; the underpayment due date of both individual income tax and corporate income tax is 30 days after the due date for returns established under the Internal Revenue Code. [68: 2385.13]

The proposed amendment to Section 710:50-15-90 implements the provisions of House Bill 2962; the earned income tax credit was made refundable and the amount of the credit will be computed using the same requirements for computing the earned income tax credit for federal income tax purposes in effect for the 2020 income tax year. [68:2357.43]

The proposed amendment to Section 710:50-15-109 implements the provisions of Senate Bill 893 which amended the definition of "qualified employee" to include engineers licensed as a Professional Engineer, and the definition of "qualified program" to mean both the undergraduate and graduate programs of the same discipline of engineering at an institution shall be part of the qualified program if either program is ABET accredited. [68:2357.301]

The proposed amendments to Sections 710:50-15-114 and 710:50-15-115 and the promulgation of new Section 710:50-15-115.1 implement the provisions of Senate Bill 1080 relating to the Oklahoma Equal Opportunity Education Scholarship Act. [68:2357.206]

The proposed amendments to Section 710:50-17-5, Section 710:50-17-51 and Appendix A. Computation of Tax Accrual When Tax Credits Are Allowable implement the provisions of House Bill 2960 which reduced the corporate income tax rate from 6% to 4% beginning with tax year 2022. [68:2355]

## CONTACT PERSON:

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 3. RETURNS AND REPORTS

### PART 7. OTHER REQUIRED REPORTING

#### 710:50-3-53. Income tax withholding - oil and gas royalties

(a) Effective for royalty payments made on or after October 1, 2000 and before July 1, 2006, any remitter who distributes revenue to a non-resident royalty interest owner is required to deduct and withhold Oklahoma income tax from each payment being made with respect to production of oil and gas in Oklahoma. The amount of income tax to be withheld is six and three-fourth's percent (6.75%) of the gross royalty amount paid. Effective for royalty payments made on or after July 1, 2006, the rate of withholding for any remitter who distributes revenue to a non-resident royalty interest owner is ~~five percent (5%)~~ the highest Oklahoma marginal individual income tax rate with respect to production of oil and gas in Oklahoma

(b) For purposes of this Section, "remitter" means any person who distributes revenue to royalty interest owners; "gross royalty" means that amount which is reported for federal income tax purposes on IRS Form 1099; "non-resident royalty interest owner" means any person who is not a current or permanent resident of Oklahoma who retains a non-working interest in oil or gas production; and "oil" and "gas" shall have the meaning as the terms are defined in 68 O.S. § 1001.2. Oil and gas royalty payments made to publicly-traded partnerships as defined by Section 7704 (b) of the Internal Revenue Code that are treated as partnerships for federal tax purposes or its publicly-traded partnership affiliates are not subject to the withholding requirement in subsection (a).

(c) Remitters are required to file an Oklahoma Nonresident Royalty Withholding Tax Return and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

(1) For royalty payments made during January, February, and March, the amount withheld is due no later than April 30;

(2) For royalty payments made during April, May, and June, the amount withheld is due no later than July 30;

(3) For royalty payments made during July, August, and September, the amount withheld is due no later than October 30; and

(4) For royalty payments made during October, November, and December, the amount withheld is due no later than January 30 of the following year.

(d) The remitter is also required to provide non-resident individual royalty owners and the Oklahoma Tax Commission an annual written statement showing the name of the remitter, to whom the royalty was paid, the amount of the royalty payment and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the royalty owner's name, address, and social security number or Federal Employer Identification Number. This annual filing with the Oklahoma Tax Commission may be done separately, or in conjunction with the annual reporting requirement under 68 O.S. § 2369, if applicable to the remitter.

(e) Any non-resident royalty interest owner from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident royalty interest owner will be entitled to a refund of the amount of the overpayment.

(f) If the non-resident royalty interest owner is a pass-through entity, the pass-through entity shall allocate the non-resident royalty withholding to its partners, shareholders or members in the same manner as the royalty income.

**710:50-3-54. Income tax withholding for pass-through entities**

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Member"** means:
  - (A) A shareholder of a Subchapter S Corporation;
  - (B) A partner in a general partnership;
  - (C) A partner in a limited partnership;
  - (D) A partner in a limited liability partnership;
  - (E) A member of a limited liability company; or,
  - (F) A beneficiary of a trust.
- (2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.
- (3) **"Pass-through entity"** means:
  - (A) A corporation that is treated as a Subchapter S Corporation under the Internal Revenue Code;
  - (B) A general partnership;
  - (C) A limited partnership;
  - (D) A limited liability partnership;
  - (E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **Subchapter S Corporations; general, limited, or limited liability partnerships; limited liability companies.**

In the case of Subchapter S Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of ~~five percent (5%)~~ is required on the Oklahoma portion of the taxable income distributed to each non-resident member at the highest Oklahoma marginal individual income tax rate. In the case of Subchapter S Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the Subchapter S Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of ~~five percent (5%)~~ is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust at the highest Oklahoma marginal individual income tax rate.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

- (1) Persons, other than individuals, who are exempt from federal income tax;
- (2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;
- (3) Insurance companies subject to the Oklahoma gross premium income tax and therefore exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(C); and
- (4) Non-resident members who have submitted a Non-resident Member Withholding Exemption Affidavit to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC 710:50-19-1* and filing a Nonresident Member Withholding Exemption Affidavit, the inclusion of the partner's income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing a Non-resident Member Withholding Exemption Affidavit and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

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- (C) For non-resident beneficiaries included in a trust return and filing a Nonresident Member Withholding Exemption Affidavit, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.
- (f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:
- (1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;
  - (2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;
  - (3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;
  - (4) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;
  - (5) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars (\$500.00);
  - (6) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission; or
  - (7) When a pass-through entity that is required to file either an Oklahoma partnership income tax return or an Oklahoma Subchapter S corporate income tax return makes an election to pay income tax at the entity level pursuant to the Pass-Through Entity Tax Equity Act of 2019. [68 O.S. § 2355.IP-1 et seq.]
- (g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars (\$500.00) for the taxable year must make quarterly estimated tax payments. Oklahoma Nonresident Distributed Income Estimated Withholding Tax Report is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars (\$500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.
- (h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:
- (1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-B, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.
  - (2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return on or before the due date of the pass-through entity's income tax return, including extensions.
  - (3) Each non-resident member must enclose a copy of OTC Form 500-B with the Oklahoma income tax return as verification for this withholding.
- (i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.
- (j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.
- (k) **Affidavit filing procedures.** Non-resident members who elect to file a Nonresident Member Withholding Exemption Affidavit agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.
- (1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having signed an affidavit. All pass-through entities are required to file the non-resident member affidavit information on a ~~diskette or CD~~ with the Oklahoma Tax Commission—~~Audit Services Division~~.
  - (2) **Format.** The format for filing the ~~diskette or CD~~ will be in either a spreadsheet format (i.e. ~~Lotus 1-2-3 or Excel~~) or a database format (i.e. dbf or Access) or a Delimited Text File.
  - (3) **Waiver.** Pass-through entities may obtain a waiver from the ~~diskette or CD~~ filing requirement if

the pass-through entity can demonstrate that a hardship would result if it were required to file on a ~~diskette or~~ CD. Direct waiver requests to the Oklahoma Tax Commission—~~Audit Services Division~~, Oklahoma City, Oklahoma 73194.

## SUBCHAPTER 9. REFUNDS

### 710:50-9-3. Interest on refunds

(a) **Returns filed prior to January 1, 2004.** For returns filed on or after January 1, 1987, and before January 1, 2004, interest will be paid on income tax refunds that are not processed within ninety (90) days from the date a processible return is filed or due, whichever is later, at the same rate of interest specified for delinquent tax payments.

(b) **Returns filed on or after January 1, 2004 and before January 2, 2010.** In the case of returns filed on or after January 1, 2004 and before January 2, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

- (1) For electronically-filed returns, thirty (30) days from the date a processible return is filed or due, whichever is later; and,
- (2) For all other returns, one hundred fifty (150) days from the date a processible return is filed or due, whichever is later.

(c) **Returns filed after January 1, 2010 and before July 1, 2016.** For returns filed after January 1, 2010 and before July 1, 2016, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

- (1) For electronically-filed returns, twenty (20) days from the date a processible return is filed, and
- (2) For all other returns, ninety (90) days from the date a processible return is filed.

(d) **Returns filed ~~on or after July 1~~ June 30, 2016 and before May 7, 2021.** For returns filed ~~on or after July 1~~ June 30, 2016, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

- (1) For electronically-filed returns, forty-five (45) days from the date a processible return is filed, and
- (2) For all other returns, ninety (90) days from the date a processible return is filed.

(e) **Returns filed after May 6, 2021.** For returns filed after May 6, 2021, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

- (1) For electronically-filed returns, forty-five (45) days from the date a processible return is filed or due, whichever is later, and
- (2) For all other returns, ninety (90) days from the date a processible return is filed or due, whichever is later.

(f) **Processible return.** To be "processible", all information on the return, including the computations, must be correct and

all documents required by the Tax Commission must be included. In the case of an ~~Amended~~ amended Oklahoma ~~Income Tax Return~~ income tax return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. [See: 68 O.S. § 217(H)]

(fg) **Exceptions.** Alternative statutory provisions apply in the following instances:

- (1) Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter. [See: 68 O.S. § 217(H)]
- (2) In the event of litigation, interest will be paid in accordance with 68 O.S. §2374.
- (3) In the case of refunds made to recover taxes illegally collected on bonus payments from oil and gas leases located on tax exempt Indian lands interest at ~~six~~ six percent (6%) per annum will be calculated from the date of payment by the taxpayer, until the date the refund is issued. [See: 68 O.S. § 2373]

## SUBCHAPTER 11. INTERCEPT OF REFUNDS

### 710:50-11-6. Priority of claims; procedures

(a) The Tax Commission shall have first priority over all qualified entities when the Tax Commission is collecting a debt, ~~municipal court~~ finest costs, or final judgment. Subsequent to the Tax Commission priority, a claim filed by the Department of Human Services for the collection of child support and spousal support shall have priority over all other claims filed pursuant to this Subchapter. Priority in multiple claims by other qualified entities pursuant to the provisions of this Section shall be in the order in which the Tax Commission receives the claim from the qualified entities required by (b) of this Section. [See: 68 O.S. § 205.2(G)]

(b) A qualified entity seeking to collect a debt, unpaid court fines and ~~costs~~, or final judgment of at least Fifty Dollars (\$50.00) from an individual who has filed a state income tax return may file a claim with the Tax Commission, requesting that the amount owed to the qualified entity be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security Number of the debtor. [See: 68 O.S. § 205.2(B)]

(c) Upon receiving a claim from a qualified entity, the Tax Commission shall deduct the claim amount, plus collection expenses as provided in OAC 710:50-11-11, from the tax refund due the debtor and transfer the amount to the qualified entity. Provided, the Tax Commission need not report available funds of less than Fifty Dollars (\$50.00).

(d) The Tax Commission has established a central computerized record keeping system to implement the identification of such debtors and may, upon the proper establishment of a claim by a referring agency, intercept a taxpayer's Oklahoma Income Tax Refund and deliver over the proceeds to the referring agency to satisfy the debtor's or ~~municipal court~~ defendant's obligations.

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### 710:50-11-7. Notice to taxpayer

(a) The referring qualified entity to whom a debt is owed must notify the taxpayer/debtor of an income tax refund intercept.

(b) The qualified entity shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The qualified entity shall send notice to the judgment debtor or ~~municipal court~~ defendant by first class mail at the last-known address of the judgment debtor or ~~municipal court~~ defendant as shown by the records of the Tax Commission when seeking to collect a final judgment or unpaid ~~municipal court~~ fines and ~~costs~~. The Tax Commission shall provide in an agreed electronic format to the Department of Human Services the amount withheld by the Tax Commission, the home address and the Social Security number of the taxpayer. The notice shall state:

(1) That a claim has been filed with the Tax Commission for any portion of the tax refund due to the debtor or ~~municipal court~~ defendant which would satisfy the debt, unpaid ~~municipal court~~ fines and ~~costs~~, or final judgment in full or in part;

(2) The basis for the claim;

(3) That the Tax Commission has deducted an amount from the refund and remitted it to the qualified entity;

(4) That the debtor or ~~municipal court~~ defendant has the right to contest the claim by sending a written request to the qualified entity for a hearing to protest the claim and if the debtor or ~~municipal court~~ defendant fails to apply for a hearing within sixty (60) days of the date of mailing of the notice, the debtor or ~~municipal court~~ defendant shall be deemed to have waived the opportunity to contest the claim. If the claim was filed by the Department of Human Services, the notice shall state that the debtor must contest the claim by sending a written request to the Department within thirty (30) days after the date of mailing of the notice; and,

(5) That a collection expense of five percent (5%) of the gross proceeds owed to the qualified entity has been charged to the debtor or ~~municipal court~~ defendant and withheld from the refund.

(c) If the qualified entity determines that a refund is due the taxpayer, the qualified entity shall reimburse the amount claimed plus the five percent (5%) collection expense to the taxpayer. The qualified entity may request reimbursement of the two percent (2%) collection expense retained by the Tax Commission. The request shall be made within ninety (90) days of the reimbursement to the taxpayer. If timely requested, the Tax Commission will make reimbursement to the qualified entity within ninety (90) days of the request.

### 710:50-11-9. Joint returns intercept

(a) The Tax Commission will intercept a refund from a ~~Joint Income Tax Return~~ joint income tax return to offset a past due obligation if either spouse is legally responsible for the past due obligation.

(b) In the case of a joint return, the notice shall state:

(1) The name of the taxpayer named in the return, against whom no debt, no unpaid ~~court~~ fines and ~~costs~~, or final judgment is claimed;

(2) The fact that a debt, unpaid ~~municipal court~~ fines and ~~costs~~, or final judgment is not claimed against the taxpayer;

(3) The fact that the taxpayer is entitled to receive a refund if it is due, regardless of the debt, ~~municipal court~~ fines and ~~costs~~, or final judgment asserted against debtor or ~~municipal court~~ defendant; and,

(4) That in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the qualified entity named in the notice within sixty (60) days after the date of the mailing of the notice. If the claim was filed by the Department of Human Services, the notice shall state that the taxpayer must apply, in writing, for a hearing with the Department within thirty (30) days after the date of the mailing of the notice. Tax Commission Form 505 can only be used to claim the refund when the Tax Commission is the agency claiming that a debt is owed.

(c) If the taxpayer against whom no debt, no unpaid ~~municipal court~~ fines and ~~costs~~, or final judgment is claimed fails to apply in writing for a hearing within sixty (60) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund. If the claim was filed by the Department of Human Services, the notice must state that if the taxpayer fails to apply in writing for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, the taxpayer shall have waived his or her right to a refund. [See: 68 O.S. § 205.2(B)(4)]

### 710:50-11-10. Nondebtor spouse protest

If the qualified entity asserting the claim receives a written request for hearing from the debtor or taxpayer against whom no debt, no ~~municipal court~~ fines and ~~costs~~, or final judgment is claimed, the qualified entity shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt, unpaid ~~court~~ fines and ~~costs~~, or final judgment asserted by the qualified entity, no action shall be taken in furtherance of the collection of the debt, unpaid ~~court~~ fines and ~~costs~~, or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act. [See: 68 O.S. § 205.2(C)]

### 710:50-11-11. Notification after final determination at hearing

(a) Upon final determination at a hearing, as provided for in 710:50-11-10, of the amount of the debt, unpaid ~~court~~ fines and ~~costs~~, or final judgment, or upon failure of the debtor or taxpayer against whom no debt, no unpaid ~~court~~ fines and ~~costs~~, or final judgment is claimed to request such a hearing, the qualified entity shall apply the amount of the claim to the debt owed. Any amounts held by the qualified entity

in excess of the final determination of the debt and collection expense must be refunded by the qualified entity to the taxpayer. However, if the tax refund due is inadequate to pay the collection expense and debt, unpaid court fines and ~~costs~~, or final judgment, the balance due the qualified entity shall be a continuing debt or final judgment until paid in full.

(b) Upon receipt of a claim as provided in OAC 710:50-11-6 the Tax Commission shall:

- (1) Deduct from the refund five percent (5%) of the gross proceeds owed to the qualified entity and distribute it by retaining two percent (2%) and transferring three percent (3%) to the qualified entity as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Tax Commission Fund;
- (2) Transfer the amount of the claimed debt, unpaid court fines and ~~costs~~, or final judgment or so much thereof as is available to the qualified entity;
- (3) Notify the debtor in writing as to how the refund was applied; and,
- (4) Refund to the debtor any balance remaining after deducting the collection expense and debt, unpaid court fines and ~~costs~~, or final judgment. [See: 68 O.S. § 205.2(D) and (E)]

### SUBCHAPTER 13. ESTIMATED TAX

#### **710:50-13-8. Interest on underpayment of estimated tax; exceptions**

(a) Interest is levied at 20% per annum, for the period of underpayment, on any underpayment of the "required annual payment" of estimated tax, as that term is defined by 68 O.S. § 2385.9(B) and 710:50-13-7.

(b) The amount of the underpayment equals the excess of the required installment over the amount paid on or before the due date of the installment. The period of underpayment runs from the due date of the required installment to the earlier of the fifteenth day of the fourth month, or for corporations, ~~the fifteenth day of the third month~~ thirty days after the due date for returns established under the Internal Revenue Code, following the close of the taxable year or the date on which the required installment is paid.

(c) Provided, however, no interest will be added to the tax if:

- (1) The tax shown on the return for the taxable year is less than One Thousand Dollars (\$1,000.00); or
- (2) The taxpayer was an Oklahoma resident throughout the preceding taxable year of twelve (12) months and did not have any liability for tax for the preceding taxable year.

(d) OTC Form OW-8-P is a schedule provided for calculating interest for underestimating and also provides for an exception for fluctuations of income throughout the year.

### SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

## PART 7. CREDITS AGAINST TAX

#### **710:50-15-90. Oklahoma earned income tax credit**

(a) Effective for tax years beginning on or after January 1, 2002, there shall be an Oklahoma Earned Income Tax Credit (EITC) for resident and part year resident individuals.

(b) The Oklahoma ~~Earned Income Tax Credit~~ EITC shall be an amount equal to five percent (5%) of the Federal Earned Income Tax Credit allowed under Section 32 of the Internal Revenue Code.

(1) Effective for tax ~~year~~ years 2016 ~~and subsequent tax years~~ through 2021, if the credit exceeds the tax imposed by Section 2355 of Title 68, the excess amount shall not be refunded to the taxpayer, nor shall any amount be carried forward to a subsequent tax year.

(2) For tax years beginning on or after January 1, 2022:

(A) If the credit exceeds the tax imposed by Section 2355 of Title 68, the excess amount shall be refunded to the taxpayer.

(B) The credit shall be computed using the same requirements, other than the five percent (5%) amount to compute the credit as prescribed by this section which shall remain constant, in effect for computation of the earned income tax credit for federal income tax purposes for the 2020 income tax year. [68 O.S. § 2357.43]

(3) The Oklahoma ~~Earned Income Tax Credit~~ EITC may not be paid in advance and must be claimed on the individual income tax return when filed.

(c) The credit is to be prorated on the ratio that Oklahoma Adjusted Gross Income bears to Federal Adjusted Gross Income, not to exceed one hundred percent (100%). When the Oklahoma Adjusted Gross Income or the Federal Adjusted Gross Income is negative the ratio will be determined as follows:

(1) When the Oklahoma Adjusted Gross Income is negative and is less than the Federal Adjusted Gross Income, the ratio shall be 0%. (For example: Oklahoma Adjusted Gross Income is negative \$1,000 and the Federal Adjusted Gross Income is negative \$500, the ratio shall be 0%).

(2) When the Federal Adjusted Gross Income is negative and is equal to or less than the Oklahoma Adjusted Gross Income, the ratio will be 100%. (For example: Oklahoma Adjusted Gross Income is negative \$500 and the Federal Adjusted Gross Income is negative \$1,000 the ratio is 100%).

#### **710:50-15-109. Credit for qualified employers and employees of the aerospace sector**

(a) **General provisions.** For tax years beginning after December 31, 2008 and before January 1, 2026, three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees in the aerospace sector. The three (3) credits are as follows:

(1) Credit for qualified employers for tuition reimbursement to qualified employees.

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- (2) Credit for qualified employers for compensation paid to qualified employees.
- (3) Credit for qualified employees.
- (b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) ~~"Aerospace sector" is a private or public organization that is:~~

- ~~(A) a manufacturer of aerospace or defense hardware and/or software;~~
- ~~(B) provides aerospace maintenance, repair or overhaul;~~
- ~~(C) supplies parts to the aerospace industry;~~
- ~~(D) provides services and/or support relating to the aerospace industry;~~
- ~~(E) provides research and development of aerospace technology and systems, or~~
- ~~(G) provides education or training of aerospace personnel.~~

~~(2) "Compensation" includes salary or other remuneration, wages subject to withholding tax paid to either a part time employee or full time employee and payments in the form of contract labor for which the payor is required to provide a Form 1099 to the person paid. Compensation does not include any employer provided benefits, including but not limited to retirement, medical or health care benefits; reimbursement for travel, meals, lodging or any other expense.~~

~~(3) "Institution" is any institution included within The Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body.~~

~~(4) "Qualified employer" is an entity whose principal business activity involves the aerospace sector. This includes sole proprietors, general partnerships, limited partnerships, limited liability companies, corporations, or any other legally recognized business entity, or public entity.~~

~~(5) "Qualified employee". is any person, regardless of the date of hire by the qualified employer, newly employed by or contracting with a qualified employer in Oklahoma on or after January 1, 2009. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified employee does not include a person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer. Qualified employee may include a person who was employed in the aerospace sector, but not as a full time engineer, prior to being awarded an undergraduate or graduate degree from a qualified program by an institution or any person who has been awarded an undergraduate or graduate degree from a qualified program by an institution and is employed by a professional staffing company and assigned to work in the aerospace sector in this state.~~

(A) Any person, regardless of the date of hire by the qualified employer, who is newly employed by or contracting with a qualified employer in Oklahoma on or after January 1, 2009.

(B) A person who has been either:

- (i) Awarded an undergraduate or graduate degree from a qualified program by an institution, or
- (ii) Licensed as a Professional Engineer by the State Board of Licensure for Professional Engineers and Land Surveyors pursuant to Section 475.15 of Title 59 of the Oklahoma Statutes and employed as a qualified employee in the aerospace sector by a qualified employer on or after November 1, 2021.

(C) Qualified employee does not include a person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer, unless,

- (i) The employee was employed in the aerospace sector, but not as a full-time engineer, prior to being awarded a degree, or
- (ii) The employee has been awarded a degree and is employed by a professional staffing company and assigned to work in the aerospace sector in Oklahoma.

(62) "Qualified program" is any program that awards undergraduate or graduate degrees and has been accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET). Effective November 1, 2021, a qualified program includes both undergraduate and graduate programs of the same discipline of engineering at an institution if either program is ABET accredited.

(7) "Tuition" is the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program. Tuition does not include the cost of books, any other fees or the cost of room and board.

(3) "Aerospace sector", "compensation", "institution", "qualified employer" and "tuition" shall be defined as in Section 2357.301 of Title 68 of the Oklahoma Statutes.

(c) **Credit for tuition reimbursement.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes based on the amount of tuition reimbursed to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for tuition reimbursement may only be claimed if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of starting employment with the qualified employer. The undergraduate or graduate degree must be from a qualified program.

(3) The credit for tuition reimbursement is equal to fifty percent (50%) of the tuition reimbursed to a qualified employee and may be claimed for the first through fourth years of employment with the qualified employer. The credit is only allowed to be claimed in the tax year that the tuition was reimbursed to the qualified employee and may not exceed in any taxable year fifty percent (50%) of the average annual amount paid by a qualified employee



for enrollment and instruction in a qualified program at a public institution in Oklahoma.

(4) The credit for tuition reimbursement may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for tuition reimbursement may not be claimed after the fourth year of employment of the qualified employee.

**(d) Credit for compensation paid.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for compensation paid equals:

(A) Ten percent (10%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located in this state.

(B) Five percent (5%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located outside this state.

(3) The credit for compensation paid cannot exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) for each qualified employee annually.

(4) The credit for compensation paid may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for compensation paid may not be claimed after the fifth year of employment.

**(e) Credit for qualified employees.**

(1) For taxable years beginning after December 31, 2008, a qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes of up to Five Thousand Dollars (\$5,000.00) per year for a period of time not to exceed five (5) years.

(2) The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

(3) Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

**710:50-15-114. Credit for contributions to a scholarship-granting organization**

(a) **General provisions.** An income tax credit is available for contributions to an eligible scholarship-granting organization. [68 O.S. § 2357.206]

(b) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars (\$1,000) for each taxpayer or Two Thousand Dollars (\$2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars (\$100,000) for any taxpayer which is a legal business entity, subject to the

limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars (\$1,000.00) for single individuals or limited to Two Thousand Dollars (\$2,000.00) for married persons filing a joint return.

(c) **Additional year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for an additional year, the credit shall be seventy-five percent (75%) of the total amount of the contribution made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(d) **Registration.** An eligible scholarship-granting organization is required to register with the Tax Commission.

**(e) Limitation of credit.**

(1) If total credits claimed exceed the caps established pursuant to 68 O.S. ~~§2357.206(D)~~—~~2357.206(E)~~, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year. [See: 68 O.S. ~~§2357.206(H)~~2357.206(I)]

(2) At least once each taxable year, the eligible scholarship-granting organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

**(f) Annual notification.**

(1) By January 10 each year, the scholarship-granting organization shall provide electronically to the Tax Commission:

- (A) The scholarship-granting organization's account number;
- (B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;
- (C) The date and amount of each contribution; and
- (D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The scholarship-granting organizations shall notify contributors of that amount annually.

(g) **Annual report.** In order to maintain registration, a scholarship granting organization shall file an annual report with the Oklahoma Tax Commission on or before September 1 of each year. [See 68 O.S. § 2357.206(M)(1)]

(h) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible scholarship-granting organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided

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by the total amount available to award over the most recent twenty-four (24) months.

**(hi) Limitations.**

- (1) The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years.
- (2) The credit is not transferable.
- (3) For tax year 2016 and subsequent tax years, credits earned but not allowed due to the application of statewide caps will be considered suspended and authorized to be used in the next immediate tax year and applied to the next year's statewide cap.

**710:50-15-115. Credit for contributions to an educational improvement grant organization**

(a) **General provisions.** An income tax credit is available for contributions to an eligible educational improvement grant organization. [68 O.S. § 2357.206]

(b) **Application.** An educational improvement grant organization shall submit an application to the Tax Commission. The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

(c) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars (\$1,000) for each taxpayer or Two Thousand Dollars (\$2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars (\$100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars (\$1,000.00) for single individuals or limited to Two Thousand Dollars (\$2,000.00) for married persons filing a joint return.

(d) **Additional year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for an additional year, the credit shall be seventy-five percent (75%) of the total amount of the contribution made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(e) **Limitation of credit.**

(1) If total credits claimed exceed the caps established pursuant to 68 O.S. ~~§2357.206(D)~~—2357.206(E), the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year. [See: 68 O.S. ~~§2357.206(H)~~2357.206(I)]

(2) At least once each taxable year, the educational improvement grant organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) **Annual notification.**

(1) By January 10 each year, the educational improvement grant organization shall provide electronically to the Tax Commission:

- (A) The educational improvement grant organization's account number;
- (B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;
- (C) The date and amount of each contribution; and
- (D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The educational improvement grant organization shall notify contributors of that amount annually.

(g) **Annual report.** In order to maintain eligibility, an educational improvement grant organization shall ~~annually file an annual report the following information to with~~ the Tax Commission, ~~on forms prescribed by the Tax Commission,~~ on or before September 1 of each year:—[See 68 O.S. § 2357.206(L)(3)]

~~(1) The name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year;~~

~~(2) A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements;~~

~~(3) The names of the public school and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented;~~

~~(4) Where the organization collects information on a county by county basis, and~~

~~(5) The total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.~~

(h) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible educational improvement grant organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(i) **Limitations.**

(1) The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years.

(2) The credit is not transferable.

(3) For tax year 2016 and subsequent tax years, credits earned but not allowed due to the application of statewide

caps will be considered suspended and authorized to be used in the next immediate tax year and applied to the next year's statewide cap.

**710:50-15-115.1. Credit for contributions to a public school foundation or public school district**

(a) **General provisions.** For contributions made on or after January 1, 2022, an income tax credit is available for contributions to an eligible public school foundation or public school district. [68 O.S. § 2357.206]

(b) **Application.** An eligible public school foundation or public school district shall submit an application to the Oklahoma Tax Commission. The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

(c) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars (\$1,000) for each taxpayer or Two Thousand Dollars (\$2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars (\$100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars (\$1,000.00) for single individuals or limited to Two Thousand Dollars (\$2,000.00) for married persons filing a joint return.

(d) **Additional year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for an additional year, the credit shall be seventy-five percent (75%) of the total amount of the contribution made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(e) **Limitation of credit.**

(1) If total credits claimed exceed the caps established pursuant to 68 O.S. § 2357.206(E), the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year. [See: 68 O.S. § 2357.206(I)]

(2) At least once each taxable year, the public school foundation or public school district shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) **Annual notification.**

(1) By January 10 each year, the public school foundation or public school district shall provide electronically to the Tax Commission:

(A) The public school foundation or public school district's federal employer identification number;

(B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;

(C) The date and amount of each contribution; and

(D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The public school foundation or public school district shall notify contributors of that amount annually.

(g) **Annual report.** In order to maintain eligibility, the public school foundation or public school district shall submit an annual report to the Tax Commission, on or before September 1 of each year. [See 68 O.S. § 2357.206(L)(3)]

(h) **Limitations.**

(1) The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years.

(2) The credit is not transferable.

(3) Credits earned but not allowed due to the application of statewide caps will be considered suspended and authorized to be used in the next immediate tax year and applied to the next year's statewide cap.

**SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS**

**PART 1. GENERAL PROVISIONS**

**710:50-17-5. Tax rate for corporations**

(a) For all taxable years beginning after December 31, 1984, the corporate tax rate is five percent (5%).

(b) For all taxable years beginning before January 1, 1985, the corporate tax rate is four percent (4%).

(c) For all taxable years beginning after December 31, 1984, the corporate tax rate is five percent (5%).

(d) For all taxable years beginning after December 31, 1989, the corporate tax rate is six percent (6%).

(e) For all taxable years beginning after December 31, 2021, the corporate tax rate is four percent (4%).

**PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME**

**710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations**

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [See: 68 O.S. § 2358]

(1) **Taxes based on income.** [See: 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

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- (i) State and Local Income Taxes,
  - (ii) Foreign Income Taxes, and
  - (iii) some Franchise Taxes that are based on or measured by income.
- (2) **Federal income taxes.** Federal Income Taxes are not deductible.
- (3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.
- (4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [See: 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2007, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code; and

(II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and

(III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The

Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.**

~~(A) Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty one) for tax years beginning after December 31, 1984, and the number 26 (twenty six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used as follows:~~

~~(i) Divide the Oklahoma net income by the number 26 for tax years beginning before January 1, 1985.~~

~~(ii) Divide the Oklahoma net income by the number 21 for tax years beginning after December 31, 1984 and ending before January 1, 1990.~~

~~(iii) Divide the Oklahoma net income by the number 17.667 for tax years beginning after December 31, 1989 and ending before January 1, 2022.~~

~~(iv) Divide the Oklahoma net income by the number 26 for tax years beginning after December 31, 2021.~~

(B) There is no deduction for Oklahoma ~~Accrued Income Tax~~ **accrued income tax** when Oklahoma ~~Net Income~~ **net income** is a loss. [See: 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income.

(A) An adjustment is required when a corporation has an investment in assets which produce income which is non-unitary, or separately allocable. Such items may include, but are not limited to, investments in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income.

(B) A ratio is used to allocate expenses between unitary business operations and all other activities that do not produce unitary income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is allocable, by the average of total assets. This percentage is

then applied to certain expenses claimed on the return to arrive at the amount of expenses related to non-unitary business, and the resulting amount is added back to federal taxable income.

(C) Generally, interest expense is the only expense against which the adjustment described in subparagraph (B) of this paragraph is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)] [See example in Appendix E of this Chapter]

(7) **Interest income.**

(A) **U.S. obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(A) For purposes of calculating Oklahoma taxable income, foreign earnings deemed repatriated pursuant to 26 U.S.C. § 965 shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(i) To the extent such income is not included in the calculation of a taxpayer's federal taxable income due to inclusion on an IRC 965 Transition Tax Statement rather than the income tax return, the income shall be included on the Oklahoma return as an addition to net taxable income.

(ii) If a taxpayer elects to make installment payments of tax pursuant to the provisions 26 U.S.C. § 965, such election may also apply to the payment of Oklahoma income tax, attributable to the income upon which such installment payments are based.

(B) For purposes of calculating Oklahoma taxable income, global intangible low-taxed income included in federal income pursuant to 26 U.S.C. § 951A shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, and for tax years beginning on or after January 1, 2014, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty percent (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [See: 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) ~~Net Rental Income~~ net rental income is separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) A schedule of ~~Net Rental Income~~ net rental income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [See: 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]

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(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

**(15) Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

**(16) Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]

**(17) Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

**(18) Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]

**(19) Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

**(20) Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]

**(21) Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the provisions of the federal *Economic*

*Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

**(22) Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars (\$175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.

**APPENDIX A. COMPUTATION OF TAX ACCRUAL WHEN TAX CREDITS ARE ALLOWABLE  
[REVOKED]**

**APPENDIX A. COMPUTATION OF TAX ACCRUAL WHEN TAX CREDITS ARE ALLOWABLE [NEW]**

- 1. Oklahoma Income **before** tax accrual \_\_\_\_\_
- 2. Allowable Oklahoma credits \_\_\_\_\_

**COMPUTATION OF ACCRUED TAX ALLOWED**

- A. Oklahoma Income (**Line 1** above) \_\_\_\_\_
- B. Amount from **Line 2**, above, divided by 4% \_\_\_\_\_
- C. Subtract **Line B** from **Line A** \_\_\_\_\_
- D. Divide **Line C** by 26 \_\_\_\_\_

(If **Line D** is less than 0, enter 0)

- 3. Subtract **Line D** from **Line 1** above \_\_\_\_\_

(Enter **Line 3** above on **Line 1, Page 1**, of your **Oklahoma Corporation Income Tax Form 512**.)

**TOTAL TAX DUE** \_\_\_\_\_

**TAX ACCRUAL ALLOWED** \_\_\_\_\_

**TAX CREDIT ALLOWED** \_\_\_\_\_

*[OAR Docket #22-522; filed 6-30-22]*

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## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 65. SALES AND USE TAX

[OAR Docket #22-523]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
710:65-1-7 [AMENDED]  
Subchapter 3. Reports and Returns; Payments and Penalties; Records  
Part 1. General Provisions  
710:65-3-1 [AMENDED]  
710:65-3-4 [AMENDED]  
Subchapter 7. Duties and Liabilities  
710:65-7-13 [AMENDED]  
710:65-7-15 [AMENDED]  
Subchapter 9. Permits  
710:65-9-10 [AMENDED]  
Subchapter 11. Credits and Refunds  
710:65-11-1 [AMENDED]  
Subchapter 13. Sales and Use Tax Exemptions  
Part 5. Items Subject To Other Taxes  
710:65-13-30 [AMENDED]  
Part 7. Churches  
710:65-13-33 [AMENDED]  
710:65-13-40 [AMENDED]  
Part 10. Coal  
710:65-13-55 [AMENDED]  
Part 15. Hazardous Wastes  
710:65-13-80 [AMENDED]  
Part 23. Gas and Electricity  
710:65-13-122 [AMENDED]  
710:65-13-123 [AMENDED]  
Part 25. Governmental Entities  
710:65-13-133 [AMENDED]  
Part 31. Medicine, Medical Appliances, and Health Care Entities and  
Activities  
710:65-13-172 [AMENDED]  
710:65-13-174 [AMENDED]  
710:65-13-175 [AMENDED]  
710:65-13-177 [AMENDED]  
Part 35. Newspapers; Periodicals; Programs; Media  
710:65-13-194 [AMENDED]  
Part 37. Sales for Resale  
710:65-13-201 [AMENDED]  
Part 39. Schools and Higher Education  
710:65-13-210 [AMENDED]  
710:65-13-220 [AMENDED]  
Part 42. Disabled Veterans in Receipt of Compensation at the One Hundred  
Percent Rate  
710:65-13-275 [AMENDED]  
Part 43. Social, Charitable, and Civic Organizations and Activities  
710:65-13-334 [AMENDED]  
710:65-13-335 [AMENDED]  
710:65-13-336 [AMENDED]  
710:65-13-337 [AMENDED]  
710:65-13-338 [AMENDED]  
710:65-13-339 [AMENDED]  
710:65-13-340 [AMENDED]  
710:65-13-341 [AMENDED]  
710:65-13-342 [AMENDED]  
710:65-13-343 [AMENDED]  
710:65-13-344 [AMENDED]  
710:65-13-345 [AMENDED]  
710:65-13-346 [AMENDED]  
710:65-13-348 [AMENDED]  
710:65-13-350 [AMENDED]  
710:65-13-351 [AMENDED]  
710:65-13-352 [AMENDED]  
710:65-13-353 [AMENDED]  
710:65-13-354 [AMENDED]

710:65-13-355 [AMENDED]  
710:65-13-357 [AMENDED]  
710:65-13-359 [AMENDED]  
710:65-13-360 [AMENDED]  
710:65-13-362 [AMENDED]  
710:65-13-363 [AMENDED]  
710:65-13-364 [AMENDED]  
710:65-13-365 [AMENDED]  
710:65-13-366 [AMENDED]  
710:65-13-367 [AMENDED]  
710:65-13-368 [NEW]  
710:65-13-369 [NEW]  
710:65-13-370 [NEW]  
Part 47. Commercial Forestry Equipment [New]  
710:65-13-470 [NEW]  
Part 55. Trust Authorities  
710:65-13-550 [AMENDED]  
Part 65. Web Portals  
710:65-13-650 [AMENDED]  
Subchapter 19. Specific Applications and Examples  
Part 11. "F"  
710:65-19-116 [AMENDED]  
Part 37. "S"  
710:65-19-305 [AMENDED]

### AUTHORITY:

68 O.S. §§ 203 and 1357; Oklahoma Tax Commission

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 14, 2021

### COMMENT PERIOD:

January 18, 2022 through February 22, 2022

### PUBLIC HEARING:

March 7, 2022

### ADOPTION:

March 15, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 18, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST / ANALYSIS:

Sections 710:65-1-7 and 710:65-7-13 have been amended to update the list of entities which may pass through their sales tax exemption to a contractor for purposes of fulfilling a public contract with the exempt entity.

Section 710:65-7-15 has been amended to add existing entities exempted from sales tax on their purchases with the applicable documentation to be accepted by the vendor for purposes of a vendor's relief from liability to collect sales tax.

Section 710:65-13-30 has been amended to update the in lieu tax provisions of the rule relating to motor vehicles consistent with the provisions of HB 2964, effective November 1, 2021, to exempt commercial trailers and semitrailers registered under 47 O.S. § 1133(C) to transport cargo over the highways of this state from imposition of the 1.25% motor vehicle sales tax upon payment of the excise tax levied pursuant to 68 O.S. § 2103. The payment of excise tax levied by Section 2013 also exempts vehicles/units proportionally registered pursuant to Section 1120 of Title 47 from the 1.25% motor vehicle sales tax which is also noted in the rule amendment.

Section 710:65-13-201 has been amended consistent with the passage of HB 1060, which amends Section 1360(1) of Title 68 to exempt from the sales tax levy, sales or transfers of tangible personal property between wholly owned subsidiaries of a parent company and between a parent company and its wholly owned subsidiary.

Section 710:65-13-275, relating to the sales tax exemption afforded qualifying 100% disabled veterans, has been amended to implement the provisions of Sections 10 and 11 of HB 1198 [2017], effective November 1, 2020, which added a veterans registry qualification requirement for the sales



tax exemption; Section 2 of SB 415 [2021], effective April 28, 2021 which provides that qualifying 100% veterans receiving the referenced exemption prior to November 1, 2020, must register with the veterans registry prior to July 1, 2023, in order to remain qualified for exemption and HB 2780 [2021] which provides that in order to claim a refund of sales taxes erroneously paid, the eligible taxpayer must submit to the OTC a signed notification of the vendor's denial of the sales tax exemption for 100% disabled veterans. [68:1357, 1361.2]

New Sections 710:65-13-368 and 710:65-13-369 have been added to outline the process to qualify for the sales tax exemption for sales of tangible personal property or services used solely for construction and remodeling projects to a qualifying organization that is exempt from taxation pursuant to the provisions of the IRC, 26 U.S.C., Section 501(c)(3) and for the sales tax exemption to qualified non-profit organizations that provide repair or restoration of single-family dwellings or the construction of a replacement single-family dwelling following a natural disaster. The referenced sales tax exemptions were enacted pursuant to the passage of HB 1935 [2021], effective November 1, 2021. [68:1356]

New Section 710:65-13-370 has been added to outline the procedures for obtaining the sales tax exemption enacted pursuant to SB 909 [2021] which exempts from the sales tax levy effective November 1, 2021, through December 31, 2024, sales of tangible personal property or services to a museum that operates as part of an organization that is exempt from taxation pursuant to 26 U.S.C., § 501(c)(3) and is not accredited by the American Alliance of Museums. To qualify, the described entities must operate on an annual budget of less than \$1 million. [68:1356]

New Part 47 and New Section 710:65-13-470 have been added to outline the application process to qualify for the sales tax exemption beginning January 1, 2022, until January 31, 2027, for sales of commercial forestry service equipment, limited to, forwarders, fellers, bunchers, track skidders, wheeled skidders, hydraulic excavators, delimiters, soil compactors and skid steer loaders, to businesses engaged in logging, timber and tree farming. HB 1588 [2021]. [68:1357]

Section 710:65-19-305 has been amended to detail the requirement and process for scrap metal dealers and junkyards to obtain an Oklahoma sales tax permit.

In addition, several sections have been amended to update the location and mailing address of the Tax Commission, to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references.

**CONTACT PERSON:**

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**710:65-1-7. Consumer/user defined; specific applications**

"Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

(1) **Hospitals, sanitariums, nursing homes and emergency medical care.** Hospitals and sanitariums are primarily engaged in the business of selling services, and for the purposes of the Sales Tax Code are considered to be the consumers or users of all tangible personal property and services used in the operation of the institution. Thus, the gross proceeds derived from sales of tangible personal property and certain services to such institutions

are subject to tax. This paragraph applies to all hospitals, sanitariums and nursing homes, including those owned or operated by churches, fraternities, cooperatives, or any other organization, except those operated by the Federal Government, the State, or a political subdivision thereof.

(2) **Withdrawals from stock.** If any business purchases tangible personal property for resale, manufacturing or further processing and that business withdraws tangible personal property, either from its inventory or after such inventory has been manufactured or processed for its own use or consumption, that business has made a taxable sale and the value of the property withdrawn is taxable at its "sales value", as defined in OAC 710:65-1-2. The business withdrawing tangible personal property from inventory should include the "sales value" of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

(3) **Contractors.** Contractors are consumers or users, and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. Examples of contractors subject to this paragraph are: painting contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing contractors, and other persons engaged in a contractual arrangement to make improvements on real property. A person working for a salary or wage is not considered a contractor. The Sales Tax Code limits the ability of contractors to make purchases exempt from sales tax based on the exempt status of another entity to the following situations: [See: 710:65-7-6 and 710:65-7-13]

(A) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, city-county library system, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, Arbuckle Master Conservancy District, Fort Cobb Master Conservancy District, Foss Reservoir Master Conservancy District, Mountain Park Master Conservancy District, Waurika Lake Master Conservancy District or Department of Central ~~Central~~ the Office of Management and Enterprise Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs and effective July 1, 2022, the University Hospitals Trust may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(B) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(C) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any live-stock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax.

(D) A contractor may make purchases of materials, supplies and equipment necessary to fulfill a contract, exempt from sales tax, for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(E) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC 710:65-13-80*. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in *710:65-13-80*, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(F) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(G) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax.

(H) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned

by the child care center and operated for educational purposes exempt from sales tax.

(I) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services exempt from sales tax pursuant to a contractual relationship with a manufacturer for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation classified under NAICS No. 324110 (Petroleum Refineries).

(4) **Repairmen.** Repairmen are persons engaged in the business of repairing tangible personal property. Parts incidental to the repair service which are consumed/used in making repairs are taxable to the repairman as a consumer/user. [See: 68 O.S. § 1352]

### SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

#### PART 1. GENERAL PROVISIONS

##### **710:65-3-1. Reports, payments, and penalties**

(a) **Monthly reporting.** Every vendor, except as noted in (b), (c) and (d) of this Section, shall file with the Commission on or before the 20th day of each month, a report on forms to be obtained from the Commission, covering sales for the previous calendar month.

(b) **Semiannual reporting.** Any vendor who is classified as a Group Three vendor or whose total tax liability for any one (1) month does not exceed Fifty Dollars (\$50.00) must notify the Commission of its intent to file a semiannual return and remittance in lieu of a monthly return and remittance, provided the vendor qualifies.

(1) **Qualification.** To qualify, the vendor must substantiate that the vendor is in business making sales incidental to that business, or is seasonal or transient, or makes sales through peddlers, solicitors or other salesmen without an established place of business. Otherwise, to qualify, filing records will have to substantiate the fact that the vendor's sales tax liability, for the past six (6) consecutive months immediately preceding the date of the application, has not exceeded Fifty Dollars (\$50.00) in any one month. Requests to file semiannually should be directed to the Registration Section of the Business Tax Services Division, Oklahoma Tax Commission, P.O. Box 269057, Oklahoma City, Oklahoma ~~73126~~ 905773194 or by FAX at (405) 521-3826.

(2) **Commencement of semiannual reporting.** It should be clearly understood that semiannual filing should not be commenced until the Commission notifies taxpayer, in writing, that Commission records have been amended to reflect semiannual filing status. Failure to follow this procedure may result in taxpayer receiving assessments, adjustments, etc. for the months of February through June and August through December.

(3) **Semiannual reporting due dates.** When the application for semiannual filing has been approved, returns shall be filed on or before the 20th day of January and July of each year for the preceding six (6) months' period.

(4) **Revocation of authorization.**

(A) Conditions that could cause revocation of the authorization to report semiannually are:

(i) In the event that the vendor filing the return on a semiannual basis becomes delinquent in either the filing of the return or the payment of the taxes due thereon, or

(ii) In the event that the liability of a vendor, who has been authorized to file returns and to make payments on a semiannual basis, exceeds Fifty Dollars (\$50.00) in sales tax for any one month, or

(iii) In the event that the Commission determines that any semiannual filing or return or any payment of tax due thereon would unduly jeopardize the proper administration of the Oklahoma Sales Tax Law.

(B) If the Commission decides it is necessary to revoke the authorization to file semiannually in relation to any of the conditions in (A) of this paragraph, the taxpayer will be required to file returns and to pay the tax due on a monthly basis.

(c) **Semimonthly electronic reporting.** Persons owing an average of Two Thousand Five Hundred Dollars (\$2,500.00) or more, per month, in total sales taxes for the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

(1) For sales from the first (1st) day through the fifteenth (15th) day of each month, the tax shall be due and payable on the twentieth (20th) day of the month, and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the requirements of this paragraph if, on or before the twentieth (20th) day of each month, the taxpayer paid at least ninety (90) percent of the liability for that fifteen-day period, or at least fifty (50) percent of the liability incurred during the immediate preceding calendar year for the same month; and

(2) *For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer; [See: 68 O.S. § 1365(D)(2)]*

(d) **Electronic reporting.** Beginning June 1, 2007, all new sales tax registrants required to report and remit sales tax shall file their monthly sales tax report in accordance with the Tax Commission's electronic funds transfer and electronic data interchange program unless the vendor receives an exception to the electronic filing requirement pursuant to OAC 710:65-3-4(c).

(e) **Electronic reporting; due dates; delinquency dates.** Persons required to remit the tax due pursuant to subsection (c) and (d) shall file a monthly sales tax report in accordance with

the Tax Commission's electronic data interchange program on the twentieth (20th) day of the month following that in which the sales occurred. Taxes not paid on or before the due dates specified in subsection (c) shall be delinquent from such dates.

(f) **Payment.** Remittances covering the sales tax liability reported shall accompany the sales tax return. Sales taxes will be considered delinquent and interest as provided by law will be charged, if payment is not received or postmarked by the date the return is due.

(g) **Interest.** Interest at the rate provided by law will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent tax at the statutory rate from the date the tax is delinquent until paid.

(h) **Audit; refund/credit for overpayment; assessment inclusive of interest due.** When, in the course of an audit, it is found that the tax being audited was overpaid for any period included in the audit, and the taxpayer has not filed a verified claim for refund of the overpayment, the overpayment may be allowed as a credit against the total liability established during the audit. The overpayment shall be applied to the liability as of the date of the overpayment. Whenever an assessment is made for any delinquent tax, the amount of interest due thereon at the time the assessment is made shall be included in the assessment.

(i) **Liability for tax, penalty, interest; interest computation.** Any taxpayer responsible for the payment of any tax levied by any state tax law shall be liable for payment of interest at the rate set by statute on any amount of tax not paid before it becomes delinquent. Interest shall be computed for each day of delinquency from the date the tax becomes delinquent until it is paid.

(j) **Penalty for failure to file and remit.** Penalties - A vendor who fails to file a return and remit the full amount of the tax within fifteen (15) days after the tax is due shall be subject to a penalty of ten (10) percent of the amount of tax due.

(k) **Penalty for failure or refusal to file after demand.** In the case of failure or refusal to file within ten (10) days after written demand has been served upon the taxpayer by the Commission, a penalty of twenty-five (25) percent may be assessed and collected.

(l) **Penalty for fraud.** If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty (50) percent shall be added, collected, and paid.

(m) **Waiver of penalty; interest.** At the discretion of the Commission, the interest or penalty, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [See: 68 O.S. §§ 217, 1365, 1405]

**710:65-3-4. Contents of monthly sales report**

(a) **General provisions.** Every vendor shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, and, sales tax number as

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it appears on the sales tax permit of the business and the period (month and year) covered by the report. In instances where a business does not provide a sales tax number, the federal employer identification number (FEIN) or social security number (SSN) of the business is required to be included on the sales tax report. In addition, the report shall disclose the following:

- (1) Total gross receipts for the preceding month from sales, both taxable and non-taxable.
  - (2) The "**sales value**" of all withdrawals from inventory of goods initially purchased exempt from sales tax, including all items withdrawn for gifts, donations, prizes or business or personal use. Included is the cost of all withdrawals from inventory of goods initially purchased on a tax deferred basis pursuant to a direct pay permit which are subsequently withdrawn for a taxable use.
  - (3) Deductions allowed by law. Deductions not specifically delineated on the face of the return must be fully explained in the space provided.
  - (4) The amount of tax due, including any city or county tax, or both, as described in (c) of this Section.
    - (A) The return should show the amount of interest (if any) that is due.
    - (B) The return should show the amount of penalty (if any) that is due.
  - (5) Such other reasonable information as the Commission may require. [See: 68 O.S. §1365]
- (b) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Business Tax Electronic Filing Coordinator, Oklahoma Tax Commission, Business Tax Services, ~~123 Robert S. Kerr Ave., Oklahoma City, OK 7310273194,~~ for a determination that the vendor is unable to participate in the electronic funds transfer and electronic data interchange program, and if the application is approved, the vendor will be permitted to report on paper.
- (1) To determine whether a vendor is "unable" to file electronically, the following guidelines shall be utilized:
    - (A) The taxpayer does not have access to a computer or internet access at home or place of business; and,
    - (B) The taxpayer does not use a tax preparer that has a computer or one that does not have internet access.
  - (2) Any exception to the electronic filing requirement will be granted for only twelve (12) months. At the end of the exception period the taxpayer's electronic filing capability may be reviewed.
  - (3) An aggrieved taxpayer may protest the determination of the Commission as provided by 68 O.S. § 207 pursuant to OAC 710:1-5-20 through 710:1-5-49, the Rules of Practice and Procedure before the Office of the Administrative Law Judges.
- (c) **Reporting for city and county taxes.**
- (1) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).
  - (2) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.

- (3) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.
- (d) **Excess tax collected.** If the vendor has collected, in the aggregate, an amount of sales tax from its customers, larger than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement "**Excess Tax Collected**" should be written on the face of the report, under the line captioned "**Total Due.**"

### SUBCHAPTER 7. DUTIES AND LIABILITIES

#### 710:65-7-13. Vendors' responsibility - sales to contractors

- (a) **General rule.** Contractors are defined by statute as consumer/users and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment purchased to develop, repair, alter, remodel, and improve real property.
- (b) **Limited exceptions.** A contractor may make purchases based upon the exempt status of another entity only in the statutorily-limited circumstances described in this paragraph.
  - (1) A contractor who has a public contract, or a sub-contractor to that public contract, with an Oklahoma municipality, county, public school district, city-county library system, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, Arbuckle Master Conservancy District, Fort Cobb Master Conservancy District, Foss Reservoir Master Conservancy District, Mountain Park Master Conservancy District, Waurika Lake Master Conservancy District or ~~Department of Central~~ the Office of Management and Enterprise Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs and effective July 1, 2022, the University Hospitals Trust may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.
  - (2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax. However, the

institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education, or the State Department of Education.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [See: OAC710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Contractors claiming exemption for purchases to be used in a qualified campus construction project should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-210, and provide a copy of the letter to vendors, pursuant to subsection (g) of that rule. [See: 68 O.S. §1356(41)]

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to OAC 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(6) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax. Contractors claiming exemption for purchases to be used in a qualified rural electric cooperative project shall follow the procedures set out in OAC 710:65-13-124.

(8) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(9) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services exempt from sales tax pursuant to a contractual relationship with a manufacturer for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation classified under NAICS No. 324110 (Petroleum Refineries).

(c) **Documentation required for limited exceptions.** In the case of a sale to a contractor claiming exemption pursuant to subsections (b)(1), (b)(2), (b)(6), (b)(8), or (b)(9) of this Section, the vendor must obtain:

- (1) A **copy** of the exemption letter or card issued to one of the entities described in (b) of this Section;
- (2) Documentation indicating the contractual relationship between the contractor and the entity; and,
- (3) Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

**710:65-7-15. Vendors' responsibility - sales to entities with other specific statutory exemptions**

(a) **Sales to entities with other specific statutory exemptions.** In the case of sales to purchasers claiming exemption based upon specific statutory authority, the vendor must obtain the information described in this subsection:

- (1) A **copy** of the letter or card from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases; and
- (2) A signed statement that the purchase is **authorized by, and being made by,** the exempt entity, with funds of the exempt entity, and **not** by the individual; and,
- (3) In the case of sales to **fire departments organized for unincorporated areas**, as defined in 18 O.S. § 592, certification on the face of the invoice or sales ticket is also required.
- (4) In the case of purchases made by the federal government, charged pursuant to the GSA SmartCard program, no letter or card from the Commission is required, and 710:65-13-130 should be consulted to determine the taxability of the transaction.

(b) **Examples and applications.** Types of entities which may receive letters or cards, certifying or confirming a specific statutory exemption include:

- (1) **Churches;** [See: 710:65-13-40]
- (2) **Youth camps, supported or sponsored by** one or more **churches**, members of which serve as trustees of the organization; [See: 710:65-13-33]
- (3) **Children's homes** where church members are trustees or where the home is on church-owned land or where 50% of the juveniles are court-adjudicated and the home receives less than 10% of its funding from state funds; [See: 710:65-13-33]
- (4) **Council organizations** of the Boy Scouts and Girl Scouts of America or Camp Fire USA; [See: 710:65-13-341]

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- (5) **Public schools**; [See: 710:65-13-210]
- (6) Oklahoma System of **Higher Education**; [See: 710:65-13-210]
- (7) **Private schools** registered with the State Department of Education and private institutions of higher education accredited by the Oklahoma State Board of Regents for Higher Education; [See: 710:65-13-210]
- (8) **Federal governmental** units, institutions, and instrumentalities; [See: 710:65-13-130]
- (9) **Governmental entities** of the State of Oklahoma, including county and local units; [See: 710:65-13-130]
- (10) City and county **trust authorities**; [See: 710:65-13-550]
- (11) Federally chartered **credit unions**;
- (12) **Rural water districts**;
- (13) Facilities engaged in the remediation or processing to ameliorate **hazardous wastes**; [See: 710:65-13-80]
- (14) **Disabled American Veterans** Department of Oklahoma and its subordinate chapters; [See: 710:65-13-336]
- (15) **Museums** which are members of the American Alliance of Museums formally the American Museum Association; [See: 710:65-13-334]
- (16) **Rural Electric Cooperatives**;
- (17) Federally qualified **health care** facilities;
- (18) **Health care** facilities receiving reimbursement from the Indigent Care Revolving Fund;
- (19) **Community based health centers** providing primary care services at no cost to the patient;
- (20) **Cultural organizations** established to sponsor and promote educational, charitable, and **cultural events for disadvantaged children**; [See: 710:65-13-335]
- (21) Federally recognized **Indian Tribes**;
- (22) Leases or lease-purchases of tangible personal property or services to **municipalities, counties, or school districts**; [See: 710:65-13-210]
- (23) Sales of tangible personal property or services **to, or by,** a tax-exempt [26 U.S.C. § 501(c)(3)] organization, which is organized primarily to provide education and to conduct events related to **teacher training in robotics**, and affiliated with a comprehensive University within the Oklahoma System of Higher Education;
- (24) Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), in the course of conducting a **national championship sports event**, but only if all or a portion of the payment in exchange therefor would qualify as the receipt of a qualified sponsorship payment described in Internal Revenue Code, 26 U.S.C., Section 513(i);
- (25) Volunteer fire departments organized pursuant to 18 O.S. § 592; [See: 710:65-13-340]
- (26) Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code; [See: 710:65-13-210]
- (27) The non-profit organization which operates the Oklahoma City National Memorial and Museum; [See: 710:65-13-330]
- (28) The first Fifteen Thousand Dollars (\$15,000.00) of sales of tangible personal property sold for fund raising purposes to or by a youth athletic team which is part of an athletic organization exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(4); [See: 710:65-13-343]
- (29) Tax exempt, nonprofit organizations which provide services during the day to homeless persons; [See: 710:65-13-344]
- (30) Motion picture or television production companies for certain eligible productions; [See: 710:65-13-194]
- (31) Child care centers providing on site universal pre-kindergarten education; [See: 710:65-13-220]
- (32) Tax exempt organizations which are shelters for abused, neglected, or abandoned children; [See: 710:65-13-355]
- (33) Tax exempt organizations providing funding for medical scholarships; [See: 710:65-13-357]
- (34) Nonprofit local public or private school foundations; [See: 710:65-13-210(m)]
- (35) Nonprofit foundations in support of NRA and other like organizations; [See: 710:65-13-359]
- (36) Grassroots fundraising programs in support of NRA; [See: 710:65-13-360]
- (37) Construction projects for organizations providing end of life care and hospice service. [See: 710:65-13-178]
- (38) Meals on Wheels, Mobile Meals; [See: 710:65-13-337]
- (39) Organizations which received federal funding pursuant to the Older Americans Act of 1965, for purposes of providing nutrition programs for the care and benefit of elderly persons; [See: 710:65-13-338]
- (40) Collection and Distribution Organization; [See: 710:65-13-339]
- (41) Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and Camp Fire USA; [See: 710:65-13-341]
- (42) Organizations which take court-adjudicated juveniles for purposes of rehabilitation; [See: 710:65-13-342]
- (43) Tax exempt organizations which provide funding for the preservation and conservation of wild turkeys or preservation of wetlands or habitats for wild ducks; [See: 710:65-13-345]
- (44) Tax exempt organizations which are part of a network of community-based, autonomous member organizations providing job training and employment services; [See: 710:65-13-346]
- (45) Qualified neighborhood watch organizations; [See: 710:65-13-348]
- (46) Specialized facilities, which provide services for physically and mentally handicapped persons; [See: 710:65-13-347]
- (47) Daughters of the American Revolution; [See: 710:65-13-350]
- (48) Veterans of Foreign Wars of United States, Oklahoma Chapters; [See: 710:65-13-351]

- (49) YWCA or YMCA organizations; [See: 710:65-13-352]
- (50) Organizations primarily engaged in providing education services and programs concerning health-related diseases and conditions; [See 710:65-13-353]
- (51) Organizations whose purpose is to provide training and education to developmentally disabled persons; [See: 710:65-13-354]
- (52) Nonprofit Boys & Girl Clubs of America affiliates not affiliated with the Salvation Army; [See: 710:65-13-362]
- (53) National Guard Association of Oklahoma exempt from federal taxation pursuant to 26 U.S.C. 501(c)(19); [See: 710:65-13-363]
- (54) Marine Corps League of Oklahoma exempt from federal taxation pursuant to 26 U.S.C. 501(c)(4); [See: 710:65-364]
- (55) Nonprofit collaborative model organization connecting agencies to serve persons affected by violence; [See: 710:65-13-365]
- (56) Tax exempt organization who is an official member of the Fab Lab Network; [See: 710:65-13-366]
- (57) The American Legion; [See: 710:65-13-367]
- (58) Tax exempt, independent, nonprofit community blood banks headquartered in this state. [See 710:65-13-175]
- (59) Tax exempt, independent, nonprofit biomedical research foundations. [See 710:65-13-174]
- (60) Museums which are not accredited by the American Alliance of Museums operating on budgets of less than \$1,000,000; [See: 710:65-13-370]
- (61) University Hospital Trust and nonprofit entity with a joint operating agreement with the Trust. [See 68 O.S. § 1356(30)]
- (62) Tax exempt organizations that construct, remodel and sell affordable housing. [See: 710:65-13-368]
- (63) Nonprofit organizations restoring single family housing following a disaster. [See: 710:65-13-369]
- (64) Businesses engaged in logging, timber, and tree farming. [See 710:65-13-470]

**SUBCHAPTER 9. PERMITS**

**710:65-9-10. Direct payment permits (DPP)**

(a) **General provisions.** The holder of a valid Oklahoma direct payment permit may make purchases of taxable items, for use in its Oklahoma enterprises and not for resale, and defer the taxes imposed by the Oklahoma Sales and Use Tax Codes until such time as the items are first used or consumed in a taxable manner, if all requirements described in this Section are met. [See: 68 O.S. § 1364.1]

(b) **Qualification for direct payment permit.** To qualify for a direct payment permit, valid for three (3) years, an applicant must meet the requirement set forth in paragraph 1, 2, or 3.

(1) **Documentation for established businesses.** The applicant must be making purchases of \$800,000.00 annually in taxable items for the use in its Oklahoma

enterprises, and not for resale and annual purchases of \$800,000.00 must be verifiable from the applicant's sales or use tax records.

(2) **Documentation for new or expanding businesses.** An applicant without any qualifying sales and use tax reporting history in Oklahoma must submit to the Commission along with its application, a sworn statement that "applicant shall purchase \$800,000.00 of taxable items and services annually for use in its Oklahoma enterprises and not for resale." Adequate records or documentation must be available to support the statement of projected purchases.

(3) **Documentation for healthcare providers.** The applicant must be making purchases of drugs for the treatment of human beings, medical appliances, medical devices and other medical equipment including but not limited to corrective eyeglasses, contact lenses, hearing aids, prosthetic devices, durable medical equipment, and mobility-enhancing equipment for administration or distribution by a practitioner, as defined in 68 O.S. § 1357.6(B), who is authorized by law to administer or distribute the referenced items and the cost of such items will be reimbursed under the Medicare or Medicaid programs.

(c) **Other qualifications.** In addition to any other conditions mandated by statute, all applicants for a direct payment permit must comply with all conditions, prerequisites and qualifications described in (1) through (4) of this subsection:

(1) **Overall compliance with tax provisions.** The applicant must be in compliance with all pertinent tax laws of the State of Oklahoma and with the respective rules of the Commission.

(2) **Applicant must establish reliability and accuracy of accounting methods.** All applicant(s) must be able to establish to the satisfaction of the Commission that the applicant is or will be using an accounting method which clearly distinguishes between taxable and nontaxable purchases. An explanation of the accounting procedures which will be used to determine the taxability of any purchase and to ensure that any tax due is correctly accrued and remitted must accompany the application for a direct payment permit. Additionally to substantiate the exempt purchase of medical equipment pursuant to subsection (a) of 710:65-13-173, a healthcare provider holding a direct pay permit must maintain separate from confidential patient records the following information:

- (A) Patient case number or account number;
- (B) Type of insurance and
- (C) Item description or product number.

(3) **Compliance with reporting and remitting requirements.** The applicant must agree to accrue and pay all taxes imposed by the Sales or Use Tax Codes, on the applicable direct payment sales or use tax return, for items not specifically exempted. The applicant must agree to make the payments to the state on or before the 20<sup>th</sup> day of the month following the applicable reporting period in which the items become subject to the tax by reason of their consumption in this state. A written agreement to this effect, signed by an officer or other person authorized

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to legally bind the applicant must be furnished to the Commission along with the application for a direct payment permit.

- (4) **Compliance with restrictions on purchases for resale.** The applicant must agree to give a resale certificate, rather than a direct payment permit, for any item that will be resold, as provided by the Sales or Use Tax Codes.
- (d) **Application for direct payment permit.** Application for a direct payment permit may be made to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~.
- (e) **Granting of permit discretionary; options available upon denial.** The Oklahoma Tax Commission shall be the sole judge of an applicant's qualifications and may deny an application or refuse to issue a direct payment permit. However, an applicant is not precluded from submitting an amended application or may submit a new application after a reasonable period of time from the date of the original application. For purposes of this subsection "**reasonable period of time**" means a period of time of not less than twelve (12) calendar months duration from the date of the Commission denial or refusal to issue the permit.
- (f) **Issuance, scope, limitations of direct payment permit.** When a direct payment permit is issued to a particular legal entity, it will include all branches and divisions of that entity which are purchasing taxable items. A direct payment permit issued to a supplier by one branch or division shall apply to purchases made by all branches or divisions from the same supplier. For purposes of this Section, "**branches and divisions**" shall be limited to those subunits or groups associated with a single unique federal employer identification number. A direct payment permit-holder may not authorize any other person or entity to purchase any taxable items under the permit. Use by unauthorized persons may result in revocation of the permit.
- (g) **Use of direct payment certification procedure with vendors.** A direct payment permit-holder must provide its vendors with the direct payment certification defined in this Section and a copy of its direct payment permit in order to make those purchases to which the permit is applicable.
- (h) **"Direct payment certification" described.** "**Direct payment certification**" means the procedure by which a direct payment permit-holder provides a vendor with properly completed documentation and certification as to its deferred status. Properly completed documentation may consist of a copy of the direct payment permit, multi-state exemption certificate, or other document, so long as it contains the information described in (1) through (4) of this subsection.
- (1) A **copy** of the purchaser's Direct Payment Permit (DPP), or if unavailable, the name, address, and DPP number of the purchaser;
  - (2) A statement that the permit-holder claims deferral of the payment of state, city and county sales or use taxes upon its purchases of taxable tangible personal property or services;
  - (3) A statement that the articles purchased are for use in the purchaser's Oklahoma enterprises, and not for resale;
  - (4) The signature of the purchaser or a person authorized to legally bind the purchaser, and date signed.

(i) **Limitations on use of direct payment procedure.** Direct payment certification procedures are not applicable to the purchase of materials or supplies used, transferred, or consumed by a third party in performing services for the direct payment permit-holder, regardless of whether the third party is a contractor, service provider, or other person.

(j) **Incidence of tax for purchases made pursuant to direct payment permit and stored in Oklahoma.** For taxable items purchased under a direct payment permit, the incidence of Oklahoma sales and use taxes to be accrued and remitted on items stored in Oklahoma is to be determined by reference to this subsection, as well as to the provisions of the Oklahoma Sales and Use Tax Codes. [See: 68 O.S. § 1361(C)]

(1) **Use tax to be accrued on items and goods purchased outside Oklahoma.** Items and goods purchased outside Oklahoma pursuant to an Oklahoma direct payment permit, which are intended solely for use in other states, but which are stored in the state pending shipment to such other states, or which are temporarily retained for the purpose of fabrication, repair, testing, alteration, maintenance, or other service, are not subject to Oklahoma use tax. However, if the items purchased out-of-state are first used or consumed in Oklahoma, then Oklahoma use tax and any applicable city use tax shall be accrued and remitted to the Commission by the direct payment permit-holder.

(2) **Sales tax to be accrued on items and goods purchased in Oklahoma.** Items and goods purchased in Oklahoma pursuant to a valid Oklahoma direct payment permit are subject to Oklahoma sales and applicable city and county sales taxes at the time they are first used or consumed in a taxable manner. Sales made to direct payment permit holders of tangible personal property intended solely for use in other states, but which is stored in Oklahoma pending shipment to other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service are not subject to Oklahoma sales tax.

(k) **Monthly reports required.** All direct payment permit-holders must file sales and use tax returns, in the manner set out in this subsection, whether or not they have either sales tax or use tax to report.

(1) Purchases made in Oklahoma, using the taxpayer's DPP, such that the sales tax otherwise due has been deferred, are to be reported monthly on the Sales Tax Report Form which bears taxpayer's Direct Payment Permit Number. This report is in addition to any Sales Tax Report which is required to be filed using taxpayer's Sales Tax Permit Number.

(2) Purchases made outside Oklahoma, using the taxpayer's DPP, such that the use tax otherwise due has been deferred, are to be reported monthly on the taxpayer's Use Tax Report Form, using the Use Tax Account Number.

(l) **Cancellation, suspension, revocation of permit.** A direct payment permit may be cancelled by the Commission if the annual purchases fall below the qualifying threshold. Further, the Commission may revoke a permit upon information that the permit has been used by persons other than to



whom it was issued. Finally, the Commission may suspend, cancel, or revoke a direct payment permit, at any time, for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a license or permit pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-49 of the permanent rules of the Commission.

(m) **Procedure upon cancellation, revocation, or forfeiture.** Any entity whose direct payment permit is either voluntarily forfeited, or is cancelled or revoked by action of the Commission, must immediately notify all vendors from whom purchases of taxable items are made advising them that any certification provided to them pursuant to the forfeited, cancelled or revoked direct payment permit is no longer valid.

**SUBCHAPTER 11. CREDITS AND REFUNDS**

**710:65-11-1. Sales tax credits and refunds**

(a) Credits, other than for bad debts discussed below, may not be taken on the sales tax reporting form until or unless a valid letter of credit has been received from the Commission. The burden of establishing the right to, and the validity of, a credit or refund is on the vendor or purchaser claiming the credit or refund.

(b) Credit/refund requests submitted by a vendor shall include the information set out in paragraphs (1) through (8) of this subsection (if applicable). The application for credit may be obtained from the Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, OK 73102, or online at [www.tax.ok.gov](http://www.tax.ok.gov).

- (1) A written detailed explanation of why the credit/refund is due. (Include exemption numbers and/or an explanation on exempt customers.)
- (2) Amended reports detailing the correct figures that should have been reported. (A worksheet may be used in lieu of an amended report for each month involving an extended period.)
- (3) Copies or a list of the sales tax reports on which the sales were originally reported.
- (4) Copies of cancelled checks used to remit the tax paid.
- (5) Copies of the original invoices on which the tax was originally charged. If the number of invoices exceeds twenty-five (25), the invoices must be accompanied by an electronic spreadsheet of the invoices associated with the refund claim that relates back to the tax amount requested on the application for credit. The required fields should accurately list the customer name, invoice date, invoice number, description of the items, the taxable amount, the sales/use tax requested, period the tax was remitted, permit number the tax was remitted under, and the jurisdiction(s) for which the tax was paid.
- (6) Copies of the credit invoices or checks showing the tax collected or charged in error has been refunded to your customer.

(7) A recap of the credit/refunds by tax type, tax period, and taxing jurisdiction.

(8) Other documentation which may be pertinent to the requested credit/refund.

(c) Credit/refund requests submitted by a purchaser shall include the information set out in paragraphs (1) through (5) of this subsection (if applicable). The application for credit may be obtained from the Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave~~ 300 N. Broadway Ave, Oklahoma City, OK 73102, or online at [www.tax.ok.gov](http://www.tax.ok.gov).

(1) The name, address, telephone number of the contact person along with the name, address, telephone number and at least the last four digits of the purchaser's identification number.

(2) A written detailed explanation of why the credit/refund is due. Such explanation must contain sufficient factual information about the transaction and reason why the transaction is not subject to tax. (Include exemption number, if applicable)

(3) Copies of the original invoices included in the refund request, in chronological order, from the oldest to the most current. If the number of invoices exceeds twenty-five (25), the invoices must be accompanied by an electronic spreadsheet of the invoices associated with the refund claim that relates back to the tax amount requested on the application for credit. The required fields should accurately list the vendor name, invoice date, invoice number, description of the items, the taxable amount, the sales/use tax requested, period the tax was remitted, permit number the tax was remitted under, and the jurisdiction(s) for which the tax was paid.

(4) Additional documents which support the refund claim, for example: executed contracts, shipping documents or bills of lading, or documentation reflecting usage of tangible personal property, if not evident from the invoice description.

(5) If the amount of the credit/refund request exceeds \$10,000.00, the purchaser must also provide the following:

- (A) A statement from each vendor to whom the purchaser paid the tax setting forth each invoice included in the claim,
- (B) The amount of state, city and/or county tax collected from the purchaser and reported by the vendor and the local jurisdiction(s) for which the tax was paid,
- (C) The date on which the tax was remitted to the Tax Commission, and
- (D) A statement that the vendor has not, and will not, refund the tax to the purchaser.

**SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS**

**PART 5. ITEMS SUBJECT TO OTHER TAXES**

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### 710:65-13-30. Exemption for the sale of tangible personal property subject to other taxes

(a) **Aircraft, boats, boat motors, and low-speed/medium-speed electrical vehicles.** Sales and use tax does not apply to the sale of airplanes, boats, boat motors, and low-speed/medium-speed electrical vehicles, which are subject to the "Oklahoma Aircraft Excise Tax Act" [See: 68 O.S. § 6002], the "Oklahoma Vessel and Motor Registration Act" [See: 63 O.S. § 4107], or the "Oklahoma Vehicle Excise Tax Act" [See: 68 O.S. § 2106]. These excise taxes are levied on all aircraft, small vessels, watercraft, sailboats, motors greater than ten (10) horsepower, motorboats, or low-speed/medium-speed electrical vehicles, and also the optional equipment and accessories attached at the time of the sale and included in the purchase price or manufacturer statement of origin.

(b) **Motor vehicles.** Sales of motor vehicles on which the Oklahoma vehicle excise tax levied in Section 2101 et seq. of Title 68 has been, or will be paid, are subject to sales/use tax at the rate of 1.25% of the gross receipts of such sales. (See 710:65-19-215). The provisions of this subsection do not apply to low-speed/medium-speed electrical vehicles, power units (truck tractors) and trailers proportionally registered pursuant to the International Registration Plan (IRP) 47 O.S. § 1120 or trailers and semitrailers registered under subsection C of Section 1133 of Title 47 of the Oklahoma Statutes to transport cargo over the highways of this state.

(c) **Accessories, optional equipment, and parts.** Sales tax is due on accessories, optional equipment, or parts which are not attached and sold as part of the purchase price on the sale of aircraft, motors greater than ten (10) horsepower, vessels, motorboats, motor vehicles and low-speed/medium speed electrical vehicles.

(d) **Boats motors.** The sale of boat motors in excess of ten (10) horsepower is subject to boat and motor excise tax. [See: 63 O.S. §§ 4003(B)(1), 4107] The sale of boat motors ten (10) horsepower or less is subject to sales/use tax. [See: 68 O.S. § 1355]

(e) **Leases of aircraft.** Leases of aircraft are not subject to sales tax if either the aircraft excise tax has been paid on the lease transaction or an exemption applies to the transfer from the lessor to the lessee, pursuant to 68 O.S. §§ 1355(9) and 6001(4).

(f) **Sales of crude petroleum, natural or casinghead gas, and other products.** *Sales of crude petroleum, natural or casinghead gas, and other products subject to gross production tax pursuant to 68 O.S. §1001 et seq. and 68 O.S. §1101 et seq. are not subject to sales tax. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas.* [See: 68 O.S. § 1355(3)]

(g) **Sales from coin-operated vending devices.** Sales from coin-operated vending devices on which the fee imposed by 68 O.S. §§1501-1512 has been paid are not subject to sales tax.

(h) **Leases of motor vehicles.** Leases of motor vehicles are exempt from sales tax provided that the lease is for a term of twelve (12) months or more and the vehicle excise tax levied

by Section 2103 of Title 68 of the Oklahoma Statutes has been paid.

(i) **Sales of charity game equipment.** Sales of charity game equipment on which a tax is paid pursuant to the Oklahoma Charity Games Act, (3A O.S. § 401 et seq.), are not subject to sales tax. Additionally charity games equipment is exempt from sales tax when sold to the following entities: or which is sold to

(1) a veterans' organization exempt from taxation pursuant to the provisions of Section 501(c)(4),(7),(8),(10), or (19) of the Internal Revenue Code; or which is sold to

(2) a group home for mentally disabled individuals exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code are not subject to sales tax; and

(3) a charitable healthcare ~~organization~~organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

(j) **Sales of cigarettes and tobacco products.** Sales of cigarettes and tobacco products are exempt from sales tax in the following instances:

(1) Sales to a federally-recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of 68 O.S. § 346(C) or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid; or

(2) ~~Sales to a federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied by 68 O.S. § 349 or 426 has been paid; or,~~

(3) From and after January 1, 2005, sales of cigarettes on which the tax levied in 68 O.S. § 301 et seq. or tobacco products on which the tax levied in 68 O.S. § 401 et seq. has been paid. [See: 68 O.S. § 1355(11)]

## PART 7. CHURCHES

### 710:65-13-33. Children's homes and youth camps

(a) **Qualification for the exemption for children's homes located on church-owned property.** The sale of tangible personal property or services to children's homes located on church-owned property and operated by a qualified organization is exempt from sales tax. "**Qualified organization**" means, for purposes of this Section, an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3). [See: 68 O.S. § 1357(15)]

(b) **Qualification for the exemption for certain children's homes supported by one or more churches.** The sale of tangible personal property or services to children's homes supported or sponsored by one or more churches, whose members serve as trustees of the children's home, is exempt from sales tax. [See: 68 O.S. § 1356(27)]

(c) **Qualification for the exemption for certain youth camps.** The sale of tangible personal property or services to youth camps supported or sponsored by one or more churches, whose members serve as trustees of the youth camp, is exempt from sales tax. [See: 68 O.S. § 1356(29)]

(d) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~423 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with the applicable documentation set forth in (e) of this Section.

(e) **Supporting documentation required.**

(1) **Children's homes on church property.** Children's homes on church property must submit the following documentation:

(A) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(B) Documentation evidencing church ownership of the property where the children's home is located.

(2) **Children's homes supported by churches.** Children's homes supported or sponsored by churches must submit the following documentation:

(A) The name(s) of the church(es) which support or sponsor the home;

(B) The names of the members who serve as trustees of the home; and

(C) The amount that each church contributes each year.

(3) **Youth camps.** Youth camps must submit the following documentation:

(A) The name(s) of the church(es) which support or sponsor the camp; and

(B) The names of the church members who serve as trustees of the camp.

**710:65-13-40. Sales by churches; sales to churches**

(a) **Sales "by" churches.** Sales by churches are not subject to sales tax when it can be said that such selling is noncompetitive with business establishments.

(1) The following are tests for determining that such selling is noncompetitive:

(A) The transactions are conducted by members of the church and not by any franchisee or licensee.

(B) All of the proceeds must go to the church organization.

(C) The transaction must not be a continuing one but rather should be held whether annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Commission.

(D) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the church.

(2) In addition, there are these further considerations as guides to the resolution of questions raised by each individual situation:

(A) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

(B) The character of the particular sale, and the real practical effect upon putative competition. [See: 68 O.S. § 1356(7)]

(b) **Sales "to" churches.** Generally, sales made directly to a church are exempt from sales and use tax. Only sales purchased by the church, invoiced to the church, and paid for by funds or check directly from the church, will qualify for the exemption. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC 710:65-7-6* and *710:65-7-15*.

(c) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor with whom a church has duly entered into a construction contract, or to any subcontractor to such construction contract, are exempt provided they are necessary for carrying out the contract. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of subsection (c) of *OAC 710:65-7-13*.

(d) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~423 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation which shows that the church consists of a body of believers which holds religious services and public notification of the place and time of those services such as a copy of a newspaper or yellow pages ad, newsletter or bulletin sent to regular attendees or distributed during a service.

**PART 10. COAL**

**710:65-13-55. Exemption for coal mining**

(a) **Qualification in general.** Sales of machinery, electricity, fuels, explosives and materials, excluding chemicals, used in the mining of coal in this state are exempt from sales or use tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~423 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

(1) The applicant's name, mailing address and federal identification number; and

(2) A statement that the entity is engaged in mining coal in Oklahoma and setting out any coal mining permit numbers issued to the entity or, if the applicant is a contractor to a mine owner, the coal mining permit numbers issued to the mine owner, by the Oklahoma Department of Mines or other applicable regulatory agency.

(c) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the qualifying entity, invoiced to that entity and paid for by funds or check directly from the qualifying entity will be eligible for the exemption described in this Section.

**PART 15. HAZARDOUS WASTES**

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### 710:65-13-80. Exemption for purchases to reduce hazardous waste

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Directly used or consumed in the process of treatment"** means either the tangible personal property is:

(A) **"Directly used"** in the step-by-step processes by which hazardous waste is treated. Any tangible personal property or any services which are only indirectly related to the process of treatment are not included; or

(B) **"Consumed"** as in destroyed, used up, or worn out to the degree or extent that such property cannot be repaired, reconditioned, or rendered fit for further use. **"Consumed"** does not mean or include mere obsolescence.

(2) **"Equipment"** means the implements used in the direct process of treatment.

(3) **"Hazardous waste"** means waste materials and by-products, either solid or liquid, which are to be discarded by the generator, and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary landfills, waste or sewage treatment facilities. Hazardous waste may include, but is not limited to, explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludge, tank bottoms containing heavy metallic ions, toxic organic chemicals, infectious materials, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste, and excludes domestic sewage. For purposes of the sales and use tax exemption, the term **"hazardous waste"** may include low-level radioactive waste.

(4) **"Incorporated into"** means directly used or consumed in the process of treatment.

(5) **"Machinery"** means mechanically, electrically, or electronically operated devices used for performing the tasks of remediation of hazardous waste.

(6) **"Other materials"** means other items of tangible personal property which are used in the direct process of treatment of hazardous waste, but which are not machinery, equipment, fuel, or chemicals. For purposes of this Section, electricity is included in the category **"other materials"**.

(b) **Exemption limited to eligible, properly documented transactions.** Only purchases of machinery, equipment, fuel, and chemicals or other materials incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume of harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste Management Act and operated at the place of waste generation, or facilities approved by the Department

of Environmental Quality for the cleanup of a site of contamination are exempt. Only purchases made by persons engaged in the process of treatment, invoiced to those persons, and paid for by such persons are exempt.

(c) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~73102~~73194, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

(1) A written description of the process in which the person will be engaged;

(2) Information regarding the permit or approval under which the person is operating;

(3) Documentation that any nonresident contractor or subcontractor is in compliance with the registration requirements found at 68 O.S. § 1701 et. seq.; and

(4) Such additional information as the Commission may require to confirm eligibility.

(d) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption allowed will be forwarded to the applicant.

(e) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-49 of the permanent rules of the Commission.

(f) **Use of letter certifying eligibility for the exemption.** Persons claiming exemption under this Section should provide their vendors with a copy of the certification letter issued by the Commission and a signed statement that the purchase is being made exempt from sales tax. If purchases will be made from a vendor on a regular basis, the vendor may make subsequent sales without requiring proof of eligibility for each sale, providing the person to whom the exempt sales are being made has agreed in writing to notify the vendor of any and all purchases which may be made to which the exemption would not apply. Vendors may accept the certification set out in this subsection in the same manner as any other letter certifying to a specific statutory exemption as set out in 710:65-7-6 and 710:65-7-15.

(g) **Limitations.** Any letter certifying an exemption issued under this Section is valid only for use by the addressee and is not transferable. The exemption may **not** be used by any other entity, even if that entity claims to be an agent, administrator, party to a contract or other relationship. Each entity desiring to obtain a letter certifying an exemption must make application in its own name.

## PART 23. GAS AND ELECTRICITY

**710:65-13-122. Exemption for sales of electricity for use in a reservoir dewatering project**

- (a) **General provisions.** Beginning January 1, 2004, sales of electricity and associated delivery and transmission services, when sold exclusively for use by an oil and gas operator for approved reservoir dewatering projects and associated operations shall be exempt from the levy of sales tax.
- (b) **Where to apply.** To qualify for the exemption, the operator of the reservoir dewatering project must apply in writing to the ~~Director's Office, Business Tax Services Division, Oklahoma Tax Commission, 123 Robert S Kerr Ave, Oklahoma City, OK 7310273194,~~ requesting an exemption letter.
- (c) **Contents of the application letter.** The letter of application must set out the name of the operator, the physical location of the project, the federal identification number of the operator, the date the project commenced, and the electric service account number associated with services provided to the project. A copy of the Oklahoma Corporation Commission Order approving the designation of the area and reservoir as a "reservoir dewatering project" or a "reservoir dewatering unit" must accompany the application letter.
- (d) **Review and approval procedure.** Upon review and approval, a letter of exemption shall be issued to the operator, who must forward the exemption letter to the electricity utility, to document the sales tax exemption on their purchases of electricity. The letter, when provided to the utility along with a statement by the operator that the purchases of electricity are exempt, shall constitute "properly completed documentation certified by the Oklahoma Tax Commission" as that phrase is used in 710:65-7-6.
- (e) **Limitations.** The exemption shall apply to the electricity used in reservoir dewatering projects and associated operations which commenced after June 30, 2003. The exemption shall not apply to the transportation or distribution of the oil or gas once it has been produced.

**710:65-13-123. Exemption for sales of electricity for use in enhanced recovery methods of oil production**

- (a) **General provisions.** Beginning July 1, 2006, sales of electricity to the operator of a spacing unit or lease where oil is produced or is attempted to be produced using enhanced recovery methods shall be exempt from the levy of sales tax. Enhanced recovery methods include but are not limited to increased pressure in a producing formation through the use of water or saltwater if the electrical usage is associated with and necessary for the operation of equipment required to inject or circulate fluids in a producing formation for the purpose of forcing oil or petroleum into a wellbore for eventual recovery and production from the wellhead.
- (b) **Where to file for exemption.** To qualify for the exemption, the operator of the enhanced recovery methods on a spacing unit or lease must apply in writing to the ~~Director's Office, Business Tax Services Division, Oklahoma Tax Commission, 123 Robert S Kerr Ave, Oklahoma City, OK 7310273194,~~ requesting an exemption letter.

- (c) **Supporting documentation required.** The request must set out the name of the operator, the physical location of the project, the federal identification number of the operator, the date the project commenced, and the electric service account number associated with services provided to the project and the Production Unit Number and Merge Number of the project. A copy of the application [Form 1535] filed with and approved by the Oklahoma Corporation Commission must accompany the request.
- (d) **Review and approval procedure.** Upon review and approval, a letter of exemption shall be issued to the operator, who must forward the exemption letter to the electric utility, to document the sales tax exemption on their purchases of electricity. The letter, when provided to the utility along with a statement by the operator that the purchases of electricity are exempt, shall constitute "properly completed documentation certified by the Oklahoma Tax Commission" as that phrase is used in 710:65-7-6.
- (e) **Eligibility.** In order to be eligible for the exemption set forth in this Section, the total content of oil recovered after the use of the enhanced recovery methods must not exceed one percent (1%) by volume.
- (f) **Limitations.** The exemption shall apply only to the state sales tax rate and not to any county or municipal sales tax rate.

**PART 25. GOVERNMENTAL ENTITIES**

**710:65-13-133. State parks**

- (a) **General provisions.** Sales of tangible personal property or services, directly used in or for the benefit of a state park, and made to an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., § 501(c)(3) and organized primarily for the purpose of supporting one or more state parks located in this state, are exempt from sales tax.
- (b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~Robert S Kerr Ave, Oklahoma City, OK 7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:
  - (1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and
  - (2) A written description stating the activities of the organization, as evidenced by copies of:
    - (A) Articles of Incorporation;
    - (B) By-laws;
    - (C) Brochure; or
    - (D) Notarized letter from the President or Chairman of the organization.

**PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES**

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### 710:65-13-172. Exemption for health centers, indigent health care clinics, certain community-based health care centers, and community mental health centers

(a) **Qualification for the exemption for health centers, indigent health care clinics, certain community-based health care centers and community mental health centers.** Sales tax does not apply to the sale of tangible personal property or taxable services when sold to:

- (1) Any health center as defined in Section 254b(a) of Title 42 of the United States Code;
- (2) Any clinic receiving disbursements of state monies from the Indigent Health Care Revolving Fund pursuant to the provisions of Section 66 of Title 56 of the Oklahoma Statutes;
- (3) Any community-based health center which provides primary care services at no cost to the recipients, **and** is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). For purposes of this Section, "**primary care services**" means health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians, and where appropriate, physician assistants, nurse practitioners, or other licensed medical professionals; or
- (4) Any community mental health center as defined in Section 3-302 of Title 43A of the Oklahoma Statutes. For purposes of this Section, "**community mental health center**" means a *facility offering*:

(A) *A comprehensive array of community-based mental health services, including, but not limited to, outpatient treatment, emergency evaluation and care, consultation, education, rehabilitation services, and aftercare, and*

(B) *Certain services at the option of the center, including, but not limited to, inpatient treatment, training programs, and research and evaluation programs.*

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~73102~~73194, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with the applicable documentation set forth in (c) of this Section:

(c) **Supporting documentation required.**

(1) **Health centers.** Health centers must submit the letter of notification from the U.S. Department of Health and Human Services, recognizing that the center qualifies under Section 254b(a) of Title 42 of the United States Code.

(2) **Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund.** Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund must submit a copy of the letter or disbursement voucher from the Fund, showing the date the funds were disbursed.

(3) **Community-based health centers.** Community-based health centers must submit the documentation described in (A) through (C) of this paragraph:

(A) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(B) A written description of the primary care services provided must be submitted, stating the activities of the organization, and evidenced by copies of the following, as applicable:

(i) By-laws;

(ii) An audit or other financial statement, showing the types and amounts of revenue received; and

(iii) Intake documents or other forms used to obtain information from clients and which specifically reflect that the primary care services were being provided at no cost to the recipients.

(C) For the purposes of this paragraph, "**at no cost to the recipient**" means at no cost to either the recipient or any unit of government, or any insurance company, or any other person or entity. Centers which provide primary care services on a "sliding scale" fee schedule do **not** qualify for the exemption.

(4) **Community mental health centers.** Community mental health centers must submit to the Commission, as part of its application, proof of recognition by the Oklahoma Department of Mental Health and Substance Abuse Services that applicant qualifies as a Community Mental Health Center, along with a written description of the comprehensive array of community-based mental health and other optional services the facility offers, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property and services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying health care organizations exempt from sales tax.

### 710:65-13-174. Exemption for tax-exempt, independent, nonprofit biomedical research foundations

(a) **Qualification for tax-exempt, independent, nonprofit biomedical research foundations.** Sales of tangible personal

property or taxable services to independent, nonprofit biomedical research foundations who are entities qualified pursuant to 26 U.S.C. § 501(c)(3) and who provide educational programs for Oklahoma science students and teachers will be exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave.~~, Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the foundation as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and
- (2) A written description of the qualifying activities of the foundation, as may be evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; and
  - (D) Notarized letter from the President or Chairman of the foundation.

(c) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the foundation, and paid for by funds or check directly from the foundation, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for foundations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified foundations.

**710:65-13-175. Exemption for tax-exempt, independent, nonprofit community blood banks headquartered in this state**

(a) **Qualification in general.** Sales of tangible personal property or taxable services to tax-exempt, independent, nonprofit community blood banks headquartered in this state are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave.~~, Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and
- (2) A written description of the qualifying criteria that the organization meets, as may be evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; and

(D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying community blood banks exempt from sales tax.

**710:65-13-177. Construction projects for organizations providing end-of-life care and hospice service**

(a) **Qualification for exemption.** Sales of tangible personal property and services for use solely on construction projects for organizations exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3) whose purpose is to provide low income individuals who live in a facility owned by the organization end-of-life care and access to hospice services.

(b) **Application process.** Application is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave.~~, Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov), along with the following information:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,
- (2) A written description stating the activities of the organization, as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or,
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Sales to qualified organization limited to eligible, properly-documented transactions.** Only sales of goods or services for use solely on construction projects actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC* 710:65-7-6 and 710:65-7-15.

(d) **Sales under contract.** Sales to any person, including contractors and subcontractors, with whom a qualifying organization has duly entered into a construction contract necessary for carrying out such contract are exempt from sales tax.

(e) **Documentation and certification required.** In the case of sales to a person including contractors and subcontractors claiming exemption pursuant to this Section, the vendor must obtain:

- (1) A copy of the exemption letter or card issued to the qualified organization;

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- (2) Documentation indicating the contractual relationship between the purchaser and the qualified organization; and
- (3) Certification by the purchaser, on the face of each invoice or sales ticket, setting out the name of the exempt organization that the purchases are being made for and on behalf of the organization, and that they are necessary for the completion of the contract.

### PART 35. NEWSPAPERS; PERIODICALS; PROGRAMS; MEDIA

#### 710:65-13-194. Exemption for sales of tangible personal property and services to a motion picture or television production company to be used or consumed in connection with an eligible production

- (a) **General provisions.** The sale of tangible personal property and services to a motion picture or television production company are exempt from sales and use taxes in Oklahoma, if used or consumed in connection with an eligible production.
- (b) **Definitions.** Pursuant to 68 O.S. §1357(23), "**Eligible production**" means "*a documentary, special, music video, or a television commercial or television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series, filmed or taped for network or national or regional syndication; or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast.*" **Qualified purchaser**" means a motion picture or television production company making purchases of tangible personal property and services for use in producing an eligible production, which has received an exemption letter for its eligible production.
- (c) **Examples of exempt items.** Items that may be purchased exempt from sales tax by a qualified purchaser include, but are not limited to:
  - (1) Accommodations and meals.
  - (2) Production equipment purchases and rentals.
  - (3) Set construction and rigging materials.
  - (4) Production office equipment and supplies.
  - (5) Prop and wardrobe purchases and rentals.
  - (6) Utilities used by the production company on location and in the production office.
- (d) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave, Oklahoma City, OK 73102~~ 73194, a completed Form 13-88, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov).
- (e) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying that the exemption is allowed will be forwarded to the applicant.
- (f) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for

non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue an exemption letter pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-49 of the permanent rules of the Commission.

(g) **Use of letter certifying eligibility for the exemption.** Persons claiming exemption under this Section should provide their vendors with a copy of the certification letter issued by the Commission and a signed statement that the purchase is being made exempt from sales tax. If purchases will be made from a vendor on a regular basis, the vendor may make subsequent sales without requiring proof of eligibility for each sale, providing the person to who the exempt sales are being made has agreed in writing to notify the vendor of any and all purchases which may be made to which the exemption would not apply. Vendors may accept the certification set out in this subsection in the same manner as any other letter or card certifying to a specific statutory exemption as set out in 710:65-7-6 and 710:65-7-15.

(h) **Limitations.** Any letter certifying an exemption issued under this Section is valid only for use by the addressee and is not transferable. The exemption may **not** be used by any other entity, even if that entity claims to be an agent, administrator, party to a contract or other relationship. Each entity desiring to obtain a letter certifying an exemption must make application in its own name.

### PART 37. SALES FOR RESALE

#### 710:65-13-201. Sales between related entities

- (a) Each interdepartmental transfer of tangible personal property and taxable services between various departments of a single legal entity shall not constitute a sale subject to sales tax.
- (b) ~~Each~~ Except for transfers of tangible personal property between wholly owned subsidiaries of a parent company and between a parent company and its wholly owned subsidiary each transfer of tangible personal property, and taxable services between separate legal entities for use or consumption, and not for resale, shall be taxable, unless otherwise exempt by statute pursuant to a reorganization, winding up, dissolution, liquidation, or formation of a corporation, even though:
  - (1) The entities share common principals or ownerships and operations.
  - (2) The entities share the same business location.
  - (3) The entities file consolidated income tax returns for federal and state income purposes or one of the entities is disregarded for income tax purposes.
  - (4) The entities do not enjoy a profit or expense as a result of the transaction.
- (c) When a transaction would be subject to sales tax if the transaction were between two separately owned and operated legal entities, the commonality of the two entities is irrelevant, and sales tax is imposed on the transaction between the two related entities.



(d) **"Separate legal entities"** means entities which are recognized as individual entities either in fact or at law. Taxable transfers of tangible personal property and services between separate legal entities for use or consumption, and not for resale, shall include:

- (1) Transfers between individuals and partnerships.
  - (2) Transfers between individuals and corporations.
  - (3) Transfers between individuals and unincorporated associations.
  - (4) Transfers between partnerships and corporations.
  - (5) Transfers between partnerships and unincorporated associations.
  - (6) Transfers between partnerships.
  - (7) Transfers between unincorporated associations and corporations.
  - (8) Transfers between corporations, whether between sister corporations or parent and subsidiary corporations.
- [See: 68 O.S. §§ 1354, 1360]

**PART 39. SCHOOLS AND HIGHER EDUCATION**

**710:65-13-210. Exemption for public and private schools and institutions of higher education**

(a) **Sales to schools.** Sales of tangible personal property or services to the following entities are exempt from taxation:

- (1) Private institutions of higher education.
- (2) Private elementary and secondary schools.
- (3) Members of the Oklahoma system of higher education.
- (4) Public school districts.

(b) **Scope of exemption.** The exemption in this subsection shall apply only if said institution or school is accredited by the State Department of Education, registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to 26 U.S.C.A § 501(c)(3) of the Internal Revenue Code. Included in sales which are exempt are materials, supplies and equipment used in construction and improvement of buildings owned by said entities and operated for educational services.

(c) **Sales by a lease or lease-purchase agreement with a school district.** Sales of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district are exempt from sales tax.

(d) **Sales under public contract.** Sales to any public school, institution of the Oklahoma system of higher education and to any person, including subcontractor, whom a public school or institution of the Oklahoma system of higher education has duly entered into a contract pursuant to law necessary for carrying out said contract are exempt from taxation.

(e) **Certification required.** Certification on the face of the invoice is required of persons making purchases on behalf of an entity listed in (a) of this Section. The invoice containing the certification must be retained by the vendor. Wrongful or erroneous certification may result in criminal punishment.

(f) **Campus or school construction.** Sales for use on campus or school construction projects for the benefit of either

the institutions of the Oklahoma system of higher education, private institutions of higher education accredited by the Oklahoma State Regents for Higher Education, or for public schools or school-districts, are exempt when the projects are financed by or through the use of nonprofit entities exempt from taxation pursuant to the provisions of the Internal Revenue Code 26 U.S.C., § 501(c)(3).

(g) **Obtaining exemption for campus or school construction projects.** The general contractor shall request a letter of confirmation that the project qualifies for the exemption from the Business Tax Services Division. Along with the request, the following must be supplied:

- (1) A letter from the institution confirming that the not-for-profit entity is financing the project and that the requestor is the general contractor for the project.
- (2) A copy of the IRS letter to the not-for-profit entity showing its exemption status.

(h) **Private schools tuition.** Tuition and educational fees paid to private institutions of higher education, private elementary and secondary institutions of education duly accredited by the State Board of Education or registered to participate in federal programs are exempt from sales tax. The institution must be exempt from income taxation pursuant to the provisions of 26 U.S.C.A. § 501(c)(3) for this exemption to apply.

(i) **Sales in school cafeterias.** Sales of food in cafeterias or lunchrooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils are exempt from taxation so long as the cafeteria or lunch room is not operated primarily for the public or for profit. Management companies operating for a profit who contract with a school, college or university to operate a lunchroom or cafeteria will be denied the exemption. Also, sales of food made on school premises but not in a cafeteria or lunchroom do not fall within the exemption provided by statute.

(j) **Sales of admission tickets.** That portion of the gross receipts received from the sale of admission tickets which is for the repayment of money borrowed by an accredited state-supported college or university for the purposes outlined in the statute is exempt from taxation if said amount is:

- (1) separately stated on the admission ticket; and
- (2) imposed, collected and used for the sole purpose of servicing the debt incurred by the college or university for capital improvements described in the statute.

(k) **Sales by school, student, parent-teacher organizations or associations.** Private schools, public schools, public or private school boards, public school districts, public or private school student organizations and parent-teacher organizations or associations can make sales of tangible personal property exempt from sales tax. Public or private school personnel can make sales for fund-raising projects to benefit the school, school district, school board or student group or organization without collecting and remitting sales tax. For purposes of subsections (k) and (l) tangible personal property includes the sale of admission tickets and concessions at athletic events. [See: 68 O.S. § 1356(13)]

(l) **Sales to, or by, parent-teacher organizations.** Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to

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Section 501(c)(3) of the Internal Revenue Code may make purchases and sales free from the levy of Oklahoma sales taxes.

(m) **Sales to, or by, nonprofit local public or private school foundations.** Nonprofit local public or private school foundations which solicit money or property in the name of any public or private school or public school district may make purchases and sales of tangible personal property exempt from sales tax.

(n) **Sales to career technology student organizations.** Career technology student organizations under the direction and supervision of the Oklahoma Department of Career and Technology Education may make purchases exempt from Oklahoma sales and use taxes and local sales and use taxes.

(o) **Application process.** The entities set forth in (l) through (n) of this Section may make application for exemption by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave., Oklahoma City, OK 7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with the applicable documentation outlined in (p) of this Section.

(p) **Supporting documentation required.**

(1) **Parent-Teacher Associations or Organizations.** Parent-Teacher Associations or Organizations must submit the Internal Revenue Service determination letter recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3).

(2) **School foundations.** School foundations must submit the documentation described in (A) and (B) of paragraph (2).

(A) A letter from the Internal Revenue Service recognizing the foundation as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(B) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:

- (i) Articles of Incorporation;
- (ii) By-laws;
- (iii) Brochure; and
- (iv) Notarized letter from the President or Chairman of the foundation.

(3) **Career Technology School Organizations.** Career Technology School Organizations must submit documentation that the organization is under the direction and supervision of the Oklahoma Department of Career and Technology Education.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave., Oklahoma City, OK 7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

(1) A copy of the Oklahoma Child Care Facility License;

(2) A copy of the 3-star rating Certificate from the Department of Human Services Reaching for the Stars Program or documentation which shows that the entity has a national accreditation; and

(3) A copy of a current year contractual agreement with a public school or school district for provision, by the child care facility, of on-site universal pre-kindergarten education to four-year-old children.

(c) **Sales to child care center limited to eligible, properly-documented transactions.** Only sales of goods or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC 710:65-7-6* and *710:65-7-15*.

(d) **Sales under contract.** Sales to any person, including contractors and subcontractors, with whom a child care center has duly entered into a contract for construction and improvement of buildings and other structures owned by the child care center and operated for education purposes are exempt from sales tax.

(e) **Documentation and certification required.** In the case of sales to a person including contractors and subcontractors claiming exemption pursuant to this Section, the vendor must obtain:

(1) A copy of the exemption letter or card issued to the qualified child care center;

(2) Documentation indicating the contractual relationship between the purchaser and the qualified child care center; and

(3) Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

### **710:65-13-220. Exemption for child care facilities which provide on-site universal pre-kindergarten education**

(a) **Qualification for child care facilities which provide on-site universal pre-kindergarten education exemption.** Sales of tangible personal property and services to a child care facility, licensed pursuant to the Oklahoma Child Care Facilities Licensing Act which possesses either a 3-star rating from the Department of Human Services Reaching for the Stars Program or a national accreditation and provides on-site universal pre-kindergarten education to four-year-old children through a contractual agreement with any public school or school district are exempt from sales tax.

### **PART 42. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE**

#### **710:65-13-275. Exemption for disabled veterans in receipt of compensation at the one hundred percent rate and unmarried surviving spouses of qualifying veterans**

(a) **General provisions for exemption afforded certain veterans.** Sales of tangible personal property or services are exempt from sales tax when made to persons who have been honorably discharged from active service in any branch of

the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the ~~one hundred percent (100%)~~ 100% rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service and are registered with the veterans registry created by the Oklahoma Department of Veterans Affairs. The exemption includes sales to the spouse of such veteran or to a household member where the veteran resides and who is authorized to make purchases on behalf of the veteran in the veteran's absence, so long as the purchase is for the benefit of the qualified veteran.

(b) **General provisions for exemption afforded unmarried surviving spouse of deceased qualifying veteran.** Sales of tangible personal property or services are exempt from sales tax when made to a surviving spouse of a deceased veteran qualifying for the exemption set out in subsection (a) of this Section if the spouse has not remarried. The exemption includes sales to a household member where the surviving spouse of the deceased qualifying veteran resides who is authorized to make purchases on behalf of the spouse in his or her absence, so long as the purchase is for the benefit of the spouse.

(c) **Qualification to receive an exemption card.** To qualify for exemption under this Section and receive an exemption card a veteran or surviving spouse of the qualifying veteran must be an Oklahoma "resident" as defined in 68 O.S. §2353 and submit to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave., Oklahoma City Ok 73102~~ 73194 the following information:

(1) **Qualifying ~~veteran~~ veteran.** A letter from the United States Department of Veterans Affairs certifying that the veteran is receiving disability compensation at the 100% rate and proof of registration with the veterans registry established in accordance with 72 O.S. § 721.

(2) **Unremarried surviving spouse.** A letter from the United States Department of Veterans Affairs, Muskogee, OK certifying that the applicant is the unremarried spouse of the qualifying veteran.

(d) **Exemption limitations.** The authorized exemption in this Section is subject to the following limitations:

(1) **Disabled veterans in receipt of compensation at the one hundred percent rate.** The authorized exemption for a qualified veteran is limited to Twenty-five Thousand Dollars (\$25,000.00) per year of qualifying purchases made by the qualified veteran, spouse or household member authorized to make purchases on behalf of the qualified veteran in the veteran's absence. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded the yearly limitation of Twenty-five Thousand Dollars (\$25,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(2) **Unremarried surviving spouse of qualifying disabled veteran.** The authorized exemption for the unremarried surviving spouse is limited to One Thousand Dollars (\$1,000.00) per year of qualifying purchases made by the qualified surviving spouse. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amount for which the exemption is applicable has not exceeded the yearly limitation of One Thousand Dollars (1,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(e) **Qualifying sales.** Sales are exempt if the qualified veteran or surviving spouse has an interest in the funds presented and the purchase is made on his or her behalf, and the qualified veteran's spouse or household member or the surviving spouse's household member authorized to make purchases on behalf of the veteran or surviving spouse in their absence has presented the exemption card issued by the Oklahoma Tax Commission.

(f) **Previously qualified veterans.** Veterans which were granted the sales tax exemption outlined in this Section prior to November 1, 2020, must register with the ODVA veterans registry prior to July 1, 2023, in order to remain qualified.

(g) **Perfection of exemption.** The sales tax exemption afforded 100% disabled veterans must be perfected by presenting the sales tax exemption card issued to the qualifying veteran by the Tax Commission at the time of sale so that the vendor does not charge and collect sales tax on the purchase.

(h) **Denial of exemption by vendor.** All vendors shall honor the proof of eligibility for the sales tax exemption to both the qualified veteran, qualified unremarried surviving spouse and persons making purchases for the benefit of the disabled veteran or surviving spouse. Qualifying 100% disabled veterans and qualifying unremarried surviving spouses who have had claims for sales tax exemption denied by vendors may notify the Tax Commission of such denial by submitting to the Audit Services Division a signed and completed OTC Form 13-37, which is available online at [www.tax.ok.gov](http://www.tax.ok.gov).

(i) **Refund request.** A refund of sales taxes erroneously paid may be claimed only under circumstances where a vendor refused to honor the proof of exemption eligibility issued by the Tax Commission and the person eligible for the exemption submits to the Tax Commission a completed and signed OTC Form 13-37 *Disabled American Veterans Notification of Denial of Exemption.*

(j) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. Section 1352 are taxable to the contractor. A contractor who performs improvements to real property for a disabled veteran in receipt of compensation at the one hundred percent (100%) rate or an unremarried surviving spouse of the qualifying veteran who qualifies for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute

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to disabled veterans in receipt of compensation at the one hundred percent rate.

### PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

#### 710:65-13-334. Exemption for qualified museums

- (a) **General provisions.** Museums or other entities accredited by the American Alliance of Museums formally the American Association of Museums are exempt from the levy of sales tax on their purchases of tangible personal property and services, and provided that the museum is in compliance with (d)(2) of this Section, on the sales of tickets for admission.
- (b) **Certification required for purchases.** Certification, in which the name of the museum or other accredited entity is set out on the face of the invoice or sales receipt to be obtained and retained by the vendor, is required of persons making purchases on behalf of a qualifying museum or other accredited entity, in order to support the exemption pursuant to OAC 710:65-3-30 and 710:65-3-33.
- (c) **Application procedure.** Application for the exemption is made by submitting to the ~~Business Tax Services Division~~ Taxpayer Resource Center, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>1</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with written confirmation that the applicant is currently accredited by the American Alliance of Museums formally the American Association of Museums.
- (d) **Exemption limited to eligible, properly-documented transactions.**
- (1) Only those purchases actually purchased by the museum or other accredited entity, invoiced to the museum or entity, and paid for by funds or check directly from the museum or other accredited entity, will qualify for the exemption on purchases.
  - (2) To qualify for the exemption on sales of admission tickets, the museum must separately state an amount equivalent to the tax which would otherwise have been required to be collected on the face of the admission ticket and must use the amount so stated and so collected solely for the purpose of servicing debt incurred by the museum in the construction, enlargement, or renovation of facilities used or to be used for the entertainment, edification, or cultural cultivation of persons admitted to the museum or facility. The museum or other accredited entity must maintain records adequate to show that the proper amount was collected in lieu of the tax and that those funds were used for purposes of servicing qualifying projects.
- (e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to museums and other accredited entities.

#### 710:65-13-335. Limited exemption for organizations which sponsor and promote educational, charitable, and cultural events for disadvantaged children

- (a) **Qualification for educational, charitable, and cultural events for disadvantaged children exemption.** The first \$15,000.00 of each calendar year's sales, to or by, organizations which were established to sponsor or promote educational, charitable, or cultural events for disadvantaged children, are exempt from sales tax.
- (b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>1</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) and the supporting documentation described in (c) of this Section.
- (c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:
- (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and
  - (2) Documentation showing that the organization was established to sponsor and provide educational, charitable, and cultural events for disadvantaged children, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:
    - (A) Articles of incorporation;
    - (B) By-laws;
    - (C) Brochure; or,
    - (D) Notarized letter from the President or Chairman of the organization.
- (d) **Exemption limited to eligible, properly-documented transactions.** Only the first \$15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this Section, the sales tax must be remitted to the Oklahoma Tax Commission. Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.
- (e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

#### 710:65-13-336. Exemption for Disabled American Veterans, Department of Oklahoma, Inc. and subordinate chapters

- (a) **General provisions.** Disabled American Veterans, Department of Oklahoma, Inc. and its subordinate chapters are exempt from the levy of sales tax on purchases of tangible personal property and services.

(b) **Application procedure.** Application for exemption is made by submitting to the ~~Business Tax Services Division~~ Taxpayer Resource Center, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave., Oklahoma City, OK 7310273194,~~ a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with written confirmation that the applicant is a currently recognized chapter of the Disabled American Veterans, Department of Oklahoma, Inc.

**710:65-13-337. Qualifications for "Meals on Wheels" exemption**

(a) **Qualification for Meals on Wheels exemption.** Sales tax does not apply to the sale of food, food products, or any equipment or supplies used in the preparation of the food or food products, to or by organizations enumerated in 68 O.S. § 1357(13)(a), and which are commonly referred to as "Meals on Wheels," "Mobile Meals," and the like.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave., Oklahoma City, OK 7310273194,~~ a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,
- (2) A written description stating the activities of the organization, as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or,
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of food, food products, or any equipment or supplies used in the preparation of the food or food products purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying "Meals on Wheels," "Mobile Meals," and similar programs enumerated in 68 O.S. § 1357(13)(a) exempt from sales tax.

**710:65-13-338. Qualifications for "Older Americans Act" exemption**

(a) **Qualification for the Older Americans Act exemption.** Sales tax does not apply to the sale of food or food products, or any equipment or supplies used in the preparation of the food or food products, to or by organizations enumerated in 68 O.S. § 1357(13)(b), and which receive federal funding pursuant to the Older Americans Act of 1965, for purposes of

providing nutrition programs for the care and benefit of elderly persons.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave., Oklahoma City, OK 7310273194,~~ a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);
- (2) A written description stating the activities of the organization, as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or,
  - (D) Notarized letter from the President or Chairman of the organization; and,
- (3) Copy of notification letter approving the organization for funding under the Older Americans Act of 1965.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of food or food products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying "Older Americans Act" organizations exempt from sales tax.

**710:65-13-339. Qualifications for "Collection and Distribution Organization" exemption**

(a) **Qualification for Collection and Distribution Organization exemption.** Sales tax does not apply to the sale of tangible personal property or services to or by organizations exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) and;

- (1) are primarily involved in the collection and distribution of food and household products to other organizations that facilitate the distribution of such products to the needy and such distributee organizations are exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) or
- (2) facilitate the distribution of such products to the needy.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave., Oklahoma City, OK 7310273194,~~ a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);
- (2) A written description stating the activities of the organization, as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;

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(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization; and,

(3) For organizations described in (a)(1) a list of organizations, including federal employer identification numbers, to which items were distributed for the previous calendar year must also be provided.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of food, food products, and household products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(d) **Other limitations.** The exemption set out in this Section does not apply to sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352 are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying "Collection and Distribution Organizations" exempt from sales tax.

### 710:65-13-340. Exemptions for volunteer fire departments

(a) Sales to volunteer fire departments which are organized under 18 O.S. § 592 are exempt from sales tax. Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation that the department is registered with the Oklahoma Secretary of State.

(b) A vendor shall obtain the documentation set out in OAC 710:65-7-15 in order to be relieved of liability for sales tax on such sales.

(c) Additionally, volunteer fire departments which are organized under 18 O.S. Section 592 are exempt from having to charge sales tax on the first Fifteen Thousand Dollars (\$15,000.00) of sales per year which are made for the purpose of raising funds for the benefit of the department, provided the sales are made on no more than six days per year. [68 O.S. § 1356(19)]

### 710:65-13-341. Exemption for Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and Camp Fire USA

(a) **General provisions.** Council and state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A., and Camp Fire USA are exempt from the levy of sales tax on purchases of tangible personal property and services. **Dens, packs, troops**, or similar groups affiliated with a council or state supervisory organization of the Boy Scouts of America, Girl Scouts of U.S.A., or Camp Fire USA are not included within the scope of the exemption described in this Section.

(b) **Application procedure.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with a determination letter or group ruling from the Internal Revenue Service.

### 710:65-13-342. Qualifications for "Juvenile Rehabilitation" exemption

(a) **Qualification for the Juvenile Rehabilitation exemption.** Sales tax does not apply to the sale of goods or services to organizations which take court-adjudicated juveniles for purposes of rehabilitation and which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). However, at least fifty percent (50%) of the juveniles served by the organization must be court-adjudicated and the organization must receive state funds in an amount which is less than ten percent (10%) of the annual budget of the organization.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(2) A copy of the last audit, income tax informational return, or other financial statements which will show that for the last fiscal year end before application, less than 10% of the budget of the organization was from state funds;

(3) A statement signed by a responsible officer of the organization that sets out the percentage of juveniles served which were court-adjudicated during the last fiscal year, giving the total number served, and the total number of those that were court-adjudicated;

(4) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization which states the services provided by the organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of goods or services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for "Juvenile Rehabilitation" organizations may **not** purchase the tangible personal property or services used to perform the contract exempt from

sales tax under the exemption provided by statute to "Juvenile Rehabilitation" organizations.

**710:65-13-343. Exemption for qualified youth athletic teams**

(a) **General provisions.** Sales tax does not apply to the first \$15,000.00 of each year's sales, to or by, youth athletic teams, made for the purpose of raising funds for the benefit of the team. In order to qualify for exemption the youth athletic team must be a part of an athletic organization exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4).

(b) **Application process.** Application is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave.,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov), along with the following information:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4); and,
- (2) A written description stating the activities of the organization, as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or,
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly-documented transactions.** Only the first \$15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this Section, the sales tax must be remitted to the Oklahoma Tax Commission. Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

**710:65-13-344. Exemption for tax exempt, nonprofit organizations, which provide services during the day to homeless persons**

(a) **Qualification for tax-exempt, nonprofit organizations which provide services during the day to homeless person exemption.** Sales of tangible personal property to a nonprofit organization exempt from income taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), which is organized primarily for the purpose of providing services to homeless persons during the day and located in a metropolitan area with a population in excess of five

hundred thousand (500,000) persons according to the latest Federal Decennial Census are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave.,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3); and
- (2) Documentation showing that the organization was established to provide services to homeless persons during the day and is located in a metropolitan area with a population in excess of five hundred thousand (500,000) persons according to the latest Federal Decennial Census. Also, a written description of the services of the organization, as may be evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

**710:65-13-345. Exemption for tax exempt organizations, which provide funding for the preservation of wetlands or habitats for wild ducks or preservation and conservation of wild turkeys**

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made to or by an organization exempt from income taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), for events the principal purpose of which is to provide funding for the preservation of wetlands and habitats for wild ducks or preservation and conservation of wild turkeys.

(b) **Exemption limited to eligible, properly-documented transactions.** Only those purchases or sales which are made for an event, the principal purpose of which is to provide funding for the preservation of wetlands and habitats for wild ducks and/or the preservation and conservation of wild turkeys will qualify for the exemption described in this Section.

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(c) **Application process.** Application is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave., Oklahoma City, OK 7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov), along with the following information:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,
- (2) A written description stating the activities of the organization, as evidenced by copies of:

- (A) Articles of incorporation;
- (B) By-laws;
- (C) Brochure; or,
- (D) Notarized letter from the President or Chairman of the organization.

(d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations enumerated in 68 O.S. § 1356(55) & (56) exempt from sales tax.

### **710:65-13-346. Exemption for tax exempt organizations which are a part of a network of community-based, autonomous member organizations providing job training and employment services**

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made to an organization, exempt from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, which is a part of a network of community-based, autonomous member organizations provided that the organization meets the following criteria:

- (1) Serves people with workplace disadvantages and disabilities by providing job training and employment services, as well as job placement opportunities and post-employment support,
- (2) Has locations in the United States and at least twenty other countries,
- (3) Collects donated clothing and household goods to sell in retail stores and provides contract labor services to business and government, and
- (4) Provides documentation to the Oklahoma Tax Commission that over seventy-five percent (75%) of its revenues are channeled into employment, job training and placement programs and other critical community services.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave., Oklahoma City, OK 7310273194~~, a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3);

(2) A written description stating the activities of the organization which shows that the applicant meets the criteria set out in subsection (a) above as evidenced by copies of:

- (A) Articles of incorporation;
- (B) By-laws;
- (C) Brochure; or
- (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

### **710:65-13-348. Limited exemption for qualified neighborhood watch organizations**

(a) **Qualification for exemption.** Effective July 1, 2005, the first \$2,000 of each calendar year's sales of tangible personal property or services, to, by, or for the benefit of a qualified neighborhood watch organization that is endorsed or supported by or working directly with a law enforcement agency with jurisdiction in the area in which the neighborhood watch organization is located are exempt from sales tax. For purposes of this exemption "**qualified neighborhood watch organization**" means an organization that is a not-for-profit corporation under the laws of the State of Oklahoma that was created to help prevent criminal activity in an area through community involvement and interaction with local law enforcement and which is one of the first two thousand organizations which makes application to the Oklahoma Tax Commission for the exemption after ~~the effective date of the act~~ March 29, 2006 [68 O.S. § 1356(53)]

(b) **Application process.** Only the first two thousand applications received by the Oklahoma Tax Commission are eligible for exemption. Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave., Oklahoma City, OK 7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

(1) Documentation showing that the organization is a not-for profit corporation under the laws of Oklahoma established to help prevent criminal activity in a specific area through community involvement and interaction with local law enforcement, as may be evidenced by copies of one or more of the following:

- (A) Articles of incorporation;



- (B) By-laws;
- (C) Other documents that show the intent of the incorporators at the time of incorporation.
- (2) Documentation showing that the organization is either endorsed, supported by or working directly with a law enforcement agency that has jurisdiction in the area where the neighborhood watch is located. Documentation may consist of membership lists, notices or minutes of meetings or letters from the applicable law enforcement agencies concerning their support, endorsement or involvement with the organization.
- (3) A description of the boundaries of the area in which the neighborhood watch organization is located.
- (4) The name and address of the person representing the organization to whom the exemption card will be mailed and who will be responsible for keeping track of the sales made to, by, or for the benefit of the organization so that the annual limit of \$2,000 will not be exceeded by the organization.
- (c) **Exemption limited to eligible, properly-documented transactions.** Only the first \$2,000 of either sales to, by or on behalf of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption. The exemption documentation that vendors are required to obtain on purchases to, or for the benefit of the organization is set out in 710:65-7-17.
- (d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.
- (e) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, an exemption card will be sent to the applicant.
- (f) **Denial of exemption; cancellation, suspension, revocation of exemption card.** The exemption may be denied, and the exemption card cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-49 of the permanent rules of the Commission.

**710:65-13-350. Exemption for Daughters of the American Revolution**

- (a) **General provisions.** Sales of tangible personal property or services to or by the Daughters of the American Revolution are exempt from sales tax.
- (b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave~~, Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained

in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Written confirmation that the applicant is currently recognized as an Oklahoma chapter of the Daughters of the American Revolution; and
- (2) A written description stating the activities of the organization, as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization.
- (c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.
- (d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

**710:65-13-351. Exemption for Veterans of Foreign Wars, Department of Oklahoma, Inc. and subordinate posts**

- (a) **General provisions.** Sales of tangible personal property or services to or by the Veterans of Foreign Wars, Department of Oklahoma, Inc. and its subordinate posts are exempt from sales tax.
- (b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave~~, Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:
  - (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(19);
  - (2) Written confirmation that the applicant is currently recognized as a post of the Veterans of Foreign Wars, Department of Oklahoma, Inc.; and
  - (3) A written description stating the activities of the organization, as evidenced by copies of:
    - (A) Articles of incorporation;
    - (B) By-laws;
    - (C) Brochure; or
    - (D) Notarized letter from the President or Chairman of the organization.
- (c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

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(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

### 710:65-13-352. Exemption for YWCA or YMCA organizations

(a) **General provisions.** Sales of tangible personal property or services to or by YWCA or YMCA organizations are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~2501 N. Lincoln Blvd.~~, Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Written confirmation that the applicant is currently recognized as part of a national nonprofit community service organization meeting the health and social service needs of its members; and
- (2) A written description stating the activities of the organization, as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

### 710:65-13-353. Exemption for organizations primarily engaged in providing educational services and programs concerning health-related diseases and conditions

(a) **Qualification for organizations primarily engaged in providing educational services and programs concerning health-related diseases and conditions exemption.** Sales of tangible personal property or services to an organization primarily engaged in providing educational services and programs concerning health-related diseases and conditions

to individuals suffering from such health-related diseases and conditions, their caregivers and family members, or in health-related research of such diseases and conditions, or both, are exempt from sales tax. However, in order to qualify, such organization must itself be a member of a tax-exempt organization that is primarily engaged in advancing the purposes of its member organizations through fundraising, public awareness or other efforts for the benefit of its member organizations.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~423 Robert S. Kerr Ave.~~, Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(3);
- (2) Proof of membership in a tax-exempt organization primarily engaged in advancing the purposes of its member organization, including a description of the activities of the membership organization; and
- (3) Documentation showing that the organization is primarily engaged either in providing educational services, programs or support concerning health-related diseases and conditions to individuals suffering from such diseases or their caregivers and family members and or health-related research of such diseases or conditions, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

### 710:65-13-354. Exemption for organizations whose purpose is to provide training and education to developmentally disabled persons

(a) **Qualification for organizations whose purpose is to provide training and education to developmentally disabled persons.** Sales to or by qualifying organizations of tangible personal property and services to be used exclusively

for charitable or educational purposes are exempt from sales tax. To qualify an organization must be exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code; must have filed a Not-for-Profit Certificate of Incorporation in Oklahoma, and must be organized for the purpose of providing training and education to developmentally disabled individuals; educating the community about the rights, abilities and strengths of developmentally disabled individuals; and promoting unity among developmentally disabled individuals in their community and geographic area.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK ~~73102~~73194, a completed Form 13-16-A, contained in Packet E, available online at www.tax.ok.gov along with supporting documentation as follows:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(3);
- (2) Proof of Not-for-Profit Certificate of Incorporation in Oklahoma; and
- (3) Documentation showing that the organization is organized for the purpose of providing training and education to developmentally disabled individuals, educating the community about the rights, abilities and strengths of developmentally disabled individuals and promoting unity among developmentally disabled individuals in their community and geographic area, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization which states the services provided by the organization.

(c) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

**710:65-13-355. Exemption for shelters for abused, neglected, or abandoned children from birth to age eighteen**

- (a) **Qualification for shelters for abused, neglected, or abandoned children from birth to age eighteen.** Sales of tangible personal property and services to an organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, which is a shelter for abused, neglected, or abandoned children from birth to age eighteen.
- (b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S. Kerr Ave.~~ Oklahoma City, OK ~~73102~~73194, a completed Form 13-16-A, contained in Packet E, available online at www.tax.ok.gov along with supporting documentation as follows:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(3); and
- (2) Documentation showing that the organization is a shelter for abused, neglected, or abandoned children from birth to age eighteen.
- (3) A written description of the activities of the organization, as may be evidenced by copies of one or more of the following:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure;
  - (D) Intake documents or other forms used to obtain information from clients which specifically reflect age of children and reason for being sheltered; or
  - (E) Notarized letter from the President or Chairman of the organization which states the services provided by the organization.

(c) **Exemption limited to eligible, properly-documented transactions.** Only sales of goods or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

**710:65-13-357. Organizations providing funding for scholarships in the medical field**

- (a) **Qualification for exemption.** Sales tax does not apply to the sale of food and snacks items to or by organizations exempt from taxation pursuant to Internal Revenue Code, 26 U.S.C., Section 501(c)(3) who primary and principal purpose is providing funding for scholarships in the medical field.
- (b) **Application process.** Application is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~2501 N. Lincoln Blvd.,~~ Oklahoma City, OK ~~73102~~73194, a completed Form 13-16-A, contained in Packet E, available online at www.tax.ok.gov, along with the following information:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,
- (2) A written description stating the activities of the organization, as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or,
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of food or snack items, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

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(d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations enumerated in 68 O.S. § 1356(71) exempt from sales tax.

### 710:65-13-359. Nonprofit foundations supporting NRA and other like organizations

(a) **Qualifications for exemption.** Sales of property to a nonprofit foundation which raises tax deductible contributions in support of a wide range of firearms related public interest activities of the National Rifle Association of America and other organizations that defend and foster the Second Amendment are exempt from sales tax.

(b) **Application process.** Application is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov), along with the following information:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the foundation or organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and
- (2) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; and
  - (D) Notarized letter from the President or Chairman of the foundation or organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only property purchased by the foundation/organization, invoiced to the foundation/organization, and paid for by funds or check directly from the foundation/organization will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying foundations/organizations enumerated in 68 O.S. § 1356(74)(a) exempt from sales tax.

### 710:65-13-360. Grassroots fundraising programs supporting the NRA

(a) **Qualification for exemption.** Sales of property to or by grassroots ~~fund—raising~~fundraising programs related to events to raise funds for nonprofit foundations which raise tax deductible contributions in support of firearms related public interest activities of the National Rifle Association are exempt from sales tax.

(b) **Exemption limited to eligible, properly documented transactions.** Only those purchases or sales which are made in relation to events to raise funds for nonprofit foundations which raise tax deductible contributions in support of firearms

related public interest activities of the National Rifle Association will qualify for the exemption described in this Section.

(c) **Application process.** Application is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E<sub>2</sub> available online at [www.tax.ok.gov](http://www.tax.ok.gov), along with a written description stating the activities of the organization, as evidenced by copies of:

- (1) Articles of incorporation;
- (2) By-laws;
- (3) Brochure; or,
- (4) Notarized letter from the President or Chairman of the organization.

### 710:65-13-362. Exemption for Boys & Girls Clubs of America affiliates

(a) **General provisions.** Sales of tangible personal property or services to any Boys & Girls Clubs of America affiliate in Oklahoma which is not affiliated with the Salvation Army and which is exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3) are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and
- (2) Documentation verifying that the applicant club is not affiliated with the Salvation Army.

### 710:65-13-363. Exemption for the National Guard Association of Oklahoma

(a) **General provisions.** Effective July 1, 2018, sales of tangible personal property or services to or by an association which is exempt from taxation pursuant to 26 U.S.C. § 501(c)(19) and which is known as the National Guard Association of Oklahoma are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(19); and
  - (2) Written confirmation that the applicant is currently recognized as the National Guard Association of Oklahoma.
- (c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by

funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

**710:65-13-364. Exemption for the Marine Corps League of Oklahoma**

(a) **General provisions.** Effective July 1, 2018, sales of tangible personal property or services to or by an association which is exempt from taxation pursuant to 26 U.S.C. § 501(c)(4) and which is known as the Marine Corps League of Oklahoma are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4); and
- (2) Written confirmation that the applicant is currently recognized as the Marine Corps League of Oklahoma.

(c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

**710:65-13-365. Exemption for tax exempt organizations who operate as a collaborative model which connects community agencies to serve individuals and families affected by violence**

(a) **Qualifications for exemption.** Effective November 1, 2017, sales of tangible personal property or services are exempt from sales tax when made to an organization exempt from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code that operates as a collaborative model which connects community agencies in one location to serve

individuals and families affected by violence and where victims have access to services and advocacy at no cost to the victim. For the purposes of this paragraph, "**at no cost to the recipient**" means at no cost to either the recipient or any unit of government, or any insurance company, or any other person or entity. Organizations which provide services on a "sliding scale" fee schedule do **not** qualify for the exemption.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3);
- (2) A written description stating the activities of the organization which shows that the applicant meets the criteria set out in subsection (a) above as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

**710:65-13-366. Exemption for tax exempt organization who is an official member of the Fab Lab Network**

(a) **Qualifications for exemption.** Effective November, 1, 2019, sales of tangible personal property or services are exempt from sales tax when made to, or by, an organization which is exempt from taxation pursuant to 26 U.S.C., Section 501(c)(3), who is an official member of the Fab Lab Network in compliance with the Fab Charter as verified by a letter from the MIT Fab Foundation and whose primary and principal purpose is to provide community access to advanced 21st century manufacturing and digital fabrication tools for science, technology, engineering, art and math ("STEAM") learning skills, developing inventions, creating and sustaining businesses and producing personalized products.

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(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3).
- (2) A written description stating the activities of the organization which shows the applicant meets the criteria set out in subsection (a) above as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure;
  - (D) Letter from the MIT Fab Foundation verifying the organization is an official member of the Fab Lab Network and in compliance with the Fab Charter.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

### **710:65-13-367. Exemption for the American Legion**

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made to the American Legion, whether the purchase is made by the entity chartered by the United States Congress or is an entity organized under the laws of this or another state pursuant to the authority of the national American Legion organization.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194~~, a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Documentation that the applicant is the entity chartered as the American Legion by the U.S. Congress;
- (2) Proof the applicant is organized under the laws of Oklahoma or another state pursuant to the authority of the national American Legion organization;
- (3) Written confirmation the applicant is currently recognized as an organization of the American Legion.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or

services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

### **710:65-13-368. Exemption for nonprofit organizations that construct, remodel and sell affordable housing**

(a) **Qualifications for exemption.** Effective November 1, 2021, sales of tangible personal property or services used solely for construction and remodeling projects are exempt from sales tax when made to an organization exempt from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which meets the following requirements:

- (1) Its primary purpose is to construct or remodel and sell affordable housing and provide homeownership education to residents of Oklahoma that have an income below one hundred percent (100%) of the Family Median Income guidelines as defined by the U.S. Department of Housing and Urban Development,
- (2) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes,
- (3) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interest of its clients, and
- (4) Compensates its employees in a manner that does not incentivize employees to act other than in the best interest of its clients.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3); and
- (2) A written description stating the activities of the organization which shows that the applicant meets the criteria set out in subsection (a) above as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may not purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

**710:65-13-369. Exemption for nonprofit organizations restoring single family housing following a disaster**

(a) **General provisions.** Sales of tangible personal property or services to a nonprofit entity, organized pursuant to Oklahoma law before January 1, 2022, exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, the principal functions of which are to provide assistance to natural persons following a disaster, with program emphasis on repair or restoration to single-family residential dwellings or the construction of a replacement single-family residential dwelling. As used in this Section, "disaster" means damage to property with or without accompanying injury to persons from heavy rain, high winds, tornadic winds, drought, wildfire, snow, ice, geologic disturbances, explosions, chemical accidents or spills and other events causing damage to property on a large scale. For purposes of this exemption, an entity that expended at least 75% of its funds on the restoration to single-family housing following a disaster, including related general and administrative expenses, shall be eligible for the exemption authorized by this Section.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3);
- (2) A written description stating the activities of the organization which shows that the applicant meets the criteria set out in subsection (a) above as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization; and
- (3) A copy of an audit, income tax informational return or financial statement which demonstrates that for the last fiscal year end before application that at least 75% of the applying organization's funds were expended on the

restoration to single family housing following a disaster including related general and administrative expenses.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may not purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

**710:65-13-370. Exemption for non-accredited museums**

(a) **General provisions.** Effective November 1, 2021 through December 31, 2024, sales of tangible personal property or services to a museum that operates as part of an organization which is exempt from taxation pursuant 26 U.S.C., § 501(c)(3) and is not accredited by the American Alliance of Museums are exempt from sales and use tax. To qualify, the described entities must operate on an annual budget of less than One Million Dollars (\$1,000,000.00). [See: 68 O.S. § 1356]

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);
- (2) A written description stating the activities of the organization which shows that the applicant operates within the organization as a museum as evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; or
  - (D) Notarized letter from the President or Chairman of the organization; and
- (3) A copy of an audit, income tax informational return, or other financial statement which demonstrates the organization's annual budget is less than One Million Dollars (\$1,000,000.00).

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of goods or services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for "non-accredited museums" may **not** purchase the tangible personal property or

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services used to perform the contract exempt from sales tax under the exemption provided by statute to "non-accredited museums".

## **PART 47. COMMERCIAL FORESTRY EQUIPMENT**

### **710:65-13-470. Exemption for sales of commercial forestry service equipment**

(a) **General provisions.** Effective January 1, 2022 and ending January 31, 2027, sales of commercial forestry service equipment, limited to forwarders, fellers, bunchers, track skidders, wheeled skidders, hydraulic excavators, delimiters, soil compactors, and skid steer loaders are exempt to business engaged in logging, timber, and tree farming.

(b) **Qualifying activities.** Business engaged in growing trees as classified under NAICS 1132 [Forest Nurseries and Gathering of Forest Products] or the cutting, harvesting or removal of trees as classified under NAICS 113 [Forestry and Logging] are eligible for the exemption outlined in this Section.

(c) **Application process.** Application is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available online at [www.tax.ok.gov](http://www.tax.ok.gov), along with the following information:

- (1) Proof of business registration with the State of Oklahoma under one of the NAICS groups outlined in subsection (b), or
- (2) A written description which demonstrates the qualifying activities of the applicant as evidenced by copies of:
  - (A) Contracts;
  - (B) Agreements, or
  - (C) Notarized statement from the owner or chief operating officer of the business.

## **PART 55. TRUST AUTHORITIES**

### **710:65-13-550. Trust authority transactions**

(a) Trust authorities organized pursuant to 60 O.S. § 176 et seq. may purchase material exempt from sales tax, but may not appoint an agent to do so. In order for the transaction to be exempt from sales tax, the purchase must be invoiced to and paid for by the authority, using authority funds or revenue received from bonds let by the authority.

(b) Purchases made with flow-thru funds are taxable. Flow-thru funds are defined as monies deposited in a trust authority account, by private industry, with the authority to dispense the funds under the trust's own name. [See: 68 O.S. § 1356]

(c) The amount of proceeds received from the sale of admission tickets which is separately-stated on the ticket of admission, for the repayment of money borrowed by any public trust of which a county in this state is the beneficiary, for purposes set out in 68 O.S. § 1356(8), is not taxable.

(d) The amount of any surcharge, separately stated on an admission ticket, which is imposed, collected, and used for the sole purpose of constructing, remodeling, or enlarging facilities of a public trust having a municipality or county as its sole beneficiary is exempt from sales tax.

(e) Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194,~~ a completed Form 13-16-A, contained in Packet E, available online at [www.tax.ok.gov](http://www.tax.ok.gov) along with the enabling document for the Trust or Authority showing organization under 60 O.S. § 176 et. seq.

## **PART 65. WEB PORTALS**

### **710:65-13-650. Exemption for sales of tangible personal property and services to a web search portal**

(a) **General provisions.** Exempted from sales tax are *sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a web search portal located in this state which derives at least eighty percent (80%) of its annual gross revenue from the sale of a product or service to an out-of-state buyer or consumer. For purposes of this paragraph, "web search portal" means an establishment classified under NAICS code 519130 which operates web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format.* [68 O.S. § 1357(38)]

(b) **Where to apply.** To qualify for the exemption, the entity operating the web search portal must apply in writing to the Business Tax Services Division, Oklahoma Tax Commission, ~~123 Robert S Kerr Ave,~~ Oklahoma City, OK ~~7310273194,~~ requesting an exemption letter.

(c) **Application.** Application for exemption may be made by filing a signed, sworn affidavit with the Commission, stating:

- (1) The name, address, and federal employer identification number of the applicant and the name and title of the person signing for the applicant;
  - (2) A statement that the entity which owns the establishment derives at least eighty percent (80%) of its annual gross revenue from the sale of products or services to out-of-state buyers or consumers, a statement of the entity's annual gross revenues, and the percentage of the annual gross revenues derived from sales made to out-of-state buyers and consumers, determined for the most recently completed income tax year;
  - (3) A statement that the applicant is primarily engaged in the activities appropriate to NAICS code 519130;
  - (4) The signature of a person authorized to bind the applicant, signed under penalty of perjury before a notary; and
  - (5) Such additional information as the Commission may require to confirm eligibility.
- (d) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination



as to the applicant's eligibility. Upon approval, a letter certifying the exemption will be forwarded to the applicant.

(e) **Issuance, scope, limitations of certification letter.** The letter of certification issued by the Commission will become effective as of the date of the letter and will remain effective until revoked. The letter is valid only for property actually purchased by the qualifying entity, invoiced to that entity, and paid for by funds or check directly from the qualifying entity.

(f) **Purchases by contractors.** Purchases of taxable tangible personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for entities which are certified for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the certified entity.

(g) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance under the provisions of this Section and applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-49 of the permanent rules of the Commission.

**SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES**

**PART 11. "F"**

**710:65-19-116. Fireworks**

Effective August 26, 2011, no exemption shall apply to the sale of fireworks other than for resale purposes and all retail fireworks locations must possess a current sales tax permit which is to be conspicuously posted and immediately available for examination. Fireworks retailers shall make application for a sales tax permit by submitting to the Business Tax Services Division, Oklahoma Tax Commission, ~~423 Robert S Kerr Ave,~~ Oklahoma City, OK ~~73102~~73194, a completed Form 40003 available online at [www.tax.ok.gov](http://www.tax.ok.gov).

**PART 37. "S"**

**710:65-19-305. Scrap metal facilities and junkyards**

(a) ~~The term "scrap Definitions. The following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:~~

(1b) ~~The term "junkyard"~~ **"Junkyard"** means an establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk or for the maintenance or operation of an automobile graveyard and includes garbage dumps and sanitary fills. Junkyards do not qualify as manufacturers.

(2) **"Scrap metal"** means any copper material or aluminum material and any item listed in Section 11-93(C) of Title 2, offered for sale or resale or purchased by any person, firm or business.

(3) **"Scrap metal dealer"** means any person, firm or corporation being an owner, keeper or proprietor of a retail or wholesale business which buys, sells, salvages, processes or otherwise handles scrap metal materials regulated by the provisions of the Oklahoma Scrap Metal Dealers Act.

(4) **"Scrap metal processing facility"** means an establishment having facilities used primarily for processing iron, steel, or nonferrous metals and whose principal products, is such iron, steel or scrap for sale, for remelting purposes only. Scrap metal facilities qualify as ~~manufacturers~~ a manufacturing operation for purposes of the sales/use tax exemption in 68 O.S. § 1359(1) and OAC 710:65-13-150.1.

(b) **General provisions.** Any person, firm or corporation desiring to become a scrap metal dealer is required to obtain a sales tax permit as provided by Section 1364 of Title 68 of the Oklahoma Statutes, from the Oklahoma Tax Commission, for each scrap metal yard owned or operated by such person, firm or corporation. Likewise, junkyards making sales of tangible personal property in the state are required to obtain a sales tax permit and collect, report and remit state and any applicable local sales tax on sales of tangible personal property occurring in the state. To register a new business and obtain a sales tax permit, access the Oklahoma Tax Commission's Online Business Registration System, a part of OkTAP (the Oklahoma Taxpayer Access Point) web portal at [www.tax.ok.gov](http://www.tax.ok.gov). [See: OAC 710:65-9-1]

[OAR Docket #22-523; filed 6-30-22]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES**

[OAR Docket #22-524]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 2. Cigarette Stamp Tax
- Part 1. General Provisions
- 710:70-2-11 [AMENDED]
- Subchapter 5. Excise on Tobacco Products
- 710:70-5-8 [AMENDED]
- 710:70-5-9 [REVOKED]
- 710:70-5-13 [AMENDED]

**AUTHORITY:**

68 O.S. §§ 203, 403, 403.1 and 415; Oklahoma Tax Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 14, 2021

**COMMENT PERIOD:**

January 18, 2022 through February 22, 2022

**PUBLIC HEARING:**

March 7, 2022

# Permanent Final Adoptions

## ADOPTION:

March 15, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 18, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

Section 710:70-5-13 has been amended to include the new invoice information required to be maintained by wholesalers and retailers of tobacco products while Section 710:70-5-8 has been amended and Section 710:70-5-9 has been revoked to remove all references to drop shipments. All proposed amendments are a result of the passage of HB 2292 [2021].

The proposed amendment to Section 710:70-2-11 is to update agency contact information.

## CONTACT PERSON:

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 2. CIGARETTE STAMP TAX

### PART 1. GENERAL PROVISIONS

#### 710:70-2-11. Requirements placed on wholesalers and retailers to maintain copies of invoices

(a) Wholesalers shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the wholesaler is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation must show the name, address, phone number and wholesale license number of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction. [68 O.S. § 312.1(E)].

(b) Retailers shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases cigarettes at each of its facilities. The invoices or documentation must show the name and address of the wholesaler from whom, or the address of another facility of the same retailer from which, the cigarettes were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number. [68 O.S. § 312.1(F)].

(c) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission,

manufacturers, wholesalers, and retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted by mail to the Business Tax Services Division ~~of the~~at Oklahoma Tax Commission ~~by mail at 123 Robert S. Kerr Ave, Oklahoma City, Ok 73102~~ OK 73194 or by FAX at (405) 522-4450. [68 O.S. § 312.1(H)].

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction. [68 O.S. § 312.1(I)].

## SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

#### 710:70-5-8. Reports on tobacco products by persons, retailers, consumers, carriers or bailees other than those required to report and pay tax

(a) Every person or entity, listed below, who possesses, controls, transports, uses or in any manner deals with tobacco products within this State subject to the tobacco products excise tax, upon which the tax has not been paid, even though not the party required to pay the tax, shall file a monthly report to the Oklahoma Tax Commission on prescribed forms as follows:

(1) Every retailer or consumer purchasing tobacco products subject to tax ~~in drop shipments~~ shall report those purchases to the Oklahoma Tax Commission on the Monthly Tobacco Products Tax Reports in accordance with 710:70-5-3 through 710:70-5-5, as required of licensed manufacturers, wholesalers, retailers or consumers.

(2) Every carrier transporting tobacco products, subject to tax, to a point within this State shall monthly report to the Oklahoma Tax Commission the following information:

(A) Name and business address of the carrier;

(B) The date of delivery of each shipment of said tobacco products transported and delivered into this State in the previous calendar month;

(C) The point of origin and the point of delivery of each shipment of said tobacco products transported and delivered into this State in the previous calendar month;

(D) The name of the person or entity to whom said tobacco products were delivered in this State in the previous calendar month; and

(E) Copies of all invoices, bills of lading or instruments of consignment of said tobacco products transported and delivered into this State in the previous calendar month, attached to said report.

(3) Every bailee having possession, custody, control, use or in any manner dealing with tobacco products within

this State subject to the tax, shall report monthly to the Oklahoma Tax Commission as is required of carriers.

(b) All required monthly reports shall be due on or before the twentieth (20<sup>th</sup>) day of the calendar month immediately following the calendar month in which the tobacco products subject to the tax are possessed, controlled, transported, used or in any manner dealt with in this State, in accordance with 710:70-5-5.

(c) Copies of invoices, bills of lading or other instruments of consignment submitted shall be subject to destruction upon completion of an office audit of the monthly report and shall not discharge the reporter from the statutory duty to maintain records and files of all such transactions and to permit inspection and examination thereof by the Commission. [See: 68 O.S. § 201; 68 O.S. §§ 401 et seq.]

**710:70-5-9. Reports and payment of taxes on drop shipments of tobacco products [REVOKED]**

~~It shall be the duty of every licensed wholesaler to report and pay the tobacco products excise tax, levied upon all drop shipments of tobacco products subject to such tax, purchased by any wholesaler, retailer or consumer receiving and paying for such drop shipment through the licensed wholesaler. The tax on such drop shipments shall be reported and paid in the same manner as if the drop shipment had first been received or delivered to the licensed wholesaler through whom the drop shipment was purchased.~~

**710:70-5-13. Requirements placed on wholesalers and retailers to maintain copies of invoices with certain information that must be shown on each invoice**

(a) Wholesalers of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the wholesaler is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation must contain the wholesaler's tobacco license number and the retailer's tobacco license number if the sale is to a retailer and the quantity by brand style of the tobacco products involved in the transaction. [68 O.S. Section 420.1(A)].

(b) Retailers of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The invoices or documentation must show the name, and address and tobacco license number of the wholesaler from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction, the date the tobacco products were received and the retail tobacco license number. [68 O.S. § 420.1(B)]

(c) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax

Commission. With the permission of the Tax Commission, manufacturers, wholesalers, and retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the Business Tax Services Division of the Oklahoma Tax Commission by mail at 123 Robert S. Kerr Ave, Oklahoma City, Ok 73102-73194 or by FAX at (405) 522-4450.

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction.

[OAR Docket #22-524; filed 6-30-22]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 85. VARIOUS TAX INCENTIVES**

[OAR Docket #22-525]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 7. Oklahoma Film Enhancement Rebate Program  
710:85-7-3 [AMENDED]

**AUTHORITY:**

68 O.S. § 203; Oklahoma Tax Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 14, 2021

**COMMENT PERIOD:**

January 18, 2022 through February 22, 2022

**PUBLIC HEARING:**

March 7, 2022

**ADOPTION:**

March 15, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 18, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST / ANALYSIS:**

Section 710:85-7-3 has been amended to implement the provisions of Senate Bill 200 [2019] which increased the maximum amount of rebates eligible to be paid in any one fiscal year from \$4 million to \$8 million, and House Bill 2780 [2021] which clarifies that the amount of claims prequalified and approved by the Office of the Oklahoma Film and Music Commission must not exceed \$8 million for any fiscal year. [68:3624]

**CONTACT PERSON:**

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

# Permanent Final Adoptions

SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

## SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

### 710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

(1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. § 1357; and,

(2) The production company has filed or will file any Oklahoma tax return or tax document which may be required by law.

(b) **When repayment of taxes may be required.** If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund" on or after July 1, 2006, and on or after each July 1 thereafter following the fiscal year in which the documented expenditures were made. The amount of ~~payments~~ ~~in~~ ~~claims~~ ~~prequalified~~ ~~and~~ ~~approved~~ ~~by~~ ~~the~~ ~~Office~~ for any single fiscal year shall not exceed ~~Four~~ ~~Eight~~ Million Dollars (~~\$4,000,000.00~~ ~~(\$8,000,000.00)~~). If the amount of approved claims exceeds the amount specified in this Section in a fiscal year, then the payments will be made in the order in which claims are approved by the office and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

[OAR Docket #22-525; filed 6-30-22]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 90. WITHHOLDING

[OAR Docket #22-526]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

710:90-1-13 [AMENDED]

Subchapter 3. Returns and Payments

710:90-3-10 [AMENDED]

710:90-3-11 [AMENDED]

### AUTHORITY:

68 O.S. § 203; Oklahoma Tax Commission

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 14, 2021

### COMMENT PERIOD:

January 18, 2022 through February 22, 2022

### PUBLIC HEARING:

March 7, 2022

### ADOPTION:

March 15, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 18, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST / ANALYSIS:

The amendments to 710:90-1-13 and 710:90-3-10 reflect changes to the individual income tax rate for tax year 2022. [68:2355]

The amendment to Section 710:90-3-11 reflects changes to the filing format for the Nonresident Member Withholding Exemption Affidavit; the format for filing the affidavit on CD will be in either a spreadsheet format (i.e. Excel) or a database format (i.e. dbf or Access) or a Delimited Text File.

### CONTACT PERSON:

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 710:90-1-13. Pensions, annuities, and certain other deferred income

(a) **Treatment of designated distributions.** Designated distributions, as defined by the Internal Revenue Code (IRC), Section 3405, whether periodic or non-periodic, should be treated as if they were a payment of wages for Oklahoma ~~Income Tax Withholding~~ ~~income tax withholding~~ purposes. The payor of any periodic or non-periodic payment should inform recipients who are or become Oklahoma residents of the need to withhold if:

(1) The recipient has not chosen the election of "no federal withholding," provided by Section 3405 of the Internal Revenue Code, or

(2) The recipient elects to have Oklahoma ~~Income Tax~~ ~~income tax~~ withheld irrespective of any election to not withhold federal income tax.

(b) **Treatment of periodic payments.** The amount to be withheld from a periodic payment is determined as if it were a payment of wages. The marital status and number of withholding allowances an employee may claim in determining the tax to be withheld shall be the same as that claimed on Form W-4P, Withholding Certificate for Pension or Annuity Payments, or a similar form provided by the payer.

(1) If the recipient has not provided a withholding certificate, tax will be withheld as if the recipient were married and claiming three (3) withholding allowances.

(2) The recipient can choose not to have tax withheld, regardless of how much tax is owed for the previous year, or is expected to be owed in the current year.

(c) **Treatment of non-periodic payments.** Tax will be withheld at a ~~five percent (5%)~~ the highest Oklahoma marginal individual income tax rate on any non-periodic payments.

(1) The recipient cannot use Form W-4P to determine the amount to be withheld, since withholding allowances or marital status are not taken into consideration.

(2) The recipient can use Form W-4P to specify an additional amount to be withheld.

(3) The recipient can also use Form W-4P to choose not to have tax withheld.

(d) **Employer contributions.** Employer contributions to qualified cash or deferred arrangements are not subject to Oklahoma ~~Withholding Tax~~ withholding tax.

(4) For royalty payments made during October, November, and December, the amount withheld is due no later than January 30 of the following year.

(d) The remitter is also required to provide non-resident individual royalty owners and the Oklahoma Tax Commission an annual written statement showing the name of the remitter, to whom the royalty was paid, the amount of the royalty payment and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the royalty owner's name, address, and social security number or Federal Employer Identification Number. This annual filing with the Oklahoma Tax Commission may be done separately, or in conjunction with the annual reporting requirement under 68 O.S. § 2369, if applicable to the remitter.

(e) Any non-resident royalty interest owner from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident royalty interest owner will be entitled to a refund of the amount of the overpayment.

(f) If the non-resident royalty interest owner is a pass-through entity, the pass-through entity shall allocate the non-resident royalty withholding to its partners, shareholders or members in the same manner as the royalty income.

### SUBCHAPTER 3. RETURNS AND PAYMENTS

#### 710:90-3-10. Income tax withholding - oil and gas royalties

(a) Effective for royalty payments made on or after October 1, 2000 and before July 1, 2006, any remitter who distributes revenue to a non-resident royalty interest owner is required to deduct and withhold Oklahoma income tax from each payment being made with respect to production of oil and gas in Oklahoma. The amount of income tax to be withheld is six and three-fourth's percent (6.75%) of the gross royalty amount paid. Effective for royalty payments made on or after July 1, 2006, the rate of withholding for any remitter who distributes revenue to a non-resident royalty interest owner is ~~five percent (5%)~~ the highest Oklahoma marginal individual income tax rate with respect to production of oil and gas in Oklahoma

(b) For purposes of this Section, "**remitter**" means any person who distributes revenue to royalty interest owners; "**gross royalty**" means that amount which is reported for federal income tax purposes on IRS Form 1099; "**non-resident royalty interest owner**" means any person who is not a current or permanent resident of Oklahoma who retains a non-working interest in oil or gas production; and "**oil**" and "**gas**" shall have the meaning as the terms are defined in 68 O.S. § 1001.2.

(c) Remitters are required to file an Oklahoma Nonresident Royalty Withholding Tax Return and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

(1) For royalty payments made during January, February, and March, the amount withheld is due no later than April 30;

(2) For royalty payments made during April, May, and June, the amount withheld is due no later than July 30;

(3) For royalty payments made during July, August, and September, the amount withheld is due no later than October 30; and

#### 710:90-3-11. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "**Member**" means:

- (A) A shareholder of a Subchapter S Corporation;
- (B) A partner in a general partnership;
- (C) A partner in a limited partnership;
- (D) A partner in a limited liability partnership;
- (E) A member of a limited liability company; or,
- (F) A beneficiary of a trust.

(2) "**Non-resident**" means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) "**Pass-through entity**" means:

- (A) A corporation that is treated as a Subchapter S Corporation under the Internal Revenue Code;
- (B) A general partnership;
- (C) A limited partnership;
- (D) A limited liability partnership;
- (E) A trust; or,
- (F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

## Permanent Final Adoptions

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- (4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.
- (c) **Subchapter S Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of Subchapter S Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of ~~five percent (5%)~~ is required on the Oklahoma portion of the taxable income distributed to each non-resident member at the highest Oklahoma marginal individual income tax rate. In the case of Subchapter S Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the Subchapter S Corporations or the partnership.
- (d) **Trusts.** For trusts, withholding of ~~five percent (5%)~~ is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust at the highest Oklahoma marginal individual income tax rate.
- (e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:
- (1) Persons, other than individuals, who are exempt from federal income tax;
  - (2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;
  - (3) Insurance companies subject to the Oklahoma gross premium income tax and therefor exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and
  - (4) Non-resident members who have submitted a Non-resident Member Withholding Exemption Affidavit to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.
    - (A) For non-resident partners included in a composite partnership return under *OAC 710:50-19-1* and filing a Nonresident Member Withholding Exemption Affidavit, the inclusion of the partner's income within the composite partnership return will satisfy the requirements contained in the affidavit.
    - (B) For non-resident shareholders filing a Non-resident Member Withholding Exemption Affidavit and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.
    - (C) For non-resident beneficiaries included in a trust return and filing a Nonresident Member Withholding Exemption Affidavit, the inclusion of the

beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

- (f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:
- (1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;
  - (2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;
  - (3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;
  - (4) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;
  - (5) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars (\$500.00); or,
  - (6) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.
  - (7) When a pass-through entity that is required to file either an Oklahoma partnership income tax return or an Oklahoma S corporation income tax return makes an election to pay income tax at the entity level pursuant to the Pass-Through Entity Tax Equity Act of 2019. [(68 O.S. § 2355.IP-1 et seq.)]
- (g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars (\$500.00) for the taxable year **must** make quarterly estimated tax payments. The Oklahoma Nonresident Distributed Income Estimated Withholding Tax Report is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars (\$500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

- (1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-B, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.
- (2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return on or before the due date of the pass-through entity's income tax return, including extensions.
- (3) Each non-resident member must enclose a copy of OTC Form 500-B with the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file a Nonresident Member Withholding Exemption Affidavit agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

- (1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having signed an affidavit. All pass-through entities are required to file the non-resident member affidavit information on a ~~diskette or CD~~ with the Oklahoma Tax Commission—~~Audit Services Division~~.
- (2) **Format.** The format for filing the ~~diskette or CD~~ will be in either a spreadsheet format (i.e. ~~Lotus 1-2-3 or Excel~~) or a database format (i.e. ~~dbf or Access~~) or a Delimited Text File.
- (3) **Waiver.** Pass-through entities may obtain a waiver from the ~~diskette or CD~~ filing requirement if the pass-through entity can demonstrate that a hardship

would result if it were required to file on a ~~diskette or CD~~. Direct waiver requests to the Oklahoma Tax Commission—~~Audit Services Division~~, Oklahoma City, Oklahoma 73194.

[OAR Docket #22-526; filed 6-30-22]

**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 95. MISCELLANEOUS AREAS  
OF REGULATORY AND ADMINISTRATIVE  
AUTHORITY**

[OAR Docket #22-527]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 4. Rental Tax on Motor Vehicle Rentals

710:95-4-2 [AMENDED]

710:95-4-3 [AMENDED]

710:95-4-4 [AMENDED]

Subchapter 21. Quality Events

710:95-21-2 [AMENDED]

710:95-21-4 [AMENDED]

710:95-21-6 [AMENDED]

710:95-21-8 [AMENDED]

710:95-21-9 [AMENDED]

Subchapter 22. Registration Requirements for Resident and Nonresident Contractors

710:95-22-8 [AMENDED]

**AUTHORITY:**

68 O.S. §§ 203, 2110, and 4309; Oklahoma Tax Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 14, 2021

**COMMENT PERIOD:**

January 18, 2022 through February 22, 2022

**PUBLIC HEARING:**

March 7, 2022

**ADOPTION:**

March 15, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 18, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST / ANALYSIS:**

Sections 710:95-4-2, 710:95-4-3 and 710:95-4-4 have been amended to implement the provisions of SB 355 [2021], effective November 1, 2021, relating to the application of the 6% vehicle rental tax [68 O.S. § 2110] to certain peer-to-peer car sharing agreements. [47:1050 et seq]

Sections 710:95-21-2, 710:95-21-4, 710:95-21-6, 710:95-21-8 and 710:95-21-9 have been amended consistent with the revisions to the Quality Events Incentive Act regarding certain filing deadlines and documentation requirements enacted pursuant to HB 1121 [2021], effective April 19, 2021. [68:4303, 4304, 4305]

The amendment to Section 710:95-22-8 updates agency contact information.

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## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 4. RENTAL TAX ON MOTOR VEHICLE RENTALS

### 710:95-4-2. Definitions

The following words and terms, when used in the Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Lease agreement"** or **"rental agreement"** will be used synonymously when referencing a single agreement by which an owner gives exclusive use of a vehicle to another for a period of ninety (90) days or less, for a consideration.

**"Applicable taxes"** means, with respect to shared vehicles purchased in Oklahoma, motor vehicle excise taxes levied under Section 2103 of Title 68 and sales taxes levied under Sections 1354 and 1355 of Title 68. With respect to vehicles not purchased in Oklahoma, applicable taxes refers to the sales, use, excise or other tax generally due upon the purchase of a motor vehicle in the jurisdiction in which the shared vehicle was purchased.

**"Motor vehicle"**, as used in this Subchapter means an automobile, bus, or Class A, B, C commercial motor vehicle or Class D motor vehicle as those terms are defined by Title 47 of the Oklahoma Statutes.

**"Peer-to-peer car sharing program"** means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. A peer-to-peer car sharing program is not engaged in "renting motor vehicles without a driver" in Oklahoma within the meaning of Section 2110 of Title 68 of the Oklahoma Statutes, except as specifically provided in that section. A peer-to-peer car sharing program is not "engaged in the business of renting motor vehicles without drivers" under the provisions of Section 8-101 of Title 47 of the Oklahoma Statutes. A peer-to-peer car sharing program is not a service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for the use of a shared vehicle. A peer-to-peer car sharing program shall not be considered a transportation network company as defined in Section 1011 of Title 47 of the Oklahoma Statutes.

**"Peer-to-peer car sharing program agreement"** means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program. A peer-to-peer car sharing program agreement is not a rental agreement within the meaning of Section 2110 of Title 68 of the Oklahoma Statutes, except as specifically provided in that section.

*A peer-to-peer car sharing program agreement is not an agreement to rent a motor vehicle without a driver under the provisions of Section 8-101 of Title 47 of the Oklahoma Statutes.*

**"Rental agreement"** means an agreement of ninety (90) days or less duration on any motor vehicle that is rented to a person by a business engaged in renting motor vehicles without drivers in this state and includes those peer-to-peer car sharing agreements only involving shared vehicles for which the shared vehicle owner has not paid the applicable taxes upon purchase of the shared vehicle.

**"Shared vehicle"** means a vehicle that is available for sharing through a peer-to-peer car sharing program. A shared vehicle is not a "motor vehicle that is rented" within the meaning of Section 2110 of Title 68 of the Oklahoma Statutes, except as specifically provided in that section. A shared vehicle is not a "motor vehicle engaged in the business of renting a motor vehicle without a driver" as described pursuant to Section 8-101 of Title 47 of the Oklahoma Statutes.

**"Shared vehicle owner"** means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

### 710:95-4-3. Applicability of the rental tax on motor vehicle rentals

(a) **General provisions.** The tax levied on the rental of motor vehicles is assessed on all rental agreements, except those agreements made with agencies of the State of Oklahoma, the United States government and with those federal instrumentalities upon which the states are prohibited from levying a tax by specific provision of the United States Code, such as federally-chartered credit unions.

(b) **Transactions to which the tax is inapplicable.** The rental tax on motor vehicles is not applicable to:

(1) An agreement termed a "lease agreement", if in excess of ninety (90) days in duration.

(2) A single agreement termed a "rental agreement", if more than ninety (90) days in duration. However, if a rental business and its customer sign more than one agreement, and the term of each agreement is less than ninety (90) days, the tax applies even though the agreements are to run consecutively and sum of the number of days covered by the agreements exceeds ninety (90) days.

(3) A rental agreement for any truck or truck-tractor registered pursuant to the provisions of 47 O.S. §§ 1120 or 1133, having a laden weight or combined laden weight of eight thousand (8,000) pounds or more.

(4) Any shared vehicle upon the purchase of which applicable taxes were paid.

(c) **Rental tax in lieu of motor vehicle excise tax only; other taxes may be applicable.** The rental tax on motor vehicle rentals is not in lieu of sales tax, which may be due on the gross receipts of the rental. The rental tax is due on all rental agreements, except those described in (b) of this Section and 68 O.S. Sections 2110(A)(1)-(3), even if the consumer entering into the rental agreement is exempt from sales tax.



**710:95-4-4. Collection, reporting, remittance of the tax; interest and penalties**

- (a) The tax is to be collected by the rental business or peer-to-peer car sharing program at the time of the payment of the rental agreement.
- (b) The following filing requirements apply to all taxpayers required to report and remit tax on motor vehicle rentals:
  - (1) Taxpayers must report the tax on forms prescribed and furnished by the Oklahoma Tax Commission.
  - (2) Returns are due on the 20<sup>th</sup> day of each month, for the liability incurred the previous calendar month. However, taxpayers who are permitted to file semiannual sales tax reports pursuant to 68 O.S. § 1365(E) may file semiannual Rental Tax Reports and remit taxes due thereunder to the Tax Commission on or before the 20<sup>th</sup> day of January and July of each year for the preceding six-month period.
- (c) If payment of the tax is not postmarked or delivered to the Oklahoma Tax Commission on or before the 20<sup>th</sup> of the month, the tax shall be delinquent from that date. Reports timely mailed shall be considered timely filed. If a remittance is not timely made, interest at the rate of one and one-fourth percent (1  $\frac{1}{4}$  %) per month shall be charged from the date the remittance should have been made until the tax is actually paid.
- (d) If payment of the tax due is not made within thirty (30) days of the due date, a ten percent (10%) penalty will be applied.

**SUBCHAPTER 21. QUALITY EVENTS**

**710:95-21-2. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Certified sponsor"** means an entity or organization authorized to promote and conduct a quality event, which is incurring expenses for the promotion of such event to be conducted within the corporate limits of an eligible municipality or an unincorporated area within a county.

**"Commission"** means the Oklahoma Tax Commission.

**"Economic impact study"** means a study, which includes:

- (A) A description and, if applicable, history of the quality event.
- (B) Information regarding the site selection process for the quality event.
- (C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event.
- (D) An estimate of the total gross sales made by vendors during any period of time during which no quality event activity occurs.
- (E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event.
- (F) The general economic impact likely to occur as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event.

**"Eligible local support amounts"** means:

- (A) *Any payment made by a local government entity or transfer of monies from the general fund or transfer of tax revenues derived from a locally imposed tax to a certified sponsor for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event, or*
- (B) *Any direct payment made by a certified sponsor to a for-profit or nonprofit entity, other than the host community, for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event.*

**"Event history"** means:

- (A) *Historical information on the event including past locations of the event,*
- (B) *A description of previous attempts by the host community to secure the event,*
- (C) *Information regarding attempts by other communities to recruit the event, and*
- (D) *If applicable, the competitive bidding process for securing the event by the host community.*

**"Host community"** means any county, incorporated city or town, or any combination of counties, incorporated cities or towns of the state which are authorized by their respective governing bodies to host or assist in the presentation of a quality event.

**"Incremental sales tax revenue"** means, the amount of additional state sales tax revenue as a result of the quality event, as determined by an economic impact study verified by the Oklahoma Tax Commission based on actual documentation of taxable transactions occurring as a result of the quality event.

**"New event"** means a quality event which did not occur within a period of twenty-four (24) months prior to the month during which a quality event is held.

**"Quality event"** means:

- (A) *A new event or a meeting of a nationally recognized organization or its members,*
- (B) *A new or existing event that is a national, international or world championship, or*
- (C) *A new or existing event that is managed or produced by an Oklahoma-based national or international organization.*

**"Recurring event"** means a quality event which occurred at least once within the twenty-four (24) months prior to the month during which a quality event is held.

**"State sales tax revenue"** means the proceeds from the state sales tax levy imposed pursuant to Section 1354 of Title 68 of the Oklahoma Statutes upon taxable transactions occurring as a result of the quality event, as determined by an economic impact study verified by the Oklahoma Tax Commission based on actual documentation.

**"Vendors"** means those persons or business entities making taxable sales of tangible personal property or services as a result of the quality event, as determined by an economic impact study by the Oklahoma Tax Commission based on actual documentation and, unless the context otherwise requires, shall have the same meaning as defined by Section 1352 of Title 68 of the Oklahoma Statutes.

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## 710:95-21-4. Quality event approval and application requirements

(a) **Application for approval.** Within ~~thirty~~ (30) sixty ~~(60)~~ days of the adoption date of the ordinance or resolution designating a quality event, which must be adopted not later than ~~six (6) months~~ thirty (30) days prior to the initial date of the designated quality event, the host community must submit a written request for recognition as a quality event to the Tax Policy Division, ~~of the Oklahoma Tax Commission at 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma 7310273194.~~ The postmark date of the written request for recognition as a quality event is deemed to be its date of delivery.

(b) **Application requirements.** The application for recognition must include the following:

(1) **Ordinance or resolution.** A copy of the ordinance or resolution designating the quality event; ~~and~~

(2) **Economic impact study.** The economic study must include the following information:

(A) A description and, if applicable, history of the quality event.

(B) Information regarding the site selection process for the quality event.

(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event which specifically categorizes the type of expenses, such as advertising, anticipated to be incurred along with the estimated costs associated therewith.

(D) An estimate of the total gross sales made by vendors during any period of time during which no quality event activity occurs.

(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event.

(F) The general economic impact likely to occur as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event.

(3) **Event history.** The event history must include the following information:

(A) *Historical information on the event including past locations of the event,*

(B) *A description of previous attempts by the host community to secure the event,*

(C) *Information regarding attempts by other communities to recruit the event, and*

(D) *If applicable, the competitive bidding process for securing the event by the host community.* [68 O.S. § 4303]

(c) **Ineligibility for quality event recognition.** The Tax Commission shall not consider any application for quality event recognition which is not submitted within the statutory timeframe outlined in this Section.

## 710:95-21-6. Determination of eligible local support amounts

(a) **Outline and required documentation.** Within ~~thirty~~ (30) one hundred and twenty (120) days from the conclusion of the quality event the host community must submit to the Tax

Policy Division, ~~of the Oklahoma Tax Commission, at 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma 7310273194,~~ an outline with supporting billing or contractual obligations to pay and payment information detailing the total amount of eligible local support amounts for purposes of determining the amount of incremental state sales tax revenue that may be paid to the host community in which a quality event occurred. Acceptable "payment information" shall include a receipt of payment issued by the recipient, copy of payment instrument, credit card statement, or bank statement evidencing payment of eligible local support.

(b) **Payment verification.** The Commission must verify the amount of eligible local support amounts prior to making any payment to the host community.

## 710:95-21-8. ~~Verification~~ **Comparison of eligible local support amounts with incremental state sales tax revenue**

Upon receipt, the Tax Commission will review the documentation submitted pursuant to ~~Section~~ Sections 710:95-21-6 and 710:95-21-7 to compare the total amount of eligible local support amounts with the ~~verify~~ additional state sales tax revenue, as determined by the ~~actual documentation which was collected as a result of the event~~ economic impact study and determine the amount of payment to the host community as provided in Section 710:95-21-9.

## 710:95-21-9. Manner of determining payment

The Commission must compare the total amount of eligible local support amounts with the total amount of incremental state sales tax revenues remitted by vendors, such revenues to be established ~~based on actual documentation~~ through the economic impact study. Payments made to the host community are governed by the following determinations:

(1) If a determination is made that the total amount of incremental state sales tax revenues is zero, no payment shall be made to a host community.

(2) If a determination is made that the total amount of incremental state sales tax revenues is greater than zero, but less than the total amount of eligible local support amounts, a payment shall be made subject to the limitation of the payment cap provided for in Section 710:95-21-10(b), to the host community of the quality event in an amount equal to the incremental state sales tax revenues.

(3) If a determination is made that the total amount of incremental state sales tax revenues is at least equal to the amount of eligible local support amounts, a payment shall be made, subject to the limitation of the payment cap provided in Section 710:95-21-10(b), to the host community in which the quality event occurs in an amount equal to, but not greater than, the eligible local support amounts.

## SUBCHAPTER 22. REGISTRATION REQUIREMENTS FOR RESIDENT AND NONRESIDENT CONTRACTORS

**710:95-22-8. Fine review procedures**

- (a) **Review request.** A contractor who disagrees with a fine imposed pursuant to 710:95-22-4 and 710:95-22-6 may request within thirty (30) days of mailing of the Fine Notification that the fine be reviewed by the Audit Services Division.
- (b) **Contents of request.** The request must be in writing, submitted to the Audit Services Division at P.O. Box 269062, Oklahoma City, OK ~~73126-9062~~73194, and state the basis for the contractor's belief that the fine is issued in error. Documentation supporting the contractor's statement must accompany the request.
- (c) **Conditions of fine withdrawal.** The fine(s) will be withdrawn under the stated circumstances:
  - (1) The Audit Services Division determines that the fine(s) was issued in error.
  - (2) The Audit Services Division finds that the contractor subsequent to the imposition of the fine provided for in 710:95-22-4 obtained the required employer identification numbers.
- (d) **Contents of notification when fine not withdrawn.** If the Audit Services Division does not agree that the fine should be withdrawn, the contractor shall be so notified in writing by the Audit Services Division. The notification shall prominently state that if the contractor disagrees with the Audit Services Division's final determination, the contractor must file, within thirty (30) days of mailing of the notification, a protest with the General Counsel's Office of ~~the~~ at Oklahoma Tax Commission ~~at 123 Robert S. Kerr Ave,~~ Oklahoma City, Oklahoma ~~73102~~73194.
- (e) **Protests.** Upon receipt, the General Counsel's Office shall forward the protest to the Office of the Administrative Law Judge to be set for hearing.

*[OAR Docket #22-527; filed 6-30-22]*

**TITLE 715. TEACHERS' RETIREMENT SYSTEM  
CHAPTER 10. GENERAL OPERATIONS**

*[OAR Docket #22-506]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Membership Provisions
  - 715:10-1-4. Optional TRS membership [AMENDED]
- Subchapter 5. Establishing Other Service Credits
  - 715:10-5-9. Re-establishing withdrawn service [AMENDED]
  - 715:10-5-38. Credit for service as an optional employee prior to July 1, 2021 [NEW]
- Subchapter 11. Withdrawal from Membership and Refund of Deposits
  - 715:10-11-2. Withdrawal of optional membership while still employed [REVOKED]
  - 715:10-11-4. Refunds of Contributions [AMENDED]
- Subchapter 13. Contributions for Membership Service
  - 715:10-13-3. Employee contribution rates [AMENDED]
  - 715:10-13-7. Matching funds [AMENDED]
  - 715:10-13-8. Procedure for making contribution deductions [AMENDED]
- Subchapter 17. Post Retirement Employment
  - 715:10-17-15. Salary limitations for certain returning classroom teachers [AMENDED]

**AUTHORITY:**

70 O.S. Section 17-101 et seq., especially 17-10(10); Board of Trustees

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 19, 2021

**COMMENT PERIOD:**

December 15, 2021, through January 14, 2022

**ADOPTION:**

January 26, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

January 31, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS**

715:10-1-4 is being amended to comply with amendments to 70 O.S. Section 17-103 enacted by Senate Bill 683 in the 2021 legislative session and effective July 1, 2021.

715:10-5-9 is being amended to comply with amendments to 70 O.S. Section 17-103 enacted by Senate Bill 683 in the 2021 legislative session and effective July 1, 2021. These amendments remove the one-year waiting period for optional personnel to join the System and remove the ability for optional personnel to opt in and out of the System without terminating employment.

715:10-5-38 is being added to address the purchase of optional service to comply with amendments to 70 O.S. Section 17-103 enacted by Senate Bill 683 in the 2021 legislative session and effective July 1, 2021.

715:10-11-2 is being revoked to comply with amendments to 70 O.S. Section 17-103 enacted by Senate Bill 683 in the 2021 legislative session and effective July 1, 2021.

715:10-11-4 is being amended to comply with amendments to 70 O.S. Section 17-103 enacted by Senate Bill 683 in the 2021 legislative session and effective July 1, 2021.

715:10-13-3 is being amended to reflect amendments to 70 O.S. Section 17-108.2 enacted by Senate Bill 772 in the 2019 legislative session.

715:10-13-7 is being amended to comply with amendments to 70 O.S. Section 17-108 enacted by House Bill 2293 in the 2021 legislative session and effective August 25, 2021.

715:10-13-8 is being amended to comply with amendments to 70 O.S. Section 17-103 enacted by Senate Bill 683 in the 2021 legislative session and effective July 1, 2021.

715:10-17-15 is being amended to comply with amendments to 70 O.S. Section 17-116.10 enacted by Senate Bill 267 in the 2021 legislative session and effective July 1, 2021. These amendments allow certain retired persons to return to public education employment without being subject to earnings limitations.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. MEMBERSHIP PROVISIONS**

**715:10-1-4. Optional TRS membership**

The following employees are eligible to be members of ~~the Teachers' Retirement System~~ TRS at their option:

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(1) "Non-classified optional personnel" ~~employees~~ regularly employed by the public, state-supported educational institutions in Oklahoma for twenty (20) hours or more per week at a rate of compensation comparable to other persons employed in similar positions and receive payment for service by a school or state warrant, recorded on a warrant register with standard payroll deductions, and receive benefits generally provided to regular employees provided.

(A) A non-classified optional employee shall have thirty (30) days from the date of hire or initial eligibility to join the System, whichever is later, to make a one-time written irrevocable election to opt out of the System on a form provided by TRS. If an eligible employee fails to make an election within the thirty-day period, the eligible employee shall be deemed to participate in the System.

(B) A non-classified optional employee who opts out of participation in the System shall be ineligible for future participation in the System; provided, however, that if the employee is hired for a classified position, he or she shall become a member of the System but shall not be eligible for prior service credit for service performed while employed in a non-classified position during which time the employee opted out of participation in the System.

(2) Any member absent from the teaching service who is eligible to continue membership under special provisions of 70 O.S. 17-116.2, provided that such employee continues to be employed by a governmental agency.

(3) A visiting professor from another state or nation.

(4) Classified and Non-Classified members employed after retirement. (See OAC 715:10-17-13).

~~(5) Full time, non-classified optional personnel who previously have opted out of TRS under OAC 715:10-11-2 may revoke their election and return to TRS participation. Providing, however, that such member is not eligible to redeposit the account withdrawn under OAC 715:10-11-2 or purchase credit for service performed after termination of membership and re-instatement of membership.~~

### SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

#### 715:10-5-9. Re-establishing withdrawn service

~~After returning to employment in the public schools of Oklahoma~~ re-establishing participation in TRS, a member may redeposit a withdrawn account to re-establish service previously withdrawn from the system. For purposes of this section the following shall apply:

(1) A "classified" and "non-classified" member (except as noted in paragraph 2 of this section) who has returned to public education employment and has established one full year (twelve calendar months) of creditable Oklahoma service, is eligible to redeposit withdrawn contributions. A redeposit of withdrawn contributions must include all

applicable interest, which shall be computed at a simple interest rate of ten percent (10%) per annum from the date of the withdrawal to the date repayment is made.

(2) Non-classified members who voluntarily withdrew from membership in TRS, ~~between July 1, 1984 and June 30, 1990,~~ without terminating employment in the public schools of Oklahoma, are not eligible to redeposit or purchase past service for any period of employment between the date of the membership period covered by the withdrawn account and the date of return to membership in TRS.

(3) Non-classified members who voluntarily ~~ceased~~ ceased monthly contributions to TRS while continuing to be employed in an eligible position shall be considered to have withdrawn from membership.

(4) Requests for redeposits should be made to TRS in writing. The request must include the name in which the service was rendered, the TRS Member ID number or Social Security number, and the number of years withdrawn.

(5) Documentation of this service is on file with TRS and will be verified by the staff. Service that cannot be verified must be purchased under the rule for establishing service prior to membership.

(6) Repayments of withdrawn accounts may be made by active contributing members of TRS in a single lump sum, which includes the withdrawn contributions and all applicable interest, or in installment payments. Such installment payments may be paid in 12-month increments, but shall be completed within 60 months. The member shall be responsible for maintaining the payment schedule. Payments are due on the first day of each month. A monthly installment not paid within sixty (60) days of the due date will result in immediate termination of the installment payment schedule. The member will be given the option of paying the remaining balance within six (6) months. If the balance is not paid in full in the remaining six (6) month period, the redeposit will be canceled. Installment payments shall include interest based upon actuarial assumptions adopted by the TRS Board of Trustees. Such installment payments shall be completed before the member's effective retirement date. No proration is allowed for partial payments. If payments terminate prior to completion of the installment agreement, the amount paid by the member shall be refunded without interest.

(7) Redepositing of withdrawn accounts must be completed, and payment made to TRS, ninety (90) days prior to the effective date of a member's official retirement date.

(8) No person may make a redeposit to a member's account after the death of the member.

#### 715:10-5-38. Credit for service as an optional employee prior to July 1, 2021

Members may obtain service credit for qualified employment in public educational institutions in the State of Oklahoma for work performed prior to July 1, 2021, as an optional, non-classified employee under certain circumstances.

(1) The member shall not be eligible to purchase withdrawn service as described in OAC 715:10-5-9(2) or service for which the member had ceased monthly contributions on at any prior date as described in OAC 715:10-5-9(3).

(2) The member is not receiving and is not eligible to receive retirement credit or benefits from the service in any other public retirement system of this state, the United States government, or any other state or territory of the United States.

(3) The purchase price for eligible non-classified optional service credit shall be based upon actuarial costs as defined in OAC 715:10-5-4. All payments for such service credit must be made while the member is an active contributing member or within sixty (60) days after the end of the member's employment in the public schools in Oklahoma. No person may purchase service credit for such employment after the member's death.

(4) The payments for such service credit may be made in one lump sum or in equal monthly installments for up to sixty (60) months, as provided in OAC 715:10-5-4 and may be made as a picked-up service credit purchase in compliance with OAC 715:10-5-35.

(5) The purchase of service must be completed, and payment made to TRS, no later than ninety (90) days prior to the effective date of a member's official retirement date.

**SUBCHAPTER 11. WITHDRAWAL FROM MEMBERSHIP AND REFUND OF DEPOSITS**

**715:10-11-2. Withdrawal of optional membership while still employed [REVOKED]**

~~A non-classified optional member may voluntarily terminate TRS membership while continuing employment in the public schools of Oklahoma, if:~~

~~(1) Proper application is made to TRS. Withdrawal may be made no earlier than two (2) months after date of application and no earlier than the receipt by TRS of the final deposit to the member's account.~~

~~(2) The financial officer of the employing school certifies the member's election to stop contributions and the date the member's last contributions will be remitted to TRS.~~

~~(3) Any member who withdraws under the conditions listed here may rejoin the Teachers' Retirement System, under the provision of OAC 715:10-1-4(8). A member who terminates membership under this section cannot re-deposit contributions withdrawn under this section at a later date, even if the individual returns to membership in TRS. The member will also forfeit any right to purchase service performed from the date of termination of membership under this section and prior to the re-entry date, and will forfeit any unused sick leave accumulated from the date of termination of membership under this section and prior to the re-entry date.~~

~~(4) A member's contributions cannot be terminated, by either the member or the employer, without termination~~

~~of TRS membership. Any member who ceases contributions while still employed in an optional position shall be deemed to have become an ineligible member of TRS, and will have forfeited all rights to retirement benefits provided by TRS for the service prior to the date the member ceased contributions.~~

~~(5) An employer may prevent its employees from withdrawing, under this rule, if the employer has a negotiated labor agreement, or formalized IRS plan, prohibiting such terminations and withdrawals.~~

~~(6) After tax contributions can be refunded to an optional member prior to separation from service. Pre tax contributions cannot be refunded until the member terminates employment or turns 62. Following termination of employment, TRS should be contacted for the proper form to be completed for return of pre tax contributions. Upon completion of the verification form by the school and the mandatory four month waiting period, payment of the balance of the account will be made at the same time as regular withdrawals.~~

**715:10-11-4. Refunds of contributions**

(a) Refunds for overpayment of employer annual contributions, ineligible service purchases, and membership service contributions of less than six (6) months shall be made upon request by the employing school if the payment of contributions was made based on mistake of fact or law.

~~(1) Refunds to members who are terminating accounts will not be made until the final contributions of the withdrawing member is received and posted to his account. The required application must be completed and on file. The amount to be returned to the employer is the excess of the amount contributed or paid over the amount that would have been contributed or paid had no mistake been made.~~

~~(2) No interest shall be paid on refunds for this purpose.~~  
~~(3) Contributions reported by the employer as "pre-tax" contributions will be refunded to the employer.~~

(b) Refunds of excess employee contributions shall be distributed to the member as soon as practical through a lump sum payment for all past overpayments with appropriate interest under OAC 715:10-11-1. The distribution shall be reported on IRS Form 1099-R for the year of the distribution.

**SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE**

**715:10-13-3. Employee contribution rates**

(a) Beginning with the 1996-97 school year, the maximum compensation level for all members, other than those members employed by a comprehensive university on or before June 30, 1995, shall be the member's regular annual compensation. This includes any employee of a comprehensive university who transfers to another school or university after June 30, 1996, or who terminates paid employment status with a comprehensive university and returns to employment at a later date.

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(b) Beginning with the 1996-97 school year, the maximum compensation level for those employees of a "comprehensive university", defined in statutes as the University of Oklahoma and all of its constituent agencies, including the University of Oklahoma Health Sciences Center, the University of Oklahoma Law Center and the Geological Survey, and Oklahoma State University and all of its constituent agencies, including the Oklahoma State Agricultural Experiment Station, the Oklahoma State University Agricultural Extension Division, the Oklahoma State University College of Veterinary Medicine, the Oklahoma State University Center for Health Sciences, the Technical Branch at Oklahoma City the Technical Branch at Okmulgee and Oklahoma State University-Tulsa, who were employed on or before June 30, 1995, shall contribute the following:

(1) for members who, prior to June 30, 1995, elected to contribute on a maximum compensation level not to exceed \$25,000:

- (A) \$32,500 for service between July 1, 1996 and June 30, 1997,
- (B) \$37,500 for service between July 1, 1997 and June 30, 1998,
- (C) \$42,500 for service between July 1, 1998 and June 30, 2000,
- (D) \$47,500 for service between July 1, 2000, and June 30, 2001,
- (E) \$52,500 for service between July 1, 2001, and June 30, 2002,
- (F) \$57,500.00 for service between July 1, 2002, and June 30, 2003,
- (G) \$62,500.00 for service between July 1, 2003, and June 30, 2004,
- (H) \$67,500.00 for service between July 1, 2004, and June 30, 2005,
- (I) \$72,500.00 for service between July 1, 2005, and June 30, 2006,
- (J) \$77,500.00 for service between July 1, 2006, and June 30, 2007, and
- (K) the full amount of regular annual compensation for service authorized and performed after June 30, 2007, and

(2) for members who, prior to June 30, 1995, elected to contribute on a maximum compensation level in excess of \$25,000, or who did not make an election prior to June 30, 1995, because their annual salary was less than \$25,000:

- (A) \$49,000 for service between July 1, 1996 and June 30, 1997,
- (B) \$54,000 for service between July 1, 1997 and June 30, 1998,
- (C) \$59,000 for service between July 1, 1998 and June 30, 2000,
- (D) \$64,000 for service between July 1, 2000, and June 30, 2001,
- (E) \$69,000 for service between July 1, 2001, and June 30, 2002,
- (F) \$74,000 for service between July 1, 2002, but not later than June 30, 2003,

(G) \$79,000 for service between July 1, 2003, and June 30, 2004,

(H) \$84,000 for service between July 1, 2004, and June 30, 2005,

(I) \$89,000 for service between July 1, 2005, and June 30, 2006,

(J) \$94,000 for service between July 1, 2006, and June 30, 2007, and

(K) the full amount of regular annual compensation for service authorized and performed after June 30, 2007.

(c) A ~~teacher~~person employed by any school district or technology center school district, who holds a valid certificate issued by the State Department of Education or the State Board of Career and Technology Education and is employed on a full-time basis as a teacher, principal, supervisor, administrator, superintendent, counselor, librarian, or certified or registered nurse~~qualifies for a minimum salary pursuant to the State's minimum salary schedule~~ shall have a specific amount credited against the employee's contribution amount to TRS. The State of Oklahoma shall pay an annual amount as set forth in 70 O.S. § 17-108.2 for each fiscal (or plan) year.

(d) Each school district or technology center school district shall adjust each eligible employee's monthly contribution to TRS in accordance with statutory provisions, and shall cause the annual amount paid by the State of Oklahoma as provided in the preceding paragraph to be deducted from the monthly remittance to each eligible employee's retirement account and a like amount added to the net pay of the eligible employee.

(1) If the school district pays the retirement contribution in addition to the employee's total compensation, the employer must reduce the employee's annual retirement contribution which the school pays to TRS by the appropriate amount and add that amount to each eligible employee's net pay.

(2) If the school district deducts the retirement contribution from each employee's total compensation, whether as a salary reduction to pay the retirement contribution as a fringe benefit or as a deduction on an after-tax basis, the employer must adjust the employee's annual retirement deduction in accordance with the amount to be paid by the State. The adjustment in the retirement deduction will result in an increase to the eligible employee's net pay.

(3) The State contribution to each eligible employee's retirement account is determined by the total experience of each employee as verified by the State Department of Education or the Oklahoma Department of Career and Technology Education.

(4) The State contribution must be calculated and paid in equal monthly installments as determined by the eligible employee's contract, i.e., ten months, eleven months or twelve months. Eligible employees who work ~~less than a full contract year, whether full-time for less than a full contract year or part-time for the full contract year,~~ shall have the prescribed State contribution prorated ~~in accordance with the eligible employee's full-time equivalent rate of employment~~proportionately based on the

employee's full-time employment during the relevant contract period.

**715:10-13-7. Matching Funds**

~~Statutes require employers~~Employers of Teachers' Retirement System~~TRS members whose compensation is paid from federal funds or externally sponsored agreements such as grants, contracts, and cooperative agreements shall to match the contributions of these members on all compensation, or that portion of, compensation paid from these funds. Federal matching~~Matching funds shall be paid in addition to employer and employee contributions and shall be transmitted at the same time and in the same manner as the members' contributions. Effective July 1, 2001, employers shall match on a pro rata basis the contributions of members whose salaries are paid by federal funds or externally sponsored agreements such as grants, contracts and cooperative agreements. Matching contributions shall be required on all salaries funded from revenues other than funds generated from local taxes or revenues originating from the State of Oklahoma. No later than April 1, 2001, and each April 1 thereafter year, the TRS Board of Trustees of the Teachers' Retirement System shall set the two contribution rates to be paid by employers.

(1) Traditional Matching Rate: The first rate shall be applied to all services paid by federal funds or externally sponsored grants or agreements performed by members except those services that are included in the definition of "Summer School Program," as defined in subsection 2 below. This contribution rate shall be determined using cost principles established by federal regulations and shall be consistent with generally accepted accounting principles.

(2) Summer School Matching Rate: The second rate shall be applied to service performed by members during a Summer School Program. "Summer school program" is defined as a program offering academic enrichment for students from Pre-K through 12th grades during the summer term after the close of the school year. Members shall only be considered as providing service to a summer school program if such service is provided pursuant to a separate summer school contract between the member and the participating employer. The term "Summer School Program" does not include services performed at a participating employer offering an extended school year pursuant to 70 O.S. § 1-109.1 or services performed pursuant to a twelve-month contract with the employer. The contribution rate shall be determined using cost principles established by federal regulations and shall be consistent with generally accepted accounting principles. The Summer School Matching Rate may take into consideration whether, or to what extent, such service is likely to add to members' service credit or final average salary; however, this rate shall not exceed one-half (1/2) of the Traditional Matching Rate.

**715:10-13-8. Procedure for making contribution deductions**

The Teachers' Retirement System contribution deduction shall start with the payment for the first month of a "classified" employee's contract, or the first month of membership for an optional "non-classified" member. This contribution shall be based on the total compensation for the month, but shall not apply to the compensation of a substitute teacher or any employee working on a less than one-half time basis. Individuals who join the Teachers' Retirement System during the school year, and who have been employed prior to becoming a member, must make retroactive contributions from the beginning of that school year. The membership date of such a member is the date of first payment not the beginning of the school year. The member shall not receive credit for a year of service until the balance of contributions, including any contributions required by the employer, are received by TRS. Interest compounded annually at ten percent (10%) per annum shall be levied against the balance due until paid.

(1) The total deductions in any one school year shall not exceed the maximum limit prescribed by statutes as defined in OAC 715:10-13-3.

(2) In determining the amount of the contribution for a member in any payroll period, the employer shall consider the total compensation earned from all sources. The contribution shall be calculated on the gross compensation before any deductions, such as tax-sheltered annuity, income taxes, Social Security, etc. Deductions shall be made at the statutory contribution rate on each month's compensation until the maximum annual compensation level is reached. Total monthly compensation shall be reported in the monthly salary column of the remittance report. Monthly compensation includes gross wages and fringe benefits paid or provided by the remitting agency.

(3) Monthly contributions for employees of a comprehensive university, whose maximum compensation level is less than the member's regular annual compensation, may be remitted in twelve equal payments to the member's account during the school year. It shall be the responsibility of the employer to insure any required adjustment in contributions is made if a member terminates employment or the member's salary changes during the school year.

~~(4) Required Contributions contributions must shall be remitted monthly, as long as the individual is employed in a position for which membership is a condition of employment. No member, including non-classified optional employees, may terminate contributions and retain membership in Teachers' Retirement System, except as expressly provided elsewhere in the statutes or TRS rules.~~

(5) As of July 1, 1979, members who signed a waiver to contribute on a maximum annual salary of \$7,800 are required by law to contribute on their total compensation not to exceed any current maximum contribution level.

(6) The Department of Corrections shall contribute the employer's share to the Teachers' Retirement System. The contribution shall be the same dollar amount required of the member.

## SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

### 715:10-17-15. Salary limitations for certain returning classroom teachers

~~Legislation enacted during the 2017 legislative session allows members who retired on or before July 1, 2017, to return to employment as a classroom teacher for a public school or career technology district with no earnings limitations in certain circumstances. Members seeking to return to employment as a classroom teacher under this provision must meet all of the following requirements:~~

- ~~(1) The member must have been employed as an active classroom teacher as is defined in 70 O.S. § 17-101(27) for at least one full school year immediately prior to their date of retirement. Members employed as superintendents, administrators, or in other non-classroom teacher positions during the school year immediately preceding retirement are ineligible;~~
- ~~(2) The member can only be employed as an active classroom teacher as defined in 70 O.S. § 17-101(27) when they return to employment;~~
- ~~(3) The member must have been retired and drawing a TRS retirement benefit and not be employed by any public school or career technology district in any capacity for the twelve (12) consecutive months immediately following the last day of employment prior to their retirement date; and~~
- ~~(4) Prior to the member's return to employment the member must provide to TRS on forms prescribed by TRS, documentation establishing their eligibility under this provision. This documentation must be accepted by and approved by TRS prior to the member commencing employment under this provision.~~

Legislation enacted during the 2021 legislative session allows members who retired on or before July 1, 2020, to return to employment as an active classroom teacher for a public school or career technology district with no earnings limitations in certain circumstances. Members seeking to return to employment as an active classroom teacher under this provision must meet all the following requirements:

  - (1) The member must have been retired as of July 1, 2020;
  - (2) The member must have been retired and drawing a TRS retirement benefit and not be employed by any public school or career technology district in any capacity for a period of twelve (12) consecutive months immediately following the last day of employment prior to their retirement date;
  - (3) The member can only be employed as an active classroom teacher as defined in 70 O.S. § 17-101(27) when they return to employment; and
  - (4) Within sixty (60) days of the member's return to employment, the member's employer must provide

to TRS, on a form prescribed by TRS, documentation establishing the member's eligibility under this provision.

[OAR Docket #22-506; filed 6-29-22]

## TITLE 720. STATE TEXTBOOK COMMITTEE CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #22-660]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

720:1-1-2. Duties of committee [AMENDED]

720:1-1-3. Selection of ~~chairperson~~ and vice-chairperson; quorum [AMENDED]

720:1-1-5. Calendar [AMENDED]

### AUTHORITY:

State Textbook Committee; 70 O.S. § 16-101, *et seq.*

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 7, 2022

### COMMENT PERIOD:

February 1, 2022 through March 3, 2022

### PUBLIC HEARING:

March 3, 2022

### ADOPTION:

March 24, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 31, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

House Bill 3644 (2020) was signed into law on May 19, 2020 and became effective on November 1, 2020. In part, House Bill 3466 establishes requirements for how the State Textbook Committee is to accept, review, and adopt submitted academic materials to ensure a high level of alignment with the Oklahoma Academic Standards as adopted by the State Board of Education and approved by the Legislature. The proposed rules will revise existing Committee duties and procedures to reflect the changes instituted by House Bill 3644 and to assist the State Textbook Committee in the performance of its duties.

### CONTACT PERSON:

Brad Clark, General Counsel, Office of Legal Services, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma State Department of Education, 5<sup>th</sup> Floor, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-3274 E-mail: Brad.Clark@sde.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**



**720:1-1-2. Duties of Committee**

- The duties of the Committee shall be to:
- (1) select a ~~chairperson and~~ vice-chairperson;
  - (2) establish rules and regulations;
  - (3) establish a calendar for the following fiscal year;
  - (4) examine carefully, ~~using advisors,~~ all books submitted for adoption;
  - (5) select textbooks in each subject area called for in the adoption;
  - (6) prepare and publish a list of textbooks selected for each subject;
  - (7) process substitutions;
  - (8) consider unusual or extraordinary circumstances;
  - (9) approve an application process to assemble annually one or more review teams comprised of subject matter experts for each subject area under review to assist the Committee in reviewing textbooks and instructional materials;
  - (10) adopt a rubric, in consultation with the State Department of Education, containing a three-tiered rating system for each subject called for in the adoption that are labeled "Exemplifies Quality", "Approaching Quality", and "Not Representing Quality" which are respectively the first, second, and third tier;
  - (11) verify the review process has been conducted in a scrupulous and fair manner; and
  - (12) adopt a final rating for each textbook prior to including it on the textbook list required.

**720:1-1-3. Selection of ~~chairperson and vice-chairperson~~; quorum**

Before the first day of July of each year, the State Textbook Committee will meet at the call of the State Superintendent of Public Instruction and elect by secret ballot a ~~chairperson and~~ vice-chairperson from its membership to serve for the year. A majority of the State Textbook Committee seven (7) must be present to form a quorum.

**720:1-1-5. Calendar**

- (a) The State Textbook Committee shall, at their organizational meeting before the first day of July of each year, adopt a schedule of events for the next fiscal year. The schedule will include dates, times and locations, as appropriate, for the following events:
- (1) deadline for acceptance of letters of intent to bid;
  - (2) deadline for receipt of bids and books;
  - (3) committee meeting for the opening and consideration of bids;
  - (4) ~~local textbook presentations for committee members and their advisors;~~
  - (5) ~~committee meeting for textbook representatives' presentation of bid items to the assembled State Textbook Committee;~~
  - (6) ~~deadline for submitting written request to appear at public hearing;~~
  - (7) ~~committee hearing of public input;~~
  - (8) ~~committee meeting for adoption selection;~~

- (9) date for issuance of call for substitutions;
  - (10) ~~deadline for acceptance of letters of intent to substitute;~~
  - (11) ~~deadline for receipt of bids and books to substitute;~~
  - (12) ~~committee meeting for substitution for approval.~~
- (b) In order to comply with the deadlines described in paragraphs (1), (2), (6), (10), and (11) of subsection (a) of this section, materials must either be delivered to the Textbook office on or before the established date.

[OAR Docket #22-660; filed 7-20-22]

**TITLE 720. STATE TEXTBOOK COMMITTEE  
CHAPTER 10. TEXTBOOK SELECTION**

[OAR Docket #22-661]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 720:10-1-2. Definitions [AMENDED]
- Subchapter 3. Bidding Procedures
- 720:10-3-5. Materials to be considered for adoption [AMENDED]
- 720:10-3-6. Ancillary materials and supplementary ~~items~~ materials [AMENDED]
- Subchapter 5. Procedures for Evaluating and Voting to Select Textbooks
- 720:10-5-1. Advisors [REVOKED]
- 720:10-5-5. Consideration of new materials due to unusual or extraordinary circumstances [AMENDED]
- Subchapter 7. Contracts and Bonds
- 720:10-7-2. Contract [AMENDED]

**AUTHORITY:**

State Textbook Committee; 70 O.S. 16-101, *et seq.*

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 7, 2022

**COMMENT PERIOD:**

February 1, 2022 through March 3, 2022

**PUBLIC HEARING:**

March 3, 2022

**ADOPTION:**

March 24, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 31, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

House Bill 3644 (2020) was signed into law on May 19, 2020 and became effective on November 1, 2020. In part, House Bill 3466 establishes requirements for how the State Textbook Committee is to accept, review, and adopt submitted academic materials to ensure a high level of alignment with the Oklahoma Academic Standards as adopted by the State Board of Education and approved by the Legislature. The proposed rules will revise existing Committee duties and procedures to reflect the changes instituted by House Bill 3644 and to assist the State Textbook Committee in the performance of its duties.

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## CONTACT PERSON:

Brad Clark, General Counsel, Office of Legal Services, 8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma State Department of Education, 5<sup>th</sup> Floor, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-3274 E-mail: Brad.Clark@sde.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 720:10-1-2. Definitions

The following words and terms, when used in this (Chapter, Subchapter, Part), shall have the following meaning, unless the context clearly indicates otherwise:

**"Adopted materials"** Adopted materials refers to materials approved by the State Textbook Committee and purchased with state funds.

**"Ancillary material"** ~~Ancillary items considered for adoption shall be compatible with the textbook bid. This term refers to materials intended and designed to be used with a comprehensive program submitted by the same publisher. Examples of this type of material may include but are not limited to workbooks, quizzes, puzzles, test banks, transparencies, black line masters, etc. Materials intended and designed to be used with a comprehensive program submitted with the corresponding comprehensive program or comprehensive materials with the publisher bid. Examples of this type of material may include, but are not limited to, workbooks, quizzes, and test banks.~~

**"Comprehensive material or comprehensive program"** ~~This term refers to teacher instructional material not intended to be used by students and shall include *Priority Academic Student Skills (PASS)* correlations. Additionally, this also includes one edition of the initial student instructional material such as a student text (electronic or print). Instructional materials or textbooks designed to guide instruction for, and learning of, grade-level courses or subject areas. Materials should align to and encompass the breadth of Oklahoma Academic Standards or learning objectives associated with the grade level(s) course being bid.~~

**"Core subject cycle"** This term refers to the period of time for which contracts are entered into for subjects identified by the State Textbook Committee. The cycle begins when contracts go into effect for the items bid in a subject area, and the cycle ends when the contracts expire and new contracts are established for materials in the same subject area. The State Textbook Committee operates under a six-year adoption cycle for all subjects except Instructional Technology, which operates under a three-year adoption cycle.

**"Free materials"** Materials in any medium which a publisher intends to make available without cost upon the purchase of textbooks bid and adopted.

~~"Supplementary item or supplementary material materials"~~ These terms refer This term refers to items intended and designated to guide the instruction of one or a few of the curriculum standards for the subject area for which the item has been submitted. Supplementary materials are designed to be used independently or cooperatively with bid items submitted in the same subject area by the same or different publisher. Examples of supplementary items may include but are not limited to maps, atlases, flash cards, classroom libraries, stories about significant people in the subject area, selected readings, literature guides, assessment materials or small books textbooks or instructional materials teaching about one component of a subject area.

## SUBCHAPTER 3. BIDDING PROCEDURES

### 720:10-3-5. Materials to be considered for adoption

(a) One copy of each textbook and one sample of each learning package, kit, or other comprehensive review materials shall be filed with the office of the Secretary of the state Textbook Committee on or before the date specified in the schedule for the textbook adoption process. Textbooks must be in final form.

(b) One copy of each textbook and one sample of each learning package, kit, or other comprehensive review material and materials not listed as free shall be provided to each member of the State Textbook Committee, review teams, and to each Congressional District Review Center. Failure to deliver samples by the date established by the State Textbook Committee calendar will result in a bid rejection.

(c) Samples of textbooks provided to the State Textbook Committee members and review teams may be returned to the publishers, donated to a school district or donated to a college or university. Under no circumstances shall the samples become the personal property of the committee member or the ~~advisor~~ review team members. Under no circumstances shall the samples be sold or donated for resale purposes.

(d) In order for a library or university to be designated by the State Textbook Committee as a Congressional District Review Center the library or university must agree to the following conditions:

(1) conveniently display materials immediately upon the receipt of materials and maintain the display until such date adopted by the State Textbook Committee;

(2) obtain approval of the State Textbook Committee before disposing or distributing the materials to any other person or entity; and remove materials from public access once they are adopted. Materials may remain accessible for on-site use to a limited audience (education professionals and pre-service teachers); and

(3) sample materials may be returned to the publisher or may be disposed of with the approval of the State Textbook Committee.

(e) Highly-visible, permanent labels stating, "sample not to be sold" must be attached to each item furnished as a sample to the State Textbook Committee, review teams, Congressional

Review Centers and the office of the Secretary of the State Textbook Committee.

(f) Consumable materials must be clearly marked as consumable.

(g) Each publisher must warrant that all books adopted shall comply with the standards in the Manufacturing standards and Specifications for Textbooks approved by the National Advisory Commission on Textbook Standards.

(h) The State Textbook Committee favors regular editions, but special editions may be considered provided the differences between the two (2) editions are set forth with the bid.

(i) Digital content and related materials will be considered for adoption.

(j) Teacher materials will be adopted as separate items only at the kindergarten level and ESL.

(k) Instructional Materials shall be adopted in no more than one (1) core subject cycle.

~~(l)~~

~~(m)~~ A book which has been bid and rejected by the State Textbook Committee cannot be bid again for the subject contract cycle.

~~(n)~~ Technology components of instructional materials, including, but not limited to applications using computer assisted instruction, Web 2.0 Tools, Saas (Software as a Service) and other Cloud-based technologies, shall include comprehensive teacher materials listing special requirements for the respective subject or course along with

- (1) instructions on how to use the technology components;
- (2) an inventory of the components of the program;
- (3) specifications for the hardware necessary to operate the system; and
- (4) on-demand technical support.

~~(o)~~ Specifications for the hardware necessary to operate the instructional computer software system must be identified. If the hardware and equipment essential for review of the materials bid in any category is not available, it shall be supplied to the State Textbook Committee, Congressional District Review Centers, review teams, and the State Department of Education for the duration of the review process.

~~(p-q)~~ Publishers may not pilot programs to be bid for adoption without explicit written permission from the district superintendent and site administrator. Pilots must be completed no later than the date of the call for bids one adoption cycle year prior to the opening and consideration of bids in that subject area. Violation of this rule will result in immediate removal from the state textbook list.

**720:10-3-6. Ancillary materials and supplementary items**

(a) Any ancillary materials ~~items or supplementary items~~ listed with textbooks in the annual requisition must be approved by the State Textbook Committee with the corresponding comprehensive materials or programs being bid unless designated as free. If ancillary ~~or supplementary~~ materials are not available at the time of the initial adoption, but subsequently become available, publishers may submit the ancillary ~~and supplementary~~ materials out of cycle. When the Call for

Bids is mailed each year, publishers can submit letters of intent to present ancillary ~~and supplementary~~ materials. Samples must be sent to all members of the State Textbook Committee and review team members, to the regional review centers and to the office of the Secretary of the State Textbook Committee. The ancillary ~~and supplementary item(s) materials~~ will be considered for adoption at the regular adoption meeting. The adopted ancillary materials ~~and supplementary item(s)~~ will be listed in the next annual requisition.

(b) Supplementary materials are not reviewed or approved by the State Textbook Committee. Supplementary materials purchased with State Textbook funds should undergo a rigorous local review process with the local district textbook committee prior to selection. Supplementary materials should supplement adopted comprehensive materials or programs but not replace them. Supplemental materials must be listed on the Supplemental Materials Form of the Bid and additionally labeled, "Supplemental Materials not reviewed or approved by the State Textbook Committee".

**SUBCHAPTER 5. PROCEDURES FOR EVALUATING AND VOTING TO SELECT TEXTBOOKS**

**720:10-5-1. Advisors [REVOKED]**

~~(a) Each textbook committee member shall select a maximum of five (5) advisors for each subject in which textbooks have been called for adoption to assist in the textbook review process. One (1) of the advisors may be a lay member who has a child in public school in this state and who does not have a teaching certificate. All remaining advisors will be certified educators with experience in the adoption area.~~

~~(b) Official advisors must abide by all laws and rules and regulations of the State Textbook Committee and the state.~~

~~(c) Nothing in this section is intended to limit the right of textbook committee members to seek advice from as many sources as they wish; however, textbook samples may be provided only to official advisors.~~

**720:10-5-5. Consideration of new materials due to unusual or extraordinary circumstances**

(a) Under the provisions of Title 70, Article XVI, Section 16-102, any resident of the State of Oklahoma, or publisher of textbooks, who feels that unusual or extraordinary circumstances exist in a particular subject area during the period of adoption may, by written request to the State Textbook Committee, present evidence that significant new techniques of teaching, significant new findings or discoveries, or other new information or knowledge exists in a particular subject area that would warrant consideration by the State Textbook Committee of new materials in that particular subject area.

(b) Written requests will be addressed to the Secretary of the State Textbook Committee. The written request will include the name, address, and phone number of the person making the request. Also to be included are the subject area name and grade classification. The person making the request will

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then describe in detail any new technique, procedure, finding, discovery, and any other information that will aid the Committee in making a decision. Furthermore, the person making the request will address the impact the technique, procedure, finding or discovery will have on students or education and the impact the absence of this information will have upon students or education until the next adoption period.

(c) Upon determination by three-fourths (3/4) of the members of the State Textbook Committee that unusual or extraordinary circumstances exist in a particular subject area, the Committee may select one or more textbooks in that subject area for the remainder of the adoption period.

(1) The chairperson of the Committee will direct the Secretary of the Committee to issue a Call for Bids in the subject area indicated. Said Call for Bids will include:

- (A) subject area;
- (B) grade;
- (C) description of new technique, Finding, discovery or procedures that must be included in any item bid;
- (D) deadline date for letters of intent;
- (E) deadline dates for receipt of bids and books;
- (F) public hearing dates; and
- (G) date of the adoption meeting.

(2) All normal adoption procedures will be followed to include sampling of Committee, State Department of Education, Congressional District Review Centers, and ~~any advisors review team members that the committee members may identify~~. Adoption will be by a majority vote.

## SUBCHAPTER 7. CONTRACTS AND BONDS

### 720:10-7-2. Contract

(a) ~~The execution date of the contracts shall be December 31 of each year.~~

(b) Assumption, acquisition, assignment or transfer of contracts currently in effect between the State Textbook Committee and persons, firms or corporations will be allowed during the period of the contract upon receipt by the Secretary of the State Textbook Committee of a replacement bond provided by the receiving company.

(c) It is required that a publisher notify the office of the Secretary of the State Textbook Committee of any and all price reductions, either temporary or permanent, of materials under contract with this state. Those price reductions then become permanent and replace the existing costs on the approved contracts. All price reductions are permanent until the contract expires or a substitution with a price increase is approved by the State Textbook Committee. Temporary sale prices are not permitted.

[OAR Docket #22-661; filed 7-20-22]

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS

[OAR Docket #22-662]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 3. Acceptance of Checks
- 725:15-3-2. Definitions [AMENDED]
- 725:15-3-3. Acceptance of checks [AMENDED]
- 725:15-3-5. Information necessary [AMENDED]
- Subchapter 21. Oklahoma Recreational Trails Program and The Boating Infrastructure Grants Program
- 725:15-21-3. Reimbursement procedures [AMENDED]
- 725:15-21-4. Limitations on grant awards [AMENDED]
- 725:15-21-5. Procedures for submission and review of project applications [AMENDED]
- 725:15-21-6. Acquisition policies and procedures-RTP only [AMENDED]
- 725:15-21-7. Construction policies and procedures [AMENDED]
- Subchapter 23. Collection of Accounts Receivable
- 725:15-23-2. Collection processes [AMENDED]
- Subchapter 25. Gift Cards, Certificates, Codes or Vouchers
- 725:15-25-1. Purpose [AMENDED]
- 725:15-25-2. Establishing gift certificate card programs [AMENDED]
- 725:15-25-3. Guidelines of issuing gift certificates cards [AMENDED]
- 725:15-25-4. Expiration date [AMENDED]
- 725:15-25-5. Use of gift certificate cards [AMENDED]
- 725:15-25-6. Outstanding balance on redeemed gift certificates cards [AMENDED]
- 725:15-25-7. General accountability controls [AMENDED]
- Subchapter 29 Oklahoma Today Magazine
- 725:15-29-32. Terms and payment of credit accounts [AMENDED]
- Subchapter 31. Refunds
- Part 3. Refunds
- 725:15-31-13. Rain checks in lieu of refund [REVOKED]

### AUTHORITY:

Oklahoma Tourism and Recreation Department; 74 O.S. §2204

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 25, 2022

### COMMENT PERIOD:

February 15, 2022, through March 17, 2022

### PUBLIC HEARING:

March 18, 2022

### ADOPTION:

March 29, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

April 1, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The purpose of the permanent rules is to amend the rules to update the language to reflect recent statutory changes, revoke rules that are preempted by statute or no longer in use, and to bring the rules in line with current practices and modernization efforts of the Department.

### CONTACT PERSON:

Brett Thomas, General Counsel, (405) 522-9575, Brett.Thomas@TravelOK.com

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 3. ACCEPTANCE OF CHECKS

725:15-3-2. Definitions

The following words or terms when used in this Subchapter shall have the following meaning unless context clearly indicates otherwise:

"Department" means the Oklahoma Tourism and Recreation Department.

"Facility" means any operating unit so designated within the Oklahoma Tourism and Recreation Department.

"Guest/Patron" means any person (including employees) who purchase goods and/or services from a state facility.

"Overnight Guest" means any person staying overnight in a park or lodge accommodation and is duly registered and paying for the services provided at the approved rate.

725:15-3-3. Acceptance of checks

(a) Personal checks may not be accepted as payment for goods and services except for subscriptions to Oklahoma Today Magazine.

(b) ~~Business~~ All other business type checks may be accepted as payment for goods and services in the amount of purchase. Acceptance of these checks must be approved by the facility manager or designee.

725:15-3-5. Information necessary

Before accepting any check, the following information must be printed on the front side of the check: ~~residence~~ or business address, city, state, and telephone number.

SUBCHAPTER 21. OKLAHOMA RECREATIONAL TRAILS PROGRAM AND THE BOATING INFRASTRUCTURE GRANTS PROGRAM

725:15-21-3. Reimbursement procedures

(a) The program is a reimbursement-type grant program. Project sponsors will apply to the ~~Oklahoma Tourism and Recreation~~ Department (OTRD) for funding of specific trail/boating projects. The ~~Department~~OTRD will select projects to receive funding and obtain approval from the Federal Highway Administration (FHWA) or the US Fish and Wildlife Service (USFWS) as applicable.

(b) After a project agreement is executed between the sponsor and ~~OTRD~~ the Department, the sponsor may initiate the project's proposed work elements, spending from their own funds and submitting ~~billings~~ reimbursement requests to the

~~Department~~OTRD. Reimbursement from the federal funds will be paid to the sponsor by OTRD.

(c) ~~OTRD~~The Department will reimburse the sponsors of projects selected for funding for the allowable percent of the project's total cost provided:

(1) The costs are for allowable expenditures as outlined in the sponsor's application and approved in the Project Agreement signed by ~~OTRD~~the Department and the sponsor, and

(2) Sponsor supplies adequate documentation that fully accounts for both out-of-pocket expenditures and any donated labor, land, or materials and that certifies that the expenditures have been incurred on the project.

(d) Sponsors may ~~bill~~submit reimbursement to ~~OTRD~~the Department on an interim basis by submitting receipts and other documentation of expenditures and work undertaken provided the sum of the ~~interim billing reimbursement~~ totals at least \$5,000. If the entire project cost is below \$5,000, only one ~~billing reimbursement~~ will be accepted. After processing the ~~billing reimbursement~~, OTRD will make a payment to the sponsor for the allowable percent of the amount submitted.

(e) Interim reimbursements may be made up to 80 percent of the federal grant amount for RTP and up to 75 percent for the BIG. The remaining 20 or 25 percent of the grant amount respectively will be released after the ~~Department~~OTRD has performed an inspection of the project, which shows all elements of the project to be in substantial compliance.

725:15-21-4. Limitations on grant awards

(a) Size of awards.

(1) The ~~OTRD~~Department will limit the maximum amount granted to any single sponsor per project in one application period based on the amount of funds received during any such period.

(2) Each State Park shall be considered a separate sponsor.

(b) Number of projects per sponsor.

(1) Applicants may submit more than one project. However, the total amount granted for each individual project may not exceed the ceiling.

(2) As mentioned under 725:15-21-2, the sponsor is the applicant, not the partner who may be the land manger. When one sponsor wishes to submit more than one project, separate applications should be submitted when projects are not located at the same site. An exception to this rule would involve the allowance of a single application for RTP trail work of a similar nature on a system of trails in one jurisdiction. For example, a city may submit one application proposing drainage improvements to all trails in its area, even though the trails are not connected and are located at various sites around town.

(c) 30%-30%-40% reserved funds for RTP.

(1) The federal act outlines a formula for state grant spending (after funds for administration and education are set aside). Not less than 30 percent of the funds shall be reserved for uses related to motorized trail recreation, and not less than 30 percent shall be reserved for uses related to non-motorized trail recreation. The remaining

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40 percent is discretionary for "diversified" trail use that gives preference to project proposals which:

- (A) Provide for the greatest number of compatible recreational trail purposes, or
  - (B) Provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized recreational trail use.
- (2) ~~OTRD~~ The Department will interpret the discretionary category for RTP as meeting either the greatest number of uses or innovative motorized/non-motorized sharing.
- (d) Allowable project costs.
- (1) Approved projects. The grant recipient may only initiate activities to undertake the approved scope of work after receipt of a fully executed Project Agreement. This includes not taking title to lands or easements that are included in the project costs. The sponsor will not be reimbursed for project costs incurred prior to the date of the signed Agreement. The RTP does not allow application preparation, site design, and other pre-application costs to be recovered retroactively.
- (2) Allowable costs. Donations from the private sector (land for the RTP, materials, or labor for RTP and BIG) may only be attributed to the sponsor's match. Sponsors may not make a profit by being reimbursed beyond their out-of-pocket costs. Private donations which exceed the federal share simply serve to reduce the overall cost of a project.
- (3) Allowable project costs. Project sponsors may be reimbursed for, but not limited to, the following items.
- (A) Acquisition of fee title land or easement (RTP only)
  - (B) Service contracts
  - (C) Direct labor costs (hired workers, current staff, force account)
  - (D) Materials (purchased)
  - (E) Equipment rental
  - (F) Purchase of trail hand tools and equipment (total not to exceed \$1500 for RTP only)
  - (G) Design, engineering and architectural services (not to exceed 20% of total project costs)
  - (H) Natural and cultural resource surveys/clearances (if required)
  - (I) Appraised value of donated land or easement (RTP)
  - (J) Value of donated service contracts (including volunteer labor)
  - (K) Value of donated materials or contribution of materials on hand
  - (L) Rental value if donated equipment
  - (M) Any of the reimbursable costs which are paid for by cash donations or sponsor's appropriations (to account for the required match)

### 725:15-21-5. Procedures for submission and review of project applications

- (a) Submission. Project applicants shall submit the Project application digitally to the ~~OTRD~~ Department with the applicable support documentation. The project applications will be reviewed for completeness prior to being scored and ranked.
- (b) Selection. A Project Priority Scoring System will be used to score and rank projects for the RTP and the BIG programs. The projects which accumulate the highest scores will receive grant assistance up to the available amount. The ~~OTRD~~ Department will maintain the Oklahoma Trails Advisory Board (OTAB) in accordance with the federal RTP legislation. The OTAB reviews and scores projects and makes recommendations for funding.
- (c) Approval process. Recommendations of projects to be funded will be presented to OTRD for approval. Project applicants will receive approval or disapproval in writing. Projects receiving approval will be included in ~~OTRD's~~ Department's application to the FHWA or the USFWS. Upon receipt of FHWA or USFWS approval, applicants will receive a Project Agreement to execute.
- (d) Resubmission. Sponsors whose projects are not selected and approved for funding may resubmit their proposals for consideration in the next cycle by notifying ~~OTRD~~ Department prior to the deadline which has been set for that cycle. Sponsors may wish to modify their proposals to give them a better chance of achieving a higher score. If proposals are modified, sponsors must supply updated materials along with their request to be reconsidered. Sponsors may resubmit an unmodified project no more than twice. If any previously funded projects have not been completed at the time of any new project submittal, the sponsor or the managing entity (if several sponsors fall under the same managing entity) will be penalized through the Project Priority Scoring System.

### 725:15-21-6. Acquisition policies and procedures-RTP only

- (a) Means of acquisition. Acquisition of land or interests therein (easements, leases, or other legal interests) may be accomplished through purchase, transfer, donation, or a combination of these methods. When the acquisition is proposed by donation, the nature of any restriction on the use of the area or condition of donation will be examined to ensure that it is compatible with the purpose of the project. Only the value of land donations from private landowners may qualify as match for all or a portion of the local matching share.
- (b) Property subject to continuing use provision, section 6(f)(3). The RTP allows states to decide if they wish to apply Section 6(f)(3) of the Land and Water Conservation Fund Act. Oklahoma has chosen to apply this provision only to acquisition of fee simple property. This provision assures that once an area is protected by 6(f)(3), it will be continually maintained in public recreation use unless property of reasonably equivalent usefulness of at least equal fair market value is substituted and the substitution is approved, in advance, by ~~OTRD~~ the Department.
- (c) Acquisition of less than fee simple property-- RTP only.

(1) The RTP requires that easements be pursued as a priority; acquisition of fee simple title may occur only when an easement is not feasible. Sponsors requesting funds for trails on private property are required to have an acceptable formal written agreement giving the public access to the trail for a minimum of twenty (20) years. Property with less than fee simple interest (usually an easement, lease or license) will only be eligible for fund support if it meets all of the following requirements:

- (A) Sponsor has (or will have) legal control of the surface rights that are relevant to trail use, and any rights retained by the owner are not incompatible with trail use; and
- (B) The term of the easement, lease or license may not be less than twenty years; and
- (C) The easement, lease or license cannot be revocable at will by the grantor.

(2) Prior to the submission of an application involving property with less than fee simple title, it is suggested that the sponsor contact ~~OTRD~~ the Department to discuss program requirements. The sponsor should submit a copy of the draft legal document for ~~OTRD~~ Departmental approval prior to its execution to ensure eligibility and avoid unnecessary delays. The draft agreement should include a boundary map, project area metes and bounds (if possible), and a letter from the lessor indicating a willingness to enter into the agreement when the project is approved.

(d) Reservations and rights not acquired. Reservations and rights held by others are permissible only if it is determined that the outdoor recreation activities and environment would not be adversely affected by conditions such as the holding of mineral rights, property liens, easements, etc. The applicant shall list all outstanding rights or interests held by others on the boundary map. Sponsors may be asked to explain how these outstanding rights are to be dealt with to assure that the outdoor recreation interests and the environment will not be adversely affected.

(e) Acquisitions involving compatible use. Non-recreation uses such as timber management, grazing mineral extraction, and other natural resource uses may be carried out within the project area only if they are:

- (1) Clearly described in the project application; and
- (2) Compatible and secondary to outdoor recreation use. The sponsor should contact ~~OTRD~~ Department prior to any action which would cause the fund-assisted area to be converted to other than outdoor recreation uses.

(f) Acquisitions which will not be assisted. The following acquisitions will not be assisted:

- (1) Lands which are already within the public domain and can currently be utilized for outdoor recreation.
- (2) Land acquisitions which occur prior to grant approval or ~~OTRD~~ Department's authorization. Consequently, the value of land already owned by the project sponsor cannot be used as the sponsor's local match.
- (3) Private land from an unwilling seller.

(g) Scheduling. When proposing the acquisition of land or real property, it is not appropriate to negotiate a price prior to grant and appraisal approval by the ~~OTRD~~ Department.

Sponsors may, however, contact the ~~land owner~~ landowner to determine if the land is available for acquisition to determine if the donor is willing to donate, sell or partially donate the subject property. Please be advised that negotiations of a price prior to grant and appraisal approval may jeopardize the eligibility of the proposed acquisition for grant assistance.

**725:15-21-7. Construction policies and procedures**

(a) Construction projects. RTP construction projects may consist of new trail development, restoration, rehabilitation, or maintenance, and development of related support facilities at trailheads or alongside trails. BIG projects may include docks, restrooms, ~~wavebrakes~~ wavebrakes and other development that serves the transient boater and must serve the general public and further a specific goal of the Oklahoma Statewide Comprehensive Outdoor Recreation Plan (SCORP), plus any applicable local or regional plans. In order to encourage and support the RTP/ BIG, sponsors must also erect a sign at the project site which designates the project as a product of the National Recreational Trails Fund Act or the Boating Infrastructure Grants program as applicable. This sign may be attached to existing park or facility signs at the project site or included on signs to be constructed as part of the project. The sign should state "National Recreational Trails Program" and should be included in the cost estimate for the project.

(b) Barrier-free access. Sponsors are encouraged to make all elements proposed in the project accessible to users who are physically and/or mentally disabled. All development including, parking facilities, and restrooms developed with grant assistance must be fully accessible. To the greatest extent possible, within reasonable cost, trails intended for use by pedestrians should be accessible to people using wheelchairs, whether manual or motorized. Projects in developed areas should place particular emphasis on accessibility. Sponsors will need to justify why it is not feasible to make trails fully accessible.

(c) Scheduling. On-the-ground construction shall begin no later than twelve (12) months after the ~~OTRD~~ Department, by official notification, has approved the project plans and specifications. Any project sponsor who is unable to comply shall notify the ~~OTRD~~ Department in writing, at least 30 days before the twelve (12) month period has lapsed, stating the reason(s) why and requesting a time extension. All projects must be accomplished within two years or less unless the ~~OTRD~~ Department approves a time extension. Construction which occurs prior to grant approval and ~~OTRD~~ Department's authorization will not be eligible for reimbursement.

(d) Inspections. Three inspections will be conducted throughout the life of the project. They are as follows:

- (1) a pre-inspection before the project begins
- (2) a 50% inspection to evaluate progress
- (3) a post-inspection when the project is complete.

(e) Compliance. All federal laws apply. Development projects approved to receive federal funds must meet federal contract compliance requirements. These requirements include, but are not limited to:

- (1) Equal Opportunity Clause (41 CFR 60-1.4);

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- (2) Nonsegregated Facilities Statement (41 CFR 60-1.8);
- (3) Notice of Requirement for Affirmative Action (41 CFR 60-4.2)
- (4) Standard Federal Equal Employment Opportunity Specifications (41 CFR 60-4.3);
- (5) Acknowledgment that federal funds are being utilized.
- (6) Facility designs must be in accordance with the Architectural Barriers Act of 1968 (Public Law 90-480 as amended through 1978), and the Americans With Disabilities Act (ADA) (Public Law 101-336, 1990).
- (7) Flood Disaster Protection Act of 1973 (P.L. 93-234);
- (8) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646)
- (9) Management of Real Property (49 CFR 18.31, 49 CFR 19.32)
- (10) Management of Equipment (49 CFR 18.32, 49 CFR 19.34)

### SUBCHAPTER 23. COLLECTION OF ACCOUNTS RECEIVABLE

#### 725:15-23-2. Collection processes

- (a) The Department will make every reasonable effort to collect all duly owed and delinquent accounts in a timely manner consistent with cost effective principles. Such efforts may include, but are not limited to, telephone, written certified correspondence, Small Claims Court, and referral to a collection agency.
- (b) Accurate and up to date account files and monitoring information shall be maintained by the Department and a summary report of all unpaid accounts shall be presented to the Executive Director for review and appropriate action.
- (c) The Executive Director shall direct the implementation of operation procedures to carry out the expressed intent of the policy. ~~Such procedures shall provide for specific staff responsibility and time frame for effectively carrying out the policy. All department personnel shall comply with such procedures.~~
- (d) ~~Annually or more frequently as required, the Chief Financial Officer shall submit a list of accounts to be certified as uncollectible to the State Auditor. The Auditor will review and submit a recommendation of accounts to be certified as uncollectible to the Executive Director for their action.~~

### SUBCHAPTER 25. GIFT CARDS CERTIFICATES, CODES OR VOUCHERS

#### 725:15-25-1. Purpose

The purpose of this Subchapter is to establish policy for the sale of ~~department~~ Department gift certificates, gift cards, codes, vouchers or other proofs of issuance, here on referred to as gift ~~certificates~~ cards.

#### 725:15-25-2. Establishing gift ~~certificate~~ card programs

Gift ~~certificate~~ card programs may be established upon approval of the Executive Director when it is determined sale of such ~~certificate~~ cards will increase revenue for the operating divisions.

#### 725:15-25-3. Guidelines of issuing gift certificates cards

- (a) Gift ~~certificate~~ cards may be issued for any dollar amount and full payment of the face value of the ~~certificate~~ cards must be made at time of purchase.
- (b) Gift ~~certificate~~ cards may ~~not~~ be issued for promotional purposes as approved by Director of State Parks.

#### 725:15-25-4. Expiration date

- (a) Gift ~~certificates~~ cards will carry an expiration date ~~that is no more than one (1) year from date of issue~~ in accordance with current system of record for electronic gift cards.
- (b) Paper gift certificates will carry an expiration date that is no more than one (1) year from the date of issue.

#### 725:15-25-5. Use of gift ~~certificates~~ cards

The original gift ~~certificate~~ cards or electronic record must be presented to obtain credit against the purchase of goods or services.

#### 725:15-25-6. Outstanding balance on redeemed gift certificates cards

When the amount of a gift ~~certificate~~ card exceeds charges for services rendered, the outstanding balance will be cleared by using one of the following methods:

- (1) If the gift card is a paper certificate from the previous gift certificate program, a new electronic gift card for the remaining balance will be issued. A new gift certificate for the remaining balance may be issued. The new gift certificate will carry the same expiration date as the original gift certificate.
- (2) If a ~~gift certificate~~ card is in an electronic format, the remaining balance will remain on the electronic account.

#### 725:15-25-7. General accountability controls

The Chief Financial Officer will be responsible for establishing accountability controls. Funds obtained from the sale of ~~certificates~~ gift cards will be accounted for in accordance with established procedures.

### SUBCHAPTER 31. REFUNDS

#### PART 3. REFUNDS



725:15-31-13. Rain checks in lieu of refund

[REVOKED]

- (a) A rain check may be issued in lieu of a refund when an individual has paid for usage at a state park facility in advance and cannot complete the usage. Managers reserve the right to prorate the amount of a refund based upon the usage already consumed.
(b) The facility manager shall determine and approve the cause for the inability of the guest to complete the stay and/or usage.
(c) Rain checks shall be issued by the park manager or designee.
(d) Rain checks shall be issued for paid usage only.
(e) Rain checks are not transferable.
(f) Rain checks are valid for no more than one year from the date of issue and may be redeemed at any department operated facility.

[OAR Docket #22-662; filed 7-21-22]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 20. MARKETING SERVICES OPERATION

[OAR Docket #22-663]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
725:20-1-1. Purpose [AMENDED]
725:20-1-4. Definitions [NEW]
Subchapter 7. Reimbursement of Matching Funds to Multicounty Organizations
725:20-7-2. Definition of matching funds; limitations [AMENDED]
725:20-7-3. Tourism marketing plan; budget work program [AMENDED]
725:20-7-4. Allocation of matching funds among multicounty organizations [AMENDED]
725:20-7-5. Allowable expenditures [AMENDED]
725:20-7-7. Tourism promotion expenditures [AMENDED]
725:20-7-9. Independent and certified audit [AMENDED]
Subchapter 9. Brochure Charges
725:20-9-5. Establishing fees [REVOKED]
725:20-9-6. Application of fees, discounts and waivers [REVOKED]
Subchapter 11. Promotional Items Fees
725:20-11-3.1. Establishing fees [REVOKED]
725:20-11-3.2. Application of fees, discounts and waivers [AMENDED]
725:20-11-4. Authorization [AMENDED]
725:20-11-5. Mailing/freight charges [AMENDED]
725:20-11-6. Sales tax [AMENDED]
Subchapter 13. Tourism Information Centers
725:20-13-1. Purpose [AMENDED]
725:20-13-2. State Capitol tours [AMENDED]
725:20-13-4. Setting hours of operation [AMENDED]
725:20-13-8. Soliciting [AMENDED]
725:20-13-9. Alcoholic beverages and controlled substances [AMENDED]
725:20-13-10. Commercial use of Tourism Information Centers [AMENDED]

AUTHORITY:

Oklahoma Tourism and Recreation Department; 74 O.S. §2204

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 25, 2022

COMMENT PERIOD:

February 15, 2022, through March 17, 2022

PUBLIC HEARING:

March 18, 2022

ADOPTION:

March 29, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

April 1, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The purpose of the permanent rules is to amend the rules to update the language in the rules to reflect recent statutory changes; revoke rules that are preempted by statute, no longer in use, or unneeded; and to bring the rules in line with current practices, information, and modernization efforts of the Department.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

725:20-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. This Chapter applies specifically to the responsibilities of the ~~Travel and Tourism~~ Travel Promotion Division.

725:20-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Department" means the Oklahoma Tourism and Recreation Department.

"Director" means the Director of the Travel Promotion Division, or their designee.

"Division" means the Travel Promotion Division.

"Executive Director" means the Executive Director or Deputy Executive Director of the Oklahoma Tourism and Recreation Department.

SUBCHAPTER 7. REIMBURSEMENT OF MATCHING FUNDS TO MULTICOUNTY ORGANIZATIONS

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### 725:20-7-2. Definition of matching funds; limitations

(a) Matching funds are funds appropriated by the Legislature and administered by the ~~Tourism and Recreation~~ Department, for the reimbursement of expenditures by qualified multicounty organizations for allowable administrative expenditures and for allowable tourism promotion expenditures conducted by the multicounty organization.

(b) Limitations to the amount of matching funds that any multicounty organization may receive are contingent upon:

- (1) the total amount appropriated each year by the Legislature;
- (2) the amount of allowable expenditures by a multicounty organization;
- (3) the number of eligible multicounty organizations; and,
- (4) an organization's compliance with rules governing the program.

### 725:20-7-3. Tourism marketing plan; budget work program

(a) Each multicounty organization shall prepare a tourism marketing plan, which shall include a budget work program, for the ensuing fiscal year. The tourism marketing plan shall specify:

- (1) Which multicounty region of the state the multicounty organization represents and the tourism attributes of the region.
- (2) Target markets and the method(s) of communication that will be employed to reach the targeted markets shall be identified.
- (3) The projected cost of each method of promotion.
- (4) Evaluative measures of the multicounty organization's marketing and promotion. The measures shall be designed to enable the multicounty organization to gauge whether a promotion/marketing effort reached the identified target market(s) and how many inquiries to the multicounty organization resulted from the promotion/marketing effort. The results shall be submitted to the Department as a supplemental report with the annual independent audit.
- (5) The marketing plan shall be specific as to ~~how~~How the multicounty organization plans to attract travelers/visitors/tourists to the region comprised of the multiple counties.

(b) The tourism marketing plan shall not be an individual business, community, or county plan.

(c) A multicounty organization's marketing shall complement the State of Oklahoma's tourism marketing plan in the following regards:

- (1) Target markets shall be identified and all marketing/promotion shall be placed in such a manner as to effectively reach the targeted markets;
- (2) Media advertising/communication shall be employed to project an image of the multicounty region and to pull inquiries for more specific or comprehensive information about the area, events, or attractions;
- (3) Produce specific and comprehensive information about the multicounty region's tourism attributes;

(4) Distribute information to those who inquire, as well as to unsolicited potential travelers/visitors/tourists, and at travel and trade shows; and,

(5) Evaluate the multicounty organization's marketing/promotion methods to determine effectiveness.

(d) Each multicounty organization shall submit its marketing plan, which includes a budget work program for the ensuing fiscal year to the Tourism and Recreation Department not later than May 20, each year.

(e) Expenditures for obligations incurred before the ~~Tourism and Recreation Commission~~Executive Director approves a multicounty organization's plans and budget, and expenditures not in accordance with a multicounty organization's marketing plan shall not be reimbursable expenditures. Amendments to marketing plans may be submitted during the current fiscal year and are subject to approval by the ~~Oklahoma Tourism and Recreation Commission~~Executive Director.

(f) A multicounty organization's marketing plan shall be structured to:

- (1) Integrate the association's tourism marketing and promotion with the Department's tourism marketing;
- (2) Participate and cooperate with the Department in identifying historical, scenic and recreational attractions and events in the multicounty organization area;
- (3) Participate at travel/trade shows by exhibiting at a minimum of one (1) travel/trade show;
- (4) Participate and cooperate with the Department in developing and distributing brochures, news and publicity materials which promote area attractions and tourism-related activities by budgeting for the production of a periodic promotional publication an amount equal to a minimum of thirty percent (30%) of the amount of matching funds allocated to the multicounty organization;
- (5) Participate and cooperate with the Department in identifying marketing areas for the purpose of placing media advertising that promotes area attractions and tourism-related activities;
- (6) Participate and cooperate with the Department in the development of print media, radio and television spots to be utilized for paid and public service announcements and contract for and place a minimum of ten thousand dollars (\$10,000.00) or higher in media advertising with media whose majority circulation is outside the counties comprising the multicounty organization's area;
- (7) Participate and cooperate with the Department in the development of travel industry familiarization tours and international travel markets for the state;
- (8) Participate and cooperate with the Department in developing package tours for the purpose of establishing Oklahoma as a destination state; and,
- (9) Participate and cooperate with the Department in tourism promotion and advertising programs ~~approved by the Commission~~.

(g) A multicounty organization's marketing shall be planned, implemented and administered by the multicounty organization's administrator or staff designated by the association's governing body.

(h) A multicounty organization shall not subcontract or reassign the responsibilities described without the approval of the Department of Tourism and Recreation.

**725:20-7-4. Allocation of matching funds among multicounty organizations**

(a) Matching funds appropriated by the Legislature for multicounty organizations shall be allocated among the multicounty organizations who have submitted an acceptable marketing plan and certified audit for the previous fiscal year to the ~~Oklahoma Tourism and Recreation~~ Department. The marketing plan will be considered an application to receive matching funds.

(b) To be eligible to receive matching funds, a multicounty organization must have raised an average of at least fifty thousand dollars (\$50,000.00) in private funds over the three (3) most recent fiscal years.

(c) The amount allocated to a multicounty organization shall be one hundred percent (100%) of the average amount expended, by the multicounty organization over the three (3) most recent fiscal years, for administration and promotion expenses that would have qualified for reimbursement with matching funds, regardless of whether the expenditures were reimbursed. However, no multicounty organization will receive more than twenty-five percent (25%) per allocation of the amount appropriated by the Legislature.

(d) The average amount will be derived from the annual independent audits submitted by a multicounty organization for the most recent three (3) years.

(e) If a multicounty organization has not been audited for three (3) consecutive years, its amount of private sector funds raised will be based on the average of the two (2) most recent years or, if audited for only the immediate past fiscal year, the amount of qualified private sector funds raised during that year.

(f) In the event the appropriated funds are more, or less than the amount necessary to satisfy one hundred percent (100%) of the overall average, then each association will be allocated an amount equivalent to its percentage of the overall average.

(g) If a multicounty organization has not utilized the full amount of its allocation (evidenced by either proof of payment, invoice showing obligated expense, work order, or contract) at least thirty (30) days prior to the end of the fiscal year, the unobligated amount shall be reallocated among the multicounty organizations who stipulate they will be able to utilize matching funds in excess of the amount initially allocated. No multicounty organization shall receive more than twenty-five percent (25%) of the reallocated amount.

**725:20-7-5. Allowable expenditures**

(a) Expenditures by multicounty organizations are expenditures that are consistent with the definition of Administrative and Promotion expenditures, submitted to the ~~Department of Tourism and Recreation~~ for reimbursement of matching funds.

(b) Allowable administrative expenditures shall be limited to those expenditures specified in the definition of administrative expenditures. An administrative expenditure shall be an

expenditure made by the multicounty organization for administering the association's fund raising for tourism promotion.

(c) Allowable tourism promotion expenditures shall be limited to those expenditures specified in the definition of tourism promotion expenditures. A tourism promotion expenditure shall be an expenditure made by the multicounty organization for marketing and promotion conducted by the association. Advertising or promotion of activities that are prohibited by Oklahoma State Law shall not be allowable expenditures.

(d) Allowable expenditures shall be in conformity with the multicounty organization's marketing plan approved by the ~~Oklahoma Tourism and Recreation Commission~~ Director.

(e) Paying for marketing, promotion or administrative expenses incurred by, or on behalf of, an individual or entity other than the multicounty organization shall not be an allowable (matchable) expenditure.

**725:20-7-7. Tourism promotion expenditures**

(a) Tourism promotion expenditures are expenditures by the multicounty organization for tourism marketing planned and conducted by the association.

(1) Tourism promotion expenditures by a multicounty organization reimbursable with matching funds are actual costs for the preparation, printing, publication and distribution of media advertising in:

- (A) brochures;
- (B) travel posters;
- (C) mailing pieces;
- (D) newspapers;
- (E) magazines;
- (F) film and video;
- (G) television;
- (H) radio;
- (I) billboards; and,
- (J) websites.

(2) Brochures, promotion materials and advertisements shall be planned, approved and implemented by the multicounty organization.

(b) Any tourism promotion communication, with the exception of billboards, shall substantially disseminate information or project an image of the relevant multicounty area.

(c) Brochures, direct mail, newspaper advertisements, magazine advertisements, television advertisements, radio advertisements, and websites shall specify how the reader/viewer/listener may inquire of the multicounty organization for comprehensive or particular information about tourism attractions, services, events or attributes of the multicounty organization area.

(1) The multicounty organization shall maintain a record of responses and inquiries that result from the mass communication and media advertising.

(2) The record, at a minimum, shall identify the origin of inquiries and the number of inquiries generated by each communication/advertising method.

(d) Costs of renting exhibit space and displays at travel and trade shows and conventions, and the multicounty organization's expenses for operating such exhibits, not to exceed amounts provided in the State Travel Reimbursement Act.

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- (e) Costs of travel writer, travel agent, tour broker and tour operators familiarization tours into the state of Oklahoma, not to contravene the State Travel Reimbursement Act shall be allowable expenditures.
- (f) Registration fees for the annual tourism and recreation industry conference shall be allowable expenditures.
- (g) Advertising/promotion specialties shall be indicative and representative of the multicounty region's tourism attributes. Items shall be not for resale and distributed to target markets.
- (h) All tourism promotion expenditures shall be for the purpose of attracting travelers/visitors/tourists into the state of Oklahoma or into the multicounty organization area.
- (i) Media advertising (excluding billboards) shall be placed with a medium whose primary circulation is outside the multicounty organization's area.
- (j) A newspaper, magazine, television station, or radio station that cannot document by subscription, circulation, viewer or listener ratings that their primary audience is outside the multicounty organization's area shall not qualify as a communication/advertising medium for which matching funds may be reimbursed. However, a multicounty organization may use as much as twenty percent (20%) of its total allowable promotion expenditures promoting events and attractions within its region by using local newspapers, radio stations, television stations, brochures or billboards.
- (k) There shall be no prohibition upon the location of billboard advertising provided the billboard is along an interstate or state highway.
- (l) Matching funds shall not be reimbursed to a multicounty organization for any partisan or political communication or advertising.
- (m) Any communication/advertising shall include and utilize the appropriate logo or slogan designated by the ~~Tourism and Recreation~~ Department as the official tourism logo or slogan. The logo shall be prominently displayed on the cover of print publications and, at a minimum, on ten percent (10%) of the publication's pages.
- (n) Brochures and periodic promotional publications shall state "produced in cooperation with the Oklahoma Tourism and Recreation Department" and, shall identify the Department as a source of tourism information for the state and include the Department's website address and/or telephone number.
- (o) Tourism promotion expenditures shall be specified in the multicounty organization's marketing plan and budget work program. The marketing plan shall comply with the format provided by the Department.
- (p) Tourism promotion expenditures that are reimbursed with matching funds shall be limited to the production of material, communication, advertising, travel/trade show exhibitions and/or hosting of familiarization tours; all conducted by the multicounty organization.
- (q) Reimbursement of matching funds to a multicounty organization is expressly prohibited for any endeavor undertaken by, or any expense incurred by, an individual or entity other than the multicounty organization.

### 725:20-7-9. Independent and certified audit

Each multicounty organization that receives matching funds shall provide to the ~~Tourism and Recreation~~ Department an audit for the fiscal year. The audit shall be performed by a public accountant or certified public accountant registered with the Oklahoma Accountancy Board.

- (1) The audit shall be a financial audit as defined by "Government Auditing Standards", issued by the Comptroller General of the United States, and due no later than January 20 each year.
- (2) The scope of the audited financial report shall, at a minimum, consist of a statement of revenue and expenditures, and shall specify the sources and uses of funds and the fund-raising method(s) shall be described.
- (3) The audited financial report shall identify separately the disbursement of all allowable and discretionary expenditures. Examples of discretionary promotion expenditures shall be provided as a supplement to the audit to determine whether such expenditures satisfied the requirements to be reimbursed with matching funds.
- (4) Revenue reported shall include all advertising revenue received and define all other individual sources of revenue. The names and addresses and amounts received from each advertiser shall be included as an unaudited supplemental schedule to the audit report.
- (5) The auditor's Report on Compliance ~~with~~ With Rules and Regulations shall address whether a contractor who solicited advertising revenue for the production of a promotional periodical publication provided detailed written disclosure of its actual costs incurred in performance of the contract on at least a quarterly basis.
- (6) Audit reports showing reimbursement of unallowable expenditures, reimbursement for expenditures by an individual or entity other than the multicounty organization, or noncompliance with statutes, procedures, or ~~Tourism and Recreation~~ Department rules and regulations will bar further reimbursement of matching funds until restitution is made to the ~~Tourism and Recreation~~ Department.
- (7) An incomplete or insufficient audit report shall be cause for withholding matching funds until such time as an acceptable audit is provided.
- (8) The person or entity engaged to perform the audit shall not be the same person or entity that performs book-keeping, controllership or management functions, or other accounting services for the multicounty organization; and, file a copy of the audit with the State Auditor and Inspector.
- (9) While not a part of the audit and not subject to the standards of the audit: the performance measures report (as prescribed by the Department), evaluative measures report that records the origin and number of inquiries, and examples of advertising not submitted for reimbursement with matching funds shall be submitted to the Department separate from the audit; but, simultaneously with the audit.
- (10) When an audit cites deficiencies or shortcomings, the organizations shall include a response describing how the deficiencies or shortcomings will be corrected.

Organizations will not be eligible for funding until the shortcomings identified in the audit are corrected.

**SUBCHAPTER 9. BROCHURE CHARGES**

**725:20-9-5. Establishing fees [REVOKED]**

- (a) ~~The Executive Director and the Director of Travel and Tourism shall periodically submit proposed fees to the Commission for approval.~~
- (b) ~~Such fees will be based upon the cost of producing brochures.~~
- (c) ~~The Division of Travel and Tourism will maintain fee information to be made available upon request. Requests may be made as follows:
 
  - (1) ~~Telephone requests may be made by calling 405.230.8400.~~
  - (2) ~~Written requests may be mailed to Division of Travel and Tourism, 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma 73102.~~~~

**725:20-9-6. Application of fees, discounts and waivers [REVOKED]**

- (a) ~~Every person shall be charged the same fee for brochures except:
 
  - (1) ~~Individual persons seeking tourist information. Persons may receive quantities of brochures up to 25 of any one item, once annually, without charge for the brochures.~~
  - (2) ~~Any tourism related company, organization or individual may receive Department brochures free of charge within the quantity approved by the Director of the Travel and Tourism Division or designee.~~~~
- (b) ~~Oklahoma State government agencies may be exempt from brochure charges with approval of the Director of the Travel and Tourism Division designee and if the use of brochures is determined to promote Oklahoma tourism.~~
- (c) ~~Any company, organization or individual may be exempt from the brochure or freight/postage charges if they are involved in a direct promotional effort with the Department.~~
- (d) ~~All organizations, companies or individuals shall be charged for freight/postage of all bulk orders unless exempted in (c) of this Section.~~

**SUBCHAPTER 11. PROMOTIONAL ITEMS FEES**

**725:20-11-3.1. Establishing fees [REVOKED]**

- (a) ~~The Executive Director and Director of Travel and Tourism shall periodically submit proposed fees to the Commission for approval.~~
- (b) ~~Such fees will be based upon the following considerations:
 
  - (1) ~~Cost of items produced.~~~~

~~(2) Distribution costs.~~

~~(c) The Division of Travel and Tourism will maintain printed fee schedules to be made available upon request. Requests may be made as follows:~~

- ~~(1) Telephone requests may be made by calling 405.230.8400.~~
- ~~(2) Written requests may be mailed to Division of Travel and Tourism, 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma 73102.~~

**725:20-11-3.2. Application of fees, discounts and waivers**

- (a) All organizations, companies, individuals and other entities shall pay for promotional items created, manufactured or distributed by the Division of Travel and Tourism.
- (b) Every person shall be charged the same fee for promotional items except:
  - (1) Fees may be waived or discounted for organizations, companies, individuals and other entities involved in promotional efforts of the ~~Travel and Tourism Division of the Oklahoma Tourism and Recreation Department.~~
  - (2) The Director of the ~~Travel and Tourism Division of the Oklahoma Tourism and Recreation Department~~ may authorize discounts for volume purchases or when the promotional effort is deemed in the best interest of the Division of Department.
  - (3) The Director of the ~~Travel and Tourism Division~~ may waive any fees or charges when promotional effort is deemed in the best interest of the Division or Department.

**725:20-11-4. Authorization**

- (a) Organizations, companies, individuals and other entities may produce, sell and distribute promotional items of the ~~Travel and Tourism Division of the Oklahoma Tourism and Recreation Department~~ with written permission from the Director of the ~~Travel and Tourism Division of the Department.~~
- (b) The Director of the ~~Travel and Tourism Division~~ may authorize the production, sale and distribution of ~~Travel and Tourism Division~~ promotional items for a fee and/or percentage of sales based on a bid. The ~~Travel and Tourism Division~~ reserves the right to accept multiple bids.
- (c) The ~~Travel and Tourism Division~~ reserves the right to cancel authorization for producing, selling, and distributing promotional items as it deems necessary. The Division also reserves the right to establish a time limit on the authorization extended to organizations, companies, individuals and other entities producing, selling, and distributing promotional items of the ~~Travel and Tourism Division.~~

**725:20-11-5. Mailing/freight charges**

The ~~Travel and Tourism Division~~ shall collect the cost of mail or freight on any promotional items sent/forwarded to organizations, companies, individuals or other entities unless waived pursuant to OAC 725:20-11-3.2.

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## 725:20-11-6. Sales tax

Appropriate sales tax shall be charged on all sales of promotional items by the ~~Travel and Tourism Division of the Oklahoma Tourism and Recreation Department.~~

## SUBCHAPTER 13. TOURISM INFORMATION CENTERS

### 725:20-13-1. Purpose

The purpose of this Subchapter is to establish policies for Tourism Information Centers operated by the Division ~~of Travel and Tourism.~~

### 725:20-13-2. State Capitol tours

Tours of the State Capitol may be arranged by calling (405) 521-3356, through the Travel Promotion Division as follows:

- (1) Telephone requests may be made by calling (405) 522-9500.
- (2) ~~Written requests may be to the Department at [https://www.travelok.com/contact\\_us](https://www.travelok.com/contact_us).~~

### 725:20-13-4. Setting hours of operation

- (a) ~~The Executive Director or the Director of Travel and Tourism will periodically approve and appropriately publish hours of operation for Tourism Information Centers.~~
- (b) Hours of operation will be based upon the following considerations:
  - (1) Seasonal travel patterns
  - (2) Available staff
- (c) The hours of operation will be posted at each Tourism Information Center and be made available on [www.travelok.com](http://www.travelok.com).

### 725:20-13-8. Soliciting

The following is prohibited in or on the grounds of Tourism Information Centers:

- (1) Soliciting or demanding gifts, money, goods or services.
- (2) Selling, hawking, peddling any goods, wares, merchandise, liquids, edibles or any item of value unless authorized by the ~~Oklahoma Tourism and Recreation Department.~~

### 725:20-13-9. Alcoholic beverages and controlled substances

- (a) Possession or consumption of alcoholic beverages is prohibited in Tourism Information Centers, except for special events as approved by the ~~Director of Travel and Tourism.~~
- (b) Possession of a controlled substance, unless such substance was obtained by the possessor directly or pursuant to a valid prescription from a practitioner acting in the course of professional practice allowed by state law, is prohibited in Tourism Information Centers.

### 725:20-13-10. Commercial use of Tourism Information Centers

- (a) The Department may authorize the ~~Travel Promotion Division~~ to enter into agreements for commercial use of space in a tourism information center for advertising. Examples of appropriate commercial use of space are interactive video displays, printed promotional materials, interactive hotel/motel reservations equipment, etc.
- (b) Upon approval of the Department to enter into agreements for commercial use of space, rates shall be set by agreements in one of the following manners:
  - (1) ~~Printed promotional materials. The Executive Director and the Director of Travel and Tourism shall periodically approve and appropriately publish a schedule of fees for printed promotional materials.~~
  - (2) ~~Other commercial use fees. Agreements for other types of commercial use will be awarded by competitive bid. The Division of Travel and Tourism reserves the right to award bids to multiple vendors.~~
- (c) All organizations, companies, individual and other entities will be charged the same fees except:
  - (1) Fees may be waived or discounted for organizations, companies, individuals and other entities involved in promotional efforts of the ~~Travel and Tourism Division of the Department.~~
  - (2) The Executive Director, or the Director ~~of Travel and Tourism~~ may waive any fees or charges when promotional effort is deemed in the best interest of the department.
  - (3) ~~The Director of the Travel and Tourism Division of the Oklahoma Tourism and Recreation Department may authorize discounts when it is deemed in the best interest of the Division or Department.~~
  - (4) ~~State and federal governmental agencies and non-profit organizations may be exempted from fees charged for commercial advertising displays.~~

[OAR Docket #22-663; filed 7-21-22]

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #22-664]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 2. General Purpose
- 725:30-2-2. Applicability and scope [AMENDED]
- 725:30-2-3. Penalties [AMENDED]
- 725:30-2-4. Definitions [AMENDED]
- 725:30-2-6. Closure and curfew [AMENDED]
- 725:30-2-7. Public notice [AMENDED]
- 725:30-2-8. Signs, signals and markings [AMENDED]
- Subchapter 4. Public Use and Recreation
- 725:30-4-1. Preservation and protection of natural, cultural and archaeological resources [AMENDED]
- 725:30-4-2. Hunting [AMENDED]
- 725:30-4-3. Fishing [AMENDED]
- 725:30-4-4. Weapons [REVOKED]

725:30-4-5. Research and specimens [AMENDED]  
 725:30-4-6. Audio disturbances and quiet hours [AMENDED]  
 725:30-4-7. Fires [AMENDED]  
 725:30-4-8. Sanitation [AMENDED]  
 725:30-4-11. Aircraft [AMENDED]  
 725:30-4-13. Property [AMENDED]  
 725:30-4-15. Interfering, lawful order and false reports [AMENDED]  
 725:30-4-16. Report of injury or damage [AMENDED]  
 725:30-4-18. Alcoholic beverages and controlled substances [AMENDED]  
 725:30-4-19. Gambling [REVOKED]  
 725:30-4-20. Soliciting [AMENDED]  
 725:30-4-21. Explosives and fireworks [AMENDED]  
 725:30-4-22. Special events [AMENDED]  
 725:30-4-23. Public assemblies, meetings and distribution of printed material [AMENDED]  
 725:30-4-24. Livestock and agriculture [AMENDED]  
 725:30-4-25. Memorialization [AMENDED]  
 725:30-4-26. Swimming and associated swimming activities [AMENDED]  
 Subchapter 6. Fees, Discounts, and Waivers  
 725:30-6-1. Fee authority, requirements, discounts and waivers [AMENDED]  
 Subchapter 8. Camping and day use  
 725:30-8-1. Definitions [AMENDED]  
 725:30-8-2. Prohibitions [AMENDED]  
 725:30-8-3. Fee collection, restrictions and exemptions [AMENDED]  
 725:30-8-4. Time limits and extensions [AMENDED]  
 725:30-8-5. Day use [AMENDED]  
 725:30-8-6. Group camping [AMENDED]  
 Subchapter 10. Trails  
 725:30-10-1. Oklahoma Trails System Act [AMENDED]  
 725:30-10-2. Prohibitions [AMENDED]  
 Subchapter 12. Reservations and use of Cabins, Group Camps, Shelters, Reserve/Assigned Camping Facilities, Amphitheaters, Community Buildings and Meeting Rooms  
 725:30-12-1. Definitions [AMENDED]  
 725:30-12-2. Cabins [AMENDED]  
 725:30-12-3. Group camps [AMENDED]  
 725:30-12-4. Shelters [AMENDED]  
 725:30-12-5. Reserved/assigned and group camping [AMENDED]  
 725:30-12-6. Amphitheaters, community buildings and meeting rooms [AMENDED]  
 Subchapter 16. Permits  
 725:30-16-1. Objective and general requirements [AMENDED]  
 725:30-16-2. Prohibitions [AMENDED]  
 725:30-16-3. Types of Permits [NEW]  
 Subchapter 18. Special Use Areas  
 725:30-18-2. Alabaster Caverns State Park [AMENDED]  
 725:30-18-3. McGee Creek Natural Scenic Recreation Area - McGee Creek State Park [AMENDED]  
 Subchapter 20. Volunteers  
 725:30-20-1. Definition, purpose and objective [AMENDED]  
 725:30-20-2. Application, qualification, selection and restriction  
 725:30-20-3. Orientation and training [AMENDED]  
 725:30-20-4. Supervision and performance evaluation [AMENDED]  
 725:30-20-5. Fee waiver [AMENDED]  
 725:30-20-8. Prohibitions [AMENDED]  
 725:30-20-9. Termination of Volunteer Contract [AMENDED]  
 Subchapter 22. Concession Leases and Commercial Use  
 725:30-22-1. Purpose an authority [AMENDED]  
 725:30-22-1.1. Definitions [AMENDED]  
 725:30-22-1.2. Examination [AMENDED]  
 725:30-22-2. ~~Bidding~~ RFP process [AMENDED]  
 725:30-22-3. Evaluation of bids and award of contracts [AMENDED]  
 725:30-22-4. General lease requirements [AMENDED]  
 725:30-22-6. Permits [REVOKED]  
 Subchapter 23. Mineral Leases and Operations  
 725:30-23-1. Purpose and authority [AMENDED]  
 725:30-23-2. Examination [AMENDED]  
 725:30-23-4. Rules and regulations [AMENDED]  
 725:30-23-5. Damages and fees [AMENDED]  
 Subchapter 26. Vehicles and Traffic Safety

725:30-26-1. Applicability and scope [AMENDED]  
 725:30-26-2. State law applicability [REVOKED]  
 725:30-26-4. Reporting motor vehicle accidents [AMENDED]  
 725:30-26-5. Park road designation [AMENDED]  
 725:30-26-6. Load, weight and size limits [AMENDED]  
 725:30-26-9. Open container of alcoholic beverage [REVOKED]  
 725:30-26-11. Speed limits [AMENDED]  
 725:30-26-12. Unsafe operation [AMENDED]  
 725:30-26-14. Off-road vehicles [AMENDED]  
 725:30-26-15. Use of golf carts and utility vehicles [AMENDED]  
 Subchapter 28. Park Security and Law Enforcement  
 725:30-28-1. Park ranger - powers, authority and appointments [REVOKED]  
 725:30-28-2. Primary authority and jurisdiction [REVOKED]  
 725:30-28-3. Other agencies having authority - reporting requirements [AMENDED]  
 725:30-28-5. Park ranger applicants - requirements [REVOKED]  
 Subchapter 29. Lodge Operations  
 725:30-29-2. Definitions [AMENDED]  
 725:30-29-3. Use of Public Space [AMENDED]  
 725:30-29-4. Accepting reservation requests [AMENDED]  
 725:30-29-5. Setting rates for guest rooms, meeting rooms and other public space [AMENDED]  
 725:30-29-6. Special rates and promotional discounts [AMENDED]  
 725:30-29-8. Setting price and fees for commodities and services provided by lodges [AMENDED]  
 725:30-29-10. Specials [REVOKED]  
 725:30-29-11. Promotional discounts [AMENDED]  
 725:30-29-14. Confidentiality of guest records [REVOKED]

**AUTHORITY:**

Oklahoma Tourism and Recreation Department; 74 O.S. §2204

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 25, 2022

**COMMENT PERIOD:**

February 15, 2022, through March 17, 2022

**PUBLIC HEARING:**

March 18, 2022

**ADOPTION:**

March 29, 2021

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

April 1, 2021

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2021

**EFFECTIVE:**

September 11, 2021

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The purpose of the permanent rules amend the rules to update the language in the rules to reflect recent statutory changes; revoke rules that are preempted by statute, no longer in use, or unneeded; and to bring the rules in line with current practices, information, and modernization efforts of the Department.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 2. GENERAL PURPOSE**

# Permanent Final Adoptions

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## 725:30-2-2. Applicability and scope

- (a) The regulations contained in this ~~chapter~~ Chapter apply to all persons entering, using, visiting or otherwise within:
- (1) The boundaries of ~~state-owned~~ state-owned lands and waters administered by or subject to the jurisdiction of the Oklahoma Tourism and Recreation Department, Division of State Parks.
  - (2) The boundaries of lands and waters, controlled, leased, administered or otherwise subject to the jurisdiction of the Oklahoma Tourism and Recreation Department, Division of State Parks.
- (b) The rules contained in Subchapter 18 of this ~~chapter~~ Chapter are special rules prescribed for special use areas. Those rules may amend, modify, relax or make more stringent the rules defined in this ~~chapter~~ Chapter but do not preclude the application of all rules in this ~~chapter~~ Chapter unless expressly indicated.
- (c) The rules contained in this ~~chapter~~ Chapter shall not be construed to prohibit administrative activities conducted by the Division of State Parks, or its agents, in accordance with general operations and management plans, or in emergencies involving threats to life, property and park resources.
- (d) The rules contained in this ~~chapter~~ Chapter are intended to treat a mobility-impaired person using a manual or motorized wheelchair as a pedestrian, and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same rules.
- (e) In addition to the rules set forth in this ~~chapter~~ Chapter, nothing shall preclude the application of any state law or federal regulation and the penalties prescribed therein.
- (f) The rules in this ~~chapter~~ Chapter are severally adopted. If one or more of these sections are deemed invalid, the remaining sections are intended to remain in effect. Where a rule herein is amended or revoked, acts or omissions prior thereto such amendment or revulsion may be prosecuted as though such section or rule had not been so amended or revoked.

## 725:30-2-3. Penalties

- (a) Any person found violating any rule contained in this ~~chapter~~ Chapter defined as prohibited shall be subject to revocation of visitation privileges and may be removed from park property by any commissioned park ranger for any period of time that is reasonable and appropriate.
- (b) Such persons shall be provided reasonable time to locate and secure all personal property and equipment prior to such removal.
- (c) In addition to the penalties prescribed in (a) of this section, other penalties may be imposed as prescribed and defined by state law or federal regulation.
- (d) Nothing shall preclude the application of community service work in any state park in whole or as part of a sentence, for persons convicted of crimes committed in the State Park System as prescribed by any duly appointed or elected official having jurisdiction over such matters.

## 725:30-2-4. Definitions

The following words or terms, when used in the chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Abandonment"** means the voluntary relinquishment of property with no intent to retain possession.

**"Administrative activities"** means those activities conducted under the authority of the Division of State Parks for the purpose of safeguarding persons or property, implementing management plans and conducting general repair and maintenance of facilities.

**"Aircraft"** means a device that is used or intended to be used for human flight in the air, including powerless flight.

**"Archaeological resources"** means material remains of past human life or activities that are of archaeological interest and are at least fifty (50) years of age. This term includes, but shall not be limited to, objects made and used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures, pit houses, rock paintings and carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

**"Authorized emergency vehicle"** means a vehicle in official use for emergency purposes by the Division of State Parks or an emergency vehicle as defined by state law.

**"Authorized person"** means an employee or agent of the Oklahoma Tourism and Recreation Department, Division of State Parks with delegated authority to enforce the provisions of this chapter.

**"Bicycle"** means every device propelled solely by human power upon which a person or persons may ride on land, have one, two, or more wheels, except a manual wheelchair.

**"Boundary"** means a delineation of state interest on a map filed or recorded by the state or political subdivision in accordance with applicable law.

**"Camping"** means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring a vessel for the apparent purpose of remaining overnight.

**"Carry"** means to wear, bear, or have on or about the person.

**"Commission"** means the Oklahoma Tourism and Recreation Department Commission which is a public body with the authority to establish policy, and carry out the duties of the Oklahoma Tourism and Recreation Act.

**"Controlled substance"** means a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV or V of Article II of Uniform Controlled Dangerous Substances Act [63:2-201-2-212].

**"Cultural resources"** means material remains of past human life or activities that are of archaeological interest and are at least fifty (50) years of age. This term includes, but shall not be limited to, objects made and used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures, pit houses, rock paintings and carvings, intaglios, or any portion or piece of the foregoing items, and the physical



site, location or context in which they are found, or human skeletal materials or graves.

**"Curfew"** means a restriction established by the park manager whereby specific areas within a park or a park unit may be closed or restricted to activities during designated periods.

**"Department"** means the Oklahoma Tourism and Recreation Department.

**"Developed area"** means roads, parking areas, day use areas, picnic areas, campgrounds, or other structures, facilities or lands located within development zones depicted on use maps.

**"Director"** means the Director of the Division of State Parks, or their designee.

**"Employee"** means any paid employee of the Oklahoma Tourism and Recreation Department, Division of State Parks regardless of classification status.

**"Executive Director"** means the director of the Oklahoma Tourism and Recreation Department, or the Deputy Executive Director.

**"Firearm"** means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to expel a projectile by the use of a propellant.

**"Fish"** means any member of the subclasses Agnatha, Chondrichthyes, or Osteichthyes families.

**"Fishing"** means taking or attempting to take fish.

**"Hunting"** means taking or attempting to take wildlife, except trappings.

**"Manager"** means the Park Manager, Lodge Manager, or Golf Course Manager who is responsible for the operation of the property.

**"Manual wheelchair"** means a device that is propelled by human power, designed for and use by a mobility impaired person.

**"Motor vehicle"** means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water except a motorized wheelchair.

**"Motorcycle"** means every motor vehicle having a seat for the use of the rider designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

**"Motorized wheelchair"** means a self-propelled wheeled device, designed solely for and used by a mobility impaired person.

**"Natural resources"** means any plant, animal, or any natural object or material which has been produced by nature and is located within a park unit.

**"Non-developed area"** means all lands and waters within park areas which are not developed.

**"Operator"** means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

**"Park area"** means lands and waters controlled or administered by the Oklahoma Tourism and Recreation Department, Division of State Parks.

~~**"Park Manager"** means the official in charge of a park area or an authorized representative thereof.~~

~~**"Park Ranger"** means a commissioned law enforcement official of the Oklahoma Tourism and Recreation Department, Division of State Parks with authority to enforce park rules and state laws. This includes reserve rangers.~~

**"Park road"** means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the Oklahoma Tourism and Recreation Department, Division of State Parks.

**"Permit"** means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, and regulated or beyond the normal scope of recreational activities for a state park unit.

**"Person"** means an individual, firm, corporation, society, association, partnership, or private or public body.

**"Pet"** means a dog, cat or any animal that has been domesticated.

**"Possession"** means exercising direct physical control or dominion, with or without ownership, over property, or archaeological or natural resources.

**"Primitive"** means an undeveloped area which does not provide any developed facilities including sanitation facilities or services.

**"Public use limit"** means the number of persons; number and types of animals; size and types of equipment, vehicles or property allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

~~**"Ranger"** means a commissioned law enforcement official of the Oklahoma Tourism and Recreation Department, Division of State Parks with authority to enforce park rules and state laws. This includes reserve rangers.~~

**"Refuse"** means trash, garbage, rubbish, waste, bottles or cans, debris, litter, liquid waste, or other discarded materials.

**"Regional Manager"** means the official in charge of a geographic region in the Oklahoma Tourism and Recreation Department, Division of State Parks.

**"Season"** means the primary recreation season in a calendar year which is from April 15 through September 30, except when defined differently within this chapter. All other time is considered to be "off season".

**"Services"** means, but is not limited to, meals and lodging, labor, professional services, transportation, tours or any act for which payment is customarily received.

**"Sign"** means a board, poster, placard or device displayed in a state park to advertise or convey information or a direction.

**"Smoking"** means the carrying of lighted cigarettes, cigars or pipes or the intentional and direct inhalation of smoke from these objects.

**"State"** means the State of Oklahoma.

**"State law"** means the applicable and non-conflicting laws or statutes enacted by the legislative and executive branches of government of the State of Oklahoma.

**"State Park System"** means all facilities, lands, waters under the control and administration of, owned or leased, operated and managed by the Oklahoma Tourism and Recreation Department, Division of State Parks.

**"Sunrise"** means a period of time one-half hour before actual sunrise.

## Permanent Final Adoptions

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**"Sunset"** means a period of time one-half hour after actual sunset.

**"Take"** means the pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the above.

**"Traffic"** means pedestrian, ridden or herded animals, vehicles and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for the purpose of travel.

**"Traffic control device"** means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the park manager for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

**"Trap"** means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

**"Unit"** means a single state park.

**"Unloaded"** as applied to weapons and firearms, means that:

(A) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm.

(B) A muzzle-loading weapon does not contain gun powder in the pan, or percussion cap is not in place.

(C) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

**"Vehicle"** means every device in, upon, or by which a person or property is or may be transported or drawn on land, and devices moved by human power or used exclusively upon stationary rails or track.

**"Visitor"** means a user of a park.

**"Weapon"** means a firearm compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spear gun, hand thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles, and includes any other weapon the possession of which is prohibited under the laws of the state.

**"Wildlife"** means any member of the animal kingdom and includes a part, product, egg, or offspring thereof, or the dead body or part thereof.

### 725:30-2-6. Closure and curfew

(a) Consistent with applicable state law and administrative rules, and based upon a determination that such action is necessary for the maintenance of public health and safety, protection of the environment, natural and cultural resources, implementation of operation and management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the park manager or designee may with approval of the regional manager:

(1) Close all or a portion of a park area to all public use or to a specific use or activity.

(2) Designate areas for specific uses or activities, or impose conditions or restrictions on a use or activity.

(3) Terminate or relax a restriction, limit, closure, designation, condition or visiting hour restriction imposed under (a) (1) or (2) of this section.

(b) Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude or duration that will result in significant alteration of the public use pattern of the park area or adversely affect the park's natural or cultural resources, or is of highly controversial nature, shall be approved by the ~~commission~~ Executive Director.

(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, or closure, the park manager shall prepare a written determination justifying such action or in the case of terminating a restriction, condition or closure previously established under (a) of this section, a determination of why the restriction is no longer necessary. This determination shall be filed in the director's office of the Oklahoma Tourism and Recreation Department, Division of State Parks and the park office where the restriction, condition or closure exists. This determination shall be available to the public upon request.

(d) To relax a condition whereby the area is currently restricted or closed the park manager shall implement a use limit system through the use of permits. Permits shall be issued in accordance with ~~subchapter-Subchapter (16)~~ 16 of this ~~chapter~~ Chapter.

(e) For the purpose of this ~~subchapter-Subchapter~~ a curfew shall not be considered an emergency and subject to the applicable provisions set forth in this ~~chapter-Chapter~~ except under (b) of this section and shall be approved by the director.

~~(f) Violating a restriction, condition or closure is prohibited.~~

### 725:30-2-7. Public notice

Whenever the authority of 725:30-2-6(a) is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of a park or park area as open or closed, the public shall be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along boundaries of affected areas.

(2) Maps defining affected areas shall be provided in park office and other convenient locations in the park.

~~(3) Public service announcements or a publication in a newspaper of general circulation in the affected area.~~

~~(4) Public service announcements through radio or television.~~ Posting on Department's website and social media platforms.

### 725:30-2-8. Signs, signals and markings

(a) Signs located within the state park system provide general information and regulatory guidance for public health and safety and protection of natural and cultural resources, and can include the use of international symbols.

(b) Certain signs will designate activities which are prohibited in the following manner:

- (1) The word "prohibited" will be defined as part of the signs language, or
- (2) A symbolic sign will bear a slash mark. These signs are pictured in Appendix A of this ~~chapter~~Chapter.

(c) Signs, signals or markings regulating the operation of motor vehicles, motorcycles and other legal modes of transportation within state parks shall carry the same force and affect as defined by Article I and II of Title 47, Oklahoma Statutes.

**SUBCHAPTER 4. PUBLIC USE AND RECREATION**

**725:30-4-1. Preservation and protection of natural, cultural and archaeological resources**

Except as otherwise provided in this ~~chapter~~Chapter, the following is prohibited in state parks:

- (1) Possessing, destroying, injuring, defacing, removing, digging, killing, or disturbing in or from its natural state:
  - (A) Living or dead wildlife or the parts or products thereof, such as antlers, nests, or skins [74:2217].
  - (B) Plants or trees or any parts thereof [74:2217].
  - (C) Non-fossilized and fossilized paleontological specimens, cultural or archaeological resources, or the parts thereof [74:2217].
- (2) The feeding, touching, teasing, frightening or intentional disturbance of wildlife, their nesting or breeding sites or other aspects of wildlife habitat.
- (3) Using or possessing wood gathered from within the park area. Provided, however, that the ~~park manager~~Manager may designate areas where wood on the ground may be collected for use as fuel for camp fires within the park area only.
- (4) Walking on, climbing, entering, ascending, descending, or traversing on any archaeological or cultural resource site, monument, or statue, except in areas designated by the ~~park manager~~Manager.
- (5) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, sub-bottom profiler, or any other metal detecting device. This paragraph does not apply to:
  - (A) A device broken down and stored or packed to prevent its use while in park areas;
  - (B) Electronic equipment used for the navigation of boats and fishing purposes;
  - (C) Metal or mineral detectors when authorized by Permitpermit from the ~~park manager~~Manager, or Director.
- (6) The gathering and removal of nuts, berries and fruits or any other natural products ~~for personal consumption purposes~~, except when authorized by a Permitpermit, upon determination that the gathering and removal will

~~not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources. The park manager may:~~

- ~~(A) Limit the quantity that may be gathered; or~~
- ~~(B) Limit the location where natural products may be gathered; and~~
- ~~(C) Restrict the possession or consumption to the park area.~~
- (7) Use of a magnet or electro magnetic object in water to retrieve metal objects, common known as magnet fishing.

**725:30-4-2. Hunting**

(a) All state parks within the state park system are considered game refuges, except as otherwise posted [74:2227]. The hunting, taking or possessing of wildlife or portions thereof, except as provided in (b) of this section, is prohibited [29:7-304].

(b) Hunting or trapping may be permitted in the park where such activities are specifically authorized by written agreement and approval of the ~~Oklahoma Tourism and Recreation Department Commission~~Executive Director and the Oklahoma Department of Wildlife Conservation Commission [74:2228].

(c) The hanging, curing or storage of lawfully taken wildlife carcasses in any area of a state park unit except those areas designated by the ~~park manager~~Manager is prohibited.

**725:30-4-3. Fishing**

(a) Fishing is permitted in all areas of the state park system except in those areas which have been posted and designated as restricted.

(b) Fishing shall be in accordance with the laws and regulations set forth by the Department of Wildlife Conservation.

(c) Bow fishing is restricted to primitive areas of the park with an authorized Permitpermit from the ~~park manager~~Manager or ~~park ranger~~Ranger.

**725:30-4-4. Weapons [REVOKED]**

~~(a) Except as otherwise provided in this section or pursuant to 21 O.S. 1290.1 et.seq. the following is prohibited in state parks:~~

- ~~(1) Possessing or carrying a weapon on one's person [21:1272].~~
- ~~(2) Possessing or carrying a loaded weapon in a motor vehicle, vessel or other mode of transportation [21:1289.7].~~
- ~~(3) Using a weapon in violation of any other applicable state laws.~~

~~(b) Weapons may be carried, possessed and used in accordance with 725:30-4-2(b), and:~~

- ~~(1) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose.~~
- ~~(2) Firearms with blank ammunition for living history events when approved by the park manager by permit.~~
- ~~(3) Within a residential dwelling. For the purposes of this paragraph only, the term "residential dwelling" means~~

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~~a fixed housing structure which is either the principal residence of its occupants, or is occupied by its occupants as an alternative residence.~~

~~(4) May be possessed within a temporary lodging arrangement when such implements are rendered temporarily inoperable or are parked, cased or stored in a manner which shall prevent their use.~~

~~(5) For authorized law enforcement officials in the performance of their official duties.~~

### 725:30-4-5. Research and specimens

(a) Permits may be issued by the ~~director~~—Director to an official representative of a reputable scientific or educational institution or state or federal agency for the purpose of research, baseline inventories, monitoring, impact analysis or group study when the ~~director~~—Director determines that such research would provide an educational or scientific value to the scientific community.

(b) Specimens for research and educational value may be removed by Permit ~~permit~~ except when such specimen removal would result in damage to other natural or cultural resources, adversely affect scenic values, or if the specimen is readily available outside the park.

(c) A Permit ~~permit~~—to take an endangered or threatened species in accordance with the Endangered Species Act shall not be issued unless said species cannot be obtained outside the park and the primary purpose of the collection is to enhance the protection or management of the species.

### 725:30-4-6. Audio disturbances and quiet hours

(a) Operating equipment or machinery such as an electric ~~generating plant generator~~, motor vehicle, audio device or musical instrument which generates unreasonable noise, considering the nature and purpose of the conduct, location, time of day or night, purpose for which the area was established, impact upon park visitors, and other factors that would govern the conduct of a reasonably prudent person under such circumstances is prohibited. This subsection does not apply to vessels in areas where motor boating is allowed, unless level of noise is unreasonable.

(b) During quiet hours (11:00 p.m. - 6:00 a.m. daily) operating equipment or machinery such as an electric ~~generating plant generator~~, motor vehicle, boat, audio device, musical instrument which, or any person who, generates unreasonable noise beyond the immediate camp or picnic site is prohibited. For the purposes of this section "unreasonable" shall mean noise which in the judgment of the ~~park manager~~—Manager or ~~park ranger~~—Ranger is considered disturbing to a reasonably prudent person.

(c) A Permit ~~permit~~—from the ~~park manager~~—Manager shall be required for special events or functions which will violate the terms set forth in subsections (a) and (b) of this section. ~~Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.~~

### 725:30-4-7. Fires

(a) The following is prohibited in state parks:

(1) Lighting or maintaining a fire, except in designated areas or receptacles and under conditions that may be established by the ~~park manager~~—Manager.

(2) Lighting, tending, or using a fire, stove or lantern in a manner that threatens, causes damage to or results in the burning of property or park natural resources, or creates a public safety hazard.

(3) Leaving a fire unattended.

(4) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or natural resources, or creates a public safety hazard.

(b) Fires shall be extinguished upon termination or use or departure from the area.

(c) During periods of high fire danger, the ~~park manager~~—Manager may close all or a portion of a park area to the lighting or maintaining of a fire.

### 725:30-4-8. Sanitation

The following is prohibited in state parks:

(1) Disposing of refuse in any manner or area except refuse receptacles.

(2) Depositing of refuse or materials in marked recyclable containers not designated for such refuse or materials.

(3) Using state park refuse receptacles or other refuse facilities for dumping household, commercial or industrial refuse, brought as such from private or municipal property, except in accordance with conditions as may be established by the ~~park manager~~—Manager.

(4) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(5) Draining sewage and/or grey water from a trailer or recreational vehicle, except in facilities provided for that purpose.

(6) Washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those areas designated for such purpose.

(7) Disposing of fish remains on land, or waters within 200 feet of boat docks or designated swimming areas.

(8) In non-developed or primitive areas the disposal of human body waste. The ~~park manager~~—Manager shall establish conditions concerning the containerization and carryout of human body waste.

(9) Disposing of refuse in a park where a trash in - trash out program has been instituted.

### 725:30-4-11. Aircraft

(a) The following are prohibited in state parks:

(1) Operating or using aircraft on lands or waters other than at locations designated by the ~~park manager~~—Director or by ~~permit~~—Permit.

(2) Operating or using aircraft under power within 500 feet of locations designated as swimming beaches, boat docks, piers or ramps.

- (3) Delivering or retrieving a person by helicopter or other airborne means except in emergencies involving public safety or serious property loss or pursuant to the term of a ~~permit~~Permit.
- (b) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration and state law.

**725:30-4-13. Property**

(a) Prohibited activities. The following are prohibited in state parks:

- (1) Abandoning property.
- (2) Leaving property unattended for longer than 48 hours, except when authorized by ~~permit~~Permit from the ~~park manager~~Manager in accordance with the conditions set out therein.
- (3) Failing to turn in found property to the ~~park manager~~Manager or ~~park ranger~~Ranger as soon as practicable.

(b) Impoundment of property.

- (1) Property left unattended in excess of an allowed period of time may be impounded by ~~park officials~~Park Officials.
- (2) Unattended property that interferes with visitor safety, orderly management of the park area, or presents a threat to natural resources may be impounded by ~~park officials~~Park Officials.
- (3) Found or impounded property shall be inventoried to determine ownership and safeguard such property.
- (4) The owner of record is responsible and liable for all charges to the person who has removed, stored or otherwise disposed of property impounded pursuant to this section; fees may be charged at the discretion of the ~~park manager~~Manager for the impoundment and storage of property impounded pursuant to this section.
- (5) Impoundment of motor vehicles and boats shall be conducted in accordance with state law.

(c) Disposal of property.

- (1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60 day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the ~~park manager's~~Manager's custody, if the owner cannot be identified.
- (2) Unclaimed found property shall be stored a minimum of 60 days and, unless claimed by the owner or an authorized representative thereof, may be claimed by the finder, provided that the finder is not an employee of the ~~Oklahoma Tourism and Recreation Department, Division of State Parks~~. If a finder claims such property the finder shall be responsible for any fees associated with such claimed property. Found property not claimed by the owner or an authorized representative or the finder shall be deemed abandoned.
- (3) All unclaimed abandoned property shall become the property of the ~~Department, Oklahoma Tourism and~~

~~Recreation Department, Division of State Parks and shall be disposed of in the following manner:~~

- (A) ~~Property which can be utilized for official state park business shall be inventoried pursuant to procedure as state park property by the state park unit where the property was abandoned and utilized by that park unit or any other park unit where such property may be applicable.~~
- (B) ~~Property which cannot be utilized for official state park business more shall be inventoried pursuant to procedure as state park property by the state park unit where the property was abandoned and liquidated at the next Oklahoma Tourism and Recreation Department's sponsored auction.~~

**725:30-4-15. Interfering, lawful order and false reports**

The following are prohibited in state parks:

- (1) Interference, threatening, resisting, intimidating, or intentionally interfering with a ~~park officials~~Park Official engaged in an official duty.
- (2) Violating a lawful order of a ~~park ranger~~Ranger when maintaining order and controlling public access and movement during emergencies, rescue operations, law enforcement situations, operations that involve a threat to public safety or natural resources, or other activities where control of public movement and activities is necessary to maintain order and public safety.
- (3) Knowingly giving a false or fictitious report or other false information to a ~~park ranger~~Ranger or law enforcement officer investigating an accident, violation of the law or park rules. Knowingly giving false or fictitious information on the application of a ~~permit~~Permit.
- (4) Knowingly giving a false report for the purpose of misleading a ~~park officials~~Park Officials in the conduct of official duties or making a false report that causes a response to a fictitious event.

**725:30-4-16. Report of injury or damage**

- (a) A person involved in an accident resulting in personal injury or property damage exceeding \$300.00, other than accidents reportable under 725:30-26-4 shall report the incident to the ~~park manager~~Manager or ~~park ranger~~Ranger as soon as possible.
- (b) Failure to report any incident in accordance with subsection (a) of this section is prohibited.

**725:30-4-18. Alcoholic beverages and controlled substances**

- (a) Presence in a park area when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person or damage property or natural resources is prohibited.
- (b) The ~~park manager~~Manager may close all or portions of a public use area or facility to the consumption of beverages containing alcohol when:

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- (1) The consumption of such beverages or the possession of an open container of such beverages would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or
- (2) Incidents of aberrant behavior related to the consumption of such beverages are of such magnitude that the diligent application of enforcement, over a reasonable period of time, does not alleviate the problem.
- ~~(3) Violating a closure pursuant to this subsection is prohibited.~~

### 725:30-4-19. Gambling [REVOKED]

Gambling in any form, or the operation of gambling devices, for money or anything of value, is prohibited in state parks [21:941,942].

### 725:30-4-20. Soliciting

The following is prohibited in state parks:

- (1) Soliciting or demanding gifts, money, goods or services.
- (2) Selling, hawking, peddling any goods, wares, merchandise, liquids, edibles or any item of value without a contract, Permit, or ~~lease~~ agreement approved by the Department.

### 725:30-4-21. Explosives and fireworks

- (a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited in state parks except when authorized by ~~permit~~ Permit. When permitted, the use, possession, storage and transportation shall be in accordance with state law.
- (b) Using or possessing fireworks and firecrackers is prohibited except when authorized by ~~permit~~ Permit which shall define the terms and conditions as the ~~park manager~~ Manager may establish and in accordance with state law.
- ~~(c) Violation of the terms and conditions of the permit established by the park manager is prohibited and may result in the suspension or revocation of the permit.~~

### 725:30-4-22. Special events

- ~~(a) Sports events, pageants, regattas, tournaments, spectator attractions, entertainments, ceremonies, and similar events are allowed. Provided, however, there is a meaningful association between the park area and the events, and the observance contributes to visitor understanding of the significance of the park area, and a Permit therefore has been issued by the Manager. A permit shall be denied if such activities would:~~
  - ~~(1) Cause injury or damage to park facilities or natural resources.~~
  - ~~(2) Unreasonably impair the atmosphere of peace and tranquility of a state park environment.~~
  - ~~(3) Unreasonably interfere with normal visitor services or other program activities of the Oklahoma Tourism and Recreation Department, Division of State Parks.~~

- ~~(4) Substantially impair the operation of public use facilities or services of concessionaires, lessees or contractors.~~
- ~~(5) Present a clear and present danger to public health and safety.~~
- ~~(6) Result in significant conflict with other existing uses.~~
- ~~(b) Persons wishing to make application for a special event shall complete a permit form which shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, and any other information required by the park manager. The application shall be submitted no later than fourteen (14) days prior to the commencement of the proposed event.~~
- ~~(c) As a condition of permit issuance the park manager:~~
  - ~~(1) Shall require liability insurance which the Oklahoma Tourism and Recreation Department, Division of State Parks is named as coinsured in an amount set forth by the park manager based upon event risk and spectator attendance.~~
  - ~~(2) May require a cash deposit in an amount equitable to cover the cost of restoration, damage, cleanup or other costs resulting from the event.~~
- ~~(d) No permits shall be issued for a period in excess of 4 days, except when approved by the director.~~
- ~~(e) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.~~

### 725:30-4-23. Public assemblies, meetings and distribution of printed material

- ~~(a) Public assemblies, meetings, gatherings, rallies, demonstrations, the distribution of printed materials and other expressions of views are allowed within park areas, provided a Permit therefore has been issued by the Manager.~~
- ~~(b) Persons wishing to make application for such an activity shall complete a permit form which shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed activity, an estimate of the number of persons expected to attend, and any other relevant information required by the park manager. The application shall be submitted no later than 48 hours prior to the commencement of the proposed activity.~~
- ~~(c) The park manager shall issue a permit upon receipt of a valid and proper application unless:~~
  - ~~(1) A prior application for a permit for the same period of time and place has been made that will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy at that particular area; or~~
  - ~~(2) It reasonably appears that the activity will pose a clear and present danger to the public health and safety; or~~
  - ~~(3) The event is of such nature or duration that it cannot reasonably be accommodated for in the particular location applied for, considering such issues as damage to park resources and facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities.~~

(4) The number of persons engaged in the activity exceeds the number that can reasonably be accommodated in the particular location applied for.

(5) The activity would constitute a violation of applicable state laws.

(d) No permit shall be issued for a period in excess of 7 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(e) Approved permits may contain such conditions as are consistent with protection and use of the park area for the purposes for which it was established. It may also contain reasonable limitations relative to the equipment used and the time and location where such equipment is allowed.

(f) It is prohibited for persons engaged in any approved activity under this section to obstruct or impede pedestrians or vehicles, harass park visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged or misrepresent whether the printed matter is available without cost or donation.

(g) A permit may be suspended or revoked under any condition defined in subsection (c) of this section which constitutes grounds for denial of a permit; for violations of the terms and conditions of the permit; for violation of rules set forth in this chapter, or for violation of state law.

**725:30-4-24. Livestock and agriculture**

(a) The running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind in a park area or the use of a park area for agricultural purposes is prohibited, except with an approved lease agreement authorized by the Oklahoma Tourism and Recreation Department Commission Executive Director.

(b) Estray livestock trespassing in the park may be impounded by the park manager-Manager. Every attempt shall be made to contact the rightful owner. If contact cannot be made the park manager-Manager shall contact the county sheriff who shall proceed with the sale of unclaimed livestock. The sheriff shall pay the Oklahoma Tourism and Recreation Department, Division of State Parks for actual costs of impound, maintenance and damages which have accrued during the impoundment period. Such payments shall be derived from the proceeds of the sale of estray livestock [4:85.1 et. seq.].

**725:30-4-25. Memorialization**

(a) The installation of a monument, sign, structure or other commemorative installation in a park area without authorization from the Executive Director or Director of State Parks is prohibited.

(b) The naming of a state asset using the name of an individual requires authorization from the Executive Director or Director of State Parks.

(c) Signs or exhibits that interpret the history of a state park area may contain the names of individuals. Such interpretive signage shall be approved by the Executive Director.

(d) The scattering of human ashes from cremation is prohibited except pursuant to the terms and conditions of a departmental Use-Permit.

**725:30-4-26. Swimming and associated swimming activities**

The following is prohibited in state parks:

- (1) Swimming or bathing in areas designated as closed.
- (2) Swimming within 150 feet of a boat ramp, boat dock or public fishing pier.
- (3) Having any child 12 years of age or younger, within a designated swimming area, unattended by an adult who is 18 years of age or older.
- (4) Possessing any glass container or glass material in a designated swimming area.
- (5) Swimming in violation of the posted restrictions set forth by the park manager-Manager.
- (6) Utilizing a pool without a lifeguard present except when posted otherwise.

**SUBCHAPTER 6. FEES, DISCOUNTS, AND WAIVERS**

**725:30-6-1. Fee authority, requirements, discounts and waivers**

(a) Recreation fees are hereby established as approved by the Oklahoma Tourism and Recreation Department Commission Executive Director. The Commission Executive Director shall prescribe rates, fees, tolls, or charges for the services, facilities and commodities rendered by all property of the Commission Department [74:2220]. Such fees, rates and charges shall be based upon staff recommendation pursuant to prevailing market conditions for similar facilities, services or merchandise. Fees, rates and charges shall be structured in a manner that is competitive with the private sector and avoids undercutting.

(b) All fees and charges shall be posted in a convenient location in each park. Every person using any facility shall be charged with the same fee except:

- (1) Individuals 62 years of age and over and his or her spouse may receive discounts for camping, cabin rental, golf, cave tours, swimming, and parking and bicycle rentals. A driver's license shall be used for verification of age [74:2220].
- (2) Individuals who have been certified as totally disabled as defined by state or federal law and their spouses shall be entitled to a discount which shall apply to use of, or access to, recreation facilities, regardless of residency. Acceptable means of verifying total disability include: the presentation of a Medicare card issued to an individual prior to their 65th birthday; a Notice of Award letter from the Social Security Administration; hunting and fishing license that notes total disability; award letter issued by the Department of Veterans Affairs or a document issued by a retirement or insurance board, commission or administration that attests to the individual's total disability; or a

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physicians letter, on letterhead stationery, that declares the individual is totally disabled. [74:2220].

- (3) Children's groups that provide beneficial services may receive discounts for camping, shelters and swimming [74:2220]. Such services shall be restricted to projects which provide environmental education awareness such as tree planting, refuse clean up, or wildlife habitat improvement. Children's groups performing a minimum of 2 hours service toward such projects shall be entitled to prescribed fee discounts. For the purpose of this section a group is 5 or more persons and a child is a person under the age of 18.
- (c) The ~~director~~ Director may, when in the public interest, prescribe times or periods during which the collection of fees may be waived or suspended.
- (d) The ~~director~~ Director may offer special group or promotional rates in accordance with 74 O.S., Section 2221.
- (e) Using campground sites, facilities, equipment or services, or participation in group activities, recreation events, or other specialized recreation used for which fees have been established without paying such fees is prohibited. Violation of the terms and conditions of this section may result in the suspension or revocation of the use of the facility, equipment or service or any other penalties prescribed by state law.
- (f) Entrance or day-use charges established by the ~~Oklahoma Tourism and Recreation Department-Commission~~, in accordance with 725:30-6-1, shall be evidenced by a receipt or pass sold upon demand from the public or at the entrance of any designated entrance or day-use charge facility. The method of collection will be by ~~deposit in a self-pay receptacle or payment to Department personnel who will provide a cash receipt.~~ payment through the appropriate online portal which can be accessed at [www.travelok.com/state-parks](http://www.travelok.com/state-parks).

## SUBCHAPTER 8. CAMPING AND DAY USE

### 725:30-8-1. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Primitive campsite"** means a site or area where there are no utilities, sanitation facilities or developments and is generally a significant distance from emergency services.

**"Unimproved campsite"** means a site where there is no water, electric or sanitation hookups for recreational vehicles but water, tables and grills are available in the area.

**"Semi-modern campsite"** means a site with a table, grill and electric utility service and water hydrants either at the site or in the area.

**"Modern campsite"** means a site which may have a table, grill, electric utility service, sanitation dump and water.

**"Tent site"** means a campsite where tents may be erected for overnight camping which includes erecting tents upon unimproved, semi-modern or modern campsites.

**"Reserved campsite"** means those sites that can be reserved through the online Oklahoma State Park Campground Reservation System or by contacting the park unit.

Reservations may be made for campsites in accordance with 75:30-12-5 (a) of this ~~chapter~~ Chapter.

~~"Non reserved/assigned camping" means the rental of campsites on a first come, first served basis.~~

### 725:30-8-2. Prohibitions

- (a) The ~~park manager~~ Manager may require permits, designate sites or areas, and establish conditions for camping.
- (b) The following is prohibited:
- (1) ~~Digging or leveling the ground at a campsite except in primitive areas.~~
  - (2) Hanging a propane or gas operated lantern on any tree or plant.
  - (3) Leaving refuse or human waste after departing a campsite.
  - (4) Camping within 25 feet of a water hydrant or within 100 feet of a stream, river or body of water, except as designated.
  - (5) ~~Creating or sustaining unreasonable noise between the hours of 11:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on park users, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances as determined by the park manager or park ranger.~~
  - (6) The construction of permanent camping facilities or dwellings.
  - (7) Failing to obtain a ~~permit~~ Permit for camping in primitive areas.
  - (8) Connecting more than one water, electrical or sanitary connection per campsite or connecting to a utility which exceeds its manufactured design or capacity.
  - (9) Camping outside of designated site or areas as defined by the ~~park manager~~ Manager.
  - (10) Parking a vehicle in, occupying or otherwise blocking in any manner, any campsite; or using the utility services in a campsite without having first paid campsite or utility fees.
  - (11) The placing or parking of 2 or more recreational vehicles on any site not designed for more than 1 recreational vehicle.
  - (12) Camping longer than the time limits set forth in 725:30-8-5.
- (c) ~~Violation of the terms and conditions of this section or the terms and conditions of a permit~~

### 725:30-8-3. Fee collection, restrictions and exemptions

- (a) The daily fee covers use of facilities until 2:00 p.m. the day of check-out. Check in prior to 5:00 p.m. may be permitted by the Park Manager.
- (b) Camping fee receipts are non-transferable.
- (c) Camping fee receipts shall be maintained at the campsite and available for review upon request by the ~~park manager~~ Manager, ~~park ranger~~ Ranger or any other official designated to collect fees.
- (d) Unimproved camping fees shall be assessed and charged in the following manner:



- (1) Persons in a "family unit" shall only be charged one (1) unimproved camping fee This applies when the family unit is not more than 2 parents and dependent children or grandparents and grandchildren only.
- (2) Persons not in a family unit shall be charged one (1) fee for each "sleeping unit".
- (3) Organized groups shall be charged according to the rule of four (4) which is one (1) unimproved fee for each multiple of four (4) persons. Children's groups may receive a discount in accordance with 725:30-6-1(b) (3).
- (e) Improved camping fees shall be assessed and charged in the following manner:
  - (1) One (1) recreational vehicle fee shall be charged for each unit occupying an improved site.
  - (2) If the improved site is not occupied by a recreational vehicle but rather with other "sleeping unit" methods the rules defined under (d) of this section shall apply and improved camping fees shall be assessed.
  - (3) One (1) tent only may be established as an extension to a recreational vehicle in an improved site. There shall be no charge for this extra tent if it is a small profile children's unit used by dependent children under the age of 18 whose parent or parents or grandparents are occupying the improved site. Any other person, such as friends or relatives, shall be charged one (1) unimproved fee for the extra tent. Fees for use of utilities for the additional tent will be in accordance with the utility fee structure for improved sites. The ~~park manager~~ Manager has discretion to determine fee application.
- (f) Any person who utilizes any type of campsite, regardless of equipment, shall pay the established fee for said site.

**725:30-8-4. Time limits and extensions**

- ~~(a)~~ The following is prohibited:
  - (1) Camping for periods longer than 14 consecutive days within the same campsite or campground depending on the park ~~during the camping season~~.
  - (2) Camping within the same state park unit for periods longer than 14 consecutive days ~~without an extension approved by the~~ requires a Permit ~~park manager and, if on Federally owned property will not be granted per Federal regulations.~~
- ~~(b)~~ Camping is permitted for longer than 14 days in accordance with the following conditions:
  - ~~(1) The park manager may grant extensions by issuing a permit for camping beyond the 14 day limit. Such extensions shall be based upon the degree of park use, anticipated weekend or holiday occupancy and recreation season.~~
  - ~~(2) Persons receiving extended camping privileges shall be limited to specific campsites or campgrounds as defined by permit.~~
  - ~~(3) Persons with a medical disability, who are currently under a physicians care for such disability, may maintain the same campsite for periods longer than 14 days with an approved permit. Verification of such disability shall be provided to the park manager at the time an extension is requested.~~

~~(4) Extensions shall be requested 48 hours prior to the requested date of the extension.~~

**725:30-8-5. Day use**

- (a) For the purposes of this ~~subchapter~~ Subchapter a day use area is an area used specifically from opening to closing as defined and posted by the ~~park manager~~ Manager for general recreational activities such as swimming, picnicking and fishing.
- (b) The following is prohibited:
  - (1) Entering or remaining in a day use area during closed hours for any purpose.
  - (2) Use of electric utilities except by ~~permit~~ Permit.
- (c) All other applicable rules and state laws as set forth in this ~~chapter~~ Chapter shall apply to day use areas.
- (d) The ~~park manager~~ Manager may relax or further restrict the use hours as defined in 725:30-2-6.

**725:30-8-6. Group camping**

- (a) Group camping is permitted within designated campgrounds in the state park system when there will be 5 or more sites occupied by a group for two (2) or more consecutive nights or three (3) consecutive nights on holiday weekends.
- (b) Group camping is permitted outside of designated campgrounds in the state park system with an approved ~~permit~~ Permit from the ~~park manager~~ Manager when there will be 20 or more recreational vehicle units for two (2) or more consecutive nights or three (3) consecutive nights on holiday weekends.
- (c) Reservations may be made for group camping in accordance with 725:30-12-5 of this ~~chapter~~ Chapter.

**SUBCHAPTER 10. TRAILS**

**725:30-10-1. Oklahoma Trails System Act**

- (a) "The purpose of the Oklahoma Trails System Act is to provide public access to, and enjoyment and appreciation of, the Oklahoma outdoors in order to foster the conservation, development and wise use of the natural and historic resources of the state. It is the intent and purpose of the Oklahoma Trails System Act to encourage hiking, bicycling, horseback riding and other recreational activities and, because trail use by motorized vehicles is incompatible with some other trail uses, it is intended to provide separate trails and facilities for motorized vehicles whenever necessary and feasible" [74:2279].
- (b) The ~~Oklahoma Tourism and Recreation Department, Division of State Parks~~ Department shall adopt the purpose of the Oklahoma Trails System Act and such purpose shall dictate the operation, management and use of trails within the state park system.
- (c) For the purpose of this ~~subchapter~~ Subchapter all trails are considered multiple use with exceptions and restrictions clearly marked.

**725:30-10-2. Prohibitions**

The following is prohibited in state parks:

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- (1) Use of a trail for purposes or activities which have posted as restricted.
- (2) Mutilation, destruction or vandalism of any guidepost, notice, tablet or any other improvement designed and established for trail use.
- (3) Trail users shall remain on designated trails in order to minimize adverse impact on the environment. Field study off of a trail is permitted, however, in sensitive or wilderness areas prior approval of the ~~park manager~~ Manager shall be required by ~~permit~~ Permit.
- (4) Failure to yield right of way in accordance with multiple use trail yield signage defined in 725:30-2-8.

## SUBCHAPTER 12. RESERVATIONS AND USE OF CABINS, GROUP CAMPS, SHELTERS, RESERVED/ASSIGNED CAMPING FACILITIES, AMPHITHEATERS, COMMUNITY BUILDINGS AND MEETING ROOMS

### 725:30-12-1. Definitions

The following words or terms, when used in this ~~subchapter~~ Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Daily"** means the charge for use of a camp site from 5:00 p.m. until 2:00 p.m. the day of check out.

**"Deposit"** means the normal deposit for the first night's rate to be applied to the last night of the reservation. A deposit may be in the form of cash, check or properly authorized and processed credit card.

**"Free shelter"** means shelters designated by the ~~park manager~~ Manager available free of charge on a first-come, first-served basis.

**"Function space"** means any area of the park unit used for purposes other than sleeping accommodations, such as meetings, banquets, golf tournament, dances and receptions.

**"Group"** means 8 or more persons.

**"Group reservation"** means a reservation for 20 or more accommodations or thirty percent of total units available at the property for one or more nights, or 10 accommodations with a scheduled function.

**"Holiday period"** means any multiple day period associated with a state-declared holiday.

**"Improved financial condition"** means the financial results of an activity, a change in rates or fees, or any other event that increases revenues or reduces expenditures, the net result of which improves the financial condition of the Division or facility in the current or succeeding fiscal years.

**"New accommodation"** means other lodging or use types that may arise in addition to those currently covered in Division of ~~State Parks~~ rules. New accommodations may be treated as an existing accommodation category such as cabins, shelters, group camps, lodges or other accommodations as determined by the ~~Director of State Parks~~.

**"One-half day"** means a period of time before 2:00 p.m. or after 4:00 p.m.

**"Per day"** means 6:00 a.m. to 11:00 p.m.

**"Portal Fee"** means a non-refundable fee charged to a customer for making a reservation using the Oklahoma State Parks Reservation website. This fee covers the cost of the web service.

**"Reservation"** means a confirmed request for a park accommodation or facility which is available to be reserved and such availability has been verified and a deposit received by the park unit.

**"Reservation Fee"** means a non-refundable fee charged to a customer for making a reservation using the Oklahoma State Parks Reservation website. This fee covers the cost to the park for securing and managing the reservation at the site.

**"Season"** means, for the purposes of this ~~subchapter~~ Subchapter only, the period of time between April 1 and September 30 each year.

**"Year-to-day"** means the same day, week, weekend or holiday of the subsequent calendar year.

### 725:30-12-2. Cabins

#### (a) General cabin reservations.

##### (1) Reservation restriction.

(A) Individual cabin reservations are accepted up to eleven months in advance.

(B) The person making a reservation will be responsible for payment of all charges established for the accommodation, including any damages by the occupants.

(C) Those assuming responsibility for reservations and payment of charges shall be 18 years of age or older.

##### (2) Reservation priorities. Due to the heavy demand for weekend accommodations during the season, the following procedures apply during this period:

###### (A) Holiday periods and special events:

(i) Reservations made more than 30 days prior to arrival must be for a minimum of 3 nights if a Friday or Saturday or holiday eve night is included in the request.

(ii) At the discretion of the ~~park manager~~ Manager, reservations made between 30 and 5 days prior to arrival may be accepted for 2 nights providing not less than ten percent (10%) of the park accommodations remain available for later requests including all 3 nights of the weekend.

###### (B) Non-Holiday Periods:

(i) Reservations made more than 36 days prior to arrival must be for a minimum of 2 nights if a Friday or Saturday night is included in the request.

(ii) At the discretion of the ~~park manager~~ Manager, single night reservations may be accepted between 30 and 5 days prior to arrival.

##### (3) Deposits.

~~(A)~~ A request for accommodations becomes a confirmed reservation only when a deposit is received.

~~(A)~~ Deposits shall be equal to the first night's rate and presented to the park unit ~~within 14 days (excluding Sundays) from the date of the request for deposit~~

~~or the reservation shall be cancelled at the time of reservation.~~

~~(B#)~~ Cancellation of the reservation shall be made 5 days in advance of the occupancy date or the deposit shall be subject to forfeiture.

~~(B)~~ Any requests for accommodations made within 14 days of arrival will be honored on a first come, first served basis.

(4) **Refunds.** Refunds on advance deposits may be refunded in accordance with 725:15-31-10.

(b) **Group cabin reservations.**

(1) Group cabin reservations may be accepted more than one year in advance of requested dates with approval from the manager or the Director of State Parks, if there is reason to believe it will benefit the facility's financial condition.

(2) The representative of an organization, company or other entity shall assume responsibility for charges and damages associated with group cabin reservations.

(3) Direct billing or credit, other than an approved credit card, for group cabin reservations is prohibited except when approved by the park manager-Manager.

(c) **Complimentary meeting space.**

(1) Complimentary meeting space where available, may be made available to groups occupying 20 or more accommodations per night, or thirty percent of the total available at the property.

(2) Should the group fail to occupy the number of cabins for which they reserved, the park unit will prorate the balance at the regular meeting room charge.

(d) **Cabin prohibitions.** The following is prohibited:

(1) Reserving and renting a cabin with an outstanding balance of payment resulting from a cabin rental during a previous visit.

(2) Allowing more persons to occupy the cabin than the occupancy limits set forth by the park manager-Manager.

(3) Departing the park unit with no intention of paying cabin rental fees including damages to property [21:1503].

**725:30-12-3. Group camps**

(a) **Group camp season.** Group camps open April 1 and close October 31 of each year. Exceptions may be approved by the park manager-Manager.

(b) **Application.**

(1) Reservation applications are accepted on a year-to-day basis.

(2) Applications for a reservation may be obtained by contacting the park unit in which the reservation is desired. Applications shall be completed in full and define an alternate date.

(3) Applications shall be mailed or emailed directly to the park unit for which the reservation is requested.

(c) **Reservations and reservation priorities.**

(1) Reservations for groups requesting the use of the group camp for 5 consecutive days or more shall be accepted and confirmed on a first-come, first-served basis, except as provided for in OAC 725:30-12-5(c)(4).

(2) Reservations for groups requesting the use of the group camp for less than 5 consecutive days shall be confirmed after January 1st each year.

(3) In instances when 2 or more groups have requested the same group camp on the same date, first consideration will be given to the earliest postmark date on the envelope in which the application was submitted. In cases of 2 identical postmark dates, first consideration shall be given to the group having the same reservation dates in the previous year. The next consideration will be the requested alternate date.

(4) The number of reservations is not limited during any single season, and the ~~park manager~~ Manager shall give consideration to serving the greatest numbers of groups and the maximum number of persons. In addition, the ~~park manager~~ Manager may determine the length of the reservation so that successive reservations will result in the greatest occupancy of the group camp. Such determinations shall be based upon the reservation type, size and activities.

(5) If an application is accepted a request for reservation deposit shall be mailed or presented to the group representative. The deposit shall be equal to the first night's rate and shall be mailed or presented to the park unit within 14 days (excluding Sundays) from the day the request for deposit was mailed from the park unit or the reservation may be cancelled. Failure to submit an accurate deposit amount may result in cancellation of the reservation. Upon receipt of the deposit the reservation will be confirmed. Once confirmed a reservation will not be cancelled or changed to accommodate any other group.

(6) Cancellation of reservations shall be made by the group representative 60 days in advance of the occupancy date which is listed on the confirmed reservation form or the deposit shall be subject to forfeiture.

(7) In cases where the group camp is not reserved it may be rented to the first group making application and providing a deposit on a first-come, first served basis.

(d) **Restrictions and general information.**

(1) No group will be permitted to reserve a group camp for 2 successive holiday or special event periods.

(2) A damage and cleaning deposit may be requested by the park manager-Manager.

(3) Group directors shall receive the area between 2:00 p.m. and 4:00 p.m. on the first day of the reservation or in its present condition at any other time.

(4) All fees are due and payable upon departure except as defined by the park manager-Manager.

(5) The group camp will be furnished with silverware, china, drinking glasses, pots and pans, chairs, beds, tables, paper products, mattresses and mattress covers. All other equipment, bedding and supplies necessary for the operation, cleanliness and safety of the group camp shall be provided by the group.

(6) A group camp director shall be provided and shall be no less than 25 years of age and one (1) counselor shall be provided for every eight (8) children who shall be no less than 18 years of age.

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- (7) Any damages to property or injuries shall be reported to the ~~park manager~~ Manager.
- (8) Arrangements for medical care shall be arranged in the nearest community prior to group camp occupancy.
- (9) Groups using pools or water related recreational facilities shall provide a waterfront director who holds a valid lifesaving certificate as defined by the American Red Cross and is no less than 18 years of age. The ~~Oklahoma Tourism and Recreation Department, Division of State Parks~~ may provide lifeguard services pursuant to the fee defined in 725:30-6-1. Such fee shall not exceed the posted maximum limit which has been set forth by the ~~Oklahoma Tourism and Recreation Department Commission~~. Swimming pools may be reserved at the discretion of the ~~park manager~~ Manager.
- (10) Recreational vehicles may be parked in the vicinity of the group camp at the discretion and designation of the ~~park manager~~ Manager based upon the established fee for the campsite type.
- (11) Group camps shall be left clean and sanitary prior to check out time which is 11:00 a.m. on the scheduled day of departure.
- (e) **Prohibited activities.** The following is prohibited:
- (1) Using the group camp for purposes other than those activities which are approved by the ~~park manager~~ Manager.
  - (2) The sale of merchandise, goods or services to anyone other than a member of the group.
  - (3) Transfer or assignment of the group camp reservation to any other group without authorization of the ~~park manager~~ Manager.
  - (4) ~~Violation of the terms and conditions as defined in this section is prohibited and may result in the suspension or revocation of the use of the group camp.~~

### 725:30-12-4. Shelters

- (a) **Reservation and reservation priorities.**
- (1) Shelter reservations are accepted up to eleven months in advance.
  - (2) Shelters not reserved or made unavailable may be rented on a first-come, first serve basis.
  - (3) A reservation can be made by contacting the park unit in which the reservation is requested, or may be made on-line if available in the on-line reservation system.
  - (4) If accepted, a request for reservation deposit shall be mailed or presented to the person requesting a reservation. The deposit shall be equal to the fee charged for the entire shelter reservation period and shall be presented to the park unit within 14 days (excluding Sundays) from the date of the request for deposit or the reservation shall be cancelled.
  - (5) Cancellation of the reservation shall be made at least thirty days in advance of the occupancy date or the deposit shall be subject to forfeiture.
  - (6) ~~In cases where the shelter is not reserved, it may be reserved up to 24 hours in advance by providing a deposit on a first come, first served basis.~~

- (7) A damage deposit may be required at the discretion of the ~~park manager~~ Manager.
- (8) ~~The park manager~~ Manager may determine the length of the reservation so that successive reservations will result in the greatest occupancy of shelter use. Such determination shall be based upon the reservation type, size and activities.
- (9) Persons may reserve a shelter for half ( $\frac{1}{2}$ ) days which is fifty percent (50%) of the full daily rate.
- (10) Picnic equipment and supplies may be left in the shelter overnight when shelter is rented for 2 or more days.
- (b) **Special considerations.** Shelter rental discounts are available for volume campsite rental as follows:
- (1) 10 campsites per day - 50% discount
  - (2) 20 campsites per day - 75% discount
  - (3) 30 or more campsites per day - 100% discount
- (c) **Prohibited activities.** The following is prohibited:
- (1) Using a shelter for purposes other than those approved by the ~~park manager~~ Manager.
  - (2) The sale of merchandise, goods or services to anyone other than a member of the group.
  - (3) ~~Violation of the terms and conditions as defined in this section is prohibited and may result in the suspension or revocation of use of the shelter.~~

### 725:30-12-5. Reserved/assigned and group camping

- (a) Reservations and reservation priorities - reserved/assigned camping.
- (1) Individual camping reservations are accepted up to eleven months in advance.
  - (2) All sites must be reserved prior to occupancy. No sites within the parks system are available on a first-come basis.
  - (3) Sites shall be reserved by site type and by site number, unless the ~~park manager~~ Manager determines otherwise.
  - (4) All reservations shall be made online via <https://www.travelok.com/state-parks>.
  - (5) A non-refundable portal fee and reservation fee shall be assessed for each campsite reserved online or with the assistance of park office staff.
  - (6) Minimum Stay
    - (A) The minimum reservation shall be for 2 nights on weekends and 3 nights on holiday periods ~~during the season~~.
    - (B) At the discretion of the ~~park manager~~ Manager, single night reservations may be accepted less than 30 days prior to arrival.
  - (7) Deposits.
    - (A) Non-Holiday Periods deposits:
      - (i) A deposit equal to the first night's rental /or the entire stay is required for reservations on non-holiday weekends, at the discretion of the ~~park manager~~ Manager.
      - (ii) The deposit is in addition to the non-refundable portal fee and reservation fee.
      - (iii) Deposits for online reservations must be made with a credit or debit card.

- (iv) Deposits may be made by presenting cash, credit card, check or money order to the park unit. Reservations made with a cash, check or money order deposit are not confirmed until that deposit is received by the park unit.
  - (B) Holiday periods and special event deposits. Reservations for Memorial Day, 4th of July and Labor Day holiday periods and special events must be secured with a deposit equal to the rental for the full stay.
  - (C) Other Deposits
    - (i) Other dates may require a deposit equal to the full length of stay.
    - (ii) Dates requiring a deposit equal to the full length of stay will vary from park to park.
    - (iii) All dates requiring a deposit equal to the full length of stay will be prominently displayed (on the Oklahoma State Parks Reservations System homepage for each park).
  - (8) Confirmed Reservations
    - (A) A reservation is confirmed when the non-refundable portal fee, reservation fee and applicable deposit is paid.
    - (B) The customer will receive an e-mail confirmation upon receipt of payment.
    - (C) The reservation confirmation will provide the reservation confirmation number for each reservation and detailed reservation information that includes but is not limited to: customer name; customer e-mail address; name of the state park; arrival date; departure date; type of RV site reserved; and the total amount charged for each reservation.
  - (9) Reservation Cancellation
    - (A) The customer must cancel their reservation ten (10) business days or more prior to the scheduled arrival date to receive a refund of the deposit.
    - (B) The portal and reservation fees incurred at the time of the reservation are not refundable.
    - (C) Reservations cancelled less than ten (10) business days prior to the scheduled arrival date will be subject to forfeiture of the deposit. The portal and reservation fees shall not be refunded.
  - (10) Reservation modification
    - (A) A reservation may be modified one (1) time after the reservation is completed and a confirmation number assigned without incurring additional portal or reservation fees.
    - (B) Reservation modifications that result in an upgrade to the campsite type may require an additional deposit before the modified reservation is confirmed.
    - (C) A second request to modify a reservation may result in cancellation of that reservation and reservation cancellation rules will apply.
  - (11) Reservation Limitations - Number of Reservations
    - (A) The Oklahoma State Parks Reservations System may establish a limit on the number of reservations per on-line session (placed in the reservation cart).
      - (B) A separate portal fee and reservation fee is charged for each reservation session
  - (12) Deposit requirements apply to each reservation.
    - (A) Late Arrivals. A confirmed reservation will be held until 10AM on the day following the schedule arrival.
    - (B) Early Departures. Departures after arrival to the park will be considered as a cancellation of the reservation by the guest resulting in the forfeiture of the portal and reservation fees and may also include forfeiture of the total rental fee for the dates associated with the reservation.
  - (13) Change of location after arrival. If a customer chooses to move from the site assigned by the park unit or the site they reserved, customer must reserve the new site prior to occupation and may not be refunded for the original reservation by the park.
  - (14) One tent may be established in the immediate area of a rented site and an added site fee may be imposed at the discretion of the ~~park manager~~ Manager in accordance with 725:30- 8-3(e)(3).
  - (15) The provisions in (a)(1) through (a)(13) of this subsection apply only to State Parks reserved camping.
- (b) Reservation and reservation priorities - group camping.
    - (1) Reservations shall be accepted for groups when there will be five (5) or more sites occupied by the group for 2 or more consecutive nights or three (3) consecutive nights on holiday periods. At the ~~park manager's~~ Manager's discretion, reservations for groups (5 or more sites) may be requested for dates not in excess of three years from the date of application.
    - (2) A reservation can be made by contacting the park unit in which the reservation is requested 75 days in advance of the date of arrival.
    - (3) Reservations shall be made by one (1) person representing the entire group. The group representative shall provide the park unit:
      - (A) The arrival and departure dates;
      - (B) The number of campsites which will be occupied by the group; and
      - (C) The number of members applicable to a discount as defined in 725:30-6-1.
    - (4) The provisions (1) through (3) of this subsection apply only to state Parks offering reserved group camping.
    - (5) Advance deposits are available for groups. Deposits shall be coordinated by the group representative 60 days in advance of arrival date in accordance with the following requirements:
      - (A) The group representative shall coordinate with the ~~park manager~~ Manager to secure the quantity of sites needed for the group occupancy dates.
      - (B) Individual group members have a fixed time to make contact with the ~~park manager~~ Manager and pay appropriate deposit for the site rented.
      - (C) Sites not secured by a deposit ten days in advance of the group occupancy date may be released by the ~~manager~~ Manager.

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- (6) Visitation and reservation circumstances shall dictate consecutive site allocation for groups.
- (c) Reservation and reservation priorities - rallies and large groups.
- (1) Reservations shall be accepted outside of campgrounds for groups in excess of 20 recreational vehicle units where park facilities can accommodate the size of the group.
- (2) A reservation can be made by contacting the park unit in which the reservation is requested 75 days in advance of the date of arrival.
- (3) Reservations shall be made by one (1) person representing the entire group. The group representative shall provide the park unit:
- (A) The arrival and departure dates;
- (B) The number of campsites which will be occupied by the group; and
- (C) The number of members applicable to a discount as defined in 725:30-6-1.
- (4) A deposit shall be required in accordance with the terms set forth in (b) (5) of this section.
- (5) Notice of cancellation for the entire group shall be received by e-mail, mail or telephone from the group representative ten days in advance of the occupancy date or the deposit amount will be deducted from the security bond deposit or the deposit will be forfeited for non-security bond deposits.
- (6) A ~~permit~~ Permit requiring liability insurance may be ~~require~~ required contingent upon activities conducted by the group in accordance with the rules set forth in ~~subchapter~~ Subchapter 16 of this ~~chapter~~ Chapter.
- (7) Upon arrival the group representative or designee shall provide payment for the balance of the reservation period for the entire group.
- (d) Transferring of reservations. The transferring of ~~camp-site~~ reservations is prohibited. Reservations that are transferred to another party shall be immediately canceled by the Department and no refund shall be given. The party receiving the reservation will be liable to pay all fees associated with the occupancy of the reservation to the Department.

### 725:30-12-6. Amphitheaters, community buildings and meeting rooms

- (a) **Reservation and reservation priorities.**
- (1) Facilities defined in this section may be reserved, if available through on- line reservations, up to eleven months in advance.
- (2) Group reservations with overnight accommodations may be accepted more than one year in advance of requested dates with approval from manager or Director ~~of State Parks~~, if there is reason to believe that it would benefit the facility's financial condition, and may include other structures noted in this section.
- (3) A group reservation can be made by contacting the park unit in which the reservation is requested.
- (4) If the reservation application is accepted, a request for reservation deposit shall be e-mailed, mailed or presented to the person requesting a reservation. The

deposit shall behalf of the total fee for the facility reserved and presented to the park unit within 14 days (excluding Sundays) from the date of the request for deposit or the reservation shall be cancelled.

- (5) Cancellation of the reservation shall be made at least thirty days in advance of the occupancy date or the deposit shall be subject to forfeiture.
- (6) Fee balance is payable upon receipt of the facility and shall not be prorated.
- (7) A damage and or cleaning deposit may be required at the discretion of the ~~park manager~~ Manager.
- (8) The ~~park manager~~ Manager may determine the length of the reservation so that successive reservations will result in the greatest occupancy of facility use.
- (b) **Special consideration for amphitheaters.**
- (1) Utilization of amphitheaters is under the control of the ~~park manager~~ Manager at the designated park or lodge unit.
- (2) There shall be an additional charge for use of lighting and sound equipment which will be operated by ~~park officials~~ Park Officials.
- (c) **Special considerations for visitor center meeting rooms.** Groups using visitor center meeting rooms, which do not meet the requirements of free usage in accordance with 725:30-12-2(c), shall pay the set fee.
- (d) **Prohibited activities.** The following is prohibited:
- (1) Using these facilities for purposes other than those approved by the ~~park manager~~ Manager.
- (2) The sale of merchandise, goods or services to anyone other than a member of the group.
- (3) ~~Violation of the terms and conditions as defined in this section is prohibited and may result in the suspension or revocation of use of these facilities.~~

## SUBCHAPTER 16. PERMITS

### 725:30-16-1. Objective and general requirements

- (a) When authorized by rules set forth in this ~~chapter~~ Chapter, the ~~park manager~~ may issue a Permit ~~permit may be issued,~~ as set forth in this Subchapter, to authorize an otherwise restricted or prohibited activity or impose a public use limit except those activities which have been prohibited by state law. The activity authorized by a Permit ~~permit~~ shall be consistent with applicable rules and state laws, and be based upon the determination that public health and safety, environmental values, natural or cultural resources, and scientific research will not be adversely impacted. Further, the Permit ~~permit~~ shall assure the implementation of some management practices and responsibilities by requiring proper allocation and use of facilities or the avoidance of conflict among visitor or guest use activities.
- (b) Application for a Permit ~~permit~~ shall be submitted to the ~~park manager~~ Manager during normal business hours. All applications for Permits shall be submitted not less than thirty (30) days prior to event.
- (c) Unless otherwise provided for by the regulations in this ~~chapter~~ Chapter, the ~~park manager~~ Department shall deny a

permit that has been properly applied for only upon determination that one or more of the factors set forth in subsection (a) of this section would be adversely impacted. The basis for denial shall be provided to the applicant upon request.

(d) ~~The park manager shall include in a permit~~ Permit shall include the terms and conditions that the park manager-Department deems necessary to protect park resources or public safety and shall also include terms and conditions established pursuant to the authority of any other section of this chapter.

**725:30-16-2. Prohibitions**

- (a) The following is prohibited in state parks:
  - (1) Engaging in an activity subject to a ~~Permit permit~~ requirement imposed pursuant to this section without obtaining a Permit permit; or
  - (2) Violating a term or condition of a ~~Permit permit~~-issued pursuant to this ~~subchapter-Subchapter~~.
- (b) Violating a term or condition of a ~~Permit permit~~-issued pursuant to this ~~subchapter-Subchapter~~ may result in the suspension or revocation of the ~~Permit permit~~ by the park manager or park ranger a Park Official and may result in removal from the Park and loss of all monies paid for Permit and any associated reservations.

**725:30-16-3. Types of Permits**

(a) The Department may grant and impose charges for any and all Permits. Charges for Permits shall be in accordance with the charges schedule approved by the Executive Director. There are three types of Permits which may be issued by the Department:

- (1) Use Permits. May be issued by the Manager for specific short-term activities for the following:
  - (A) Primitive Camping
  - (B) Hunting, when such hunts have been approved in accordance with 725:30-4-2
  - (C) Bow fishing
  - (D) Activities requiring a permit on the National Scenic Recreation Area
  - (E) Renting or staying in campsite or RV site for more than fourteen (14) days on state owned property
- (2) Event Permit. May be issued by the Director for:
  - (A) Scientific Research and/or collection of Specimens
  - (B) Events open to the public such as concerts, workshops, and the like that are free to the public
  - (C) For the use of aircraft in areas outside of established airports or private use of helicopters
  - (D) All events which involve fireworks
  - (E) Metal detecting
  - (F) Drone usage
- (3) Commercial Permits. Commercial Permits may require organizers or vendors of organizer to report sales and a percentage of sales for the issuance of Permits. Such terms and conditions shall be communicated to the organizer prior to issuance of a Commercial Permits may be issued by the Director for:

- (A) Ticketed events which are open to the general public to purchase
- (B) Events in which the organizer is requesting sites to resell
- (C) Short-term business operations of Concession-like businesses that may not exceed four (4) months in duration
- (D) Commercial filming
- (E) Events in which third-party vendors will sell goods or services to the public
- (F) Tournaments of any kind
- (G) ATV/UTV rallies and gatherings
- (H) Any events which result in overflow parking areas or require or result in parking on the shoulders of roadways within the park or highways. All such events that will allow for parking of vehicles on the shoulders of roadways outside of the park will be contingent upon the organizer receiving proper approvals from the appropriate jurisdictions.

**SUBCHAPTER 18. SPECIAL USE AREAS**

**725:30-18-2. Alabaster Caverns State Park**

Wild caving at Alabaster Caverns State Park is authorized under the following conditions:

- (1) Wild caving is prohibited unless approved by issuance of a ~~Permit permit~~ from the park manager-Department or under the supervision of a tour guide.
- (2) A minimum of 2 spelunkers shall be required to secure a ~~Permit permit~~, with one person having previous spelunking experience.
- (3) Wild caving is only permitted between the hours of 8:00 a.m. and 4:30 p.m.
- (4) Each spelunker shall be required to have the following equipment:
  - (A) Three (3) light sources
  - (B) Hard hat
  - (C) First aid kit
  - (D) Long sleeve shirt and trousers
  - (E) Gloves
  - (F) Water
- (5) Spelunkers shall advise the park office staff prior to entering a wild cave, noting the location of the cave to be explored. These spelunkers will likewise notify the park office staff upon their departure.
- (6) All spelunkers shall be required to sign a liability release prior to beginning the spelunking activity.
- (7) No permits will be issued between October 1 and February 28 for the protection of hibernating bats.
- (8) ~~All rules defined in this chapter shall apply to Alabaster Caverns State Park. Violating any rules pursuant to this section or chapter may result in the suspension or revocation of a permit, use privilege or any other penalties prescribed by state law.~~

# Permanent Final Adoptions

## 725:30-18-3. McGee Creek Natural Scenic Recreation Area - McGee Creek State Park

(a) The Natural Scenic Recreation Area is a unique 8,900 acre natural recreational resource authorized by Congress as a feature of the McGee Creek Project. The Natural Scenic Recreation Area was formulated, through a public involvement process, based on four concepts:

- (1) a quiet water zone,
- (2) a wilderness-type recreational experience,
- (3) non-motorized activities, and
- (4) preservation of natural and cultural resources.

(b) In compliance with environmental resource use regulations as defined by the United States Department of Interior, Bureau of Reclamation, the following interim rules shall apply to the McGee Creek Natural Scenic Recreation Area of McGee Creek State Park:

(1) **Access to the Natural Scenic Recreation Area.** Access to the Natural Scenic Recreation Area is authorized by ~~Permit~~ permit only and available at the entrance station and park office. The purpose of the ~~Permit~~ per~~mit~~ system is to minimize environmental impacts in the Natural Scenic Recreation Area. Permit issuance is based upon the number of persons individually or in a group until the maximum daily limit is reached. The maximum daily limit may be adjusted based upon the changes in the number of miles of designated trails, updated user group ratio data, and/or adjustments in response to the results of the ongoing monitoring program, including user surveys. Maintenance of trails by the different user types is considered in setting the maximum daily limit. Permits are issued for each user type and are not transferable or interchangeable.

(A) The following table defines maximum daily limits (users/mile/day):

	Multi-use trails	Biker/Hiker only	Hiker only
Biker	1.0	4.1	0
Equestrian	2.0	0	0
Hiker - land access	3.6	14.6	21.2
Hiker - water access	0.9	3.7	5.3
Total user/mile	7.5	22.4	26.5
Camper	(1.5)	(4.5)	(5.3)
Impact units	26.5	26.5	26.5
Half-day user	40 vehicles maximum (4 hour limit)		
Boater/fishermen	No limit (shoreline area access only)		

(B) ~~The Oklahoma Tourism and Recreation Department, Division of State Parks~~ Department has the discretion to temporarily restrict use within the Natural Scenic Recreation Area under certain circumstances such as severe weather conditions, high fire

danger, trail maintenance, special events and other approved uses.

(2) **Day use permits.** Half ( $\frac{1}{2}$ ) of the full day permits may be reserved up to 90 days in advance. Half-day permits are issued on a first-come, first served basis only. Any reserved ~~Permit~~ permit not picked up by 10:00 a.m. of the date of issue will be released for use by others unless previous arrangements have been made.

(3) **Overnight camping.** Camping in the Natural Scenic Recreation Area will be by ~~Permit~~ permit only and be restricted to specified areas. When the ~~Permit~~ per~~mit~~ is issued, users will be provided with a map of the Natural Scenic Recreation Area indicating the location of their reserved/assigned camp area for each night of their stay. Users shall park their vehicles in a secured parking area at the Natural Scenic Recreation Area entrance and enter the Natural Scenic Recreation Area from the trail-head access only. The camper maximum daily limit will indicate the maximum number of campers allowed throughout the Natural Scenic Recreation Area at any given time. Half (50%) of the daily camping permits may be reserved up to 90 days in advance. The remaining camping permits shall be issued on a first-come, first-served basis up to the maximum daily limit. Individual party size shall be limited to a maximum of 12 persons per campsite for sanitary reasons. Camping permits not picked up by the opening of business of the second day of the ~~Permit~~ per~~mit~~ may be released for others to use. Persons arriving after the close of business hours shall camp in the McGee Creek State Park camping areas, and obtain the ~~Permit~~ per~~mit~~ the next day. The maximum length of stay for each ~~Permit~~ per~~mit~~ is four days, beginning with sunup of the day the ~~Permit~~ per~~mit~~ is issued and ending at sunset of the last day. Camping permits may be renewed depending on availability, and only if the camper maximum daily limit has not been reached.

(4) **Water access permits.** Permits for water access for hiking and camping shall be permitted in accordance with (2) and (3) of this subsection. Some campsites may be designated for water access users only. Vessels may be anchored, tied to shore, or carried to the campsite for storage. Construction of racks or bars for dry storing of vessels is prohibited. Use of internal combustion engines within the quiet zone is prohibited. Electric motors, paddles, poles, or sails are ~~permitted~~ allowed.

(5) **Equestrian ~~Permit~~ per~~mit~~.** Permits for equestrian access shall be permitted in accordance with (2) and (3) of this subsection. Some campsites may be designated for equestrian users only. Horses tethered to trees or structures are prohibited. Hobbles or ground tying is prohibited. Use of feed bags and picket lines are required adjacent to the designated camping area. Horses shall be kept in the campsite only as long as it takes to unpack or pack them. Users shall not be allowed to turn their horses loose to graze. Horses shall not be left unattended for more than a few hours. Stallions are prohibited. Since all trails open to equestrian use will be multi-use, horse droppings shall be dispersed off the trails. Horse droppings at the camp sites shall be buried. Tying up horses



overnight within 100 yards of any body of water or creek is prohibited.

(6) **Multi-use trails.**

(A) With the limited number of miles of trails available, all groups shall be required to use the main trails. Equestrians shall be limited to logging roads or trails designated for equestrian use only. Bicyclists may be allowed on designated trails that are appropriate for their use. The remainder of the trails shall be restricted to hikers only. Any additional proposed trails shall be mapped and their use approved by the Bureau of Reclamation before they are opened. National accepted trail etiquette will apply to the Natural Scenic Recreation Area and any other guidelines posted at the trail head.

(B) Trail signage shall consist of painted blazes on trees and routed wood signs. The blazes shall be color coded by U.S. Forest Service Standards to indicate which user type can access that trail. The blaze shall be located at eye level to a hiker and, if possible, spaced so as to be in sight of the next marker. Routed wood signs shall be kept to the absolute minimum needed to identify junctions and campsites. These and other types of signs and their locations shall be submitted for approval by the Bureau of Reclamation.

(7) **Fire.** The use of wood fires shall be restricted to fire pans or fire blankets. Fire rings or pits are prohibited. Natural deadfall will be the only source material. Cutting of standing trees or large logs is prohibited. No axes or other large cutting implements shall be ~~permitted~~ allowed into the area except for maintenance by ~~Oklahoma Tourism and Recreation Department, Division of State Parks Department~~ staff and assignees. Campers entering the area shall be required to show that they have in their possession a fire pan, fire blanket, or backpackers stove before they are allowed to proceed. Ash and other residue from the fire will be disposed of as follows: large chunks of unburned wood will be buried; debris will be removed from the ash and packed out; ash will be dispersed outside the camp area over as much ground as possible. Disposal of ash within 100 yards of any body of water or creek is prohibited.

(8) **Disposal of human waste.** Disposal of human waste shall be accomplished by the use of cat holes. Every camper entering the area shall be required to have (or share) a small hand shovel for this purpose. Digging cat holes within 50 feet of any campsite or 100 yards from a body of water, creek or spring is prohibited. Large group latrines or pits are prohibited.

(9) **Llamas.** Until an in-depth study of llama activity can be conducted, llamas will be treated as pack animals. Restrictions set forth in (5) of this subsection shall apply to llamas.

(10) **Quiet water zone.** An internal combustion engine in the zone is prohibited. Electric motors shall be allowed and there will be no limit to the number of vessels accessing the zone. Any boater wanting to access the land portion of the Natural Scenic Recreation Area, other

than the immediate shoreline area, shall be required to get a ~~Permit permit~~ before entering the quiet water zone. Signage stating the rules shall be posted at the junction of the ~~Permit permit~~ station road, the Grassy Hollow access road, the Grassy Hollow boat ramp, and the start of the quiet water zone which is defined by floating signs.

(11) **Special events.** Permitting of a limited number of periodic special large group events (except on holiday weekends) will be considered on a case by case basis. ~~Factors to be considered before deciding whether to issue a permit shall include:~~

~~(A) Compatibility with the four environmentally quality concepts which govern the use of the Natural Scenic Recreation Area.~~

~~(B) User impacts observed to date from the monitoring program.~~

~~(C) Any other rules set forth in subchapter (4) of this chapter.~~

(12) **Natural Scenic Recreation Area restrictions.** In addition to the restrictions and prohibitions set forth in (1)-(11) of this subsection the following prohibitions shall apply to the Natural Scenic Recreation Area:

(A) The use of motorized vehicles except emergency and maintenance vehicles.

(B) Development and construction unless authorized by the Bureau of Reclamation.

(C) Trace backpacking rules.

(D) Access to the Ferndale Bog area without prior authorization of the ~~park manager~~ Manager and ~~director~~ Director with concurrence of the Bureau of Reclamation.

(E) Pets of any kind except horse and pack animals.

(F) Using any area except designated trails and camping areas.

(G) Removal of artifacts and plants.

(13) **West Buffer Zone.** The 1,200 acre portion of the Natural Scenic Recreation Area west of the McGee Creek is jointly managed by the ~~Oklahoma Tourism and Recreation~~ Department and the Oklahoma Department of Wildlife Conservation in accordance with a Memorandum of Understanding dated September 14, 1987. All use and development within the 1,200 acres is subject to the same Natural Scenic Recreation Area environmental quality concepts previously discussed. No trails will be developed within the 1,200 acre area for the interim operating plan. Accordingly, only wilderness type hunting will be allowed initially with access by ~~Permit permit~~ only from the Wildlife Management Area. Appropriate signs will be posted to identify the area and notify users of applicable rules and regulations. Although no Maximum Daily Limit limits are included in the initial interim operating plan (the maximum daily use to date has been 6 hunters), the use levels and associated impacts will be informally monitored. If necessary, a hunter Maximum Daily Limit may be established prior to implementation of the final Resource Management Plan.

(14) **Natural Scenic Recreation Area rules.** All rules defined in this ~~chapter~~ Chapter shall apply to the Natural

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Scenic Recreation area. ~~Violating any rules pursuant to this section or chapter may result in the suspension or revocation of a permit, use privilege or any other penalties prescribed by state law.~~

## SUBCHAPTER 20. VOLUNTEERS

### 725:30-20-1. Definition, purpose and objective

(a) For the purposes of this ~~subchapter~~ Subchapter a volunteer is a person who volunteers their labor or services to the ~~Oklahoma Tourism and Recreation Department, Division of State Parks~~ Department with no monetary compensation provided for such labor or services for a period of 8 or more accumulative hours.

(b) The primary purpose of the volunteer program shall be to provide a vehicle through which the ~~Oklahoma Tourism and Recreation Department, Division of State Parks~~ can accept and utilize voluntary help and services from the public. The major objective of the VIP program is to utilize voluntary help in such a way that it is mutually beneficial to the Department and the volunteer.

### 725:30-20-2. Application, qualification, selection and restrictions

(a) Any person may volunteer, without regard to race, color, creed, religion, age, sex, political affiliation or national origin, when work or other services are designated by the ~~park manager~~ Manager as those which may be accomplished by a volunteer.

(b) Application for volunteer work may be made by contacting the ~~park manager~~ Manager in the park where the person wishes to volunteer their services. A background check will be required by the Department prior to allowing all volunteers eighteen (18) years of age or older.

(c) An interview shall be conducted by the ~~park manager~~ Manager or designee to determine if such person is physically capable or has the required education and/or experience to meet the requirements of the position. Such requirements shall be set forth by the ~~park manager~~ Manager.

(d) The ~~park manager~~ Manager may request the volunteer applicant to disclose a ~~self-identification~~ self-identification of medical disability or obtain a medical examination if there is a question regarding the volunteer's physical capability to perform assigned tasks associated with a position.

(e) Any person convicted of any violent crime, sexual offense, crime against another person, crime involving the use of deadly force, or any crime involving moral turpitude or other serious offense; or any person who is an illegal alien in the United States is prohibited from participating as a volunteer.

(f) A person shall be considered selected for volunteer services when a volunteer contract has been fully executed between the volunteer and the ~~park manager~~ Manager. Where volunteer services will result in fee waiver for facility use the ~~park manager and director's~~ Director's approval shall be required.

### 725:30-20-3. Orientation and training

An orientation and training program shall be conducted by the ~~park manager~~ Manager or a person responsible for supervising the activities of a volunteer. Such orientation shall include, but not limited to, the following topical areas:

- (1) Work schedule and job responsibility.
- (2) Time reporting requirements.
- (3) Use and care of government property.
- (4) Use of safety equipment.
- (5) Reporting injuries and property damage.
- (6) Volunteer conduct.
- (7) Applicable laws, rules, policies or operating procedure.
- (8) Causes for termination of the volunteer contract.
- (9) Volunteer injuries and payment of medical expenses associated with injuries.

### 725:30-20-4. Supervision and performance evaluation

(a) A supervision plan for volunteers shall be established by the ~~park manager~~ Manager which outlines supervisor/subordinate roles and responsibilities.

(b) Volunteer's performance shall be evaluated by their immediate supervisor every 6 months or at the end of their volunteer contract whichever comes first. Such evaluation shall be written and the results discussed with the volunteer to identify performance, weaknesses and strengths and methods for improving performance.

### 725:30-20-5. Fee waiver

(a) The ~~director~~ Director may waive certain facility fees when such facility use by the volunteer is necessary to meet the requirements and obligations of the position, or enhance the comfort and safety of the volunteer.

(b) Such fee waivers shall be defined in the volunteer contract which shall include the extent and terms of such waiver.

### 725:30-20-8. Prohibitions

~~(a)~~ The following is prohibited and applicable to persons providing volunteer services to the ~~Oklahoma Tourism and Recreation Department, Division of State Parks~~ Department:

- (1) Performing volunteer services without a fully executed contract.
- (2) Performing duties defined in the contract without proper training or orientation as set forth in section 725:30-20-3.
- (3) Violating any term or condition set forth within the volunteer contract.

~~(b) Violating any term or condition set forth within the contract, within this section or rules set forth in this chapter may result in the termination of the contract and other penalties imposed by the rules defined in this chapter.~~

### 725:30-20-9. Termination of Volunteer Contract

(a) Department reserves the right to terminate volunteer contract at any time with or without cause.

(b) Any Volunteer Contract terminated by the Department prior to expiration shall be approved by both the ~~facility manager~~ Manager and the Director of the Division of State Parks.

(c) Early termination of the volunteer contract must be done in writing.

(d) Once the contract is terminated, volunteer has 48 hours to vacate the site.

(1) Failure to vacate the site or occupancy of another site is subject to regular rate charges for occupancy.

(2) Occupancy of site by a volunteer whose contract has been terminated early must be paid for in advance.

(3) Failure to vacate the volunteer site or failure to pay the regular rate may result in removal of person and or property from the park as provided by law. Any cost resulting in the removal or storage of removed property shall be born solely by the owner of the property.

**SUBCHAPTER 22. CONCESSION LEASES AND COMMERCIAL USE**

**725:30-22-1. Purpose and authority**

(a) The purpose of this ~~subchapter~~ Subchapter shall be to define the process in which Concession Leases located upon Department property are examined, competitively bid, awarded and ultimately leased.

(b) In accordance with state law, the ~~Oklahoma Tourism and Recreation~~ Department is authorized to lease lands and facilities for the promoting of the public use of parks.

**725:30-22-1.1. Definitions**

The following words and terms, when used in this Subchapter, shall have following meaning, unless the context clearly indicates otherwise:

~~"Bid" means the official response by a third party to ITB that shall be a binding formal offer to do business as a Concession with the Department.~~

~~"Bid opening" means the time when Bids are opened by the Department employees after the deadline for Bids being due.~~

~~"Concession" means the operator operation of a business on Department owned properties that operates under a Concession Lease.~~

~~"Concession commission—Commission" or "Concession royalty—Royalty" or "Royalty" means the payments made to the Department under the terms of the Concession Lease.~~

~~"Concession lease—Lease" or "Lease" means the agreement executed by the Department and a third party for the operation of business or service upon properties operated by the Department.~~

~~"Concession lessee—Lessee" or "Lessee" means the party leasing a Concession from the Department under the terms of a Concession Lease.~~

~~"Department" means the Oklahoma Tourism and Recreation Department.~~

~~"Executive Director" means the Executive Director of the Department.~~

~~"Grievance" means letter or email to the Department documenting a complaint by a Concession customer.~~

~~"ITB" means invitation to bid on a concession lease whereby the Department invites members of the public to bid in response to specifications determined by the Department.~~

~~"Proposal" means the official response by a third party to RFP that shall be a binding formal offer to do business as a Concession with the Department.~~

~~"Proposal opening" means the time when Proposals are opened by the Department employees after the deadline for Proposals being due~~

~~"Permit" means a grant from the Department to hold an event and/or operate a short term (less than one hundred eighty (180) days) business on property operated by the Department.~~

~~"Request for Proposal" or "RFP" means invitation to submit a Proposal on a Concession whereby the Department invites members of the public to submit a Proposal in response to specifications determined by the Department.~~

**725:30-22-1.2. Examination**

(a) Prior to issuing an ~~ITB—RFP~~, for a ~~Concession Lease~~, a determination will be made whether the proposed operation would be a desirable addition to the Department. Department staff shall make this determination after an analysis of the following considerations:

- (1) Economic viability,
- (2) Environmental impact,
- (3) Impact on the property infrastructure,
- (4) Compatibility with the overall property and its nature,
- (5) Benefits to the park visitor and the citizens of Oklahoma, and
- (6) Impact on and compatibility with other concession leases.

(b) The Department will consult with any owner or federal agency as required by either law or contract.

(c) The Department may require a feasibility study or other information in the event that the ~~concession—Concession~~ is being proposed by a third party, which shall be done at the expense of the proposing party. Any party proposing a new ~~concession—Concession~~ shall receive no preference or special consideration and such new ~~concession—Concession~~ shall be ~~put out to bid~~ subject to an RFP process if pursued by the Department.

(d) The determination of the Department whether to proceed with ~~bidding an ITB~~ an RFP for a proposed Concession Lease shall rest solely with the Department. Such decision shall not be subject to the Administrative Procedures Act.

**725:30-22-2. Bidding—RFP process**

The Department shall competitively bid a property or facilities for a concession lease as follows:

- (1) A bid package shall be prepared by the Department which shall include the following:
  - (A) Instructions, which include all deadlines;

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- (B) The process and method of bid evaluation;
  - (C) Explanation of the reasons for automatic bid disqualification;
  - (D) An ~~ITB-RFP~~ form, which must be fully completed;
  - (E) A financial statement;
  - (F) Section(s) describing operation and management;
  - (G) General terms applicable to the ~~ITB-RFP~~;
  - (H) Section(s) listing the bidder's experience and background; and
  - (I) Other sections deemed necessary by the Department.
- (2) ~~ITB-RFP~~ shall be posted on the Department website for not less than fifteen days and shall contain all of the necessary information, as determined by the Department.
- (3) Interested parties may request a bid package by either emailing [ospconcessions@travelok.com](mailto:ospconcessions@travelok.com) or by downloading it from the Department website.
- (4) Fully executed bid packages shall be received in accordance with the instructions and format required in the ~~ITB-RFP~~.
- (5) Bid packages shall be opened and reviewed at the time of the Bid Opening. Bids shall not be opened prior to Bid Opening.
- (6) The Department reserves the right to reject all or part of all bids within thirty (30) calendar days from the Bid Opening. Such notice of rejection, stating the reasons for rejection, shall be provided in writing within ten (10) calendar days of the rejection to all parties who submitted a Bid.
- (7) The following are reasons for rejection, but the Department is not limited solely to these reasons:
- (A) The bid was not submitted in accordance with the deadline set forth in the ~~ITB-RFP~~.
  - (B) The information or signatures requested in the ~~ITB-RFP~~ was not complete or fully executed.
  - (C) The bid included inaccurate, false or inauthentic information or documentation.
  - (D) The Department has withdrawn the ~~ITB-RFP~~.
  - (E) Unfavorable results of criminal background check.
  - (F) Agricultural leases may, at the Department's discretion, be exempt from the requirements set forth in this subsection.

### 725:30-22-3. Evaluation of bids and award of contracts

- (a) The rejection of the bid or award of the contract shall occur within thirty (30) days from the date of the Bid Opening, unless otherwise extended by the Department in its sole discretion.
- (b) The award of the contract shall not be based upon the proposed Royalties alone and shall include managerial competence, quality of proposed services and improvements, and financial capability to operate and manage the proposed property or facility. The Department reserves the right to verify all documents submitted for evaluation purposes.

- (c) A recommendation of award shall be made to the Executive Director based upon a complete evaluation by reviewers appointed by the Executive Director or their designee.
- (d) The Executive Director shall make the final decision regarding the awarding of Concession Lease to the successful bidder.
- (e) ~~The Director of the Division of State Parks, shall coordinate the execution and negotiation of the Concession Lease with the successful bidder.~~

### 725:30-22-4. General lease requirements

- (a) The Lease shall be prepared reflecting the terms and conditions of the ~~ITB-RFP~~ and the response of the successful bidder.
- (b) The following issues shall be included in all Concession Leases:
  - (1) Providing all final and as-built construction documents to the Department;
  - (2) Required owner approval for all construction;
  - (3) Compliance with all applicable Federal and Oklahoma laws;
  - (4) Conditions on which the Department may terminate the Concession Lease;
  - (5) Calculation of all Concession Commission or Royalty Payments due to Department; and
  - (6) Assignment, purchase or conveyance of any right under the Concession Lease must be approved by the Department in writing and any owner of the property as may be required by contract.

### 725:30-22-6. Permits [REVOKED]

- ~~(a) Pursuant to state law, the Department may grant and impose charges for Permits. Examples of Permit uses include, but are not limited to, ATV gatherings and fishing tournaments. Commercial use of Department property is prohibited except by Permit or Concession Lease.~~
- ~~(b) An application for Permit shall be submitted to the park manager and reviewed by Department staff pursuant to the general requirements contained in 725:30-16-1.~~
- ~~(c) Permits will define the period of time for which they are valid, the number of times they may be renewed (if any), and the services/activities allowed. Charges for Permits shall be a reasonable rate set by the Department. The Department may take the following into account when determining a Permit Royalty:
  - (1) Rates charges for similar Permits throughout the state or region;
  - (2) Applicable business model;
  - (3) Desirability of Permit; and
  - (4) Any relevant facts or circumstances.~~
- ~~(d) The terms contained in the Permit shall guide its operation and oversight.~~

## SUBCHAPTER 23. MINERAL LEASES AND OPERATIONS

**725:30-23-1. Purpose and authority**

- (a) The purpose of this ~~subchapter~~—Subchapter shall be to define the process in which mineral leases located upon ~~Oklahoma Tourism and Recreation~~ Department property are examined, competitively bid, awarded and ultimately leased. General management of mineral operations is also addressed.
- (b) In accordance with state law, the Department is authorized to offer for sale, sell, and execute oil and gas leases, and other mineral and mining leases [74:2219].
- (c) The Executive Director may to enter into leases, grant easements and execute such instruments as in the judgment of the Department are necessary or convenient to the exercise of those powers and duties of the Department pursuant to the Oklahoma Tourism and Recreation Act. [74:2207(5)].

**725:30-23-2. Examination**

- (a) Prior to issuing an invitation to bid for a mineral lease, a determination will be made whether the proposed lease would be an acceptable operation at the specific park property. ~~Oklahoma Tourism and Recreation~~ Department (~~Department~~) staff shall make this determination after an analysis of the following considerations.
  - (1) Environmental impact,
  - (2) Compatibility with the overall property and its nature,
  - (3) Safety of the park visitor, and
  - (4) Financial benefit to the Department.
- (b) The determination of the Department regarding whether to proceed with issuing an invitation to bid for a minerals lease shall rest solely with the Department and shall not be subject to the Administrative Procedures Act.

**725:30-23-4. Rules and regulations**

- The rights and responsibilities of the mineral lessee shall be governed by the lease document and the following rules and regulations.
- (1) All pipelines, except those that are used exclusively in lease operations, must be covered by a ~~permit~~—Permit. Applications for pipeline permits must include a plat of pipeline, drawn to scale, in triplicate.
  - (2) All pipelines, as to location and depth, must be approved by the Department.
  - (3) Within thirty (30) days of the completion of a producing oil and gas well, a sign shall be posted showing the name and number of the well and the legal description.
  - (4) On or before the last day of the month following the month of production, the lessee must file a sworn monthly report of oil produced and sold from the leased premises. This report will be filed with the Department.
  - (5) On or before the last day of the month following the month of production, the lessee must file a sworn monthly report of gas and casinghead gas produced and sold from the leased premises. This report must be filed with the Department and must be complete in detail.
  - (6) Prior to the commencement of operation, notice shall be given to the Department of intention to drill or recomplete any well, the name and number of the well, the

- approximate date operations will begin, and the estimated depth.
- (7) Notice of intention to plug must be filed with the Department at least five (5) days prior to plugging any oil or gas well. A copy of the plugging record shall be filed with the Department within thirty (30) days of the completion of plugging operations.
- (8) The lessee shall file an annual summary of lease operations on or before the first day of March. This report shall be filed with the Department and covers operations on producing leases for the previous calendar year.
- (9) The Department may require special reports pertaining to production or operation of a state lease. Upon request, the lessee shall promptly submit the required reports.
- (10) Within thirty (30) days after completion or recompletion of any well, a completion report shall be filed with the Department. This report shall be on the form prescribed by the Oklahoma Corporation Commission and shall be signed and sworn to by the lessee or his authorized representative. In addition to the above report, the lessee, upon request, shall furnish to the Department a copy of any electric or other log runs on this well.
- (11) All lessees shall abide by the environmental regulations that are included in the lease agreement.
- (12) All lessees must post a performance bond, in the amount requested by the Department, to cover the following agreements with the Department: oil and gas lease, salt water disposal lease, and seismic exploration agreement.
  - (A) Bonds will be released upon written request of the lessee or bonding company if liability is terminate.
  - (B) All surety bonds must be made by a company authorized to do business in the State of Oklahoma.
  - (C) Each assignment must be accompanied by a performance bond in accordance with the Department's bond schedule, with the assignee as principal.
  - (D) No assignment of a state lease will be valid or vest any interest in the assignee until the same is approved in writing by the Department.
  - (E) Assignments of state leases may be made on any assignment form in general use in the oil and gas industry and may convey a subdivision.
  - (F) All assignments presented for approval which are subject to other agreements must be accompanied by a copy of such other agreement.
  - (G) Assignments or grants of overriding royalty do not require approval of the Department.
- (13) All lease forms used in the sale of oil and gas leases shall be provided by the Department upon request.
- (14) Nothing in these rules and regulations shall be construed as excepting lessees from other applicable state and federal laws, and receipt of certification of non-compliance from responsible agencies may result in the suspension of the lease.
- (15) The lessee shall be liable for violation of any of the provisions herein set forth and shall make full restitution to the Department for such damages. Such damages shall be

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determined by the Department with the assistance of other agencies of state government.

(16) The lessee may be required to screen the mineral operation from access or viewing of the public. Such screening may include, but is not limited to fencing, berms, painting of the equipment or other actions as identified by the Department.

### 725:30-23-5. Damages and fees

(a) At properties where mineral operations are desired, but the Department may or may not be the owner of mineral interests, the Department shall establish the means for evaluating the damage that occurs as a result of the operation and shall set fees attributable to the mineral operation.

(b) Mineral exploration related fees that shall be established by the ~~Commission~~ Executive Director shall include the following:

- (1) Permit fee up to \$500.00.
- (2) Monitoring fee up to \$500.00.
- (3) Roadway easement up to \$2,000.00 per acre; Use of existing Department road up to \$1,000.00 per mile per year.
- (4) Well site up to \$2,000.00 per acre.
- (5) Tank and batteries up to \$2,000.00 per acre if separators and related production facilities are located at other than the well site; if at same location up to \$500.00 per acre.
- (6) Use of water - from lakes or ponds there is a minimum of \$100.00 per day or \$2.00 per 1,000 gallons. Drilling of a water well will be up to \$1,000.00.
- (7) Pipelines shall be assessed based on a fifty (50) feet minimum width at up to \$2,000.00 per acre of right of way for buried pipeline for gas or freshwater; \$5,000.00 per acre of right of way for buried pipelines for oil or salt water. Above ground pipelines will not be allowed, except temporary fresh water lines during drilling or well servicing at up to \$500.00 per mile.
- (8) Seismograph work shall be assessed based on a twenty-five (25) feet minimum width at up to \$2,000.00 per acre of land surveyed.
- (9) Timber damage fees will be assessed in accordance with the actual type and number of trees damaged or removed. The expertise of state agency professionals in the appropriate field shall be utilized to assess the cost/fee associated with such damage.
- (10) Other damages not specifically identified that may occur at a mineral exploration site shall be assessed based on the actual damage in the area. The expertise of state agency professionals in the appropriate field shall be utilized to assess the cost/fee associated with such damage.

## SUBCHAPTER 26. VEHICLES AND TRAFFIC SAFETY

### 725:30-26-1. Applicability and scope

~~The applicability of the rules in this subchapter~~ Subchapter are described in 725:30-2-2 of this chapter. apply to operation of motor vehicles within Department owned, operated, or leased properties, unless specifically addressed in state law.

### 725:30-26-2. State law applicability [REVOKED]

~~(a) Unless specifically addressed by rules in this chapter, traffic and the use of vehicles within the park system are governed by state law.~~

~~(b) Violating any provisions of state law defined in this subchapter is prohibited and subject to penalties described thereby.~~

### 725:30-26-4. Reporting motor vehicle accidents

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the ~~park manager~~ Manager, park ranger Ranger, any other law enforcement officer as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle or next of kin of the injured operator shall report the accident.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the ~~park manager~~ Manager, park ranger Ranger, or any other law enforcement officer unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before a vehicle is removed from the park unit.

(c) Failure to comply with a reporting requirement specified in subsection (a) or (b) of this section is prohibited.

(d) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by state law.

### 725:30-26-5. Park road designation

The following is prohibited in state parks:

- (1) Operating a motor vehicle off of designated park roads, parking areas and routes except when so designated.
- (2) Operating a motor vehicle not equipped with pneumatic tires except by ~~permit~~ Permit from the ~~park manager~~ Manager.
- (3) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a park road.

### 725:30-26-6. Load, weight and size limits

(a) Vehicle load, weight and size limits established by state law apply to a vehicle operated on a park road. However, the ~~park manager~~ Manager may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The ~~park manager~~ Manager may require a ~~permit~~ Permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following is prohibited when operating a vehicle on a park road:

- (1) Operating a vehicle that exceeds a load, weight or size limit designated by the ~~park manager~~ Manager.
- (2) Failing to obtain a ~~permit~~ Permit when required.
- (3) ~~Violating a term or condition of a permit. Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the park manager.~~

**725:30-26-9. Open container of alcoholic beverage [REVOKED]**

- ~~(a) Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle in a park unit is prohibited.~~
- ~~(b) This section does not apply to:
  - (1) An open container stored in the trunk of a motor vehicle, or if the motor vehicle is not equipped with a trunk to an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to The operator or passengers.
  - (2) An open container stored in the living quarters of a motor home or recreational vehicle.
  - (3) Unless otherwise prohibited, an open container carried or stored in a motor vehicle parked at an authorized campsite where the motor vehicle's occupants are camping.~~
- ~~(c) For the purpose of paragraph (b)(1) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.~~

**725:30-26-11. Speed limits**

- (a) Park unit speed limits are as follows:
  - (1) 15 miles per hour: within all campgrounds, picnic area, parking areas, utility areas, business, cabin, lodge or residential areas, and any other places of public assemblage.
  - (2) 25 miles per hour: upon section of park road under construction.
  - (3) 45 miles per hour: upon all other roads except when such road is considered under the control and jurisdiction of the Oklahoma Department of Transportation and such speed limits are designated by that agency.
- (b) ~~The park manager~~ Manager may designate a different speed limit upon any park road when a speed limit set forth in subsection (a) of this section is determined to be unreasonably unsafe, or inconsistent with the purposes for which the park area was established.
- (c) Speed limits shall be posted by using standard uniform traffic control devices in accordance with the United States Department of Transportation.
- (d) Operating a vehicle at a speed in excess of the posted limit is prohibited.
- (e) Park rangers may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a park road. Signs indicating that vehicle speed is determined by the

use of such radiomicrowaves or other electrical devices are not required.

**725:30-26-12. Unsafe operation**

- (a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by state law and violations are prosecuted pursuant to ~~subchapter~~ Subchapter 2 of this ~~chapter~~ Chapter.
- (b) The following are prohibited in state parks:
  - (1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.
  - (2) Operating a motor vehicle which unnecessarily cause its tires to squeal, skid or break free of the road surface.
  - (3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, wildlife and property.
  - (4) Operating a motor vehicle while allowing a person to ride:
    - (A) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed.
    - (B) On any exterior portion of the motor vehicle not designed or intended for use of a passenger. This restriction does not apply to a person seated in the bed of a truck that is equipped with sides.

**725:30-26-14. Off-road vehicles**

- (a) Off-road vehicles, when operated within designated off-road vehicle areas, shall operate such vehicles in a reasonable and prudent manner which provides for the safety and protection of the operator, wildlife, park resources, and the general public. Operating an off-road vehicle in an unreasonable or imprudent manner or without the proper equipment as defined in subsection (b) of this section may result in the suspension or revocation of off-road vehicle area use privileges.
- (b) The following equipment is required for off-road vehicles operation in designated areas:
  - (1) The vehicle will have a whip, which is any pole, rod, antenna, etc., that is securely mounted on the vehicle and which extends at least ten feet from the surface of the ground to the end of the whip. In addition, when the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any flags attached thereto. Lake Murray ATV area is exempt from this section.
  - (2) At least one whip attached to the vehicle shall have a flag that is solid bright orange in color and that is at least six inches by twelve inches in size. The flags must be within ten inches of the tip of the whip and may be of triangular, square, or rectangle shape. Club or other flags may be mounted below the above flag or on a second whip. Lake Murray ATV area is exempt from this section.

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(3) Each 4 wheel vehicle equipped with bench or bucket seats must be equipped with adequate roll bars or roll structure or sufficient strength to support the vehicle weight.

(4) Each 4 wheel vehicle shall be equipped with a seat and seat belt for the vehicle operator and each passenger, except a 4 wheel cycle equipped with a seat that must be straddled by the operator and passenger shall not require seat belts. Each 2, 3, and 4 wheel cycle shall have a seat for the vehicle operator and each passenger.

(5) For operation at nighttime, every vehicle shall be equipped with at least one headlamp emitting a white light visible from a distance of not less than 200 feet to the front and at least one tail lamp emitting a red light visible not less than 200 feet to the rear. For the purposes of this section, "nighttime" is defined as  $\frac{1}{2}$  hour after sunset to  $\frac{1}{2}$  hour before sunrise.

(6) All Utility Vehicles operating as a tagged and licensed vehicle through the Oklahoma Tax Commission or similar out-of-state state licensing entity shall comply with all applicable state and local laws while operating such vehicles on roadways.

### 725:30-26-15. Use of golf carts and utility vehicles

(a) Use of golf carts in state parks by persons with physical disabilities is authorized in 47 O.S. §1116.2 which establishes provisions for such use. The ~~park manager~~ Manager shall use discretion in allowing vehicle use by persons with qualified disabilities and shall provide a ~~permit~~ Permit for such use as necessary and appropriate.

(b) Other persons may use golf carts and utility vehicles in certain designated state parks or areas within state parks, as identified by the ~~Commission~~ Director, based on staff recommendation. Safety shall be the primary but not the sole determiner of areas where golf cart and utility vehicle use is allowed.

(c) A ~~permit~~ Permit shall be required for this use of golf carts and utility vehicles and a fee may be charged for issuance of the golf cart or utility vehicle use ~~permit~~ Permit. Permits are only valid for the specific locations for which they are issued. [74:2220]

(d) Operation of golf carts and utility vehicles may only occur as follows:

- (1) Within the boundary of a designated state park;
- (2) During daylight hours;
- (3) On roadways with a posted speed limit of 25 miles per hour or less; and
- (4) The permitted operator shall possess a valid driver license.

(e) A vehicle that would otherwise be viewed as a golf cart or utility vehicle ~~but is equipped with a vehicle tag, lights and was manufactured or sold for operation on the public streets or highways and possesses equipment required by law for street or highway use, shall be considered a motor vehicle, but is licensed and tagged as street legal vehicle shall be treated as such~~ may only operate in areas where vehicles are allowed. Such vehicles shall not require a special Permit.

## SUBCHAPTER 28. PARK SECURITY AND LAW ENFORCEMENT

### 725:30-28-1. Park ranger - powers, authority and appointments [REVOKED]

~~(a) Park rangers when commissioned, shall have all the powers of peace officers except the serving or execution of civil process, and shall have in all parts of the state the same powers with respect to criminal matters and enforcement of laws relating thereto as sheriffs, highway patrolmen, and police officers in any suit brought against them in consequence of acts done in the course of their employment, provided, however, they shall comply with the provisions of Section 3311 of Title 70 of the Oklahoma Statutes [74:2216].~~

~~(b) The director may commission any officer who is certified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes as a park ranger as the Department deems necessary to secure the parks and property of the Department and to maintain law and order therein [74:2216].~~

~~(c) The director may commission other employees as reserve park rangers and seasonal rangers who are certified pursuant to 70 O.S., Section 3311 as park rangers "as the Department deems necessary to secure the parks and property of the Department and to maintain law and order therein" [74:2216].~~

~~(d) For the purposes of this subchapter a seasonal ranger or reserve ranger shall have the same authority as defined in (a) and (b) of this section.~~

### 725:30-28-2. Primary authority and jurisdiction [REVOKED]

~~(a) Park rangers as defined in 725:30-28-1 shall be the primary law enforcement authority within the state park system who shall enforce parking, traffic, criminal and any other law applicable which provide for the maintenance of public health and safety, protection of the environment, natural and cultural resources and proper use of the park unit.~~

~~(b) "Park rangers shall have jurisdiction over all parts and aspects of the parks, including the state lodges located therein, whether state operated or leased to private operators" [74:2216].~~

### 725:30-28-3. Other agencies having authority - reporting requirements

(a) In conformance with state law other law enforcement officers shall have authority within state park.

(b) Unless otherwise provided by law, all other law enforcement officers, defined as having jurisdiction in state parks shall be required to report all offenses, violations or accidents which are defined as reportable by the Uniform Crime Report or any other rules set forth in this ~~chapter~~ Chapter to the ~~park manager~~ Ranger within 10 days after such offenses, violations or accidents were investigated within the park system by such officer.



725:30-28-5. Park ranger applicants - requirements [REVOKED]

(a) The director, when appointing park rangers to positions defined in this subchapter, shall determine, in consultation with the Office of Personnel Management, minimum qualifications and shall select such park rangers only after examination to determine their physical, aptitudinal and mental qualifications for such positions have been met. The content of the examination shall be prescribed by the director.
(b) Failure of an applicant to satisfactorily meet the requirements set forth by subsection (a) of this section shall be grounds for passing over the applicant for consideration.

SUBCHAPTER 29. LODGE OPERATIONS

725:30-29-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"Benchmarks" means standards of satisfactory performance.

"Commodities" means foods, beverages, gift shop merchandise, and other items bought and resold.

"Deposit" means a charge equal to the first night's rate to be applied to the last night of the reservation. A deposit may be in the form of cash, check or properly authorized and processed credit card.

"Function" means a banquet, a meeting space use, a golf tournament or other similar use.

"Group with overnight accommodations" means a block of 20 accommodations or 30% of total accommodations; or for smaller properties 10 accommodations or 15% of total accommodations with a scheduled function.

"Improved financial condition" means the financial results of an activity, a change in rates or fees, or any other event that increases revenues or reduces expenditures, the net result of which improves the financial condition of the Division or facility in the current or succeeding fiscal years.

"Lodge division revenues" means the gross revenues from all sales of products and services of all Lodge operations combined.

"New accommodation" means a lodging or use types that may arise in addition to those currently covered in Division of State Parks rules. New accommodations may be treated as an existing accommodation category such as cabins, shelters, group camps, lodges or other accommodations as determined by the Director of State Parks.

"Reservation Fee" means a non-refundable fee charged to a customer for making a reservation using the Oklahoma State Parks Reservation website.

"Services" means, but are not limited to, waiting on restaurant and banquet customers, baggage handling, setting-up and cleaning-up after banquet functions, and catering of meals.

725:30-29-3. Use of Public Space

(a) Identification of public space available for group use will include, but not be limited to, the following:

- (1) Lobby
(2) Dining room
(3) Swimming pool area
(4) Parking lot
(5) Patio area
(6) Tennis court

(b) At his/her discretion, the lodge manager will make the decision to provide a group this privilege. The lodge manager Manager will also make a reasonable effort to provide guests not a part of the group with equal accommodations.

725:30-29-4. Accepting reservation requests

The Division of State Parks will accept requests and make reservations at state lodges as follows:

- (1) Individual reservations shall be accepted up to eleven months in advance. When request for a reservation is made by an individual, a deposit is required before a reservation can be confirmed.
(2) Group reservations with overnight accommodations may be accepted more than one year in advance of requested date with approval from the Manager or the Director of State Parks if there is reason to believe that it would result in an improved financial condition.
(3) When a block of several rooms is requested for a group, a group reservation agreement shall be signed by an authorized person representing the group may be substituted in place of a deposit in order to confirm the reservations.
(4) When a deposit is not received or a contract is not returned in accordance with procedures established, the reservation may be cancelled without further notice and the accommodations may be made available to other customers.
(5) When market demand exists and there is reason to believe improved financial condition will result, reservations may be restricted to those of two (2) days or more.
(6) Group reservations for meeting room space may be accepted without reserving overnight accommodations no more than sixty (60) days in advance of the requested date without specific approval from the manager or the Director of State Parks or Executive Director. Acceptance of such reservations may be declined if there is reason to believe that the department's financial condition may be adversely affected.

725:30-29-5. Setting rates for guest rooms, meeting rooms and other public space

(a) The Executive Director and the Director of State Parks shall periodically approve and appropriately publish rates and fees for rental of guest rooms, meeting rooms, banquet rooms, and other public space rendered by the Division of State Parks to the general public.

(b) Such rates and fees will be based on the following considerations:

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- (1) The amount determined that will result in improved financial condition for the Division of State Parks, and
  - (2) The rates and fees for similar services then prevailing in the State of Oklahoma.
- (c) The Division of State Parks will maintain printed rate sheets to be made available upon request. Requests may be made to the Park facility or to the Oklahoma Tourism and Recreation Department at its Oklahoma City headquarters.

## 725:30-29-6. Special rates and promotional discounts

- (a) Individuals sixty-two (62) years or older (and their spouse if using it together) may be offered a special rate for a guest room or cottage providing they identify themselves as senior citizens and the request is made prior to use. This special rate may be restricted during periods of heavy demand.
- (b) Individuals who have been certified as totally disabled under state or federal law, may be offered a special rate providing request is made prior to use of the guest room or cottage. This special rate may be restricted during periods of heavy demand.
- (c) Guest rooms, cottages, banquet space and/or meeting space may be made complimentary or a discount may be offered when it is determined by the Director of State Parks or Lodge Manager that such action is in tandem with the marketing program and likely to result in improved financial condition for the Lodge System.
- (d) Special rates for groups will be established in conjunction with the establishment of individual rates. Group rates or any promotional discount afforded them will apply only when a Group Reservation Agreement is fully executed and will be limited to the provisions and terms stated therein. This special rate may be restricted during periods of heavy demand.

## 725:30-29-8. Setting price and fees for commodities and services provided by lodges

- (a) The Executive Director and the Director of State Parks shall periodically approve and appropriately publish a schedule of rates for all regularly offered items such as those on restaurant and banquet menus. In addition, fees will be established for any common service rendered by the state lodges such as, but not limited to, baggage handling and set-up and clean-up charges.
- (b) Such rates and fees will be based on the following considerations:
  - (1) The amount determined that will result in improved financial condition for the Division of State Parks, and
  - (2) The prices, fees, or other charges for similar commodities and services then prevailing in the State of Oklahoma.

## 725:30-29-10. Specials [REVOKED]

The Lodge Manager or Food and Beverage Manager may set temporary prices for items not on the restaurant or banquet menus. This provision is intended to allow the use of perishables in a timely manner and to accommodate unanticipated needs of individuals and/or groups.

## 725:30-29-11. Promotional discounts

Commodities and services may be made complimentary or a discount offered when it is determined by the Director of State Parks that such promotion is in tandem with the marketing program and is likely to result in improved financial condition for the Parks System.

## 725:30-29-14. Confidentiality of guest records [REVOKED]

- (a) Records containing details of individual customer's stay at a state lodge are considered confidential.
- (b) Release of records will be made only to law enforcement agencies that can demonstrate a legal requirement for access.

[OAR Docket #22-664; filed 7-21-22]

## TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 10. DEPARTMENT PROGRAMS

[OAR Docket #22-510]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 23. County Improvements for Roads and Bridges Program
- 730:10-23-4. Use of Funds [AMENDED]
- 730:10-23-5. Project eligibility and approval [AMENDED]
- 730:10-23-6. Request for funds [AMENDED]
- 730:10-23-7. Project selection [AMENDED]
- 730:10-23-8. Programming of projects [AMENDED]

### AUTHORITY:

Oklahoma Transportation Commission; 23 U.S.C. 101 et seq.; 69 O.S. §§ 101, 301, 303, 304, 312, 317, 318, 401, 403 through 409, 411, 412, 501, 502, 507, 601, 636.1 through 636.7, 656, 657, 659 through 662, 665, 689, 701, 1502, 1507, 1511, and 4002; P.L. 104-59 § 350

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 5, 2021

### COMMENT PERIOD:

December 1, 2021 through January 3, 2022

### PUBLIC HEARING:

N/A

### ADOPTION:

February 7, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 14, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rulemaking actions are to bring these rules up to date and in agreement with current Department processes and procedures as well as Circuit Engineering District County participation.

### CONTACT PERSON:

Tara Brown, Deputy Chief Innovation Officer, Office of Innovation, ODOT, 200 N.E. 21<sup>st</sup> Street, Oklahoma City, OK 73105, 405-522-8151, tlbrown@odot.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

**SUBCHAPTER 23. COUNTY IMPROVEMENTS FOR ROADS AND BRIDGES PROGRAM**

**730:10-23-4. Use of Funds**

Funds available to the County Improvements for Roads and Bridges Program may only be expended on high priority projects included in a fiscally constrained five-year construction work plan cooperatively developed, maintained and updated annually by the county, Circuit Engineering Districts and the Department of Transportation and to be used for the following purposes as approved by the Department:

- (1) Construction projects to replace or reconstruct structurally deficient, functionally obsolete, destroyed or unusable bridges on the county transportation system in accordance with Department established design and construction requirements.
- (2) Construction projects for the improvement of county roads in accordance with Department established design and construction requirements.
- (3) Matching other funds available for county road or bridge construction projects, provided it can be substantiated that the applicable funds will be available at the time of a qualifying and scheduled project expenditure.
- (4) Project engineering costs including those identified in paragraph (8) of this section.
- (5) The cost of right-of-way, the costs of relocation of utilities from the right-of-way so acquired, and the costs of employing or contracting with qualified individuals to assist a county or counties in properly acquiring and clearing the right-of-way.
- (6) The cost of reconstruction or replacement of roadway structures which may be less than twenty (20) feet in length.
- (7) The expense and related costs of employing or contracting with qualified individuals to assist a county or counties in carrying out the environmental clearance, design, contract administration and the inspection of construction, including the reimbursement of project related expenses incurred by the county's engineer or Circuit Engineering District.

**730:10-23-5. Project eligibility and approval**

Projects shall be considered and approved for inclusion in the five year construction work plan annually by the Department of Transportation on the basis of specific project evaluation criteria. These criteria shall generally consider deficiencies in bridge conditions, recognize safety concerns, capacity concerns based on higher traffic volumes and mobility corridors that improve inter-community or inter-county connectivity, economic development and home to school

routes. Prioritization criteria should also consider the difficulty to address these projects utilizing conventional funding. ~~Factors~~ Factors including the ability of the county to effect the improvements through the utilization of other resources and funding mechanisms, the priority of the projects ~~established by the Circuit Engineering District~~, project feasibility and cost including the ability of the county to participate, existing phase of project development, anticipated safety and mobility benefits realized by the traveling public and commerce, and the extent the project will improve the overall level of service and longevity of the county transportation system in the area are also priority considerations.

**730:10-23-6. Request for funds**

Funds made available through the County Improvements for Roads and Bridges Program shall be allocated to requesting counties on the basis of the formal submission of a request for projects to the coordinating Circuit Engineering District, or the Department, for further consideration. Each project request shall be prepared in a uniform format cooperatively developed by the Circuit Engineering Districts and the Department of Transportation and shall be submitted in accordance with the notifications and deadlines established to meet the Department's annual programming schedule requirements.

**730:10-23-7. Project selection**

Upon determination of the conformance of a proposed project with the intent of the program and the project evaluation criteria, the county or coordinating Circuit Engineering District will compile a prioritized list of recommended projects occurring within the District to be transmitted for further consideration by the Department of Transportation. In the absence of an acceptable project recommendation from any CED or county, the Department reserves the authority to select and recommend projects to the Transportation Commission as determined appropriate.

**730:10-23-8. Programming of projects**

Acceptance by the Department of each county ~~or the coordinating~~ Circuit Engineering District's prioritized list of recommended projects does not constitute a commitment of funds for the requested projects. The Department shall have the responsibility for considering the recommended projects from each Circuit Engineering District or county, formulating a project recommendation to the Transportation Commission and for the subsequent development and maintenance of the County Improvement for Roads and Bridges Program 5 Year Construction Work Plan. Upon the annual Transportation Commission approval of the Construction Work Plan, the Department shall notify the county and Circuit Engineering District of the acceptance of projects. Projects which are excluded on the basis of non-availability of funds may be resubmitted ~~by the Circuit Engineering District~~ for future consideration.

[OAR Docket #22-510; filed 6-29-22]

# Permanent Final Adoptions

## TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 15. HIGHWAY PLANNING

[OAR Docket #22-511]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Highway and Bridge Signage

730:15-3-1. Commission dedications and commendations [AMENDED]

**AUTHORITY:**

Oklahoma Transportation Commission; 23 CFR 470.109; 49 CFR 1.48(b)(2); 23 U.S.C. 103(b)(2), 103(e)(1) through (e)(3), 103(f), 134, 135, and 315.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND  
CABINET SECRETARY:**

November 5, 2021

**COMMENT PERIOD:**

December 1, 2021 through January 3, 2022

**PUBLIC HEARING:**

N/A

**ADOPTION:**

February 7, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND  
LEGISLATURE:**

February 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rulemaking action is to bring this rule in compliance with statute 69 O.S., 2011 §1600.1 which has removed the length of time requirement.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 3. HIGHWAY AND BRIDGE SIGNAGE

**730:15-3-1. Commission dedications and  
commendations**

(a) Highways, bridges, and other facilities which are part of the state highway system may be considered by the Transportation Commission for dedication in honor of individuals deserving of commendation for their active involvement in the project or for outstanding service to the nation, this state, or their community. ~~Persons proposed to be so honored shall have been deceased not less than three years prior to consideration.~~ Proposals for the dedication of state highway facilities

should specifically state the accomplishments upon which the proposal is based.

(b) No facility or group of related facilities shall be considered for naming in honor of more than one individual or entity, once named. Except in the most unusual circumstances, the Commission shall not consider changing the name of the facility, nor shall the Commission consider changing or designating additional names to the current named facility or city street which is also part of the state highway system.

[OAR Docket #22-511; filed 6-29-22]

## TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 25. HIGHWAY CONTRACTORS

[OAR Docket #22-512]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Contractor Prequalification and Proposals

730:25-3-1. Prequalification [AMENDED]

**AUTHORITY:**

Oklahoma Transportation Commission; 25 O.S., §1313;61 O.S., §1, and §§101 et seq;69 O.S., §§ 101, 301, 303, 304, 312, 622, 1101, and 4006; 75 O.S., §§ 302, and 309 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND  
CABINET SECRETARY:**

November 5, 2021

**COMMENT PERIOD:**

December 1, 2021 through January 3, 2022

**PUBLIC HEARING:**

n/a

**ADOPTION:**

February 7, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND  
LEGISLATURE:**

February 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rulemaking action is to reflect process changes pertaining to the Department's prequalification requirements.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. CONTRACTOR  
PREQUALIFICATION AND PROPOSALS**

**730:25-3-1. Prequalification**

(a) The purpose of contractor qualification is to make an initial determination if a contractor has adequate financial resources, integrity, experience, and proven performance to maintain progress on Oklahoma Department of Transportation projects and to make timely payments to sub-contractors and material suppliers. Prequalification is the method of qualification which has been adopted by the Oklahoma Transportation Commission and the Department pursuant to the Public Competitive Bidding Act at Title 61 OS § 118. Prequalification provides a method by which the Department may review a contractor's financial resources and technical expertise before a contractor is allowed to bid on projects which have not been exempted from the prequalification requirement. Prequalification is not a license, but is rather a procedure used by the Department to evaluate prospective bidders' ability to perform. Prospective bidders must ensure that their prequalification application is accurate and complete in all aspects, and fully discloses all information requested in the application form. Prospective bidders will be allowed to submit one application in a twelve month period. The Department may request additional information for clarification of a prospective bidder's application. The owners and officers who comprise a company will be the determinative factor as to the existence of prior prequalification applications not an alteration or change of an organization name. The prequalification application and all financial information submitted to the Department by a contractor for the purpose of prequalification shall be held in confidence by the Department and shall not be an open record pursuant to the Oklahoma Open Records Act at Title 51 OS §24A.3(1)(d).

(b) Except as provided in this subchapter, only prequalified contractors will be permitted to bid on construction and maintenance contracts to be awarded by the Commission on the recommendation of the Department. When projects do not encompass highway construction maintenance, the Department may waive prequalification when it is in the best interest of the State and to increase competition on individual projects of a special nature including, but not limited to:

- (1) Right-of-Way Clearance
- (2) Landscaping
- (3) Wetland creation
- (4) Repair or maintenance of railroad facilities
- (5) Environmental cleanup or mitigation
- (6) Transportation enhancement projects

(c) A prospective bidder may obtain a "sample" copy of the bidding documents for use in preparing bid computations after official advertisement of a project, but must submit an application for prequalification not less than twenty-one days prior to the announced bid opening date to the Office Engineer Division and obtain a Certificate of Qualification in order to submit a bid proposal to the Department. The submitted application for prequalification will be considered by a prequalification committee composed of the Office Engineer, along with representatives from the Comptroller Division, the Construction

Division, Director of Operations, and the General Counsel's Office. Contractors prequalified by the committee may be approved for the classes of work specified by the applicant on the prequalification application, dependent on personnel, equipment, capital and experience in highway construction.

(d) A prospective bidder must submit as part of their Prequalification Application, an Audited Financial Statement in which a Certified Public Accountant has expressed an opinion. The prospective bidder's fiscal year end Audited Financial Statement shall not be dated more than 180 days prior to the date of receipt by the Department of the Prequalification Application. Based upon these statements and other materials submitted or subsequently requested by the Department, the Department may, at its discretion, grant the prospective bidder a conditional prequalification. The Department shall impose such additional requirements on a conditionally prequalified contractor as the Department deems necessary and in the best interests of the public. If a conditional prequalification is granted, it is valid only for the remainder of the prospective bidder's fiscal year in which the conditional prequalification is granted, plus an additional period not to exceed 180 days.

(e) No prospective bidder will be qualified unless the prospective bidder's Prequalification Application and the Department's review of that Application determines that the prospective bidder possesses working capital, equipment, experience and personnel sufficient in the judgment of the Department, to indicate that the prospective bidder can satisfactorily perform its contract and meet all obligations incurred therein. The Audited Financial Statement must show all liabilities (current, deferred and contingent). The prospective bidder will not be qualified for more than two and one-half times its current working capital as computed by the Department, based on an evaluation of the contractor's Audited Financial Statement. When a conditionally prequalified contractor receives a notice of project completion on a project, that notice may be submitted to the Department for removal of that project from its bidding limit.

(f) If the prospective bidder submits cash value of life insurance as an asset, the applicant will support the submission with a letter from the insurance company, showing that the prospective bidder absolutely controls the cash value and that there are no legal encumbrances, preexisting loans or any other impediment which would prevent or interfere with the access of the prospective bidder to that cash value.

(g) When a partnership is being considered, an Audited Financial Statement of the partnership, which will include all the assets and liabilities of each member, will be required.

(h) Prospective bidders will furnish an itemized list of all Secondary Cash Resource items such as marketable securities, stocks and bonds.

(i) Prospective bidders will sign, under oath, all forms submitted to the Department.

(j) The Department will make such investigation of the information submitted as it deems necessary.

(k) The Department will qualify, or refuse to qualify, any prospective bidder for paving, grade and drain, bridge or other Department construction work in accordance with such prospective bidder's experience and financial condition.

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(l) Prospective bidders who are conditionally prequalified will not be permitted to bid on individual projects that, in aggregate, exceed maximum bidding limits. Proposals may be "taken out" without limitation as to aggregate total. Should a conditionally prequalified contractor be low bidder on contracts totaling, in aggregate, more than the amount for which the contractor is conditionally prequalified, the Commission reserves the right to:

(1) Reject any or all of the contractor's bids and re-advertise for new bids as required in the best interests of the state; or,

(2) Award contract(s) on which the conditionally prequalified contractor would otherwise be the low bidder to the second lowest bidder; or

(3) Waive the maximum bidding limit and award all or any of such contracts to the conditionally prequalified contractor if the Department, in the exercise of sound discretion, shall determine that the contractor has the apparent ability to successfully perform the contract(s) and it is in the best interest of the Department for the award to be made.

(m) Any prospective bidder not satisfied with a rejection of its application for prequalification may appeal to the Department's Executive Director or the Executive Director's designated representative by giving notice of the applicant's objection by certified mail addressed to the Executive Director. The applicant's objection must be mailed within fourteen (14) calendar days after the date such prospective bidder received written notice of the Department's action. The Executive Director shall review the prequalification file and make an independent determination concerning the applicant's prequalification.

(n) Upon being conditionally prequalified a minimum of one (1) year from the date of the initial prequalification, and satisfactory final completion of either:

(1) A minimum of three (3) projects and not less than Five Million Dollars (\$5,000,000) of Department projects requiring prequalification as a prime contractor, OR,

(2) A single project in excess of Ten Million Dollars (\$10,000,000.00) as a prime contractor, the contractor will be considered by the prequalification committee. If found fully qualified, the Contractor's Certificate of Qualification will be reissued to allow the contractor to bid on and be awarded projects to the extent of their bonding capacity as a fully prequalified contractor. A conditionally prequalified contractor that completes a project as a joint venture with a fully prequalified contractor shall receive credit for its proportional share of the project and contract amount, limited to its bidding capacity.

(o) Prequalification shall expire after a two year term at the completion of the contractor's fiscal years following issue of the contractor's Certificate of Qualification. After the expiration date of the contractor's Certificate of Qualification, the contractor shall have a period of 180 days to submit audited financial statements, or a financial review of the contractor's business operations. During this 180 day period the contractor

shall remain prequalified under its current Certificate of Qualification. If the contractor does not submit audited financial statements or a financial review of its operations within the 180 day period following the expiration date of the contractor's Certificate of Qualification, the contractor's prequalification status will cease and the contractor will not be eligible to submit bid proposals to the Department at that date. The contractor's audited financial statement or financial review of its operations must demonstrate that the contractor has a positive amount of working capital that is sufficient to satisfactorily perform its contract in the judgment of the Department. The Department will renew the contractor's Certificate of Qualification if the contractor's working capital is sufficient in the opinion of the Department. If the Department's review determines that the contractor has insufficient working capital, the contractor's Certificate of Qualification will not be renewed and will expire at that time.

(p) When a previously fully prequalified contractor re-applies for prequalification within two years of the expiration of their prequalification, upon approval the Department may, at its sole discretion, reinstate the contractor to fully prequalified status, provided that:

(1) the contractor was in good standing with the Department at the time that the contractor's prequalification expired,

(2) the contractor submits current audited financial statements that indicate financial resources equal to or greater than its last financial statements submitted to the Department, and

(3) it is demonstrated that such reinstatement of the contractor to fully prequalified status is in the best interests of the Department.

(q) The Department will consider a contractor to be in good standing if:

(1) The contractor was demonstrating satisfactory performance on contracts which the contractor was awarded by the Department;

(2) The contractor had settled all debts and obligations owed to the Department;

(3) The contractor had made all necessary payments to subcontractors in accordance with its subcontract agreements;

(4) The contractor had made all necessary payments to suppliers for materials to be used on Department contracts;

(5) The contractor had settled all claims against the contractor;

(6) The contractor was not in the process of being suspended or debarred by the Department, or any other government entity, and the action and/or decision was later upheld;

(7) The contractor was not party to any criminal suit against the contractor in which the contractor was later convicted.

[OAR Docket #22-512; filed 6-29-22]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 30. HIGHWAY DESIGN

[OAR Docket #22-513]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Consulting Engineering Services
730:30-5-1. Department Consultant Contracts [AMENDED]

AUTHORITY:

Oklahoma Transportation Commission; 61 O.S., §§ 60 et seq.; 69 O.S., §§ 101, 301, 303, 304, 689, 701, 708.2, 1210, 1401 et seq., 4002, and 4006; 47 O.S., §§ 14-118, 14-101 et seq., and 1129; 23 U.S.C. 101, 127 and 315; 49 U.S.C. 101 through 113; 23 CFR 658

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 5, 2021

COMMENT PERIOD:

December 1, 2021 through January 3, 2022

PUBLIC HEARING:

n/a

ADOPTION:

February 7, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 14, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rulemaking action is to bring this rule up to date and in agreement with current Department processes and procedures.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 5. CONSULTING ENGINEERING SERVICES

730:30-5-1. Department consultant contracts

(a) The Oklahoma Department of Transportation may utilize consultant contracts to assist in the delivery of the Department's eight year construction work plan and other transportation improvements. All requests for consultant services must be approved by the Chief Engineer or an appointed designee. The Department will contract for professional services when one or both of the following conditions exist:

- (1) The inability to complete the required work within the desired time frame with available resources.

- (2) The work requires specialized experience or expertise that is not available within the agency.
(b) The Department will utilize two (2) basic forms of professional service contracts:
(1) Project Specific Contracts. Contracts that provide for a general project location and specific definition of the anticipated services that will be required.
(2) Demand Service Contracts. Contracts that require a consultant to provide work and services on an as-needed or on-call basis. Demand service contracts that encompass all the preconstruction services necessary to provide a complete Plan, Specification and Estimate (PS&E) submission shall not exceed a total of five hundred thousand dollars (\$500,000) per consultant, per state fiscal year.
(c) The Department will solicit for project specific contracts on an as-needed basis and for demand service contracts on a periodic basis. The Department will maintain a list of all consulting firms that submit a consultant information form. The Department will solicit for professional services from the list and will utilize the technological means available to notify interested consultants in a manner that will maximize their opportunity to respond. For unusual or specialized services, the Department may deviate from the list of consulting firms and solicit in a manner that will provide notice to the greatest number of consulting firms determined to be qualified and capable of providing the services required.
(d) A consultant selection committee composed of representatives with knowledge and expertise in critical aspects of the projects and services will be utilized for the consultant selection for professional service contracts.
(e) The Oklahoma Transportation Commission must approve each obligation of funds for engineering and planning work prior to contract execution.

[OAR Docket #22-513; filed 6-29-22]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 35. MAINTENANCE AND CONTROL OF STATE HIGHWAY SYSTEM

[OAR Docket #22-514]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Maintenance
730:35-1-4. Maintenance responsibilities [AMENDED]
Subchapter 5. Highway Advertising Control
730:35-5-3. Definitions [AMENDED]
Subchapter 13. Freeway Signing Supplement Guide Signs
730:35-13-4. Tourist oriented directional signs (TODS) [AMENDED]

AUTHORITY:

Oklahoma Transportation Commission; 47 O.S., §§ 11-202, 11-203, 11-204, 11-204.1, 11-205, 11-307, 11-308, 11-313, 11-701, 11-702, 11-703, 11-802, 11-1301, 11-1302, 15-104, 15-105, and 15-108; 69 O.S., §§ 212, 218, 226, 232, 304, 501, 502, 504, 701, 901, 1208, 1209, 1210, 1213, 1251 et seq., 1271 et seq., 1502, 1510, 1403, 1903, 4002, and 4021 et seq.; 74 O.S., § 3117; 23 U.S.C. 131, 135, and 136; 23 CFR 750 and 751

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 5, 2021

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**COMMENT PERIOD:**

December 1, 2021 through January 3, 2022

**PUBLIC HEARING:**

N/A

**ADOPTION:**

February 7, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rulemaking action is to bring these rules up to date and in agreement with current Department processes and procedures.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. MAINTENANCE

### 730:35-1-4. Maintenance responsibilities

(a) The Department shall pay the cost or perform the act of constructing, improving, or maintaining roads, including frontage roads, public roads, local roads, and interchange ramps or any sections thereof, which have been designated by the Transportation Commission as part of the state highway system.

(b) The Department ~~shall~~ may pay the cost of maintaining all official traffic signs and pavement markings except for parking space markings, ~~crosswalks, and stop lines~~, from right-of-way line to right-of-way line.

(c) Within a municipality, the Department shall maintain the roadway pavement and pavement structure only. The ~~department~~ Department may pay the cost of construction or reconstruction of drainage systems, curbs, sidewalks, and driveways when necessary to construct or reconstruct an existing highway within a municipality. The Department shall not perform maintenance on or pay the cost of accident or spill clean up, sweeping, mowing the right-of-way, drainage systems, and facilities including inlets, curbs, sidewalks, and driveways, electronic traffic control devices or highway system lights. The Department may also perform maintenance on electronic traffic control devices or highway system lights when the Department determines it is in the best interest for the safety and mobility of the highway.

(d) The Department may participate in the cost of construction or replacement of highway lighting systems and electronic traffic control devices on highways within municipal limits.

(e) At places where city streets or county roads intersect with the state highway system, the city or county shall be responsible for maintaining all advance warning signs and for roadside maintenance activities outside the highway right-of-way line including sight distance clearance on the city street or county road leading to the stop intersection.

## SUBCHAPTER 5. HIGHWAY ADVERTISING CONTROL

### 730:35-5-3. Definitions

The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Abandoned sign"** means a registered sign in need of substantial repair, or which is overgrown by trees or other vegetation not on the highway right-of-way or is otherwise no longer being utilized as an outdoor advertising device, for a period of one (1) year, shall be considered "abandoned" and any nonconforming or grandfather status granted by the Highway Advertising Control Act shall be terminated. Leasing information shall not be considered advertising content for purposes of this definition.

**"Adjacent area"** or **"control area"** within urban areas means the area which is adjacent to and within six hundred sixty (660) feet of the nearest edge of the right-of-way on any Interstate or the National Highway System. The six hundred sixty foot (660) distance shall be measured horizontally along a line perpendicular to, or ninety degrees (90°) to the centerline of the highway. Outside of urban areas, adjacent area or control area means the area which is visible from the main traveled way on any interstate or the National Highway System and has the purpose of being read. All spacing considerations are determined by whether or not they exist within the adjacent or control area. Signs located outside the "control area" will not be registered.

**"Adjacent Property Owners"** means any person, firm or corporation owning property which is located adjacent to a "Clearance Area," as defined in this subsection. Applicant shall submit written consent from any such property owner when making application for a clearance permit.

**"Advertisement"** means any writing, printing, picture, painting, display, emblem, drawing, sign or similar device which is posted or displayed outdoors on real property and is intended to invite or to draw the attention or to solicit the patronage or support of the public to any goods, merchandise, real or personal property, business, services, entertainment or amusement manufactured, produced, bought, sold, conducted, furnished, or dealt in by any person; the term shall also include any part of an advertisement recognizable as such, whether a permanent or portable installation, but shall not include surface markers showing the location or route of underground utility facilities or pipelines or public telephone coin stations installed for emergency use; nor shall same include temporary



election candidate campaign signs or voters' referendum signs, if erected not more than forty-five (45) days prior to an election and removed within seven (7) days following the election or within seven (7) days following the final election if more than one is required to settle the advertised candidate election or non-election, or referendum issue.

**"Agreement"** means the agreement between the Director of the Oklahoma Department of Transportation and the Secretary of the Transportation of the United States, regarding the enforcement of the Highway Beautification Act of 1965.

**"Business area"** means any part of an adjacent (control) area which is zoned for business, commercial or industrial activities under the authority of any law of this state, or not zoned, but which constitutes an unzoned commercial or industrial area as herein defined.

**"Centerline of the highway"** means a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the centerline of the main-traveled way of a non-divided highway.

**"Commercial or industrial area"** means any part of a control area which is within six hundred sixty (660) feet of the nearest edge of the right of way and is:

(A) Zoned for industrial or commercial activities under the authority of any state zoning law, or city or county zoning ordinance of this State. Any commercial or industrial area created or established by any zoning authority must actually be capable of supporting commercial or industrial activities. A zoning action which is not a part of a comprehensive zoning plan and is created primarily to allow outdoor advertising structures does not constitute valid zoning for outdoor advertising control purposes.

(B) Not zoned, but which constitutes an unzoned commercial or industrial area as herein defined.

**"Clearance Area"** means the area of state right-of-way adjacent to property upon which a legal outdoor advertising sign is located, of which said sign owner wishes to remove vegetation. This area shall not exceed 800 feet in length, from any face of the sign, along the highway. This distance shall be determined by measuring horizontally along the highway from a line perpendicular from the support pole, nearest the highway, of the sign to the centerline of the highway.

**"Commercial and industrial activities"** means those activities, clearly visible and recognized as a commercial or industrial activity from the main traveled way, generally recognized as commercial or industrial by zoning authorities in the state.

**"Comprehensive zoning"** means a complete approach to land use within the jurisdiction of a zoning authority. For example, the mere placing of the label "zoned commercial or industrial" on land does not constitute comprehensive zoning, but rather, the establishment of a complete set of regulations to govern the land use within the entire jurisdiction of the zoning authority.

**"Control Area Measurement Methodology"** means the standard method which is used by the Department for measuring all distances between signs and disqualifiers. In measuring

proper spacing between registered signs and disqualifying factors, a line perpendicular from the sign site to the centerline of the highway is first determined. The distance is then measured from that line in each direction along the highway. Lines from those measured points are then run perpendicular to the centerline of the highway extending outward six hundred and sixty (660) feet from the nearest edge of the right-of-way; on both sides of the roadway when undivided, or same side only, if the roadway is divided. The area located inside this delineated space constitutes the control area of the proposed sign location.

**"Control of access"** means the Department shall not issue a permit for any sign which cannot be erected or maintained from private property without violating control of access boundaries.

**"Customary maintenance"** means maintenance that shall only include, change of message, replacing electrical wiring and bulbs, painting of the face and structure, clearing vegetation (not on right-of-way), reinforcing the structure with banding or nails, and repairing the apron or catwalks. Additional maintenance activities may be approved upon written request to the Department. An increase in dimension, any change in location, increase in height, change in location in lighting, or the addition of lighting does not constitute customary maintenance. An increase, change, addition or any maintenance which is not listed above, shall terminate any non-conforming or grandfather status granted by the Act and the sign shall be considered illegal, thus a public nuisance subject to summary abatement and removal without compensation.

**"Damage"** means injury or harm as a result of wear and tear, storms, or other natural causes including, but not limited to, insect damage. If such damage occurs, the owner of the damaged sign shall notify the Department by letter within thirty (30) days of the occurrence, giving the sign's registration number, date damage occurred, whether or not the sign will be repaired, an itemized list of repairs, and a picture of the damaged structure. Failure to comply with any part of the above requirements before repairing a damaged sign shall result in forfeiture of any nonconforming or grandfather status granted by the 1972 Highway Advertising Control Act. After receiving authorization and repairs have been completed, the owner shall send a picture of the repaired structure to the Department.

**"Department"** means the Oklahoma Department of Transportation.

**"Destroyed"** means that a sign shall be considered destroyed when damaged, from any cause except a criminal or tortious act, exceeds fifty percent (50%) of the sign structure.

**"Directional signs"** means signs giving directional information about goods and services of interest to the traveling public. Such signs shall be limited to those pertaining to rest stops, camping grounds, food services, fuel and automotive services, and lodging.

**"Director"** means the Director of the Department of Transportation or his designee.

**"Discontinued"** or **"blank sign"** means a registered sign not displaying products or service advertising contents for a period of one (1) year shall be considered discontinued and removed at the expense of the sign owner. Leasing information

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shall be considered advertising content for purposes of this definition.

**"Divided highway"** means that part of a primary highway which has been constructed as divided, dual lane fully controlled access to the throughways except for the established interchanges.

**"Federal-aid primary highway"** means any highway at any time officially designated as part of the Federal-aid Primary System by the Department and approved by the appropriate authority of the federal government.

**"Grandfathered sign"** means a sign which was lawfully erected but does not comply with all the provisions of the State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not non-conforming signs. (Same as Non-conforming (grandfathered) sign.)

**"Illegal sign"** means signs that are situated in control areas adjacent to Interstate and Federal-aid Primary Systems which are outside zoned and unzoned commercial or industrial areas, are not listed on the 1972 inventory and do not qualify either as on-premise, directional or official signs and notices required or authorized by law. Signs erected within zoned and unzoned commercial and industrial areas without the benefit of a permit or which are erected or maintained not in accordance with permit requirements are also illegal.

**"Informational signs"** mean signs containing directions or information about public persons or public places which are owned or operated by federal, state, or local governments or their agencies. It also refers to public or privately owned natural phenomenon, historic, cultural, educational, or religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation, when deemed to be of interest to the traveling public. Informational signs do not include political campaign signs or posters.

**"Interstate highway"** means any highway at any time officially designated a part of the National System of Interstate and Defense Highways by the Department and approved by the United States Department of Transportation.

**"Lease"** means an agreement, in writing, by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.

**"License"** means the privilege granted by the Department to do business as an outdoor advertising company in the State of Oklahoma.

**"Main traveled way"** means the traveled portion of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

**"Maintain"** means to hold or keep in a state of continuing existence.

**"Non-conforming (grandfathered) sign"** means a sign which was lawfully erected but does not comply with all the provisions of the State law or State regulations passed at a later date or later fails to comply with State law or State regulations

due to changed conditions. Illegally erected or maintained signs are not non-conforming signs.

**"Non-conforming (grandfathered) sign maintenance"** means the sign must remain substantially the same as it existed on the effective date of State law. (Also see "Customary Maintenance" and "Destroyed" above.)

**"Official signs and notices"** mean signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal or state law for the purpose of carrying out an official duty or responsibility. These signs must not exceed thirty-two (32) total square feet in area.

**"On-premise sign"** mean signs consisting solely of the name of the establishment, or which identify the establishment's principal or accessory products, or the services which are offered on the business premises. Signs advertising the sale or lease of the property on which they are located, are considered on-premise signs. Signs located on narrow strips of land contiguous to the advertised activity when the purpose clearly is to circumvent the Oklahoma Highway Advertising Control Act shall not qualify as on-premise signs. (See 730:35-5-14)

**"Outdoor advertising business"** means any person, firm or corporation which builds, leases, sells, or rents advertising space upon an outdoor advertising sign, display or device to others for profit.

**"Permittee"** means a person, firm or corporation who has applied for and received a permit from the Department for the express purpose of removing brush and/or trees from the state highway rights-of-way.

**"Primary highway"** means any highway at any time officially designated a part of the Federal-aid Primary System by the Department and approved by the United States Department of Transportation.

**"Public utility signs"** mean warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned utilities, as essential to their operations.

**"Rest area"** means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

**"Scenic turnout"** means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control which provides a shelter off the main-traveled way for stopped vehicles for the purpose of viewing an area of scenic significance.

**"Service club and religious notices"** mean signs and notices relating to the existence or meetings of non-profit service clubs, including but not limited to, garden clubs, charitable associations or religious services. Service club or religious notice signs shall not exceed eight (8) square feet in area.

**"Sign, outdoor advertising"** or **"outdoor advertising device"** means any outdoor sign, display, device, notice, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of

the Interstate or National Highway System. It includes permanent or portable installations, but shall not include surface markers showing the location or route of underground utility facilities or pipelines or public telephone coin stations installed for emergency use. It also shall not include temporary election candidate campaign signs or voters' referendum signs, if erected not more than 45 days prior to an election and removed within 7 days following the election or within 7 days following the final election if more than one election is required to fill the office or settle the referendum issue.

**"Sign facing"** means the total advertising surface of an outdoor advertising sign, display or device which is visible from the main-traveled way of the highway. For purposes of this definition, a single sign facing may consist of one or more sign panels facing in one direction.

**"Sign panel"** means a separate advertising area contained upon a sign facing, including any border or trim, but excluding ornamental base or apron supports; provided however, that such ornamental base or apron supports shall not contain an advertising message or messages.

**"Sign standards by sign type"** means Class "A" signs, Class "B" signs, Class "C" signs, Class D signs, "on premise" signs, exempt signs, prohibited signs and all their zoning, spacing, lighting and size requirements. (See 730:35-5-12, 730:35-5-13, 730:35-5-14, 730:35-5-15, and 730:35-5-16.)

**"Sign structure support"** includes all structures, poles, bracings, lateral supports and other material of every kind and nature used to support a face or surface on which outdoor advertising is placed, whether located on or attached to the surface of the earth or man-made structure.

**"The Act"** means the Highway Advertising Control Act contained in Title 69 O.S., Section 1271 et seq., and any amendments thereto.

**"To erect", and variants of the verb "to erect"**, means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish. These shall not include any of the foregoing activities when performed as incident to the change of advertising message or customary maintenance of the sign structure. Any relocation of the sign structure, however slight, from one site to another site shall be deemed to be within the meaning of the verb "to erect" and its variants.

**"Truck weighing station"** means an area or site established and maintained within or adjacent to the highway right-of-way and upon which are located permanent truck weighing facilities operated by the Department, the Department of Public Safety, and/or the Oklahoma State Tax Commission.

**"Unzoned commercial or industrial areas"** means those areas which are not zoned by state or local law, regulation or ordinance, and on which there is located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon. No area upon which a commercial or industrial activity is conducted shall be considered as an unzoned commercial

or industrial area if the commercial or industrial activity is conducted as a method, scheme or ruse designed for the purpose of conducting the business of outdoor advertising.

**"Urban area"** means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each state, or an urban place as designated by the Bureau of the Census having a population of five thousand (5,000) or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

**"Visible"** means capable of being seen without visual aid by a person of normal visual acuity.

**"Zoned commercial or industrial areas"** means those area zoned for commercial or industrial activities under the authority of any state law, or city or county zoning ordinance of this state. Any commercial or industrial area created or established by any zoning authority must actually be capable of supporting commercial or industrial activities. Any state or local zoning action which is not a part of a comprehensive zoning plan, such as strip zoning, spot zoning, or variances created primarily to allow outdoor advertising structures, will not be recognized by the Department as zoning for outdoor advertising purposes.

**SUBCHAPTER 13. FREEWAY SIGNAGE  
SUPPLEMENT GUIDE SIGNS**

**730:35-13-4. Tourist oriented directional signs (TODS)**

(a) The Oklahoma Tourism Signage Advisory Task Force as created by 74 O.S. § 1891 performs screening and issues recommendations to the Department concerning directional signs for tourism and travel-related attractions and enterprises in this state.

(b) Tourist Oriented Directional Signs-oriented directional signs are guide signs with one or more sign panels that display the business identification of and directional information for eligible business, service, and activity facilities provide directional information for attractions and points of interest to motorists as historic, cultural, parks, lakes, or as a site of natural scenic beauty or suited for outdoor recreation.

(c) ~~In order to help motorists identify a qualified Tourist Attraction, an approved international logo is incorporated into the design of the sign. See Appendix F of this Chapter.~~

(d) The specific criteria for Tourist Oriented Directional Signs are included in The Oklahoma Tourist Oriented Directional Signs Policy. All signage must be in compliance with the MUTCD, "Manual on Uniform Traffic Control Devices", for consistency and uniformity. This program is handled through an application process administered by the Traffic Engineering Division. Requesting facilities are required to pay for approved signs.

[OAR Docket #22-514; filed 6-29-22]

## TITLE 748. OKLAHOMA UNIFORM BUILDING CODE COMMISSION CHAPTER 20. ADOPTED CODES

[OAR Docket #22-493]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. IRC® 2015

- 748:20-5-1. Adoption of IRC® 2015 [AMENDED AND RENUMBERED TO 748:20-6-1]
- 748:20-5-2. Effect of Adoption [AMENDED AND RENUMBERED TO 748:20-6-2]
- 748:20-5-3. IRC® 2015 Appendices [AMENDED AND RENUMBERED TO 748:20-6-3]
- 748:20-5-4. IRC® 2015 Provisions Adopted and Modified [AMENDED AND RENUMBERED TO 748:20-6-4]
- 748:20-5-4.1. Participation in federal programs and/or federally funded or financed projects [AMENDED AND RENUMBERED TO 748:20-6-5]
- 748:20-5-5. IRC® 2015 Chapter 1 Scope and Administration [AMENDED AND RENUMBERED TO 748:20-6-6]
- 748:20-5-5.1. IRC® 2015 Chapter 2 Definitions [AMENDED AND RENUMBERED TO 748:20-6-7]
- 748:20-5-6. IRC® 2015 Chapter 3 Building Planning [AMENDED AND RENUMBERED TO 748:20-6-8]
- 748:20-5-7. IRC® 2015 Chapter 4 Foundations [AMENDED AND RENUMBERED TO 748:20-6-9]
- 748:20-5-8. IRC® 2015 Chapter 5 Floors [AMENDED AND RENUMBERED TO 748:20-6-10]
- 748:20-5-9. IRC® 2015 Chapter 6 Wall Construction [AMENDED AND RENUMBERED TO 748:20-6-11]
- 748:20-5-10. IRC® 2015 Chapter 7 Wall Covering [AMENDED AND RENUMBERED TO 748:20-6-12]
- 748:20-5-11. IRC® 2015 Chapter 8 Roof-Ceiling Construction [AMENDED AND RENUMBERED TO 748:20-6-13]
- 748:20-5-11.1. IRC® 2015 Chapter 9 Roof Assemblies [AMENDED AND RENUMBERED TO 748:20-6-14]
- 748:20-5-11.2. IRC® 2015 Chapter 10 Chimney and Fireplaces [AMENDED AND RENUMBERED TO 748:20-6-15]
- 748:20-5-12. IRC® 2015 Chapter 11 Energy Efficiency [AMENDED AND RENUMBERED TO 748:20-6-16]
- 748:20-5-13. IRC® 2015 Chapter 15 Exhaust Systems [AMENDED AND RENUMBERED TO 748:20-6-20]
- 748:20-5-13.1. IRC® 2015 Chapter 16 Duct Systems [AMENDED AND RENUMBERED TO 748:20-6-21]
- 748:20-5-13.2. IRC® 2015 Chapter 19 Special Appliances, Equipment and Systems [AMENDED AND RENUMBERED TO 748:20-6-24]
- 748:20-5-14. IRC® Chapter 24 Fuel Gas [AMENDED AND RENUMBERED TO 748:20-6-29]
- 748:20-5-15. IRC® 2015 Chapter 25 Plumbing Administration [AMENDED AND RENUMBERED TO 748:20-6-30]
- 748:20-5-16. IRC® 2015 Chapter 26 General Plumbing Requirements [AMENDED AND RENUMBERED TO 748:20-6-31]
- 748:20-5-17. IRC® 2015 Chapter 27 Plumbing Fixtures [AMENDED AND RENUMBERED TO 748:20-6-32]
- 748:20-5-19. IRC® 2015 Chapter 29 Water Supply and Distribution [AMENDED AND RENUMBERED TO 748:20-6-34]
- 748:20-5-20. IRC® 2015 Chapter 30 Sanitary Drainage [AMENDED AND RENUMBERED TO 748:20-6-35]
- 748:20-5-22. IRC® Chapter 34 General Requirements (Electrical) [AMENDED AND RENUMBERED TO 748:20-6-39]
- 748:20-5-22.1. IRC® Chapter 37 Branch Circuit and Feeder Requirements [REVOKED]
- 748:20-5-24. IRC® Chapter 42 Swimming Pools [AMENDED AND RENUMBERED TO 748:20-6-47]
- 748:20-5-24.1. IRC® Chapter 44 Referenced Standards [AMENDED AND RENUMBERED TO 748:20-6-49]
- 748:20-5-25. Appendix V, Automatic Fire Systems [AMENDED AND RENUMBERED TO 748:20-6-50]
- 748:20-5-26. Appendix W, Energy Efficiency [AMENDED AND RENUMBERED TO 748:20-6-52]

- 748:20-5-27. Appendix X, Swimming Pools, Spas and Hot Tubs [AMENDED AND RENUMBERED TO 748:20-6-51]
- 748:20-5-28. Appendix Y, Residential Tornado Provisions [AMENDED AND RENUMBERED TO 748:20-6-53] Subchapter 6. IRC® 2018 [NEW]
- Subchapter 6. IRC® 2018 [NEW]
- 748:20-6-1. Adoption of the International Residential Code®, 2018 Edition (IRC® 2018) [NEW]
- 748:20-6-2. Effect of Adoption [NEW]
- 748:20-6-3. IRC® 2018 and Other Appendices [NEW]
- 748:20-6-4. IRC® 2018 Provisions Adopted and Modified [NEW]
- 748:20-6-5. Participation in federal programs and/or federally funded or financed projects [NEW]
- 748:20-6-6. IRC® 2018 Chapter 1 Scope and Administration [NEW]
- 748:20-6-7. IRC® 2018 Chapter 2 Definitions [NEW]
- 748:20-6-8. IRC® 2018 Chapter 3 Building Planning [NEW]
- 748:20-6-9. IRC® 2018 Chapter 4 Foundations [NEW]
- 748:20-6-10. IRC® 2018 Chapter 5 Floors [NEW]
- 748:20-6-11. IRC® 2018 Chapter 6 Wall Construction [NEW]
- 748:20-6-12. IRC® 2018 Chapter 7 Wall Covering [NEW]
- 748:20-6-13. IRC® 2018 Chapter 8 Roof-Ceiling Construction [NEW]
- 748:20-6-14. IRC® 2018 Chapter 9 Roof Assemblies [NEW]
- 748:20-6-15. IRC® 2018 Chapter 10 Chimneys and Fireplaces [NEW]
- 748:20-6-16. IRC® 2018 Chapter 11 Energy Efficiency [NEW]
- 748:20-6-17. IRC® Chapter 12 [RESERVED]
- 748:20-6-18. IRC® Chapter 13 [RESERVED]
- 748:20-6-19. IRC® 2018 Chapter 14 Heating and Cooling Equipment and Appliances [NEW]
- 748:20-6-20. IRC® 2018 Chapter 15 Exhaust Systems [NEW]
- 748:20-6-21. IRC® 2018 Chapter 16 Duct Systems [NEW]
- 748:20-6-22. IRC® Chapter 17 [RESERVED]
- 748:20-6-23. IRC® Chapter 18 [RESERVED]
- 748:20-6-24. IRC® 2018 Chapter 19 Special Appliances, Equipment and Systems [NEW]
- 748:20-6-25. IRC® Chapter 20 [RESERVED]
- 748:20-6-26. IRC® Chapter 21 [RESERVED]
- 748:20-6-27. IRC® Chapter 22 [RESERVED]
- 748:20-6-28. IRC® 2018 Chapter 23 Solar Thermal Energy Systems [NEW]
- 748:20-6-29. IRC® 2018 Chapter 24 Fuel Gas [NEW]
- 748:20-6-30. IRC® 2018 Chapter 25 Plumbing Administration [NEW]
- 748:20-6-31. IRC® 2018 Chapter 26 General Plumbing Requirements [NEW]
- 748:20-6-32. IRC® 2018 Chapter 27 Plumbing Fixtures [NEW]
- 748:20-6-33. IRC® 2018 Chapter 28 Water Heaters [NEW]
- 748:20-6-34. IRC® 2018 Chapter 29 Water Supply and Distribution [NEW]
- 748:20-6-35. IRC® 2018 Chapter 30 Sanitary Drainage [NEW]
- 748:20-6-36. IRC® Chapter 31 [RESERVED]
- 748:20-6-37. IRC® Chapter 32 [RESERVED]
- 748:20-6-38. IRC® Chapter 33 [RESERVED]
- 748:20-6-39. IRC® 2018 Chapter 34 General Requirements (Electrical) [NEW]
- 748:20-6-40. IRC® Chapter 35 [RESERVED]
- 748:20-6-41. IRC® Chapter 36 [RESERVED]
- 748:20-6-42. IRC® Chapter 37 [RESERVED]
- 748:20-6-43. IRC® Chapter 38 [RESERVED]
- 748:20-6-44. IRC® Chapter 39 [RESERVED]
- 748:20-6-45. IRC® Chapter 40 [RESERVED]
- 748:20-6-46. IRC® Chapter 41 [RESERVED]
- 748:20-6-47. IRC® 2018 Chapter 42 Swimming Pools [NEW]
- 748:20-6-48. IRC® Chapter 43 [RESERVED]
- 748:20-6-49. IRC® 2018 Chapter 44 Referenced Standards [NEW]
- 748:20-6-50. Appendix U, Automatic Fire Systems [NEW]
- 748:20-6-51. Appendix V, Swimming Pools, Spas and Hot Tubs [NEW]
- 748:20-6-52. Appendix W, Energy Efficiency [NEW]
- 748:20-6-53. Appendix X, Residential Tornado Provisions [NEW]

### AUTHORITY:

Oklahoma Uniform Building Code Commission; 59 O.S. § 1000.23 - 1000.24

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 18, 2022

**COMMENT PERIOD:**

February 16, 2022 through March 18, 2022

**PUBLIC HEARING:**

March 22, 2022

**ADOPTION:**

March 22, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approve by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 14, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

International Code Council; International Residential Code®, 2018 Edition

**Incorporating rules:**

748:20-6-1., 748:20-6-2., 748:20-6-3., 748:20-6-4., 748:20-6-5., 748:20-6-6., 748:20-6-7., 748:20-6-8., 748:20-6-9., 748:20-6-10., 748:20-6-11., 748:20-6-12., 748:20-6-13., 748:20-6-14., 748:20-6-15., 748:20-6-16., 748:20-6-19., 748:20-6-20., 748:20-6-21., 748:20-6-24., 748:20-6-28., 748:20-6-29., 748:20-6-30., 748:20-6-31., 748:20-6-32., 748:20-6-33., 748:20-6-34., 748:20-6-35., 748:20-6-39., 748:20-6-47., 748:20-6-49., 748:20-6-50., 748:20-6-51., 748:20-6-52., and 748:20-6-53.

**Availability:**

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Uniform Building Code Commission, 2401 NW 23<sup>rd</sup> St., Suite 82, Oklahoma City, OK 73107, 405-521-6501

**Subchapter 5:**

Sections 748:20-5-1., 748:20-5-2., 748:20-5-3., 748:20-5-4., 748:20-5-4.1., 748:20-5-5., 748:20-5-5.1., 748:20-5-6., 748:20-5-7., 748:20-5-8., 748:20-5-9., 748:20-5-10., 748:20-5-11., 748:20-5-11.1., 748:20-5-11.2., 748:20-5-12., 748:20-5-13., 748:20-5-13.1., 748:20-5-13.2., 748:20-5-14., 748:20-5-15., 748:20-5-16., 748:20-5-17., 748:20-5-19., 748:20-5-20., 748:20-5-22., 748:20-5-22.1., 748:20-5-24., 748:20-5-24.1., 748:20-5-25., 748:20-5-26., 748:20-5-27., and 748:20-5-28., have been amended and renumbered to the new Subchapter 6 entitled "IRC® 2018."

**Subchapter 6:**

**748:20-6-1 Adoption of International Residential Code® 2018 (IRC® 2018)**

This section clarifies the adoption of the 2018 International Residential Code® (IRC® 2018) as the statewide minimum code for residential construction for one- and two-family dwellings and townhouses within the State of Oklahoma.

**748:20-6-2 Effect of Adoption**

This section clarifies the IRC® 2018 as amended and revised by the rules is adopted as the statewide minimum code for residential construction for one- and two-family dwellings and townhouses within the State of Oklahoma and may only be amended or altered by other jurisdictions pursuant to Oklahoma law.

**748:20-6-3 IRC® 2018 and Other Appendices**

This section clarifies none of the appendices of the IRC® 2018 were adopted by the OUBCC in inclusion in the statewide minimum code for residential construction for one- and two-family dwellings and townhouses within the State of Oklahoma; and that the OUBCC has created four new non-mandatory appendices. The first newly created appendix is entitled "Appendix U, Automatic Fire Systems" where Sections R313.2, entitled "One- and two-family dwellings automatic fire systems," and R313.2.1, entitled "Design and installation" were removed from the mandatory requirements and placed into this appendix. The second newly created appendix is entitled "Appendix V, Swimming Pools, Spas, and Hot Tubs" where Section R326.1 entitled "General" as modified, was removed from the mandatory requirements and placed into this appendix. The third newly created appendix is entitled "Appendix W, Energy Efficiency" where Section N1101.14 entitled "Certificate" was removed from the mandatory requirements and placed into this appendix. The fourth newly created appendix is entitled "Appendix X, Residential Tornado Provisions" which contains additional language related to recommended tornado provisions.

**748:20-6-4 IRC® 2018 Provisions Adopted and Modified**

This section clarifies that all chapters and provisions within chapters, including exceptions of the IRC® 2018 not specifically addressed within the

rules as being modified, deleted, moved or removed are hereby adopted without modification as the statewide minimum code for residential construction for one- and two-family dwellings and townhouses within the State of Oklahoma; and that any references in the IRC® 2018, as amended and modified in the sub-chapter, are made to any other code or standard, the particular edition for that reference is defined in the references standards found in the IRC® 2018 Chapter 44 entitled "Referenced Standards."

**748:20-6-5 Participation in federal programs and/or federally funded or financed projects**

This section clarifies that in order to maximize federal financial aid, assistance, participation, financing and/or funding in any public projects(s) by the State of Oklahoma, it's agencies, public trusts, and instrumentalities, or by any Oklahoma municipalities or other political subdivisions that received financial aid, assistance, participation, financing and/or funding for and participate in federal programs, may cooperate with the United States Government and any agency or instrumentality thereof, in the manner authorized and provided by federal law and regulation and in doing so may perform all necessary functions and take all necessary actions for accomplishing such federal purposes and programs, including, but not limited to, following and/or complying with federal laws, regulations, and/or requirements arising from or related to federal financial aid, assistance, participation, financing and/or funding in the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, improvement, expansion, operation, maintenance, removal, and demolition of buildings and structures or any appurtenances attached to such buildings or structures, notwithstanding any provisions of any and all uniform building codes and standards adopted by the OUBCC to the contrary.

**748:20-6-6 IRC® 2018 Chapter 1 Scope and Administration**

This section adopts Chapter 1 of the IRC® 2018 only to the extent its provisions are not inconsistent with other laws or lawfully established code administration and enforcement policies.

**748:20-6-7 IRC® 2018 Chapter 2 Definitions**

This section addresses the additions, modifications, or deletions of items defined in Chapter 2 of the IRC® 2018. Below is a list of the items that were added, modified or deleted:

- (1) BUILDING DRAIN
- (2) NATIONALLY RECOGNIZED TESTING LABORATORY
- (3) STORM SHELTER
  - (A) Community Shelter
  - (B) Residential Shelter

**748:20-6-8 IRC® 2018 Chapter 3 Building Planning**

This section addresses the modifications, additions, or deletions made to Chapter 3 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

- (1) Table R301.2(1) Climatic and Geographic Design Criteria was modified to fill in a blank cell in Row 2 under the Ice Barrier Underlayment Required column with a "no" in the first part of the two-part table.
- (2) Table R302.1(1) Exterior Walls was modified to change the requirements for minimum fire separation distance and delete some sub-rows from the table.
- (3) Table R302.1(2) Exterior Walls - Dwellings with Fire Sprinklers, was modified to change the requirements for minimum fire separation distance and delete some of the sub-rows from the table.
- (4) Section R303.4 Mechanical ventilation was modified to add language to allow for a visual inspection.
- (5) Section R311.1 Means of egress was modified to specify the section requirements apply to garages (attached or detached from the dwelling) as well as dwellings, while allowing the means of egress from the garage to go through an adjacent dwelling.
- (6) Section R311.2 Egress door was modified to specify the section requirements apply to garages, as well as dwellings.
- (7) Section R311.7.5.1 Risers was modified to add a third exception to the section that allows the top and bottom riser height to vary by 3/4 inch (19 mm).
- (8) Section R313.2 One- and two-family dwellings automatic fire sprinkler systems was moved to the newly created Appendix U, entitled "Appendix U, Automatic Fire Systems" and is not adopted as part of the statewide minimum code for residential construction in Oklahoma. The section specifies the section number itself will stay as part of the code for numbering alignment but will not have any requirements attached to it.
- (9) Section R313.2.1 Design and installation was moved to the newly created Appendix U, entitled "Appendix U, Automatic Fire Systems" and is not adopted as a part of the statewide minimum code for residential construction in Oklahoma. The section specifies the section number itself

# Permanent Final Adoptions

will stay as part of the code for numbering alignment but will not have any requirements attached to it.

(10) Section R323.1 General was modified to clarify the section included both above and below ground storm shelters and to limit the use of the term "storm shelter."

(11) Section R323.3 Required was added to the code to stipulate in addition to other applicable requirements of the code, storm shelters shall be constructed in accordance with ICC 500® except as required by Sections R323.2.1. through R323.2.4.

(12) Section R323.2.1 Design wind speed. This section has been added to modify the requirements of ICC 500 Section 304.2 to clarify the minimum design wind speed for all storm shelters in Oklahoma shall be set at 250 miles per hour.

(13) Section R323.2.2 In-ground storm shelters. This section has been added to clarify for all in-ground storm shelters installed in garages, the rim of the shelter shall be raised a minimum of 1 inch (22 mm) above the highest point of the adjacent garage floor to resist surface drainage, and to require the floor around the shelter to slope at a maximum slope of 1:8.

(14) Section R323.2.3 Height of storm shelter was added to clarify how to determine the location of the natural ventilation openings in storm shelters in accordance with ICC 500® Section 702.1.1.1, by providing a definition for the height of the storm shelter to be calculated by taking the average of the vertical dimensions from the floor elevation to the bottom of the storm shelter deck or to the underside of a hard ceiling within the storm shelter.

(15) Section R323.2.4 Occupancy density was added to modify the requirements of ICC 500® Section 501.1.1 to clarify residential storm shelters located in or adjacent to one-and two-family dwellings, may exceed the occupant density requirements in ICC 500® Table 502.4 and not be required to conform to the requirements of a community shelter.

(16) Section R326.1 General was modified to move the published requirement for the construction of swimming pools, spas and hot tubs to comply with the International Swimming Pool and Spa Code® to the newly created Appendix V, entitled "Appendix V, Swimming Pools, Spas and Hot Tubs." The section was further modified to add new language in Section specifying new swimming pools, spas and hot tubs requiring a permit to comply with Sections R326.2 through R326.4.

(17) Section R326.2 Enclosure was added to provide enclosure requirements for residential swimming pools, spas and hot tubs.

(18) Section R326.3 Gates was added to provide gate requirements for residential pools, spas and hot tubs.

(19) Section R326.4 Suction outlet fitting assemblies was added to clarify all suction outlet fitting assemblies shall be listed and labeled in compliance with ANSI/APSP/ICC 16.

(20) Section R326.5 Entrapment avoidance has been added to require suction entrapment avoidance for pools and spas to comply with ANSI/APSP/ICC 7 and provide an exception for portable spas and portable exercise pools listed in accordance with UL 1563 or CSA C22.2 No 281.1.

(21) Section R327.3 Installation was modified to change the wording "stationary storage battery systems" to "ESS" (Energy Storage Systems) and delete the requirement prohibiting them from being installed within habitable space.

(22) Section R327.3.1 Locations was added to specify the locations in a dwelling where an ESS (Energy Storage System) may be installed.

## 748:20-6-9 IRC® 2018 Chapter 4 Foundations

This section addresses the modifications, additions or deletions made to Chapter 4 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section R402.2 Concrete was modified to include an exception for interior concrete slabs on grade and enclosed garage slabs from the requirement to be air-entrained.

(2) Table R403.1(1) Minimum width and thickness for concrete footings for light-frame construction (inches) was modified to remove footnote "b" from the table and remove the superscript "b" after the title of the table that was used to indicate footnote "b" was applicable.

(3) Table R403.1(2) Minimum width and thickness for concrete footings for light-frame construction with brick veneer (inches) was modified to remove footnote "b" from the table and remove the superscript "b" after the title of the table that was used to indicate footnote "b" was applicable.

(4) Table R403.1(1) Minimum width and thickness for concrete footings for cast-in-place concrete or fully grouted masonry wall construction (inches) was modified to remove footnote "b" from the table and remove the superscript "b" after the title of the table that was used to indicate footnote "b" was applicable.

(5) Section R403.1 General was modified to provide language specifying rebar reinforcement requirements in concrete footings.

(6) Section R403.1.6 Foundation anchorage was modified to specify hand driven cut and concrete nails are not an approved fastener and include an exception for wood sole plates of braced wall panels anchorage under specific criteria.

(7) Section R403.1.7.3 Foundation elevation was stricken from the code.

(8) Section R403.1.9 Protection of footings was added to provide protection to footings when trenching work is needed.

## 748:20-6-10 IRC® 2018 Chapter 5 Floors

This section addresses the modifications, additions and deletions made to Chapter 5 of the IRC® 2018. Below is a list of the items that were added, modified or deleted:

(1) Section R506.2.1 Fill was modified to provide fill lift measurements.

(2) Section R506.2.3 Vapor retarder was modified to allow for other industry accepted vapor retarders installed according to the manufacturer's specifications.

## 748:20-6-11 IRC® 2018 Chapter 6 Wall Construction

This section addresses the modifications, additions and deletions made to Chapter 6 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Table R602.3(1) Fastening schedule was modified to add a new footnote "k" to the table that is applicable to numbered row "16" of the table.

(2) Table R602.3(3) Requirements for wood structural panel wall sheathing used to resist wind pressures was modified to add a footnote "d" to the table heading and to the table to allow for alternative fasteners when certain criteria is met.

(3) Section R602.10.5 Minimum length of a braced wall panel was modified to allow for the portal frame to begin at 12 1/2 feet (3810 mm) from the wall line end for CS-PF method.

(4) Section R602.10.8 Braced wall panel connections was modified to include a fourth requirement to the section for anchoring wood sole plates to the building interiors on monolithic slabs using connectors when specific criteria is met.

(5) Section R602.12 Simplified wall bracing was modified to change wall height, roof eave height, and wind speed conditions.

(6) Section R602.12.2 Sheathing materials has been modified to change the minimum thickness of wood structural panels.

## 748:20-6-12. IRC® 2018 Chapter 7 Wall Covering

This section addresses the modifications, additions and deletions made to Chapter 7 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section R703.1 General was modified to clarify and add requirements for direct applied exterior finish with water-resistive barrier installations.

(2) Section R703.4 Flashing was modified to clarify that 6-mil polyethylene sheeting is an approved corrosion-resistant flashing in certain circumstances and to clarify flashing above doors is not required when the door is covered by a minimum of 3 feet.

(3) Section R703.7.3 Water-resistive barriers was modified to clarify the requirements for the water-resistive barrier, where applied over approved sheathing, to drain to the outer water-resistive barrier.

(4) Section R703.8 Anchored stone and masonry veneer, general was modified to specify anchored stone walls shall have an additional layer of No. 15 asphalt felt complying with ASTM D226 for Type I felt or other water-resistive barrier to provide a bond break between the primary water-resistive barrier and the back side of the stone and mortar.

(5) Figure R703.8 Typical Masonry Veneer Wall Details has been modified to add footnotes "f" and "g" to the footnote section and amend the figure heading to include a superscript "f" and "g" to indicate the associated footnotes.

(6) Figure R703.8.2.1 Exterior Masonry Veneer Support by Steel Angles was modified to add a footnote to the figure and amend the heading to have a superscript letter "a" to indicate the new footnote is applicable.

(7) Figure R703.8.2.2 Exterior Masonry Veneer Support by Roof Members was modified to add a footnote to the figure and amend the heading to have a superscript letter "a" to indicate the new footnote is applicable.

(8) Section R703.8.3.1 Allowable span was modified to provide guidance to builders using a typical for Oklahoma, lintel.

(9) Section R703.9.1 Exterior insulation and finish systems (EFIS) has been modified to clarify EFIS shall be installed in accordance with the same product manufacturer's instructions to ensure product/material compatibility and performance.

(10) Section R703.9.2 Exterior insulation and finish systems (EFIS) with drainage was modified to clarify EFIS shall be installed in accordance with

the same product manufacturer's instructions to ensure product/material compatibility and performance.

**748:20-6-13 IRC® 2018 Chapter 8 Roof-Ceiling Construction**

This section addresses the modifications, additions and deletions made to Chapter 8 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

- (1) Section R801.3 Roof drainage was stricken from the code.
- (2) Section R802.3 Ridge was modified to clarify a ridge beam shall be designed in accordance with acceptable engineer practices when the roof load exceeds the specific criteria to carry one-half of the tributary load.
- (3) Section R802.4.1 Rafter size was modified to provide guidance for builders framing rafters above the top sill of the wall system and provide an exception to require collar ties to be sized not less than the required size of the rafters they are connected to.
- (4) Section R802.4.2 Framing details was modified to change the rafter framing details.
- (5) Section R802.4.3 Hips and valleys was modified to provide an exception for the use of a "Blind Valley" and provide a definition of a brace.
- (6) Section R802.5.1 Purlins size was modified to include an exception for spacing the braces at not more than 6 feet (1829 mm) when specific conditions are met.
- (7) Section R802.5.2 Ceiling joists and rafter connections was modified to reflect current framing practices.
- (8) Section R802.7.1.2 Ceiling joist taper cut was modified to include an exception to the section requirements for ceiling joists not carrying more than a 25-pound live load for limited attic storage.
- (9) Section R806.5 Unvented attic and unvented enclosed rafter assemblies was modified to provide guidance on where the air permeable and impermeable insulation should be installed and provide exceptions to the section related to when air supply to the attic is not required.

**748:20-6-14. IRC® 2018 Chapter 9 Roof Assemblies**

This section addresses the modifications, additions and deletions made to Chapter 9 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

- (1) Section R905.1.2 Ice barriers was modified to add two more paragraphs to the section to require 36-inch wide ice barriers to be installed on the roof under specific conditions and in specific locations.
- (2) Section R905.2.1 Sheathing requirements was modified to add a definition for the term "solidly sheathed."
- (3) Section R905.2.8.5 Drip edge was modified to add an exception to the section when certain criteria are met.
- (4) Section R905.3.1 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (5) Section R905.4.1 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (6) Section R905.5.1 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (7) Section R905.6.2 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (8) Section R905.7.1 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (9) Section R905.8.1 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (10) Section R905.10.1 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (11) Section R905.16.1 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (12) Section R905.17.1 Deck requirements was modified to provide a definition for the term "solidly sheathed."
- (13) Section R908.3.1.1 Roof re-cover was modified to list a fourth condition for when a roof re-cover shall not be permitted.

**748:20-6-15 IRC® 2018 Chapter 10 Chimney and Fireplaces**

This section addresses a modification made to Section R1005.7 Factory-built chimney offsets to provide an exception for listed and labeled factory-built chimneys that are part of a fireplace and chimney assembly to be installed according to the manufacturer's installation instructions.

**748:20-6-16 IRC® 2018 Chapter 11 Energy Efficiency**

This section addresses the modifications, additions or deletions made to Chapter 11 of the IRC® 2018. Below is a list of the items that were added, modified or deleted:

- (1) Section N1101.6 Defined terms was modified to delete the definition of a ROOF RECOVER from the list of terms defined in the chapter.
- (2) Section N1101.14 (R401.3) Certificate (Mandatory) was moved to the newly created Appendix W, entitled "Appendix W, Energy Efficiency"

and is not adopted as part of the statewide code for residential construction in Oklahoma; however, the section number itself will stay as part of the code for numbering alignment.

- (3) Table N1102.1.2 (R402.1.2) Insulation and Fenestration Requirements by Component was modified to change the requirements in Climate Zone 3, for the Fenestration U-factor, Glazed Fenestration SHGC, the Ceiling R-value and the Wood Frame Wall R-value.
  - (4) Table N1102.1.4 (R402.1.4) Equivalent U-Factors was modified to change the requirements in Climate Zone 3 for the Fenestration U-factor, the Ceiling U-Factor and the Frame Wall U-factor.
  - (5) Section N1102.2.1 Ceilings with attic spaces was modified to add two exceptions to the section under specific circumstances.
  - (6) Section N1102.2.10 Slab-on-grade floors was modified to add an exception to the section under certain circumstances.
  - (7) Table N1102.4.1.1 (R402.4.1.1.) Air Barrier and Insulation Installation was modified to change the insulation installation criteria for walls uncertain circumstances and the air barrier criteria and insulation installation criteria for electrical and communication boxes.
  - (8) Section N1102.4.1.2 Testing was modified to provide an exception to the section for visual testing, modify the air changes per hour in Climate Zone 3 and clarify when the section is required.
  - (9) Section N1102.4.6 (R402.4.6) Air-sealed electrical and communication outlet boxes was added to require air-sealed electrical and communication outlet boxes as permitted by Table N1102.4.1.1, that penetrate the building thermal envelope to be sealed; require boxes that are air sealed to be tested in accordance with NEMA OS 4, have an air leakage rate not greater than 2.0 cfm at a pressure differential of 1.57 psf; require those boxes meeting NEMA OS 4 to be marked with "NEMA OS 4" or "OS 4," require those boxes so marked to be installed in accordance with the manufacturer's instructions; and with any supplied components required to achieve compliance with NEMA OS 4.
  - (10) Section N1103.3.2 (R403.3.2) Sealing (Mandatory) was modified to added plenums and start collar connections to the plenum to the items that shall be sealed; and require duct systems with sheet metal plenums, Y's, and supply boots to be sealed by liquid applied sealants that comply with 181 BM (Mastic or similar) to be used to seal inner liners and start collars to the plenum and for any other seams in the system.
  - (11) Section N1103.3.3 (R403.3.3) Duct testing was modified to specify the section is not mandatory and to add a third exception for visual testing.
  - (12) Section N1103.4 Mechanical system piping insulation (Mandatory) was modified to change the temperature the mechanical piping systems are required to carry fluids at and to add language specifying the piping shall be insulated to a specific R-value or to the manufacturer's installation instructions, whichever is more stringent.
  - (13) Section N1103.5.3 (R403.5.3) Hot water pipe insulation (Prescriptive) was modified to delete two of the items where insulation of the hot water pipe is required.
  - (14) Section N1103.7 (R403.7) Equipment sizing and efficiency rating (Mandatory) was modified to add a requirement for all new residential one- and two-family dwellings and townhouses to provide documentation showing compliance with this section to the authority having jurisdiction at the time a mechanical permit is requirements.
  - (15) Section N1105.4.2 Compliance report was modified to specify compliance is required only when the proposed design of a building will be built on different sites where the cardinal orientation of the building on each site is different.
  - (16) Table N1106.4 (R406.4) Maximum Energy Rating Index was modified to change the Energy Rating Index in Climate Zone 3.
- GIST/ANALYSIS:**
- The purpose of these permanent rules is to continue implementation of 59 O.S. § 1000.20 - 1000.29 (the "Act"), creating the Oklahoma Uniform Building Code Commission (the "OUBCC"). These permanent rules adopt the International Residential Code®, 2018 Edition (IRC®), as the statewide minimum for residential construction for one- and two-family dwellings and townhouses in the State of Oklahoma.
- 748:20-5-1., 748:20-5-2., 748:20-5-3., 748:20-5-4., 748:20-5-4.1., 748:20-5-5., 748:20-5-5.1., 748:20-5-6., 748:20-5-7., 748:20-5-8., 748:20-5-9., 748:20-5-10., 748:20-5-11., 748:20-5-11.1., 748:20-5-11.2., 748:20-5-12., 748:20-5-13., 748:20-5-13.1., 748:20-5-13.2., 748:20-5-14., 748:20-5-15., 748:20-5-16., 748:20-5-17., 748:20-5-19., 748:20-5-20., 748:20-5-22., 748:20-5-22.1., 748:20-5-24., 748:20-5-24.1., 748:20-5-25., 748:20-5-26., 748:20-5-27., and 748:20-5-28., have been amended and renumbered to the new Subchapter 6 entitled "IRC® 2018."
- 748:20-6-1., 748:20-6-2., 748:20-6.3., 748:20-6.4., and 748:20-6-5., adopt the IRC® 2018 edition without appendices and establishes the IRC®

# Permanent Final Adoptions

2018 edition as the statewide minimum code for residential building construction for one- and two-family dwellings and townhouses in the State of Oklahoma. 748:20-6-6., adopts Chapter 1 of the IRC® 2018 only to the extent its provisions are not inconsistent with other laws or lawfully established code administration and enforcement policies. 748:20-6-7., 748:20-6-8., 748:20-6-9., 748:20-6-10., 748:20-6-11., 748:20-6-12., 748:20-6-13., 748:20-6-14., 748:20-6-15., 748:20-6-16., 748:20-6-19., 748:20-6-20., 748:20-6-21., 748:20-6-24., 748:20-6-28., 748:20-6-29., 748:20-6-30., 748:20-6-31., 748:20-6-32., 748:20-6-33., 748:20-6-34., 748:20-6-35., 748:20-6-39., 748:20-6-47., 748:20-6-49., 748:20-6-50., 748:20-6-51., 748:20-6-52., and 748:20-6-53., set forth the OUBCC's adoption of Oklahoma modifications to the provisions of the IRC® 2018 edition in Chapters 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 19, 23, 24, 25, 26, 27, 28, 29, 30, 34, 42, 44 and the OUBCC created appendices U, V, W, and X, respectively.

748:20-6-17., 748:20-6-18., 748:20-6-22., 748:20-6-23., 748:20-6-25., 748:20-6-26., 748:20-6-27., 748:20-6-36., 748:20-6-37., 748:20-6-38., 748:20-6-40., 748:20-6-41., 748:20-6-42., 748:20-6-43., 748:20-6-44., 748:20-6-45., 748:20-6-46., and 748:20-6-48., have been reserved for possible future changes to the IRC® in Chapters 12, 13, 17, 18, 20, 21, 22, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, and 43, respectively.

## CONTACT PERSON:

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**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA UNIFORM BUILDING CODE COMMISSION, 2401 NW 23 ST., SUITE 82, OKLAHOMA CITY, OK 73107, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

## SUMMARY:

**748:20-6-17 IRC® [RESERVED]**

**748:20-6-18 IRC® [RESERVED]**

**748:20-6-19 IRC® 2018 Chapter 14 Heating and Cooling Equipment and Appliances**

This section addresses the modifications, additions, or deletions made to Chapter 14 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section M1401.3 Equipment and appliance sizing was modified to add a requirement for all new residential one- and two-family dwellings and townhouses to provide documentation showing compliance with this section to the authority having jurisdiction at the time a mechanical permit is required.

(2) Section M1402.1 General was modified to add another referenced standard, "UL/CSA 60335-2-40" as an option for conformity for electrical furnaces.

(3) Section M1403.1 Heat pumps was modified to update the standard referenced to remove the "ANCE" sponsorship of the standard.

(4) Section M1411.8 Locking access port caps was modified to specify the section will apply to new and retrofit outdoor condensers only.

(5) Section M1412.1 Approval of equipment was modified to update a referenced to remove the "ANCE" sponsorship of the standard.

(6) Section M1413.1 General was modified to update a referenced standard by removing the "ANCE" sponsorship of the standard.

**748:20-6-20 IRC® 2018 Chapter 15 Exhaust Systems**

This section addresses the modifications, additions or deletions made to Chapter 15 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted.

(1) Section M1502.3 Duct termination was modified to add requirements for the exhaust duct to terminate a minimum of 12 inches (305 mm) above the ground or any obstructions; terminate at least 3 feet (914 mm) from any condensing units; and exempts existing dryer terminations.

(2) Section M1502.4.2 Duct installation was modified to prohibit ducts from being joined with any screws or similar fasteners that protrude into the inside of the duct, and to change the length of support intervals from 12 feet to 4 feet.

**748:20-6-21 IRC® 2018 Chapter 16 Duct Systems**

This section addresses the modifications, additions or deletions made to Chapter 16 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted.

(1) Table M1601.1.1 Duct construction minimum sheet metal thickness for single dwelling units was stricken from the code and replaced with a newly created table with the same table heading.

(2) Section M1601.4.1 Joints, seams and connections was modified to add a fourth exception for duct systems with sheet metal plenums, Y's, and supply boots with liquid applied sealants.

**748:20-6-22 IRC® [RESERVED]**

**748:20-6-23 IRC® [RESERVED]**

**748:20-6-24 IRC® 2018 Chapter 19 Special Appliances, Equipment and Systems**

This section addresses an added section to the code entitled "M1903.1.1 Electrical requirements" to clarify in additions to the requirements of M1903.1, interconnection and all associated wiring shall be installed in accordance with NFPA 70, NEC® 2017, Article 692 Fuel Cell Systems.

**748:20-6-25 IRC® [RESERVED]**

**748:20-6-26 IRC® [RESERVED]**

**748:20-6-27 IRC® [RESERVED]**

**748:20-6-28 IRC® 2018 Chapter 23 Solar Thermal Energy Systems**

This section addresses a modification to Section M2301.2.2.1 Roof-mounted collectors that requires a mechanical means of disconnect to be installed on piping to allow for the disconnecting and removal of collectors to service or replace the roof.

**748:20-6-29 IRC® 2018 Chapter 24 Fuel Gas**

This section addresses a modification to Section G2415.12 Minimum burial depth to require all underground piping systems to be installed at a minimum of 18 inches below grade.

**748:20-6-30 IRC® 2018 Chapter 25 Plumbing Administration**

This section addresses the modifications, additions or deletions made to Chapter 25 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section P2503.4 Building sewer testing was modified to clarify that the building sewer test is only necessary when the local authority having jurisdiction requires the testing to be done and to change the building sewer test height requirement from a 10-foot high test to a 5-foot high test.

(2) Section P2503.7 Water-supply system testing was modified to delete the word "plastic" and replace it with the terms "PVC" and "CPVC."

**748:20-6-31 IRC® 2018 Chapter 26 General Plumbing Requirements**

This section addresses the modifications, additions or deletions made to Chapter 26 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section P2603.2.1 Protection against physical damage was modified to change the installation sizing requirement of the holes or notches in studs, joists, rafters or similar members for piping other than cast-iron or galvanized steel from "1 1/4 inches (32 mm)" to "1 1/2 inches (38 mm)."

(2) Section P2603.4 Pipes through foundation walls was modified to add a requirement for the relieving arch or pipe sleeve to comply with the materials and standards listed in Table 3002.1(2).

(3) Section P2603.5.1 Sewer depth was modified to include a depth for the septic tank connection unless otherwise approved by the authority having Jurisdiction.

**748:20-6-32. IRC® 2018 Chapter 27 Plumbing Fixtures**

This section addresses the modifications, additions or deletions made to Chapter 27 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section P2705.1 General was modified to add a ninth requirement for fixtures to conform to that specifies vanity countertops are permitted to extend a specific length into the water closet floor space.

(2) Section P2709.2 Lining required was modified to clarify it is only effective where required and to change the distance the lining material must extend from 2 inches to 3 inches (51 mm to 76 mm).

(3) Section P2715.1 Laundry tray waste outlet was modified to replace the word "tub" with the word "tray" in the section heading and section language.

**748:20-6-33 IRC® 2018 Chapter 28 Water Heaters**

This section addresses an added section to Chapter 28 of the code entitled "P2802.3 Solar water heater panels means of disconnect," to specify when solar water heater panels are installed on a roof, a union will be installed on all piping entering and exiting the solar panel to allow for a mechanical means of disconnect for service or replacement of the roof.

**748:20-6-34. IRC® 2018 Chapter 29 Water Supply and Distribution**

This section addresses the modifications, additions or deletions made to Chapter 29 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section P2902.5.3 Lawn irrigation systems was modified to add a spill resistant backflow preventer as an option for protection.



(2) Section P2904.1.1 Required sprinkler locations was modified to clarify sprinklers shall only be installed to protect all areas of a townhouse dwelling unit.

(3) Section P2906.4 Water service pipe was modified to require piping materials not third-party certified for water distribution, to terminate at least 30 inches outside of the exterior wall. It has also been modified to strike the requirement of the termination to be before the full open valve located at the entrance to the structure.

(4) Section P2906.9.1.4 PVC plastic pipe was modified to add a clear primer as another option to be applied to PVC solvent-cemented joints.

#### **748:20-6-35. IRC® 2018 Chapter 30 Sanitary Drainage**

This section addresses the modifications, additions or deletions made to Chapter 30 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section P3003.2 Prohibited joints was modified to include an exception for "Saddle-type" fittings.

(2) Section P3003.9.2 Solvent cementing was modified to delete the exception that allows for primer to not be used under certain conditions.

**748:20-6-36. IRC® [RESERVED]**

**748:20-6-37. IRC® [RESERVED]**

**748:20-6-38. IRC® [RESERVED]**

#### **748:20-6-39. IRC® 2018 Chapter 34 General Requirements (Electrical)**

This section addresses the modifications, additions or deletions made to Chapter 34 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) Section E3403.3 Listing and labeling was modified to add a requirement to comply with the National Electrical Code® (NEC®), NFPA 70®.

(2) Section 3404.7 Integrity of Electrical Equipment was modified to allow for the reuse of existing electrical equipment, rather than requiring new replacements when certain conditions are met.

**748:20-6-40. IRC® [RESERVED]**

**748:20-6-41. IRC® [RESERVED]**

**748:20-6-42. IRC® [RESERVED]**

**748:20-6-43. IRC® [RESERVED]**

**748:20-6-44. IRC® [RESERVED]**

**748:20-4-45. IRC® [RESERVED]**

**748:20-4-46. IRC® [RESERVED]**

#### **748:20-6-47. IRC 2018® Chapter 42 Swimming Pools**

This section addresses a modification to Section 4206.4.1 Maximum voltage was modified to limit the operation of luminaries in swimming pools to the low-voltage contact limits defined in Section E4202.1.

**748:20-4-48. IRC® [RESERVED]**

#### **748:20-6-49. IRC® 2018 Chapter 44 Referenced Standards**

This section addresses the modifications, additions or deletions made to Chapter 44 of the IRC® 2018. Below is a list of the items that were added, modified, or deleted:

(1) The reference for the standard ANCE NMX-J-521/2-40-ANCE-2014/CAN/CSA-22.2 No. 60335-2-40-12/UL 60335-2-40: Safety of Household and Similar Electric Appliances, Part 2-40: Particular Requirements for Heat Pumps, Air Conditioners and Dehumidifiers along with the associated referenced sections was stricken from the code.

(2) A reference for the standard ANSI/APSP/ICC 7-20 American National Standard for Suction Entrapment Avoidance in Swimming Pool, Wading Pools, Spas, Hot Tubs, and Catch Basins was added to the chapter.

(3) A reference for the standard ANSI/APSP/ICC 16-17, American National Standard for Suction Fittings for Use in Swimming Pools, Wading Pools, Spas and Hot Tubs® was added to the chapter.

(4) The reference to the ASHRAE Standard 34-2016: Design and Safety Classification of Refrigerants was modified to update the publication year from 2016 to 2019.

(5) A reference for the standard CSA C22.2 No. 218.1-17 was added to the chapter.

(6) The reference to the CSA standard CAN/CSA/C22.2 No. 60335-2-40-2012 was modified to change the title and update the edition year of the reference from 2016 to 2019.

(7) The reference to the ICC 500® ICC 500-14 ICC/NSSA Standard on the Design and Construction of Storm Shelters® was modified to update the code section references.

(8) The reference to the International Building Code® was modified to change the edition year back to 2018 and include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC."

(9) The reference to the International Fire Code® was modified to change the edition year back to 2018 and include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC."

(10) The reference to the International Fuel Gas Code® was modified to change the edition year back to 2018 and include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC."

(11) The reference to the International Mechanical Code® was modified to change the edition year back to 2018 and include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC."

(12) The reference to the International Plumbing Code® was modified to change the edition year back to 2018 and include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC."

(13) The referenced standard for NFPA® 70 National Electrical Code® was modified to change the edition year to 2020 and include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC."

(14) A reference for the standard UL 1563-2009 Standard for Electric Hot Tubs, Spas and Associated Equipment®, with revisions through September 2020 has been added to the chapter.

(15) The referenced standard UL 1995-2011 Heating and Cooling Equipment - with revisions through July 2015 was modified to update the edition year and remove the reference to revisions.

(16) The reference standard UL/CSA/ANCE 60335-2-40-2012: Standard for Household and Similar Electrical Appliances, Part 2: Particular Requirements for Motor-compressors was modified to update the edition year and the title and add a section reference.

#### **748:20-6-50. Appendix U, Automatic Fire Systems**

This section addresses a newly created OUBCC appendix entitled "Appendix U, Automatic Fire Systems" and clarifies the provisions contained in the section are not mandatory unless specifically referenced in a local jurisdiction's adoption ordinance or order. The following sections were added to the code as non-mandatory requirements:

(1) Section U101 General adds the heading and clarifies the sections of text applicable to installing residential fire sprinkler systems in one- and two-family dwellings.

(2) Section U101.1 One- and two-family dwellings automatic fire sprinkler systems was formerly numbered Section R313.2 has been moved into appendix U, entitled "Automatic Fire Sprinkler Systems." The section specifies the provisions of this appendix shall apply to one- and two-family dwellings.

(3) Section U101.2 Design and installation was formerly numbered Section R313.2.1 has been moved into Appendix U, entitled "Automatic Fire Sprinkler Systems." The section specifies the design and installation of automatic residential fire sprinkler systems shall comply with the provisions of this appendix and NFPA 13D.

#### **748:20-6-51. Appendix V, Swimming Pools, Spas, and Hot Tubs**

This section addresses a newly created OUBCC appendix entitled "Appendix V, Swimming Pools, Spas and Hot Tubs" and clarifies the provisions contained in the section are not mandatory unless specifically referenced in a local jurisdiction's adoption ordinance or order. The following sections of code were added to the code as non-mandatory requirements:

(1) V101 Swimming Pools, Spas, and Hot Tubs section header was added to clarify the sections of text that apply to the general requirements for swimming pools, spas and hot tubs.

(2) V101.1 General was formerly numbered R326.1 General has been moved into an appendix.

#### **748:20-6-52. Appendix W, Energy Efficiency**

This section addresses a newly created OUBCC appendix entitled "Appendix W, Energy Efficiency" and clarifies the provisions contained in the section are not mandatory unless specifically referenced in a local jurisdiction's adoption ordinance or order. The following sections of code were added to the code as non-mandatory requirements:

(1) W101 General was added to clarify the scope for the appendix.

(2) W101.1 Certificate was formerly numbered N1101.14 has been moved into appendix W, entitled "Energy Efficiency."

#### **748:20-6-53. Appendix X, Residential Tornado Provisions**

(a) This section addresses a newly created OUBCC appendix entitled "Appendix X, Residential Tornado Provisions" and clarifies the provisions contained in the section are not mandatory unless specifically referenced in a local jurisdiction's adoption ordinance or order. The following sections of code were added to the code as non-mandatory requirements: (b) X101 Scope was added as a section heading to specify the sections of this appendix that deal with the Scope of the appendix.

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(1) Section X101.1 General was added to clarify the provisions shall be applicable for new construction where residential tornado provisions are required.

(2) Section X101.2 Application was added to clarify the administrative provisions of this appendix are applicable in the administrative and building planning and construction requirements in Chapters 1 through 10 of this code.

(3) Section X101.3 Wind design criteria was added to clarify that if Section R301.2.1 is modified, the buildings and portions thereof shall be constructed in accordance with the code and the ultimate wind speed design of 135 mph.

(4) Section X101.4 Lumber sheathing was added to address the permitted forms of lumber sheathing. For Sixteen Inch Framing and Twenty-four Inch Framing.

(5) Section X101.5 Ceiling joist and rafter connections was added to require ceiling joists and rafters to be nailed to each other in a manner to achieve a connection that can transfer a 500-pound force in both compression and tension across the connections.

(6) Section X101.6 Rafter uplift resistance was added to require individual rafters to be attached to supporting wall assemblies by connections capable of resisting uplift forces of 500 pounds.

(7) Section X101.7 Gable end walls was added to clarify connections and sheathing for gable end walls.

(8) Section X101.8 Exterior wall bracing was added to clarify sheathing methods to be utilized to brace exterior walls and prohibit intermittent bracing on exterior walls.

(9) Section X101.9 Multi story construction was added to require nailing upper and lower story wall sheathing to a common rim board.

(10) Section X101.10 Wood floor above crawl space construction was added to require extending structural wood sheathing to lap the sill plate.

(11) Section X101.11 Garage Doors was added to require garage doors to be rated for 135 mile per hour winds

A copy of the full text of the rules is available on the OUBCC website at: <https://www.ok.gov/oubcc>, or may be obtained in person at the offices of the OUBCC at 2401 NW 23<sup>rd</sup> Street, Suite 82, Oklahoma City, OK 73107.

*[OAR Docket #22-493; filed 6-28-22]*

## TITLE 748. OKLAHOMA UNIFORM BUILDING CODE COMMISSION CHAPTER 20. ADOPTED CODES

*[OAR Docket #22-494]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 10. NEC<sup>®</sup>~~2017~~2020 [AMENDED]  
748:20-10-1. Adoption of the National Electrical Code<sup>®</sup>, ~~2017~~2020 Edition (NEC<sup>®</sup>~~2017~~2020) [AMENDED]  
748:20-10-2. Effect of Adoption [AMENDED]  
748:20-10-3. NEC<sup>®</sup>~~2017~~2020 Informative Annexes [AMENDED]  
748:20-10-4. NEC<sup>®</sup>~~2017~~2020 Provisions Adopted and Modified [AMENDED]  
748:20-10-6. NEC<sup>®</sup>~~2017~~2020 Article 90 Introduction [AMENDED]  
748:20-10-7. NEC<sup>®</sup>~~2017~~2020 Chapter 1 General [AMENDED]  
748:20-10-8. NEC<sup>®</sup>~~2017~~2020 Chapter 2 Wiring and Protection [AMENDED]  
748:20-10-9. NEC<sup>®</sup> 2017 Chapter 3 Wiring Methods and Materials [REVOKED]  
748:20-10-10. NEC<sup>®</sup>~~2017~~2020 Chapter 4 Equipment for General Use [AMENDED]  
748:20-10-11. NEC<sup>®</sup>~~2017~~2020 Chapter 5 Special Occupancies [AMENDED]  
748:20-10-12. NEC<sup>®</sup>~~2017~~2020 Chapter 6 Special Equipment [AMENDED]  
748:20-10-13. NEC<sup>®</sup>~~2017~~2020 Chapter 7 Special Conditions [AMENDED]  
748:20-10-14. NEC<sup>®</sup> 2017 Chapter 8 Communication Systems [REVOKED]

### AUTHORITY:

Oklahoma Uniform Building Code Commission; 59 O.S. § 1000.23 - 1000.24

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 18, 2022

### COMMENT PERIOD:

February 16, 2022 through March 18, 2022

### PUBLIC HEARING:

March 22, 2022

### ADOPTION:

March 22, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 25, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approve by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 14, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

#### Incorporated standards:

National Fire Protection Association, National Electrical Code<sup>®</sup>, 2020 Edition

#### Incorporating rules:

748:20-10-1., 748:20-10-2., 748:20-10-3., 748:20-10-4., 748:20-10-5., 748: 20-10-6., 748:20-10-7., 784:20-10-8., 748:20-10-10., 748:20-10-11., 748:20-10-12., and 748:20-10-13.

#### Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Uniform Building Code Commission, 2401 NW 23<sup>rd</sup> St., Suite 82, Oklahoma City, OK 73107, 405-521-6501

#### GIST/ANALYSIS:

748:20-10-1., 748:20-10-2., 748:20-10-3., 748:20-10-4., and 748:20-10-5., adopt the NEC<sup>®</sup> 2020 edition, without Annexes and establishes the NEC<sup>®</sup> 2020 as the statewide minimum code for commercial electrical construction in the State of Oklahoma. 748:20-10-6. modifies the adoption of Article 90 of the NEC<sup>®</sup> 2020 only to the extent its provisions are not inconsistent with other laws or lawfully established code administration and enforcement policies. 748:20-10-7., 748:20-10-8., 748:20-10-10., 748:20-10-11., 748:20-10-12., and 748:20-10-13., set forth the OUBCC's adoption of Oklahoma modifications to the provisions of the NEC<sup>®</sup> 2020 in Chapters 2, 4, 5, 6, and 7, respectively.

748:20-10-9. and 748:20-10-14., have been revoked.

#### CONTACT PERSON:

Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23<sup>rd</sup> St., Suite 82, Oklahoma City, OK 73107, 405-521-6501

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2022:**

### SUBCHAPTER 10. NEC<sup>®</sup>~~2017~~2020

#### 748:20-10-1. Adoption of the National Electrical Code<sup>®</sup>, ~~2017~~2020 Edition (NEC<sup>®</sup>~~2017~~2020)

(a) The Oklahoma Uniform Building Code Commission (the "OUBCC") hereby adopts the National Electrical Code<sup>®</sup>, ~~2017~~2020 Edition - NFPA 70<sup>®</sup> (NEC<sup>®</sup>~~2017~~2020), as amended and modified in this subchapter as the statewide minimum code for commercial electrical construction in the State of Oklahoma pursuant to 59 O.S. § 1000.23.

(b) The OUBCC through formal action expressly chose to adopt the NEC<sup>®</sup>20172020 as amended and modified in this subchapter as the statewide minimum code for commercial electrical construction in the State of Oklahoma.

(c) The OUBCC has pulled from the National Fire Protection Association (NFPA) website, published errata and Temporary Interim Amendments (TIA's) to the NEC<sup>®</sup>20172020 through April 21, 2020. Any errata or TIA's published after that date have not been reviewed or incorporated into these rules.

(d) This material contains information which is proprietary to and copyrighted by the National Fire Protection Association. The acronym "NFPA" and the NFPA logo are trademarks and service marks of NFPA. ALL RIGHTS RESERVED.

**748:20-10-2. Effect of Adoption**

The NEC<sup>®</sup>20172020 as amended and revised by these rules, is hereby established and adopted as the statewide minimum code for commercial electrical construction in Oklahoma pursuant to 59 O.S. § 1000.23, and may only be amended or altered by other jurisdictions pursuant to Oklahoma law and the administrative rules of the OUBCC as set forth in Title 748, Chapter 15 of the Oklahoma Administrative Code.

**748:20-10-3. NEC<sup>®</sup>20172020 Informative Annexes**

(a) None of the informative annexes of the NEC<sup>®</sup>20172020 have been adopted by the OUBCC for inclusion in the statewide minimum code for commercial electrical construction in the State of Oklahoma.

(b) Informative Annexes A through J are not adopted as the statewide minimum code for commercial electrical construction within the State of Oklahoma. However, other jurisdictions within the State of Oklahoma may adopt any or all of said annexes in accordance with 59 O.S. § 1000.29.

(c) Issuance of annual permits. Annual permit requirements are located in Informative ~~annex~~ Annex H, Section 80.19 (D) and while the OUBCC is not adopting the informative annexes, issuance of annual permits has been authorized and the annual permits section modified to provide the following requirements:

(1) 80.19 (D) Annual permit. This section has been modified to clarify an annual permit is a yearly permit which represents a group of individual permits for each alteration to an already approved electric, gas, mechanical or plumbing installation. This section has been modified to read: 80.19(D) Annual permit. An annual permit is a yearly permit which represents a group of individual permits for each alteration to an already approved electrical, gas, mechanical or plumbing installation. The building official is authorized to issue an annual permit upon application therefore to any person, firm or corporation regularly employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the permit.

(2) 80.19 (D)(1) Annual permit records. This section has been added to require the building official to collect the OUBCC permit fee for each individual permit that is

part of the annual permit at the completion of the annual permit term. This section has been added to read: 80.19 (D)(1) Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such detailed records of alterations at all times. At the completion of the entity's annual permit term, the applicant shall file such detailed records of alterations with the building official. Pursuant to the authority of 59 O.S. § 1000.25, the building official shall collect fees for each individual permit which is part of the annual permit once the detailed records are submitted and remit such fees to the OUBCC.

**748:20-10-4. NEC<sup>®</sup>20172020 Provisions Adopted and Modified**

All chapters and provisions within chapters, including exceptions, of the NEC<sup>®</sup>20172020 not specifically addressed within these rules as being modified, deleted, moved or removed are hereby adopted without modification as the statewide minimum code for commercial electrical construction within the State of Oklahoma pursuant to 59 O.S. § 1000.23. Chapters and provisions within chapters, including exceptions adopted with modifications are specifically addressed in these rules.

**748:20-10-6. NEC<sup>®</sup>20172020 Article 90 Introduction**

Article 90 of the Oklahoma adopted NEC<sup>®</sup>20172020, includes the following Preamble at the very beginning of the chapter:

(1) Pursuant to 59 O.S. § 1000.23, the OUBCC has adopted the NEC<sup>®</sup>20172020 as amended and revised by the OUBCC, as the minimum code to be used by all entities for commercial electrical construction in jurisdictions throughout the State of Oklahoma. However, the OUBCC's adoption of Article 90 "Introduction" of the NEC<sup>®</sup>20172020 is for continuity purposes and the OUBCC's adoption of Article 90 recognizes the methods of best practice in fully implementing the statewide minimum code for commercial electrical construction.

(2) All provisions of the adopted NEC<sup>®</sup>20172020, including Article 90, as amended and revised by the OUBCC, are hereby established and adopted as the statewide minimum code for commercial electrical construction in Oklahoma pursuant to 59 O.S. § 1000.23, which may only be amended or altered pursuant to Oklahoma law and the administrative rules of the OUBCC as set forth in Title 748, Chapter 15 of the Oklahoma Administrative Code. However, the provisions of Article 90 adopted herein are only intended to be in force and effect to the extent that the respective provisions do not conflict with State law or the lawful exercise of code administration and enforcement jurisdiction by entities empowered to do so pursuant to applicable law.

(3) The OUBCC's adoption of Article 90 in this manner is made with the recognition that the legal authority granting state and local code administration and enforcement

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jurisdictions the power and discretion to administer and enforce codes arises from Oklahoma laws governing those jurisdictions. Furthermore, the OUBCC also recognizes that many state and local code administration and enforcement jurisdictions have already created, or have the lawful authority to create, departments, offices and administrative policies pursuant to various applicable laws and other adopted model codes with "Introduction" provisions similar to Article 90 of the adopted NEC<sup>®20172020</sup>.

(4) This limited adoption of Article 90 is made in recognition of the authority and discretion possessed by jurisdictions to administer and enforce building codes. Exercising such authority and jurisdiction in a manner inconsistent with Article 90 must be supported by Oklahoma law. Code administration and enforcement jurisdictions shall not use the OUBCC's limited adoption of Article 90 to circumvent the remainder of the requirements established by the Oklahoma adopted NEC<sup>®20172020</sup> and the OUBCC will strongly oppose any such practice.

## 748:20-10-7. NEC<sup>®20172020</sup> Chapter 1 General

Chapter 1 of the Oklahoma adopted NEC<sup>®20172020</sup> is adopted with the following modifications:

(1) Article 100 Definitions. This section has been modified to include a definition of a nationally recognized testing laboratory and a definition of a plaque. This section has been modified to read:

(A) Nationally Recognized Testing Laboratory. A testing facility given this designation from the United States Occupational Safety and Health Administration (OSHA) that provides product safety testing and certification services to manufacturers.

(B) Plaque. A flat, thin piece of metal, wood, or non-conductive, UV, rain, corrosion, and ice resistant material with a sustainable temperature rating from negative 20 degrees Fahrenheit to 130 degrees Fahrenheit or better. For the ambient temperature of the environment to which it is installed, with engraved writing on it that is used especially as a reminder or warning of something. A plaque shall be designed to be installed by adhesive means or mechanical fasteners, as determined by the environment where to be permanently installed. A plaque shall also be known as a Permanent Plaque, Directory, or substitute for a label, excluding circuit directories.

(2) Section 110.12 (B) Integrity of Electrical Equipment and Connections. This section has been modified to allow for the reuse of existing electrical equipment, rather than requiring new replacements when certain conditions are met. This section has been modified to read: 110.12 (B) Integrity of Electrical Equipment and Connections. Internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces, shall not be damaged or contaminated by foreign materials such as paint, plaster, cleaners, abrasives, or corrosive residues. There shall be no damaged parts that may adversely affect safe operation or mechanical strength of the equipment such as parts that are broken; bent; cut; or deteriorated

by corrosion, chemical action or overheating. Damaged materials, equipment, appliances, and devices shall not be reused unless such elements have been reconditioned, tested, and placed in good and proper working condition and approved by a nationally recognized testing laboratory, or by the manufacturer of the equipment. Electrical equipment damaged by natural or man-made events shall be reused only as recommended by the manufacturer of such equipment.

## 748:20-10-8. NEC<sup>®20172020</sup> Chapter 2 Wiring and Protection

Chapter 2 of the Oklahoma adopted NEC<sup>®20172020</sup> is adopted with the following ~~modifications~~modification: Section 210.08 (F) Outdoor Outlets. This section has been modified to include mini-split-type heating/ventilating/air-conditioning equipment and other HVAC units employing power conversion equipment as a means to control compressor speed. This section has been modified to read: 210.08 (F) Outdoor Outlets. All outdoor outlets for dwellings, other than those covered in 210.8 (A) (3), Exception to (3), and for mini-split-type heating/ventilating/air-conditioning (HVAC) equipment and other HVAC units employing power conversion equipment as a means to control compressor speed, that are supplied by single-phase branch circuits rated 150 volts to ground or less, 50 amperes or less, shall have ground-fault circuit-interrupter protection for personnel. Informational Note: Power conversion equipment is the term used to describe the components used in HVAC equipment that is commonly referred to as a variable speed drive. The use of power conversion equipment to control compressor speed differs from multistage compressor speed control. Exception: Ground-fault circuit-interrupter protection shall not be required on lighting outlets other than those covered in 210.8 (C).

~~(1) Section 210.12 Arc Fault Circuit Interrupter Protection. This section has been modified to address errata published by NFPA<sup>®</sup> which adds a section reference "(D)" to the section. This section has been modified to read: 210.12 Arc Fault Circuit Interrupter Protection. Arc fault circuit interrupter protection shall be provided as required in 210.12(A), (B), (C), and (D). The arc fault circuit interrupter shall be installed in a readily accessible location.~~

~~(2) Section 220.12 Lighting Load for Specified Occupancies. This section was modified to address a TIA published by NFPA<sup>®</sup>. The change modifies the second exception to delete incorrect calculation formulas. This section has been modified to read: 220.12 Lighting Load for Specified Occupancies. A unit load of not less than that specified in Table 220.12 for occupancies specified shall constitute the minimum lighting load. The floor area for each floor shall be calculated from the outside dimensions of the building, dwelling unit, or other area involved. For dwelling units, the calculated floor area shall not include open porches, garages, or unused or unfinished spaces not adaptable for future use. Exceptions:~~

(A) ~~Exception No. 1: Where the building is designed and constructed to comply with an energy code adopted by the local authority, the lighting load shall be permitted to be calculated at the values specified in the energy code where the following conditions are met:~~

- ~~(i) A power monitoring system is installed that will provide continuous information regarding the total general lighting load of the building.~~
- ~~(ii) The power monitoring system will be set with alarm values to alert the building owner or manager if the lighting load exceeds the values set by the energy code.~~
- ~~(iii) The demand factors specified in 220.42 are not applied to the general lighting load.~~

~~(B) Exception No. 2: Where a building is designed and constructed to comply with an energy code adopted by the local authority and specifying an overall lighting density of less than 13.5 volt amperes/square meters (1.2 volt amperes/square feet), the unit lighting loads in Table 220.12 for office and bank areas within the building shall be permitted to be reduced by 11 volt amperes/square meters (1 volt ampere/square foot).~~

(3) ~~Section 230.67 Electric Utility Meter Enclosure. This section has been added to clarify installation specifications for outdoor electric utility meter enclosures for structures intended for use as a single family dwelling to a maximum of a four family dwelling. This section has been added to read: 230.67 Electric Utility Meter Enclosure.~~

~~(A) Electric utility meter enclosures for structures intended for use as a single family dwelling to a maximum of a four family dwelling shall be installed in accordance with the following: Outdoor Utility Meter Enclosures~~

- ~~(i) A meter enclosure installed outdoors shall be securely mounted to the exterior of a building or other structure such as a pole or metal rack. The meter enclosure shall be installed in a readily accessible location.~~
- ~~(ii) The meter enclosure shall not be placed where it is prone or likely subjected to physical damage, vibration, excessive dust, vapors, or corrosive conditions.~~
- ~~(iii) The meter enclosure shall be installed not more than five and one half (5 1/2) feet or less than two and one half (2 1/2) feet above finished grade measured to the horizontal centerline of the meter socket. Working clearances for the meter enclosure shall be maintained in accordance with 110.26(A).~~
- ~~(iv) Electric utility meter enclosures shall not be installed on the inside of a structure, or within walls, locked gates or other obstructions that limit ready access to the equipment.~~
- ~~(v) The provisions of 90.2 concerning metering equipment shall not apply.~~

~~(vi) The electric utility meter enclosure installed outdoors shall not be placed or located within or in the immediate vicinity of the proper enclosure of a dangerous dog as defined in 4 O.S. § 44.~~

~~(B) Hazardous (Classified) Locations. Meter enclosures shall not be installed in a hazardous (classified) location.~~

**748:20-10-9. NEC® [REVOKED]**

Chapter 3 of the Oklahoma adopted NEC® 2017 is adopted with the following modifications:

(1) ~~Section 300.4 Protection Against Physical Damage. This section has been modified to address errata published by NFPA® to delete the informational note. This section has been modified to read: 300.4 Protection Against Physical Damage. Where subject to physical damage, conductors, raceways, and cables shall be protected.~~

(2) ~~Table 310.104(A) Conductor Applications and Insulations Rated 600 Volts. This table has been modified to address errata published by NFPA® in row 18, column 6, subcolumn 3. The table has been modified to read: Table 310.104(A) Conductor Applications and Insulations Rated 600 Volts. The title contains a superscript "1" at the end to indicate footnote 1 is applicable. The table contains 27 rows and 7 columns. Column 6 of the table contains three subcolumns. The modified table is described below:~~

~~(A) Row 1 contains the headers for the table and are listed below:~~

- ~~(i) Row 1, column 1 is entitled "Trade Name."~~
- ~~(ii) Row 1, column 2 is entitled "Type Letter."~~
- ~~(iii) Row 1, column 3 is entitled "Maximum Operating Temperature."~~
- ~~(iv) Row 1, column 4 is entitled "Application Provisions."~~
- ~~(v) Row 1, column 5 is entitled "Insulation."~~
- ~~(vi) Row 1, column 6 is entitled "Thickness of Insulation" and contains three subcolumns listed below:~~

- ~~(I) Row 1, column 6, subcolumn 1 is entitled "AWG or kcmil."~~
- ~~(II) Row 1, column 6, subcolumn 2 is entitled "mm."~~
- ~~(III) Row 1, column 6, subcolumn 3 is entitled "mils."~~

~~(vii) Row 1, column 7 is entitled "Outer Covering" with a subscript "2" at the end of the title indicating footnote #2 is applicable.~~

~~(B) Row 2 lists the trade name "Fluorinated ethylene propylene" in column 1. No changes have been made to this row.~~

~~(C) Row 3 lists the trade name "Mineral insulation (metal sheathed)" in column 1. No changes have been made to this row.~~

~~(D) Row 4 lists the trade name "Moisture , heat , and oil resistant thermoplastic" in column 1. No changes have been made to this row.~~

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- (E) Row 5 lists the trade name "Paper" in column 1. No changes have been made to this row.
- (F) Row 6 lists the trade name "Perfluoro alkoxy" in column 1. No changes have been made to this row.
- (G) Row 7 lists the trade name "Perfluoro alkoxy" in column 1. No changes have been made to this row.
- (H) Row 8 lists the trade name "Thermoset" in column 1. No changes have been made to this row.
- (I) Row 9 lists the trade name "Moisture resistant thermoset" in column 1. No changes have been made to this row.
- (J) Row 10 lists the trade name "Silicone" in column 1. No changes have been made to this row.
- (K) Row 11 lists the trade name "Thermoset" in column 1. No changes have been made to this row.
- (L) Row 12 lists the trade name "Thermoplastic and fibrous outer braid" in column 1. No changes have been made to this row.
- (M) Row 13 lists the trade name "Extended polytetra fluoro ethylene" in column 1. No changes have been made to this row.
- (N) Row 14 lists the trade name "Heat resistant thermoplastic" in column 1. No changes have been made to this row.
- (O) Row 15 lists the trade name "Moisture and heat resistant thermoplastic" in column 1. No changes have been made to this row.
- (P) Row 16 lists the trade name "Moisture and heat resistant thermoplastic" in column 1. No changes have been made to this row.
- (Q) Row 17 lists the trade name "Moisture and heat resistant thermoplastic" in column 1. No changes have been made to this row.
- (R) Row 18 has been modified and is described below:
- (i) Column 1 lists the trade name "Moisture resistant thermoplastic."
  - (ii) Column 2 lists the type letter "TW."
  - (iii) Column 3 lists the maximum operating temperature of "60 degrees Celsius (140 degrees Fahrenheit)."
  - (iv) Column 4 lists the Application Provisions "Dry and wet locations."
  - (v) Column 5 lists the Insulation "Flame retardant, moisture resistant thermoplastic."
  - (vi) Column 6 lists the Thickness of Insulation in each of the subrows as follows:
    - (I) Column 6, subrow 1 lists the AWG or kcmil "14 10, 8, 6 2, 1 4/0, 213 500, 501 1000, 1001 2000," respectively.
    - (II) Column 6, subrow 2 lists the mm "0.76, 1.14, 1.52, 2.03, 2.41, 2.79, 3.18," respectively.
    - (III) Column 6, subrow 3 lists the mils "30, 45, 60, 80, 95, 110, 125," respectively.
  - (vii) Column 7 lists the Outer Covering "None."
- (S) Row 19 lists the trade name "Underground feeder and branch circuit cable—single conductor

(for Type UF cable employing more than one conductor, see Article 340)" in column 1. No changes have been made to this row.

(T) Row 20 lists the trade name "Underground service entrance cable—single conductor (for Type USE cable employing more than one conductor, see Article 338)" in column 1. No changes have been made to this row.

(U) Row 21 lists the trade name "Thermoset" in column 1. No changes have been made to this row.

(V) Row 22 lists the trade name "Thermoset" in column 1. No changes have been made to this row.

(W) Row 23 lists the trade name "Moisture resistant thermoset" in column 1. No changes have been made to this row.

(X) Row 24 lists the trade name "Moisture resistant thermoset" in column 1. No changes have been made to this row.

(Y) Row 25 lists the trade name "Moisture resistant thermoset" in column 1. No changes have been made to this row.

(Z) Row 26 lists the trade name "Modified ethylene tetrafluoro ethylene" in column 1. No changes have been made to this row.

(AA) Row 27 lists the trade name "Modified ethylene tetrafluoro ethylene" in column 1. No changes have been made to this row.

(BB) The table has seven footnotes. No changes have been made to the footnotes.

(3) Section 392.80(A)(1) Multiconductor Cables. This section has been modified to address errata published by the NFPA<sup>®</sup> to correct a section reference in the first subparagraph from "310.15(A)(3)(a)" to "310.15(B)(3)(a)." This section has been modified to read: 392.80(A)(1) Multiconductor Cables. The allowable ampacity of the multiconductor cables, nominally rated 2000 volts or less, installed according to the requirements of 392.22(A) shall be as given in Table 310.15(B)(16) and Table 310.15(B)(18), subject to the provisions of (A)(1)(a), (b), (c), and 310.15(A)(2).

(A) The adjustment factors of 310.15(B)(3)(a) shall apply only to multiconductor cables with more than three current carrying conductors. Adjustment factors shall be limited to the number of current carrying conductors in the cable and not to the number of conductors in the cable tray.

(B) Where cable trays are continuously covered for more than 1.8 m (6 ft) with solid unventilated covers, not over 95 percent of the allowable ampacities of Table 310.15(B)(16) and Table 310.15(B)(18) shall be permitted for multiconductor cables.

(C) Where multiconductor cables are installed in a single layer in uncovered trays, with a maintained spacing of not less than one cable diameter between cables, the ampacity shall not exceed the allowable ambient temperature corrected ampacities of multiconductor cables, with not more than three insulated

conductors rated 0 through 2000 volts in free air, in accordance with 310.15(C).

**748:20-10-10. NEC<sup>®</sup>20172020 Chapter 4 Equipment for General Use**

Chapter 4 of the Oklahoma adopted NEC<sup>®</sup>20172020 is adopted with the following ~~modifications~~modification: Section 422.16(B)(5) Gas-fired central furnaces. This section has been added to allow flexible cord-and-plug connections in dwelling units as an alternative means of temporarily supplying the gas-fired furnace by a portable generator for heating purposes. This section has been added to read: 422.16(B)(5) Gas-fired central furnaces. Gas-fired furnaces supplying dwelling units shall be permitted to be connected by a flexible cord-and-plug. The cord and attachment plug shall have sufficient ampacity for the load, and shall be routed or otherwise protected to prevent physical damage to the cord or attachment plug.

(1) ~~Section 410.2 Definition.~~ This section has been modified to add two definitions to the section:

(A) ~~The definition of HORTICULTURAL LIGHTING EQUIPMENT has been added to clarify lighting equipment identified for horticultural use is to be designed to provide supplemental general illumination within the growing environment. This definition has been added to read: HORTICULTURAL LIGHTING EQUIPMENT. Lighting equipment identified for horticultural use is designed to provide a spectral characteristic needed for the growth of plants and can also provide supplemental general illumination within the growing environment.~~

(B) ~~The definition of LUMINAIRE REMOTE POWER SOURCES has been added to clarify Luminaire remote power sources include LED Drivers, fluorescent ballasts or HID ballasts. This definition has been added to read: LUMINAIRE REMOTE POWER SOURCES. Luminaire remote power sources include LED Drivers, fluorescent ballasts, or HID ballasts.~~

(2) ~~Part XVI. Special Provisions for Horticultural Lighting Equipment.~~ This part header has been added to Article 410 Luminaires, Lampholders, and Lamps to signify the start of a new section of code related to provisions needed for horticultural lighting equipment. This part heading has been added to read: ~~Part XVI. Special Provisions for Horticultural Lighting Equipment~~

(3) ~~Section 410.170 General.~~ This section has been added to clarify luminaires complying with parts 1 through 7, 9, 10, 11 and 12 of this article shall be permitted to be used for horticultural lighting. It clarifies part 16 of the article shall apply to lighting equipment specifically identified for horticultural use. This section has been added to read: 410.170 General. Luminaires complying with Parts, I, II, III, IV, V, VI, VII, IX, X, XI, and XII of this article shall be permitted to be used for horticultural lighting. Part XVI shall additionally apply to lighting equipment specifically identified for horticultural use.

(4) ~~Section 410.172 Listing.~~ This section has been added to clarify lighting equipment identified for horticultural use is required to be listed. This section has been added to read: 410.172 Listing. Lighting equipment identified for horticultural use shall be listed.

(5) ~~Section 410.174 Installation and use.~~ This section has been added to clarify lighting equipment identified for horticultural use to be installed and used in accordance with the manufacturer's installation instructions and installation markings on the equipment as required by the listing. This section has been added to read: 410.174 Installation and use. Lighting equipment identified for horticultural use shall be installed and used in accordance with the manufacturer's installation instructions and installation markings on the equipment as required by that listing.

(6) ~~Section 410.176 Locations not permitted.~~ This section has been added to clarify the location and installation where lighting equipment identified for horticultural use is not permitted. This section has been added to read: 410.176 Locations not permitted.

(A) ~~General Lighting.~~ Lighting equipment identified for horticultural use shall not be installed as lighting for general illumination unless such use is indicated in the manufacturer's instructions.

(B) ~~Installed Location.~~ Lighting equipment identified for horticultural use shall not be installed where it is likely to be subject to physical damage or where concealed.

(7) ~~Section 410.178 Flexible cord.~~ This section has been added to clarify flexible cord will be permitted only when provided as part of a listed lighting equipment identified for horticultural use and identified for specific uses. This section has been added to read: 410.178 Flexible cord. Flexible cord shall only be permitted when provided as part of listed lighting equipment identified for horticultural use for any of the following uses:

(A) ~~Connecting a horticultural lighting luminaire directly to a branch circuit outlet.~~

(B) ~~Interconnecting horticultural lighting luminaires.~~

(C) ~~Connecting a horticultural lighting luminaire to a remote power source.~~

(8) ~~Section 410.180 Fittings and connectors.~~ This section has been added to clarify fittings and connectors attached to flexible cords shall be provided as part of a listed horticultural lighting equipment device or system and installed in accordance with the instructions provided as part of the listing. This section has been added to read: 410.180 Fittings and connectors. Fittings and connectors attached to flexible cords shall be provided as part of a listed horticultural lighting equipment device or system and installed in accordance with the instructions provided as part of that listing.

(9) ~~Section 410.182 Grounding.~~ This section has been added to require lighting equipment identified for horticultural use to be grounded as required in Article 250 and Part V of this article. This section has been added to read: 410.182 Grounding. Lighting equipment identified for

horticultural use shall be grounded as required in Article 250 and Part V of this article.

(10) ~~Section 410.184 Ground fault circuit interrupter protection. This section has been added to clarify lighting equipment identified for horticultural use employing flexible cord(s) with one or more connectors to be supplied by lighting outlets with ground fault circuit interrupter protection. This section has been added to read: 410.184 Ground fault circuit interrupter protection.—Lighting equipment identified for horticultural use employing flexible cord(s) with one or more connectors shall be supplied by lighting outlets with ground fault circuit interrupter protection.~~

(11) ~~Section 410.186 Support. This section has been added to clarify special fittings identified for support of horticultural lighting equipment shall be designed specifically for the horticultural lighting equipment on which they are installed and shall be used in accordance with the installation instructions provided and shall be securely fastened. This section has been added to read: 410.186 Support. Special fittings identified for support of horticultural lighting equipment shall be designed specifically for the horticultural lighting equipment on which they are installed and shall be used in accordance with the installation instructions provided and shall be securely fastened.~~

(12) ~~Section 410.188 Hazardous (classified) locations. This section has been added to clarify where horticultural lighting is installed in hazardous (classified) locations, the horticultural lighting equipment shall conform to Articles 500 through 517 in addition to this article. This section has been added to read: 410.188 Hazardous (classified) locations. Where installed in hazardous (classified) locations, horticultural lighting equipment shall conform to Articles 500 through 517 in addition to this article.~~

(13) ~~Section 422.16(B)(5) Gas fired central furnaces. This section has been added to allow flexible cord and plug connections in dwelling units as an alternative means of temporarily supplying the gas fired furnace by a portable generator for heating purposes. This section has been added to read: 422.16(B)(5) Gas fired central furnaces. Gas fired furnaces supplying dwelling units shall be permitted to be connected by a flexible cord and plug. The cord and attachment plug shall have sufficient ampacity for the load, and shall be routed or otherwise protected to prevent physical damage to the cord or attachment plug.~~

(14) ~~424.99(B) Insulation. This section has been modified to address errata published by NFPA® to correct a section reference from "(C)(5)" to "(B)(6)." This section has been modified to read: 424.99(B) Insulation. Listed heating panels or panel sets, if installed under floor covering, shall be installed on floor surfaces that are smooth and flat in accordance with the manufacturer's instructions and shall also comply with 424.99(B)(1) through (B)(6).~~

(15) ~~Section 430.97(C) Minimum Wire Bending Space. This section has been modified to address errata published by NFPA® to correct a reference from "Article 312(D)" to "Article 312." This section has been modified to read:~~

~~430.97(C) Minimum Wire Bending Space. The minimum wire bending space at the motor control center terminals and minimum gutter space shall be as required in Article 312.~~

(16) ~~Section 450.23(A) Indoor Installations.—This section has been modified to address errata published by NFPA®. The correction moves the last two items out of the list of conditions in the first paragraph for Type I or Type II buildings, and makes each their own conditions for when indoor installations shall be permitted. The section has been modified to read: 450.23(A) Indoor Installations. Indoor installations shall be permitted in accordance with one of the following:~~

(A) ~~In Type I or Type II buildings, in areas where all of the following requirements are met:~~

- (i) ~~The transformer is rated 35,000 volts or less.~~
- (ii) ~~No combustible materials are stored.~~
- (iii) ~~A liquid confinement area is provided.~~
- (iv) ~~The installation complies with all the restrictions provided for in the listing of the liquid.~~

(B) ~~With an automatic fire extinguishing system and a liquid confinement area, provided the transformer is rated 35,000 volts or less.~~

(C) ~~In accordance with 450.26.~~

### **748:20-10-11. NEC®20172020 Chapter 5 Special Occupancie**

Chapter 5 of the Oklahoma adopted NEC®20172020 is adopted with the following modifications:

(1) ~~Section 505.7 (A) Implementation of zone classification system. This section has been modified to require a registered professional engineer to engineer and design, and select the equipment and wiring methods for classification areas. It allows for the installation of the equipment, wiring methods and inspections to be performed by qualified persons. This section has been modified to read: 505.7 (A) Implementation of zone classification system. Classification of areas, engineering and design, selection of equipment and wiring methods shall be performed by a Registered Professional Engineer with expertise in Hazardous (Classified) Locations and Zone Systems. The installation of equipment and wiring methods, and inspections shall be performed by qualified persons.~~

(2) ~~Section 505.9(E)(2) Equipment Provided with Threaded Entries for Metric Threaded Conduit or Fittings. This section has been modified to address a TIA published by the NFPA®. The change deletes Groups C, D, IIB, or IIA from requiring metric threaded fittings installed into explosionproof or flameproof equipment entries to have a class fit of at least 6g/6H and be made up with at least five threads fully engaged; and deletes the language requiring "at not less than eight threads fully engaged and wrenchtight." This section has been modified to read: 505.9(E)(2) Equipment Provided with Threaded Entries for Metric Threaded Conduit or Fittings.~~



(A) For equipment with metric threaded entries, listed conduit fittings or listed cable fittings shall be used. Such entries shall be identified as being metric or listed adapters to permit connection to conduit or NPT threaded fittings shall be provided with the equipment and shall be used for connection to conduit or NPT traded fittings.

(B) Metric threaded fittings installed into explosionproof or flameproof equipment entries shall have a class of fit of at least 6g/6H and be made up with at least five threads fully engaged.

(32) Section 506.7 (A) Implementation of zone classification system. This section has been modified to require a registered professional engineer to engineer and design, and select the equipment and wiring methods for classification areas. It allows for the installation of the equipment, wiring methods and inspections to be performed by qualified persons. This section has been modified to read: 506.7 (A) Implementation of zone classification system. Classification of areas, engineering and design, selection of equipment and wiring methods, shall be performed by a Registered Professional Engineer with expertise in Hazardous (Classified) Locations and Zone Systems. The installation of equipment and wiring methods and inspection shall be performed by qualified persons.

(3) Section 555.30 (D) Luminaires and other electrical equipment. This section has been added to require the location of luminaires and other electrical equipment to be located not less than 5 feet horizontally from the nearest normal edge of the water. However, if the luminaire or other electrical equipment is within the 5 feet horizontal zone it must be 12 feet vertically from the nearest normal edge of the water. This section has been added to read: 555.30 (D) Luminaires and other electrical equipment. Luminaires and electrical connections to luminaires or other electrical equipment shall be located not less than 5 feet horizontally from the nearest normal edge of the water. If a luminaire is within the 5 foot horizontal zone it must be 12 feet vertically.

(4) Section 511.2 Major Repair Garage. This section has been modified to include maintenance or repairs that require open flame cutting or welding as part of the definition of a major repair garage. This section has been modified to read: 511.2 Major Repair Garage. A building or portions of a building where major repairs, such as engine overhauls, painting, body and fender work, maintenance or repairs that require open flame cutting or welding, and repairs that require draining of the motor vehicle fuel tank are performed on motor vehicles, including associated floor space used for offices, parking, or showrooms [30A:3.3.12.1].

(5) Section 555.9 Electrical Connections. This section has been modified to limit access to luminaries or other electrical connections while standing in either a natural or man-made body of water by requiring luminaires or other

electrical connections not intended for submerged application to be located at least 5 feet horizontally from the nearest normal edge of the water. This section has been modified to read: 555.9 Electrical Connections. Electrical connections shall be located at least 305 mm (12 in.) above the deck of a floating pier. Luminaires or other electrical connections shall be located at least 5 feet (1524 mm) horizontally from the nearest normal edge of the water not intended for a submerged application. Conductor splices, within approved junction boxes, utilizing sealed wire connector systems listed and identified for submersion shall be permitted where located above the waterline but below the electrical datum plane for floating piers. All electrical connections shall be located at least 305 millimeters (12 inches) above the deck of a fixed pier but not below the electrical datum plane.

(6) Section 590.4(G) Splices. This section has been modified to address a TIA published by NFPA® deleting the language "except where" in the first sentence and rewording the conditions as an exception to the section when installed on a construction site. This section has been modified to read: 590.4(G) Splices. A box, conduit body, or other enclosure, with a cover installed shall be required for all splices. Exception: On construction sites, a box, conduit body, or other enclosure shall not be required for either of the following conditions:

(A) The circuit conductors being spliced are all from nonmetallic multiconductor cord or cable assemblies, provided that the equipment grounding continuity is maintained with or without the box.

(B) The circuit conductors being spliced are all from metal sheathed cable assemblies terminated in listed fittings that mechanically secure the cable sheath to maintain effective electrical continuity.

**748:20-10-12. NEC®20172020 Chapter 6 Special Equipment**

Chapter 6 of the Oklahoma adopted NEC®20172020 is adopted with the following modifications:

(1) 625.17(B) Output Cable to the Electric Vehicle. This section has been modified to address a TIA published by NFPA®. The change breaks the section out and removes the electrical vehicle cable listed types into one item and adds a second item to require the output cable to be an integral part of listed electrical vehicle supply equipment. This section has been modified to read: 625.17(B) Output Cable to the Electric Vehicle. The output cable to the electric vehicle shall be one of the following:

(A) Listed Type EV, EVJ, EVE, EVJE, EVT or EVJT flexible cable as specified in Table 400.4.

(B) An integral part of listed electrical vehicle supply equipment.

(2) 625.44(A) Portable Equipment. This section has been modified to address a TIA published by NFPA®. The change adds two more methods for connecting portable equipment to the premises wiring. This section has been modified to read: 625.44(A) Portable Equipment.

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Portable equipment shall be connected to the premises wiring systems by one of the following methods:

- (A) A nonlocking, 2 pole, 3 wire grounding type receptacle outlet rated 125 volt, single phase 15 or 20 amperes.
- (B) A nonlocking, 2 pole, 3 wire grounding type receptacle outlet rated at 250 volt, single phase, 15 or 20 amperes.
- (C) A nonlocking, 2 pole, 3 wire grounding type receptacle outlet rated at 250 volts, single phase, 30 or 50 amperes.
- (D) A nonlocking, 2 pole, 3 wire grounding type receptacle outlet rated at 60 volts dc maximum, 15 or 20 amperes.

(3) The length of the power supply cord, if provided, between the receptacle outlet and the equipment shall be in accordance with 625.17(A)(5).

(4) Section 680.23 (A)(4) Voltage Limitations. This section has been modified to prohibit the use of underwater luminaires if they operate above the low voltage contact limit as defined in Section 680.2 and limit the use of luminaires or other electrical connections while standing in either a natural or man-made body of water. This section has been modified to read: 680.23 (A)(4) Voltage Limitations. No luminaires shall operate above the low voltage contact limit as defined in Section 680.2. This requirement shall apply to new installations, repair, replacement and modification of underwater luminaires. This section shall not apply to relamping if the line-voltage luminaire is protected by a Class A ground-fault circuit-interrupter.

(5) Section 682.10 Electrical Equipment and Transformers. This section has been modified to require luminaires or other electrical connections to be located at least 5 feet horizontally from the nearest normal edge of the water or if closer than 5 feet horizontally, it must be 12 foot vertical from the nearest normal edge of the water. This section has been modified to read: 682.10 Electrical Equipment and Transformers. Electrical equipment and transformers, including their enclosures, shall be specifically approved for the intended location. No portion of an enclosure for electrical equipment not identified for operation while submerged shall be located below the electrical datum plane. Luminaires or other electrical connections shall be located at least 5 feet (1524 mm) horizontally from the nearest edge of the water. If the luminaire is within 5 feet horizontally of the water edge it must be 12 foot vertically above the nearest edge of the water.

(6) Section 690.15 Disconnection of Photovoltaic Equipment. This section has been modified to address errata published by NFPA. The correction adds a comma between the words "converters" and "inverters" in the first sentence of the paragraph. This section has been modified to read: 690.15 Disconnection of Photovoltaic Equipment. Isolating devices shall be provided to isolate PV modules, ac PV modules, fuses, dc to dc converters, inverters, and charge controllers from all conductors that are not solidly grounded. An equipment disconnecting

means or a PV system disconnecting means shall be permitted in place of an isolating device. Where the maximum circuit current is greater than 30 amperes for the output circuit of a dc combiner or the input circuit of a charge controller or invert, an equipment disconnecting means shall be provided for isolation. Where a charge controller or inverter has multiple input circuits, a single equipment disconnecting means shall be permitted to isolate the equipment from the input circuits.

### 748:20-10-13. NEC<sup>®</sup>20172020 Chapter 7 Special Conditions

Chapter 7 of the Oklahoma adopted NEC<sup>®</sup>20172020 is adopted with the following modifications/modification: Section 700.16 (B) System Reliability. This section has been modified to address errata to change the reference for listed equipment to be in accordance with 700.12(F) to 700.12(I). This section has been modified to read: 700.16 (B) System Reliability. Emergency lighting systems shall be designed and installed so that the failure of any illumination source cannot leave in total darkness any space that requires emergency illumination. Control devices in the emergency lighting system shall be listed for use in emergency systems. Listed unit equipment in accordance with 700.12(I) shall be considered as meeting the provisions of this section.

(1) ~~Section 700.16 Emergency Illumination. This section has been modified to add ballast and LED drivers to the list of any individual lighting elements, in the second paragraph, that are part of the emergency lighting system requirement to be installed so that failure of any of the individual element cannot leave any space that requires emergency illumination in total darkness. This section has been modified to read: 700.16 Emergency Illumination. Emergency illumination shall include means of egress lighting, illuminated exit signs, and all other luminaires specified as necessary to provide required illumination.~~

(2) ~~Emergency lighting systems shall be designed and installed so that the failure of any individual lighting element, such as the failure of a lamp, ballast, or LED driver, cannot leave in total darkness any space that requires emergency illumination.~~

(3) ~~Where high intensity discharge lighting such as high and low pressure sodium, mercury vapor, and metal halide is used as the sole source of normal illumination, the emergency lighting systems shall be required to operate until normal illumination has been restored.~~

(4) ~~Where an emergency system is installed, emergency illumination shall be provided in the area of the disconnecting means required by 225.31 and 230.70, as applicable, where the disconnecting means are installed indoors. Exception: Alternative means that ensure that the emergency lighting illumination level is maintained shall be permitted.~~

(5) ~~Section 725.144(B) Use of Class 2 LP or Class 3 LP Cables to Transmit Power and Data. This section has been modified to address a TIA published by NFPA<sup>®</sup>.~~

The change adds language to specify the correction factors of 310.5(B)(2) shall apply for ambient temperatures above 30 degrees Celsius (86 degrees Fahrenheit). This section has been modified to read: 725.144(B) Use of Class 2 LP or Class 3 LP Cables to Transmit Power and Data. Types CL3P LP, CL2P LP, CL3R LP, CL2R LP, CL3LP, or CL2 LP shall be permitted to supply power to equipment at a current level up to the marked ampere limit located immediately following the suffix LP and shall be permitted to transmit data to the equipment. For ambient temperatures above 30 degrees Celsius (86 degrees Fahrenheit), the correction factors of 310.5(B)(2) shall apply. The Class 2 LP and Class 3 LP cables shall comply with the following as applicable:

- (A) Cables with the suffix "LP" shall be permitted to be installed in bundles, raceways, cable trays, communications raceways, and cable routing assemblies.
- (B) Cables with the suffix "LP" and marked ampere level shall follow the substitution hierarchy of Table 725.154 and Figure 725.154(A) for the cable type without the suffix "LP" and without the marked ampere level.
- (C) System design shall be permitted by qualified persons under engineered supervision.

(6) Table 725.154 Applications of Listed Class 2, Class 3, CMUC, and PLTC cables in Buildings. This table has been modified to address errata published by NFPA®. The errata adds missing horizontal lines between sections in the table. None of the content in the table itself has been modified. The table contains 5 rows and 2 columns. Some of the rows have subrows, the first column entitled "Applications" has two subcolumns, and the second column entitled "Cable Type" has 6 subcolumns. Horizontal lines have been added to the table in the following rows and columns:

- (A) Row 2 entitled "In fabricated ducts as described in 300.22(B)." A horizontal line has been added in the first column entitled "Applications" in the second subcolumn and carries through the second column entitled "Cable Type" through all 6 subcolumns, to clarify the section has two subrows across all columns except the first subcolumn in the first column. The line splits the row into two subrows as described below:
  - (i) Row 2, subrow 1 is entitled "In fabricated ducts."
  - (ii) Row 2, subrow 2 is entitled "In metal raceway that complies with 300.22(B)."
- (B) Row 5 entitled "Within buildings in other than air handling spaces and risers." A horizontal line has been added in the second column entitled "Cable Type" in the sixth subcolumn to carry the subrow all the way across. The line splits between the two subrows as described below:
  - (i) Row 2, subrow 1 is entitled "General"
  - (ii) Row 2, subrow 2 is entitled "In one and two family dwellings."

(7) Table 760.154 Applications of Listed PLFA Cables in Buildings. This table has been modified to address errata published by NFPA®. The errata adds a missing vertical line between two columns in the table. None of the content of the table itself has been modified. The table contains 5 rows and 2 columns. Each row has subrows, column 1 entitled "Applications" has two subcolumns, and column 2 entitled "Cable Type" has three subcolumns. The vertical line has been added in the fourth row entitled "In risers," and in the first subrow entitled "In vertical runs," between the second and third subcolumns of the second column entitled "Cable Tray."

(8) Section 770.110(A)(2) Communication Raceways. This section has been modified to address a TIA published by the NFPA®. The change modifies the section reference for listing requirements from "800.113" to "800.182" and adds to the installation requirements a reference to section "800.113." This section has been modified to read: 770.110(A)(2) Communication Raceways. Optical fiber cables shall be permitted to be installed in plenum communication raceways, riser communication raceways selected in accordance with Table 800.154(b), listed in accordance with 800.182, and installed in accordance with 800.113 and 362.56, where the requirements applicable to electrical nonmetallic tubing (ENT) apply.

**748:20-10-14. NEC® [REVOKED]**

Chapter 8 of the Oklahoma adopted NEC® 2017 is adopted with the following modifications:

- (1) Section 840.3(G) Electrical Classification of Data Circuits and Cables. This section has been modified to correct errata published by NFPA®, changing a reference paragraph from "(c)" to (b)." The section has been modified to read: 840.3(G) Electrical Classification of Data Circuits and Cables. Sections 725.139(D)(1) and 800.133(A)(1)(b) shall apply to the electrical classification of Class 2 and Class 3 circuits in the same cable with communications circuits.
- (2) Section 840.160 Power Circuits. This section has been modified to address a TIA published by NFPA®. The modification deletes a requirement for where the power supplied over a communications cable to communications equipment is greater than 60 watts, the communication cables and the power circuits are to comply with Section 725.144 when used in place of Class 2 and Class 3 cables. The modification adds a requirement for installations of listed communication cables to comply with 725.144 where listed communication cables are used in place of Class 2 and Class 3 cables and adds an exception for non-compliance with Section 725.144 for installations of listed 4 pair communications cables where the nominal current does not exceed 0.3 amperes in any conductor. This section has been modified to read: 840.160 Powering Circuits. Communications cables, in addition to carrying the communication circuit, shall also be permitted to carry circuits for powering communications equipment. Installations of listed communications cables shall comply with 725.144 where listed communications cables are used in

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~~place of Class 2 and Class 3 Cables. Exception: Compliance with 725.144 shall not be required for installations of listed 4 pair communications cables where the nominal current does not exceed 0.3 amperes in any conductor.~~

*[OAR Docket #22-494; filed 6-28-22]*

## TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS CHAPTER 5. PURPOSE AND PROCEDURES

*[OAR Docket #22-389]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Purpose and Definitions  
775:5-1-2. Definitions [AMENDED]

### AUTHORITY:

59 O.S. Supp.2009, SEC. 698.1 et seq.; Board of Veterinary Medical Examiners

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 2, 2021

### COMMENT PERIOD:

December 1, 2021 through January 10, 2022

### PUBLIC HEARING:

February 18, 2022

### ADOPTION:

February 18, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 22, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Our agency requires definition - PAVE is another pathway for foreign trained graduates of a non AVMA accredited school to become licensed in Oklahoma.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. PURPOSE AND DEFINITIONS

### 775:5-1-2. Definitions

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Veterinary Practice Act, 59 O.S. Sec. 698.1, et seq.

"**APA**" means Article I and/or Article II of the Oklahoma Administrative Procedures Act, 75 O.S. Sec. 250, et seq.

"**Applicant**" means any person who submits an application for licensure to the Board.

"**Board**" means the Board of Veterinary Examiners.

"**Executive Director**" means the Executive Director of the Board.

"**PAVE**" means the Program for the Assessment of Veterinary Education Equivalence.

"**President**" means the President of the Board.

"**Secretary-Treasurer**" means the Secretary-Treasurer of the Board.

"**Vice-President**" means the Vice-President of the Board.

*[OAR Docket #22-389; filed 6-22-22]*

## TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS CHAPTER 10. LICENSURE OF VETERINARIANS, VETERINARY TECHNICIANS AND ANIMAL EUTHANASIA TECHNICIANS

*[OAR Docket #22-390]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Licensure of Veterinarians

775:10-3-3. Examination Criteria [AMENDED]

775:10-3-5. Continuing education for renewal of license [AMENDED]

775:10-3-7. Continuing education for reinstatement of license [AMENDED]

775:10-3-9. Certificate holders [AMENDED]

Subchapter 5. Rules of Professional Conduct

775:10-5-26. Disciplinary action [AMENDED]

775:10-5-30. Unprofessional conduct [AMENDED]

Subchapter 7. Certification of Veterinary Technicians

775:10-7-1. Application for certification form; time for filing; fee [AMENDED]

775:10-7-2. Certification by examination [AMENDED]

775:10-7-3. Issuance of certificate; notification [AMENDED]

775:10-7-4. Current certification [AMENDED]

775:10-7-6. Qualifications for reinstatement of lapsed certificate [AMENDED]

775:10-7-9.1. Duties Performed Without Direct Supervision [AMENDED]

775:10-7-10. Denial, suspension or revocation of a veterinary technician certificate [AMENDED]

Subchapter 8. Certification of Euthanasia Technicians

775:10-8-3. Application for certification form; time for filing [AMENDED]

775:10-8-5. Examination for certification [AMENDED]

775:10-8-6. Issuance of a certificate; Renewal of certificate; Reinstatement of certificate; Fees of the Board [AMENDED]

775:10-8-7. Continuing education hours required for renewal of certificate [AMENDED]

775:10-8-8. Continuing education required for reinstatement of certificate [AMENDED]

775:10-8-13. Authority of animal euthanasia technicians to purchase, possess and administer controlled substances; Limitations on authority [AMENDED]

775:10-8-17. Standards for injection of animals [AMENDED]

- 775:10-8-18. Euthanasia by injection of controlled dangerous substances; Verification of death [AMENDED]
- 775:10-8-19. Euthanasia by oral administration of denatured sodium pentobarbital; verification of death [AMENDED]
- 775:10-8-20. Area used for animal euthanasia; Recommended equipment and supplies [AMENDED]
- 775:10-8-22. Denial, suspension or revocation of an animal euthanasia technician certificate [AMENDED]
- 775:10-8-23. Emergency temporary suspension of a certificate [AMENDED]
- 775:10-8-27. Inspection; Failure to correct deficiency [AMENDED]
- 775:10-8-28. Complaints [AMENDED]
- 775:10-8-30. Emergency temporary suspension of Board recognition and approval [AMENDED]
- 775:10-8-31. Persons reporting information or investigating; liability [AMENDED]

**AUTHORITY:**

59 O.S. Supp.2009, SEC. 698.1 et seq.; Board of Veterinary Medical Examiners

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 2, 2021

**COMMENT PERIOD:**

December 1, 2021 through January 10, 2022

**PUBLIC HEARING:**

February 18, 2022

**ADOPTION:**

February 18, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 22, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed revisions to chapter 10 include allowance of web based material for the continuing education; all DEA registrants require additional one hour continuing education in opioids addiction/pain management; any Oklahoma State College of Veterinary Medicine continuing education will qualify; deletion of outdated continuing education language and addition of PAVE as alternate pathway to licensure. Additional language necessary for certain tests in approving a treatment modality of licensees that may be impaired; addition of municipal under the failure to report and adding cruelty of animals as a violation under unprofessional conduct. Deletion of outdated unnecessary language for applications and certifications. Deletion of outdated language for euthanasia technicians.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. LICENSURE OF VETERINARIANS**

**775:10-3-3. Examination Criteria**

In the event an applicant twice fails any veterinary licensing examination, whether or not taken in the State of Oklahoma, before the applicant can retake any veterinary licensing exam in Oklahoma, the Board may require the applicant to demonstrate successful completion of additional training and clinical competency. Such evidence may include but not be limited to:

- (1) One additional year of education training in a school approved by the Board.
- (2) Obtaining licensure in another state or jurisdiction and/or passing the ECFVG/PAVE.

**775:10-3-5. Continuing education for renewal of license**

(a) Before an active license is reissued, the licensee shall, on a form provided by the Board, certify that he or she has obtained twenty (20) hours of continuing education in veterinary medicine or surgery. Acceptable hours of credit will be determined as follows:

- (1) One hour of credit for each hour of attendance at veterinary college and extension seminars.
- (2) One hour of credit for each hour of attendance at national, regional, state or local scientific meetings.
- (3) One hour of credit for each hour spent developing or presenting original, peer-received presentations or publication. A maximum of four hours credit may be gained by this means.
- (4) One hour of credit for each hour of study with auto-tutorial tapes or web based of scientific material related to veterinary practice. A maximum of four hours credit may be gained by this means.
- (5) One hour of credit for each hour of study of scientific or non-scientific articles in veterinary journals or periodicals pertaining to veterinary medicine or state and federal controlled dangerous substance laws. A maximum of four hours credit may be gained by this means.
- (6) Two of the twenty hours of continuing education per year shall encompass state or federal controlled dangerous substance laws, or review of the Oklahoma Veterinary Practice Act and applicable rules.
- (7) One hour of credit for each approved hour of completed interactive online courses approved by the Board. For all online courses, a copy of the certificate indicating the number of course hours must be ~~submitted to qualify~~ obtained and kept for five years.
- (8) For DEA registrants - one hour of credit in pain management or one hour in opioid use or addiction.

(b) Graduates who receive a license to practice veterinary medicine in the State of Oklahoma within one calendar year of graduation are exempt from reporting continuing education credits until the submission of the second renewal application after initial licensure.

(c) The Board may waive these requirements upon written request and a finding of good cause.

(d) Each licensee shall maintain verifiable documentary proof of attendance in a readily retrievable file of reported

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continuing education credit for random audit purposes. Documentary proof shall be maintained for a period of five years from the date of attendance.

(e) Only those courses, meetings or seminars previously approved and/or offered by the American Veterinary Medical Association (AVMA), the American Association of Veterinary State Boards (AAVSB), Oklahoma State College of Veterinary Medicine or any other state veterinary board or recognized state veterinary association, shall not require previous approval by the Board to qualify as continuing education hours to be counted towards the fulfillment of the twenty (20) required hours, so long as the material offered complies with the requirements of this section.

(f) Regional veterinary associations, corporations, individuals or any other organizations must submit course material to the Board for evaluation to qualify for continuing education hours being offered at regional or local meetings, and shall adhere to the following procedure:

- (1) Submit a published notice of the meeting,
- (2) Submit a planned program as evidenced by a published agenda,
- (3) Submit a formal presentation on ~~printed material (i.e. papers, brochures, videos with printed material describing the video contents, etc), and~~
- (4) Submit a verification of attendance form after the conclusion of the meeting, which contains the attendees printed name and signature, ~~taken previously to the initiation of the material presented, and the attendees printed name and signature after the conclusion of the material presented.~~

(g) Non-scientific topics may be acceptable as continuing education credits provided that:

- (1) Not more than twenty-five percent (25%) of the total hours submitted to meet the required credits for renewal of license are devoted to non-scientific material, and
- (2) Any meetings shall be conducted by or sponsored by a veterinary association, organization or professional recognized as such by the Oklahoma Board of Veterinary Medical Examiners.

(h) The Vice-President of the Board may evaluate and approve any Continuing Education (CE) credit requests received by the Board office, or the Vice-President of the Board may submit the request to the full Board at the next regularly scheduled meeting of the Board for consideration.

(i) Regional veterinary associations, corporations, individuals or any other organizations that submitted Continuing Education credit program requests which were deemed ineligible, may appeal the decision upon the presentation of new and additional material to the full Board at the next regularly scheduled meeting of the Board for consideration.

### **775:10-3-7. Continuing education for reinstatement of license**

(a) Before any license is reinstated, the licensee shall on a form provided by the Board, certify that he/she has obtained twenty (20) hours of continuing education in veterinary medicine or surgery for each year the license has been inactive up to a maximum of one hundred (100) hours of continuing

~~education. Acceptable hours of credit will be determined as follows:~~

- ~~(1) One hour of credit for each hour of attendance at veterinary college and extension seminars, courses and meetings.~~
  - ~~(2) One hour of credit for each hour of attendance at national, regional, state or local scientific meetings.~~
  - ~~(3) One hour of credit for each hour spent developing or presenting original, peer received presentations or publications. A maximum of four hours credit may be gained by this means.~~
  - ~~(4) One hour of credit for each hour of study with audio-tutorial tapes of scientific material related to veterinary practice. A maximum of four hours credit may be gained by this means.~~
  - ~~(5) One hour of credit for each hour of study of scientific or non-scientific articles in veterinary journals or periodicals pertaining to veterinary medicine or state and federal controlled dangerous substance laws. A maximum of four hours credit may be gained by this means.~~
  - ~~(6) Two hours of continuing education per year shall encompass state or federal controlled dangerous substance laws and/or review of the Oklahoma Veterinary Practice Act and applicable rules.~~
  - ~~(7) One hour of credit for each approved hour of completed interactive online courses approved by the Board. For all online courses, a copy of the certificate indicating the number of course hours must be submitted to qualify.~~
- (b) The Board may waive all or part of the required continuing education hours and accept in lieu practice, training or education considered comparable by the Board.

### **775:10-3-9. Certificate holders**

All certificate holders may practice veterinary medicine within certain limitations and restrictions.

(1) **Qualifications.** Any applicant for a certificate must fulfill the following criteria:

- (A) Demonstrate good moral character.
- (B) Graduation from an American Veterinary Medical Association approved college of veterinary medicine, ~~or an ECFVG, or PAVE~~ certificate holder.
- (C) Completion of application and payment of all fees.
- (D) Successfully passing either a national exam or Oklahoma veterinary exam, or be an active candidate for one or more examinations to be administered by the Board.

(2) **Direct Supervision.** All veterinary practice by a certificate holder shall be performed under the direct supervision of a licensed veterinarian who has completed a Supervising Veterinarian Form with the Board and been accepted by the Board. The Board may require a personal appearance by either the applicant or the supervising veterinarian.

(3) **Identification.** All certificate holders shall identify themselves to the public as non-licensed veterinarians on all signs, business cards, letterheads, and other forms of communication or public representation. Each certificate

holder shall wear a name tag in one of the following forms, to-wit:

- (A) Name, SDVM
- (B) Name, DVM Supervised
- (C) Name, DVM Intern
- (D) Name, Supervised Doctor of Veterinary Medicine

**SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT**

**775:10-5-26. Disciplinary action**

(a) The Board may revoke, suspend, probate or otherwise modify a license or certificate in accordance with the Oklahoma Veterinary Practice Act. Any veterinarian impaired by abuse of alcohol or other drugs, or found unable to practice veterinary medicine with reasonable skill and safety or to deliver competent professional care may be the subject of disciplinary action. The Board may use its own discretion, or the advice of competent authorities, in approving a treatment modality for each individual case. The competent authority may recommend specific tests including but not limited to a mental or physical examination, body fluid, nail, or hair follicle test, or a chemical addiction abuse or dependency evaluation. The Board may also monitor the veterinarian to ensure compliance with the terms of treatment.

(b) In accordance with the Oklahoma Administrative Procedures Act and the Rules and Regulations of the Board, a program of therapy for the veterinarian, against whom allegations of impairment have been made and properly filed with the Board, may be determined by mutual consent and voluntary submittal to Board jurisdiction before a license suspension or revocation hearing is held. In this case, the hearing may be deferred pending the termination of treatment, at which time the hearing may be convened or canceled.

**775:10-5-30. Unprofessional conduct**

The following acts and/or omissions shall be considered unprofessional conduct and shall constitute grounds for disciplinary action by the Board. They shall include, but not be limited to:

- (1) failing to meet the minimum standards for veterinary clinics as set forth by Chapter 20 herein and for the practice of veterinary medicine as set forth by Chapter 25.
- (2) engaging in conduct likely to deceive, defraud or harm the public or a demonstration of willful or careless disregard for the health, welfare or safety of a patient. For the purposes of this provision, acts of fraud herein shall include, but not be limited to:
  - (A) claiming to have performed or charging for an act or treatment that was, in fact, not performed or given;
  - (B) providing professional services to more than one party in any transaction where such parties have conflicting interests, without providing full, written

- disclosure of the dual representation and consent of the interested parties;
- (C) claiming certification or recognition as a specialist which is untrue. Specialization shall be limited to those areas of specialization accepted by the American Veterinary Medical Association;
- (D) practicing veterinary medicine under a false or assumed name or impersonating another practitioner;
- (E) using a corporate or assumed name which is deceptive or misleading to the public;
- (F) making a false, fraudulent or misleading statement of professional superiority in the practice of veterinary medicine;
- (G) using any form of advertisement which is false, deceptive or misleading;
- (H) performing surgery to conceal genetic or congenital defects, in any species, with the knowledge the surgery is performed to perpetrate a fraud;
- (I) fraudulently issuing or using:
  - (i) certificate of veterinary inspection;
  - (ii) test chart;
  - (iii) vaccination report;
  - (iv) any other official report for the prevention of the dissemination of animal disease, the transportation of diseased animals or the sale of edible products of animal origin for human consumption;
- (J) fraud or misrepresentation in applying for, procuring or renewing a veterinary license or certificate;
- (K) the use of any false, fraudulent or deceptive statement in any document connected with the practice of veterinary medicine and surgery;
- (3) practice under an expired, revoked or suspended Oklahoma veterinary license;
- (4) promoting, aiding, abetting or allowing the practice of veterinary medicine by any unlicensed person, except as specifically authorized by the Veterinary Practice Act or rules of the Board. For the purposes of this provision, aiding the unlicensed practice of veterinary medicine shall also include, but shall not be limited to:
  - (A) allowing an unlicensed person to issue an animal health certificate with the veterinarian's signature affixed to the certificate, or to inoculate or treat animals unless the inoculation or treatment was performed under the direct supervision of the licensed veterinarian;
  - (B) allowing the issuance by any person in the employ of the veterinarian a certificate of veterinary inspection of an animal unless the veterinarian performs the inspection and appropriate tests as required.
- (5) performing any aspect of veterinary medicine outside a valid veterinarian, client, and patient relationship, except as specifically authorized by rules of the Board;
- (6) violating any state or federal statute, rule or regulation regarding the prescription, dispensation or administration of veterinary prescription drugs or controlled dangerous substances. For the purposes of this provision, such violations shall include, but shall not be limited to:

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- (A) prescribing, providing, obtaining, ordering, administering, dispensing, giving or delivering any veterinary prescription drug or controlled dangerous substance to or for an animal solely for training, show or racing purposes and not for a medically sound reason;
  - (B) failing to provide appropriate labels on veterinary prescription drugs or controlled dangerous substances;
  - (C) prescribing or dispensing, delivering, or ordering any veterinary prescription drug or controlled dangerous substance without first having established a veterinarian/client/patient relationship and determining that such prescription drug is therapeutically indicated for the health or well being of the animal;
  - (D) prescribing, providing, ordering, administering, possessing, dispensing, giving or delivering any veterinary prescription drugs or controlled dangerous substance under the following circumstances:
    - (i) when the drugs are not necessary or required for the medical care of animals; or
    - (ii) when the use or possession of the drugs would promote addiction thereto.
  - (E) prescribing, providing, obtaining, ordering, administering, dispensing, giving or delivering any controlled dangerous substance for the veterinarian's personal use.
- (7) failing or refusing to cooperate in an investigation by the Board where no privilege for such exists. For the purposes of this provision, such failure to cooperate shall include, but shall not be limited to:
- (A) failing or refusing to allow the Board or its investigator the ability to inspect a veterinary facility at reasonable hours, pursuant to an investigation by or on behalf of the Board and permitted by the Act or rules of the Board, or in accordance with other applicable State and/or Federal Statutes and regulations;
  - (B) failing or refusing to respond to reasonable inquiry from the Board or its investigator in the course of an investigation;
- (8) failing to report to the proper authorities cruel or inhumane treatment to animals by any person, when the veterinarian has ~~direct~~ knowledge of the cruel or inhumane treatment;
- (9) practicing any form of medicine on humans, except that a veterinarian may render first aid or emergency care, without expectation of compensation, in an emergency or disaster situation;
- (10) any disciplinary action taken against the licensee by any other licensing jurisdiction, professional veterinary association, veterinary specialty board, or government or regulatory agency, where the basis for such disciplinary action would be a basis for action by the Board;
- (11) failing to report to the Board within 30 days any disciplinary action taken against the licensee by any other licensing jurisdiction, professional veterinary association, veterinary specialty board, or government, municipal or

- regulatory agency, where the basis for such disciplinary action would be a basis for action by the Board;
- (12) except as appropriate in the course of a valid veterinarian, patient, client relationship, allowing any unlicensed person, as defined by 59 O.S. 698.2 (13) to control the professional judgment of the veterinarian;
- (13) failing to post or display, in a public area of the veterinarian's practice, the veterinarian's original license to practice veterinary medicine and current year's renewal certificate;
- (14) failing to practice veterinary medicine with reasonable skill and safety. For the purpose of this provision, reasonable skill and safety shall refer to a level of care, skill and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the profession in good standing in the community;
- (15) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's practice of veterinary medicine and surgery;
- (16) improper preparation, recording, management and/or maintenance of veterinary records.
- (17) no person, as defined by O.S., Sec. 698.2 (19) shall control, exploit, or intervene between the patient, client and the veterinarian. A veterinarian shall not allow a non-licensed person or entity to interfere with or intervene in the veterinarian's practice of veterinary medicine. Each veterinarian shall be responsible for the veterinarian's own actions and shall be directly responsible to the client for the care and treatment of the patient.
- (18) failure to confirm an individual is duly registered as a veterinary technician with the Board prior to allowing that person to perform specific RVT services without direct supervision directly to a patient in the State of Oklahoma.
- (19) making a referral for animal massage therapy without first confirming an animal massage provider is certified and has liability insurance coverage.
- (20) cruelty of any animal.

### SUBCHAPTER 7. CERTIFICATION OF VETERINARY TECHNICIANS

#### 775:10-7-1. Application for certification form; time for filing; fee

- (a) Application for certification as a veterinary technician shall be made on printed forms provided by the Oklahoma Board of Veterinary Medical Examiners, herein after referred to as the Board.
- (b) An application for certification shall be sworn to and accompanied by fees ~~as listed in Board rule 775:10-3-12 (a)(6). This application shall be filed with the Board not less than sixty (60) days prior to the date of an examination.~~
- (c) The applicant shall also submit documents sufficient to establish proof of graduation from an approved program in veterinary technology.
- (d) The application shall not be considered until the application is complete.



**775:10-7-2. Certification by examination**

(a) An application for certification by examination may be thoroughly investigated. The Board may inquire from the references or by such other means as the Board deems expedient as to the accuracy of the information submitted. ~~If the replies from the references cited are not received within a reasonable time the Board may so notify the applicant and may request additional references. Information so obtained shall then be filed with the application as a permanent record and shall remain the property of the Board.~~

(b) In the event an applicant twice fails any veterinary examination, whether or not taken in the State of Oklahoma, before the applicant can retake any veterinary exam in Oklahoma, the Board may require the applicant to demonstrate successful completion of additional training and clinical competency. Such evidence may include but not be limited to:

- (1) One additional year of education training in a school approved by the Board.
- (2) Obtaining certification in another state or jurisdiction.

**775:10-7-3. Issuance of certificate; notification**

After the Board determines that an applicant is eligible for certification, the applicant shall be properly notified and issued a certificate ~~as required in 59 O.S., Section 698.23.~~

**775:10-7-4. Current certification**

(a) In order to hold current certification in the State of Oklahoma, a registered veterinary technician must apply for renewal each year on a form provided by the Board. However, the Board may refuse to issue any certification pending its investigation into questions of negligence, noncompliance with the Oklahoma Veterinary Practice Act, or noncompliance with the Rules and Regulations of the Board.

(b) Before certification is renewed, the applicant shall:

- ~~(1) Certify that he or she has obtained 10 (ten) hours of continuing education;~~
- ~~(2) Pay the annual renewal fee as determined by the Board and~~
- ~~(3) Complete an application for certificate renewal and provide current information with regard to, mailing address, telephone number and other contact information.~~

(c) Acceptable hours of continuing education credit will be determined as follows:

- (1) One hour of credit for each hour of attendance at veterinary college and extension seminars, veterinary technology schools, courses and meetings.
- (2) One hour of credit for each hour of attendance at national, regional, state or local scientific meetings.
- (3) One hour of credit for each hour spent developing or presenting original, peer-reviewed presentations or publications. A maximum of two hours credit may be gained by this means.
- (4) One hour of credit for each hour of study with audio-tutorial tapes or web based of scientific material related to veterinary practice. A maximum of two hours credit may be gained by this means.

(5) One hour of credit for each hour of study of scientific or non-scientific articles in veterinary journals or periodicals pertaining to veterinary medicine or state and federal controlled dangerous substance laws. A maximum of two hours credit may be gained by this means.

(6) Two hours of continuing education per year shall encompass state or federal controlled dangerous substance laws and/or review of the Oklahoma Veterinary Practice Act and applicable rules.

(7) One hour of credit for each approved hour of completed interactive online courses approved by the Board. For all online courses, a copy of the certificate indicating the number of course hours must be ~~submitted to qualify~~ obtained and kept for five years.

(d) Graduates who receive a certificate to practice veterinary technology in the State of Oklahoma within one calendar year of graduation are exempt from reporting continuing education credits until the submission of the second renewal application after initial certification.

(e) The Board may waive these requirements upon written request and a finding of good cause.

(f) Each certificate holder shall maintain verifiable documentary proof of attendance in a readily retrievable file of reported continuing education credit for random audit purposes. Documentary proof shall be maintained for a period of five years from the date of attendance.

(g) Only those courses, meetings or seminars previously approved and/or offered by the American Veterinary Medical Association (AVMA), the American Association of Veterinary State Boards (AAVSB), Oklahoma State College of Veterinary Medicine or any other state veterinary board or recognized state veterinary association, shall not require previous approval by the Board to qualify as continuing education hours to be counted towards the fulfillment of the ten (10) required hours, so long as the material offered complies with the requirements of this section.

(h) Regional veterinary associations, corporations, individuals or any other organizations must submit course material to the Board for evaluation to qualify for continuing education hours being offered at regional or local meetings, and shall adhere to the following procedure:

- (1) Submit a published notice of the meeting,
- (2) Submit a planned program as evidenced by a published agenda,
- (3) Submit a formal presentation ~~on printed material (i.e. papers, brochures, videos with printed material describing the video contents, etc), and~~
- (4) Submit a verification of attendance form after the conclusion of the meeting, which contains the attendees printed name and signature, ~~taken previously to the initiation of the material presented, and the attendees printed name and signature after the conclusion of the material presented.~~

(i) The Vice-President of the Board may evaluate and approve any Continuing Education (CE) credit requests received by the Board office, or the Vice-President of the Board may submit the request to the full Board at the next regularly scheduled meeting of the Board for consideration.

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## **775:10-7-6. Qualifications for reinstatement of lapsed certificate**

A registered veterinary technician must qualify for reinstatement of a certificate by the following:

- (1) Make application for reinstatement on a form provided by the Board,
- (2) Pay fees as determined by the Board, and
- (3) Certify that he or she has obtained ten (10) hours of continuing education per year for each year certification has lapsed, up to a maximum of one hundred (100) hours of continuing education.

## **775:10-7-9.1. Duties Performed Without Direct Supervision**

(a) The duties of a Registered Veterinary Technician shall be performed pursuant to the direction and under the general supervision of a licensed veterinarian. Where appropriate, depending upon the services provided, such general supervision shall not be construed to require the physical presence of the supervising veterinarian at the time and place where such services are performed.

(b) A Registered Veterinary Technician may perform the following procedures listed below as directed by or on the order of a licensed veterinarian without the continuing physical presence of the licensed veterinarian, but the RVT must comply with the general record keeping requirements as set forth in the Oklahoma Veterinary Practice Act:

- (1) Euthanasia of animals;
- (2) Thoracocentesis;
- (3) Abdominocentesis;
- (4) Ocular Tonometry, Schirmer tear test, fluorescein staining;
- (5) Animal Massage Therapy;
- (6) Vaccinations;
- (7) Dental Scaling and Polishing;
- (8) Suturing existing skin incisions made by a veterinarian;
- (9) Microchipping or tattooing for identification purposes;
- (10) Pregnancy checking of farm animals with or without diagnostic equipment, rectal palpation, artificial insemination, correcting of uterine prolapse, uncomplicated fetal extractions excluding fetotomies and c-sections;
- (11) Flotation or dressing of equine teeth;
- (12) Gavage;
- (13) Ear flush;
- (14) ~~EKG/ECG~~, Ultrasound or other diagnostic imaging or monitoring;
- (15) Administration and management of anesthetic and analgesic agents, with the exception of perineural injection of local anesthetics requiring ultrasound-guided visualization of the target nerve/s;
- (16) Application of splints and bandages; and
- (17) Wound management and care.

## **775:10-7-10. Denial, suspension or revocation of a veterinary technician certificate**

Upon written complaint under oath by any person and after notice and hearing, as prescribed in the Oklahoma Veterinary Practice Act, the Board may deny, suspend for a definite period or revoke the certificate of a veterinary technician for:

- (1) Fraud, misrepresentation or deception in obtaining a license, certificate or permit.
- (2) Adjudicated to be incompetent.
- (3) Use of advertising or solicitation which is false, misleading or as otherwise deemed unprofessional under the regulations promulgated by the Board.
- (4) Conviction of a felony.
- (5) Incompetence, gross negligence or other malpractice in the practice of the profession.
- (6) Having professional association with any person practicing veterinary medicine unlawfully.
- (7) Engaging in conduct likely to deceive, defraud or harm the public or a demonstration of willful or careless disregard for the health, welfare or safety of a patient.
- (8) Fraud or dishonesty in the application or reporting of any test or disease in animals.
- (9) Unprofessional conduct by violation of a regulation promulgated by the Board under the Oklahoma Veterinary Practice Act.
- (10) Representing himself/herself as a doctor of veterinary medicine.
- (11) Violation of the Oklahoma Veterinary Technician Act.
- (12) Conviction of a violation of a Federal or State law regarding dangerous substances, ~~as defined by House Bill 1100 of the 1st session of the 33rd Legislature and as hereafter amended.~~

## **SUBCHAPTER 8. CERTIFICATION OF EUTHANASIA TECHNICIANS**

### **775:10-8-3. Application for certification form; time for filing**

(a) Any person who desires to be certified as an animal euthanasia technician must make written application on printed forms provided by the Board.

(b) An application for certification shall be sworn to and accompanied by fees as listed in Rule 775:10-3-12(a)(7). The application shall be filed with the Board not less than seven (7) calendar days prior to the date of the examination for certification.

(c) The applicant shall submit satisfactory proof that the applicant:

- (1) Is of good moral character;
- (2) Is at least 21 years of age;
- (3) Has received a high school diploma or its equivalent, or the applicant has submitted additional information and ~~three (3) two (2)~~ sworn letters of recommendation;
- (4) Is a citizen of the United States or is lawfully entitled to remain and work in the United States;

- (5) Has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony or misdemeanor involving cruelty to animals, moral turpitude or relating to any controlled dangerous substance as defined by the Uniform Controlled Dangerous Substance Act, in this or any other jurisdiction;
- (6) Has successfully completed a course which complies with the requirements of the Board for the training of animal euthanasia technicians, ~~as set forth in Rules 775:10-8-32 and 775:10-8-33; and~~
- (7) Is an employee of a law enforcement agency, animal control agency, or animal shelter. An applicant who has satisfied all other requirements for certification, including passing the examination for certification, shall be considered as eligible for certification and a certificate shall be issued when verification of employment by a law enforcement agency, animal control agency, or animal shelter recognized and approved by the Board has been received by the Board. ~~No certificate shall be issued until verification of employment by a law enforcement agency, animal control agency, or animal shelter recognized and approved by the Board has been received by the Board.~~
- (d) Any person who shall apply for certification as an animal euthanasia technician in the State of Oklahoma shall undergo a national fingerprint-based criminal history search.
  - (1) ~~The employing Law Enforcement Agency may submit the applicant's fingerprint cards to the Oklahoma State Bureau of Investigation (OSBI) and the FBI directly.~~
    - (A) ~~When the reports of the criminal history search are received by the employing Law Enforcement Agency it shall submit a copy of the reports to the Board.~~
  - (2) The applicant may submit to the Board or its agent(s), as part of the application for certification, two (2) completed fingerprint cards. The fingerprint cards shall bear full sets of the applicant's fingerprints created by a law enforcement agency. The Board shall forward the fingerprint cards, along with the applicable fee for a national fingerprint-based criminal history check, to the Oklahoma State Bureau of Investigation (OSBI).
  - (3) ~~No application for certification shall be considered complete until the reports from the national based criminal history search have been obtained by the Board.~~
- (e) An application for certification may be thoroughly investigated. Information so obtained shall be filed with the application as a permanent record and shall remain the property of the Board.
- (f) The Board reserves the authority to require any applicant to provide additional information or evidence to support an application for certification. The Board may require an applicant to appear before the Board to provide the Board such additional information or evidence.
- (g) The Board or its agent(s) may deny certification of an applicant based on evidence of unsuitability of the applicant or failure of the applicant to satisfy any of the requirements for certification.

**775:10-8-5. Examination for certification**

- (a) The Board or its agent(s) shall examine every qualified applicant for certification as an Animal Euthanasia Technician to determine the applicant's qualifications.
- (b) The examination shall consist of a written examination and a practical examination. Both examinations shall be administered by the Board or its agent(s). Passing is 70 percent on the written examination and 100 percent on the practical portion of the examination.
- (c) ~~The written examination shall be administered by the Board or its agent(s) and shall include questions covering the materials and topics included in, but not limited to, the:~~
  - (1) ~~Veterinary Practice Act and Rules, Oklahoma Bureau Narcotics and Drug Enforcement Administration Laws and Rules.~~
  - (2) ~~Correct calculation of a dosage of a euthanasia drug not less than the minimum recommended by the manufacturer or approved by the Board.~~
- (d) ~~An applicant shall score no less than 70 percent on the written examination.~~
- (e) The practical examination shall be administered by the Board or its agent(s) and shall require the examinee to demonstrate competence in the following subjects:
  - (1) Administration of injectable agents by:
    - (A) Proper intravenous injection of a sterile solution into a vein of an animal in at least one of two attempts;
    - (B) Intraperitoneal injection by proper insertion of a needle into the injection site in at least one of two attempts; and
    - (C) Intracardiac injection by proper insertion of a needle into the heart of an anesthetized or unconscious animal in at least one of two attempts.
  - (2) Proper selection and handling of needles by:
    - (A) Selecting a needle of the appropriate gauge and length for the size of the animal and the route of administration; and
    - (B) Using universal precautions for handling and disposal of needles and syringes.
  - (3) Handling of animals by:
    - (A) Exercising care and regard for the humane treatment of animals;
    - (B) Exercising care and regard for human safety;
    - (C) Using appropriate restraining devices and techniques for the control of fractious or potentially dangerous animals;
    - (D) Communicating effectively with an animal handler;
    - (E) Using appropriate techniques and criteria to accurately determine the level of consciousness of an animal; and
    - (F) Using appropriate techniques and criteria to verify the death of an animal.
- (f) ~~A score of 100 percent shall be obtained by the applicant on the practical portion of the exam.~~

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## **775:10-8-6. Issuance of a certificate; Renewal of certificate; Reinstatement of certificate; Fees of the Board**

- (a) The Board shall have the authority to issue an Animal Euthanasia Technician certificate after an applicant has completed all requirements for certification.
- (b) Every Animal Euthanasia Technician who is the holder of a certificate authorizing animal euthanasia, shall, on or before the first day of July of each and every year, apply to the Board on forms furnished by the Board for a renewal certificate of registration entitling such technician to perform animal euthanasia techniques in this state during the next fiscal year. A renewal fee in an amount fixed by the Board shall accompany each such application.
- (c) Failure to renew a certificate on or before the first day of July shall cause the certificate to be considered suspended for failure to renew ~~and subject to the provisions of Rule 775:10-8-11.~~
- (d) If, on or before the thirty-first day of July, the certificate holder pays the renewal fee plus any reactivation fee set by the Board, the President or Secretary-Treasurer of the Board may reactivate the certificate.
- (e) If the certificate is not reactivated before the first day of August, the certificate shall be considered as lapsed, and the certificate may be reinstated only upon approval by the Board, ~~the President or Secretary-Treasurer of the Board after proper re-application of the certificate holder.~~
- (f) The Board or its agent(s) may require any individual who has received a certificate as an Animal Euthanasia Technician to retake all or part of the examination and/or attend all or part of the training course as the result of investigative findings and/or disciplinary action by the Board.
- (g) Performing animal euthanasia by administering a controlled dangerous substance or any other drug approved for euthanasia by the Board is unlawful unless the individual administering the drug is a licensed veterinarian, an Animal Euthanasia Technician whose certificate is active and in good standing, or the individual is working under the direct supervision of a licensed veterinarian.

## **775:10-8-7. Continuing education hours required for renewal of certificate**

- (a) Before any certificate is renewed, the certificate holder shall certify on a form provided by the Board that they have obtained six (6) hours of continuing education approved by the Board which covers topics that relate to animal euthanasia, the care and custody of animals in preparation for adoption and/or shelter management. Acceptable hours of credit will be determined as follows:
- (1) One hour of credit for each hour of attendance at veterinary college and extension seminars, and veterinary technology schools.
  - (2) One hour of credit for each hour of attendance at national, regional, state or local approved scientific meetings.
  - (3) One hour of credit for each hour of study with audio-tutorial tapes or reading of scientific or non-scientific

articles in journals or periodicals pertaining to animal euthanasia, the care and custody of animals in preparation for adoption and/or shelter management. A maximum of two hours credit may be gained by this means.

- (4) Two hours of continuing education per year must encompass review of state and federal controlled dangerous substance laws and applicable rules and regulations and/or review of the Oklahoma Veterinary Practice Act and applicable rules.
- (b) Individuals who are certified as a CAET in the State of Oklahoma within one calendar year of completing a training course for Animal Euthanasia Technicians are exempt from reporting continuing education credits until submission of the second renewal application after initial certification.
- (c) The Board or its agent(s) may waive all or part of the required continuing education hours and accept in lieu training or education considered comparable by the Board.
- (d) Each certificate holder shall maintain verifiable documentary proof of attendance of reported continuing education credit in a readily retrievable file for random audit purposes. Documentary proof shall be maintained for a period of five years from the date of attendance.
- (e) Only those courses, meetings or seminars previously approved and/or offered by the American Veterinary Medical Association (AVMA), the American Association of Veterinary State Boards (AAVSB), or any other state veterinary board or recognized state veterinary association, shall not require previous approval by the Board to qualify as continuing education hours to be counted towards the fulfillment of the six (6) required hours, so long as the material offered complies with the requirements of this section ~~or comply with Rules 775:10-3-5(f)(h)(i).~~

## **775:10-8-8. Continuing education required for reinstatement of certificate**

Before any certificate is reinstated, the certificate holder shall certify on a form provided by the Board that he/she has obtained six (6) hours of continuing education for each year the certificate has lapsed. ~~Acceptable hours of credit are outlined in Rule 775:10-8-7.~~

## **775:10-8-13. Authority of animal euthanasia technicians to purchase, possess and administer controlled substances; limitations on authority**

- (a) An Animal Euthanasia Technician who is registered with the OBN and DEA to purchase and possess controlled dangerous substances is authorized to:
- (1) Purchase, possess and administer any controlled dangerous substance approved for euthanasia of animals by the Board;
  - (2) Transfer a controlled dangerous substance to either an Animal Euthanasia Technician or a licensed veterinarian who holds valid Certificates of Registration from the OBN and DEA for the schedules of the drugs to be transferred; and

(3) Dispose of controlled dangerous substances in accordance with applicable ~~Rule Rules~~ 475:35-1-4 of the OAC.

(b) An Animal Euthanasia Technician who is registered with the OBN and DEA to purchase and possess controlled dangerous substances is prohibited from:

- (1) Purchasing, possessing or administering any controlled dangerous substance or any other drug which is not approved for the euthanasia of animals by the Board;
- (2) Transferring a controlled dangerous substance to anyone other than an Animal Euthanasia Technician or a licensed veterinarian who holds valid Certificates of Registration from the OBN and DEA for the schedules of the drugs to be transferred;
- (3) Prescribing, or writing a prescription for, a controlled dangerous substance or any other drug; and
- (4) Dispensing a controlled dangerous substance or any other drug in any manner other than by administration of the drug to an animal; ;
- ~~(5) Disposing of a controlled dangerous substance in any manner other than that required by Rule 475:35-1-4 of the OAC; and~~
- ~~(6) Executing a power of attorney which authorizes any other individual to use the Animal Euthanasia Technician's Certificates of Registration to purchase or possess a controlled dangerous substance.~~

**775:10-8-17. Standards for injection of animals**

Any person performing animal euthanasia by injection of denatured sodium pentobarbital or other drug approved for animal euthanasia shall comply with the following standards for the injection of an animal:

- (1) Except as otherwise provided in ~~775:10-8-17(a)(2) and 775:10-8-17(a)(5)~~, an animal shall be held or restrained after injection of a euthanasia drug until the animal is unconscious.
- (2) Except as otherwise provided in ~~775:10-8-17(a)(2) and 775:10-8-17(a)(5)~~, an animal shall be held or restrained after injection of a euthanasia drug until the animal is unconscious.
- ~~(3) An individual administering euthanasia drugs shall have available the assistance of an animal handler when administering an intravenous injection unless the animal is heavily sedated, anesthetized, or comatose.~~
- ~~(4) Intravenous injection must be used on all dogs and cats over the age of 16 weeks and any other animal, unless the physical condition, size or behavior of the animal presents a danger to the individual performing the injection or the animal handler; the physical restraint required for intravenous injection would cause unnecessary fear or anxiety in the animal; or the small size of the animal would make location and injection into a vein extremely difficult or impossible.~~
- ~~(5) A euthanasia drug may be administered by intraperitoneal injection only when the physical condition, size or behavior of the animal presents a danger to the individual performing the injection or the animal handler; the physical restraint required for intravenous injection~~

would cause unnecessary fear or anxiety in the animal; or the small size of the animal would make location and injection into a vein extremely difficult or impossible.

(A) After an intraperitoneal injection of a euthanasia drug, the animal shall be placed alone in an enclosure which is appropriate for the species and size of the animal and permits adequate visual observation of the animal, except that dogs or cats under the age of 16 weeks or other animals which have not been weaned may be placed together in an enclosure with their littermates and/or dam.

(B) An animal which has received a euthanasia drug by intraperitoneal injection shall be observed ~~every 5 minutes~~ after injection until death is verified.

~~(64)~~ Intracardiac injection shall not be performed on any animal unless it is heavily sedated, anesthetized, or comatose.

~~(75)~~ The gauge and length of the needle used shall be appropriate for the size and species of the animal and the method of injection.

~~(86)~~ A new, unused disposable needle of medical quality shall be used for the administration of denatured sodium pentobarbital or other drug approved by the Board for euthanasia to each separate animal. ~~A needle that is barbed or that may otherwise cause unnecessary discomfort to the animal shall never be used.~~ Each needle shall be disposed of in a commercial sharps container immediately after a single use.

~~(97)~~ The same syringe may be used to inject more than one animal ~~also long as:~~

~~(A) A separate syringe is used for each euthanasia agent and each syringe is clearly labeled with the name of the drug for which it is used;~~

~~(B) All disposable syringes must be discarded in a commercial sharps container after the conclusion of all euthanasia procedures for a single day.~~

~~(C) All non-disposable syringes shall be cleaned and disinfected after the conclusion of all euthanasia procedures for a single day.~~

~~(108)~~ An animal may be euthanized under field conditions when an emergency situation requires euthanasia to eliminate animal pain and suffering or is required for the safety of the public.

**775:10-8-18. Euthanasia by injection of controlled dangerous substances; Verification of death**

(a) An additional dose of a euthanasia drug shall be administered if, within ~~3060~~ seconds after an intravenous or intracardiac injection, or 15 minutes after an intraperitoneal injection an animal fails to demonstrate:

- (1) Loss of consciousness;
- (2) Absence of heartbeat and respiration; and
- ~~(3) Lack of corneal and pupillary reflexes.~~

(b) The additional dose of euthanasia drug may be administered by intravenous, intraperitoneal, or intracardiac injection, as appropriate to the size and level of consciousness of the

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animal, and in accordance with the guidelines set forth in applicable ~~Rule~~ Rules 775:10-8-17.

(c) To verify death, each animal shall be examined and be found to have ~~absence of a heartbeat and respiration.~~

- ~~(1) Absence of a heartbeat and respiration; and~~
- ~~(2) Lack of corneal and pupillary reflexes.~~

## **775:10-8-19. Euthanasia by oral administration of denatured sodium pentobarbital; verification of death**

(a) ~~Powdered denatured~~ Denatured sodium pentobarbital or other drugs approved for euthanasia by the Board may be administered orally by mixing with food in accordance with the instructions of the manufacturer or as approved by the Board to an animal that can be captured or restrained only with serious danger to human safety or when physical restraint would cause extreme anxiety and fear in the animal.

(b) Adequate precautions must be taken to protect other animals and humans against accidental exposure to, or ingestion of, denatured sodium pentobarbital or other drugs approved for euthanasia by the Board.

(c) Another dose of a euthanasia drug shall be administered, if, within 60 minutes after an oral administration of denatured sodium pentobarbital or other drug approved for euthanasia by the Board, the animal fails to demonstrate:

- (1) Loss of consciousness;
- (2) Absence of heartbeat and respiration; ~~and,~~
- ~~(3) Lack of corneal and pupillary reflexes.~~

~~(d) The additional dose of euthanasia drug may be administered by intravenous, intraperitoneal, or intracardiac injection, as appropriate to the size and level of consciousness of the animal, and in accordance with the guidelines set forth in Rule 775:10-8-17.~~

~~(e) To verify death, each animal shall be examined and be found to have:~~

- ~~(1) Absence of a heartbeat and respiration; and~~
- ~~(2) Lack of corneal and pupillary reflexes.~~

## **775:10-8-20. Area used for animal euthanasia; recommended equipment and supplies**

(a) The area used for animal euthanasia at a law enforcement agency, animal control agency or animal shelter should:

- (1) Be an area that is separated from the rest of the agency or shelter and from public view by a wall, barrier or other divider or an area that is not used for any other purpose while an animal is being euthanized;
- (2) Have bright and even lighting. Additional lighting over the location where euthanasia agents are administered by injection is highly recommended;
- (3) Have an ambient temperature that is between 60 and 90 degrees Fahrenheit;
- (4) Have adequate ventilation to prevent the accumulation of odors. At least one exhaust fan which is vented directly to the outside from an enclosed room is suggested;
- (5) Have flooring which is dry and non-slip to prevent accidents, and is easy to clean and disinfect; and
- (6) Be kept clean and disinfected.

(b) The law enforcement agency, animal control agency or animal shelter is recommended to provide the following equipment and supplies for the area used for animal euthanasia; ~~unless a contract exists between a law enforcement agency, animal control agency or an animal shelter and an Animal Euthanasia Technician, in which case the Animal Euthanasia Technician may provide items (7) through (24):~~

- ~~(1) A table or work area where an animal can be handled and restrained while being euthanized.—The surface must be non-pervious and easily disinfected;~~
- ~~(2) A cabinet, table or workbench where the controlled dangerous substances, needles, syringes, clippers and other equipment and supplies can be placed while euthanasia is being performed. This surface should be adjacent to, but separate from, the area described in 775:10-8-20(b)(1) where the animals are handled and restrained for injection;~~
- ~~(3) A hand washing sink or faucet within 25 feet of the area used for animal euthanasia;~~
- ~~(4) An emergency eye wash station;~~
- ~~(5) Laundry facilities for cleaning and sanitizing personnel uniforms, towels, cat restraint bags and capture/restraint nets;~~
- ~~(6) Equipment and supplies as needed for adequate room sanitation, such as detergents, disinfectants, paper towels, brooms and mops;~~
- ~~(7) Eye or face protection for personnel either performing injections or restraining animals for injection;~~
- ~~(8) Disposable medical exam gloves;~~
- ~~(9) Elbow length heavy duty leather gloves suitable for restraining animals;~~
- ~~(10) An assortment of muzzles for dogs and cats and/or appropriate disposable material which can be used for muzzles;~~
- ~~(11) A control stick for dogs, feral cats and wild mammals, such as raccoons and opossums;~~
- ~~(12) Cat restraint bags constructed of washable material;~~
- ~~(13) Capture/restraint nets suitable for the species and size of animals normally handled by the agency or shelter and constructed of materials, which can be sanitized;~~
- ~~(14) Towels of terry cloth or other fabric suitable for restraining animals;~~
- ~~(15) Hair clippers with a minimum of two sets of #30 or #40 or equivalent size clipper blades, maintained sharp and in good condition;~~
- ~~(16) Quick release tourniquets appropriate for the sizes of animals normally handled by the agency or shelter;~~
- ~~(17) Isopropyl (rubbing) alcohol and either cotton balls or roll cotton;~~
- ~~(18) An adequate supply of 18, 20, and 22 gauge disposable needles of medical quality in appropriate lengths and in other gauges and lengths as required by the species and size of animals normally handled by the agency or shelter;~~
- ~~(19) An adequate supply of disposable or non-disposable syringes of medical quality in sizes appropriate for the volumes of drugs which must be administered based on the species and sizes of animals normally handled~~

by the agency or shelter. The use of syringes equipped with non-slip or Luer-Lok®-type hubs is strongly recommended for the safety of personnel;

(204) A commercially available sharps container for used needles and syringes, constructed of puncture resistant material; ~~and which complies with Title 21, Section 1910.1030(d)(viii) of the Code of Federal Regulations;~~

~~(21) A stethoscope;~~

~~(22) A penlight and spare batteries;~~

~~(23) Medical grade disinfectant hand soap; and~~

~~(24) A first aid kit for humans.~~

**775:10-8-22. Denial, suspension or revocation of an animal euthanasia technician certificate**

(a) Upon written complaint, and after notice and hearing pursuant to the disciplinary procedures as provided for in ~~Section 698.14a of the Veterinary Practice Act, Rule 775:15-1-1 et seq. and Rule 775:30-1-1 et seq.~~ the Board may deny, suspend or revoke the certificate of an Animal Euthanasia Technician and/or impose a penalty upon the certificate holder for:

(1) Violation of any part of the Oklahoma Veterinary Practice Act or implementing rules;

(2) Fraud, misrepresentation or deception in obtaining a certificate, or failure to provide accurate information upon request by the Board for initial certification or renewal, reactivation or reinstatement of certification, or during an investigation or disciplinary hearing;

(3) Conviction of, or entry of a plea of guilty or nolo contendere to, a felony or misdemeanor involving cruelty to animals, moral turpitude or relating to any controlled dangerous substance as defined by the Uniform Controlled Dangerous Substance Act, in this or any other jurisdiction;

(4) Violation of any laws relating to the administration, prescribing or dispensing of controlled dangerous substances or violation of any federal laws or the laws of any state relative to prescription drugs or controlled dangerous substances;

(5) Accepting employment as an Animal Euthanasia Technician by, or entering into a contract to perform euthanasia services for, any person or organization other than a law enforcement agency, animal control agency or animal shelter that is recognized and approved by the Board;

(6) Having a working association with any person, agency or organization practicing veterinary medicine or performing animal euthanasia unlawfully;

(7) Incompetence or negligence;

(8) Cruelty to animals;

(9) Use of advertising or solicitation that is false, misleading, or otherwise deemed unprofessional under the rules promulgated by the Board;

(10) Representing him/herself as a licensed veterinarian or a d Registered Veterinary Technician, unless licensed or certified as such;

(11) Fraud or dishonesty in the application for, or in the reporting of the results of, any diagnostic test, or in the reporting of disease in animals;

(12) Adjudication of insanity or incapacity; or

(13) Habitual use or abuse of alcohol or of a habit-forming drug or chemical.

(b) The President or Secretary-Treasurer of the Board may issue a confidential letter of concern to a certificate holder when, although evidence does not warrant formal proceedings, there has been noted indications of possible misconduct by the certificate holder that could lead to serious consequences and formal action.

(c) In the event it comes to the attention of the Board that a violation of the rules may have occurred, even though a formal complaint or charge may not have been filed, the Board may conduct an investigation of such possible violation, and may, upon its own motion, institute a formal complaint.

**775:10-8-23. Emergency temporary suspension of a certificate**

~~In accordance with Rules 775:15-3-4, the~~ The Secretary-Treasurer of the Board, or his/her designee, upon concurrence of the President or his/her designee, based upon clear and convincing evidence that an emergency exists for which the immediate suspension of the certificate of an Animal Euthanasia Technician is imperative to protect the public or animal health, safety and welfare, or where the Animal Euthanasia Technician is convicted of any felony, may conduct a hearing to temporarily suspend the certificate of the Animal Euthanasia Technician upon a showing of clear and convincing evidence of unprofessional conduct, provided any such action temporarily suspending the certificate is taken simultaneously with proceedings for setting a formal hearing pursuant to Rule 775:15-1-1 et seq. before the Board en banc to be held within thirty (30) days after emergency temporary suspension.

**775:10-8-27. Inspection; Failure to correct deficiency**

(a) If a deficiency is found during a Board inspection of a law enforcement agency, animal control agency, animal shelter or registered location of an Animal Euthanasia Technician, and a field citation is issued which contains an abatement order pursuant to Section 698.19A of the Veterinary Practice Act, a Board investigator shall conduct a second inspection after the time specified for the correction of the deficiency and at the expense of the Animal Euthanasia Technician or the law enforcement agency, animal control agency or animal shelter.

(b) If the deficiency has not been corrected within the time specified for the correction of the deficiency:

(1) A report shall be forwarded to the Secretary-Treasurer or Executive Director of the Board recommending that:

(A) The Animal Euthanasia ~~Technician's~~ Technicians certificate be suspended or revoked pursuant to the provisions of Rule 775:15-1-1 et seq. and/or a penalty imposed ~~under Rule 775:30-1-1;~~ and/or

(B) The Board approval of the law enforcement agency, animal control agency or animal shelter be suspended or revoked pursuant to the provisions of Rule 775:15-1-1 et seq. and/or a penalty imposed under Rule 775: 30-1-1.

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(2) If the deficiency is related to the security, storage and/or record keeping for controlled dangerous substances, a report of any action taken by the Board shall be forwarded to DEA and OBN.

### 775:10-8-28. Complaints

(a) ~~In accordance with Rule 775:15-3-1, any~~ Any person may file a citizen complaint with the Board in regard to any law enforcement agency, animal control agency, or animal shelter that is recognized and approved by the Board or is otherwise under the Board's statutory jurisdiction.

(b) Citizen complaints may be written or oral. The Board or its agent(s) may require complainants to reduce oral complaints to writing if such would facilitate the review of the complaint.

(c) The Board or its agent(s) shall investigate all facially credible citizen complaints over which the Board would reasonably have jurisdiction.

(d) In addition, the Board or its agent(s) may refer complaints to other entities, or other law enforcement agencies.

### 775:10-8-30. Emergency temporary suspension of Board recognition and approval

~~In accordance with Rule 775:15-3-4, the~~ The Secretary-Treasurer of the Board, or his/her designee, upon concurrence of the President or his/her designee, based upon clear and convincing evidence that an emergency exists for which the immediate suspension of the recognition and approval of the law enforcement agency, animal control agency, or animal shelter is imperative to protect the public or animal health, safety and welfare, may conduct a hearing to temporarily suspend the recognition and approval of the law enforcement agency, animal control agency, or animal shelter upon a showing of clear and convincing evidence of violation of the Veterinary Practice Act and implementing rules or Title 4, Section 501 et seq of the Oklahoma Statutes, provided any such action temporarily suspending recognition and approval is taken simultaneously with proceedings for setting a formal hearing pursuant to ~~Rule 775:15-1-1 et seq.~~ before the Board en banc to be held within thirty (30) days after emergency temporary suspension.

### 775:10-8-31. Persons reporting information or investigating; liability

~~Pursuant to Section 698.16b, of the~~ Pursuant to Section 698.16b, of the Veterinary Practice Act, no person or entity which, in good faith, reports or provides information or investigates any person or agency or shelter under this Chapter shall be liable in a civil action for damages or relief arising from the reporting, providing of information or investigation except upon clear and convincing evidence that the report of information was completely false, or that the investigation was based on false information, and that the falsity was actually known to the person or entity making the report, providing the information or conducting the investigation at the time thereof.

*[OAR Docket #22-390; filed 6-22-22]*

## TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS CHAPTER 26. WHOLESALE/DISTRIBUTOR OF VETERINARY PRESCRIPTION DRUGS

*[OAR Docket #22-391]*

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

775:26-1-1. Distribution of veterinary prescription labeled drugs  
[AMENDED]

#### AUTHORITY:

59 O.S. Supp.2009, SEC. 698.1 et seq.; Board of Veterinary Medical Examiners

#### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 2, 2021

#### COMMENT PERIOD:

December 1, 2021 through January 10, 2022

#### PUBLIC HEARING:

February 18, 2022

#### ADOPTION:

February 18, 2022

#### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 22, 2022

#### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

#### FINAL ADOPTION:

June 21, 2022

#### EFFECTIVE:

September 11, 2022

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### GIST/ANALYSIS:

The proposed revision to Chapter 26 deletes published sections previously deleted from the Oklahoma Pharmacy Act.

#### CONTACT PERSON:

Cathy Kirkpatrick, Executive Director, 3812 N. Santa Fe Ave Suite 300, Oklahoma City, OK 73118, 405-522-8838

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 775:26-1-1. Distribution of veterinary prescription labeled drugs

(a) This chapter sets forth the rules for compliance with those sections of the Oklahoma Pharmacy Act (Pharmacy Act), ~~59 O.S. Suppl. 2005-§353.1, et seq.~~, which relate to veterinary prescription labeled drugs. A wholesaler or distributor means a person engaged in the business of distributing prescription drugs, including controlled dangerous substances, at wholesale or retail to pharmacies, hospitals, practitioners, government agencies or other lawful drug outlets licensed or permitted under the Pharmacy Act to sell, distribute, deliver or use drugs or medicines.

(b) In accordance with ~~§ 353.13 G~~ of the Pharmacy Act, "veterinary prescription labeled drugs", defined as "veterinary



prescription drugs" in the Oklahoma Veterinary Practice Act (Act), may be supplied by a "wholesaler or distributor", as those terms are defined in the Pharmacy Act, and shipped directly to a client located in the State of Oklahoma pursuant to a written order of an Oklahoma licensed veterinarian, but only after a valid veterinarian-client-patient relationship (VCPR), as defined in the Act, has been established and referenced in such written order.

(c) No wholesaler or distributor shall sell, dispense or supply a veterinary prescription drug to an owner or their authorized agent in the State of Oklahoma without first obtaining a written order for such drug from an Oklahoma licensed veterinarian with a valid VCPR in place. Certification by a pharmacist prior to dispensing veterinary prescription drugs by a wholesaler or distributor under these rules or under the Pharmacy Act shall not be required. No person shall acquire or use any veterinary prescription drug other than in accordance with the label affixed to the drug container and/or outside of a valid VCPR.

(d) Any wholesaler or distributor selling, supplying or dispensing veterinary prescription drugs for use in the State of Oklahoma shall comply with the dispensing and labeling requirements set forth in Chapter 25 of the Oklahoma Veterinary Administrative Rules found in Title 775 of the Oklahoma Administrative Code.

(e) Any wholesaler or distributor selling, supplying or dispensing veterinary prescription drugs for use in the State of Oklahoma shall maintain accurate written records containing information relating to the sale and/or distribution of such drugs, with sufficient detail to specifically identify the drug, the veterinarian ordering the drug, the date of distribution, the quantity of the drug, and the client receiving the drug. Such records shall be maintained by the wholesaler or distributor for a period of five years from the date of distribution of the drug and shall include, but not be limited to, the written order received from the veterinarian, a copy of the drug invoice and the bill of lading or other evidence of shipment. The records of a wholesaler or distributor selling, supplying or dispensing veterinary prescription drugs for use in the State of Oklahoma shall be available for inspection upon request by the Oklahoma State Board of Veterinary Medical Examiners or their designated representatives, during reasonable business hours.

(f) A violation of the provisions of the Pharmacy Act pertaining to veterinary prescription labeled drugs, by a person or entity, including an owner, a veterinarian and/or a wholesaler or distributor, shall constitute a violation of the Act.

(g) Every wholesaler or distributor selling, supplying or dispensing veterinary prescription drugs for use in the State of Oklahoma shall annually notify the Board of the name, address and business telephone number of each sales representative and/or veterinarian doing business in Oklahoma that is employed by or under contract with the wholesaler or distributor, by filing a written notice with the Board no later than January 1 of each year on printed forms provided by the Board for such purpose.

[OAR Docket #22-391; filed 6-22-22]

**TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #22-501]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

777:1-1-6 [AMENDED]

777:1-1-9 [AMENDED]

**AUTHORITY:**

Statewide Virtual Charter School Board; 70 O.S., §§3-145 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 17, 2021

**COMMENT PERIOD:**

December 16, 2021 through January 21, 2022

**PUBLIC HEARING:**

February 8, 2022

**ADOPTION:**

March 11, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These proposed rule changes include cleanup language- removal of duplication and unnecessary language.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**777:1-1-6. Records requests**

(a) **Custodian of records.** The Statewide Virtual Charter School Board may designate a records custodian. In absence of a records custodian designated by the Statewide Virtual Charter School Board, the records custodian of the Statewide Virtual Charter School Board shall be deemed to be the Statewide Virtual Charter School Board.

(b) **Procedure for records requests.** Any individual or group seeking access to public records maintained by the Statewide Virtual Charter School Board (the "Requester") shall submit a written request to the Statewide Virtual Charter

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School Board records custodian, by fax, email, regular mail or in person. A form is available on the Board's website. In order to provide prompt, reasonable access to records, to ensure that records requests are accurately communicated to the records custodian, and to enable the records custodian to accurately process the request, the Statewide Virtual Charter School Board recommends that all records requests be submitted in writing. In addition, all records requests must comply with the Open Records Act at 51 O.S. § 24A.1 et seq. and all of the following provisions:

- (1) All records requests must include:
  - (A) Identification and contact information of the individual and/or entity making the request;
  - (B) ~~If the Requester is an entity rather than an individual, a name of a contact authorized to communicate with the records custodian on behalf of the Requester;~~
  - (C) ~~Sufficient contact information at which the Requester may be contacted by the records custodian to comply with the records request procedures set forth in this Section;~~
  - (D) A description of the records requested with sufficient detail necessary to enable the records custodian to reasonably identify whether records responsive to the request exist; and
  - (E) ~~Whether the Requester seeks copies of any or all of the records requested and if so, whether the Requester seeks certified copies of any or all of the records requested; and~~
  - (F) ~~If the Requester claims the public interest exemption from search fees in accordance with the provisions of (d) of this Section, all information necessary for the records custodian to determine the applicability of the exemption.~~
- (2) ~~An Open Records Act request form is provided on the website of the Board or the OSDE and the form may be submitted by email, fax, or regular mail via the addresses stated on the form. The form may also be obtained by writing to the Statewide Virtual Charter School Board, at its principal office.~~
- (3) ~~Requests submitted to the Statewide Virtual Charter School Board will not be deemed to have been received unless and until the request has been identified as a request properly filed in accordance with the provisions of the Oklahoma Open Records Act at 51 O.S. § 24A.1 et seq. and the procedures set forth in this Section.~~
- (4) Within a prompt and reasonable time of the date of receipt of the request, the records custodian shall review the request, seek any additional information from the Requester necessary to clarify the request, and shall ascertain whether any records responsive to the request exist.
- (5) In addition, the records custodian shall promptly notify the Requester of the following:
  - (A) ~~Whether the request complies with the provisions of this Section and the provisions of the Open Records Act;~~

- (B) ~~Whether records responsive to the request exist, and if so, instruct the Requester to confirm the record custodian's interpretation of the request;~~
- (C) ~~If records responsive to the request exist and require an additional search of data necessary to identify and/or locate individual records of persons, whether the search will incur any fees and costs pursuant to 51 O.S. § 24A.5(d) of this Section and if so, an estimate of search fees;~~
- (D) ~~If the Requester asks to be provided copies of the requested records in lieu of or in addition to inspection, an estimate of the costs of copying the records requested as necessary to deliver the responsive records to the Requester;~~
- (E) ~~That processing of the request will not begin until any applicable records search fees and costs of copying have been received by the agency; and~~
- (F) ~~In the event the actual costs of copying and/or certification of records exceed the estimate provided and the amount of payment actually received from the Requester, that payment of any balance due from the Requester may be required prior to delivery of the requested records.~~

- (6) ~~All records requests will be deemed to have been received and processing of the request will begin when one of the following conditions is met:~~
  - (A) ~~If payment of search fees or copying costs is required, upon receipt of~~
    - (i) ~~The fees and costs due; and~~
    - (ii) ~~Receipt of any additional information necessary from the Requester to clarify and/or process the request; or~~
  - (B) ~~If payment of search fees or copying costs is not required, upon receipt by the records custodian of:~~
    - (i) ~~The Requester's confirmation of the request required by (5)(B) of this subsection; and~~
    - (ii) ~~Receipt of any additional information necessary from the Requester to clarify and/or process the request.~~
- (7) ~~Any request not confirmed by receipt of the requisite search fee within thirty (30) calendar days of the written notification set forth in (5) of this subsection shall be deemed to be abandoned, unless, within the time stated, the Requester can show cause why the confirmation should be delayed or postponed.~~
- (8) ~~If the Requester fails to furnish additional information reasonably necessary to identify the records sought or otherwise enable agency personnel to accurately process the request, or if fees and costs have not been paid, any further processing of the request may be suspended by the records custodian. A request that remains suspended for a period of forty-five (45) calendar days or more shall be deemed abandoned~~
- (c) **Processing and response times.** The agency will provide prompt, reasonable access to records in accordance with

the requirements of 51 O.S. § 25A.5. The period of time considered prompt and reasonable is dependent upon a number of variable factors including, but not limited to:

- (1) ~~The scope and complexity of the request;~~
- (2) ~~Whether the workload of the agency or agencies necessary to respond to the request permits a response to the request without excessive disruption of essential services of the agency/agencies;~~
- (3) ~~Whether the records request includes:~~
  - (A) ~~A sufficiently detailed description of the request by the requester necessary for the agency to ascertain the existence of records responsive to the request;~~
  - (B) ~~Records or portions of records deemed confidential by state and/or federal law which must be removed or redacted in order to permit inspection of the records.~~
- (4) ~~Whether the Requester has requested copies of the records requested in addition to or in lieu of inspection of the records and if so, whether the Requester paid applicable fees and/or costs set forth in (b)(5) and (d) of this Section;~~
- (5) ~~Whether additional steps by the agency must be taken in order to ensure that inspection, copying, and/or response to the records can be provided without jeopardizing the integrity and organization of the records; and~~
- (6) ~~Whether student data is included within the scope of its request, and if so:~~
  - (A) ~~Time necessary to de-identify and/or aggregate student data in accordance with the requirements of State and federal laws pertaining to confidentiality of records; or~~
  - (B) ~~Time necessary to obtain any necessary approval of the State Board of Education in accordance with the requirements of the Student Data Accessibility, Transparency and Accountability Act of 2013 at 70 O.S. § 3-168 and accompanying regulations.~~

(d) **Fees for record searches and copies of records.** Fees and costs associated with record searches and providing copies of records shall be determined in accordance with the following procedures:

- (1) **Fees to recover reasonable and direct costs of record searches.** Requests for individual records of persons that are either solely for commercial purposes or requests that cause an excessive disruption of the essential functions of the agency are subject to fees for recovery of the reasonable, direct costs of record searches. However, requesters shall be exempted from search fees when the release of the requested records is in the public interest, including, but not limited to, release of records in response to requests from:
  - (A) News media;
  - (B) Scholars;
  - (C) Authors; and
  - (D) Taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

(2) **Fees to recover reasonable and direct costs of record copies.** Requests for records are subject to fees for recovery of the reasonable, direct costs of copying records and/or certification of each individual copy of a record.

(A) For purposes of this paragraph, "copying" of a record may include costs of:

- (i) Mechanical reproduction of a paper ("hard copy") record; or
- (ii) Conversion of a record into an electronic format (e.g., pdf).

(B) In no instance shall the fees per page fee for copying and/or certification of individual copies of documents exceed the amount set forth in 51 O.S. § 25A.5(3).

(C) The Board is authorized to periodically review and adjust the rates that will be charged for providing copies of records in accordance with the law. Those rates will include costs for record copies, document searches and transcript rates. The rates will be posted at principal office of the Statewide Virtual Charter School Board and filed with the county clerk as required by law.

(D) All fees and/or costs shall be paid by the requester prior to delivery of the response to the request. All fees must be paid by check or money order. No cash will be accepted.

**777:1-1-9. Individual proceedings**

(a) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning:

- (1) "Board" shall mean the Statewide Virtual Charter School Board.
- (2) "Individual proceeding" shall have the meaning set forth in the Administrative Procedures Act at 75 O.S. § 250.3.

(b) **Computation of time.** Any period of time prescribed pursuant to the provision of this rule shall be computed in accordance with the provisions of the Administrative Procedures Act at 70 O.S. § 250.8.

(c) **Petitions.** An individual proceeding shall be initiated by filing a petition with the Statewide Virtual Charter School Board. The petition shall meet all of the following requirements:

- (1) The Petition must include:
  - (A) A statement of the legal authority and jurisdiction under which the petitioner seeks to initiate the proceeding and the hearing is to be held;
  - (B) A reference to each particular statute and/or rule involved;
  - (C) A short and plain statement of the allegations asserted; and
  - (D) A statement or description of the request for the relief petitioner seeks from the Board.
- (2) The Petition must clearly identify the petitioner(s) and be signed by the petitioner or counsel for the petitioner.

(d) **Informal disposition.** Nothing in this Section shall prevent informal disposition of a petition from being made

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by stipulation, agreed settlement, consent order, or default, unless otherwise precluded by law. In the event of an informal disposition of a petition, written notice signed by each party or counsel representatives shall be delivered to the Statewide Virtual Charter School Board prior to the time of the scheduled hearing.

(e) **Right to counsel.** All parties to an individual proceeding shall have the right to representation by legal counsel in accordance with the provisions of 75 O.S. § 310. The Board may be represented by its own counsel, or, if deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide Board Advisor counsel to assist the Board to rule in ruling on motions, questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General, the Chairperson of the Board or a hearing officer appointed by the Board will rule on motions, the evidence, competency of the witnesses and other questions of law.

(f) **Legal counsel.** In accordance with 74 O.S. § 20i (2014), the Chairperson of the Board may request a private attorney on behalf of the Statewide Virtual Charter School Board and contract for legal representation.

(g) **Entry of appearance.** All parties or attorneys representing parties in an individual proceeding shall file an entry of appearance. The entry of appearance shall constitute the address of record for the party at which all documents in the individual proceedings will be served. The entry of appearance shall meet all of the following requirements:

- (1) The case caption of the individual proceeding;
- (2) The name and signature of the party or parties entering an appearance in the individual proceeding; and
- (3) The mailing address, telephone, fax number and e-mail address of the party or parties entering an appearance in the individual proceeding or, if represented by counsel:
  - (A) The name and signature of the attorney or attorneys entering an appearance in the individual proceeding on behalf of the party or parties;
  - (B) The name of the law firm of the attorney(s), if any; and
  - (C) The Oklahoma Bar Association number of the attorney(s).

(h) **Motions.** All requests for action in an individual proceeding before the Board or hearing officer shall be made in the form of a motion. Motions shall be filed with the Board, and shall comply with all of the following requirements:

- (1) The motion must clearly and specifically state:
  - (A) The facts upon which the request is based;
  - (B) All legal grounds in support of the request; and
  - (C) The action or relief sought.
- (2) The motion must be signed by the movant or counsel for the movant;
- (3) The motion must include the name and contact information of record of the movant or counsel for the movant; and

(4) The motion must be timely served upon all parties to the proceeding and shall include a certificate of service that complies with the provisions of (h)(3) of this Section.

(5) If the non-moving party wishes to file a response to a motion, the response must be filed with the Board ten (10) business days from the date of service and served on the opposing party.

(i) **Service.** Methods of service and proof of service of any notice, pleading, order, or other document required by this Section shall comply with the following provisions:

(1) **Methods of service.** Service of any notice, pleading, or order required by this Section shall be made by one of the following methods:

- (A) By personal delivery, served by a person licensed to make service of process in civil cases;
- (B) By certified mail with delivery shown by return receipt. Service by certified mail shall be effective on the date of receipt or, if refused, on the date refusal by the Respondent. Acceptance or refusal by any officer of a business or an authorized agent for a business shall constitute acceptance or refusal by the party addressed;
- (C) By publication if it is shown that service cannot be made by any other means despite the exercise of due diligence; or
- (D) Any other method authorized by 12 O.S. § 2005(B).

(2) **Proof of service.** Proof of service of any petition to initiate an individual proceeding shall be filed with the Statewide Virtual Charter School Board. Acknowledgment in writing of the document by the recipient, or appearance by the recipient at a hearing without objection to service, shall be considered proof of service.

(3) **Certificates of service.** All documents filed with the Statewide Virtual Charter School Board in a pending individual proceeding and all documents requiring service in accordance with the provisions of this Section shall include a Certificate of Service that meets all of the following requirements:

- (A) The Certificate of Service shall state "I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a copy of the foregoing document was mailed, postage prepaid, to:" and shall identify the name and address of all parties to whom the document was served.
- (B) The Certificate of Service shall be signed by the party or counsel for the party charged with service of the document.

(j) **Formal hearing procedures.** A hearing on a petition shall be conducted by the Chairman of the Board or the hearing officer in accordance with 75 O.S. § 310 and the following procedures:

(1) **Date of hearing.** When a petition is filed, the Board shall promptly set the petition for hearing. Notice of the hearing shall comply with the requirements of 75 O.S. § 309. At the hearing, the Board may choose to consider evidence and arguments in support of or in opposition to the petition, the Board may set the matter for further hearing.

(2) **Appointment of a hearing officer.** The Chairman of the Board shall preside over any hearing conducted in an individual proceeding in accordance with the provisions of this Section. Alternatively, the Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board upon a vote of the majority of the members of the Board.

(3) **Continuances.** Any party to the proceeding may request a continuance of the scheduled hearing in accordance with the following provisions:

(A) A party may request to continue a hearing scheduled in an individual proceeding by filing a motion for continuance with the Board. The motion for continuance shall meet all of the following requirements:

- (i) The motion shall comply with all of the requirements of (g) of this Section; and
- (ii) The motion shall be filed at least ~~five (5)~~fifteen (15) business days prior to the scheduled hearing date, provided that this time requirement may be waived by the Board or hearing officer for good cause shown by the movant.

(B) The Board may continue a scheduled hearing by submitting written notification to all parties via certified mail, return receipt requested, or by electronic mail at least five (5) business days prior to the date of the scheduled hearing, provided that the time requirement may be waived by the Board or the hearing officer for good cause shown by the Board or counsel for the Board.

(C) If a motion for continuance is unopposed and the Board finds good cause for granting the motion, counsel for the Board shall prepare and sign a continuance order. The continuance order shall be filed with the Board and served in accordance with the requirements of (h) of this Section.

(D) If a motion for continuance is opposed, the non-moving party shall file a response motion opposing the continuance stating all factual and legal grounds for denial of the motion. The Board or the hearing officer shall issue an order concerning the motion as soon as possible prior to the hearing. The order shall be filed with the Board, and copies of the order served in accordance with the provisions of (h) of this Section and by email if possible.

(4) **Discovery and subpoenas.** The Board or the hearing officer may require parties to an individual proceeding to attend discovery when necessary and appropriate for prompt adjudication of an individual proceeding conducted in accordance with the provisions of this Section. Discovery shall be conducted in accordance with 75 O.S. § 315 and the following provisions:

(A) **Depositions.** The parties, upon notice may take depositions of witnesses in the same manner prescribed for depositions in civil actions in the district courts of the State of Oklahoma. The depositions may be admitted into evidence by the Board or the hearing

officer in the same manner as other evidence. Costs of depositions shall be borne by the deposing party.

(B) **Subpoenas.** Subpoenas for the attendance of a witness or for production of evidence may be issued in accordance with the following provisions:

(i) **Issuance of a subpoena.** The Chairman of the Board or the hearing ~~examiner-officer~~ may direct the Board to issue a subpoena upon the motion of a party. The signature of the Executive Director shall be sufficient authentication for issuance of any subpoena. A motion for issuance of a subpoena shall comply with the provisions of ~~(h)~~(g) of this Section and shall be filed with sufficient time to permit service of the subpoena at least five (5) business days prior to the hearing at which the attendance of the witness or ten (10) business days prior to the date production of records is required.

(ii) ~~**Service of a subpoena.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.~~

~~(iii) **Objections to and compliance with subpoenas.** Any party to the proceeding may oppose the issuance of a subpoena by filing a response to the motion for issuance within five (5) business days of receipt of service of the motion for subpoena. The Board may deny the issuance of a subpoena if, in its discretion, the request for subpoena is not necessary and proper for purposes of the individual proceeding.~~

~~(iii) **Service of a subpoena.** Subpoenas shall be served as set forth in (i)(1)(A) or (i)(1)(B).~~

~~(iv) **Quashing a subpoena.** Any party or the recipient of the subpoena may move to quash a subpoena or subpoenas duces tecum issued in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.~~

~~(iv) **Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of any individual proceeding, the Board shall consider the issue of enforcement of the subpoena as soon as convenient. By resolution, the Board may direct initiation of appropriate judicial proceedings necessary to enforce the subpoena or grant a party's motion for the party to seek compliance with the subpoena from the district court. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board or the hearing officer, at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.~~

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(v) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred, provided that the Board in its final order may tax such costs to another party if justice so requires.

(j) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(k) **Presentation and consideration of evidence.** Presentation and consideration of evidence shall be conducted in accordance with the following procedures:

(1) **Witness and exhibit lists.** The parties to the hearing shall exchange witness and exhibit lists no later than five (5) business days prior to the hearing, or within a different time by agreement of the parties.

(2) **Admissibility and consideration of evidence.** The Board or hearing ~~examiner-officer~~ may determine the order in which evidence shall be received and presented. Admission and consideration of evidence in an individual proceeding conducted in accordance with the provisions of this Section shall be conducted in accordance with the Administrative Procedures Act at 75 O.S. §§ 309 through 326 and the following provisions:

(A) **Official notice.** The Board or hearing officer may take notice of judicially cognizable facts or of generally recognized technical or scientific facts within the specialized knowledge of the Statewide Virtual Charter School Board. The Board or hearing officer shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(B) **Exclusion of witnesses.** A party may request the exclusion of witnesses to the extent and for the purposes stated in 12 O.S. § 2615. Exclusion of a

witness shall not be considered a violation of the Oklahoma Open Meeting Act.

(C) **Testimony of witnesses.** All testimony of witnesses presented by parties shall be made under oath or affirmation. A party may conduct cross-examination of witnesses called by other parties. Witnesses may also be questioned by the Board or the hearing officer.

(D) **Objections to evidence.** Objections to evidence may be made and shall be included in the record of the proceedings.

(E) **Documentary evidence and authentication.** Documentary evidence may be received in the form of copies or excerpts. Parties may challenge the authenticity of any copies. Any part of the evidence may be received in written form, when a hearing will be expedited and the interests of the parties will not be prejudiced.

(l) **Order of procedure.** The order of procedure at the hearing shall be as follows:

- (1) Opening statements by legal counsel of both parties;
- (2) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;
- (3) Closing arguments by legal counsel of both parties; and
- (4) Submission of case to the Board or the hearing officer for decision.

(m) **Dismissal of an action.** Upon a hearing, if the petitioner fails to show a prima facie case for lack of sufficient evidence, the Board may dismiss the petition upon grounds of failure to prove sufficient facts in support of the petition or upon the recommendation of the hearing ~~examiner-officer~~ on the same grounds. If the petitioner fails to appear at the scheduled hearing without prior notification to the Statewide Virtual Charter School Board within the time frame to request a stay or continuance set forth in (i) of this Section and without a demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the petition shall be dismissed.

(n) **~~Deliberations and decisions.~~Decisions.** After the conclusion of the hearing, a decision will be rendered on the petition.

- (1) If the Board presided over the hearing, deliberations ~~Deliberations by the Board or the hearing officer in an individual proceeding~~ may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307. After deliberations, the decision of the Board shall be announced in open session. Within a reasonable amount of time, the Board shall render a Final Order containing findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), and of the testimony of witnesses taken under oath.

(2) If a hearing officer presided over the hearing, the hearing officer may allow the parties to prepare and submit proposed findings of fact and conclusions of law within a reasonable period of time following the hearing. Then, as expeditiously as possible, the hearing officer shall prepare proposed findings of fact and conclusions of law and submit them to the Board.

~~(o) **Decision.** Decisions shall be issued in accordance with the following procedures:~~

~~(1) After hearing all evidence, and all witnesses, the Board or, if applicable, the hearing officer, shall render a decision on the petition.~~

~~(2) The decision shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the petitioner.~~

~~(3) If the petitioner fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (i) of this Section and without a demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the petition shall be dismissed.~~

~~(p) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the Board or hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer for the final order. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.~~

~~(q) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with ~~(t)(r)~~ of this Section, the final agency order shall represent exhaustion of all administrative remedies. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued and signed by the Chairperson of the Board ~~or the hearing officer~~ for transmission to the parties by the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and the party's attorney of record, if any.~~

~~(r) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, or the hearing officer if applicable, ~~or the employees or the agents of the Board~~ shall~~

not communicate, directly or indirectly, in connection with any issue of fact, with any ~~person or~~ party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another in compliance with the Open Meeting Act and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

~~(s) **Record of hearing.** The record of the hearing shall be set forth in such form and detail as the Chairperson or the Board may direct.~~

(1) In accordance with the requirements of 75 O.S. § 309, the record shall include:

- (A) All pleadings, motions, and intermediate rulings;
- (B) Evidence received or considered during the individual proceeding;
- (C) A statement of matters officially noticed;
- (D) Questions and offers of proof, objections, and rulings thereon;
- (E) Proposed findings and exceptions;
- (F) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and
- (G) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(2) The Board shall ensure that all proceedings, except for executive sessions, are electronically recorded. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. The Board may, but is not required to direct the recording of a proceeding to be fully transcribed and have a copy of the transcript placed on file in the Board's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense.

~~(t) **Rehearing, reopening or reconsideration of an order.**~~

The ruling shall become final unless, within ten (10) calendar days of entry of the order of declaratory ruling, the petitioner files a written request for a reconsideration of the petition with the Board stating all grounds upon which the petitioner seeks reconsideration of the Board's ruling. A petition for rehearing, reopening, or reconsideration of an agency order issued pursuant to the provisions of this Section shall comply with the following procedures:

(1) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

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(2) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

- (A) Newly discovered or newly available evidence, relevant to the issues;
- (B) Need for additional evidence adequately to develop the facts essential to proper decision;
- (C) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;
- (D) Need for further consideration of the issues and the evidence in the public interest; or
- (E) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds justifying the rehearing shall be set forth by the Statewide Virtual Charter School Board which grants the order, or in the petition of the individual making the request for the hearing.

(3) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(4) Upon receipt of a written request for reconsideration in accordance with this subsection, the request shall be set on the agenda for consideration by the Statewide Virtual Charter School Board at the next available regular meeting or at a subsequent regular or special meeting. Rehearing, reopening, or reconsideration of the matter may be heard by the Statewide Virtual Charter School Board or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(#) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding, after the exhaustion of administrative remedies, is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.

[OAR Docket #22-501; filed 6-28-22]

## TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD CHAPTER 10. STATEWIDE VIRTUAL CHARTER SCHOOLS

[OAR Docket #22-502]

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- Subchapter 1. General Provisions
  - 777:10-1-2 [AMENDED]
  - 777:10-1-3 [AMENDED]
  - 777:10-1-4 [NEW]
  - Subchapter 3. Statewide Virtual Charter School Sponsorship
  - 777:10-3-3 [AMENDED]
  - 777:10-3-4 [AMENDED]
  - 777:10-3-5 [AMENDED]
  - Subchapter 5. Statewide Virtual Charter School Facilities
  - 777:10-5-3 [AMENDED]

**AUTHORITY:**  
Statewide Virtual Charter School Board; 70 O.S., §§3-145 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 17, 2021

**COMMENT PERIOD:**

December 16, 2021 through January 21, 2022

**PUBLIC HEARING:**

February 8, 2022

**ADOPTION:**

March 11, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These proposed rule changes include adding clarification language; adding definition of education service provider; new section relating to education service providers; adding language regarding virtual provider technology; adding language to the required start-up plan description; grammar cleanup; adding clarification language to description of curriculum and instructional model; adding language regarding student records and data privacy according to federal law; adding electronic notification in addition to certified mail; adding language to further describe conflict of interest and ethics policies required of charter schools; addition of an annual evaluation of educational service providers to list of data submissions; added subsections regarding school orientation, annual audits and compliance audits; added subsection regarding performance framework for designated alternative education sites.

**CONTACT PERSON:**

Rebecca L. Wilkinson, Executive Director, SVCSB, 2501 North Lincoln Boulevard, Oklahoma City, OK 73105-4599, 405-522-0717, Rebecca.Wilkinson@svcsb.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 777:10-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Charter school site" or "school site" or "statewide virtual charter school site"** means the physical location of any facility or structure, leased or owned by the school, other than the legal residence of a student or the parent/legal guardian of a student, for use by a statewide virtual charter school to provide face-to-face or virtual instruction to students enrolled in the statewide virtual charter school.

**"Educational Management Organization" or "EMO"** means a for-profit or nonprofit organization that receives public funds to provide administration and management services for a charter school, statewide virtual charter school, or traditional public school.



**"Face-to-face instruction"** means any in-person tutoring, educational instruction, or any other activity provided by the statewide virtual charter school to an enrolled student for which the student's physical presence and/or participation is used by the charter school to earn credit for a virtual course, meet the instructional requirements of 70 O.S. § 1-111 and/or counted toward the student's compulsory attendance requirements set forth at Art. 13, § 4 of the Oklahoma Constitution, 70 O.S. § 10-105, and/or accompanying regulations of the State Department of Education relating to student attendance.

**"Statewide virtual charter school"** means any charter school sponsored by the Statewide Virtual Charter School Board in accordance with the requirements of the Oklahoma Charter Schools Act for the purpose of providing full-time virtual public school courses of instruction for Pre-K through twelfth (12th) grade students whose legal residence is located within the State of Oklahoma.

**"SVCSB" or "Board"** means the Statewide Virtual Charter School Board.

**"OCAS"** means the Oklahoma Cost Accounting System.

**777:10-1-3. School establishment requirements**

(a) **Information Technology Systems and Facilities.** By July 1 of the first year of operation, the school shall have in place the following:

- (1) Purchased and implemented a state-approved school finance system; Every approved statewide virtual charter school must utilize a state-approved school finance system aligned with the Oklahoma Cost Accounting System (OCAS). The school must notify the Statewide Virtual Charter School Board of the name of the system being utilized by July 1 prior to the start of school.
- (2) Purchased and implemented a state-approved student information system; Every approved statewide virtual charter school must utilize a state-approved student information system. The school must notify the Statewide Virtual Charter School Board of the name of the system being utilized by July 1 prior to the start of school.
- (3) ~~Established secure~~<sup>secured</sup> connectivity to state reporting systems; Every approved statewide virtual charter school must verify connections to state-reporting systems that meet federal and state requirements for student data, student privacy, and other relevant applicable laws and statutes. The school must notify the Statewide Virtual Charter School Board of the name of the system being utilized by July 1 prior to the start of school.
- (4) Secured and occupy a public school administration facility. Every approved statewide virtual charter school must have a public site that allows the public to have access to the main office of the school. The school must notify the State Virtual Charter School Board of the location, address, contact information of the facility by July 1 prior to the start of the school, and during the year if the location of the site changes. Notification to the Statewide Virtual Charter School Board shall be through the online information gathering system set forth in 777:10-3-4.

(b) **Governing Boards.**

(1) All virtual charter schools authorized by the Statewide Virtual Charter School Board shall be governed by a board whose members are separate and distinct from any/all other school governing boards.

(2) Any board member serving on two (2) governing boards shall abstain from voting on shared services between the virtual charter school and any other school on which they serve as a board member.

(3) School governing boards are required to have a minimum of (5) members, at least one (1) of which shall be a parent, grandparent, or guardian of currently or previously enrolled student(s).

(4) School governing board by-laws shall include specific terms of service for board members and methods for selections and re-appointment (if applicable).

**777:10-1-4. Educational Management Organizations**

Any virtual charter school that contracts with or otherwise utilizes an educational management organization shall abide by the following:

(1) The relationship of the charter school and an educational management organization is that of a customer and vendor. As such, the charter school and the educational management organization shall be separate entities in all aspects.

(2) The name of the educational management organization shall not be the same or similar to the name of the charter school.

(3) Charter school and governing body email addresses shall not be connected to the same web domain as the educational management organization or have the same email addresses as the educational management organization.

(4) All funds utilized to operate the charter school, including, but not limited to, paying charter school employees, providing curriculum, technology, supplies, and/or extra-curricular activities to students shall be maintained in public charter school accounts and controlled by charter school employees.

(5) All payments to educational management organizations shall be supported by documentation on file including, but not limited to, purchase orders, invoices, OCAS coding details, staff approvals, and board approvals. Prior to payments from the school to educational management organizations, all funds shall be maintained in public school accounts, subject to open records requests and audits.

(6) All products and services provided as well as all management fees charged by the educational management organization shall be specifically listed and explained in the management contract. Any amendments to the contract shall be provided to the sponsor within five (5) business days of approval by the school's governing body.

(7) School governing boards shall evaluate their educational management organization annually and submit the evaluation to the SVCSB.

(8) An owner of an educational management organization shall not serve as superintendent of the virtual charter school.

## SUBCHAPTER 3. STATEWIDE VIRTUAL CHARTER SCHOOL SPONSORSHIP

### 777:10-3-3. Applications to sponsor statewide virtual charter schools; renewal and termination of contracts for sponsorship of statewide virtual charter schools

(a) **Sponsorship application cycle and timelines.** To ensure that timely processing, review, and consideration of applications for sponsorship occurs within the time periods specified by 70 O.S. § 3-134, and to ensure that the application process is completed with sufficient time for new schools to comply with all statutory reporting requirements for the beginning of the next school year, (e.g., statutory state finance reporting deadlines for state aid purposes) the timeline for the application cycle for the following school year is as follows:

- (1) Completion of charter school training required by 70 O.S. § 3-134(A) prior to submission of letter of intent to submit an application;
- (2) Submission of a full application for statewide virtual charter school sponsorship in January, eighteen (18) months prior to the first year of proposed operation;
- (3) Public presentation of application/proposal for sponsorship at the next regularly scheduled Statewide Virtual Charter School Board meeting;
- (4) Review of application and recommendation by a team of experts in education;
- (5) Statewide Virtual Charter School Board decision on application for sponsorship at a subsequent Board meeting;
- (6) Submission of an amended application within thirty (30) calendar days of receipt of notification of rejection;
- (7) Board decision on amended application, if applicable, within thirty (30) calendar days of receipt of amended application; and
- (8) Negotiation and execution of a contract for sponsorship.

(b) **Sponsorship application requirements.** In addition to meeting the requirements of 70 O.S. § 3-134, new applications to the Statewide Virtual Charter School Board for sponsorship of a statewide virtual charter school must include the following information in the sponsorship proposal:

(1) For initial consideration for sponsorship, every applicant shall submit a set of policies and procedures governing administration and operation of the proposed statewide virtual charter school. The policies and procedures governing administration and operation of the proposed statewide virtual charter school shall be incorporated into the terms of the contract of the virtual charter school, and shall include, but are not limited to, all of the following subject areas:

- (A) Each of the following provisions required by 70 O.S. § 3-135:
  - (i) A description of the charter school program offered by the school which complies with the purposes outlined in 70 O.S. § 3-136;
  - (ii) Student admission and enrollment policies and procedures;

- (iii) Management and administration of the charter school;
- (iv) Requirements and procedures for program and financial audits;
- (v) All of the requirements set forth in 70 O.S. § 3-136, including, but not limited to, compliance with all regulations of the State Department of Education pertaining to health, safety, civil rights, and insurance and financial reporting and auditing requirements;
- (vi) Assumption of liability by the charter school; and
- (vii) Employment rights and personnel policies of the school required to be included in employee contracts pursuant to 70 O.S. § 3-135(B);

(B) Duties and responsibilities of the charter school governing body;

(C) Student grade placement, promotion, retention, and graduation requirements;

(D) Use and maintenance of charter school property and facilities, including:

- (i) Virtual provider technology protocols that ensure conformity to the Rehabilitation Act of 1973 Sections 504 and 508 provisions for electronic and information technology, W3C's Web Content Accessibility guidelines, and Oklahoma's Information Technology Accessibility Standards to include minimum and recommended specifications for hardware, software, operating system, and Internet service, course delivery, and technical support;
- (ii) Facility safety and emergency and crisis management;
- (iii) School calendar, sample daily schedule as applicable to online learning at proposed school, school instructional hours, school holidays, dismissals and closures, attendance requirements; ~~and~~

(E) Contracts with prospective contractors, including, but not limited to, any educational management organization, in which all products and services as well as all management fees are specifically listed and explained; and

~~(F)~~ Any other topics deemed necessary by the Statewide Virtual Charter School Board to assess the applicant's capability to administer and operate the charter school in compliance with all applicable provisions of federal and state laws and regulations to which charter schools are required to comply.

(2) Each applicant shall:

(A) Articulate the vision and purpose of the school.  
(B) Articulate the mission of the school, specifying how the school will embrace and accomplish its vision and purpose.

(C) Describe the key design elements and performance indicators of the school program that align with and support the school's mission and will be implemented to ensure student success.

(D) Describe how the school will ensure education access and equity for all eligible students.

(E) Describe how the governing body and governing documents ensure that a functioning organization with competent governance will be sustained, including:

- (i) lines of authority;
- (ii) leadership roles and responsibilities;
- (iii) proposed governing by-laws;
- (iv) meeting schedules for governing body;
- (v) a list of advisory bodies;
- (vi) external organizations applicable to school management;
- (vii) make-up of governing body, including proof of Oklahoma residency for a majority of Board members.
- (viii) start-up plan including a detailed listing and reporting frequency of academic, operational, and financial measures;
- (ix) recruitment, hiring and personnel policies, professional and staff development and training, technology capacity, system accessibility, student records and data management, student recruitment policies and procedures, admission and enrollment policies and procedures (including minimum and maximum enrollment for each contract year and proposed school calendar and sample daily schedule), promotion and graduation policies and procedures, attendance policies and procedures, student conduct and discipline plan, school safety and emergency response plan, parent and family education and engagement plan;
- (x) school effectiveness measurement criteria; and
- (xi) location and description of school facilities.

(F) Describe how the governing body will ensure a sound and stable financial condition for the school, including:

- (i) description of the roles and responsibilities of the treasurer and financial officers, and how each has demonstrated experience in school finance or the equivalent thereof;
- (ii) financial policies, including financial controls, and compliance with audit requirements;
- (iii) financial plan for the first five years of operation including, but not limited to, any financial support from a third-party including loans, deficit protection, and other financial leverage;
- (iv) start-up and five-year budgets and cash flow projections. The documents provided must account for the school's anticipated enrollment, as well as, a budget if the school only realizes a portion of the school's anticipated enrollment;
- (v) anticipated fundraising plan, if applicable;
- (vi) insurance coverage plan; and
- (vii) verifiable proof of secured funds for each source of revenue, and documentation to support

any agreement, donation, or loan that supports the budget.

(G) Describe how the governing body will ensure the delivery of a high-quality education program that meets academic performance for grade level and subject matter growth and, proficiency, graduation, and college career readiness, including, but not limited to:

- (i) grade levels served;
- (ii) plan for program delivery and program evaluation;
- (iii) curriculum and instructional model, including learning environment, curriculum overview, curriculum materials, instructional strategies, equipment and technology requirements, alignment with Oklahoma academic standards, which must include historical data and evaluation of the selected curriculum and instructional model, accreditations earned, and NCAA course certification status;
- (iv) student assessment, including plan to measure and report student progress, and benchmarks for student learning, district/school assessments, Oklahoma School Testing Program;
- (v) plan for support structures (e.g. online tutoring, home mentors, and technical support services in place 24x7) in addition to teacher support;
- (vi) plan for support of diverse learners, (students at-risk for poor learning outcomes, academically behind learners, English Language Learners (ELL), and other students identified through testing and assessments ~~as being in need of requiring~~ targeted remediation, intervention, and/or support);
- (vii) co-curricular and extracurricular activities;
- (viii) student performance; and
- (ix) school culture.

(H) Include a concise plan that details expected school growth and how the school will evolve to meet the needs of school growth.

(I) Demonstrate the applicant's experience in pre-kindergarten through 12<sup>th</sup> grade school operation.

(3) Each applicant shall provide documentation of its school's ability to meet each of the following requirements specific to the virtual delivery of education services:

(A) That each statewide virtual charter school is adequately prepared to deliver services to all enrolled students on the school's first day of operation and for all required instructional hours for every school year through a stable virtual platform;

(B) That each statewide virtual charter school has consistent lawful procedures in place governing admission, transfers, enrollment, and withdrawal of students;

(C) That each statewide virtual charter school has consistent lawful procedures in place governing admission, child find responsibilities, evaluation, and re-evaluation of students with disabilities, as well as applicable procedural safeguards and policies and

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procedures to ensure provision of free appropriate online and other educational and related services, supplementary aids and services, modifications, accommodations, supports for personnel, and other technical supports provided in the least restrictive environment to students with disabilities and/or other special needs in compliance with applicable federal and state laws and regulations, including:

- (i) Students who require or may require individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA); and
  - (ii) Students who require or may require accommodations, regular or special education and related aids, or other services under a plan developed in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act;
- (D) That each statewide virtual charter school has consistent procedures in place governing the admission, identification, evaluation, re-evaluation, parental notification, and provision of educational programs and services in compliance with applicable federal and state laws and regulations to students with special needs or unique abilities, including, but not limited to:
- (i) Students who are English Language Learners/Limited English Proficient and who require services as necessary to overcome language barriers and ensure that they can participate meaningfully in the district's education programs; and
  - (ii) Students who meet the definition of "gifted and talented children" set forth in 70 O.S. § 1210.301;
- (E) That each statewide virtual charter school complies with state and federal law in protection and handling of student records and data, including, but not limited to, protocols for secure storage and transmission of student records and data, parent/legal guardian access to student records and data and privacy of student records and data in compliance with all provisions of the Family Education Rights and Privacy Act of 1974 (FERPA) and the Individuals with Disabilities Education Act (IDEA), and ensures student records and data are exclusively the property of the school and the state of Oklahoma;
- (F) That each statewide virtual charter school has consistent procedures and technology in place necessary to monitor and report student attendance, student participation in online school activities, and any necessary instruction in accordance with the requirements of state law;
- (G) That each statewide virtual charter school has fair and consistent procedures in place to implement necessary and appropriate practices to promote and enforce student discipline that include sufficient due process protections for students facing accusations

of conduct which may result in suspension and/or expulsion of a student;

(H) That each statewide virtual charter school has consistent procedures and technology in place to ensure delivery of services and that each virtual charter school provider has an adequate plan in place for communicating emergency procedures to students in the event of technical failures of equipment and/or loss of connectivity;

(I) That each statewide virtual charter school has consistent procedures and technology in place to ensure consistent and adequate communication with parents/guardians of students and provide student progress and academic reports to parents/guardians of students; and

(J) That each statewide virtual charter school has provided a full description and explanation of the grade levels in which the provider intends to provide instruction and, for each charter school that offers secondary level coursework for grades nine (9) through twelve (12), whether the charter school will offer coursework as necessary to comply with the graduation requirements of 70 O.S. § 11-103.6 and accompanying regulations.

(4) Each applicant shall provide a written plan for compliance with all state and federal financial recording and reporting requirements for state and federal funds that are applicable to public school districts, including, but not limited to, compliance with:

(A) The School District Transparency Act at 70 O.S. § 5-135.4 et seq.;

(B) The Oklahoma Public School Audit Law at 70 O.S. §22-101 et seq.;

(C) Annual itemized expenditure budget and request for appropriated funds and estimate of revenues required by 70 O.S. § 5-128.1; and

(D) Statutes and regulations pertaining to the Oklahoma Cost Accounting System (OCAS).

(5) Each application shall include a contact name, mailing address of record, phone number, and email address of the governing body at which all written notices required by 70 O.S. § 3-134 shall be served. In the event that a change in contact information occurs during the application process, the governing body shall provide the Board with updated contact information in writing within five (5) business days of the date that the change occurs.

(c) **Filing, review, approval, and denial of charter school applications for sponsorship.** All applications for sponsorship shall be submitted by the governing body of the prospective charter school to the Statewide Virtual Charter School Board by filing an original and ten (10) copies, as well as an electronic version of the application with the Statewide Virtual Charter School Board. Upon receipt of an application for sponsorship, the Board shall stamp the application to record the date of receipt, and shall promptly submit written confirmation of the receipt of the application to the contact name and address of record of the governing body listed on the application.

(1) **Application format.**

(A) The text and attachments shall use standard one-inch margins, be clearly paginated, and use a readable font not smaller in type than 11 point.

(B) A cover page shall be labeled *Application for Initial Authorization* and include the following information:

- (i) Name of proposed school;
- (ii) Address of proposed school;
- (iii) Contact information: name, title, phone, email address;
- (iv) Application submission date; and
- (v) Name of applicant(s) and requested sponsor.

(C) A cover letter not to exceed two (2) pages shall provide a brief overview of the proposed school.

(D) A clearly labeled table of contents shall be included setting forth all major sections (Foundation for the School Charter, Organizational Capacity, Financial Management, Education Program and Performance, Growth Plan), appendices, and page numbers.

(E) Tables, graphs, and other data provided in the application shall be clearly presented and explained and shall be relevant to the text.

(F) The application shall include signed and notarized statements from the Head of the School and the governing body members, as applicable, showing their agreement to fully comply as an Oklahoma public charter school with all statute, regulations, and requirements of the United States of America, State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education. Specifically cite agreement to abide by the Oklahoma Open Meeting Act and the Oklahoma Open Records Act, and to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors as established by law. In addition, the head of school and governing body members, as applicable, will guarantee to establish the components necessary to begin school operations in the State of Oklahoma on July 1 of the first year, including a public administration facility, state-approved school financial system, state-approved student information system, and secured applicable connections to state reporting systems.

(G) The application shall include documentation of applicant's completion of charter school training.

(2) **Initial review and recommendation.** Prior to consideration of the application by the Statewide Virtual Charter School Board, a review panel may be formed by the Executive Director for the purpose of developing a recommendation on the application to the Board for consideration. The panel, chaired by the Executive Director, may include representatives with expertise in the area of accountability, online education, school governance, accreditation, education services, technology, school

finance, federal programs, education law, curriculum, instruction, special education, and student information.

(3) **Application review and criteria.** In reviewing an application for sponsorship of a statewide virtual charter school, the Statewide Virtual Charter School Board shall determine whether the applicant's proposal for sponsorship complies with the provisions of 70 O.S. § 3-134 and other applicable provisions of the Oklahoma Charter Schools Act. In addition, the Board may consider any other factors demonstrating the applicant's capacity to successfully comply with the goals set forth in its vision and mission statements and applicable state, federal, tribal, and/or local statutes and regulations. Such factors may include, but are not limited to the following:

(A) Whether the applicant can demonstrate previous experience in operation of one or more successful virtual charter schools;

(i) If the applicant cannot demonstrate previous experience in operation of one or more successful virtual charter schools, whether applicant has sufficient resources in place to ensure compliance with applicable state, federal, tribal, and/or local statutes and regulations.

(ii) If the applicant can demonstrate previous experience in operation of ~~a one or more successful~~ successful virtual charter ~~schools~~ schools, whether applicant has a history of non-compliance with applicable state, federal, tribal, and/or local statutes and regulations either in the State of Oklahoma or in other jurisdictions.

(B) Whether the applicant has provided evidence demonstrating financial stability in the pre-launch and operational years of the proposed school;

(C) Whether the criteria designed to measure the effectiveness of the charter school proposed by the applicant is reasonably calculated to provide accurate benchmarks for evaluation of teacher effectiveness and student learning; and

(D) Whether the charter school has adequate human resources, facilities, systems, and structures in place as necessary to evaluate the needs of and provide effective services to students with disabilities, English Language Learners, and gifted and talented students.

(4) **Acceptance or denial of sponsorship applications.** The Statewide Virtual Charter School Board shall review and consider the application in accordance with the timeline established pursuant to (a) of this Section, provided that a final decision on the application shall be made no later than ninety (90) calendar days from the date of receipt of the application by the Statewide Virtual Charter School Board. The Board shall promptly submit written notification of the decision of the Board, including reasons for rejection of the application, if applicable, to the applicant via certified mail, return receipt requested, to the address of record of the governing body designated on the application.

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(5) **Reconsideration of sponsorship applications.** In the event of a denial of an application for sponsorship, the applicant may submit a revised application for reconsideration in accordance with the following procedures:

(A) The revised application for reconsideration shall be filed with the Board within thirty (30) calendar days after the date of receiving notification of the rejection. The revised application shall meet all of the application requirements set forth in this Section. In the event that delivery of written notification required by paragraph two (2) of this subsection is refused by the applicant or returned as undeliverable due to the applicant's failure to update the contact of record in accordance with the requirements of (b)(4) of this Section, the date of receipt of notification of the rejection shall be considered the date of the meeting at which the Board took action on the proposed application.

(B) Within five (5) business days of the date of receipt of the application for reconsideration, the Board shall promptly set the application for consideration at a meeting of the Board and submit notification of the date, time, and place of the meeting to the applicant to the contact of record. The meeting to consider the application shall occur within thirty (30) calendar days of the date of receipt of the application.

(C) The Statewide Virtual Charter School Board shall take action to accept or reject the revised application within thirty (30) calendar days of its receipt by the Board.

(6) **Appeal of denial of sponsorship applications.** The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.

(d) **Requirements of the sponsorship contract.** Contracts for sponsorship between the Statewide Virtual Charter School Board and the governing body of a statewide virtual charter school shall include terms that meet all of the following requirements:

(1) The contract shall incorporate the provisions of the charter of the school in accordance with the requirements of 70 O.S. § 3-135, and the charter shall comply with the provisions of 70 O.S. § 3-136.

(2) The contract shall contain terms addressing all of the requirements set forth in 70 O.S. § 3-135.

(3) The contract shall contain terms setting forth measurable goals and objectives for student performance.

(4) The contract shall contain terms specifying standards for fiscal accounting and management that ensure the compliance of the charter school with all applicable provisions of state and federal statutes and regulations pertaining to requests for appropriations and recording and reporting receipt and expenditures of public funds, including, but not limited to:

(A) Terms providing that the charter school shall conduct annual financial audits in accordance with

the requirements of the Oklahoma Public School Audit Law;

(B) Terms providing that the charter school shall comply with all State Department of Education deadlines necessary for budgeting, calculation of appropriations, and/or disbursements of state aid, and/or federal aid;

(C) Terms providing that the charter school shall comply with all deadlines for recording and reporting of state aid revenue and expenditures;

(D) Terms providing that the charter school shall comply with all requirements of the Oklahoma Cost Accounting System (OCAS);

(E) Terms providing that the charter school shall comply with all provisions of the School District Transparency Act at 70 O.S. § 5-135.4 et seq;

(F) Terms providing that the charter school will provide any and all records of the school including, but not limited to, financial records upon request by the sponsor;

(G) Terms providing that the charter school will provide any and all school records including, but not limited to, financial records ~~from of education service providers~~ educational management organization upon request by the sponsor;

(H) Terms providing that the school is subject to requests for audit by the State Auditor's office;

(I) Terms providing that the charter school ~~shall adopt a viable conflict of interest policy and a code of ethics and its governing board shall be subject to the same conflict of interest requirements as members of local school boards including, but not limited to, Sections 5-113 and 5-124 of Title 70 of the Oklahoma Statutes. No governing board member, school staff member, or contractor/vendor shall receive pecuniary gain, incidentally or otherwise, from the earnings of the educational management organization or school.~~

~~(J) Terms providing that the charter school submit three data driven goals and measurement criteria, including one non-academic goal, and included in the Performance Framework.~~

(5) The policies and procedures governing administration and operation of the statewide virtual charter school shall be incorporated into the terms of the contract.

(6) The term of the initial contract shall be effective for five (5) years from the first day of operation in accordance with the provisions of 70 O.S. § 3-137.

(7) The term of the contract shall designate at least one contact name and address of record of the governing body of the charter school to which all notices required by the terms of the contract and/or this Section shall be served, including the name, title, mailing address, email address, and phone number of all individual(s) authorized to receive service of notices required by this Section and pursuant to the terms of the contract.

(8) The contract shall contain any other terms necessary to ensure compliance with applicable provisions of state and/or federal law.

(e) **Renewals of contracts for sponsorship of statewide virtual charter schools.** Renewal of a contract with a statewide virtual charter school sponsored by the Statewide Virtual Charter School Board shall be conducted in accordance with the requirements of the Oklahoma Charter Schools Act.

(1) **Requests for renewal of contract for sponsorship.** Requests for renewal of the contract for sponsorship shall be submitted by the governing body of the charter school in accordance with the following procedures:

(A) At least one (1) year prior to expiration of the initial contract term, but no earlier than eighteen (18) months prior to the date of expiration of the contract; the governing body of the charter school may submit a proposal for renewal of the contract to the Statewide Virtual Charter School Board by filing an original and seven (7) copies, as well as an electronic version of the proposal with the Board.

(B) The Board shall schedule the request for renewal as an item on the agenda for the next regular meeting of the Board, or at a subsequent meeting if the proposal for renewal is not received until after the agenda for the next meeting has already been set. The Board shall timely submit written notice of the date, time, and location of the meeting at which the proposal for renewal will be considered and/or heard by regular mail to the governing body of the charter school at the address of record set forth in the sponsorship contract. In addition, the Board may send a courtesy copy of the notice by facsimile, and/or email. If the Board will act on the proposal for renewal at a subsequent meeting of the Board, similar notice of such meeting shall be sent to the governing body of the charter school.

(C) The Board shall review the proposal for renewal and take action on the request for renewal no later than eight (8) months prior to the date of expiration of the contract.

(D) The Board may base its decision to deny the charter school governing body's request for renewal upon any of the grounds for nonrenewal or termination set forth in 70 O.S. § 3-137 and/or (f)(1) of this Section.

(2) **Format for renewal application.** The renewal application shall include:

(A) Text and attachments using standard one-inch margins, clearly paginated, and using a readable font not smaller in type than 11 point.

(B) A cover page labeled *Application for Reauthorization*, including the following information:

- (i) Name of school;
- (ii) Address of school;
- (iii) Contact information: name, title, phone, email address;
- (iv) Date application approved by governing body; and
- (v) Application submission date.

(C) A cover letter no more than two (2) pages in length providing a brief overview of the school's

mission, key school design elements, performance indicators and related data, and major challenges and accomplishments over the term of the current contract.

(D) A clearly labeled table of contents setting forth all major sections, appendices, and page numbers.

(E) Clearly labeled attachments provided in the appendix.

(F) Clearly labeled tables, graphs, and other data provided in this application in addition to an explanation of their relevance to the text.

(G) A signed and notarized statement from the Head of the School and the governing body members, as applicable, showing their consideration and approval of the reauthorization application and their agreement to fully comply, as an Oklahoma public charter school with all statute, regulations, and requirements of the United States of America, State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education. Specifically cite agreement to abide by the Oklahoma Open Meeting Act and the Oklahoma Open Records Act, and to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors.

(H) A single page entitled *Introduction to the School* containing, at a minimum, the following list of information:

- (i) Name of school;
- (ii) Location of ~~school~~ School;
- (iii) Year ~~opened~~ Opened;
- (iv) Year ~~renewed~~ Renewed, if applicable;
- (v) Maximum enrollment;
- (vi) Current enrollment;
- (vii) Grade span;
- (viii) Most recent accountability report information from the State of Oklahoma;
- (ix) Attendance rate;
- (x) Graduation rate;
- (xi) Recurrent enrollment;
- (xii) Dropout rate;
- (xiii) Percentage of at-risk students enrolled; and
- (xiv) Any other information the school deems necessary to include.

(3) **Information in renewal request.**

(A) In addition to the information found in the performance report, and the school's response to the performance report, if any, this reauthorization application is the school's opportunity to address each of the following components highlighting what the school believes is most important in each area:

- (i) Faithfulness to the foundation of the charter;
- (ii) Organizational capacity;
- (iii) Financial management;
- (iv) Education program and performance; ~~and~~
- (v) Strategic planning; ~~and~~
- (vi) Corrective Action Plan (if required).

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- (B) Appendices. Provide documents and related information for the term of the contract beyond those provided in the performance report and response, including examples of community and parent support of the school.
- (4) **Performance report and site visit.** The sponsor of the school will issue a school performance report in accordance with State statute. The school shall have forty-five (45) calendar days to respond to the performance report and submit any corrections or clarifications for the report. In evaluating a school's renewal request, the Board may consider the performance report, results of a site visit, and evidence provided in the school's presentation to the Board.
- (5) **Notice of intent of non-renewal of contract for sponsorship.** Notwithstanding the provisions of paragraph one (1) of this subsection, the Statewide Virtual Charter School Board may elect to not renew a contract for sponsorship in accordance with the following procedures:
- (A) No later than eight (8) months prior to the date of expiration of the contract. The Statewide Virtual Charter School Board shall submit written notice of its intent of non-renewal via certified mail, return receipt requested to the governing body of the charter school at the address of record set forth in the contract. The notice shall include:
- (i) A statement of any and all factual and legal grounds upon which the Board's intent to non-renew the contract is based; and
  - (ii) A statement of the date, time, and location of the meeting at which the Board intends to take action on the proposed non-renewal, which shall be held no earlier than thirty (30) calendar days from the date of the notice of intent to non-renew the contract is sent to the charter school.
- (B) The Board may base its decision to non-renew the contract for sponsorship upon any of the grounds for nonrenewal or termination set forth in 70 O.S. § 3-137 and/or (f)(1) of this Section.
- (C) The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.
- (f) **Terminations of contracts for sponsorship of statewide virtual charter schools.** The Statewide Virtual Charter School Board may terminate the contract with a statewide virtual charter school in accordance with the following procedures:
- (1) **Grounds for termination of a contract for sponsorship:** At any time during the term of the contract, the Statewide Virtual Charter School Board may terminate the contract on one or more of the following grounds:
    - (A) Failure to meet the requirements for student performance set forth in the terms of the contract;
    - (B) Failure to meet the standards of fiscal accounting and management set forth in the terms of the contract;
    - (C) Violations of applicable state, federal, tribal, or local laws, statutes, and/or regulations;
    - (D) Other good cause as established by the Board, which may include, but shall not be limited to:
      - (i) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to meet reporting deadlines necessary for compliance with state or federal statutes or regulations;
      - (ii) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to accurately report student enrollment counts;
      - (iii) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to accurately report and/or classify student accountability data;
      - (iv) Identification and/or designation of the charter school by the State Board of Education as consistently in need of improvement in accordance with subsection (g)(6) of Section 1003 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), pursuant to 70 O.S. § 1210.544;
      - (v) Any material breach of the terms set forth in the contract for sponsorship; and
      - (vi) Any action or failure to act by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors that presents or results in an immediate and serious danger to the health, safety, and welfare of its students.
  - (2) **Notice of intent to terminate contract.** At least ninety (90) calendar days prior to termination of a contract for sponsorship of a statewide virtual charter school, the Statewide Virtual Charter School Board shall submit written notice of its intent to terminate the contract via certified mail, return receipt requested to the governing board of the charter school at the address of record set forth in the contract. The notice shall include:
    - (A) A statement of any and all factual and legal grounds upon which the Board's intent to terminate the contract is based;
    - (B) A statement of the date, time, and location of the meeting at which the Board intends to take final action on the proposed termination, which shall be held no earlier than forty-five (45) calendar days from the date the notice of intent to terminate is mailed to the charter school; and
    - (C) A statement that the governing board of the school may request a hearing before the Board to present evidence in opposition to the proposed termination by delivering a written request to the Board within fourteen (14) calendar days of receipt of notice of the intent to terminate the contract that includes:



- (i) A response to the factual and legal grounds for termination set forth in the notice; and
- (ii) A summary of evidence that the school intends to submit in support of its response.

(D) Within ten (10) calendar days of the date of receipt of the request for hearing, the Board shall schedule a hearing and submit written notice of the date, time, and location of the hearing by regular mail to the charter school's address of record set forth in the sponsorship contract. The Board may send a courtesy copy of the notice by facsimile, and/or email.

(3) **Hearing on termination.** In the event that a hearing is requested pursuant to the provisions of (2)(C) of this subsection, the Board shall promptly schedule a hearing at which the statewide virtual charter school may present argument and/or evidence in opposition to the proposed termination. The Board shall prescribe the time allotted for oral argument and presentation of evidence. Upon completion of the hearing, the Board may consider the merits of the argument and presentation of evidence and take action on the proposed termination, or it may schedule action on the proposed termination for a subsequent board meeting to provide the board with further opportunity for deliberation.

(4) **Appeals of termination.** The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.

(g) **Negotiation and execution of contracts for sponsorship.** To facilitate and/or expedite negotiations for new contracts for sponsorship, the Statewide Virtual Charter School Board may adopt a model contract for sponsorship of a statewide virtual charter school for use by the Board and potential statewide virtual charter schools sponsored by the Board. Adoption of a model contract shall not prohibit the Board from further negotiation of contract terms or addition of terms to the contract for sponsorship prior to execution of the contract so long as such terms are in compliance with applicable state, federal, local, and/or tribal law and the provisions of this Section.

(h) **Execution of the contract.** The final contract for sponsorship shall not be executed until approved by the Statewide Virtual Charter School Board at a regular or special meeting. The Board may delegate authority to the Chairman to execute the approved contract for sponsorship on behalf of the Board.

**777:10-3-4. Oversight and evaluation of virtual charter schools by the Statewide Virtual Charter School Board**

(a) **Oversight and annual performance review.** The Statewide Virtual Charter School Board will provide ongoing oversight of the charter schools through data and evidence collection, site visits, attendance of governing board meetings, school website compliance checks, and school performance reviews. At the end of each year, schools will be subject to an annual performance review consisting of a compilation of performance ratings and findings based on the performance framework standards. Results that will be shared with key

stakeholders. The charter school will have forty-five (45) calendar fifteen (15) business days to respond to the annual performance review in writing and such response will become part of the public record. ~~A formal review of school performance may be conducted during the contract term, as applicable. The annual review report and any response will be posted to the SVCSB's website along with other information regarding each of the schools.~~

(b) **Performance framework.** The performance framework for designated virtual charter schools establishes accountability criteria for ~~virtual charter schools authorized by the Statewide Virtual Charter School Board that~~ and assesses schools on their ability to operate as a sound, independent school that successfully serves all students in the areas of academic, financial, and organizational capacities. ~~The board will use a checklist to determine if the charter school meets the standards or does not meet the standards for each criteria.~~

(1) Oklahoma performance measures will be used to assess the school's academic performance, including overall achievement, overall growth, subgroup achievement, subgroup growth, and post-secondary readiness. ~~Academic performance is measured via twenty four (24) accountability indicators and measurements (see items A-X below). To meet the expectations, schools must demonstrate attainment of each indicator for each grade level and will be given weight accordingly. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category and grade level~~ are listed below. Sub-group measures will only be applicable if the school has a minimum of ten (10) students in the sub-group.

(A) Are students achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

- (i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
- (ii) The percentage of students scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~OSTP state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.

(B) Are students achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

- (i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
- (ii) The percentage of students scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~OSTP state assessments is improved five percent (5%)5% or

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greater ~~compared to the prior school year each year over the baseline score established the first year~~ of the charter contract term.

(C) Are students enrolled in the school for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~OSTP state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.

(D) Are students enrolled in the school for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~OSTP state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.

(E) Are students enrolled in the school for ~~threefour~~ (4) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~OSTP state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.

(F) Are students enrolled in the school for ~~threefour~~ (4) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~OSTP state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.

(G) Are students in the special education subgroup achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~OSTP state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.

(H) Are students in the special education subgroup achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~OSTP state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.

(I) Are students in the special education subgroup enrolled for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing~~

- ~~Program (OSTP) OSTP~~ state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.
- (J) Are students in the special education subgroup enrolled for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):
- (i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
  - (ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP) OSTP~~ state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.
- (K) Are students in the special education subgroup enrolled for ~~three~~four (4) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):
- (i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
  - (ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP) OSTP~~ state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.
- (L) Are students in the special education subgroup enrolled for ~~three~~four (4) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):
- (i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
  - (ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP) OSTP~~ state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.

- (M) Are students in the economically disadvantaged subgroup achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):
- (i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
  - (ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP) OSTP~~ state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.
- (N) Are students in the economically disadvantaged subgroup achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):
- (i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
  - (ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP) OSTP~~ state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.
- (O) Are students in the economically disadvantaged subgroup enrolled for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):
- (i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
  - (ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP) OSTP~~ state assessments is improved five percent (5%)5% or greater compared to the prior school year each year over the baseline score established the first year of the charter contract term.
- (P) Are students in the economically disadvantaged subgroup enrolled for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

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- (i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
- (ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~ OSTP state assessments is improved five percent (5%)~~5%~~ or greater compared to the prior school year~~each year over the baseline score established the first year of the charter contract term.~~
- (Q) Are students in the economically disadvantaged subgroup enrolled for ~~threefour~~ (4) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):
- (i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
- (ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~ OSTP state assessments is improved five percent (5%)~~5%~~ or greater compared to the prior school year~~each year over the baseline score established the first year of the charter contract term.~~
- (R) Are students in the economically disadvantaged subgroup enrolled for ~~threefour~~ (4) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):
- (i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or
- (ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the ~~Oklahoma School Testing Program (OSTP)~~ OSTP state assessments is improved five percent (5%)~~5%~~ or greater compared to the prior school year~~each year over the baseline score established the first year of the charter contract term.~~
- (S) Based on state expectations for student graduation within four years, does the school meet the expectations for student graduation? Meets standard accountability indicator(s):
- (i) The school's most recent graduation rate is equal to or greater than the most recent graduation rate for the State of Oklahoma; or
- (ii) The school's most recent graduation rate as reported by the State Department of Education,

increased twenty percent (20%)~~20%~~ or more of the difference between the graduation rate of the baseline year and 100% over the past two (2) years.

(T) Based on the extended-year adjusted graduation rate, does the school meet the expectations for student graduation? Meets standard accountability indicator(s): Evidence ~~indicates supports~~ a majority of extended-year students graduating.

(U) Did the school meet the expectation for graduating eligible seniors (students within six (6) credits of graduation) during the most recent year? Meets standard accountability indicator(s): The percent of eligible seniors, students within six (6) credits of graduation, enrolled on the first day of the school year and graduating in the current school year is equal to or greater than the current graduation rate for the State of Oklahoma.

~~(V) Are the school's students participating in the American College Testing (ACT) college preparation assessment process? The most recent year's American College Testing (ACT) participation rate is equal to or greater than the most recent rate recorded for the State of Oklahoma.~~

~~(W) Does the school's student performance on the American College Testing (ACT) meet the state performance level? The school's most recent year's average composite American College Testing (ACT) score is equal to or greater than the most recent average score recorded for the State of Oklahoma~~

~~(X) Are students benefiting from college and career readiness opportunities (i.e. college preparatory coursework, Career Technology programs, military service)? Evidence provides a profile of college and career readiness opportunities.~~

(V) Do the school's students demonstrate College and Career Readiness? Meets standard accountability indicator(s):

(i) College:

(I) Achieved minimum required test score for entry without taking remediation:

a. High School Transcript of a 2.0 (C average) or higher; or

b. American College Testing (ACT); or

c. Scholastic Aptitude Test (SAT); or

d. Other recognized college entrance exams such as Accuplacer or the Classical Learning Test; and

(II) Acceptance to a college or university; and

(III) Successful completion and submission of a college FAFSA form.

(ii) Career:

(I) Accepted to the Military; or

(II) Evidence of sustainable employment; or

(III) Completed an authorizer or state approved Career and Technical Education Certificate.

~~(Y)W~~ Is the school's college remediation rate equal to or less than the state remediation rate? Meets standard accountability indicator(s): The three-year average remediation rate of high school graduating classes indicates the school's college remediation rate is equal to or less than the state remediation rate.

(2) Oklahoma performance measures will be used to assess the school's fiscal~~Fiscal~~ viability, including of the schools is measured through audit findings, quarterly financial~~financials, regulatory reporting, and compliance with all applicable statutes, laws and regulations reports, and financial reporting.~~ Financial performance is measured via six (6)-accountability indicators and measurements (see items A-F below). To meet the expectations, schools must demonstrate attainment of each indicator. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category are listed below.

(A) Did the school's most recent annual financial statement audit have findings? Meets standard accountability indicator(s): There were no findings of significant deficiencies, material noncompliance, or known fraud on the school's most recent independent financial audit.

(B) Did the most recent annual report on internal control over financial reporting disclose any significant or material deficiencies? Meets standard accountability indicator(s): There were no findings of significant deficiencies, material weaknesses or instances of noncompliance on the most recent annual report on internal control over financial reporting. ~~Did any of the school's audits over the term of the contract have findings? There were no findings of significant deficiencies, material noncompliance or known fraud on any independent financial audits over the term of the charter contract?~~

(C) Did the school consistently submit appropriate quarterly financial reports to the Statewide Virtual Charter School Board over the most recent year? Meets standard accountability indicator(s): Appropriate reports were submitted in the Oklahoma Cost Accounting System (OCAS) format, verified by the school treasurer, on time, and indicating financial stability of the school.

(D) Was the school subject to an audit by the State Auditor and Inspector and, if so, were there any findings? Meets standard accountability indicator(s): There were no findings of significant deficiencies, material noncompliance or known fraud on the school's most recent audit by the State Auditor and Inspector. ~~Did the school consistently submit appropriate quarterly financial reports over the term of the charter contract? Appropriate reports were submitted in the Oklahoma Cost Accounting System (OCAS) format, on time, and indicating financial stability of the school.~~

(E) Did the school consistently meet financial reporting expectations over the most recent year, as

required by the State Department of Education and confirmed by the Office of Financial Accounting, and Oklahoma Cost Accounting System (OCAS), and Audits? Meets standard accountability indicator(s): The State Department of Education confirms financial~~Financial~~ reporting met—expectations were fulfilled over the most recent year.

(F) Was the school's most recent fiscal year OCAS data submitted to the State Department of Education, properly certified by the school leader, and accepted by the State Department of Education? Meets standard accountability indicator(s): The school submitted OCAS data for the most recent fiscal year to the State Department of Education, certified by the school leader, and accepted State Department of Education. ~~Did the school consistently meet financial reporting expectations over the term of the charter contract, as required by the State Department of Education and confirmed by the Office of Financial Accounting, Oklahoma Cost Accounting System (OCAS), and Audits? Financial reporting met expectations over the term of the charter contract.~~

(G) Did the school submit timely the most recent annual financial statement audit to the State Department of Education? Meets standard accountability indicator(s): The school submitted timely the most recent financial statement audit to the State Department of Education.

(H) Did the State Department of Education require a corrective action plan as part of their follow-up to the financial statement audit submission? Meets standard accountability indicator(s): No corrective action plan was required in the response from the State Department of Education to the most recently submitted annual financial statement audit.

(I) If a corrective action plan was required by the State Department of Education, did the plan sufficiently address the issues and was the plan accepted by the State Department of Education? Meets standard accountability indicator(s): The corrective action plan required by the State Department of Education sufficiently addressed the issues and was accepted by the State Department of Education.

(J) If a corrective action plan was required by the State Department of Education for the prior fiscal year, can it be confirmed that the corrective action measures were followed in the most recent fiscal year? Meets standard accountability indicator(s): The corrective action plan required by the State Department of Education for the prior fiscal year was followed by the school in the most recent fiscal year.

(K) Did the school have a negative fund balance at the end of the most recent fiscal year? Meets standard accountability indicator(s): The school did not have a negative general fund balance as of the end of the prior fiscal year.

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(L) Did the Days Cash on Hand ratio fall below thirty (30) days during the fiscal year? Meets standard accountability indicator(s): Evidence supports that the school maintained a Days Cash on Hand ratio of thirty (30) days or more at the end of each fiscal quarter.

(M) Did the school fail to pay any commitments, warrants, or debts? Meets standard accountability indicator(s): Evidence supports the school paid all commitments, warrants, and debts.

(N) Did the school maintain a fund balance of greater than ten percent (10%) of the prior fiscal year's total expenditures? Meets standard accountability indicator(s): Evidence supports that the school maintained a fund balance greater than ten percent (10%) of the prior fiscal year's total expenditures measured at the end of each fiscal quarter.

(O) Is the school's enrollment (average daily membership) for the first nine (9) weeks greater than or equal to eighty-five percent (85%) of last year's enrollment? Meets standard accountability indicator(s): The first quarter statistical report indicates enrollment did not decline by more the fifteen percent (15%) in comparison to the end of year enrollment from the prior year.

(P) Does the school's governing board review periodic financial statements including a statement of financial position (balance sheet), statement of activities (income statement), and statement of cash flows? Meets standard accountability indicator(s): Evidence supports that the governing board reviews the school's periodic financial statements at the public governing board meetings.

(Q) Does the school's governing board review and approve changes to the budget as significant changes to revenues and expenditures occur? Meets standard accountability indicator(s): Evidence supports that the school's governing board reviews and approves changes to the budget at the public governing board meetings throughout the year as revenues and expenditures change significantly.

(R) Does the school's governing board review financial forecasting models prior to annual budget adoption? Meets standard accountability indicator(s): Evidence supports that the school's governing board participates in annual review of financial forecasting prior to budget adoption during a public governing board meeting.

(S) Does the school's governing board review the audited financial statements and address all findings? Meets standard accountability indicator(s): Evidence supports that the school's governing board reviews the audited financial statements and addresses all findings in a public governing board meeting.

(3) Oklahoma performance measures will be used to assess the school's organizational performance including its measured by effective organizational structure, governance, record of compliance, attendance,

recurrent enrollment, accreditation, and student support. Organizational performance is measured via the accountability indicators and measurements listed below. To meet the expectations, schools must demonstrate attainment of each indicator. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category are listed below.

(A) Is the school faithful to its mission and implementing key design elements within the approved charter contract? Meets standard accountability indicator(s): Evidence documents supports faithfulness to the school's mission and implementation of key design elements of school.

(B) Does the school follow appropriate procedures to ensure all students have equitable access to services and opportunities for success? Meets standard accountability indicator(s): Data confirms appropriate procedures to ensure student access and equity. Examples of data include, but not limited to, an equity committee; an equity audit of policies, procedures, culture, instruction, professional learning, and stakeholder perceptions and goals related to equity, inclusion, anti-racism, and identity safety; and an equity plan and policies.

(C) Does the school have approved and appropriate policies and procedures that ensure student and staff safety and success, and does the school communicate those policies and procedures to students/families and staff? Meets standard accountability indicator(s): Evidence supports approved and appropriate policies and procedures are implemented and communicated.

(D) Does the school adhere to applicable state and federal laws and regulations? Meets standard accountability indicator(s): Evidence suggests supports the school adheres to state and federal laws and regulations.

(E) Does the school adhere to the terms of the charter contract? Meets standard accountability indicator(s): Evidence suggests supports the school adheres to the charter contract.

(F) Does a stable governing board exist? Meets standard accountability indicator(s): Evidence supports history of board stability exists.

(G) Does the governing board recruit, select, orient, and train members with skills and expertise to enable them to govern the school appropriately? Meets standard accountability indicator(s): Board agendas and minutes document board member activities.

(H) Does the charter school comply with the Open Meeting Act and Open Records Act? Meets standard accountability indicator(s): Evidence supports the charter school consistently complies with requirements of the Open Meeting Act and Open Records Act.

(I) Does the charter school provide transparency through Statewide Virtual Charter School Board

access to school records? Meets standard accountability indicator(s): The charter school has provided the Statewide Virtual Charter School Board with all requested school records.

(J) Does the educational ~~management organization~~ service provider(s) provide transparency through Statewide Virtual Charter School Board access to school records? Meets standard accountability indicator(s): ~~The charter school~~ educational management organization has provided the Statewide Virtual Charter School Board with all requested school records.

(K) Did the school consistently meet the reporting expectations as required by the State Department of Education ~~during the most recent year~~? Meets standard accountability indicator(s): The State Department of Education confirms reporting expectations fulfilled.

~~(L) Did the school consistently meet the reporting expectations as required by the State Department of Education over the term of the charter contract? The State Department of Education confirms reporting expectations fulfilled.~~

~~(LM) Did the school consistently meet the reporting expectations as required by the Statewide Virtual Charter School Board during the most recent year? Meets standard accountability indicator(s): Reporting expectations fulfilled as required - ninety percent (90%) 90% or above in both on-time and accuracy categories.~~

~~(N) Did the school consistently meet the reporting expectations as required by the Statewide Virtual Charter School Board over the term of the charter contract? Reporting expectations fulfilled as required -90% or above in both on-time and accuracy categories.~~

(MO) Does the school website meet the standards for transparency and documentation as mandated by the Oklahoma School District Transparency Act and requested by the Statewide Virtual Charter School Board? Meets standard accountability indicator(s): The school has consistently met requirements for school website as mandated by the Oklahoma School District Transparency Act and requested by the Statewide Virtual Charter School Board.

~~(NP) Did the school receive accreditation from the State Department of Education in the most recent year? Meets standard accountability indicator(s): The school received accreditation with no deficiencies noted from the State Department of Education in the most recent year.~~

~~(Q) Did the school receive accreditation from the State Department of Education over the term of the charter contract? The school received accreditation with no deficiencies noted from the State Department of Education over the term of the charter contract.~~

~~(OR) Does the school meet the expectations for student attendance? Meets standard accountability indicator(s): Evidence documents supports the school met the State expectations for student attendance.~~

(PS) Does recurrent enrollment of students meet expectations? Meets standard accountability indicator(s): The school's student recurrent enrollment rate meets the expectations indicated by the methodology used for public schools in Oklahoma.

(QF) Does the school provide support structures for students and families that are accessible twenty-four (24) hours per day and seven (7) days per week, such as teacher support, individualized learning plans, guidance/counseling program, online tutoring, and technical support? Meets standard accountability indicator(s): Students and families have access to multiple support structures twenty-four (24) hours per day and seven (7) days per week.

~~(U) The charter school will submit up to three (3) data driven goals and measurement criteria for approval by the SVCSB.~~

~~(i) Did the charter school meet the expectations of Goal One over the term of the charter contract?~~

~~(ii) Did the charter school meet the expectations of Goal Two over the term of the charter contract?~~

~~(iii) Did the charter school meet the expectations of Goal Three over the term of the charter contract?~~

(R) Does the school and governing board engage in strategic planning that results in establishment of school goals and verifiable school improvement? Meets standard accountability indicator(s): Evidence supports that the school and governing board engage in strategic planning resulting in establishment of school goals and verifiable school improvement.

(4) A Performance Framework Index will be calculated based on the following categories:

(A) Academic (A) Calculation - (Score) \* (Weight) = A with ~~at a~~ weight of ~~33.33%~~ 40%.

(B) Financial (F) Calculation - (Score) \* (Weight) = F with ~~at a~~ weight of ~~33.33%~~ 35%.

(C) Organizational (O) Calculation - (Score) \* (Weight) = O with ~~at a~~ weight of ~~33.33%~~ 25%.

(D) As set forth in 70 O.S. § 3-137, Performance Framework scores will guide reauthorization procedures.

(i) A Performance Framework Index (PFI) score of ~~80~~ 75% or higher calculated over the course of the charter contract term will result in renewal of authorization for a five (5) year term should the governing board of the charter school choose to submit a letter requesting reauthorization.

(ii) A Performance Framework Index (PFI) score of ~~70-60-74~~ 70% or higher calculated over the course of the charter contract term is expected.

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However, an application for renewal of authorization is required for consideration by the Statewide Virtual Charter School Board.

(iii) A Performance Framework Index (PFI) score of less than ~~70~~ 60% calculated over the course of the charter contract term places the charter school at risk of non-approval of the renewal for authorization. An application for reauthorization is required for consideration by the Statewide Virtual Charter School Board.

(E) In the event data is not available, the Statewide Virtual Charter School Board will designate corresponding score with "Not Applicable".

**(c) Performance framework for designated alternative education sites.** The performance framework for designated virtual charter school alternative education sites establishes accountability criteria and assesses schools in the areas of academic, financial, and organizational capacities. Designated alternative education sites are those that conform to the program requirements set forth in 70 O.S. § 1210-568 and are designated as alternative education sites by the State Board of Education.

(1) Oklahoma performance measures will be used to assess the school's academic performance, including overall achievement, overall growth, subgroup achievement, subgroup growth, and post-secondary readiness. Academic performance accountability indicators and measurements in each category and grade level are listed below. Sub-group measures will only be applicable if the school has a minimum of ten (10) students in the sub-group.

(A) Are students achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(B) Are students achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP

state assessments is equal to or above the baseline;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(C) Are students enrolled in the school for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(D) Are students enrolled in the school for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(E) Are students enrolled in the school for three (3) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline;  
or



- (ii) The percentage of students scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.
- (F) Are students enrolled in the school for three (3) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):
  - (i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline;  
or
  - (ii) The percentage of students scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.
- (G) Are students in the special education subgroup achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):
  - (i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or
  - (ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.
- (H) Are students in the special education subgroup achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):
  - (i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or
  - (ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.
- (I) Are students in the special education subgroup enrolled for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):
  - (i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or
  - (ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.
- (J) Are students in the special education subgroup enrolled for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):
  - (i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or
  - (ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.
- (K) Are students in the special education subgroup enrolled for three (3) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):
  - (i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or
  - (ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.
- (L) Are students in the special education subgroup enrolled for three (3) or more consecutive academic

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years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or

(ii) The percentage of students in the special education subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(M) Are students in the economically disadvantaged subgroup achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or

(ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(N) Are students in the economically disadvantaged subgroup achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or

(ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(O) Are students in the economically disadvantaged subgroup enrolled for two (2) or more consecutive academic years achieving proficiency on

statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or

(ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(P) Are students in the economically disadvantaged subgroup enrolled for two (2) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or

(ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(Q) Are students in the economically disadvantaged subgroup enrolled for three (3) or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts? Meets standard accountability indicator(s):

(i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or

(ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(R) Are students in the economically disadvantaged subgroup enrolled for three (3) or more consecutive academic years achieving proficiency on statewide assessments in Math? Meets standard accountability indicator(s):

(i) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) totaled and averaged for all state schools designated as alternative education sites will be the baseline for comparison. The school's percentage of students scoring proficient or above at each grade level on the OSTP state assessments is equal to or above the baseline; or

(ii) The percentage of students in the economically disadvantaged subgroup scoring proficient or above at each grade level on the OSTP state assessments is improved five percent (5%) or greater compared to the prior school year of the charter contract term.

(S) Based on the extended-year adjusted graduation rate, does the school meet the expectations for student graduation? Meets standard accountability indicator(s): Evidence supports a majority of extended-year students graduating.

(T) Did the school meet the expectation for graduating eligible seniors (students within six (6) credits of graduation) during the most recent year? Meets standard accountability indicator(s): The percent of eligible seniors, students within six (6) credits of graduation, enrolled on the first day of the school year and graduating in the current school year is equal to or greater than the average current graduation rate for the State of Oklahoma.

(U) Do the school's students demonstrate College and Career Readiness? Meets standard accountability indicator(s):

(i) College:

(I) Achieved minimum required test score for entry without taking remediation:

- a. High School Transcript of a 2.0 (C average) or higher; or
- b. Accuplacer; or
- c. American College Testing (ACT); or
- d. Scholastic Aptitude Test (SAT); and

(II) Acceptance to a college or university; and

(III) Successful completion and submission of a college FAFSA form.

(ii) Career:

(I) Accepted to the Military; or

(II) Evidence of sustainable employment; or

(III) Completed an authorizer or state approved Career and Technical Education Certificate.

(V) Are students completing courses required for grade advancement each year? Meets standard accountability indicator(s): The percentage of students earning at least six (6) credits per year is equal to or greater than forty percent (40%).

(W) Are students benefiting from postsecondary and workforce readiness activities, testing, and enrollment? Meets standard accountability indicator(s): Evidence supports that the percent of students participating in one or more postsecondary and/or workforce readiness activity, testing, and/or enrollment is equal to or greater than forty percent (40%).

(X) Are students demonstrating growth on nationally recognized social emotional standards? Meets standard accountability indicator(s): Evidence supports that the percent of students demonstrating growth on nationally recognized social emotional standards is equal to or greater than forty percent (40%).

(Y) Are students attending individual, small group, and/or guidance counseling sessions? Meets standard accountability indicator(s): Evidence supports that the percent of students participating in counseling session is equal to or greater than forty percent (40%).

(Z) Are students participating in displaying, creating, and/or publishing art opportunities? Meets standard accountability indicator(s): Evidence supports that the percent of students participating, creating, and/or publishing art opportunities is equal to or greater than forty percent (40%).

(AA) Are students participating in extracurricular activities, work study, and/or service learning? Meets standard accountability indicator(s): Evidence supports that the percent of students participating in extracurricular activities, work study, and/or service learning is equal to or greater than forty percent (40%).

(BB) Are students completing required individual career academic plan (ICAP) activities? Meets standard accountability indicator(s): Evidence supports that the percent of students completing requires ICAP activities is equal to or greater than forty percent (40%).

(CC) Are students participating in life skill activities that extend beyond the curriculum, put relevant life skills into practice, and promote healthy living? Meets standard accountability indicator(s): Evidence supports that the percent of students participating in life skills activities is equal to or greater than forty percent (40%).

(2) Oklahoma performance measures will be used to assess the school's fiscal viability, audit findings, financials, regulatory reporting, and compliance with all applicable statutes, laws and regulations. Financial performance accountability indicators and measurements in each category are listed below.

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(A) Did the school's most recent annual financial statement audit have findings? Meets standard accountability indicator(s): There were no findings of significant deficiencies, material noncompliance, or known fraud on the school's most recent independent financial audit.

(B) Did the most recent annual report on internal control over financial reporting disclose any significant or material deficiencies? Meets standard accountability indicator(s): There were no findings of significant deficiencies, material weaknesses or instances of noncompliance on the most recent annual report on internal control over financial reporting.

(C) Did the school consistently submit appropriate quarterly financial reports to the Statewide Virtual Charter School Board over the most recent year? Meets standard accountability indicator(s): Appropriate reports were submitted in the Oklahoma Cost Accounting System (OCAS) format, verified by the school treasurer, on time, and indicating financial stability of the school.

(D) Was the school subject to an audit by the State Auditor and Inspector and, if so, were there any findings? Meets standard accountability indicator(s): There were no findings of significant deficiencies, material noncompliance or known fraud on the school's most recent audit by the State Auditor and Inspector.

(E) Did the school consistently meet financial reporting expectations over the most recent year, as required by the State Department of Education and confirmed by the Office of Financial Accounting, and Oklahoma Cost Accounting System (OCAS), Audits? Meets standard accountability indicator(s): The State Department of Education confirms financial reporting expectations were fulfilled over the most recent year.

(F) Was the school's most recent fiscal year OCAS data submitted to the State Department of Education, properly certified by the school leader, and accepted by the State Department of Education? Meets standard accountability indicator(s): The school submitted OCAS data for the most recent fiscal year to the State Department of Education, certified by the school leader, and accepted State Department of Education.

(G) Did the school submit timely the most recent annual financial statement audit to the State Department of Education? Meets standard accountability indicator(s): The school submitted timely the most recent financial statement audit to the State Department of Education.

(H) Did the State Department of Education require a corrective action plan as part of their follow-up to the financial statement audit submission? Meets standard accountability indicator(s): No corrective action plan was required in the response from the State Department of Education to the most recently submitted annual financial statement audit.

(I) If a corrective action plan was required by the State Department of Education, did the plan sufficiently address the issues and was the plan accepted by the State Department of Education? Meets standard accountability indicator(s): The corrective action plan required by the State Department of Education sufficiently addressed the issues and was accepted by the State Department of Education.

(J) If a corrective action plan was required by the State Department of Education for the prior fiscal year, can it be confirmed that the corrective action measures were followed in the most recent fiscal year? Meets standard accountability indicator(s): The corrective action plan required by the State Department of Education for the prior fiscal year was followed by the school in the most recent fiscal year.

(K) Did the school have a negative fund balance at the end of the most recent fiscal year? Meets standard accountability indicator(s): The school did not have a negative general fund balance as of the end of the prior fiscal year.

(L) Did the Days Cash on Hand ratio fall below thirty (30) days during the fiscal year? Meets standard accountability indicator(s): Evidence supports that the school maintained a Days Cash on Hand ratio of thirty (30) days or more at the end of each fiscal quarter.

(M) Did the school fail to pay any commitments, warrants, or debts? Meets standard accountability indicator(s): Evidence supports the school paid all commitments, warrants, and debts.

(N) Did the school maintain a fund balance of greater than ten percent (10%) of the prior fiscal year's total expenditures? Meets standard accountability indicator(s): Evidence supports that the school maintained a fund balance greater than ten percent (10%) of the prior fiscal year's total expenditures measured at the end of each fiscal quarter.

(O) Is the school's enrollment (average daily membership) for the first nine (9) weeks greater than or equal to eighty-five percent (85%) of last year's enrollment? Meets standard accountability indicator(s): The first quarter statistical report indicates enrollment did not decline by more the fifteen percent (15%) in comparison to the end of year enrollment from the prior year.

(P) Does the school's governing board review periodic financial statements including a statement of financial position (balance sheet), statement of activities (income statement), and statement of cash flows? Meets standard accountability indicator(s): Evidence supports that the governing board reviews the school's periodic financial statements at the public governing board meetings.

(Q) Does the school's governing board review and approve changes to the budget as significant changes to revenues and expenditures occur? Meets standard accountability indicator(s): Evidence supports that

the school's governing board reviews and approves changes to the budget at the public governing board meetings throughout the year as revenues and expenditures change significantly.

(R) Does the school's governing board review financial forecasting models prior to annual budget adoption? Meets standard accountability indicator(s): Evidence supports that the school's governing board participates in annual review of financial forecasting prior to budget adoption during a public governing board meeting.

(S) Does the school's governing board review the audited financial statements and address all findings? Meets standard accountability indicator(s): Evidence supports that the school's governing board reviews the audited financial statements and addresses all findings in a public governing board meeting.

(3) Oklahoma performance measures will be used to assess the school's organizational performance including organizational structure, governance, record of compliance, attendance, recurrent enrollment, accreditation, and student support. Organizational performance accountability indicators and measurements in each category are listed below.

(A) Is the school faithful to its mission and implementing key design elements within the approved charter contract? Meets standard accountability indicator(s): Evidence supports faithfulness to the school's mission and implementation of key design elements of school.

(B) Does the school follow appropriate procedures to ensure all students have equitable access to services and opportunities for success? Meets standard accountability indicator(s): Data confirms appropriate procedures to ensure student access and equity. Examples of data include, but not limited to, an equity committee; an equity audit of policies, procedures, culture, instruction, professional learning, and stakeholder perceptions and goals related to equity, inclusion, anti-racism, and identity safety; and an equity plan and policies.

(C) Does the school have approved and appropriate policies and procedures that ensure student and staff safety and success, and does the school communicate those policies and procedures to students/families and staff? Meets standard accountability indicator(s): Evidence supports approved and appropriate policies and procedures are implemented and communicated.

(D) Does the school adhere to applicable state and federal laws and regulations? Meets standard accountability indicator(s): Evidence supports the school adheres to state and federal laws and regulations.

(E) Does the school adhere to the terms of the charter contract? Meets standard accountability indicator(s): Evidence supports the school adheres to the charter contract.

(F) Does a stable governing board exist? Meets standard accountability indicator(s): Evidence supports history of board stability exists.

(G) Does the governing board recruit, select, orient, and train members with skills and expertise to enable them to govern the school appropriately? Meets standard accountability indicator(s): Board agendas and minutes document board member activities.

(H) Does the charter school comply with the Open Meeting Act and Open Records Act? Meets standard accountability indicator(s): Evidence supports the charter school consistently complies with requirements of the Open Meeting Act and Open Records Act.

(I) Does the charter school provide transparency through Statewide Virtual Charter School Board access to school records? Meets standard accountability indicator(s): The charter school has provided the Statewide Virtual Charter School Board with all requested school records.

(J) Does the educational management organization provide transparency through Statewide Virtual Charter School Board access to school records? Meets standard accountability indicator(s): The educational management organization has provided the Statewide Virtual Charter School Board with all requested school records.

(K) Did the school consistently meet the reporting expectations as required by the State Department of Education? Meets standard accountability indicator(s): The State Department of Education confirms reporting expectations fulfilled.

(L) Did the school consistently meet the reporting expectations as required by the Statewide Virtual Charter School Board? Meets standard accountability indicator(s): Reporting expectations fulfilled as required - ninety percent (90%) or above in both on-time and accuracy categories.

(M) Does the school website meet the standards for transparency and documentation as mandated by the Oklahoma School District Transparency Act and requested by the Statewide Virtual Charter School Board? Meets standard accountability indicator(s): The school has consistently met requirements for school website as mandated by the Oklahoma School District Transparency Act and requested by the Statewide Virtual Charter School Board.

(N) Did the school receive accreditation from the State Department of Education? Meets standard accountability indicator(s): The school received accreditation with no deficiencies noted from the State Department of Education

(O) Does the school meet the expectations for student attendance? Meets standard accountability indicator(s): Evidence supports the school met State expectations for student attendance.

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(P) Does recurrent enrollment of students meet expectations? Meets standard accountability indicator(s): The school's student recurrent enrollment rate meets the expectations indicated by the methodology used for public schools in Oklahoma.

(Q) Does the school provide support structures for students and families that are accessible twenty-four (24) hours per day and seven (7) days per week, such as teacher support, individualized learning plans, guidance/counseling program, online tutoring, and technical support? Meets standard accountability indicator(s): Students and families have access to multiple support structures twenty-four (24) hours per day and seven (7) days per week.

(R) Does the school and governing board engage in strategic planning that results in establishment of school goals and verifiable school improvement? Meets standard accountability indicator(s): Evidence supports that the school and governing board engage in strategic planning resulting in establishment of school goals and verifiable school improvement.

(4) A Performance Framework Index will be calculated based on the following categories:

(A) Academic (A) Calculation - (Score) \* (Weight) = A with a weight of 40%.

(B) Financial (F) Calculation - (Score) \* (Weight) = F with a weight of 35%.

(C) Organizational (O) Calculation - (Score) \* (Weight) = O with a weight of 25%.

(D) According to 70 O.S. § 3-137, Performance Framework scores will guide reauthorization procedures.

(i) A Performance Framework Index (PFI) score of 75% or higher calculated over the course of the charter contract term will result in renewal of authorization for a five (5) year term should the governing board of the charter school choose to submit a letter requesting reauthorization.

(ii) A Performance Framework Index (PFI) score of 60-74% or higher calculated over the course of the charter contract term is expected. However, an application for renewal of authorization is required for consideration by the Statewide Virtual Charter School Board.

(iii) A Performance Framework Index (PFI) score of less than 60% calculated over the course of the charter contract term places the charter school at risk of non-approval of the renewal for authorization. An application for reauthorization is required for consideration by the Statewide Virtual Charter School Board.

(E) In the event data is not available, the Statewide Virtual Charter School Board will designate corresponding score with "Not Applicable".

**(de) Submission of school data.** To aid the Statewide Virtual Charter School Board in assessing whether the schools are meeting the expectations of the performance framework, schools are required to submit school data to the Statewide

Virtual Charter School Board through an online data collection system.

(1) Schools must submit the requested documentation according to the instructions for the submission by the due date indicated in the online data collection system:

(A) Current charter contract and any amendments;

(B) Management contracts;

(C) Lease/purchase agreements;

(D) Annual budget;

(E) Audit documents (audit, response, corrective action);

(F) School performance review report response;

(G) ~~Annual report on school's mission and key design elements and performance indicator data; of school report and evidence of implementation;~~

(H) ~~College preparation coursework report; College and career readiness report, including, but not limited to, individual career academic plans, college preparation coursework, college remediation data, dual (concurrent) college enrollment, military service commitments, internships, and industry certification and career technology programs;~~

(I) ~~Career technology programs report; Annual evaluation of each educational management organization providing services to the governing body or school;~~

(J) Senior graduation report;

(K) Current inventory report;

(L) Quarterly financial statements;

(M) ~~Handbooks (student family Student/family handbook, employee Employee-handbook, other handbooks);~~

(N) School calendar;

(O) Student support documentation;

(P) Internal assessment plan;

(Q) ~~School policies (including, but not limited to, attendance, employment, enrollment/lottery, finance and procurement, code of ethics, and conflict of interest);~~

(R) Current governing board rosters, including personal contact information;

(S) Insurance verification;

(T) ~~Enrollment counts (initial, August 1 for year one (1) schools; first day of school, monthly, and final for all schools);~~

(U) Surety bond verification;

(V) Accreditation application and status;

(W) First Quarter Statistical Report summary;

(X) ~~Board meeting calendar, agendas, approved minutes and supporting board meeting documents;~~

(Y) ~~Board meeting agendas and all supporting board meeting documents submitted prior to the board meeting; Plan for Improvement (if applicable);~~

(Z) ~~Final state aid and federal allocations Board meeting approved minutes;~~

(AA) ~~ACT Profile Report Final state aid and federal allocations;~~

- (BB) ~~Military service report~~ Revenue and Expenditure Report;
- (CC) Four (4) year cohort and extended-year graduation rate documents;
- (DD) Annual Statistical Report summary;
- (EE) Strategic planning documents;
- (FF) Oklahoma School Testing Program (OSTP) documentation;
- (GG) Child counts;
- (HH) Enrollment file;
- (II) Estimate of Needs (if applicable);
- (JJ) Supplemental Estimate of Needs (if applicable);
- (KK) School, governing board, and/or educational management organization litigation ~~Litigation~~-documents;
- (LL) State accountability report;
- (MM) School organizational chart;
- (NN) ~~Comprehensive Exit Report;~~ End of fiscal year student exit status report;
- (OO) Current by-laws;
- (PP) Final Employee Compensation Report;
- (QQ) College remediation data;
- (RR) School District Budgeting Act (SDBA) Budget Summary and Budget Message (if applicable);
- (SS) SDBA public hearing documentation and published notice (if applicable);
- (TT) Shared Services Agreements (if applicable);
- (UU) Monthly and all other state aid funding reports;
- (VV) Final OSTP Participation Report.
- (WW) ACT Profile Report; and
- (XX) Plan for Improvement (if applicable).
- (RR) ~~Revenue and Expenditure Report~~

(2) In the event submission through the online system is not possible, the school must hand-deliver hard-copy documentation to the office of the Statewide Virtual Charter School Board by the due date.

(3) Failure to submit the documentation is grounds for termination of the contract if not cured within thirty (30) calendar days of the deadline.

(4) Receipt of document submissions does not necessarily indicate approval of the content of the data.

(e) **School website compliance.** In order to aid in transparency, charter schools sponsored by the Statewide Virtual Charter School Board will be subject to website compliance checks at any time. ~~The—Each school~~ school shall must maintain a website in compliance with 70 O.S. § 5-135.4 and 74 O.S. § 24-3106.2 with have the following information available ~~on its website:~~

- (1) Governing board members (board member information, and office held if any);
- (2) Schedule of governing board meetings as submitted to the Oklahoma County Clerk;
- (3) Board meeting agendas;
- (4) Board meeting approved minutes;
- (5) School accountability reports; ~~and~~

(6) Financial documents or a link to the Oklahoma Cost Accounting System (OCAS), in compliance with Oklahoma statute;

(7) Total compensation package of the superintendent;

(8) Virtual charter school Attendance Policy, in compliance with Oklahoma statute; and

(9) Most recent audit in compliance with Oklahoma statute.

(f) **School orientation.** Each statewide virtual charter school shall develop a student orientation that must be completed by each student prior to final enrollment in the school. The school shall maintain a record of completion of orientation by each student. The orientation shall contain, at a minimum, the following components:

(1) Enrollment requirements;

(2) Daily schedule and work expectations;

(3) School policies, including student engagement and attendance requirements;

(4) Student and Family Handbooks;

(5) Communication streams (website, school and teacher connection, school administration and governing board contact);

(6) Academic expectations;

(7) Assessment requirements;

(8) Social expectations;

(9) Technology management;

(10) Academic program management;

(11) Student support programs and services; and

(12) Programs specific to the school.

(g) **Annual audits.** The virtual charter schools shall change audit firms, at a minimum, every three (3) years to ensure annual audits are completed by at least two (2) different firms over the term of the charter contract. If the term of the charter contract is less than five (5) years, the school shall change audit firms at least every two (2) years, or otherwise, to ensure annual audits are completed by two (2) different firms over the term of the charter contract.

(h) **Compliance audits.** In addition to the annual financial audits, the virtual charter schools authorized by the SVCSB shall be subject to compliance audits conducted by the SVCSB at any time during the charter contract term.

**777:10-3-5. Full-time virtual charter schools - succession of contractual rights and reversion of property to Statewide Virtual Charter School Board**

(a) **School Closure Process.** Final school closure determination may be made as the result of voluntary or involuntary school closure decisions. This includes a decision of the charter school governing board to close the school, nonrenewal of a charter contract, or termination of a charter contract. In the event of a voluntary closure by the school, the final closure determination occurs as of the date the charter school governing board votes to close the school. In the event of an involuntary closure of the school, the final closure determination occurs as of the date the final order is issued by the SVCSB. Once a final closure determination is made the SVCSB will appoint a Closing Officer to provide oversight of school closure. Oversight

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responsibilities include management of the operational process of charter school closure and ensured continuation of appropriate educational services and transfer process for students and families, and ensure the governing board of the charter school continues to meet as necessary to take actions needed to wind down school operations, manage school finances, allocate resources and facilitate all aspects of closure. Under the oversight and with the support of the Closing Officer, the charter school is responsible for completing the tasks required for the closing of the school in a legal and orderly manner while continuing to operate the school and provide academic and other services to students and families. With the exception of the cost of the SVCSB Closing Officer, all expenses of school closure will be provided for through charter school funds. These include, but are not limited to, the expense of contracted expertise such as accountants and auditor, general supplies and postage, and auction costs. The following School Closure Protocol will be implemented ten (10) business days after the final order is issued, and may be stayed by the Statewide Virtual Charter School Board in the event of a request for reconsideration or rehearing:

- (1) Within ~~two (2)~~ fourteen (14) calendar ~~days~~ weeks:
  - (A) The Closing Officer meets with the school's Chief Administrative officer and the Governing Board President to provide information regarding the school closure process and expectations.
  - (B) A special meeting of the charter school governing board will be called for to establish a Transition Team composed of school staff, applicant staff, and others designated by the applicant who will attend to the tasks and responsibilities of school closure on behalf of the school.
  - (C) The SVCSB issues a media release appropriate for public notification of charter school closure.
  - (D) A temporary hold will be placed on all state and federal funding.
  - (E) Notification of school closure determination is submitted to the Oklahoma State Department of Education (OSDE) including name of school, date of action, effective date of closure, criteria for closure determination, closure process information, and location of student and personnel records. Request name and contact information for OSDE representative for communication purposes and for assistance with closure. Similar notification also sent to the Oklahoma Teachers Retirement System (if applicable), State Treasurer, and State Auditor.
  - (F) Notification is made to parents of enrolled students regarding school closure determination including name of school, date of action, effective date of closure, and expected future communication to parents.
  - (G) Notification to school staff regarding school closure determination including name of school, date of action, effective date of closure, and expected future communication to school staff.
- (2) Once a Transition Team is established, the following should occur within thirty (30) days:

(A) The Closing Officer and Transition Team will establish a written student transfer plan including the steps required for the transfer of students and student records and the security of those records.

(B) The Closing Officer and Transition Team will contact Oklahoma school districts regarding charter school closure.

(C) The Closing Officer and Transition Team will establish a written plan for ongoing communication with families. This plan will include communication through closure process and a final report of school closure to charter school families. A list of all students/families will be generated and maintained to include student name, parent name, address, telephone, email, grade level, and school district of residence.

(D) The Closing Officer and Transition Team will establish a written plan for ongoing communication with staff. This plan will include the initial communication of school closure, follow-up communication as needed, and a final report of school closure to charter school staff. A list of all staff will be created to include name, position, address, telephone, email. Notification includes information regarding closure determination, closure date, personnel records, and benefits.

(E) The Closing Officer and Transition Team will secure all financial and personnel records. In addition, Closing Officer and Transition Team will identify all agencies, employees, insurers, contractors, creditors, debtors, grantors, and management organizations. The statewide virtual charter school shall provide the Statewide Virtual Charter School Board with executed copies of all of the following documents:

- (i) A detailed list of all real and/or personal property and other assets procured by the charter school during the term of the contract that includes identification of all sources of funds used to procure the property. All items procured all or in part with state, local or federal funds shall be clearly identified.
- (ii) Title documents, deeds, and/or leases for all real or personal property or other assets procured all or in part with state or federal funds.
- (iii) Copies of all executory contracts to which the charter school or its governing body is a party.
- (iv) All documentation relating to debt, liabilities, encumbrances, or other obligations incurred by the charter school and/or the governing body of the charter school during the term of the sponsorship contract.
- (v) The Closing Officer and Transition Team Chair will ensure a complete financial accounting. A financial plan for school closure will be established. The Closing Officer may include other financial experts on behalf of the SVCSB to assist with the process. Financial Plan must ensure only



- essential invoices and regular salaries paid, all vendor refunds received, and the immediate collection of all credit cards and closing of accounts.
- (vi) All assets will be inventoried. Inventory shall include name of asset, quantity, estimated value, and location of property. Assets include, but are not limited to, property, furnishings, technology, books, supplies, and equipment.
  - (vii) All assets will be confirmed by the Closing Officer and Transition Team. Within forty-five (45) business days of a final closure determination date, the charter school assets may be liquidated and funds used to satisfy remaining school debt. Otherwise the sponsor may dispose of remaining school property as deemed appropriate and retaining any remaining funds.
- (3) Prior to final closeout, the charter school shall complete all federal, state, and local obligations on behalf of school employees as governed by Federal and State Statute and regulations; including, but not limited to, the following:
- (A) File all final federal, state, and local employer payroll tax returns and issue final W-2s and Form 1099s by the statutory deadlines.
  - (B) File the Federal Notice of Discontinuance with the Department of Treasury.
  - (C) Make final federal tax payments.
  - (D) File the final withholding tax return.
  - (E) File the final return with the IRS.
  - (F) Complete all tax requirements of the State of Oklahoma.
  - (G) Provide employees with notices and pamphlets required under applicable state and federal law.
- (4) Within thirty (30) business days of school closure, all school records, including, but not limited to, student, personnel and financial records are received and secured by the SVCSB or the State Department of Education (SDE).
- (5) Within forty-five (45) business days of school closure, a final school closure audit will be conducted and provided to the SVCSB. A copy of the audit will be presented to the State Superintendent of Public Instruction, and all fiscal balances of the charter school will be retained by the charter school authorizer.
- (6) The Statewide Virtual Charter School Board shall have forty-five (45) calendar days after the date of delivery of all of the documents set forth in (3) of this subsection to request any additional documentation from the charter school the Board deems necessary to determine the assets and liabilities of the statewide virtual charter school.
- (7) The Closing Officer will report school closure progress to the SVCSB at each regular meeting through the school closing transition period.
- (8) Upon completion of school closure, a final report from the Closing Officer will be presented to the Statewide Virtual Charter School Board.
- (9) All personal property of the charter school reverting to the Statewide Virtual Charter School Board in

accordance with the provisions of 70 O.S. 3-136 and this Section shall be delivered to the Board no later than sixty (60) calendar days after the School Closure Date in the manner and to the location(s) directed by the Board.

(10) The Chairman of the Statewide Virtual Charter School Board is authorized to execute conveyances and documents on behalf of the Board as necessary to fulfill the requirements of this subsection.

(b) **School district contracts for sponsorship of full-time virtual charter schools.** In accordance with the provisions of 70 O.S. 3-145.5, the following provisions shall apply to school district contracts for sponsorship of charter schools who provide full-time virtual education:

(1) Contracts for sponsorship of a full-time virtual charter school. Beginning July 1, 2014, no school district shall:

(1A) Offer full-time virtual education to any student whose legal residence, as determined in accordance with the provisions of 70 O.S. § 1-113, is located outside of the boundaries of the school district; or

(2B) Enter a contract to provide full-time virtual education to any student whose legal residence, as determined in accordance with the provisions of 70 O.S. § 1-113, is located outside of the boundaries of the school district.

(2) ~~Succession of contracts for school district sponsorship of a virtual charter school executed prior to January 1, 2014.~~ Beginning July 1, 2014, the Statewide Virtual Charter School Board shall succeed to the contractual sponsorship rights of any school district that executed a contract for sponsorship of a charter school prior to January 1, 2014. Contract succession shall be conducted in accordance with all of the following procedures:

(A) ~~No later than July 1, 2014, the charter school shall provide the Statewide Virtual Charter School Board with all of the following documents:~~

(i) ~~All of the documentation set forth in (a)(3) through (a)(4) of this Section;~~

(ii) ~~Copies of all reports, documents, and statements required by the Oklahoma Public School Audit Law, for all previous fiscal years of the charter school's operation; including, but not limited to, auditor's opinions and related financial statements of the charter school; and~~

(iii) ~~Copies of the charter school's annual estimate of needs, and income and expenditure data required by 70 O.S. §§ 5-135 and 5-135.2 for all previous fiscal years of the charter school's operation.~~

(B) ~~The terms of succession to the contract for sponsorship by the Statewide Virtual Charter School Board shall be as follows:~~

(i) ~~The Statewide Virtual Charter School Board shall not succeed to any terms of a contract for sponsorship executed between a charter school and a school district that violates or conflicts with the Oklahoma Charter Schools Act and/or any state or federal laws and regulations applicable to charter schools, charter school sponsors, or the~~

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~~Statewide Virtual Charter School Board. In the event that any such statute or regulation goes into effect during the term of the contract, the conflicting contractual term shall be deemed superseded by law and deemed null and void.~~

~~(ii) Any debt, obligations, encumbrances, and/or liabilities incurred by the charter school in violation of the provisions of Art. 10 § 26 of the Oklahoma Constitution shall be deemed null and void, and shall not be assumed by the Statewide Virtual Charter School Board.~~

~~(iii) The Statewide Virtual Charter School Board may require the statewide virtual charter school to execute an addendum to the contract for sponsorship for the purpose of clarifying terms not otherwise addressed in the existing contract as necessary to comply with the Oklahoma Charter Schools Act or any other provision of state or federal law applicable to charter schools.~~

~~(C) The Statewide Virtual Charter School Board shall not distribute any state aid funds to a statewide virtual charter school pursuant to the provisions of this subsection until all of the following conditions have been met:~~

~~(i) All appropriate conveyances and other documents necessary to effect the transfer of any property associated with the contract have been finally executed by the parties and copies of the finally executed documents have been filed with the Statewide Virtual Charter School Board;~~

~~(ii) All property, equipment, supplies, records, and assets required to be transferred to the Statewide Virtual Charter School Board in accordance with the provisions of 70 O.S. § 3-145.5(B) has been delivered in the manner and to the location(s) directed by the Board;~~

~~(iii) The charter school is in compliance with all applicable state and federal regulations pertaining to charter schools; and~~

~~(iv) All other requirements of this paragraph have been met.~~

~~(D) The Statewide Virtual Charter School Board shall not distribute midyear allocation funds to a statewide virtual charter school that is a party to a contract for sponsorship assumed by the Statewide Virtual Charter School pursuant to the provisions of this subsection until:~~

~~(i) The statewide virtual charter school has conducted a final audit of the charter school for fiscal year 2014 that complies with the Oklahoma Public School Audit Law at 70 O.S. § 22-101 et seq and accompanying regulations;~~

~~(ii) Copies of the auditor's opinions, related financial statements, and any other documentation pertaining to the audit have been provided to the Statewide Virtual Charter School Board; and~~

~~(iii) The charter school has presented the audit at a meeting of the Statewide Virtual Charter School Board.~~

~~(E) Succession to the contractual rights and responsibilities of sponsorship by the Statewide Virtual Charter School Board shall not qualify the charter school to apply for funds from the Charter School Incentive Fund established pursuant to the provisions of 70 O.S. § 3-144, nor shall the first year of operation under the sponsorship of the Board be considered the charter school's first year of operation.~~

~~(F) The Chairman of the Statewide Virtual Charter School Board is authorized to execute conveyances and documents on behalf of the Board as necessary to fulfill the requirements of this subsection.~~

~~(c) **Termination or nonrenewal for good cause.** Failure by any charter school to comply with the provisions of this Section shall constitute good cause for:~~

~~(1) Termination or nonrenewal of a contract for sponsorship with the Statewide Virtual Charter School Board; and/or~~

~~(2) Denial of any application for sponsorship subsequently submitted by the charter school and/or authorized representatives of the charter school, including, but not limited to, the governing body of a charter school.~~

## SUBCHAPTER 5. STATEWIDE VIRTUAL CHARTER SCHOOL FACILITIES

### 777:10-5-3. Statewide virtual charter school sites

~~(a) **Face-to-face instruction.** No statewide virtual charter school or employee of the statewide virtual charter school shall provide face-to-face instruction to any charter school student unless the instruction occurs at either:~~

~~(1) The legal residence of a student or the parent/legal guardian of a student; or~~

~~(2) A site as defined in 777:10-1-2 facility approved as a charter school site of the statewide virtual charter school in which the student is enrolled; or~~

~~(b) **Approval of statewide virtual charter school sites.** The Board may approve a charter school site if the following conditions have been met:~~

~~(1) The statewide virtual charter school submits an application at least sixty (60) days prior to beginning face-to-face instruction at the facility;~~

~~(2) The A public facility that complies with all federal and state statutes and regulations governing safety that are applicable to public school facilities; and~~

~~(3) The facility has been approved by the State Department of Education Office of Accreditation.~~

~~(c) **Reporting of approved statewide virtual charter school sites.** No later than July 1 prior to each school year, each statewide virtual charter school shall provide the State Department of Education with a list of all approved statewide virtual charter school sites. A statewide virtual charter school shall not be eligible to obtain funding for instruction provided at any statewide virtual charter school site not approved and~~

reported in accordance with the provisions of this Section and all other applicable statutes and regulations pertaining to charter school facilities.

(d) ~~Transportation supplement funding. A statewide virtual charter school shall not be eligible to receive transportation supplement funding for transportation to a statewide virtual charter school site in accordance with the provisions of 70 O.S. § 3-141 for any school year without a written transportation plan approved by the Statewide Virtual Charter School Board. The statewide virtual charter school shall submit its approved transportation plan to the State Department of Education Office of State Aid no later than July 1 prior to the school year for which the transportation plan has been approved.~~

[OAR Docket #22-502; filed 6-28-22]

**TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD CHAPTER 15. OKLAHOMA SUPPLEMENTAL ONLINE COURSE CERTIFICATION**

[OAR Docket #22-503]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 777:15-1-1 [AMENDED]
- 777:15-1-3 [AMENDED]
- 777:15-1-5 [AMENDED]
- 777:15-1-6 [AMENDED]
- 777:15-1-7 [AMENDED]
- 777:15-1-9 [AMENDED]

**AUTHORITY:**

Statewide Virtual Charter School Board; 70 O.S., §§3-145 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 17, 2021

**COMMENT PERIOD:**

December 16, 2021 through January 21, 2022

**PUBLIC HEARING:**

February 8, 2022

**ADOPTION:**

March 11, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 17, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- 777:15-1-1 [AMENDED]
- 777:15-1-3 [AMENDED]
- 777:15-1-5 [AMENDED]
- 777:15-1-6 [AMENDED]
- 777:15-1-7 [AMENDED]
- 777:15-1-9 [AMENDED]

**Gubernatorial approval:**

July 19, 2021

**Register publication:**

38 Ok Reg 894

**Docket number:**

21-698

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These proposed rule changes include clean-up language; removing unnecessary language regarding vendor contracts; removing course syllabus requirement; adding language regarding third party reviews of courses; removing outdated language.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**777:15-1-1. Purpose**

The Statewide Virtual Charter School Board (SVCSB) makes publicly available a list of supplemental online courses which it has reviewed and/or certified to ensure that the courses are high quality options and are aligned with the subject matter standards approved by the State of Oklahoma. In conjunction with the Office of Management and Enterprise Services (OMES), the SVCSB negotiates with online course providers to offer a state rate price to school districts for supplemental online courses. These rules have been adopted for the purpose of implementing policy and procedures pursuant to Oklahoma Statute Title 70, Section 3-145.3.

**777:15-1-3. Application for course certification**

(a) To have a course(s) listed in the Oklahoma Online Course Catalog, Course Providers must first be approved as vendors through the Oklahoma Management and Enterprise System (OMES) and enter into a contract with the state. ~~Potential vendors must respond to the Request for Proposals (RFP) released by the SVCSB through OMES and provide all required documentation according to the deadline listed in the RFP solicitation.~~

(b) ~~Once the solicitation period has closed, online provider is registered as a state vendor, OMES and the SVCSB will negotiate and enter into a contract with the approved vendor to provide online courses at a state rate all submitted materials will be reviewed for compliance by the SVCSB and OMES. Entities meeting the minimum criteria established in the RFP will be approved as vendors for the State of Oklahoma.~~

**777:15-1-5. Course review requirements**

(a) Online Course Providers must supply the following at the time of course review:

- (1) The name of the institution or organization providing the online content;
- (2) Course title and subject code (using appropriate course title and subject code as established by the Oklahoma State Department of Education's approved Subject Codes for the appropriate academic year);
- (3) Number of students who may be admitted to the course per instructor;

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- (4) Explanation of the alignment between Oklahoma content standards and course content and assignments;
- (5) Protocols established to monitor student engagement and course progression, including guidelines to address non-responsive students;
- (6) Description of procedures for reporting students' course progression, grade and other student information to the local school district;
- (7) Instructor credentials and qualifications; and
- (8) Course NCAA eligibility status. Recognition of course by external entity (e.g., NCAA, College Board Authorized, AdvanceED certification); and
- (9) Course syllabus that includes:

- (A) course title;
- (B) course description;
- (C) course credits;
- (D) objectives that clearly state, in measureable terms, what the students will know or be able to do at the end of the course;
- (E) assignments/assessments;
- (F) instructional strategies and student expectations, including any synchronous attendance requirements;
- (G) time requirements;
- (H) grading policy;
- (I) contact policies for communication between teacher and students and teacher and parents;
- (J) resources and materials required;
- (K) technology requirements, including the Learning Management System (LMS) utilized;
- (L) accommodation and accessibility statement; and
- (M) course outline (i.e. list of units/modules in sequential order).

(b) At the time of the course review, guest access to the course will be required for the reviewers. If substantive changes are made to a course since its last certification, it must be submitted for review regardless of its current status in the review cycle. Substantive changes would include altering the intended course outcomes, significantly changing instructional strategies or assessment protocols used in the course as a whole, or any revision that impacts standards alignment. Only courses certified (or pending review) by the Statewide Virtual Charter School Board will be accepted into the Oklahoma Online Course Catalog.

(c) Course Providers whose courses have undergone review and approval by a recognized third-party entity must provide the results of those reviews. Depending on the results of the external review, a course may be recommended for state certification with no additional review or with a modified review process (e.g. review only for alignment to state standards).

(ed) Course Providers of Advanced Placement (AP) courses must provide the results of their College Board AP Course Audit and Authorization. No other course evaluation will be conducted for AP Courses. If a course is authorized by the College Board as an AP course, it is automatically listed as "state-certified" in the Oklahoma Online Course Catalog.

Online Providers must provide evidence annually of AP Authorization Renewal.

### **777:15-1-6. Course review and certification process**

(a) All approved vendors will have the online courses they submitted ~~as part of the RFP published on the OSOCP website in the Oklahoma Online Course Catalog~~ and reviewed according to the schedule adopted by the SVCSB.

(b) Course reviews will be conducted by content experts and pedagogical experts selected by the SVCSB. Courses will be evaluated using rubrics to determine alignment with the current academic standards approved by the State of Oklahoma (or nationally/ internationally accepted content standards set for courses whose content is not included in state standards) and national standards for quality in online course design, the International Association for K-12 Online Learning (iNACOL) National Standards for Quality Online Courses. The rubric published in the most current National Standards for Quality Online Courses will be used as part of the Course Review, along with a rubric to measure the presence of each of the academic standards for the content area. Course Providers whose courses have undergone review and approval by a recognized third-party entity must provide the results of those reviews. Depending on the results of the external review, a course may be recommended for state certification with no additional review or with a modified review process (e.g. review only for alignment to state standards). Online Course Providers of Advanced Placement (AP) courses must provide the results of the AP Course Audit and Authorization. No other course evaluation will be conducted for AP Courses. Online Providers must provide evidence annually of AP Authorization Renewal.

(c) If results of the initial review suggest that a course will not be recommended for certification, the Course Provider will be contacted with the review results and will have fifteen (15) calendar days to revise material or provide additional information pertinent to the review. These revisions will be examined by the course reviewers and, if appropriate, the rubric scores will be modified. Once the course review is complete, results of the evaluation will be presented to the Statewide Virtual Charter School Board (SVCSB). The SVCSB will consider the evidence and vote whether to certify or not certify the course. The decision will be made on a simple majority vote. If the SVCSB votes to not certify a course, the course will be removed from the Oklahoma Online Course Catalog and the Course Provider will be notified of the reasons the course was not certified. The Course Provider may revise the course and resubmit for additional Course Review and certification consideration. Resubmitted courses will be reviewed after all submitted courses have undergone an initial review. Courses approved will be certified for a five-year period. After which, Course Providers must apply for renewal. Certified courses will be identified as such and have their course review ratings published in the Oklahoma Online Course Catalog available on the OSOCP website. Courses pending review will be identified as such ~~and have the date of their scheduled review published in the Oklahoma Online Course Catalog.~~

**777:15-1-7. Certified courses remaining in good standing**

(a) To remain in good standing and have a course(s) continuously listed in the Oklahoma Online Course Catalog through the entirety of the approval period, Course Providers agree to:

- (1) Maintain their vendor status.
- (2) Notify the SVCSB of any additions, deletions or changes to certified courses by completing the online form located on the OSOCP website.
- (3) Serve all enrolled students, regardless of number enrolled in a section so that Receiver Districts have reliable course options for students.
- (4) Provide online instructors who are 1) certified in Oklahoma or another state to teach in the content area of the course offered; or 2) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course. Additionally, the Course Provider shall supply certification or applicable credentialing documentation to the SVCSB as part of the course review process and within ten (10) working days upon the hire of any new instructors for any certified course. The Course Provider shall be responsible for such obligation regardless of whether instructors are employees of the Course Provider, independent contractors, or employees of a third-party course vendor. Course Providers shall take all steps necessary to verify the qualifications of non-employee instructors.
- (5) Notify SVCSB in writing within ten (10) working days if for any reason an online instructor no longer meets the requirements to teach a course offered. The name and credentials of the replacement instructor must also be provided at that time.
- (6) Refer only to courses currently certified and listed in the Oklahoma Online Course Catalog as "Statewide Virtual Charter School Board approved."
- (7) Own, secure, and/or maintain licensure and copyright for all courses offered in the Oklahoma Online Course Catalog.
- ~~(8) Maintain a current course syllabus including key information such as examinations requiring proctoring and other supporting information (see syllabus requirements in Course Review Requirements).~~
- (98) Course Providers of Advanced Placement (AP) courses must provide evidence annually of AP Authorization Renewal.
- ~~(109)~~ Refrain from significantly modifying or changing courses without prior notice and approval from the SVCSB. Course Providers shall provide written notice of any planned modification in sufficient detail for SVCSB Course Reviewers to determine whether the course continues to satisfy all requirements. Failure to obtain written approval may result in removal of the course from the approved catalog.
- ~~(110)~~ Ensure that each certified course is maintained throughout the duration that the course is offered and continues to meet the current academic standards approved

by the State of Oklahoma; national standards for quality in online course design ~~the International Association for K-12 Online Learning (iNACOL) National Standards for Quality Online Courses~~; and Oklahoma's Information Technology Accessibility Standards.

~~(111)~~ Employ the appropriate course title and subject code as established by the Oklahoma State Department of Education's approved Subject Codes for the appropriate academic year for the purpose of data collection.

~~(112)~~ Report aggregate student success data to the SVCSB in the requested format and by the timeline set. The SVCSB does not collect individual student information. By August 1 of each year, the Course Provider will report the following aggregate student success data to the SVCSB:

- (A) Total number of unique Oklahoma students;
- (B) Total number of courses taken by Oklahoma students;
- (C) Number of students in each course (both overall number and Oklahoma students); and
- (D) Successful completion rate (number and percent) of each course (i.e. X#/60% of students enrolled in X successfully completed the course). Include both overall rates and Oklahoma-specific rates.

(b) Course providers will be notified if a course(s) is found to be noncompliant and will have fifteen (15) business days after notification to bring the course(s) into compliance. If the course(s) is still noncompliant at the end of this period, the course certification will be revoked and the course will be removed from the Oklahoma Online Course Catalog.

**777:15-1-9. SVCSB responsibilities**

The SVCSB shall:

- (1) Ensure that all courses listed in the Oklahoma Online Course Catalog are reviewed according to the stated requirements.
- (2) Notify the Course Providers of changes in current academic standards approved by the State of Oklahoma; national standards for quality in online course design ~~the International Association for K-12 Online Learning (iNACOL) National Standards for Quality Online Courses~~; and Oklahoma's Information Technology Accessibility Standards, or other standards that prompt the need for course revisions. Such notification is a courtesy and does not negate the responsibility of the Course Providers to maintain currency with regard to these standards.
- (3) Maintain accurate information in the Oklahoma Online Course Catalog.

*[OAR Docket #22-503; filed 6-28-22]*

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## TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #22-557]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Finance

780:10-5-2 [AMENDED]

780:10-5-4 [AMENDED]

Subchapter 7. Local Programs, or Instructional Positions: Application; Student Accounting; Evaluation

780:10-7-1 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, § 14-104, as amended.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 25, 2022

### COMMENT PERIOD:

February 16, 2022 through March 18, 2022

### PUBLIC HEARING:

March 24, 2022

### ADOPTION:

March 24, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The threshold dollar amount for federal audits has changed from \$500,000 to \$750,000. Funding for Business and Industry Services initiatives will no longer only be on a reimbursement basis. Local program applications may be sent electronically and by other means, versus the current requirement for mailing. There is a clarification that some school districts may offer programs for grade 5 students.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 5. FINANCE

### 780:10-5-2. Audits

The Department shall require annual audits of all schools that are subrecipient of funding from this agency. O.S. 70-22-101 thru 113 cited as the "Oklahoma Public School Audit Law" provides specific guidance. The audit staff of

the Oklahoma Department of Career and Technology Education will conduct follow-up reviews of school audits or conduct audits of subrecipients as directed by the State Director. Audit reports which reflect Federal expenditures of ~~\$500,000~~ \$750,000 or more shall be in accordance with the provisions of OMB Circular A-133. Technology Centers governed by the State Board of Career and Technology Education shall adopt the general provisions of the Governmental Accounting Standards Board (GASB) Statement Number 34. Guidance on acceptable deviations from Statement Number 34 will be provided by this Agency.

### 780:10-5-4. Instructional funding

#### (a) Secondary and full-time adult programs in technology centers.

(1) **Formula payments.** The State Board will fund a portion of the cost of instruction and services in accordance with an approved technology center funding formula. The Department shall consider enrollment, number of school sites in the district, number of instructors employed on a full-time basis, transportation, availability of funds, provision of appropriate student services for all students and appropriate state and federal laws in developing the annual technology center funding budget.

(2) **Formula adjustment.** The failure of a technology center to meet minimum standards may result in an adjustment of the funding. In an event of a state revenue failure, may result in an adjustment of funding.

(3) **State mandated salary increases to technology center districts.** When funds are appropriated specifically by the Legislature for state mandated salary increases to instructors and/or staff of technology center school districts, the State Board will provide such funding to the technology center district.

#### (b) Secondary programs in comprehensive schools.

(1) **Budgets.** The State Board will assist local districts in providing for excess costs of CareerTech programs. The Department shall prepare budgets to be approved annually based upon availability of funds and appropriate state and federal laws.

(2) **Program assistance monies.** All approved CareerTech programs shall receive the program assistance monies annually. Pending availability of funds. These monies shall be used to support the additional costs of the CareerTech program limited to the purchase of equipment, instructional delivery and supplies, and staff development.

(3) **Equipment matching funds.** New CareerTech programs will receive equipment matching funds in the first year of operation, if funding is available. If funding is available, matching funds will be provided to existing programs.

(4) **Location of equipment.** Any program equipment purchased with state or federal funds shall remain in the program area for which it is intended.

(5) **Teacher salary supplement.** The Department shall determine annually the amount to reimburse each school district to augment the salary of each teacher. Teachers are required to attend summer conference and

other required teacher professional development per division to receive teacher salary supplement and program assistance.

(6) **Additional salary.** Agriculture Education programs are on a 12 month contract, the department shall determine annually the amount to reimburse each district to augment the salary of each agriculture education 12 month contract teacher.

(7) **Part-time programs.** In order to receive 100 percent funding, a program must be full-time. Any exceptions to the offering of a full-time program shall constitute a reduction in funding. Approved funded programs may not fall below half-time and 50% funding.

(c) **Business and Industry Services.** The Department shall ~~reimburse~~ provide funding for Business and Industry Services initiatives based on the availability of funds and approved by the Department.

(d) **Skills Centers programs.** The Department shall fund Skills Centers programs based on the availability of funds.

(e) **Postsecondary institutions-collegiate.** Funds shall be allocated to postsecondary institutions as set forth in agreements between the State Board and the Oklahoma State Regents for Higher Education or as mandated by P.L. 101-392.

(f) **Apprenticeship.** Local education agencies conducting apprenticeship-related training shall qualify for reimbursement at a rate approved by the Department. Reimbursement shall be based on availability of funds and approval by the Department.

(g) **Work-site learning.** Approved work-site learning activities shall meet the standards established by the Department. Reimbursement shall be based on availability of funds and approval by the Department.

(h) **Reduction in instruction and/or student services due to changes in funding.** The Oklahoma Department of Career and Technology Education may also recommend reduction in instruction and/or student services based upon loss of funding, lack of funding, revenue shortfalls or other changes in funding. The rules dealing with probationary status and reevaluation shall not apply to instruction being considered for closure based upon changes in funding. The State Board shall make the determination for reduction in instruction and/or student services based on economic factors, need, duplication, school to industry articulation, school to postsecondary articulation, student demand, student placement, student completion/retention, performance measures and/or standards and the decision of the Board shall be final.

**SUBCHAPTER 7. LOCAL PROGRAMS, OR  
INSTRUCTIONAL POSITIONS: APPLICATION;  
STUDENT ACCOUNTING; EVALUATION**

**780:10-7-1. Application; approval; contract for programs**

(a) **Local Application for CareerTech Programs.**

(1) **Description.** Any comprehensive school district, technology center or other eligible recipient requesting funds for CareerTech education programs, instructional positions, services and/or activities must submit an annual

Local Application and Assurances of Compliance for Secondary and Full-time Adult Career and Technology Education Programs. Approval and return of the Assurances of Compliance to the Department indicates the school district's intent to form a contract for CareerTech education programs, instructional positions, services and/or activities and comply with all terms set forth in the local application. For comprehensive schools only, this application includes a listing of programs and/or instructional positions.

(2) **Application Dates.** The local application shall be ~~mailed~~ sent from the Department to the superintendent of each comprehensive school district on or around March 1 for the next fiscal year. The local application shall be returned by the deadline indicated on the application.

(3) **Contents.** The local application gives comprehensive school districts the opportunity to verify ongoing programs, request new or expanded programs, or request the deletion or reduction of programs.

(4) **Additions and revisions.** Additions and/or revisions may be made to the Form-2 any time during the fiscal year. Changes or revisions must be sent by the comprehensive school to the Department.

(5) **Special funding.** Any special discretionary funds available for programs or projects shall be awarded on a proposal basis with all eligible recipients being notified. The criteria for selection will be stated in a "Request for Proposals." Selection of funding recipients will be based upon the stated criteria.

(b) **Criteria for approval of secondary and full-time adult programs.** The criteria for approving secondary (grades 6<sup>5</sup> through 12) and full-time adult programs in comprehensive schools and technology centers may all include the following:

- (1) Employment opportunities for completers;
- (2) Availability of students;
- (3) Impact upon other CareerTech offerings;
- (4) Availability of similar programs;
- (5) Facilities and equipment;
- (6) Program priority; and,
- (7) Willingness to follow all CareerTech rules; and
- (8) Availability of funds.

(c) **Contract for CareerTech programs.**

(1) **Description.** All comprehensive school districts approved by the State Board to receive reimbursement for CareerTech secondary programs must submit the signed "Contract for Secondary CareerTech Programs," which includes a listing of programs being funded. Approval and return of the contract and the Salary and Teaching Schedule, as indicated in (3) below, by the school district to the Department indicates the school district's willingness to comply with all terms set forth in the contract.

(2) **Contract dates.** The "Contract for Secondary CareerTech Programs" will be made available from the Department on or around July 15 of the current fiscal year to the superintendent of each comprehensive school district. The contract is to be presented to the local board of education for approval before being returned to the Department by the established date of October 30.

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(3) **Salary and Teaching Information.** The Salary and Teaching Schedule is a part of the contract for CareerTech programs for comprehensive school districts. Comprehensive schools must complete and submit the "Salary and Teaching Schedule" for each CareerTech instructional position in the district. The Salary and Teaching Schedule must be completed to indicate teaching schedule, numbers of students enrolled, teacher salary, beginning and ending date of employment, and expiration date of teacher's certificate. The "Salary and Teaching Schedule" must be submitted by the appropriate individuals by September 30. Technology centers will submit salary information to the Department by October 15.

[OAR Docket #22-557; filed 7-6-22]

## TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 20. PROGRAMS AND SERVICES

[OAR Docket #22-558]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs

780:20-3-1 [AMENDED]

780:20-3-2 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, § 14-104, as amended.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed amendment clarifies that each approved CareerTech STEM program needs an advisory committee, and clarifies what qualifies as a part-time Science, Technology, Engineering and Mathematics (STEM) program.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT CAREERTECH PROGRAMS

### 780:20-3-1. Administration and supervision

(a) **Advisory committee.** Each ~~full-time~~ approved CareerTech program must have an occupational advisory committee that is formally organized and meets at least once annually. The membership of the advisory committee must be diversified with the majority of membership representative of occupations for which the program is training.

(b) **Civil rights compliance.** In order to receive federal funds, local administrators must comply with all civil rights procedures and prohibitions that include, but are not limited to, the following:

(1) **Annual public notification.** All recipients offering CareerTech programs shall, at the beginning of the school year, advise parents, employees, students, and the general public that all occupational opportunities will be offered without regard to race, color, national origin, sex, age, or disability.

(2) **Employment.** Recipients offering CareerTech programs shall not engage in any employment practice that discriminates on the basis of race, color, national origin, sex, age, or disability.

(3) **Accommodations for individuals with disabilities.** Students with disabilities shall be placed in the regular educational environment of any career and technology education program unless it can be demonstrated that the education of the individual with a disability, even with the use of support services, cannot be achieved satisfactorily.

(A) **Support services.** Support services are considered on a case-by-case basis and depend on the functional impact of the individual student's disability on learning and which laws to the student's education. Decisions on what type of support services are to be utilized are a team decision. The team is made up of persons knowledgeable of the student, their disability, the course requirement as well as the local policy and laws.

(B) **Individual needs.** When students with disabilities are enrolled in any career and technology education program, evidence must exist as to how the student's individual needs are being met.

(C) **Participation in and review of IEP/504 Plans.** A representative of the area technology center shall be on the IEP/504 team when enrollment in a career and technology education program is considered to be an appropriate part of the student's IEP/504 Plan. Career and technology education instructors, whether teaching in an area technology center or in a comprehensive school program, shall have access to a



copy of the IEP/504 Plan before the identified student enters the program. State accreditation standards: Part I, Standard III, Support Services, 210:35-11-51 (b). Guidance and counseling services; Part II, Standard III, Support Services, 210:35-13-74 (e).

(D) **Standard IV OAC 210:35-11-31. Program of studies.** Students who have Individualized Education Programs may earn academic credit toward high school graduation for coursework completed in a career and technology education program, provided that state and federal legislation and policies are followed and:

(i) The IEP team documents the specific competencies for the career and technology education program which address the sets of competencies and/or Prior Academic skills required for the academic course and that the course is taught by a highly qualified teacher:

(ii) The IEP is developed with the full participation, as an IEP team member, of a representative from the technology center in which the student will be enrolled:

(iii) The specific course for which the student will receive credit is documented through individualized education program for the student; and,

(iv) The high school and the IEP team monitor the student's progress to assure both the high school and the technology center are meeting the provisions of the IEP, [34CFR300.347]

(E) **Adult 504 Plans.** Students who have provided appropriate documentation of a disability, who have been determined under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act as a qualified individual with a disability in relation to the career and technology education program, and who require necessary accommodations in order to participate in and benefit from career and technology education will have an accommodation plan in place. This plan will be developed by a group of persons knowledgeable about the student, including the student, and will specify the agreed upon services necessary for the student to participate in and benefit from career and technology education.

(F) **Staff Development.** Regular staff development shall include instruction in maintaining confidentiality, modifying instruction, and reviewing and interpreting special needs documents.

(4) **Apprenticeship.** Agreements entered into for the provision or support of apprenticeship training shall not discriminate on the basis of race, color, national origin, sex, age, or disability, and should so state.

(5) **Comparable facilities.**

(A) **Facilities.** Changing rooms, showers, and other facilities provided for CareerTech students of one sex shall be comparable to those provided to CareerTech students of the other sex.

(B) **Nondiscrimination.** CareerTech facilities may not be located, constructed, modified, or renovated in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, age, or disability.

(6) **Financial assistance.** Financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes shall be provided to CareerTech students without regard to race, color, national origin, sex, age, or disability, except where necessary to overcome the effects of past discrimination.

(7) **Printed materials.** Counseling and other printed materials shall be provided to CareerTech students for program selection recruitment, career/employment selection, and promotional activities without regard to race, color, national origin, sex, age, or disability.

(8) **Work-site learning.**

(A) **Nondiscrimination.** Work-site learning opportunities shall be made available to CareerTech students without regard to race, color, national origin, sex, age, or disability.

(B) **Nondiscrimination on the job.** All written agreements between school and employer must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, age, or disability.

(c) **Local administration supervision.** The school administration shall provide program supervision and coordinate the CareerTech program activities as an integral part of the overall educational program in the school.

(d) **Local teacher supervision.** Each CareerTech teacher shall be responsible for providing appropriate activities that will contribute to the development of each CareerTech student according to the student's occupational objective and for conducting and reporting student follow-up upon exit from or completion of the program.

(e) **Cooperative programs.**

(1) **Cooperative education.** The cooperative method of education is a joint effort between the school system and business and industry.

(2) **Supervision of students.** Schools offering cooperative CareerTech programs shall provide adequate time for teacher-coordinators to supervise and coordinate the activities of student learners. Adequate time shall be determined by applying the following formula:

(A) 0-25 cooperative students - 1 period (hour) per day

(B) 26-50 cooperative students - 2 consecutive periods (hours) per day

(3) **Exemption of planning period.** The one-hour planning period shall not be considered coordination time.

(4) **Responsibilities of the teacher-coordinator.**

(A) **Responsibilities.** The teacher-coordinator shall have the responsibility of coordinating classroom instruction, on-the-job activities or hands-on experience, and placement of students.

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- (B) **Training station visits.** The teacher-coordinator shall make a minimum of one (1) on-site visit per grading period to each training station employing cooperative CareerTech students. The purpose of these visits shall be to document and coordinate the learning experiences of the students. Training station visits shall be documented and put on file in the teacher's classroom.
- (C) **Student files.** A "Memorandum of Training" and a training plan shall be on file for each cooperative student, and a copy shall be sent to the employer and parents.
- (D) **Employer evaluation.** Each employer shall complete a written evaluation of the student's progress at least one time per grading period, and a copy of this evaluation shall be on file in the teacher's office. Employers are also required to have proof of age on file and a work permit if the employee is under 18 years of age.
- (5) **Scholastic credit.**
- (A) **Credit for on-the-job training/internship.** Additional units of credit may be added to the unit(s) earned in the classroom for being employed in an occupationally appropriate training station during the school year by applying the following:
- (i) an average of 10 periods (hours) per week for a minimum of 30 weeks of on-the-job training under the supervision of a teacher-coordinator = 1 unit;
  - (ii) an average of 20 periods (hours) per week for a minimum of 30 weeks on-the-job training under the supervision of a teacher-coordinator = 2 units;
  - (iii) in the case of block schedules, where a student completes the requirements for a unit of class work in one semester, a student could also earn an additional  $\frac{1}{2}$  unit for 10 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator, or
  - (iv) a student could earn an additional 1 unit for 20 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator.
  - (v) Employers or their representatives shall complete a written evaluation of the cooperative students worksite performance for each grading period. The teacher is responsible for converting the employer's evaluation into the appropriate letter grade for the student's on-the-job grade. Not to be confused with the pass/fail or satisfactory/unsatisfactory grade sometimes given to students participating in a work release program.
- (B) **Documentation of work hours.** Teachers must maintain, in the school files, documentation of the number of hours each cooperative student works.
- (C) **Extra assignments.** If extenuating circumstances exist, and the student is not employed, the teacher must document extra assignments equal to one hour of classroom instruction per day for every hour under the required 10 hours per week of employment.
- (D) **School release time.** A student who is employed in accordance to 5(A) above and is receiving credit for a supervised cooperative work experience may be released up to two hours per day from the normal six-hour school day.
- (E) **Classroom credit only.** If the teacher cannot document extra assignments and/or hours worked, the student shall receive only credit for the classroom activities.
- (f) **Records and reports.** Each local education agency or eligible recipient shall submit student accounting and other required reports on the specified due date.
- (g) **Maintenance of confidential records.** Each technology center shall develop and implement a local policy regarding the confidentiality of all personally identifiable information and education records. This policy shall meet the requirements of the Individuals with Disabilities Act (IDEA) CFR 300.560-300.574 and the Family Educational Rights and Privacy Act (FERPA) 34 CFR 99.1-99.67 concerning collection, storage, disclosure, and destruction of confidential student records.
- (h) **Career guidance and counseling for secondary and full time programs.** Technology centers shall have an identifiable guidance program in place that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments to provide guidance in program selection and placement, and provide support for students to help them be successful in their career pathway. This includes but is not limited to:
- (1) All students in accredited program have individual career academic plans developed and updated to identify and document career and academic services, as well as technical and academic courses to help maximize career success and employability.
  - (2) All students are enrolled or placed in a technology center program on the basis of their documented interest and ability to benefit from training, work history, IEP provisions, accommodation plans, and/or their individual career academic plans developed at the sending school or on cooperation with other agencies.
  - (3) The technology center guidance and counseling staff coordinates all services with guidance and counseling staff from sending schools, higher education institutions and other agencies through regularly planned informational meetings and/or correspondence.
  - (4) Counselors shall be appropriately certified and credentialed for the grade levels to which they are assigned. School counselors shall hold a valid Oklahoma School Counselor Certificate appropriate to grade levels to which they are assigned. (State accreditation standards: 210:35-9-45) The title of counselor should only be applied to those staff with appropriate certifications and/or credentialing.

(5) Each technology center guidance and counseling program should have an advisory committee that is formally organized and meets at least annually. The membership of the advisory committee must be diversified with representation from a variety of stakeholders.

(j) **Math Credit for Certain Career and Technology Education Classes.** After July 1, 2018 and to fully implement the provisions of SB 1370 (2018), for students on the CORE curriculum only, acceptance and successful completion of one (1) year of a full-time, three-hour career and technology program leading to an industry credential/certificate or college credit shall count as one math unit for high school graduation under the provisions of 70 O.S. 2011, Section 11-103.6 (D), as amended. The provisions of this rule shall be limited to accepted industry credentials/certificates that are industry-endorsed or industry-aligned. The Oklahoma Department of Career and Technology Education shall compile a list of accepted industry credentials/certificates and present the list to the State Board of Career and Technology Education for its review. The list of accepted industry credentials/certificates shall be reviewed annually by the State Board of Career and Technology Education.

**780:20-3-2. Programs: admissions, operations, enrollment, and length**

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to CareerTech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school grades eight through twelve and shall be provided by comprehensive school districts. Technology center school districts shall be prohibited from operating Agricultural Education programs or FFA chapters in any location. Each student enrolled in an agricultural education program shall participate in a supervised agricultural experience project. For each agricultural education program which is funded by the Oklahoma Department of Career and Technology Education, the local school district shall provide transportation services, for the agricultural education program and FFA program related duties and activities. (FFA is an integral part of the agricultural education program.)

(2) **Business, Marketing and Information Technology Education.** Business, Marketing and Information Technology Education programs are designed to prepare students in grades 6 through 12 and adults for pathways to careers in business, marketing and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Comprehensive Family and Consumer Sciences Education.** Family and Consumer Sciences programs are designed for students grades 6 through 12 to experience hands-on experiential and problem based learning to explore opportunities for careers, post-secondary transitions and pathways in family and consumer sciences related areas.

(B) **Occupational Family and Consumer Sciences Education.** Occupational Family and Consumer Sciences programs are designed to prepare students in grades 11 and 12 and/or adults for careers in specific family and consumer sciences occupations.

(4) **Health Careers Education.**

(A) **CareerTech health careers.** Health Careers Education programs are designed to prepare junior high students, high school students and adults for employment in a health career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Science Technology Engineering and Mathematics (STEM).**

(A) Science Technology Engineering and Mathematics programs are designed to prepare students grades 5-12 for hands-on and problem based curriculum that allows students to explore opportunities for careers, post-secondary transitions and pathways in Science, Technology, Engineering and Mathematics (STEM).

(B) Science Technology Engineering and Mathematics academy programs in technology centers are designed for grades 10-12. A Focus Field of Study must be submitted, approved and kept on file with the occupational division.

(6) **Trade and Industrial Education/TechConnect.** Trade and Industrial Education/TechConnect programs in comprehensive schools are designed for students in grades 6 through 10 for hands-on experience and problem based learning that allows students to explore opportunities for careers, post-secondary transitions and pathways in Trade and Industrial Education. The state program administrator must approve exceptions. Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate CareerTech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** CareerTech course offerings must be in agreement with the course titles listed in the current *Standards for Accreditation of Oklahoma Schools*, published by the State Department of Education. These same

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course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the *Standards for Accreditation of Oklahoma Schools.*)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five CareerTech instruction class periods and one planning period for a six-period day, and six CareerTech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Full-time program teachers of Marketing Education, Career Transitions Education, Science Technology Engineering and Mathematics, and TechConnect may be allowed to teach one related course, subject to the approval of the appropriate ODCTE state program administrator.

(C) **Trade and Industrial Education/TechConnect.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center.

(D) **Health Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Careers Education program administrator.

(E) **Science Technology Engineering and Mathematics.** Teachers of Science Technology Engineering and Mathematics may be allowed to teach one related course, subject to approval of the appropriate cluster administrator. Science and math courses included in the STEM state program can be counted as a STEM course, not a related course, with the approval of the cluster administrator.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the CareerTech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the CareerTech student organization, FFA.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) **Business, Marketing and Information Technology Education.**

(i) **Full-time programs in comprehensive schools.** A full-time program in comprehensive school shall consist of five instructional class periods (five credits) and one planning period for a six-period day or six instructional class periods (six credits) and one planning period for a seven-period day that is offered to students in grades 6 through 12. Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule of approved courses with one planning period. Instructors shall teach only approved business, marketing and information technology education courses that are aligned with an approved occupational outcome. State-approved syllabi identify the required length of courses - one-half or full unit of credit. Business, Marketing and Information Technology Education instructors shall have

no other extracurricular duties or responsibilities other than those required through the BPA or DECA student organizations and normal school supervisory duties.

(ii) **Full-time programs in technology centers.** A full-time program in a technology center shall consist of two three-hour block periods of instruction for students in grades 10-12 and adults, have an occupational outcome, and include a work-based learning component. Any exceptions must be approved in writing by the state program administrator.

(iii) **Technology/equipment.** Business, Marketing and Information Technology Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written program plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(iv) **Part-time comprehensive school programs.** Comprehensive school Business, Marketing and Information Technology Education programs that are less than full-time will be funded as a half-time program and will be approved by permission of the state program administrator. A part-time program shall include a minimum of three approved business, marketing or information technology education courses with one planning period.

(v) **Unfunded programs.** Non-funded Business, Marketing and Information Technology Education programs must follow state policies and guidelines and maintain an active BPA or DECA student organization chapter in order to remain in good standing.

**(C) Comprehensive Family and Consumer Sciences Education.**

(i) **Full-time programs.** A full-time program shall consist of only approved family and consumer sciences classes with one planning period in the daily schedule. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Each single teacher program shall offer at least two complete programs of study in a three-year period. A multi-teacher district shall offer one more program of study than the number of teachers per building. Coaching, administration, or other similar full-time duties must be approved by the state program manager in writing prior to implementation.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time

program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven or eight period day.

(iii) **Unfunded programs.** In the case of an approved unfunded family and consumer sciences program, the program must follow state policy and guidelines to remain in good standing. Only approved programs shall have a Family, Career and Community Leaders of America chapter.

**(D) Occupational Family and Consumer Sciences Education.**

(i) **Full-time occupational programs in comprehensive schools.** A full-time occupational family and consumer sciences education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time occupational family and consumer sciences education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered.

**(E) Health Careers Education.**

(i) **Comprehensive Schools.** Programs in 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> grade or high schools vary in length and may be offered in one, two or three blocks of time. Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) **Technology Centers.** Programs vary in length and in hours per day according to accrediting bodies and program requirements.

**(F) Science, Technology, Engineering and Mathematics.**

(i) **Full-time program.** In a six period day, instructor shall teach five approved CareerTech STEM courses and/or one approved related course. In a seven period day, instructor shall teach six approved CareerTech STEM courses and/or one approved related course. In an eight period day, instructor shall teach seven approved CareerTech STEM courses and/or one approved related course. Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule of approved courses with one planning period.

(ii) **Part-time comprehensive school programs.** Comprehensive school Science, Technology, Engineering and Math Education programs that are less than full-time will be funded as a half-time program and will be approved only through the permission of the state program administrator. A part-time program shall include a

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minimum of three approved CareerTech science, technology, engineering and math education 8000 level courses, ~~with one planning period.~~

(iii) **Unfunded programs.** Non-funded Science, Technology, Engineering and Math Education programs must follow state policies and guidelines and maintain an active CareerTech student organization chapter in order to remain in good standing.

(G) **Trade and Industrial Education.** Tech-Connect (grades 6-10): The appropriate approved courses need to be taught from one of the following career pathways: Tech Connect Agriculture, Food and Natural Resources; Tech Connect Architecture & Construction; Tech Connect Arts; A/V Technology and Communications; Tech Connect Information Technology; Tech Connect Law, Public Safety and Security; Tech Connect Manufacturing; Tech Connect Transportation, Distribution and Logistics; Tech Connect Diversified Programs.

(H) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Introduction to Agricultural Science is the prerequisite for all

other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a Cooperative Program in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business, Marketing and Information Technology Education.**

(i) **Programs in comprehensive schools.** Business, Marketing and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student. A maximum of 25 students per teacher-coordinator shall be enrolled in a capstone course or internship course. Only two sections of internship will be allowed per program. Students enrolling in an internship program must have completed a minimum of 120 hours or be concurrently in an approved business, marketing, and information technology education program.

(ii) **Programs in technology centers.** Business, Marketing and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student. Consideration should be given to the size of the facility and access to appropriate training stations.

(C) **Family and Consumer Sciences Education.**

(i) **Comprehensive Family and Consumer Sciences programs.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be:

(I) Non-laboratory courses-30 students

(II) Laboratory courses-24 students

(III) Work-based learning - The School and Community Partnership course is a work-based course in which students gain work-site experience and elective credit. The work-site experience must relate directly to an Oklahoma family and consumer sciences career cluster. Enrollment in this course is limited to 24 students. Additional rules in 780:20-3-1(e) and (h) may apply.

(ii) **Occupational Family and Consumer Sciences Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of occupational family and consumer sciences education.

(D) **Health Careers Education.**

(i) **Comprehensive Schools.** A minimum of ten and a maximum of eighteen students shall be enrolled in each course/section of a comprehensive school health careers education program.

(ii) **Technology Centers.**

(I) **Full time high school health careers programs.** A minimum of ten and 8a maximum of eighteen students per instructor shall be enrolled in a Health Careers Education program. Those programs utilizing student-centered learning as the primary method of instruction shall have a maximum of fifteen students per instructor. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(II) **Full-time adult-only health careers programs.** A minimum of eight and a maximum of twelve students per instructor shall be enrolled in a full-time adult-only Health Careers Education program. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(E) **Science, Technology, Engineering and Mathematics. Student Enrollment Limits.** The maximum enrollment for each period of a STEM program shall be 24 students. Consideration should be given to the size of the facility.

(F) **Trade and Industrial Education and Tech-Connect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and Industrial Cooperative Education (ICE) programs, which may have 50 students per career transitions teacher. Consideration should be given to the size of the facility.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** CareerTech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

[OAR Docket #22-558; filed 7-6-22]

**TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION  
CHAPTER 35. ADULT BASIC EDUCATION  
AND FAMILY LITERACY**

[OAR Docket #22-559]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
780:35-1-1 [AMENDED]  
780:35-1-2 [AMENDED]  
780:35-1-3 [AMENDED]

**AUTHORITY:**  
Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, § 14-104, and § 14-131, as amended.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
January 25, 2022

**COMMENT PERIOD:**  
February 16, 2022 through March 18, 2022

**PUBLIC HEARING:**  
March 24, 2022

**ADOPTION:**  
March 24, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
March 30, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**  
Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**  
June 21, 2022

**EFFECTIVE:**  
September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed amendments in Chapter 35 include, updating the term "adult basic education" to "adult education and family literacy." Other amendments correct the spelling of the "HiSet" test, fix punctuation and add clarification of the testing program.

**CONTACT PERSON:**  
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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**780:35-1-1. General Provisions**

(a) **Purpose.** The rules of this subchapter have been adopted for the purpose of establishing standards, guidelines, allocation of funds, development of projects and applications, and the implementation of Adult Education and Family Literacy, Activities, Corrections Education and other Education of Institutionalized Individuals, Correctional and Institutional Education, and Integrated English Literacy and Civics Education. These activities are designed to 1) assist adults to become literate and obtain the knowledge and skills necessary for employment and economic self-sufficiency, 2) assist

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adults who are parents or family members to obtain the education and skills that are necessary to becoming full partners in the educational development of their children, and lead to sustainable improvements in the economic opportunities for their family 3) assist adults in ~~attaining~~obtaining a ~~secondary school diploma~~high school equivalency diploma and in the transition to postsecondary education and training, including through career pathways, and 4) assist immigrants and other individuals who are English language learners in improving their reading, writing, speaking, and comprehension skills in English, mathematics skills, and acquiring an understanding of the American system of Government, individual freedom, and the responsibilities of citizenship.

(b) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

(1) **"Act"** means the Adult Education and Family Literacy Act, Title II of the Workforce Innovation and Opportunity Act (P.L. 113-118).

(2) **"Adult education"** means academic instruction and education services below the postsecondary level that increase an individual's ability to a ) read, ~~write~~write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma, b ) transition to postsecondary education and training, and c ) obtain employment.

(3) **"Adult education program"** means a local education agency, postsecondary institution, community-based ~~organization~~ or faith-based organization, corrections education agency a volunteer literacy organization, a public or private nonprofit agency, a library, a public housing authority, a nonprofit institution, a consortium or coalition of agencies, institutions, libraries, or authorities ~~described~~described previously, or partnership between an employer and entities described previously who are responsible for locally administering the Adult Education and Family Literacy Act grant.

(4) **"Eligible Individual"** means an individual who 1) ~~has attained~~is at least 16 years of age, 2) who is not currently enrolled or required to be enrolled in secondary school under state law, and 3) who is basic skills deficient, does not have a ~~secondary school~~high school equivalency diploma or its recognized equivalent and has not achieved an equivalent level of instruction, or is an English language learner.

(5) **"High School Equivalency" (HSE)** means a high school equivalency credential (GED, HiSET). The Oklahoma Department of Career and Technology Education (ODCTE) is the appointed entity in the State of Oklahoma, responsible for oversight and regulation of the High School Equivalency (HSE) program for high school equivalency examinations for adult populations. Effective July 1, ~~2020~~2014, the ~~HiSET~~HiSET and GED High School Equivalency Examinations are authorized by the Oklahoma Department of Career and Technology Education to provide high school equivalency examinations that meet state requirements.

(6) **"State educational agency" (SEA)** means the Oklahoma Department of Career and Technology Education.

### 780:35-1-2. ~~Adult basic education~~Education and Family Literacy

(a) Programs, services and activities funded in accordance with uses specified in this Act are designed to expand or improve the quality of adult education programs, including priority programs for eligible individuals.

(b) Adult education programs governed by the Act shall make every effort to provide free classes to students. Adult education programs may charge necessary and reasonable fees for consumable materials and work-based classes. Adult education programs that wish to implement fees must develop a fee policy that has been approved by the adult ~~learning center~~education program's local governing board. The fee policy must be reasonable and may not restrict access to services.

(c) The Act permits local adult education programs to generate income. The purpose of income is not to make a profit, but rather to expand services. Income and donations received must be reinvested in the adult education program. Any income must be accounted for in records and reported to the state ~~Adult Education and Family Literacy~~Basic Education office for National Reporting System Financial Reports.

(d) Adult education programs governed by the Act must follow the state adult education Assessment Policy per federal guidelines.

~~(e) Adult education programs governed by the Act must follow the state adult education Student Goal Setting Policy per SEA.~~

~~(f)~~ For each year covered by the plan, the fiscal effort per student from nonfederal sources available for expenditure by the state for adult education, during the second preceding fiscal year must not be less than the fiscal effort per student from nonfederal sources during the third preceding fiscal year ~~in order~~ to meet the maintenance of effort requirement.

~~(g)~~ Teachers of adult education and family literacy activities located in the adult ~~education programs~~learning centers funded by the state under the Act, shall have a valid Oklahoma Teacher's Certificate or a minimum of a Master's degree. Directors of adult education located in the adult learning centers shall have a valid Oklahoma Teacher's Certificate or a minimum of a Master's degree. Prior to employing a Teacher or Director who does not meet the above criteria, the Adult Education Program must seek written approval from the ~~SEA-ODCTE~~.

~~(h)~~ For fiscal control, the obligation basis of accounting is ~~used~~used; ~~expenditures~~Expenditures will be supported by copies of paid claims and invoices and will be audited following accepted auditing procedures.

~~(i)~~ Federal funds for adult education programs operating under a grant extension will be allocated according to, the funding formula described in Oklahoma's AEFLA State Plan.

~~(j)~~ State funds for adult education programs operating under a grant extension will be allocated according to the funding formula described in Oklahoma's AEFLA State Plan.



(kj) The ~~SEA~~ODCTE and the adult education programs participating in the plan shall enter into cooperative arrangements, when feasible and appropriate, with such entities as other state agencies, ~~community-based~~community-based organizations, community action agencies, career technology schools, churches, businesses, etc. in order to carry out the general purpose of the Act.

(~~kl~~) The adult education programs will expend 95% of the funding for adult education activities and 5% can be used for administrative ~~costs, costs, however~~However, if the administrative cost limits would be insufficient for adequate planning and administration of the program, the ~~SEA~~ODCTE may negotiate with the local grant recipient in order to determine an adequate level of funds to be used for noninstructional purposes. Negotiated administrative cost ~~limits~~limits are indicated in the Adult Education and ~~Family~~ Literacy State Plan/State Plan Amendments.

(~~ml~~) The ~~SEA~~ODCTE will provide direct and equitable access to and will review grant proposal applications during ~~an~~ open grant competition. The adult education program will demonstrate that the thirteen considerations outlined in Section 231 of the Act are being met in order to be considered for a grant award. The adult education program must assure that the services are coordinated with and are not ~~duplicative~~uplicated services under other Federal, State and local programs. The comments of the adult education program and responses thereto shall be attached to the application when it is forwarded to the state.

(~~nm~~) Federal funds for new grantees shall be allocated on the basis of an application, budget, and ~~census data~~proposed number of students to be served. State funds will be matched on the ratio specified by the Act's regulations in existence for the current fiscal program year.

(~~on~~) The ~~SEA~~ODCTE will evaluate grant recipients based on the ~~SEA~~ and federal requirements for program evaluation.

(~~po~~) Adult education programs will follow all requirements set forth in the ~~SEA~~ODCTE Adult Education State ~~Plan and Plan, State Plan Amendments, Amendments, and ODCTE handbook.~~

(~~qp~~) Adult education programs will meet the state performance measures of ~~pre-/post-assessing~~pre- and post-assessing 60% of their students and increasing the average number of student contact hours each fiscal year.

(~~rq~~) Adult education programs will use ~~an the~~SEA approved ~~ODCTE-approved~~ management information system to document student enrollment, ~~goals,~~ attendance, measurable skill gains, and other information as required by the National Reporting System (NRS). ~~At a minimum, programs~~Programs will update data at ~~minimum~~ monthly.

**780:35-1-3. High School Equivalency (HSE) testing program Testing Program**

(a) The ~~Adult Basic Education Division~~Federal Programs ~~Division, Adult Education and Family Literacy~~ staff of the Oklahoma Department of Career and Technology Education has a responsibility for directing the HSE Testing Program in Oklahoma and for issuing high school equivalency diplomas to those who successfully complete the HSE ~~tests~~Tests.

(b) Any individual ~~having attained the age of 16, but who are not yet 18, who is 16 or 17 years of age, may~~must be permitted to take the HSE tests provided the individual submits ~~along with the HSTHSE 16 and 17 Age Waiver Form, test application a notarized joint written agreement.~~ This ~~waiver agreement~~ must be signed by ~~between~~ the school administrator of the school district in which the individual resides or the district that the student last attended and the parent, guardian, or custodian, stating that it has been determined that such action is in the best interest of the child and community.

(c) The HSE tests shall be administered by one of the local HSE Testing Centers in Oklahoma.

(d) Individuals interested in taking the HSE ~~test, test~~ should register online with the HSE testing company. ~~To become eligible to take the HSE tests, an application must be made to the Adult Basic Education Division of the Oklahoma Department of Career and Technology Education online or through a HSE Testing Company.~~ A fee will be charged by the testing company when the registration is made.

(e) To obtain a high school equivalency diploma, an individual shall ~~make obtain~~ the minimum score required for passing the HSE tests, as established by the HSE Testing Company.

[OAR Docket #22-559; filed 7-6-22]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES**

[OAR Docket #22-495]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

785:5-1-6. Stream water permit application and administration fees [AMENDED]

785:5-1-10. Groundwater application and administration fees [AMENDED]

785:5-1-11. Well driller and pump installer licensing fees [AMENDED]

785:5-1-14. Stream Water and Groundwater petition fees [AMENDED]

**AUTHORITY:**

Oklahoma Water Resources Board; 82 O.S., § 1085.2; 82 O.S. § 1085.4.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 23, 2021

**COMMENT PERIOD:**

December 15, 2021 to January 18, 2022

**PUBLIC HEARING:**

January 18, 2022

**ADOPTION:**

February 15, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 22, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

# Permanent Final Adoptions

## GIST/ANALYSIS:

The Oklahoma Water Resources Board adopted amendments to the provisions of Chapter 5 of Title 785 of the Oklahoma Administrative Code (OAC) as follows:

OAC 785:5-1-6 is amended by updating the fee structure for long-term stream water right permits to reflect the increased cost of labor for stream water permit applications and administration fees.

OAC 785:5-1-10 is amended by updating the fee structure for long-term groundwater right permits to reflect the increased cost of labor for groundwater permit applications and administration fees.

OAC 785:5-1-11 is amended to show a cost associated with proposed changes in Chapter 35 with regards to an intent-to-drill system.

OAC 785:5-1-14 is amended by updating the fees to reflect the increased cost of labor to amend stream water and groundwater permits and petitions for a change of ownership of existing water rights.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 785:5-1-6. Stream water permit application and administration fees

(a) A filing fee based on amount requested in the application must be submitted with each application for a permit to appropriate stream water as follows:

- (1) 1 through 320 acre-feet - ~~\$250.00~~\$500.00
- (2) 321 through 640 acre-feet - ~~\$350.00~~\$700.00
- (3) 641 through 1,500 acre-feet - ~~\$450.00~~\$900.00
- (4) More than 1,500 acre-feet - ~~\$450.00~~\$900.00, plus an additional ~~\$150.00~~\$250.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.
- (5) If the applicant proposes to divert or use stream water from a scenic river or an area designated as an outstanding water resource by the State, the applicant must submit an additional fee of \$250.00 (see also Chapter 45 of this Title).

(b) Applications for provisional temporary permits to appropriate stream water except expedited applications require a fee of \$200.00.

(c) Expedited applications for provisional temporary permits to appropriate stream water require ~~an additional~~ fee of ~~\$250.00~~\$100.00.

(d) Annual water right administration fee for the submittal of water use reports shall be \$75.00 for each permit or vested right, ~~provided that the cumulative maximum water right administration fees imposed on any one permit or vested right holder shall not be more than \$500.00 per year.~~

(e) If the annual water use report is filed later than 30 days after the due date as set forth in the report form mailed to the water right holder, an additional amount of \$50.00 for each permit shall be due (see also 785:20-9-5).

(f) Applications for stream water use for the purpose of enhanced recovery of oil and gas pursuant to 785:20-3-4 shall have an application fee of \$4,500.00.

(g) For stream water applications that have proposed diversion points within stream systems that the Board at any time determines have no unappropriated water available and the Board holds those applications administratively, an annual fee shall be submitted by the applicant equivalent to the annual water right administration fee for the submittal of water use reports per part (d).

(h) Permit fees pursuant to this section will not be refunded unless the Board determines that an overpayment was made by the applicant.

### 785:5-1-10. Groundwater application and administration fees

(a) A filing and application fee based on amount requested must be submitted with each application for a permit for the withdrawal of groundwater as follows:

- (1) 1 through 320 acre-feet - ~~\$250.00~~\$500.00
- (2) 321 through 640 acre-feet - ~~\$350.00~~\$700.00
- (3) 641 through 1,500 acre-feet - ~~\$450.00~~\$900.00
- (4) More than 1,500 acre-feet - ~~\$450.00~~\$900.00, plus an additional ~~\$150.00~~\$250.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.

(b) Applications for provisional temporary permits except expedited applications require a fee of 200.00.

(c) Expedited applications for provisional temporary permits to withdraw groundwater require ~~an additional~~ fee of ~~\$250.00~~\$100.00.

(d) Annual water right administration fee for the submittal of water use reports shall be \$50.00 for each permit or prior right, ~~provided that the cumulative maximum water right administration fees imposed on any one permit or prior right holder shall not be more than \$500.00 per year.~~

(e) If the annual water use report is filed later than thirty (30) days after the due date as set forth in the report form mailed to the water right holder, an additional amount of \$50.00 for each permit shall be due.

(f) Applications for groundwater use that overlie a sensitive sole-source basin shall require an additional \$250.00 fee.

(g) Applications for groundwater use for the purpose of enhanced recovery of oil and gas pursuant to 785:30-3-2 shall have an application fee of \$4,500.00.

(h) Permit fees pursuant to this section shall not be refunded unless the Board determines that an overpayment was made by the applicant.

**785:5-1-11. Well driller and pump installer licensing fees**

- (a) The filing application and license fee for issuance of individual, partnership, or corporation well driller licenses for one activity to be certified under 785:35-3-1 which shall include the operator certification for the individual license or, in the case of a partnership or corporation, one operator certification for such activity shall be \$400.00 for two years.
- (b) The license fee for a nonresident shall be the amount charged in the state of the nonresident but in no case less than \$1,000.00 for two years.
- (c) The initial fee for the Indemnity Fund for one activity certified under 785:35-3-1 shall be \$250.00 for residents and \$400.00 for nonresidents.
- (d) The license application and indemnity fund fee for each additional activity shall be \$200.00.
- (e) The application fee for each additional operator certificate shall be \$100.00 for a two (2) year period.
- (f) The renewal fee, which shall include the operator certification shall be \$350.00 if the application to renew is filed by May 31; provided that a late fee of \$250.00 shall be due for the completed license renewal application if received by the Board after May 31 of the year to be renewed, but before the end of the applicable grace period.
- (g) The fee for each additional operator certification renewal shall be \$100.00 for a two (2) year period.
- (h) The renewal fee for the Indemnity Fund for each operator shall be \$100.00 for residents of Oklahoma and \$200.00 for nonresidents for a two (2) year period.
- (i) The fee for examination of any operator shall be \$50.00.
- (j) The fee for transfer of individual licensee designation to partnership, corporation or other entity or certified operator from one firm or corporation to another shall be \$50.00.
- (k) The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for groundwater wells, fresh water observation wells, heat exchange wells or test holes in Chapter 35 in this Title shall be \$75.00.
- (l) The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for monitoring wells or geotechnical borings in Chapter 35 shall be \$200.00.
- (m) The fee to file an intent to drill for marginal water well construction shall be \$500.00.
- (n) Upon presentation of satisfactory evidence that an applicant for licensure or certification is a low-income individual, shall grant a one-time one-year waiver of any fees associated with such licensure or certification. For purposes of the section, "low-income individual" means an individual who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

(o) The fee to file an intent-to-drill for authorization to construct a groundwater well for a use which requires a permit or a water right shall be \$250.00.

(p) The fee to file an intent-to-drill for authorization to construct a groundwater well for domestic use shall be \$25.00

**785:5-1-14. Stream Water and Groundwater petition fees**

Stream water and groundwater petition fees are as follows:

- (1) For the filing of a petition to amend a permit or water right which does not require notice to be given - ~~\$100.00~~\$200.00
- (2) For the filing of ~~an petition to transfer ownership or record assignment of a permit or water right or~~ Information Sheet regarding domestic use of stream water from federal reservoirs - \$100.00
- (3) For the filing of a petition to transfer ownership or a petition to subdivide the ownership or record partial assignment of a permit or water right - ~~\$400.00~~100.00.
- (4) For filing a petition for extension of time for commencement of any works for the taking of stream water - \$100.00
- (5) For filing of a petition regarding addition or deletion of land from an irrigation district - \$100.00
- (6) For filing of a petition to amend a permit or groundwater right requesting additional water, a filing and application fee based on the additional amount requested must be submitted with each amendment application as follows:
  - (A) 1 through 320 acre-feet - ~~\$200.00~~\$400.00
  - (B) 321 through 640 acre-feet - ~~\$350.00~~\$750.00
  - (C) 641 through 1,500 acre-feet - ~~\$450.00~~\$900.00
  - (D) More than 1,500 acre-feet - ~~\$450.00~~\$900.00, plus an additional ~~\$150.00~~\$250.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.
- (7) For filing of all other petitions to amend a permit or water right for which notice must be given - ~~\$200.00~~\$400.00.
- (8) For filing of a petition to amend a groundwater right that overlies a sensitive sole-source basin shall require an additional \$250.00 fee.
- (9) For filing a petition to amend a groundwater or stream water right to add the beneficial use of, or request additional water for, enhanced recovery of oil and gas pursuant to 785:20-3-4 or 785:30-3-2, shall require an application fee of \$4,500.00.
- (10) Permit fees pursuant to this section shall not be refunded unless the Board determines that an overpayment was made by the applicant.

[OAR Docket #22-495; filed 6-28-22]

# Permanent Final Adoptions

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[OAR Docket #22-496]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 13. Authorization to Drill Groundwater Wells [NEW]  
785:35-13-1. Authorization to drill groundwater wells [NEW]

### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1020.16.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 23, 2021

### COMMENT PERIOD:

December 15, 2021 to January 18, 2022

### PUBLIC HEARING:

January 18, 2022

### ADOPTION:

February 15, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 22, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Oklahoma Administrative Code ("OAC") 785:35-13 is proposed to provide for an authorization-to-drill system to groundwater well construction requirements. The amendment will require that licensed well drillers provide notice to the OWRB before drilling any new or replacement groundwater wells that require a water use permit. The purpose of this amendment is to ensure compliance with well spacing requirements, groundwater well construction standards, and prevent waste and contamination of groundwater resources.

### CONTACT PERSON:

Sara Gibson, General Counsel, Oklahoma Water Resources Board,  
3800 North Classen Blvd., Oklahoma City, OK 73228, (405) 530-8800,  
sara.gibson@owrb.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 11, 2022:**

### **SUBCHAPTER 13. AUTHORIZATION TO DRILL GROUNDWATER WELLS**

#### **785:35-13-1. Authorization to drill groundwater wells**

(a) Any person who intends to construct any new or replacement groundwater well(s) subject to the provisions of this Chapter shall, before commencing such activity, apply for authorization from the Board on forms provided by the Board, and receive approval from Board staff. Authorizations are not required for groundwater wells completed for domestic

use, test holes, geotechnical borings, or heat exchange well, monitoring wells, and temporary dewatering wells.

(b) Drilling authorizations will not be issued for construction of a well that requires another separate approval from the Board, such as a water right authorization, transfer, amendment or injection well authorization, until the other separate permitting requirements have been satisfied. A drilling authorization does not constitute a water right, injection well authorization, or other authorization that may be required.

(c) Any person who has failed or in the future fails to obtain an authorization as required by this section shall make application for a late authorization on forms provided by the Board. The late authorization application shall contain the same information as required by subsection (d). The application for a late authorization shall be accompanied by an additional fee payable to the Board. Failure to make an application for an intent to drill for a well requiring a water right shall be subject to administrative fines.

(d) The application shall be accompanied by a non-refundable fee payable to the Board and shall contain:

- (1) the name and post office address of the applicant or applicants,
- (2) the name and post address of the well owner,
- (3) the intended use,
- (4) the intended latitude/longitude location of the proposed groundwater well (within 10 feet),
- (5) the intended borehole diameter, casing diameter, casing type, estimated depth of well, and screened/perforated if known,
- (6) the estimated or desired capacity in gallons per minute,
- (7) the groundwater well identification number of the water well being replaced if applicable,
- (8) the water right application number if applicable, and
- (9) such other information as the Board requires.

(e) Applications for an authorization to drill a groundwater well will be given a timestamp upon their arrival at the Board offices and will be reviewed according to the time they were received. Applications meeting all the criteria set forth in this section shall be approved by Board staff and those failing to meet the criteria shall be denied or approved with conditions within five (5) business days of receipt by the Board. Expedited, same-day applications that meet the above criteria may be approved for an additional filing fee.

(f) If the application is incomplete or needs corrections, Board staff shall return the application to the applicant for any necessary corrections. Corrections must be made within sixty (60) days or the application will be cancelled. No refund of any application fees shall be made regardless of whether the application is approved, cancelled, or denied.

(g) An application for an authorization or late authorization for a groundwater well shall be denied only if Board staff finds:

- (1) Applications failing to meet the criteria set forth in Chapter 35,
- (2) That the location or operation of the proposed groundwater well would conflict with any regulations

adopted by the Board or of other applicable laws of the State of Oklahoma.

(3) The applicant refuses to agree to the conditions set forth in the approval.

(4) That the application includes any intentionally misleading or falsified data.

(h) When an application for authorization to drill a groundwater well is approved the applicant shall commence construction of the water well as soon as possible after the date of approval. A drilling authorization may not be assigned from one owner to another or from one driller to another. For wells requiring a water right application, the applicant shall have one (1) year after the approval of the water right application by the Board to complete construction of the groundwater well. If the applicant fails to complete the well under the terms of the authorization, the Board will cancel the authorization. The applicant can request, in writing, a 1-year continuance of the authorization.

[OAR Docket #22-496; filed 6-28-22]

**TITLE 800. DEPARTMENT OF WILDLIFE  
CONSERVATION  
CHAPTER 10. SPORT FISHING RULES**

[OAR Docket #22-448]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Harvest and Possession Limits
- 800:10-1-4. Size and bag limits on Fish [AMENDED]
- 800:10-1-7. Possession limit [AMENDED]
- Subchapter 5. Area Restrictions and Special Fees
- 800:10-5-3. Designated trout areas [AMENDED]

**AUTHORITY:**

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 4, 2021

**COMMENT PERIOD:**

December 1, 2021 - January 7, 2022

**PUBLIC HEARING:**

Date: January 6, 2022

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

**ADOPTION:**

February 7, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 14, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's Declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCES:**

n/a

**GIST/ANALYSIS:**

The proposed rule changes include a modification of the statewide size limit for largemouth and smallmouth basses by removing the fourteen (14) inch

length limit and replacing it with a one over maximum length limit (16 inches). This rule also includes a black bass tournament exemption until weigh-in, after which the fish must be released. The statewide bag limit for largemouth and smallmouth basses will be restored for Lake Murray and waters in the Wichita Mountains Wildlife Refuge. The lower Mountain Fork River trout area trout bag limit will be modified to include only one brown trout which must be thirty (30) inches or greater and the downstream section of the trout area will be re-established as a trophy area. The daily bag limit of forked-tail catfish will be modified to six (6) below Carlton Lake in the Fourche Maline River to the Robbers Cave State Park boundary. Modifications to possession limits for fish include housekeeping measures, corrections, deletion of a redundant definition, and other changes including how the Department will convey aquatic nuisance species restricted waters. Other modifications include changes allowing for fish parts or remains to be used as bait and a customer ID labeling requirement for containers used to store live fish in the field.

**CONTACT PERSON:**

Ken Cunningham, Assistant Chief of Fisheries, 405-521-3721 or Rhonda Hurst, APA Liaison, phone: 405-522-6279; 1801 N. Lincoln Blvd, Oklahoma City, Oklahoma.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS**

**800:10-1-4. Size and bag limits on fish**

There are no length or bag (harvest) limit restrictions on any game or nongame fish taken from waters of this state, except as follows:

(1) General provisions for size limits and bag limits- All fish not kept must be returned to the water unharmed immediately.

(A) Size limits (measured as total length, unless specified) are minimum limits unless specified.

(B) Release of striped bass, striped bass hybrids, trout, paddlefish, or alligator gar caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(C) Persons fishing trotlines or throwlines must release all fish on their lines except those held in possession for their daily limit, before leaving the trotline or throwline.

(D) Fish taken by bow and arrow, gig, spear, or speargun shall count towards the daily bag limit, and any carcasses or remains shall be properly disposed of (OAC 800:10-5-6p and 29 O.S. 7-205, 7-403).

(E) Bag limits for fish can be superseded and set by Commission resolution 29 O.S. 6-302(B) and will be published in the Oklahoma Fishing and Hunting Regulations.

(F) "Close To Home" waters have an aggregate bag limit of three (3) combined of all panfish species and their hybrids, trout species, and/or channel catfish. Other species are subject to statewide limits.

(2) Largemouth bass and smallmouth bass statewide ~~minimum size limit is fourteen (14) inches and~~ bag limit

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is six (6) in aggregate, of which only one (1) may exceed sixteen (16) inches, except

(A) Waters where harvest of largemouth bass is prohibited include: Doc Hollis Lake.

~~(B) Waters with no size or bag limits on largemouth bass and smallmouth bass include: Lake Murray and all waters in the Wichita National Wildlife Refuge.~~

~~(C) Waters with no minimum size limit and where largemouth bass and smallmouth bass between thirteen (13) and sixteen (16) inches must be released include: Chimney Rock Lake (W.R. Holway), Lake Arbuckle, Okmulgee Lake, and Tenkiller Lake (downstream from Horseshoe Bend boat ramp).~~

~~(D) Waters with no minimum size limit and where largemouth bass and smallmouth bass between (16) and twenty two (22) inches must be released and only one (1) greater than twenty two (22) inches may be kept include: McGee Creek Lake, Dripping Springs Lake, and Crowder Lake (Washita County).~~

~~(E) Waters with no minimum size limit and where the daily bag limit may include only one (1) largemouth bass greater than sixteen (16) inches include: Bull Lake (City of Vinita).~~

~~(F) Waters with a fourteen (14) inch minimum size limit for spotted bass include: Blue River Public Fishing Area.~~

~~(G) Waters with a fourteen (14) inch minimum size limit on largemouth bass and smallmouth bass and a bag limit of six (6) largemouth bass, smallmouth bass, and/or spotted bass (in aggregate), of which only one (1) may be a smallmouth bass include: rivers and streams statewide.~~

~~(H) Waters with a fourteen (14) inch minimum size limit and a bag limit of five (5) largemouth bass and/or smallmouth bass (in aggregate) include: Lake Texoma.~~

~~(I) Waters with a bag limit of five (5) largemouth bass, smallmouth bass, and/or spotted bass (in aggregate) include: Lake Konowa.~~

~~(E) When an individual angler possesses a tournament exemption authorized by the Department, daily bag and size limits may deviate from those listed here. Instructions for the tournament exemption application process will be provided in the Oklahoma Fishing and Hunting Regulations and on the Department website.~~

(3) Crappie (black crappie and/or white crappie, in aggregate) statewide bag limit is thirty-seven (37), except

(A) Waters with a ten (10) inch minimum size limit on crappie include: Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson (including all tributaries and upstream to Markham Ferry Dam), and Grand Lake (including all tributaries to the state line).

(B) Waters with a bag limit of six (6) crappie include: Blue River Public Fishing Area.

(C) Waters with a bag limit of fifteen (15) crappie include: Arbuckle, Tenkiller, Hudson, Ft. Gibson (including all tributaries and upstream to Markham

Ferry Dam), and Grand Lake (including all tributaries to the state line).

(4) Forked tail catfish (blue catfish and/or channel catfish, in aggregate) statewide bag limit is fifteen (15) with only one (1) blue catfish greater than thirty (30) inches, except waters with a bag limit of six (6) forked tail catfish include: all U.S. Forest Service and State Park lakes (except Lake Murray) as well as the Fourche Maline River within the boundaries of Robbers Cave State Park from Carlton Lake Dam downstream to the southern park boundary, all Department Management Area ponds and fishing areas, and all waters within the Wichita Mountain National Mountains Wildlife Refuge.

(5) Flathead catfish statewide bag limit is five (5).

(6) Walleye, sauger, and/or saugeye (in aggregate) statewide minimum size limit is fourteen (14) inches and bag limit is six (6), except

(A) Waters with no walleye, sauger, or saugeye size limit include: Great Salt Plains Reservoir (and tailwater).

(B) Waters with a sixteen (16) inch minimum size limit for walleye, sauger, and/or saugeye include: the Arkansas River, including all reservoirs and unpounded tributaries from Keystone Dam downstream to the Oklahoma state line.

(C) Waters with an eighteen (18) inch minimum size limit for walleye, sauger, and/or saugeye include: Atoka Bluestem, Bluestem, Carl Blackwell, Healdton, Ponca City, Shell, Sooner, and Thunderbird Reservoirs (and their respective tailwaters).

(7) Rainbow trout, brown trout, and/or other trout species (in aggregate) statewide bag limit is three (3), except

(A) Waters where the daily bag limit may include only one (1) rainbow trout greater than twenty-five (25) inches and ~~only one (1) brown trout~~ which must be greater than thirty (30) inches include: the lower Mountain Fork River trout area. Waters where the daily bag limit is one (1) rainbow trout which must be greater than twenty-five (25) inches and one brown trout which must be greater than thirty (30) inches include: the lower Mountain Fork trout area downstream of the State Park Dam. Fish kept from these waters count towards the bag limit for the entire lower Mountain Fork trout area.

(B) Waters where the daily bag limit is one (1) rainbow trout greater than twenty (20) inches include: the lower Illinois River trout area from the USGS stream gauge downstream to the gravel pit county road.

(C) Waters where the daily bag limit may include only one (1) brown trout greater than twenty (20) inches include: the lower Illinois River trout area.

(D) Waters where harvest of rainbow trout is prohibited from November 1 to March 1 include: the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately  $\frac{1}{2}$  mile to a marker cable.

(8) Striped bass statewide bag limit is five (5), except as designated in OAC 800:10-1-4(9). Waters with a twenty (20) inch minimum size limit on striped bass include: Sooner Reservoir.

(9) Striped bass hybrid statewide bag limit is twenty (20), of which only five (5) may be greater than twenty (20) inches, except

(A) Waters where the bag limit is ten (10) striped bass and/or striped bass hybrids (in aggregate), of which only two (2) may be greater than twenty (20) inches include: Lake Texoma.

(B) Waters where the bag limit is five (5) striped bass and/or striped bass hybrids (in aggregate), of which only two (2) may be greater than twenty (20) inches include: Arcadia Lake and Skiatook Lake.

(10) White bass bag limit is twenty-five (25) in Lake Texoma.

(11) The statewide daily bag limit for paddlefish is one (1) per day, statewide. The catch and release of paddlefish is permitted by use of rod and reel, trotline and throwlines.

(A) Individual annual harvest limit- An individual harvest limit for paddlefish may be set or amended annually by the Wildlife Conservation Commission and will be listed in the Oklahoma Fishing and Hunting Regulations. Special area (or management unit) paddlefish harvest caps, a general statewide paddlefish harvest cap, and the total number of paddlefish permits issued may be set or amended annually by the Wildlife Conservation Commission for use in determining the individual annual harvest limit. Once an individual angler has reached their annual harvest limit, continued catch and release is permitted.

(B) Paddlefish permit- An annual paddlefish permit issued by the Department is required to fish for paddlefish by any method or be in possession of paddlefish or paddlefish parts. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden.

(C) Harvest Tagging- Paddlefish caught and held in possession must be tagged OAC 800:10-3-8a. All paddlefish must have all viscera (internal organs) removed before leaving the state. Anglers must cease snagging for the day when they have taken their daily limit of paddlefish into possession.

(D) Reporting- Harvest of paddlefish must be reported OAC 800:10-3-8b.

(12) The statewide daily bag limit for alligator gar is one (1) per day, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods and possession are prohibited. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel only. Anglers must cease snagging for the day when they have taken their daily limit of alligator gar into possession. Harvest of alligator gar must be reported OAC 800:10-3-8b.

(13) A statewide daily bag limit of one (1) applies to any fish species classified as those of Special Concern Category I or Category II (OAC 800:25-19-6). Such harvest must be reported by phone or email to the Department Fisheries Division.

**800:10-1-7. Possession limit**

(a) No resident or nonresident shall have in their possession, in the field, more than one (1) daily bag limit listed in ~~800:10-1-5~~ 800:10-1-4 and 800:10-1-6. Nonresidents shall not have more than two (2) daily bag limits in their possession at any time other than in the field, except for paddlefish which shall not exceed the individual annual harvest limit as listed in the Oklahoma Department of Wildlife Conservation Fishing Guide Fishing and Hunting Regulations. "In the Field" means ~~while fishing, or while in a boat, or on the bank or in the immediate vicinity of any river, creek, stream, lake or pond, or while transporting or carrying the fish from the waters described above to camp or from such waters to the final destination.~~

(b) No person may possess with intent to transport or transport via land based transportation more than 200 shad, for personal use as bait. The sale, offer for sale, transport from Oklahoma with intent to sell or offer to sell shad taken from waters of this state is prohibited 800:15-5-2.

(c) No person shall transport shad from waters infested with Bighead or Silver Carp. ~~These~~ A list of these waters shall be designated provided in the Oklahoma Department of Wildlife Conservation Oklahoma Fishing Guide Fishing and Hunting Regulations which is published annually or on the Department website. If shad are collected from these listed waters for use as bait, they may only be used in the water body from which they were collected.

(d) Fish cleaning - ~~You may not possess a gamefish, hybrid striped bass or flathead catfish that has been filleted or had its head or tail removed while actively engaging in fishing.~~ Any species of fish that are subject to size limits (800:10-1-4) must remain intact (head, tail, and skin/scales not removed) while actively engaged in fishing.

(e) Fish storage in possession - When fishing in waters of this state, all unattended baskets or containers used to store live fish in the field (both caught fish and fish used as bait) must be labeled with the angler's customer identification number and/or until December 31, 2024 such equipment may be labeled with a name and address. Storage equipment must be attended at least once every 24 hours. These rules do not supersede the labeling requirement for trout areas (800:10-5-3) or tailwaters (800:10-5-5).

**SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES**

**800:10-5-3. Designated trout areas**

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

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- (1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.
  - (2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.
  - (3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.
  - (4) The lower Mountain Fork River and tributaries below Broken Bow reservoir downstream to U.S. Highway 70 bridge. Trout season is year-round.
  - (5) Medicine Creek from Gondola Lake dam downstream to the State Highway 49 bridge, where trout season is from November 1 through March 15 of the following year; season is annual.
  - (6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual.
  - (7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter (1 $\frac{1}{4}$ ) miles, trout season is from November 1 through March 15 of the following year; season is annual.
  - (8) Perry CCC Lake trout season is from November 1 through March 31 of the following year; season is annual.
- (b) **General; area restrictions.** The following rules apply to designated trout areas and to specified locations within certain designated trout areas:
- (1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line, except collecting shad with cast nets is legal from ~~the south boundary of the MarVal trout camp downstream to the Highway 64 bridge~~ the south boundary of the lower Illinois River Public Fishing Area - "Simp and Helen Watts Area" downstream to the Highway 64 bridge; only one (1) rod and reel or pole and line per person is allowed.
  - (2) Glass beverage containers are prohibited at designated trout areas except in designated camping and parking areas.
  - (3) The following areas are restricted to fishing tackle made by fly-tying or artificial lures made of wood, metal, glass, feathers, hair, synthetic fibers or hard plastic and barbless hooks only with the exception of the lower Illinois trout stream when fishing for species other than Rainbow Trout and Brown Trout with hooks 3/0 or larger. The use of any substance in combination with restricted fishing tackle is prohibited:
    - (A) Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, except that barbed hooks, size 3/0 or larger, may be used in combination with natural or artificial bait,

including soft plastics, for species other than Rainbow and Brown Trout.

(B) Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately  $\frac{1}{2}$  mile to a marker cable is restricted to artificial flies and lures only and barbless hooks only during the period November 1 to March 1, annually.

(4) All trout retained in possession must be kept separate from other anglers' fish on a stringer or in a creel that is clearly marked with that anglers' customer identification number, and/or until December 31, 2024 stringers may be labeled with a name and address.

(5) The lower Mountain Fork River trout area is restricted to barbless hooks.

[OAR Docket #22-448; filed 6-23-22]

## TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 20. RESTRICTION ON AQUATIC SPECIES INTRODUCTION

[OAR Docket #22-449]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Restricted Exotic Fish  
800:20-1-2. List of restricted exotic species [AMENDED]

### AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 4, 2021

### COMMENT PERIOD:

December 1, 2021 - January 7, 2022

### PUBLIC HEARING:

Date: January 6, 2022

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

### ADOPTION:

February 7, 2022

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 14, 2022

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 21, 2022

### FINAL ADOPTION:

June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCES:

n/a

### GIST/ANALYSIS:

The proposed modification provides for the inclusion of the marbled crayfish on the Department's list of restricted aquatic species which is used to limit the spread of invasive and potentially harmful aquatic species.

### CONTACT PERSON:

Ken Cunningham, Assistant Chief of Fisheries, 405-521-3721 or Rhonda Hurst, APA Liaison, phone: 405-522-6279; 1801 N. Lincoln Blvd, Oklahoma City, Oklahoma.



**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. RESTRICTED EXOTIC FISH**

**800:20-1-2. List of restricted exotic species**

(a) Until such time as is necessary for the Department of Wildlife Conservation to obtain adequate information for the determination of other harmful or potentially harmful exotic species, the importation into the State and/or the possession of the following exotic fish or their eggs is prohibited:

- (1) **Walking Catfish:** The Walking Catfish, (*Clarius batrachus*) and other members of the exotic catfish family Claridae, including but not limited to species of the genera Clarias, Heteropneustes, Gymnallables, Channallabes, and Heterobranchus are prohibited. Any live specimens of Walking Catfish or other Claridae species within the boundaries of the State of Oklahoma are contraband and subject to seizure by the Department of Wildlife Conservation.
- (2) **Grass carp:** Release of grass carp (diploid and/or triploid), also known as white amur or Chinese carp (*Ctenopharyngodon idella*) or their hybrids into public waters is prohibited in accordance with 29 O.S., Section 6-504. Only certified triploid grass carp may be imported, possessed, or introduced for the purpose of stocking private waters. Possession and transportation of diploid grass carp is permitted for the control of vegetation on licensed aquaculture facilities, the export to states allowing use of diploid grass carp and for production for sale to the human food market.
- (3) **Boney-tongue group:** *Osteoglossum* spp., and *Arapaima* spp.
- (4) **Piranha group:** *Serrasalmus* spp., *Pygocentrus* spp., *Rooseveltiella* spp., *Catoprion* spp., *Hydrocynus* spp., and *Salminus* spp.
- (5) **Electric Eel** (*Electrophorus electricus*).
- (6) **Electric catfish** (*Malapterus electricus*).
- (7) **Gar-pike topminnow** (*Belonesox belizanus*).
- (8) **Snakehead groups:** *Opicephalus* spp., and *Channa* spp.
- (9) **Pavon or Peacock Bass** (*Chichla temensis* and *Chichia ocellaris*).
- (10) **Parasitic South American Catfish group** (*Candiru*), genera & species of the Trichomycteridae family. *Vandellia* spp., *Tridens* spp., and *Pygidium* spp.
- (11) **Freshwater Stingray group:** *Paratrygon* spp., *Potomotrygon* spp., and *Disceus* spp.
- (12) **Houri (from South America):** *Macrodon* spp., and *Hoplias* spp.
- (13) **Rudd and rudd hybrids** (*Scardinius* spp.).

- (14) **Bighead carp** (*Hypophthalmichthys molitrix*). This shall not interfere with the possession of dead bighead carp when reporting the fish to ODWC personnel.
- (15) **Silver carp** (*Aristichthys nobilis*). This shall not interfere with the possession of dead silver carp when reporting the fish to ODWC personnel.
- (16) **Black carp** (*Mylopharyngodon piceus*).
- (17) **Alewives** (*Alosa pseudoharengus*).
- (18) **Rainbow smelt** (*Osmerus mordax*).
- (19) **Blueback herring** (*Alosa aestivalis*).

(b) **Tilapia:**

- (1) The sale and use of all Tilapia species as bait is prohibited.
- (2) The stocking of all Tilapia species in any heated-water reservoir including Sooner, Konawa and Boomer Reservoirs is prohibited.
- (3) This shall not interfere with the sale of dead and/or processed Tilapia for human food or the sale or transport of Tilapia species for the purpose of aquatic vegetation control in privately owned ponds.

(c) **Crayfish:**

- (1) **Australian Red Claw** (*Cherax quadricarinatus*)
- (2) **Rusty** (*Orconectes rusticus*)
- (3) **Marbled** (*Procambarus virginalis*)

*[OAR Docket #22-449; filed 6-23-22]*

**TITLE 800. DEPARTMENT OF WILDLIFE  
CONSERVATION  
CHAPTER 25. WILDLIFE RULES**

*[OAR Docket #22-450]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Hunting on Corps of Engineers Lands
- 800:25-3-2. Areas open to archery equipment and shotguns with pellets only [AMENDED]
- 800:25-3-3. Areas open to archery equipment only [AMENDED]
- Subchapter 7. General Hunting Seasons
- Part 5. Upland Game
- 800:25-7-15. Wild Turkey - Fall; dates, limits and open areas [AMENDED]
- 800:25-7-16. Wild turkey - Fall; legal means of taking [AMENDED]
- 800:25-7-20. Squirrel (fox and gray) [AMENDED]
- Part 7. Falconry
- 800:25-7-28. Dates, open areas, bag limit, hunting hours and legal means of taking [AMENDED]
- Part 15. Furbearers
- 800:25-7-60. Dates and legal furbearers [AMENDED]
- 800:25-7-61. Bag limits [AMENDED]
- 800:25-7-62. Open areas [AMENDED]
- 800:25-7-63. License requirements and fees [REVOKED]
- 800:25-7-64. General provisions for furbearers [REVOKED]
- 800:25-7-65. Fur dealers [REVOKED]
- Part 19. Season on areas owned or managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
- 800:25-7-81. Altus-Lugert WMA [AMENDED]
- 800:25-7-81.2. Arbuckle Springs WMA [AMENDED]
- 800:25-7-82.1. Atoka PHA [AMENDED]
- 800:25-7-82.3. Barren Fork WMA [NEW]
- 800:25-7-83. Beaver River WMA [AMENDED]
- 800:25-7-83.1. Beaver River WMA - McFarland Unit [AMENDED]

# Permanent Final Adoptions

800:25-7-84. Black Kettle WMA [AMENDED]  
800:25-7-85. Blue River Hunt Area [AMENDED]  
800:25-7-86. Broken Bow WMA [AMENDED]  
800:25-7-87.1. Candy Creek WMA [AMENDED]  
800:25-7-88. Canton WMA [AMENDED]  
800:25-7-90. Cherokee PHA [AMENDED]  
800:25-7-92. Chickasaw NRA [AMENDED]  
800:25-7-92.1. Cimarron Bluff Wildlife Management Area [AMENDED]  
800:25-7-92.2. Cimarron Hills Wildlife Management Area [AMENDED]  
800:25-7-94. Copan WMA [AMENDED]  
800:25-7-94.1. Cooper WMA [AMENDED]  
800:25-7-94.1.1. Cross Timbers WMA [AMENDED]  
800:25-7-94.5. Deep Fork WMA [AMENDED]  
800:25-7-94.6. Dewey County WMA [AMENDED]  
800:25-7-94.7. Drummond Flats WMA [AMENDED]  
800:25-7-95. Ellis County WMA [AMENDED]  
800:25-7-97. Fobb Bottom WMA [AMENDED]  
800:25-7-98. Fort Cobb WMA [AMENDED]  
800:25-7-99. Fort Gibson PHA [AMENDED]  
800:25-7-101. Ft. Supply WMA [AMENDED]  
800:25-7-102. Gary Sherrer WMA [AMENDED]  
800:25-7-102.1.1. Grady County WMA [AMENDED]  
800:25-7-102.2. Grassy Slough WMA [AMENDED]  
800:25-7-102.3. Grassy Slough WRP [NEW]  
800:25-7-105.5. Hackberry Flat WMA [AMENDED]  
800:25-7-105.6. Hackberry Flat WRP [AMENDED]  
800:25-7-106. Heyburn WMA [AMENDED]  
800:25-7-108. Hickory Creek WMA [AMENDED]  
800:25-7-108.1. Honobia Creek WMA [AMENDED]  
800:25-7-111. Hulah WMA [AMENDED]  
800:25-7-115. Kaw WMA [AMENDED]  
800:25-7-116. Keystone WMA [AMENDED]  
800:25-7-117. Lexington WMA [AMENDED]  
800:25-7-120. Love Valley WMA [AMENDED]  
800:25-7-120.1. Lower Illinois River Public Fishing and Hunting Area -  
Simp and Helen Watts Management Unit [AMENDED]  
800:25-7-121. Major County WMA [AMENDED]  
800:25-7-123. McClellan-Kerr WMA [AMENDED]  
800:25-7-126. Mountain Park WMA [AMENDED]  
800:25-7-127. Okmulgee GMA [AMENDED]  
800:25-7-128. Okmulgee PHA [AMENDED]  
800:25-7-129. Oologah WMA [AMENDED]  
800:25-7-130. Optima WMA [AMENDED]  
800:25-7-131. Optima NWR [AMENDED]  
800:25-7-131.1. Osage WMA - Rock Creek Unit [AMENDED]  
800:25-7-132. Ouachita WMA - LeFlore Unit [AMENDED]  
800:25-7-132.1. Ouachita WMA - Cucumber Creek Unit [AMENDED]  
800:25-7-133.1. Ouachita WMA - McCurtain Unit [AMENDED]  
800:25-7-133.2. Ozark Plateau NWR [AMENDED]  
800:25-7-134. Packsaddle WMA [AMENDED]  
800:25-7-136.1. Red Slough WMA [AMENDED]  
800:25-7-136.2. Red Slough WRP [AMENDED]  
800:25-7-137. Rita Blanca WMA [AMENDED]  
800:25-7-138. Robbers Cave WMA [AMENDED]  
800:25-7-139.1. Sandhills WMA [AMENDED]  
800:25-7-140. Sandy Sanders WMA [AMENDED]  
800:25-7-141. Schultz WMA [AMENDED]  
800:25-7-142.1. Shorb WMA [AMENDED]  
800:25-7-143. Skiatook WMA [AMENDED]  
800:25-7-144. Sparrowhawk WMA [AMENDED]  
800:25-7-145. Spavinaw GMA [AMENDED]  
800:25-7-146. Spavinaw PHA [AMENDED]  
800:25-7-147. Stringtown WMA [AMENDED]  
800:25-7-148. Tenkiller WMA [AMENDED]  
800:25-7-149. Texoma/Washita Arm WMA [AMENDED]  
800:25-7-149.1. Three Rivers WMA [AMENDED]  
800:25-7-149.2. Thomas A. Bamberger Sr WMA [AMENDED]  
800:25-7-151. Tishomingo WMU/Cooperative Unit [AMENDED]  
800:25-7-152. Washita County WMA [AMENDED]  
800:25-7-153. Washita NWR [AMENDED]  
800:25-7-154. Waurika WMA [AMENDED]  
800:25-7-154.2. Whitegrass Flats WMA [AMENDED]  
800:25-7-155. Wister WMA [AMENDED]  
Part 25. Oklahoma Land Access Program

800:25-7-181. OLAP walk-in hunting areas, seasons, and equipment  
restrictions [AMENDED]  
Subchapter 9. Controlled Hunts  
800:25-9-14. Qualifications and procedures (private land youth hunts)  
[AMENDED]

## AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the  
Constitution of Oklahoma; Department of Wildlife Conservation Commission.

## SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 4, 2021

## COMMENT PERIOD:

December 1, 2021 - January 7, 2022

## PUBLIC HEARING:

Date: January 6, 2022

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N.  
Lincoln Blvd., Oklahoma City, OK

## ADOPTION:

February 7, 2022

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 14, 2022

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

## FINAL ADOPTION:

June 21, 2022

## EFFECTIVE:

September 11, 2022

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 7. General Hunting Seasons

Part. 15. Furbearers

800:25-7-60. Dates and legal furbearers [AMENDED]

800:25-7-61. Bag limits [AMENDED]

800:25-7-62. Open areas [AMENDED]

800:25-7-63. License requirements and fees [REVOKED]

800:25-7-64. General provisions for furbearers [REVOKED]

800:25-7-65. Fur dealers [REVOKED]

### Gubernatorial approval:

July 19, 2021

### Register publication:

38 Ok Reg 1604

### Docket number:

21-706

### Superseded rules:

Subchapter 7. General Hunting Seasons

Part 19. Season on Areas Owned or Managed by the Oklahoma  
Department of Wildlife Conservation and the U.S. Fish and Wildlife  
Service

800:25-7-82.3. Barren Fork WMA [NEW]

### Gubernatorial approval:

July 19, 2021

### Register publication:

38 Ok Reg 1608

### Docket number:

21-707

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

Subchapter 3 - These rules will clarify the time periods for the Hugo Lake  
and Pine Creek Lake controlled hunts, change the restriction to archery and  
shotgun with pellets for a 475 acre unit at Hugo Lake, and add additional  
hunting areas at Pine Creek Lake.

Subchapter 7 - Remove "either sex" from the fall archery turkey hunting  
bag limit, and remove bag limit for fall turkey gun hunting and legal means  
of take language and place these into the Oklahoma Fishing and Hunting  
Regulations; allow the Commission by resolution to set squirrel season dates,  
and open squirrel season year-round for Falconry; define trap placement, trap  
checking requirements and posting of signs; revise legal means of taking for  
trapping to allow 8.5 inch circumference traps, colony traps, fully submerged  
body-grip sets on private land only, and increase river otter season limit to 6;  
Allow nonresident fur dealers to transact business at specific locations, and  
clarify language on vehicle decal placement for fur dealers, revoke duplicative

furbearer language; revise language for WMA's to be consistent with recent changes (no harvest of hen turkeys and shotgun only gun hunting) for wild turkeys, which will now be published in the Oklahoma Fishing and Hunting regulations; close quail hunting to nonresidents from Feb 1 to the end of the season and open trapping to statewide trapping regulations from February 1 to the end of February on western Oklahoma WMA's; establish permanent rules on the Barren Fork WMA in Adair county; establish rules for a new waterfowl refuge portion on Grassy Slough WMA; close quail season on January 31st on Hackberry Flat WMA; close quail season on Hackberry Flat WRP; open trapping opportunities on Lexington WMA; change spring turkey season to controlled hunts only, remove restriction on rabbit season, change fall turkey season to closed season, open deer archery season to same as statewide season dates, and close quail season on January 31st on Optima NWR; close quail season on January 31st on Washita NWR; and update language for OLAP properties to match new turkey season regulations and closing dates.

Subchapter 9 - Clarify the qualifications for private lands youth hunts by reducing the minimum acreage requirement to 320 acres and allowing ODWC to disapprove applications if a property doesn't provide a safe or reasonable opportunity.

**CONTACT PERSON:**

Bill Dinkines, Chief of Wildlife Division, 405-521-2739 or Rhonda Hurst, APA Liaison, phone: 405-522-6279; 1801 N. Lincoln Blvd, Oklahoma City, Oklahoma.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS**

**800:25-3-2. Areas open to archery equipment and shotguns with pellets only**

The following Corps of Engineers areas are open to archery equipment and shotguns with pellets only:

- (1) Canton Lake: A 80-acre unit above Highway 58A in the Sandy Cove Area.
- (2) Keystone Lake:
  - (A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.
  - (B) A 200-acre unit on the west side of the north end of the Highway 64 bridge.
  - (C) A 530-acre unit north of the New Mannford Ramp area.
  - (D) A 480-acre unit east of the Cimarron Park area.
  - (E) A 100-acre unit north and south of the Pawnee Cove Access Point.
  - (F) A 200-acre unit in the Old Mannford Ramp area.
  - (G) A 280-acre unit on the south side of the road ending at Washington Irving North.
  - (H) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.
  - (I) A 200-acre unit south of Highway 51 on Bakers Branch.
  - (J) A 135-acre area on the west side of Walnut Creek (old Walnut Creek #3).
- (3) Hugo Lake: Except, archery only during all deer seasons.

- (A) A 2,373-acre unit in the Kiamichi Park Area. Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotgun with pellets, except closed the first Tuesday through Sunday in October and the first Tuesday through Sunday in December.
- (B) A 418-acre unit in the Salt Creek Area.
- (C) A 478-acre unit in the Wilson Point Area.
- (D) A 481-acre unit in the Virgil Point Area.
- (E) A 280-acre unit in the Sawyer Bluff Area.
- (F) A 60-acre unit in the Rattan Landing Area.
- (G) A 500-acre unit in the embankment area above Hugo Dam.
- (H) A 475-acre unit lying South of the physical creek of Salt Creek on Hugo Lake.
- (4) Tenkiller Ferry Lake: A 110-acre unit north of the asphalt road and east of Highway 10A.
- (5) Copan Lake: Except, archery equipment only during all deer seasons.
  - (A) A 650-acre unit below the dam.
  - (B) A 100-acre unit east and southeast of Copan Point Park.
  - (C) Three islands north of Washington Cove Park.
- (6) Fort Gibson Lake:
  - (A) A 300-acre unit on the north side of North Bay.
  - (B) A 800-acre unit on the south side of the Chouteau Creek, starting at Highway 69 and running east and south to Highway 33.
  - (C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.
  - (D) A 480-acre unit on the west side of Mallard Bay.
  - (E) A 103 -acre unit in Section 13 of the Blue Bill Point housing addition.
  - (F) A 160-acre unit west of the town of Murphy.
  - (G) A 650-acre unit on Pryor Creek beginning on the east side of Highway 69 in Sections 29, 30 & 31.
  - (H) A 190-acre unit in the south  $\frac{1}{2}$  of Section 12, north of the Blue Bill Recreation Area.
  - (I) A 120-acre unit west of the town of Hulbert.
- (7) Sardis:
  - (A) A 950-acre unit in the Potato Hills Area.
  - (B) A 100-acre unit in the Sardis Cove Area.
- (8) Webbers Falls Lock and Dam 16:
  - (A) A 37-acre unit on the peninsula north of the lock and dam.
  - (B) A 150-acre unit in the Hopewell Park Area.
  - (C) A 150-acre unit in the Brewer's Bend Area only open for hunting 1 December through 28 February.
  - (D) A 50-acre unit south of the Spaniard Creek Area.
  - (E) A 60-acre unit off Lock View access road and south of the project office.
- (9) Lake Texoma:
  - (A) A 380-acre unit below Denison Dam.
  - (B) A 160-acre unit in the Willow Springs Area.
  - (C) A 100-acre unit in the Buncombe Creek West Area

## Permanent Final Adoptions

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- (D) A 110-acre unit on the Limestone Creek Area.
  - (E) A 250-acre unit on the Treasure Island, North Island Group.
  - (F) A 512-acre unit in the McLaughlin Creek Southwest Area.
  - (G) A 1,100-acre unit in the Washita Point Area.
  - (H) A 300-acre unit south of the Butcher Pen Area.
  - (I) A 800-acre unit on either side of Highway 70 on the east side of the lake.
  - (J) A 650-acre unit in the Lakeside West and South Area.
  - (K) A 420-acre unit in the Lebanon Area.
  - (L) A 226-acre unit on the west side of Wilson Creek.
  - (M) A 130-acre unit in the Caney Creek Area.
  - (O) A 170-acre unit in the Oakview North Area.
  - (P) A 115-acre unit in the North Platter Flats Area.
  - (Q) A 95-acre unit in the Newberry Creek South Area.
- (10) Kaw Lake:
- (A) A 280-acre unit in the Traders Bend Area.
  - (B) A 320-acre unit in the Sarge Creek Cove Area.
  - (C) A 220-acre unit in the Burbank Landing Area.
  - (D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.
  - (E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.
  - (F) A 186-acre unit south of Camp McFadden and north of a housing addition.
- (11) Eufaula Lake:
- (A) Open for archery equipment 1 October through 28 February and open for shotguns with pellets from 1 November through 28 February.
    - (i) A 165 -acre unit in the Highway 31 Landing Area.
    - (ii) A 128 -acre unit in Holiday Cove Recreation Area.
    - (iii) A 200-acre unit in Hickory Point Recreation Area.
    - (iv) A 90 -acre unit in the Gentry Creek Recreation Area.
  - (B) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets.
    - (i) A 275-acre unit known as Duchess Creek Island.
    - (ii) A 47-acre unit in Juniper Park.
    - (iii) A 99-acre unit in the Coal Creek area.
    - (iv) A 69-acre unit southwest of the city of Crowder.
    - (v) A 116-acre unit east of the city of Crowder.
    - (vi) A 95-acre unit in the Rock Creek Heights area.
    - (vii) A 63-acre unit around Highway 9 Marina.
    - (viii) A 411-acre unit in the area of Highway 9A.
    - (ix) A 247-acre unit known as Bunny Creek.
    - (x) A 251-acre unit in Sandy Bass Bay.
    - (xi) A 32-acre unit in Dam Site area.
    - (xii) A 95-acre unit below Eufaula Dam, north of the river
    - (xiii) A 443-acre unit in the Longtown Creek area known as Round Tree Landing.
- (C) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets, except for the 2<sup>nd</sup> Friday through Monday in December: A 395-acre unit in the Brooken Cove Recreational Area.
- (D) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets only, except closed the 3<sup>rd</sup> Friday of October through the 1<sup>st</sup> week-end of November: A 533-acre unit in the Gaines Creek Recreational Area.
- (12) Chouteau Lock and Dam 17: All lands beginning from the MK&T Railroad below Chouteau Lock and Dam 17 and continuing upstream to Newt Graham Lock and Dam 18, except that Pecan Park is open to hunting with archery equipment only and the Chouteau Lock and Dam 17 has a 600 yard "No Hunting" buffer area around both the lock and dam, and that Coal Creek Access Point and Afton Landing Park are closed to all hunting.
- (13) Hulah Lake:
- (A) A 200-acre unit in the Turkey Creek Point Area.
  - (B) A 60-acre unit below Hulah Dam.
  - (C) A 375-acre unit in the Caney Bend Area.
- (14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.
- (15) Oologah Lake:
- (A) A 80-acre unit on the east side of Blue Creek Park.
  - (B) A 180 acre-unit on the south side of Spencer Creek Park.
  - (C) A 120-acre unit east of Double Creek Park.
- (16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only.
- (17) Newt Graham Lock and Dam 18: All lands beginning from Newt Graham Lock and Dam 18 and continuing upstream to Interstate 44, except that the Newt Graham Lock and Dam 18 has a 600 yard 'No Hunting' buffer area around it, and that Bluegill Access Point, Highway 33 Access Point and Bluff Landing Public Use Area are closed to all hunting.
- (18) Pine Creek Lake: Except, archery only during all deer seasons.
- (A) A 280-acre unit below Pine Creek Dam.
  - (B) A 225-acre unit within Little River Park open November 1 - January 15.
  - (C) A 190-acre unit within Pine Creek Cove open November 1 - January 15.
  - (D) A 530-acre unit upstream and downstream of the dike, SW of Pine Creek Cove.
  - (E) A 500-acre unit north of Little River Park and South of the old highway.

**800:25-3-3. Areas open to archery equipment only**

The following Corps of Engineers areas are open to archery equipment only:

- (1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.
- (2) Kaw Lake:
  - (A) A 400-acre unit in the Washunga Bay Area.
  - (B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.
  - (C) A 236-acre unit in the Osage Cove Area open from 1 December to 31 December.
  - (D) A 60-acre unit south of Kaw City and west of Pioneer Park.
- (3) Fort Gibson:
  - (A) A 515-acre unit on the south side of Mallard Bay.
  - (B) A 360-acre unit on the north side of the mouth of North Bay.
  - (C) A 50-acre unit south of Jackson Bay Area.
  - (D) A 150-acre area on the northeast end of Ranger Creek.
  - (E) A 488-acre unit on the south side of Whitehorn Cove Concession.
  - (F) A 100-acre unit in the Snug Harbor area.
  - (G) A 320-acre unit on the south side of North Bay.
  - (H) A 320-acre unit on the north side of Long Bay.
  - (I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of Highway 69.
  - (J) A 36-acre area in Section 6, T16N, R20E.
  - (K) A 77-acre area on the north shore of Ranger Creek.
  - (L) A 166-acre area west of Taylor Ferry South Park in Sections 20 & 21, T17N, R19E.
- (4) Copan Lake:
  - (A) A 50-acre unit north of Copan Point Park.
  - (B) A 50-acre unit north of the Post Oak area.
  - (C) A 5-acre unit west of Post Oak Park between the old and new Highway 10.
  - (D) A 340-acre unit north of the Washington Cove Park.
- (5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.
- (6) Skiatook Lake:
  - (A) A 138-acre unit in the Osage Park Area.
  - (B) A 150-acre unit area below Skiatook Dam.
  - (C) A 120-acre unit in Hominy Landing.
- (7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.
- (8) Pine Creek Lake:
  - (A) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment, except for the 2<sup>nd</sup> Tuesday through Sunday in November; A 200-acre unit north of Highway 3 and south of the old highway.
  - (B) A 120-acre unit west of Little River Park.
- (9) Fort Supply:
  - (A) A 183-acre unit in the south portion of Fort Supply Park.

- (B) A 46-acre unit in the Project Office Area.
- (10) Arcadia Conservation Education Area: (Open by ODWC sanctioned controlled hunt through the City of Edmond Game and Fish Commission only.)
  - (A) A 500-acre unit  $\frac{1}{2}$  mile North of Memorial Road on Midwest Boulevard
  - (B) 230-acre unit at Douglas and 150<sup>th</sup> street.
- (11) Keystone Lake: A 570-acre area south of the town of Prue (old Walnut Creek #1).
- (12) Lake Texoma:
  - (A) A 610-acre unit in the Burns Run Area
  - (B) A 550-acre unit in the Alberta Creek Area.
  - (C) A 60-acre unit in the Colbert Boat Club Area.
  - (D) A 40-acre unit in the Oak Hills Area.
  - (E) A 100-acre unit in the Willafa Woods Area.
  - (F) A 50-acre unit in the Buncombe Creek South Area.
- (13) Hugo Lake:
  - (A) A 13 acre unit located across from Wilson Point in Section 18, east of Highway 147.
  - (B) A 40 acre unit located north of County Road E2040 in Section 6 and east of Highway 147.

**SUBCHAPTER 7. GENERAL HUNTING SEASONS**

**PART 5. UPLAND GAME**

**800:25-7-15. Wild turkey - Fall; dates, limits and open areas**

The following hunting dates, bag limits and areas open to hunting apply to fall turkey hunting:

- (1) **Dates.** The dates for Fall turkey hunting are:
  - (A) Archery: Concurrent with the deer archery season.
  - (B) Gun: The last Saturday of the deer primitive season through the Friday preceding deer gun season.
- (2) **Season limit.** The season limit shall be one turkey per hunter for the fall season.
- (3) **Open areas and bag Limit - archery.** ~~The bag limit is one turkey of either sex and the season is open statewide.~~ Open counties and bag limits will be determined annually by Commission resolution and published in the Oklahoma Fishing and Hunting Regulations.
- (4) **Open areas and bag limit - gun.** ~~The fall limit is one turkey. County bag limits may be "tom only" or "either sex".~~ Open counties and ~~county~~ bag limits will be determined annually and published in the Oklahoma Fishing and Hunting Regulations.

**800:25-7-16. Wild turkey - Fall; legal means of taking**

The legal means of taking turkey during the fall season shall be as follows:

- (1) **Archery.** Archery hunting is by bow and arrow with the same characteristics legal for the deer archery season.

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(2) **Gun.** Gun hunting is by the following methods and in accordance with the following provisions:

(A) ~~Shotgun (conventional or muzzleloading), handgun or rifle; except as otherwise provided.~~

(B) ~~Rimfire firearms, except .22 magnum, .17 HMR caliber, and 5 mm magnum, are illegal.~~

(C) ~~Muzzleloading rifles and handguns of .36 caliber or larger are legal in all open counties, except as otherwise provided.~~

(D) ~~Conventional handguns and rifles are not permitted for turkey hunting during the two-day period when turkey season and deer primitive season run concurrently.~~ Legal means of taking will be determined annually by Commission resolution and published in the Oklahoma Fishing and Hunting Regulations.

## 800:25-7-20. Squirrel (fox and gray)

The following hunting dates, bag limits, hunting hours and legal means of taking apply to squirrel:

(1) **Dates and open areas.** The dates for the squirrel season shall be May 15 - January 31 and the season is open statewide ~~[Title 29 O.S., Section 5-409, Part A].~~

(2) **Bag limit.** The bag limit shall be 25 daily aggregate, 50 in possession after first day.

(3) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to sunset.

(4) **Legal means of taking.** The legal means of taking squirrel shall be shotgun (conventional or muzzleloading), legal raptors, bow and arrow, hand-propelled missile, air-propelled missile, slingshot, handgun or rifle (conventional or muzzleloading), except as otherwise provided.

## PART 7. FALCONRY

### 800:25-7-28. Dates, open areas, bag limit, hunting hours and legal means of taking

The following hunting dates, open areas, hunting hours, bag limits and legal means of taking apply to licensed falconers hunting with legal raptors:

(1) **Dates and open areas.** The following species are permitted to be hunted with legal raptors:

(A) Pheasant: The season is open statewide from October 1 through March 31.

(B) Rabbit: The season is open year-round; statewide.

(C) Prairie Chicken: The season will be open at the most liberal level allowed by the Falconry and Archery Adaptive Harvest Management Strategy (AHMS) for Prairie Chickens in Oklahoma. Season dates, open areas and bag limits are defined in the AHMS.

(D) Quail: The season is open statewide from October 1 through March 31.

(E) Squirrel: The season is open year-round, statewide.

(2) **Bag limit.** The bag limit during falconry hunting dates that are outside of the regular hunting season shall be two animals of each species daily, four in possession after the first day, except prairie chickens, for which the bag limit is defined in the Falconry and Archery Adaptive Harvest Management Strategy for Prairie Chickens in Oklahoma. Bag limits during regular hunting seasons shall be the same as those listed in the Oklahoma Hunting Guide.

(3) **Hunting hours.** The hunting period shall be sunrise to sunset. Non-protected wildlife may be hunted at any time.

(4) **Legal means of taking.** The legal means of taking shall be with legal raptors only.

## PART 15. FURBEARERS

### 800:25-7-60. ~~Dates and legal furbearers~~ General provisions for furbearers

~~The following dates apply to the taking of legal furbearers:~~

~~(1) **Dates and legal furbearers.** The dates for the taking of furbearers shall be the first day of December to the last day of February [Title 29 O.S., Section 5-405] and those legal furbearers are as follows: Badger, bobcat, gray fox, mink, muskrat, opossum, red fox, river otter and weasel.~~

~~(2) **Open year-round.** The season for taking raccoon, beaver, striped skunk, nutria and coyote is open year-round. Taking of mountain lion is allowed when the mountain lion is committing or about to commit depredation on any domesticated animal, or when acting in a manner as to constitute an immediate safety hazard. In the event a mountain lion is taken, an ODWC employee must be notified immediately and the intact carcass including the hide must be presented to ODWC within 24 hours for collection of biological information.~~ The following general provisions apply to the taking of furbearers:

(1) **Sale of carcass.** The skinned carcass of any legal furbearer or predator may be sold, offered or displayed for sale or bartered at any time. The sale of scent glands from furbearers or predators is permitted.

(2) **Bobcat and River Otter export tag.**

(A) No bobcat or river otter pelt may be held in possession after 10 working days after the close of furbearer season by the taker or buyer, sold, purchased or bartered within Oklahoma, nor taken out of Oklahoma without having first affixed a permanent tag to the pelt. This tag shall serve as an export tag.

(B) The tag must be affixed by an authorized employee of the Oklahoma Department of Wildlife Conservation, a designated agent, or a private tagging station. Private tagging station may charge \$0.75 per tag fee.

(C) It is the responsibility of the possessor of the bobcat or river otter pelt, not the Department, to ensure that the pelt is legally tagged.

(D) No untagged bobcat or river otter harvested in another state may be possessed in Oklahoma.

(3) **Possession of carcasses or hides.**

(A) It shall be illegal to possess live animals, carcasses or raw furs of swift fox, ringtail, or spotted skunk, unless proven that each carcass or hide was taken legally outside of the State of Oklahoma.

(B) Proof of legality or origin for carcasses or green hides shall be a tag or other marking device attached to or imprinted on each and every hide in such a way that it cannot be removed intact. The tag or marking must be the official method used by the issuing agency. If any identification is not required by the issuing agency, a hunting or trapping license appropriate to the species taken is required as proof.

(4) **Night hunting of coyotes.** It shall be unlawful to hunt, take or attempt to take coyotes within the period of dark to daylight with the aid of any artificial light and/or any sight dog. Persons hunting at night must first obtain permission from the County Game Warden. Anyone hunting at night must use a shotgun, utilizing size 6 shot or smaller.

(5) **Special license requirement.** A special Bobcat-Raccoon-River Otter-Gray/Red Fox License is required for all who take these species by any means. Holders of an Oklahoma Department of Wildlife Conservation lifetime hunting or lifetime combination license, senior citizen hunting or senior citizen combination license are exempt. No individual may purchase more than one special license. This license is valid through seasons currently in effect for bobcat, raccoon, river otter, gray fox and red fox. Said fee for Oklahoma resident is \$9.00 plus \$1.00 vendor fee, non-resident is \$50.00 plus \$1.00 vendor fee.

(6) **Intent to hold form requirement.** Any person who takes a pelt or pelts during the season shall have until the end of March to sell or dispose of the pelts or to provide written notification to the Department of Wildlife Conservation that the person intends to hold the pelts for later sale. Written notification shall be made on a form prescribed by the Department.

(7) **Trap placement.** No trap so used may be set in paths, roads, or runways commonly used for recreational purposes by persons, domestic animals or dogs.

(8) **Trap check requirement.** Any trap set for the purpose of catching any wildlife shall be tended once during each twenty-four (24) hour period. All traps shall bear the name, or customer identification number, of the owner of the traps, except for any traps set on property owned or leased by the owner of the traps. Any person violating this subsection shall, in addition to any criminal penalty, be civilly liable for all damages caused by such violation.

(9) **Posting of signage.** On any lands where smooth-jawed double-spring offset no less than 1/8 inch or smooth-jawed coil-spring offset no less than 1/8 inch traps are used, the posting of signs shall be required at all entrances from public roads and highways. The requirement to post signs shall not apply if the person is

trapping on private property. Signs shall be no less than 5" by 8" and clearly state the word "TRAPS".

**800:25-7-61. Bag limitsDates, open areas, bag limits, and legal means of taking**

The following daily and season bag limits apply to the taking of legal furbearers:

(1) Daily bag limits:

- (A) Bobcat — no bag limit.
- (B) Gray fox — 2 per licensee.
- (C) Red fox — 1 per licensee.
- (D) Badger, beaver, coyote, mink, muskrat, nutria, opossum, raccoon, river otter, spotted skunk, striped skunk, and weasel — no daily bag limit.

(2) Season bag limits:

- (A) Bobcat — 20 per licensee.
- (B) Gray fox/Red fox combined — 6 per licensee, no more than 2 may be red fox.
- (C) Badger, beaver, coyote, mink, muskrat, nutria, opossum, raccoon, striped skunk and weasel — no bag limit.
- (D) River otter — 4 per licensee.

The following dates, open areas, bag limits and legal means of taking apply to furbearers:

(1) **Dates and legal furbearers.**

(A) Furbearer Season: The dates for the taking of furbearers shall be the first day of December to the last day of February and those legal furbearers are as follows: Badger, bobcat, gray fox, mink, muskrat, opossum, red fox, river otter and weasel.

(B) Open year-round: The season for taking raccoon, beaver, striped skunk, nutria and coyote is open year-round. Taking of mountain lion is allowed when the mountain lion is committing or about to commit depredation on any domesticated animal, or when acting in a manner as to constitute an immediate safety hazard. In the event a mountain lion is taken, an ODWC employee must be notified immediately and the intact carcass including the hide must be presented to ODWC within 24 hours for collection of biological information.

(2) **Open areas.** The following provisions apply to areas which furbearers can be legally taken or are closed to harvest:

(A) Open statewide. Badger, beaver, bobcat, coyote, gray fox, mink, muskrat, nutria, opossum, raccoon, red fox, river otter, striped skunk and weasel are open to harvest statewide.

(B) Closed statewide. Ringtail, spotted skunk, and swift fox are closed to harvest statewide.

(3) **Bag limits.** The following daily and season bag limits apply to the taking of legal furbearers:

(A) Daily bag limits:

- (i) Bobcat - no bag limit.
- (ii) Gray fox - 2 per licensee.
- (iii) Red fox - 1 per licensee.

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- (iv) Badger, beaver, coyote, mink, muskrat, nutria, opossum, raccoon, river otter, striped skunk, and weasel - no daily bag limit.
- (B) Season bag limits:
  - (i) Bobcat - 20 per licensee.
  - (ii) Gray fox/Red fox combined - 6 per licensee, no more than 2 may be red fox.
  - (iii) Badger, beaver, coyote, mink, muskrat, nutria, opossum, raccoon, striped skunk and weasel - no bag limit.
  - (iv) River otter - 6 per licensee.
- (4) Legal means of taking. The following are the legal trapping devices:
  - (A) Box traps and Colony traps.
  - (B) Smooth-jawed single-spring OR smooth-jawed double-spring offset no less than 1/8 inch OR smooth-jawed coil-spring offset no less than 1/8 inch foot-hold steel traps with an outer diameter jaw spread of:
    - (i) No more than eight (8) inches for land sets.
    - (ii) No more than eight and 1/2 (8.5) inches for water sets.
  - (C) Enclosed trigger traps.
  - (D) Body-gripping traps for fully submerged sets with no more than twelve (12) inches in diameter on private land only.

## 800:25-7-62. Open areas Fur dealers

The following provisions apply to areas which furbearers can be legally taken or are closed to harvest:

- (1) Open statewide. ~~Badger, beaver, bobcat, coyote, gray fox, mink, muskrat, nutria, opossum, raccoon, red fox, river otter, striped skunk and weasel are open to harvest statewide.~~
- (2) Closed statewide. ~~Ringtail, spotted skunk, and swift fox are closed to harvest statewide.~~ The following provisions apply to licensed fur dealers in the conduct of their business:
  - (1) Place of business.
    - (A) Each fur dealer in this state is entitled by virtue of obtaining a license to purchase furs at the address stipulated on the license. For nonresident fur dealers, transactions may be conducted at other places only after the dealer provides written notification of each additional place where business will be conducted and the hours of operation of business (Title 29 O.S., Section 4-111, Parts A and B).
    - (B) This notice must be received by the Oklahoma Department of Wildlife Conservation, P. O. Box 53465, Wildlife Division, Oklahoma City, Oklahoma 73152 at least 24 hours prior to the first day the dealer intends to transact business.
    - (C) The dealer may not proceed to buy furs in these places until that dealer receives an itemized confirmation of notification from the Department. Such confirmation must be available for inspection by Department officials at each location.

- (2) Vehicle decals.
  - (A) All vehicles used by a fur dealer to transport furs shall be marked conspicuously by decals bearing the inscription "Licensed Fur Dealer". Such decals shall be clearly visible and defaced in no manner.
  - (B) These decals shall be furnished by the Department at a cost of \$.50 each.
  - (C) Such decals shall expire on June 30.
  - (D) Decals may be concealed for security only after all transactions have been completed for the day. The vehicle must be parked and shall not be moved for any reason with a concealed decal.
- (3) Dealer's report.
  - (A) Each and every fur dealer in this state must have at the location where business is being transacted their fur dealer's license, a report book issued by the Department and, if required, a confirmed itinerary.
  - (B) All purchases made by the dealer must be recorded in the report book issued by the Department. All information requested in the report books must be provided. It is the responsibility of the dealer to keep these books intact, legible and current at all times. These books shall be available at any time for inspection by Department officials.
  - (C) As each book is completed, it will be delivered to a Department employee or to the Wildlife Division, Oklahoma Department of Wildlife Conservation, P.O. Box 53465, Oklahoma City, Oklahoma 73152 by hand, registered or certified mail.
  - (D) All report books complete, incomplete or empty must be delivered to the Department in the manner prescribed above on or before the last day in April, annually.
- (4) Possession of bobcat pelts. No untagged bobcat pelt shall be purchased in Oklahoma. No untagged bobcat harvested in another state shall be possessed in Oklahoma. No fur dealer may possess an untagged bobcat pelt unless the bobcat was harvested by fur dealer and only as otherwise provided.
- (5) Dealer inventory. Dealer inventory and records will be available for inspection by Law Enforcement Officers of the State or Federal Government at all times.

## 800:25-7-63. License requirements and fees [REVOKED]

~~A special Bobcat Raccoon River Otter Gray/Red Fox License is required for all who take these species by any means. Holders of an Oklahoma Department of Wildlife Conservation lifetime hunting or lifetime combination license, senior citizen hunting or senior citizen combination license are exempt. No individual may purchase more than one special license. This license is valid through seasons currently in effect for bobcat, raccoon, river otter, gray fox and red fox. Said fee for Oklahoma resident is \$9.00 plus \$1.00 vendor fee, non resident is \$50.00 plus \$1.00 vendor fee.~~



**800:25-7-64. General provisions for furbearers [REVOKED]**

The following general provisions apply to the taking of furbearers:

- (1) **Sale of carcass.** The skinned carcass of any legal furbearer or predator may be sold, offered or displayed for sale or bartered at any time. The sale of scent glands from furbearers or predators is permitted.
- (2) **Bobcat and River Otter export tag.**
  - (A) No bobcat or river otter pelt may be held in possession after 10 working days after the close of furbearer season by the taker or buyer, sold, purchased or bartered within Oklahoma, nor taken out of Oklahoma without having first affixed a permanent tag to the pelt. This tag shall serve as an export tag.
  - (B) The tag must be affixed by an authorized employee of the Oklahoma Department of Wildlife Conservation, a designated agent, or a private tagging station. Private tagging station may charge \$0.75 per tag fee.
  - (C) It is the responsibility of the possessor of the bobcat or river otter pelt, not the Department, to ensure that the pelt is legally tagged.
  - (D) No untagged bobcat or river otter harvested in another state may be possessed in Oklahoma.
- (3) **Possession of carcasses or hides.**
  - (A) It shall be illegal to possess live animals, carcasses or raw furs of swift fox, ringtail, or spotted skunk, unless proven that each carcass or hide was taken legally outside of the State of Oklahoma.
  - (B) Proof of legality or origin for carcasses or green hides shall be a tag or other marking device attached to or imprinted on each and every hide in such a way that it cannot be removed intact. The tag or marking must be the official method used by the issuing agency. If any identification is not required by the issuing agency, a hunting or trapping license appropriate to the species taken is required as proof.
- (4) **Night hunting of coyotes.** It shall be unlawful to hunt, take or attempt to take coyotes within the period of dark to daylight with the aid of any artificial light and/or any sight dog. Persons hunting at night must first obtain permission from the County Game Ranger. Anyone hunting at night must use a shotgun, utilizing size 6 shot or smaller.

**800:25-7-65. Fur dealers [REVOKED]**

The following provisions apply to licensed fur dealers in the conduct of their business:

- (1) **Place of business.**
  - (A) Each fur dealer in this state is entitled by virtue of obtaining a license to purchase furs at the address stipulated on the license. Transactions may be conducted at other places only after the dealer provides written notification of each additional place where business will be conducted and the hours of operation

of business (Title 29 O.S., Section 4-111, Parts A and B).

- (B) This notice must be received by the Oklahoma Department of Wildlife Conservation, P. O. Box 53465, Game Division, Oklahoma City, Oklahoma 73152 at least 24 hours prior to the first day the dealer intends to transact business.
- (C) The dealer may not proceed to buy furs in these places until that dealer receives an itemized confirmation of notification from the Department. Such confirmation must be available for inspection by Department officials at each location.
- (2) **Vehicle decals.**
  - (A) All vehicles used by a fur dealer to transport furs shall be marked conspicuously by decals bearing the inscription "Licensed Fur Dealer". Such decals shall be placed on the center of each door and defaced in no manner.
  - (B) These decals shall be furnished by the Department at a cost of \$.50 each.
  - (C) Such decals shall expire on June 30.
  - (D) Decals may be concealed for security, but not removed from the vehicle, only after all transactions have been completed for the day. The vehicle must be parked and shall not be moved for any reason with a concealed decal.
- (3) **Dealer's report.**
  - (A) Each and every fur dealer in this state must have at the location where business is being transacted their fur dealer's license, a report book issued by the Department and, if required, a confirmed itinerary.
  - (B) All purchases made by the dealer must be recorded in the report book issued by the Department. All information requested in the report books must be provided. It is the responsibility of the dealer to keep these books intact, legible and current at all times. These books shall be available at any time for inspection by Department officials.
  - (C) As each book is completed, it will be delivered to a Department employee or to the Game Division, Oklahoma Department of Wildlife Conservation, P.O. Box 53465, Oklahoma City, Oklahoma 73152 by hand, registered or certified mail.
  - (D) All report books complete, incomplete or empty must be delivered to the Department in the manner prescribed above on or before the last day in February, annually.
- (4) **Possession of bobcat pelts.** No untagged bobcat pelt shall be purchased in Oklahoma. No untagged bobcat harvested in another state shall be possessed in Oklahoma. No fur dealer may possess an untagged bobcat pelt unless the bobcat was harvested by furdealer and only as otherwise provided.
- (5) **Dealer inventory.** Dealer inventory and records will be available for inspection by Law Enforcement Officers of the State or Federal Government at all times.

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## PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

### 800:25-7-81. Altus-Lugert WMA

The following hunting and trapping seasons apply to the Altus-Lugert WMA. Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns.

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie Chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~1 tom limit.~~
- (5) Turkey-Spring: Same as statewide dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed the last seven days and closed to antlerless hunting. Archery, shotgun, and muzzleloader only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

### 800:25-7-81.2. Arbuckle Springs WMA

The following hunting and trapping seasons apply to the Arbuckle Springs

- (1) Quail: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.

- (4) Turkey - Fall
  - (A) Archery: Same as statewide season dates. ~~Either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed from opening day of deer archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from opening day of deer archery season through first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during controlled hunts.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season. Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season.

### 800:25-7-82.1. Atoka PHA

The following hunting and trapping seasons apply to the Atoka PHA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the

~~current Oklahoma Hunting Guide~~Oklahoma Fishing and Hunting Regulations.

- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last 7 days.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

**800:25-7-82.3. Barren Fork WMA**

The following hunting and trapping seasons apply to the Barren Fork WMA:

- (1) Quail: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Closed season.
- (5) Turkey: Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide dates.
- (7) Rabbit: Same as statewide dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - Primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through the first 9 days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-83. Beaver River WMA**

The following hunting and trapping seasons apply to the Beaver River WMA:

- (1) Quail: Same as statewide dates, except closed during deer primitive and the first nine days of deer gun season ~~and closed to nonresidents from February 1 to end of season.~~ and hunting-Hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~bird either sex and~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

**800:25-7-83.1. Beaver River WMA - McFarland Unit**

The following hunting and trapping seasons apply to the McFarland Unit on Beaver River WMA: That portion of the McFarland Unit lying in Section 1 & 12, T4N, R23E and Section 7, T4N, R24E are restricted to archery and shotgun with pellets only.

- (1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and closed to nonresidents from February 1 to end of season. ~~and hunting~~ Hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during the first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:

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- (A) Archery: Same as statewide season dates, ~~either sex.~~
- (B) Gun: Same as statewide season dates, ~~1 bird either sex and~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive: Controlled Hunts Only.
- (15) Deer - gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

### 800:25-7-84. Black Kettle WMA

The following hunting and trapping seasons apply to the Black Kettle WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:  
(A) Archery: Same as statewide season dates ~~one (1) tom limit.~~  
(B) Gun: Same as statewide season dates, ~~one (1) tom limit,~~ shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed first nine days of deer gun season.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed last seven days.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

### 800:25-7-85. Blue River Hunt Area

The following hunting and trapping seasons apply to the Blue River Hunt Area: Hunting is restricted to shotgun or bow and arrow only.

- (1) Quail: Same as statewide season dates.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:  
(A) Archery: Same as statewide season dates, ~~either sex.~~  
(B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Same as statewide season dates, except closed to antlerless deer hunting. Shotgun only.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-86. Broken Bow WMA

The following hunting and trapping seasons apply to the Broken Bow WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:

- (A) Archery: Same as statewide season dates; ~~either sex.~~
- (B) Gun: Closed season.
- (5) Turkey-Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the ~~current Oklahoma Hunting Guide~~Oklahoma Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

**800:25-7-87.1. Candy Creek WMA**

The following hunting and trapping seasons apply to the Candy Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.
- (2) Pheasant: Closed Season.
- (3) Prairie Chicken: Closed Season.
- (4) Turkey - Fall
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates; ~~1-tom limit,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: September 1 - January 15, except closed during the first nine (9) days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and Gallinule: Same as statewide season dates.
- (11) Common Snipe: Same as statewide season dates, except closed the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed the first nine days of deer gun season.

- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Controlled hunts only.
- (15) Deer-gun: Controlled hunts only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed March 16 - August 31 and the first nine (9) days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed March 16 - August 31 and the first nine (9) days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.

**800:25-7-88. Canton WMA**

The following hunting and trapping seasons apply to the Canton WMA:

- (1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and closed to nonresidents from February 1 to end of season. ~~and hunting~~Hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~one bird either sex,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates except controlled hunts opening weekend and the following seven days of the season buck only hunting. Closed the last seven days of the season.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

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### 800:25-7-90. Cherokee PHA

The following hunting and trapping seasons apply to the Cherokee PHA:

- (1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit on the PHA and GMA combined.
- (6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (7) Rabbit: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season.
- (8) Crow: Same as statewide season dates except closed from the opening day of deer archery season through deer gun season.
- (9) Dove: Same as statewide season dates except closed from the opening day of deer archery season through deer gun season.
- (10) Rail and gallinule: Same as statewide dates except closed from the opening day of deer archery season through deer gun season.
- (11) Common snipe: Same as statewide dates, except closed from the opening day of deer archery season through the deer gun season.
- (12) Woodcock: Same as statewide dates, except closed from the opening day of deer archery season through the deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (17) Pursuit with hounds: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
- (19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

### 800:25-7-92. Chickasaw NRA

The following hunting and trapping seasons apply to the Chickasaw NRA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~1 tom limit.~~ Shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates. Additional controlled hunts may be held.
- (15) Deer-gun: Same as statewide season dates.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-92.1. Cimarron Bluff Wildlife Management Area WMA

The following hunting and trapping seasons apply to the Cimarron Bluff WMA:

- (1) Quail: Same as statewide season dates, except closed during the first nine days of deer gun season and closed to nonresidents from February 1 to end of season. Hunting hours close at 12:00 noon daily.
- (2) Pheasant: Same as statewide season dates, except closed during the first nine days of deer gun season. Hunting hours close at 12:00 noon daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates. ~~One (1) bird either sex.~~
  - (B) Gun: Same as statewide season dates. ~~One (1) bird either sex,~~ shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, One (1) tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.

- (9) Dove: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Controlled Hunts Only.
- (15) Deer-gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during the first nine days of deer gun season.

**800:25-7-92.2. Cimarron Hills Wildlife Management Area WMA**

The following hunting and trapping seasons apply to the Cimarron Hills WMA:

- (1) Quail: Same as statewide season dates, except closed during the first nine days of deer gun season and closed to nonresidents from February 1 to end of season. Hunting hours close at 12:00 noon daily.
- (2) Pheasant: Same as statewide season dates, except closed during the first nine days of deer gun season. Hunting hours close at 12:00 noon daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates. ~~One (1) bird either sex.~~
  - (B) Gun: Same as statewide season dates. ~~One (1) bird either sex,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, One (1) tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Controlled Hunts Only.

- (15) Deer - gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during the first nine days of deer gun season.

**800:25-7-94. Copan WMA**

The following hunting and trapping seasons apply to the Copan WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~one bird either sex limit.~~
  - (B) Gun: Same as statewide season dates, ~~one tom limit.~~
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days, one antlered and one antlerless deer limit.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-94.1. Cooper WMA**

The following hunting and trapping seasons apply to the Cooper WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun

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season ~~and closed to nonresidents from February 1 to end of season and hunting~~ Hunting hours close at 4:30 PM daily.

- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~one bird either sex,~~ shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer-gun: Same as statewide season dates except closed the last seven days and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates. Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

### 800:25-7-94.1.1. Cross Timbers WMA

The following hunting and trapping seasons apply to the Cross Timbers WMA:

- (1) Quail: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Controlled Hunts only.

- (6) Squirrel: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun seasons.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery through the first nine (9) days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery through the first nine (9) days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer - primitive: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season. Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide seasons dates, except closed from opening day of archery through the first nine (9) days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

### 800:25-7-94.5. Deep Fork WMA

The following hunting and trapping seasons apply to the Deep Fork WMA:

- (1) Quail: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~one tom limit,~~ shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.



- (11) Common snipe: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed during the last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: same as statewide season dates, except closed during the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except Harold Stuart Marsh closed to waterfowl hunting.

**800:25-7-94.6. Dewey County WMA**

The following hunting and trapping seasons apply to the Dewey County WMA:

- (1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and closed to nonresidents from February 1 to end of season.~~and hunting~~ Hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates,~~one bird of either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates except closed the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed Season
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except legal archery equipment only, fluorescent orange regulations apply.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-94.7. Drummond Flats WMA**

The following hunting and trapping seasons apply to the Drummond Flats WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates, except closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Same as statewide season dates.
- (3) Prairie Chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates,~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed Season.
- (16) Trapping: Closed Season, except open February 1 through the end of February.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide dates, except closed at 1:00 PM daily.

**800:25-7-95. Ellis County WMA**

The following hunting and trapping seasons apply to the Ellis County WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates,~~either sex.~~
  - (B) Gun: Same as statewide season dates,~~either sex.~~
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

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- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed the last seven days of deer gun season. Antlerless hunting permitted last two days of the area season.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

### 800:25-7-97. Fobb Bottom WMA

The following hunting and trapping season apply to the Fobb Bottom WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex~~.
  - (B) Gun: Same as statewide season dates, ~~1 tom limit~~, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting after the first day.
- (15) Deer-gun: Same as statewide season dates, except closed to antlerless hunting after the first day.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-98. Fort Cobb WMA

The following hunting and trapping seasons apply to the Fort Cobb WMA: Unless otherwise provided, hunting is restricted to shotgun or bow and arrow only.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed last seven days.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-99. Fort Gibson PHA

The following hunting and trapping seasons apply to the Fort Gibson PHA: That portion of Fort Gibson PHA between Snug Harbor and Whitehorn Cove Road, lying in Section 29 and 30, T18N, R19E; and Fort Gibson PHA lands surrounding Blue Bill Point Development Area, lying in Section 13, T18N, R18E, are restricted to archery and shotgun with pellets only. That portion of Fort Gibson PHA north of Hwy 51 and south of Toppers Road, in the Long Bay Area, is closed to centerfire rifles.

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall
  - (A) Archery: Same as statewide season dates, ~~either sex~~.
  - (B) Gun: Closed season.

- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of season and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-101. Fort Supply WMA**

The following hunting and trapping seasons apply to Fort Supply WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season and closed to nonresidents from February 1 to end of season. Hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~one bird either sex,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.

- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer - gun: Same as statewide season dates except closed the last seven days and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of gun season.

**800:25-7-102. Gary Sherrer WMA**

The following hunting and trapping seasons apply to the Gary Sherrer WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant - Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as ~~stateside~~statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the ~~current Oklahoma Hunting Guide~~Oklahoma Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

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### 800:25-7-102.1. Gist WMA

The following hunting and trapping seasons apply to the Gist WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit; Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Open to water sets, live box traps and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-102.1.1. Grady County WMA

The following hunting and trapping seasons apply to the Grady County WMA:

- (1) Quail: Same as statewide season dates, except closed during deer muzzleloader season and first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates except closed during deer muzzleloader season and the first nine days of deer gun season, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, except closed during deer muzzleloader ~~1 tom limit~~, shotgun only.
- (5) Turkey-spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.

(9) Dove: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.

- (10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates except closed during deer muzzleloader season and the first nine days of deer gun season.
- (14) Deer-primitive firearms: Controlled hunts only.
- (15) Deer-gun: Controlled hunts only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only, except closed during deer muzzleloader season and the first nine days of deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and the first nine days of deer gun season.

### 800:25-7-102.2. Grassy Slough WMA

The following hunting and trapping seasons apply to the Grassy Slough WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the ~~current Oklahoma Hunting Guide~~ Oklahoma Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-102.3. Grassy Slough WRP**

The following hunting and trapping seasons apply to the Grassy Slough WRP: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Open February 1 through 15.
- (2) Pheasant: Closed season.
- (3) Prairie Chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery - Same as statewide season dates, except closed October 15 - January 31.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates except closed October 15 - January 31.
- (7) Rabbit: Same as statewide season dates except closed October 15 - January 31.
- (8) Crow: Same as statewide season dates except closed October 15 - January 31.
- (9) Dove: Same as statewide season dates except closed October 15 - January 31.
- (10) Rail and gallinule: Same as statewide season dates except closed October 15 - January 31.
- (11) Common Snipe: Same as statewide season dates except closed October 15 - January 31.
- (12) Woodcock: Closed season.
- (13) Deer-archery: Same as statewide season dates except closed October 15 - January 31.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed October 15 - January 31.
- (18) Predator/furbearer calling: Same as statewide season dates except closed October 15 - January 31.
- (19) Waterfowl: Same as statewide season dates except closed October 15 - January 31.

**800:25-7-105.5. Hackberry Flat WMA**

The following hunting and trapping seasons apply to the Hackberry Flat WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide dates, except closed during the first nine days of deer gun season and closed to non-residents from February 1 to end of season.
- (2) Pheasant: Closed season
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Closed season.
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Closed season.
- (6) Squirrel: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except open the first nine days only. Muzzleloading firearms only.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed at 1:00 p.m. daily.

**800:25-7-105.6. Hackberry Flat WRP**

The following hunting and trapping seasons apply to the Hackberry Flat WRP:

- (1) Quail: Same as statewide season dates except closed October 15 - January 31 and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Closed season.
  - (B) Gun: Closed season
- (5) Turkey - Spring: Closed season.
- (6) Squirrel: Closed season.
- (7) Rabbit: Same as statewide season dates except closed October 15-January 31.
- (8) Crow: Same as statewide season dates except closed October 15-January 31.
- (9) Dove: Same as statewide season dates except closed October 15-January 31.

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- (10) Rail and gallinule: Same as statewide season dates except closed October 15-January 31.
- (11) Common snipe: Same as statewide season dates except closed October 15-January 31.
- (12) Woodcock: Closed season.
- (13) Deer-archery: Same as statewide season dates except closed October 15 - January 31.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed October 15-January 31.
- (18) Predator/furbearer calling: Same as statewide season dates except closed October 15-January 31.
- (19) Waterfowl: Same as statewide season dates except closed at 1:00 p.m. daily and closed October 15-January 31.
- (20) All shotgun hunting is restricted to federally approved nontoxic shot.

### 800:25-7-106. Heyburn WMA

The following hunting and trapping seasons apply to the Heyburn WMA.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~1 tom limit,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-108. Hickory Creek WMA

The following hunting and trapping seasons apply to the Hickory Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~1 tom limit,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting after opening day.
- (15) Deer - gun: Same as statewide season dates, except closed to antlerless hunting after opening day.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-108.1. Honobia Creek WMA

The following hunting and trapping seasons apply to the Honobia Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Fishing and Hunting Regulations ~~hunting Guide.~~
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

**800:25-7-111. Hulah WMA**

The following hunting and trapping seasons apply to the Hulah WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~one (1) tom limit.~~
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days, one antlered and one antlerless deer limit.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide dates except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.

- (19) Waterfowl: Same as statewide season dates.

**800:25-7-115. Kaw WMA**

The following hunting and trapping seasons apply to the Kaw WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season.
- (2) Pheasant: Same as statewide season dates and bag limits, except closed during first nine days of deer gun season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~1 tom limit,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed during last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-116. Keystone WMA**

The following hunting and trapping seasons apply to the Keystone WMA: That portion of the Arkansas River arm of the Keystone WMA that was formerly the waterfowl refuge has restricted hunting. The west boundary of this portion is a northern extension of Swan Drive in the City of Cleveland. In this designated area, lands in Osage County and in the Arkansas River are restricted to archery and shotgun with pellets only; lands in Pawnee County are restricted to archery only.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.

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- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Same as statewide season dates; ~~1—tom limit~~, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except open the first nine days only and Cottonwood Creek Wetland Development Unit lands are closed.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-117. Lexington WMA

The following hunting and trapping seasons apply to the Lexington WMA:

- (1) Quail: Same as statewide season dates, except open the Monday following the close of the first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Closed Season.
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

- (9) Dove: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except open the Monday following the close of the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: ~~Closed season.~~ Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season. Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

### 800:25-7-120. Love Valley WMA

The following hunting and trapping seasons apply to Love Valley WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex~~.
  - (B) Gun: Same as statewide season dates, ~~1—tom limit~~, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season.



- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-120.1. Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit**

The following hunting and trapping seasons apply to the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit: All hunting is restricted to shotguns with pellets or archery equipment only.

- (1) Quail: Same as statewide season dates.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-121. Major County WMA**

The following hunting and trapping seasons apply to the Major County WMA:

- (1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and closed to nonresidents from February 1 to end of season. ~~and hunting.~~ Hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:

- (A) Archery: Same as statewide season dates, ~~either sex.~~
- (B) Gun: Same as statewide season dates, ~~one bird of either sex.~~
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season
- (11) Common snipe: Same as statewide dates, except closed the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season, and closed to antlerless hunting.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-123. McClellan-Kerr WMA**

The following hunting and trapping seasons apply to the McClellan-Kerr WMA: The discharge of firearms for purposes other than hunting is prohibited.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~1 tom.~~
- (5) Turkey - Spring: Same as statewide season dates.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.

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- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-126. Mountain Park WMA

The following hunting and trapping seasons apply to the Mountain Park WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates. 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Closed season.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-127. Okmulgee GMA

The following hunting and trapping seasons apply to the Okmulgee GMA:

- (1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:

(A) Archery: ~~Either sex, same~~ Same as statewide season dates.

(B) Gun: Closed season.

- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of archery deer season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of archery deer season through first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during designated controlled hunt dates.

### 800:25-7-128. Okmulgee PHA

The following hunting and trapping seasons apply to the Okmulgee PHA:

- (1) Quail: Same as statewide dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~1-tom limit,~~ shotgun only.
- (5) Turkey - Spring: Same ~~As~~ statewide season, 1 tom limit.

- (6) Squirrel: Same as statewide season dates, except closed from opening day of deer archery season through first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (8) Crow: Open December 9 - March 4.
- (9) Dove: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (11) Common snipe: Same as statewide dates except closed from opening day of archery season through first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-129. Oologah WMA**

The following hunting and trapping seasons apply to the Oologah WMA, that portion known as Goose Island is restricted to shotgun with pellets and archery only:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-130. Optima WMA**

The following hunting and trapping seasons apply to the Optima WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and closed to nonresidents from February 1 to end of season. ~~and hunting~~ Hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~One tom only,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide dates, except closed last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer season.
- (19) Waterfowl: Same as statewide season dates.

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### 800:25-7-131. Optima NWR

(a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www.fws.gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.

(b) The following hunting and trapping seasons apply to the Optima NWR: Hunting is restricted to shotgun or bow and arrow only.

- (1) Quail: Same as statewide season dates except closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Same as statewide season dates.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: ~~Same as statewide season dates, except closed during first nine days of deer gun season, either sex.~~ Closed Season.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: ~~Same as statewide season dates, 1 tom limit.~~ Controlled Hunts Only.
- (6) Squirrel: Closed season.
- (7) Rabbit: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
- (8) Crow: Closed season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Closed season.

### 800:25-7-131.1. Osage WMA - Rock Creek Unit

The following hunting and trapping seasons apply to the Osage WMA Rock Creek Unit:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~one (1) tom limit.~~
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days deer gun season.
- (8) Crow: Same as statewide season dates.

- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-132. Ouachita WMA - LeFlore Unit

The following hunting and trapping seasons apply to the Ouachita WMA - LeFlore Unit:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the ~~current Oklahoma Hunting Guide~~ Oklahoma Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.

- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

**800:25-7-132.1. Ouachita WMA - Cucumber Creek Unit**

The following hunting and trapping seasons apply to the Ouachita WMA - Cucumber Creek Unit. Walk-in access only.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the ~~current Oklahoma Hunting Guide~~ Oklahoma Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide seasons dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

**800:25-7-133.1. Ouachita WMA - McCurtain Unit**

The following hunting and trapping seasons apply to the Ouachita WMA - McCurtain Unit:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the

~~current Oklahoma Hunting Guide~~ Oklahoma Fishing and Hunting Regulations.

- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

**800:25-7-133.2. Ozark Plateau NWR**

(a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www/fws.gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.

(b) The following hunting and trapping seasons apply to the Ozark Plateau NWR:

- (1) Quail: Same as statewide season dates.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.

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- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through the first 9 days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-134. Packsaddle WMA

The following hunting and trapping seasons apply to the Packsaddle WMA.

- (1) Quail: Same as statewide season dates except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~one (1) tom limit.~~
  - (B) Gun: Same as statewide season dates; ~~one (1) tom limit,~~ shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates,
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season. Antlerless hunting permitted last two days of area season.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates except closed opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

### 800:25-7-136.1. Red Slough WMA

The following hunting and trapping seasons apply to the Red Slough WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the ~~current Oklahoma Hunting Guide~~ Oklahoma Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-136.2. Red Slough WRP

The following hunting and trapping seasons apply to the Red Slough WRP: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Open February 1 through 15.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~ Except closed October 15 - January 31.
  - (B) Gun: Closed season
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the ~~current Oklahoma Hunting Guide~~ Oklahoma Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates except closed October 15-January 31.
- (7) Rabbit: Same as statewide season dates except closed October 15-January 31.
- (8) Crow: Same as statewide season dates except closed October 15-January 31.
- (9) Dove: Same as statewide season dates except closed October 15-January 31.

- (10) Rail and gallinule: Same as statewide season dates except closed October 15-January 31.
- (11) Common snipe: Same as statewide season dates except closed October 15-January 31.
- (12) Woodcock: Closed season.
- (13) Deer-archery: Same as statewide season dates except closed October 15-January 31.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed October 15-January 31.
- (18) Predator/furbearer calling: Same as statewide season dates except closed October 15-January 31.
- (19) Waterfowl: Same as statewide season dates except closed October 15-January 31.

**800:25-7-137. Rita Blanca WMA**

The following hunting and trapping seasons apply to the Rita Blanca WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and closed to nonresidents from February 1 to end of season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Same as statewide season dates, ~~one tom only~~, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates; one tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless hunting.
- (16) Antelope:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Controlled hunt only.

- (17) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (18) Pursuit with hounds: Same as statewide season dates-, except closed during deer gun season.
- (19) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (20) Waterfowl: Same as statewide season dates, except closed during deer gun season.

**800:25-7-138. Robbers Cave WMA**

(a) The following hunting and trapping seasons apply to the Robbers Cave WMA (that portion lying east of State Highway 2 and Coon Creek Road):

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma ~~Hunting Guide~~ Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

(b) The following hunting and trapping seasons apply to that portion lying north of State Highway 2 in Sections 5, 6 and 8 of the Robbers Cave WMA:

- (1) Quail: Closed season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:

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- (A) Archery: Same as statewide season dates; ~~either sex.~~
- (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma ~~Hunting Guide~~ Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, shotgun only.
- (7) Rabbit: Closed season.
- (8) Crow: Closed season.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

### 800:25-7-139.1. Sandhills WMA

The following hunting and trapping seasons apply to the Sandhills WMA:

- (1) Quail: Same as statewide season dates, except closed during the first nine days of deer gun season and closed to nonresidents from February 1 to end of season. Hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Same as statewide season dates, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Controlled hunts only.

- (16) Trapping: Open to water sets, live box traps and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

### 800:25-7-140. Sandy Sanders WMA

The following hunting and trapping seasons apply to the Sandy Sanders WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season. Hunting hours close at 4:30 PM daily.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~1 tom limit.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless mule deer hunting.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

### 800:25-7-141. Schultz WMA

The following hunting and trapping seasons apply to the Schultz WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer



gun season and closed to nonresidents from February 1 to end of season ~~and hunting~~ Hunting hours close at 4:30 PM daily.

- (2) Pheasant - Panhandle: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 PM daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~ei~~ ~~ther sex~~.
  - (B) Gun: Same as statewide season dates, ~~one tom~~ ~~only~~, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common Snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates. Closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates; except closed the last seven days of deer gun season and closed to antlerless hunting.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-142.1. Shorb WMA**

The following hunting and trapping seasons apply to the Shorb WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and closed to nonresidents from February 1 to end of season ~~and hunting~~ Hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~ei~~ ~~ther sex~~.
  - (B) Gun: Same as statewide season dates, ~~One tom~~ ~~only~~, shotgun only.

- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide dates, except closed last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets, live box traps and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-143. Skiatook WMA**

The following hunting and trapping seasons apply to the Skiatook WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Same as statewide season dates, ~~1 tom~~ ~~limit~~, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates.

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- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-144. Sparrowhawk WMA

The following hunting and trapping seasons apply to the Sparrowhawk WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-145. Spavinaw GMA

The following hunting and trapping seasons apply to the Spavinaw GMA:

- (1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates ~~and one (1) either sex bird limit on the PHA and GMA combined.~~
  - (B) Gun: Closed season.

- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit on the PHA and GMA combined.
- (6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from opening day of archery season through deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed from the opening day of archery season through deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season and spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

### 800:25-7-146. Spavinaw PHA

The following hunting and trapping seasons apply to the Spavinaw PHA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~and one (1) either sex bird limit on the PHA and GMA combined.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit on the PHA and GMA combined.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.

- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

**800:25-7-147. Stringtown WMA**

The following hunting and trapping seasons apply to the Stringtown WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma ~~Hunting Guide~~Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.

- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

**800:25-7-148. Tenkiller WMA**

The following hunting and trapping seasons apply to the Tenkiller WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-149. Texoma/Washita Arm WMA**

The following hunting and trapping seasons apply to the Texoma/Washita Arm WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~4-tom limit~~, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.

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- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-149.1. Three Rivers WMA

The following hunting and trapping seasons apply to the Three Rivers WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma ~~Hunting Guide~~ Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

### 800:25-7-149.2. Thomas A. Bamberger Sr WMA

The following hunting and trapping seasons apply to the Thomas A. Bamberger Sr WMA:

- (1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, ~~1~~ tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates, open South of Barren Fork Creek.
- (15) Deer-gun: Same as statewide season dates, open South of Barren Fork Creek.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-151. Tishomingo WMU/Cooperative Unit

The following hunting and trapping seasons apply to the Tishomingo WMU/Cooperative Unit: All hunters must sign-in and sign-out at the designated location(s) on the WMU. All shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey -Fall:
  - (A) Archery: Same as statewide season dates, ~~either sex.~~
  - (B) Gun: Same as statewide season dates, ~~1 tom~~ limit, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, one tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.

- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed at 1:00 p.m. daily.

**800:25-7-152. Washita County WMA**

The following hunting and trapping seasons apply to the Washita County WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-153. Washita NWR**

(a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www/fws.gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.

(b) The following hunting and trapping seasons apply to the Washita NWR: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates except closed during controlled deer hunts and closed to nonresidents from February 1 to end of season. Contact Refuge for special restrictions.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Closed season.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Controlled hunts only.
- (6) Squirrel: Closed season.
- (7) Rabbit: Same as statewide season dates, except closed during controlled deer hunts. Contact Refuge for special restrictions.
- (8) Crow: Closed season.
- (9) Dove: Same as statewide season dates except closed during controlled deer hunts. Contact Refuge for special restrictions.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Closed season.
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Same as statewide season dates except only on designated days. Contact Refuge for designated days and special restrictions.

**800:25-7-154. Waurika WMA**

The following hunting and trapping seasons apply to the Waurika WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and closed to nonresidents from February 1 to end of season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates. 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Closed season.

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- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only except open to statewide regulations from February 1 to the end of February.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-154.2. Whitegrass Flats WMA

The following hunting and trapping seasons apply to the Whitegrass Flats WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season
- (5) Turkey - Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma ~~Hunting Guide~~Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-155. Wister WMA

The following hunting and trapping seasons apply to the Wister PHA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.

- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; ~~either sex.~~
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma ~~Hunting Guide~~Fishing and Hunting Regulations.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed during last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

## PART 25. OKLAHOMA LAND ACCESS PROGRAM

### 800:25-7-181. OLAP walk-in hunting areas, seasons, and equipment restrictions

- (a) Access is allowed for hunting activities only. All other activities are prohibited on OLAP walk-in hunting areas unless stated otherwise in the OLAP map directory and/or on posted signs at the walk-on area.
- (b) The following defines types of OLAP Walk-in Hunting Areas.
  - (1) Access allowed from September 1 - ~~May 6~~closing date of spring turkey season. General: Regulations and methods of take consistent with statewide regulations.
  - (2) Access allowed from September 1 - ~~May 6~~closing date of spring turkey season. Archery/Shotgun with pellets only. Pellet size may not be larger than conventional T (0.200" dia.).
  - (3) Controlled Hunt Area: Access granted by permit drawn through the controlled hunt program.
  - (4) Limited Access Area: Access granted by daily permit drawn through OLAP daily permit system.
- (c) Quail: Hunting hours close at 4:30 p.m. daily.
- (d) Pheasant: Hunting hours close at 4:30 p.m. daily.
- (e) Turkey - Spring: Hunting hours close at 7:00 p.m. daily.

(f) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

SUBCHAPTER 9. CONTROLLED HUNTS

PART 5. PRIVATE LANDS ANTLERLESS YOUTH HUNTS

800:25-9-14. Qualifications and procedures

The following are the qualifications and procedures for conducting a private lands antlerless youth hunt:

- (1) Application Procedure. Landowners or designees, hereby called the applicant, wishing to conduct antlerless youth hunts on their property must submit to the department an application on forms provided by the department by July 1 annually. The application will include a complete legal description and map of the property to be enrolled.
(2) Minimum Acreage. The minimum acreage is 1000320 acres. Applicants may combine acreage in order to meet the minimum acreage requirement.
(3) On-site Visit. Once an application is received by the department, a department representative will contact the applicant and make an on-site visit to the property. The number of permits to be allotted, hunting locations, blinds, hunt headquarters, number of required hunt leaders, and overall feasibility of the hunt will be approved/determined by ODWC representative.
(4) Dates of Controlled Hunts. The Department shall establish hunt dates between the period of October 1 and January 15 annually.

[OAR Docket #22-450; filed 6-23-22]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #22-451]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Use of Department Managed Lands
800:30-1-2. Use restrictions [AMENDED]
800:30-1-4. Camping [AMENDED]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 4, 2021

COMMENT PERIOD:

December 1, 2021 - January 7, 2022

PUBLIC HEARING:

Date: January 6, 2022
Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

ADOPTION:

February 7, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 14, 2022

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 21, 2022

FINAL ADOPTION:

June 21, 2022

EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. Use of Department Managed Lands
800:30-1-4. Camping [AMENDED]

Gubernatorial approval:

July 19, 2021

Register publication:

38 Ok Reg 1609

Docket number:

21-708

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Subchapter 1 - Opens Vann's Lake Refuge to fishing access from Feb 1 - October 14; removes obsolete language for Robbers Cave WMA; closes Selman Bat Cave property to open access; clarifies language restricting number of days camping is allowed on WMA's, leaving camping equipment on WMA's and labeling camping equipment used on WMA's; removes the word "Hills" from Cookson WMA; and establishes camping regulations on Barren Fork WMA.

CONTACT PERSON:

Bill Dinkines, Chief of Wildlife Division, 405-521-2739 or Rhonda Hurst, APA Liaison, phone: 405-522-6279; 1801 N. Lincoln Blvd, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-2. Use restrictions

The following restrictions apply to Oklahoma Department of Wildlife managed lands:

- (1) Wildlife Management Areas. All lands owned, licensed, leased or under the management of the Wildlife Division of the Oklahoma Department of Wildlife Conservation, except for the McCurtain County Wilderness Area, are designated Wildlife Management Areas (WMA) to accurately reflect the overall objectives for these lands and the results of management activities conducted thereon. Depending on the specific management objectives, all or parts of any particular wildlife management area may also be designated as a public hunting area, game management area or migratory bird refuge, or wetland development unit.
(2) Public Hunting Areas. On a Public Hunting Area (PHA portion), all legal forms of wildlife harvest are

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permitted under statewide hunting, fishing and furbearer regulations unless specific regulations for the area indicate otherwise.

(3) **Game Management Areas.** A Game Management Area (GMA portion) is closed to all wildlife harvest, except as specifically permitted by Commission action.

(4) **Migratory Bird Refuges.** A designated Migratory Bird Refuge or Waterfowl Refuge Portion (WRP) is closed to all public use and access during the period of October 15 - January 31, except as specifically permitted by Commission action or special hunt permittee's on days of their hunt unless specifically noted otherwise. In addition, unless otherwise provided, all shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.

(5) **Wetland Development Units.** Areas designated as Wetland Development Units (WDU) are open for hunting as published annually in the Oklahoma Fishing and Hunting Regulations. Shooting hours for waterfowl are  $\frac{1}{2}$  hour before official sunrise until 1 p.m. daily. Unless otherwise provided, all shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.

(6) **Wilderness Area.** On the Wilderness Area, there shall be no public entry except by persons possessing prior written permission from the Director of the Department of Wildlife Conservation or his designated representatives; Department employees; or by the Oklahoma Board of Agriculture, Division of Forestry personnel engaged in fire protection or suppression activities. The self-guided nature trail on the McCurtain County Wilderness Area does not fall under these restrictions.

(7) **Closed areas.** Closed areas within larger management units may not be open to specific types of hunting or other activities on a year-round basis. Other uses may be permissible according to the above priorities insofar as they do not conflict with the specific objectives assigned to these closed areas. Those areas are:

(A) An 80-acre portion of Canton WMA described as N/2 NE/4 of Section 3, T19N, R14W; Dewey County. Prairie Dog Refuge -closed to prairie dog hunting.

(B) All recreation areas located on National Forest lands including Cedar Lake, Billy Creek and Winding Stair in the Ouachita WMA, Kulli and Bokohoma in the Ouachita WMA, Skipout, Spring Creek and Dead Indian in Black Kettle WMA are closed to hunting.

(C) That portion of the Corps of ~~Engineer's~~Engineers Lock and Dam 17 (Chouteau) project under license to the Oklahoma Department of Wildlife Conservation in Sections 4, 9, and 10, T16N, R18E, Wagoner County; all licensed lands lying south and west of the center of the Navigation Channel, as described by the Corps of Engineers, and north of the paved road leading to Lock and Dam 17 are ~~closed to all public access (Vann's Lake Refuge), except~~open to fishing and non-hunting public use from February 1 to October 14 and for special hunt

permittees on the days of their hunt. Public access for wildlife viewing is allowed from old Hwy 69 road pavement and bridge as signed. Lands lying west of new Hwy 69 are open for hunting, fishing, and ~~non hunting~~ public use from February 1 to October 14, and lands lying east of old Hwy 69, are only open to fishing and non-hunting public use from February 1 to October 14. It shall be further unlawful to enter the "Vann's Lake Refuge" with a firearm, except for special hunt ~~permittee's~~permittees on the days of their hunt and during designated hunting periods and locations described above.

(D) A parcel described at Lots 9-10-12-13 and the SW/4 of the SW/4 of Section 6 T26N, R8W, Grant County known as the Van Osdol Wildlife Management Area.

~~(E) The following described lands at Robbers Cave Wildlife Management Area are closed to all hunting: That portion of Sections 18 and 19 lying west of Coon Creek Road and the Northeast quarter and the North half of the Southeast quarter of Section 25.~~

~~(F)~~ Any areas displaying signs with the words, "Safety Zone" shall prohibit anyone from the act of hunting within the boundaries of any area so marked. Retrieval of hunting dogs or downed wildlife is allowed, without any means of take.

(F) A parcel described as S/2 SW/4 SW/4 of Section 15; S/2 SE/4 of Section 16; NE/4 of Section 21 and W/2 NW/4 of Section 22 all in T26N R 19W, Woodward County known as the Selman Bat Cave Wildlife Management Area.

(8) **Conservation Education Area.** The primary purpose of the conservation education area is conservation education. All activities are strictly regulated by ODWC.

### 800:30-1-4. Camping

(a) Camping is limited to a maximum of ~~14~~16 consecutive days, and for no more than 21 days total in any 30 day period on the same WMA, except at areas open only to hunter camping for special season(s). Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt. Leaving a campsite unattended for a period longer than 48 hours is prohibited. Unattended camp items may be removed.

(b) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.

(d) Fires shall be confined to those areas designated for camping, and shall be contained in fireplaces, fire rings, grills, or other facilities designed for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including but not limited to, tires and treated wood products is prohibited.

(e) No overnight camping is permitted at the following areas unless otherwise authorized by the Department:



- (1) Altus-Lugert WMA.
  - (2) Arcadia Conservation Education Area - Any authorized camping must have education or conservation purpose.
  - (3) Barren Fork WMA.
  - (~~34~~) Broken Bow WMA.
  - (~~45~~) Canton WMA (waterfowl refuge portion).
  - (~~56~~) Cherokee (GMA portion).
  - (~~67~~) Dewey County WMA.
  - (~~78~~) Eufaula WMA
  - (~~89~~) Fort Gibson WMA.
  - (~~910~~) Gist WMA.
  - (~~1011~~) Grady County WMA
  - (~~1112~~) Grassy Slough WMA.
  - (~~1213~~) Hackberry Flat (waterfowl refuge portion).
  - (~~1314~~) Hugo WMA (waterfowl refuge portion).
  - (~~1415~~) Major County Lands.
  - (~~1516~~) McClellan-Kerr WMA (includes waterfowl refuge portion).
  - (~~1617~~) McCurtain County Wilderness.
  - (~~1718~~) Okmulgee WMA (GMA portion).
  - (~~1819~~) Osage WMA (Western Wall Unit).
  - (~~1920~~) Ozark Plateau WMA.
  - (~~2021~~) Red Slough WMA.
  - (~~2122~~) Sparrow Hawk WMA.
  - (~~2223~~) Tenkiller WMA.
  - (~~2324~~) Thomas A. Bamberger Sr WMA
  - (~~2425~~) Van Osdol WMA.
  - (~~2526~~) Washita County WMA.
  - (~~2627~~) hitegrass Flats WMA.
  - (~~2728~~) Wister WMA (waterfowl refuge portion).
- (f) Hunter and fishermen camping is permitted only in designated camping areas at:
- (1) Arbuckle Springs WMA
  - (2) Atoka WMA (includes PHA portion).
  - (3) Beaver River WMA including McFarland Unit.
  - (4) Candy Creek WMA
  - (5) Canton WMA (except waterfowl refuge portion).
  - (6) Cherokee WMA (PHA portion).
  - (7) Chickasaw NRA (Arbuckle).
  - (8) Cimarron Bluff WMA.
  - (9) Cimarron Hills WMA
  - (10) Cooper WMA.
  - (11) Copan WMA.
  - (12) Cross Timbers WMA
  - (13) Drummond Flats WMA
  - (14) Ellis County WMA.
  - (15) Fobb Bottom WMA.
  - (16) Fort Cobb WMA.
  - (17) Fort Supply WMA.
  - (18) Hackberry Flat WMA (except waterfowl refuge portion).
  - (19) Heyburn WMA .
  - (20) Hickory Creek WMA.
  - (21) Hugo WMA (except waterfowl refuge portion).
  - (22) Hulah WMA.
  - (23) James Collins WMA.
  - (24) Kaw WMA.
  - (25) Lexington WMA.
  - (26) Mountain Park WMA.
  - (27) Okmulgee WMA (PHA portion, i.e., the area north and east of the Deep Fork River).
  - (28) Oologah WMA
  - (29) Optima WMA.
  - (30) Osage WMA (Rock Creek Unit).
  - (31) Pushmataha WMA.
  - (32) Sandhills WMA.
  - (33) Sandy Sanders WMA.
  - (34) Sans Bois WMA
  - (35) Stringtown WMA
  - (36) Schultz WMA.
  - (37) Skiatook WMA.
  - (38) Texoma-Washita Arm WMA.
  - (39) Tishomingo WMU.
  - (40) Waurika WMA.
  - (41) Yourman WMA.
- (g) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:
- (1) Cookson Hills—WMA, only during open hunting seasons on the area.
  - (2) Ouachita WMA (Homer L. Johnston portion), only during deer and turkey seasons.
  - (3) John Dahl WMA, only during hunting seasons.
  - (4) Packsaddle WMA, only during open hunting seasons.
  - (5) Robbers Cave WMA, only during open deer and turkey seasons.
  - (6) Spavinaw Hills WMA, only during open hunting seasons on the area.
- (h) Hunter and fishermen camping is permitted only within 50 yards of roads designated as open for public use at:
- (1) Deep Fork WMA.
  - (2) Gary Sherrer WMA, only during open hunting seasons on the area.
  - (3) Keystone WMA.
  - (4) Love Valley WMA.
  - (5) Pine Creek WMA.
  - (6) Wister WMA, (except waterfowl refuge portion).
- (i) Camping is permitted in accordance with U.S. Forest Service regulations at:
- (1) Ouachita WMA - Le Flore Unit (Ouachita National Forest), except Homer L. Johnston Unit.
  - (2) Ouachita WMA - McCurtain Unit (Ouachita National Forest).
  - (3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
  - (4) Rita Blanca WMA (Cibola National Forest) - Rita Blanca National Grasslands.
- (j) Camping is permitted in designated camping areas only at McGee Creek WMA.2

[OAR Docket #22-451; filed 6-23-22]

# Permanent Final Adoptions

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## TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 1. GENERAL INFORMATION

[OAR Docket #22-404]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

810:1-1-6 [AMENDED]

**AUTHORITY:**

Workers' Compensation Commission; 85A O.S. §§ 19, 22, 119.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 19, 2022

**COMMENT PERIOD:**

February 15, 2022 to March 24, 2022

**PUBLIC HEARING:**

March 24, 2022

**ADOPTION:**

March 24, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 14, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendment clarifies the dollar per page copied fee of 85A O.S. § 119(A) to address paper and digital copies. It does not create a new fee, but instead clarifies that a complete digital copy will be treated as one page copied for purposes of the fee.

**CONTACT PERSON:**

Lauren Hammonds Johnson, Commission General Counsel,  
405-522-3222, LaurenH.Johnson@wcc.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2022:**

**810:1-1-6. Requests for agency public information**

(a) Public access to Commission records is subject to the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq. and 85A O.S. § 120. Any person making a request for a Commission record shall comply with the following:

(1) The request must be in writing and directed to the Clerk of the Commission when the request is to access information on workers' compensation claims, and to the General Counsel for all other requests.

(2) Requests to access information on workers' compensation claims are subject to the written request and search fee requirements of 85A O.S. § 120, unless an exemption outlined in the law applies. The Commission may request information of a requester sufficient to determine whether or not an exemption pertains.

(A) To access information on workers' compensation claims, the request must be made in writing, on a form prescribed by the Commission. The request form requires identification of the person requesting the information and the person for whom a search is being made. The request form must contain an affidavit signed by the requester under penalty of perjury stating that the information sought is not requested for a purpose in violation of state or federal law. Those making a request shall pay the Commission One Dollar (\$1.00) per search request, not to exceed One Dollar (\$1.00) per claims record of a particular worker, plus applicable copy charges set forth in 85A O.S. § 119(A), any applicable fees according to the Oklahoma Open Records Act, 51 O.S. § 24A.5(4), and certification fees if any.

(B) Electronic searches of workers' compensation claims data using public terminals at the Commission's offices may be made. The search function permits searches using the name of a claimant or the Commission file number. Certain information related to the search criteria will be displayed on the terminal. Access to additional information on claims pertaining to the search results is subject to the written request and search fee requirements described in this Paragraph.

(C) The one dollar (\$1.00) fee for each page copied, described in 85A O.S. § 119(A), includes physical paper pages copied and digital copies. However, digital copies that are downloaded shall be capped at \$1.00 for the complete download, regardless of how many digital pages are included in the file.

(3) Requests not subject to Paragraph (2) of this Subsection, should describe the record(s) requested, indicate the name of the party making the request, and include the party's mailing address and telephone number. The requesting party shall pay for copies and research of such records in accordance with 85A O.S. § 119(A) and the Oklahoma Open Records Act, 51 O.S. § 24A.5(4), and, if applicable, for certification of the record according to a fee established by the Commission if any.

(4) Copy charges may be waived at the Commission's discretion for copies requested by the media or by a public officer or public employee in the performance of his or her duties on behalf of a governmental entity.

(b) This Section does not apply to records specifically required by state or federal law, or by state or federal administrative rule, or by order of a court of competent jurisdiction, to be kept confidential, including, but not limited to, financial data obtained by or submitted to the Commission for the purpose of obtaining a license or permit and records subject to proprietary agreements, confidentiality orders and sealed exhibits.

[OAR Docket #22-404; filed 6-22-22]

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION  
CHAPTER 10. PRACTICE AND PROCEDURE**

[OAR Docket #22-405]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
810:10-1-3 [AMENDED]  
Subchapter 3. Informal Dispute Resolution Processes  
810:10-3-6 [AMENDED]  
Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners  
Part 13. Dismissals  
810:10-5-85 [AMENDED]

**AUTHORITY:**

Workers' Compensation Commission; 85A O.S. §§ 19, 22, 69, 110.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 19, 2022

**COMMENT PERIOD:**

February 15, 2022 to March 24, 2022

**PUBLIC HEARING:**

March 24, 2022

**ADOPTION:**

March 24, 2022

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 25, 2022

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

**FINAL ADOPTION:**

June 21, 2022

**EFFECTIVE:**

September 14, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules include a clarification of the definition of employee, defined by statute at 85A O.S. § 2; move a term in the definitions section to alphabetize the list; modify which division at the Commission receives Commission Mediator applications; correct a comma; and modifies the Commission's discretion to dismiss certain claims, in accordance with statutory changes to Title 85A O.S. § 69 made by HB 2367 (2019).

**CONTACT PERSON:**

Lauren Hammonds Johnson, Commission General Counsel, 405-522-3222, LaurenH.Johnson@wcc.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**810:10-1-3. Definitions**

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Acceptable Electronic Signature Technology**" means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"**Administrative Law Judge**" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"**Attorney**" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

"**AWCA**" means the Administrative Workers' Compensation Act, 85A O.S. §§1, et seq.

"**Business day**" means a day that is not a Saturday, Sunday, or legal holiday.

"**Certified workplace medical plan**" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"**Claim administrator**" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"**Claim for compensation**" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"**Claim Information**" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"**Claimant**" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"**Commission**" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"**Commission Chair**" means the Chair of the Oklahoma Workers' Compensation Commission.

"**Continuance**" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"**Controverted claim**" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"**Discovery**" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"**Document**" means any written matter filed in a cause, including any attached appendices.

"**EDI**" means electronic data interchange.

## Permanent Final Adoptions

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**"Electronic Data Interchange"** means the transmission of claim information through electronic means, in a format established by the Commission.

**"Electronic equivalent"** means a Commission-approved means of filing an electronic form through the Commission's case system. In all cases where a party is required to mail a Commission form to the opposing party, a copy may be sent by electronic mail when an electronic mail address is known. In all cases where a paper form is required to be filed to effect a certain purpose, an electronic equivalent, if available, may also be filed to effect that purpose.

~~**"EDI"** means electronic data interchange.~~

**"Electronic Signature"** means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**"Employee"** means any person who meets the definition provided in 85A O.S. § 2(18). For purposes of the agriculture, ranching, or horticulture exempt status defined at 85A O.S. § 2(18)(b)(2), the exemption applies to employees engaged in agriculture, ranching, or horticulture activities as defined.

(A) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Federal Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry.

(B) In general, "agricultural or horticultural commodities" refers to commodities resulting from the application of agricultural or horticultural techniques. Insofar as the term refers to products of the soil, it means commodities that are planted and cultivated by man. Among such commodities are the following: Grains, forage crops, fruits, vegetables, nuts, sugar crops, fiber crops, tobacco, and nursery products. Thus, employees engaged in growing wheat, corn, hay, onions, carrots, sugar cane, seed, or any other agricultural or horticultural commodity are engaged in "agriculture." In addition to such products of the soil, however, the term includes domesticated animals and some of their products such as milk, wool, eggs, and honey. The term does not include commodities produced by industrial techniques, by exploitation of mineral wealth or other natural resources, or by uncultivated natural growth. For example, peat humus or peat moss is not an agricultural commodity.

(C) "Livestock" is confined to the ordinary use of the word and includes only domestic animals ordinarily raised or used on farms. The term includes the following animals, among others: Cattle (both dairy and beef cattle), sheep, swine, horses, mules, donkeys, and goats. It does not include such animals as albino and other rats, mice, guinea pigs, and hamsters, which are ordinarily used by laboratories for research

purposes. Fish are not "livestock", but employees employed in propagating or farming of fish may qualify for exemption.

(D) "Crops" are defined in accordance with 7 C.F.R. § 1437.13.

(E) "Agricultural commodity", as used in this subchapter, means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, hemp, aquacultural species (including, but not limited to, any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant propagated or reared in a controlled or selected environment), or any other agricultural commodity, excluding stored grain, determined by the Board, or any one or more of such commodities, as the context may indicate.

(F) The crop, commodity, or livestock grown or raised by the employer must be federally funded and recognized by the United States Department of Agriculture to be eligible to claim this exemption under the AWCA.

**"Executive Director"** means the Executive Director of the Commission.

**"FROI"** means first report of injury.

**"Good cause"** means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

**"Insurance carrier"** means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

**"Insurer"** means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

**"Joint Petition Settlement"** means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

**"Legal holiday"** means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

**"Mandatory EDI implementation date"** means September 1, 2018.

**"Mediation"** means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

**"Out-of-state attorney"** means a person who is not admitted to practice law in the State of Oklahoma, but who is

admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

SUBCHAPTER 3. INFORMAL DISPUTE RESOLUTION PROCESSES

810:10-3-6. Certified mediators

(a) Mediator list. The Commission shall maintain a list of private mediators to serve as certified mediators for the Commission's alternative dispute resolution program. The list shall be placed on the Commission's website at http://www.wcc.ok.gov.

(b) Qualifications. To be eligible for appointment by the Commission to the list of certified workers' compensation mediators for a five-year period, the individual must:

- (1) be an attorney or non-attorney who has worked in the area of Oklahoma workers' compensation benefits for at least five (5) years; and
(2) otherwise have complied with the requirements of 85A O.S. § 110.

(c) Application for appointment. To request appointment to the list of certified workers' compensation mediators, an individual shall:

(1) Submit a signed and completed Commission prescribed Mediator Application form and resume to the following address: Oklahoma Workers' Compensation Commission, Attention: Legal Operations Director-COUNSELOR DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. Illegible, incomplete, or unsigned applications will not be considered by the Commission and shall be returned. A copy of the Mediator Application form may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website at http://www.wcc.ok.gov; and

- (2) Verify that the individual, if appointed, will:
(A) schedule a mediation session within thirty (30) days of the order appointing the mediator, unless otherwise agreed to by the parties;
(B) schedule mediation sessions for a minimum two (2) hour block of time, and not schedule more than one mediation session to take place at a time;
(C) submit biennially to the Legal Operations Director-Counselor Division-written verification of compliance with the continuing education requirements prescribed by 85A O.S. § 110(H); and
(D) accept as payment in full for services rendered, compensation not exceeding the rate or fee provided in 810:10-3-12.

(d) Renewal process.

(1) The Commission shall notify a certified mediator of the end of the mediator's five-year qualification period at least sixty (60) calendar days before the expiration of that period.

(2) Criteria for reappointment is the same criteria as for initial appointment in effect at the time of reappointment.

(e) Revocation.

(1) Removal of an individual from the list of certified workers' compensation mediators shall be by request of the mediator or by the Commission after notice and opportunity for hearing.

(2) The Commission may remove a mediator from the list of certified workers' compensation mediators for cause, including, but not limited to the following grounds:

- (A) a material misrepresentation in information submitted to apply for appointment to the Commission's list of certified workers' compensation mediators;
(B) refusal or substantial failure to comply with this Section or other applicable Commission rules, and statutes.

(3) Proceedings related to revocation shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of this Chapter.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 13. DISMISSALS

# Permanent Final Adoptions

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## 810:10-5-85. Dismissals

(a) **Generally.** Except as otherwise required by law, unless good cause is shown, dismissal of a complaint shall be without prejudice.

(b) **Untimely prosecution or failure to prosecute claim.**

~~(1) Pursuant to 85A O.S. § 69(A)(4), The Commission, on motion and after notice and hearing, may shall dismiss a claim for compensation with prejudice to the refiling of a claim if the employee does not: no bona fide request for hearing with respect to the claim has been made within six (6) months of the filing of claim.~~

~~(1) make a good-faith request for a hearing to resolve a dispute regarding the right to receive benefits, including medical treatment, under the AWCA within six (6) months of the date the claim is filed, or~~

~~(2) receive or seek benefits, including medical treatment, under the AWCA for a period of six (6) months.~~

~~(3) The Commission may set such claims on a disposition docket.~~

~~(2) The Commission shall dismiss a claim for additional compensation without prejudice to refiling of the claim within the limitation period specified in 85A O.S. § 69(B), if the employee does not make a no bona fide request for hearing with respect to the claim has been filed within six (6) months after the filing of the claim for additional compensation. A claim for additional compensation is described in 85A O.S. § 69(B)(C)(D).~~

(c) **Request of party filing claim for compensation.** Voluntary dismissal of a claim for compensation pursuant to a request of the worker is authorized in 85A O.S. § 108. This law gives the injured worker, upon order of the Commission and payment of the \$140.00 final award fee provided for in 85A O.S. § 118, the right to dismiss the worker's claim for compensation at any time before final submission of the case to the Commission for decision. The worker's application for dismissal shall be made on a Commission prescribed CC-Form-100 upon payment of the \$140.00 final award fee or execution of a payment plan approved by the Commission's business office. The dismissal shall be without prejudice, unless the Commission's order on the CC-Form-100 clearly identifies the dismissal as with prejudice. Prior to entering an order for dismissal with prejudice, the Commission may require notice and an evidentiary hearing.

*[OAR Docket #22-405; filed 6-22-22]*

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## TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 20. VOCATIONAL REHABILITATION SERVICES

*[OAR Docket #22-406]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

## **RULES:**

810:20-1-4. Vocational Rehabilitation Director [AMENDED]

## **AUTHORITY:**

Workers' Compensation Commission; 85A O.S. §§ 19, 22, 45.

## **SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 19, 2022

## **COMMENT PERIOD:**

February 15, 2022 to March 24, 2022

## **PUBLIC HEARING:**

March 24, 2022

## **ADOPTION:**

March 24, 2022

## **SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 25, 2022

## **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 21, 2022

## **FINAL ADOPTION:**

June 21, 2022

## **EFFECTIVE:**

September 14, 2022

## **SUPERSEDED EMERGENCY ACTIONS:**

n/a

## **INCORPORATIONS BY REFERENCE:**

n/a

## **GIST/ANALYSIS:**

The proposed rule changes the duty of the Commission to hire or contract for a Vocational Rehabilitation Director from mandatory to permissive, to reflect the statutory change to Title 85A O.S. § 45(E)(2) by HB 2367 (2019).

## **CONTACT PERSON:**

Lauren Hammonds Johnson, Commission General Counsel,  
405-522-3222, LaurenH.Johnson@wcc.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(7) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2022:**

## **810:20-1-4. Vocational Rehabilitation Director**

To carry out the vocational rehabilitation provisions of AWCA and this Chapter, the Commission ~~shall~~ may hire or contract for a Vocational Rehabilitation Director to oversee the vocational rehabilitation program of the Commission and focus on helping injured workers return to the work force. The Commission may hire such additional personnel, within budgetary constraints, as may be deemed necessary to assist the Vocational Rehabilitation Director.

*[OAR Docket #22-406; filed 6-22-22]*

# Expedited Rule Repeals

An agency may promulgate rule repeals upon "final legislative approval," as defined in OAC 655:10-1-2.

Expedited rule repeals are published in the *Oklahoma Administrative Code*, along with a source note entry that cites the *Register* publication of the expedited rule repeals document.

For additional information on the expedited rules repeal process, see 75 O.S., Section 303a.

## TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 5. FEES

[OAR Docket #22-617]

### RULEMAKING ACTION:

EXPEDITED rule repeals

### REPEALED RULES:

160:5-1-2(9) [REVOKED]

### AUTHORITY:

Commission on Consumer Credit; 59 O.S., §§ 3101 et seq.

### COMMENT PERIOD:

February 9, 2022 through March 25, 2022

### SUBMISSION OF PROPOSED REPEALS TO LEGISLATURE:

February 9, 2022

### LEGISLATIVE ADOPTION:

Not approved or disapproved by legislature, not subject to a joint resolution. Adopted by Governor's declaration pursuant to 75 O.S., Section 308.3 on June 21, 2022

### EFFECTIVE:

September 11, 2022

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### GIST/ANALYSIS:

This is a revocation of an obsolete rule related to deferred deposit lenders, a license which is no longer available in Oklahoma.

### CONTACT PERSON:

J. Steven Coates, General Counsel, 629 N.E. 28th Street, Oklahoma City, OK 73105, (405) 522-4665, scoates@okdocc.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE REPEALED UNDER THE EXPEDITED REPEAL PROVISIONS SET FORTH IN 75 O.S., SECTION 303A, WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

### 160:5-1-2. Fees

Fees charged by the Department are as follows:

#### (1) Supervised Lenders

- (A) \$290.00 annual license fee.
- (B) \$425.00 investigation fee.
- (C) A late fee of \$10.00 per day for thirty (30) days shall be assessed for each license that is not renewed by December 1.
- (D) \$500.00 examination fee that is payable at the time of license application or license renewal.
- (E) \$25.00 fee for a duplicate or amended license
- (F) \$25.00 fee for a returned check
- (G) A \$50.00 late fee shall be assessed for any annual report received after May 1.
- (H) All fees are non-refundable unless the Code or these rules require otherwise.

#### (2) Notification filings

- (A) \$120.00 annual filing fee for each business location.

(B) A late fee of \$10.00 per day shall be assessed for each filing that is not received by January 31.

(C) All fees are non-refundable unless the Code or these rules require otherwise.

#### (3) Pawnbrokers

- (A) \$240.00 annual license fee.
- (B) \$325.00 investigation fee.
- (C) \$400.00 examination fee that is payable at the time of license application or license renewal.
- (D) \$25.00 amended or duplicate license fee.
- (E) \$25.00 returned check fee.
- (F) A late fee of \$10.00 per day for thirty (30) days shall be assessed for each license renewal that is not received by December 1.

(G) All fees are non-refundable unless the Act or rules require otherwise.

#### (4) Rental purchase lessors

- (A) \$200.00 annual license fee.
- (B) \$200.00 investigation fee.
- (C) \$400.00 examination fee that is payable at the time of license application or license renewal.
- (D) \$100.00 per contract reviewal fee for each rental purchase agreement that is submitted to the Administrator for review and approval.
- (E) \$25.00 amended or duplicate license fee.
- (F) \$25.00 returned check fee.

(G) All fees are non-refundable unless the Act or rules require otherwise.

#### (5) Health Spas

- (A) \$300.00 annual registration fee.
- (B) \$200.00 investigation fee.
- (C) \$100.00 per contract reviewal fee for each health spa contract that is submitted to the Administrator for review and approval.
- (D) A late fee of \$10.00 per day for thirty (30) days shall be assessed for each registration renewal that is not received by December 1.
- (E) \$25.00 amended or duplicate registration fee.
- (F) \$25.00 returned check fee.
- (G) All fees are non-refundable unless the Act or rules require or indicate otherwise.

#### (6) Credit Services Organizations

- (A) \$200.00 annual license fee.
- (B) \$300.00 investigation fee.
- (C) \$25.00 amended or duplicate license fee.
- (D) \$400.00 examination fee that is payable at the time of license application or license renewal.
- (E) \$25.00 returned check fee.
- (F) A late fee of \$10.00 per day for thirty (30) days shall be assessed for each license renewal that is not received by December 1.

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- (G) All fees are non-refundable unless the Act or these rules require or indicate otherwise.
- (7) **Precious Metals and Gem Dealers**
- (A) \$300.00 annual license fee for precious metal and gem dealers, \$200 annual license fee for precious metal and gem dealer employees.
- (B) \$425.00 investigation fee for precious metal dealers.
- (C) A late fee of \$10.00 per day for thirty (30) days shall be assessed for each precious metal and gem dealer and employee license renewal that is not received by December 1.
- (D) \$25.00 amended or duplicate license fee for precious metal and gem dealers and employees.
- (E) \$25.00 return check fee for precious metal and gem dealers and employees.
- (F) All fees are non-refundable unless the Act or these rules require or indicate otherwise.
- (8) **Mortgage Brokers and Mortgage Loan Originators**
- (A) \$950.00 mortgage broker application fee.
- (B) \$200.00 mortgage loan originator application fee.
- (C) \$200.00 annual license fee for mortgage brokers and mortgage loan originators.
- (D) A late fee of \$10.00 per day for thirty (30) days shall be assessed for each mortgage broker or mortgage loan originator license renewal that is not received by December 1.
- (E) \$150.00 mortgage broker branch office annual license fee.
- (F) \$150.00 inactive status fee for a mortgage broker license, mortgage broker branch office license or mortgage loan originator license.
- (G) \$25.00 fee for each mortgage broker, mortgage broker branch or mortgage loan originator license change, duplicate license or returned check [59:2095.7(M)(5)]
- (H) Each mortgage broker, mortgage broker branch office and mortgage loan originator shall pay a \$10.00 fee for each initial application and each license renewal to be deposited into the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund.
- (I) Mortgage brokers and mortgage broker branch offices shall pay a \$500.00 examination fee that is payable at the time of license application or license renewal.
- (J) Mortgage loan originators shall pay a \$50.00 examination fee that is payable at the time of license application and license renewal.
- (K) All fees are non-refundable unless the Act or these rules require otherwise.
- (9) **Deferred Deposit Lenders**
- ~~(A) \$350.00 annual license fee for each licensed location.~~
- ~~(B) \$700.00 investigation fee for each license.~~

- ~~(C) \$500.00 examination fee that is payable at the time of license application or license renewal.~~
- ~~(D) A late fee of \$10.00 per day for thirty (30) days shall be assessed for each license renewal that is not received by December 1.~~
- ~~(E) A late fee of \$50.00 shall be assessed for any annual report received after May 1.~~
- ~~(F) \$25.00 fee for each license change, duplicate license or returned check.~~
- ~~(G) All fees are non-refundable unless the Act or these rules require otherwise.~~

(409) **Other**

- (A) \$0.25 fee per page for copies [51:24A.5(3)]
- (B) \$1.00 fee per copied page for a certified copy [51:24A.5(3)]
- (C) Reasonable search fee of the hourly rate of lowest paid employee capable of performing search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the Department's essential functions [51:24A.5(3)].

[OAR Docket #22-617; filed 7-13-22]

## TITLE 160. DEPARTMENT OF CONSUMER CREDIT

### CHAPTER 70. DEFERRED DEPOSIT LENDERS

[OAR Docket #22-618]

**RULEMAKING ACTION:**

EXPEDITED rule repeals

**REPEALED RULES:**

Subchapter 1. General Provisions

160:70-1-1 [REVOKED]

160:70-1-2 [REVOKED]

160:70-1-3 [REVOKED]

Subchapter 3. Licensing

160:70-3-1 [REVOKED]

160:70-3-2 [REVOKED]

160:70-3-3 [REVOKED]

160:70-3-4 [REVOKED]

160:70-3-5 [REVOKED]

160:70-3-6 [REVOKED]

Subchapter 5. Disclosures

160:70-5-1 [REVOKED]

160:70-5-2 [REVOKED]

Subchapter 7. Records

160:70-7-1 [REVOKED]

160:70-7-2 [REVOKED]

Subchapter 9. Enforcement

160:70-9-1 [REVOKED]

160:70-9-2 [REVOKED]

160:70-9-3 [REVOKED]

160:70-9-4 [REVOKED]

160:70-9-5 [REVOKED]

160:70-9-6 [REVOKED]

Subchapter 11. Collection Practices

160:70-11-1 [REVOKED]

160:70-11-2 [REVOKED]

160:70-11-3 [REVOKED]

160:70-11-4 [REVOKED]

160:70-11-5 [REVOKED]

160:70-11-6 [REVOKED]



160:70-11-7 [REVOKED]  
 160:70-11-8 [REVOKED]

**AUTHORITY:**

Commission on Consumer Credit; 59 O.S., §§ 3101 et seq.

**COMMENT PERIOD:**

February 9, 2022 through March 25, 2022

**SUBMISSION OF PROPOSED REPEALS TO LEGISLATURE:**

February 9, 2022

**LEGISLATIVE ADOPTION:**

Not approved or disapproved by legislature, not subject to a joint resolution. Adopted by Governor's declaration pursuant to 75 O.S., Section 308.3 on June 21, 2022

**EFFECTIVE:**

September 11, 2022

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**GIST/ANALYSIS:**

This is a revocation of obsolete rules related to deferred deposit lenders, a license which is no longer available in Oklahoma.

**CONTACT PERSON:**

J. Steven Coates, General Counsel, 629 N.E. 28th Street, Oklahoma City, OK 73105, (405) 522-4665, scoates@okdocc.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE REPEALED UNDER THE EXPEDITED REPEAL PROVISIONS SET FORTH IN 75 O.S., SECTION 303A, WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**160:70-1-1. Purpose [REVOKED]**

The rules in this chapter provide regulations relating to the licensure of deferred deposit lenders.

**160:70-1-2. Severability [REVOKED]**

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

**160:70-1-3. Definitions [REVOKED]**

Except as otherwise specifically defined in this section, the definitions set forth in the Act are incorporated herein and made a part hereof. The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Act"** means the Deferred Deposit Lending Act beginning at §3101 of Title 59 of the Oklahoma Statutes.

**"APA"** means the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes.

**"Business Day"** means a day on which a deferred deposit lender's office is open to the public for carrying on substantially all of its business functions.

**"Communication"** means the conveying of information regarding a deferred deposit loan directly or indirectly to any person through any medium.

**"Days"** mean calendar days. In computing any period of time for communications between a licensee and the Department or a court, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day that the deferred deposit lender, the Department or the office of the court clerk is closed.

**"Debt"** means any obligation or alleged obligation of a debtor to pay money arising out of a deferred deposit loan, whether or not such obligation has been reduced to judgment.

**"Department"** means the Oklahoma State Department of Consumer Credit.

**"Due Date"** means the business day the debtor is scheduled to pay off a deferred deposit loan, which shall expire at the regular closing time of such business day.

**"Location Information"** means a debtor's place of abode and his telephone number at such place, or his place of employment.

**SUBCHAPTER 3. LICENSING**

**160:70-3-1. Licensure forms [REVOKED]**

(a) **Application.**

(1) The deferred deposit lender license application shall be completed by the person seeking a deferred deposit lender license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.

(3) The Administrator shall grant or deny a license application within ninety (90) days from the day of filing unless the period is extended by written agreement between the applicant and the Administrator.

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a deferred deposit lender's authority to engage in deferred deposit loans within Oklahoma. No other license issued by the Administrator authorizes a person to engage in deferred deposit loans within Oklahoma [59:3103].

(c) **Annual report.** Annual reports shall be filed by all deferred deposit lenders and postmarked on or before the first day of May of each year, reporting the business and operations as of December 31st of the preceding year. The annual reports shall be confidential, but the Administrator may compile a statistical report using the information therein. [59:3114(F)] As a courtesy, the Department may mail a notice of annual report to each licensee, but the failure to do so shall not relieve any licensee of the duty to file timely or impair the authority of the Administrator against any licensee.

(d) **Renewal application.** The deferred deposit lender license renewal application shall be completed by persons previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each

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year. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

### 160:70-3-2. Investigations for licensure [REVOKED]

~~A thorough investigation shall be conducted of each applicant, and applicants shall provide such additional information as may be requested from the applicant for that purpose. In addition, the Administrator may consult outside sources, including law enforcement agencies, and may require the applicant's consent to release such other relevant information as the Administrator may deem necessary to determine financial responsibility, character, experience and general fitness of the applicant [59:3113(A)(2)]. It shall be within the discretion of the Administrator to determine the fitness of an applicant, provided that such discretion is not arbitrary or capricious and is, or will be, applied uniformly to all similarly situated applicants.~~

### 160:70-3-3. License denials [REVOKED]

~~(a) **Denial notice.** The Administrator shall notify the applicant of the denial of a license application in writing stating the reasons for the denial [59:3113(C)]. The notice shall be sent by certified mail with return receipt requested or be delivered in person.~~

~~(b) **Hearing request.** The applicant may make a written request for a hearing on the application within thirty (30) days of receipt of the denial notice.~~

~~(c) **Hearing notice.**~~

~~(1) If the applicant makes a timely request for a hearing, a hearing shall be held within sixty (60) days of receipt of the request. However, the applicant shall be given twenty (20) days notice of the hearing in writing.~~

~~(2) The notice shall:~~

~~(A) state the time, place and nature of the hearing;~~

~~(B) state the legal authority and jurisdiction for the hearing;~~

~~(C) refer to the statutory sections and rules involved; and~~

~~(D) state the matters asserted briefly and plainly [75:309(B)(1)(4)].~~

~~(d) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].~~

~~(e) **Order.**~~

~~(1) The Administrator shall issue an order granting or denying the license application within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the applicant and the Administrator.~~

~~(2) The order shall:~~

~~(A) be in writing;~~

~~(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;~~

~~(C) state conclusions of law; and~~

~~(D) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].~~

### 160:70-3-4. Moving or closing a location [REVOKED]

~~(a) At least thirty (30) days before the address of a licensed location is changed, the licensee shall notify the Administrator in writing [59:3112(D)]. The licensee shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. In the change notice, the licensee shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.~~

~~(b) At least thirty (30) days before a licensed location is to be closed, the licensee shall notify the Administrator in writing. The licensee shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. In the closing notice, the licensee shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.~~

### 160:70-3-5. Change of ownership [REVOKED]

~~(a) At least thirty (30) days before any proposed change of ownership of any licensed deferred deposit lender, the licensed owner shall notify the Administrator of the intent to change ownership, and the proposed new owner shall apply for a license. The Administrator shall notify the licensed owner and the proposed new owner when the new owner's license application has been granted. After the licensed owner surrenders its license and transfers the ownership interest, a license shall be issued to the new owner.~~

~~(b) If the change of ownership changes the payee on loan obligations, then the licensed owner shall notify the debtors of the change of ownership within thirty (30) days following the change of ownership. The notice shall include the business telephone number and mailing and business addresses of the new owner. The licensed owner shall certify to the Administrator the date the notice was mailed and shall attach a copy of the notice with a list of the names and addresses of the debtors notified.~~

~~(c) For purposes of this section, "change of ownership" means a change of an individual owner; a change of partners; a change of the service agent or a change of the principal parties in interest in a corporation.~~

### 160:70-3-6. Moving or closing a location [REVOKED]

~~(a) At least thirty (30) days before the address of a licensed location is changed, the licensee shall notify the Administrator in writing [59:3112(D)]. The licensee shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes.~~

(b) At least thirty (30) days before a licensed location is to be closed, the licensee shall notify the Administrator in writing. The licensee shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes.

**SUBCHAPTER 5. DISCLOSURES**

**160:70-5-1. Rescission [REVOKED]**

(a) A debtor has the right to rescind a deferred deposit loan until 5 p.m. on the next business day following the day the debtor signs the deferred deposit loan agreement [59:3105].  
 (b) No right to rescind period shall begin to run until all disclosures have been properly provided to the debtor.

**160:70-5-2. Notice of charges, terms and effective annual percentage rate [REVOKED]**

(a) The notice shall be posted on the front exterior at each licensed location and on each counter, desk, table or other station where potential debtors are processed. [59:3104(F)]  
 (b) Each notice shall be at least legal size (8.5 inches by 14 inches) with black characters on a white background. The characters shall be legible and at least twenty point type with the effective annual percentage rates and finance charges in bold type.  
 (c) The front exterior notice shall be posted so that it is readable from outside of the licensed location.  
 (d) Each notice shall be in plain view so that the whole notice is readable by potential debtors at all times and not obstructed by any other object or signage.

**SUBCHAPTER 7. RECORDS**

**160:70-7-1. Records and changes [REVOKED]**

(a) Each licensee shall preserve and make available such books and records related to each of its loans for four (4) years from the date of the loan, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later [59:3114(E)]. The records shall be maintained for such time periods whether the deferred deposit lender is currently licensed or previously licensed. Upon licensing, the licensee shall either designate a location or locations in Oklahoma where records shall be maintained or agree in writing to provide copies of records kept at an out of state location to the Department upon demand or agree in writing to pay for the Department to examine the records at the place where they are maintained, and the records shall not be moved from the designated location unless the Administrator has given written approval for another location. [59:3115(B)]  
 (b) Each licensee's records shall be maintained in compliance with the Act and these rules. Each licensee shall keep current the information required for licensing by reporting any changes or additions to the information previously submitted

to the Department within thirty (30) days of such change or addition unless the Act or these rules require otherwise.

**160:70-7-2. Examinations [REVOKED]**

(a) **Initiation.** The Administrator, or duly appointed representatives, shall conduct an examination as deemed necessary.  
 (b) **Procedure.** Each licensee shall ensure that all records are promptly and reasonably available to be examined and copied [59:3114(A)].  
 (c) **Confidentiality.** The information obtained in the course of any examination shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state [59:3114(A)].  
 (d) **Noncompliance.** In case of failure to comply with the Administrator's examination processes, the Administrator may initiate any authorized action, including acts for enforcement by the Administrator [59:3114(A)].  
 (e) **Violations.** If the examination finds any violations of the Act or these rules, the Administrator may initiate any authorized action.  
 (f) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

**SUBCHAPTER 9. ENFORCEMENT**

**160:70-9-1. Investigative proceedings [REVOKED]**

(a) **Initiation.** Investigations and inquiries are originated upon request or complaint of the public or by the Administrator upon the Administrator's motion. The request or complaint shall be in writing, signed by the initiator and shall contain a statement setting forth the alleged violations of law and the name and address of the party or parties at issue in the complaint. No forms or formal procedures are required in making requests or complaints. The initiator is not regarded as a party since the Administrator acts only in the public interest. The Administrator shall not take action when the alleged violation of law is merely a matter of private controversy and does not tend to adversely affect the public.  
 (b) **Procedure.** The Administrator encourages voluntary cooperation in investigations. The Administrator may invoke any or all of the compulsory processes authorized by law, including subpoenas and depositions. The Administrator may issue a notice to grant access to, for examination and copying, records of any party being investigated, and may require a party to file a report or to submit answers in writing to specific questions relating to any matter under investigation. Inquiries and investigations are conducted by representatives designated and duly authorized to exercise and perform the duties of

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their office in accordance with the laws of Oklahoma and the regulations of the Administrator, including the administration of oaths and affirmations, in any matter under investigation by the Administrator. Any party under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation. [59:3114(B) and 3115(A)]

(c) **Confidentiality.** The information obtained in the course of any investigation shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state. [59:3115(D)]

(d) **Noncompliance.** In case of failure to comply with the Administrator's investigative processes, the Administrator may initiate any authorized action, including acts for enforcement by the Administrator.

(e) **Violations.** If the investigation finds any violations of the Act or these rules, the Administrator may initiate any authorized action.

(f) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

### 160:70-9-2. Individual proceedings [REVOKED]

(a) **Allegations notice.** The Administrator shall notify the licensee of facts or conduct that warrant the intended action, and give the licensee an opportunity to show compliance with all lawful requirements for the retention of the license [75:314(C)(1)].

(b) **Violations.** Where the facts indicate that the licensee has not complied with all lawful requirements for the retention of the license, the Administrator may initiate any authorized action.

(c) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford licensees who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

(d) **Hearing notice.**

(1) If the matter is to be set for hearing, the licensee shall be given twenty (20) days notice in writing [59:3115(F)].

(2) The notice shall:

- (A) state the time, place and nature of the hearing;
- (B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) (4) and 59:3115(F)].

(e) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(f) **Standard of proof.** The standard of proof is clear and convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

(g) **Order.**

(1) The Administrator shall issue an order within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the licensee and the Administrator.

(2) The order shall:

(A) be in writing;

(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(C) state conclusions of law;

(D) state the effective date; and

(E) be delivered in person or by certified mail with return receipt requested [75:309(H), 312 and 59:3115(F)].

(h) **Impair.** A suspension or revocation shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor [59:3115(H)].

### 160:70-9-3. Hearing procedure - emergency actions [REVOKED]

(a) **Hearing notice.**

(1) If the public health, safety, or welfare imperatively requires emergency action, such action, including the suspension of a license instant or a cease and desist instant, may be ordered pending the final outcome of proceedings instituted by the Administrator [75:314(C)(2) and 314.1]. In such cases, the Administrator shall notify the party of such action by certified mail with return receipt requested or personal delivery, and shall include in such notice an order of hearing. The hearing shall be held within ten (10) days of the notice unless postponed by written agreement between the party and the Administrator.

(2) The notice shall:

(A) state the time, place and nature of the hearing;

(B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) (4)].

(b) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(c) **Standard of proof.** The standard of proof is clear and convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

(d) **Order.**

(1) The Administrator shall issue an order within thirty (30) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(2) The order shall:

- (A) be in writing;
- (B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;
- (C) state conclusions of law;
- (D) state the effective date; and
- (E) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

**160:70-9-4. Circumvention prohibited [REVOKED]**

Whenever a licensee has an administrative action taken against a license, the Administrator may deny the licensee's request to inactivate such license, to sell or transfer the accounts under such license or to take any other action to circumvent or negate the administrative action during the time of the action or during the pendency of the action if on appeal.

**160:70-9-5. Review of an order [REVOKED]**

(a) **Rehearing, reopening or reconsideration.**

(1) **Application.**

(A) Any party aggrieved by a final order may apply for a rehearing, reopening or reconsideration within ten (10) days from the date of the order [75:317(A)].

(B) The application shall be in writing and assert a statutory ground for a rehearing, reopening or reconsideration.

(C) The statutory grounds are:

- (i) newly discovered or newly available evidence, relevant to the issues;
- (ii) need for additional evidence adequately to develop the facts essential to proper decision;
- (iii) probable error committed by the Department in the proceeding or in the decision such as would be ground for reversal on judicial review of the order;
- (iv) need for further consideration of the issues and the evidence in the public interest; or
- (v) a showing that issues not previously considered ought to be examined in order properly to dispose of the matter [75:317(A)(1)–(5)].

(2) **Application order.**

(A) The Administrator shall issue an order granting or denying the rehearing, reopening or reconsideration within thirty (30) days from receipt of the application unless the period is extended by written agreement between the party and the Administrator.

(B) If the application is granted, the order shall set forth the grounds that justify it [75:317(B)].

(3) **Hearing.**

(A) If the rehearing, reopening or reconsideration is granted, the hearing shall be limited to the ground or grounds upon which it was ordered [75:317(D)].

(B) All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(4) **Rehearing order.**

(A) The Administrator shall issue an order from the rehearing, reopening or reconsideration within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(B) The order shall:

- (i) be in writing;
- (ii) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;
- (iii) state conclusions of law;
- (iv) state the effective date; and
- (v) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

(5) **Tolling.** The period for judicial review shall run from the day the party is notified of the final disposition of the application if the application was filed timely [75:317(E)].

(6) **Prerequisite.** An application shall not be a prerequisite to secure judicial review [75:318(A)(3)].

(b) **District Court.**

(1) **Petition.**

(A) Any party aggrieved by a final order may file a petition in the district court of the party's resident county or the situs county of the property interest within thirty (30) days from the day the party is notified of the order [75:318(B)(2)].

(B) The petition shall be served upon the Department and all other parties of record, and proof of service shall be filed in the court within ten (10) days after the petition is filed [75:318(C)].

(2) **Stay.** The filing of a proceeding for review shall not automatically stay the final order, but the Department may stay the order or the court may or shall impose a stay in accordance with the APA [75:319(1)].

(3) **Record.** The Department shall transmit the record of its proceeding to the court within thirty (30) days after the service of the petition unless the court has granted an extension [75:320].

(4) **Review scope.** The review shall be confined to the record and done by the court without a jury [75:321].

(5) **Court order.** The court may affirm, set aside, modify, reverse or remand the agency order in accordance with the APA [75:322], or may grant any temporary relief or restraining order deemed just [59:3115(L)(2)(a)].

# Expedited Rule Repeals

(e) ~~**Supreme Court.** Any party aggrieved by a final judgment of a district court may appeal to the Supreme Court in the manner and time provided in civil actions [75:323].~~

## 160:70-9-6. Civil and criminal actions [REVOKED]

~~This chapter shall not be interpreted as limiting the right of the Administrator to seek civil remedies or make criminal referrals for any violation of the provisions of the Act or these rules.~~

## SUBCHAPTER 11. COLLECTION PRACTICES

### 160:70-11-1. Professionally, fairly and lawfully [REVOKED]

~~All collection practices by a licensee or persons acting in the licensee's behalf shall be conducted professionally, fairly and lawfully.~~

### 160:70-11-2. Acquisition of location information [REVOKED]

~~A licensee may communicate with any person other than debtor for the purpose of acquiring location information about debtor if:~~

- ~~(1) licensee identifies himself, states that he is confirming or correcting location information concerning debtor, and, only if expressly requested, identifies his business;~~
- ~~(2) licensee does not state that debtor owes any debt;~~
- ~~(3) licensee does not communicate with any person more than once unless requested to do so by such person or unless licensee reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;~~
- ~~(4) licensee does not communicate by post card;~~
- ~~(5) licensee does not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the communication relates to the collection of a debt; and~~
- ~~(6) after licensee knows debtor is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within five (5) business days to communication from licensee.~~

### 160:70-11-3. Communication in connection with debt collection [REVOKED]

~~(a) **Communication with the debtor.** Without the prior written consent of debtor given directly to licensee or the express permission of a court of competent jurisdiction, licensee may not communicate with debtor in connection with the collection of a debt:~~

- ~~(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to~~

~~debtor. It shall be considered an unusual time to communicate with debtor before debtor's due date to remind debtor of the upcoming due date, without debtor's express written authorization, under separate signature indicating no, debtor does not desire to be contacted, or yes, debtor desires to be contacted and the phone numbers, electronic mail addresses or physical mail addresses licensee may use to contact debtor. In the absence of knowledge of circumstances to the contrary, licensee shall assume that the convenient time for communicating with debtor is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at debtor's location;~~

~~(2) if licensee knows debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within five (5) business days to a communication from licensee or unless the attorney consents to direct communication with debtor; or~~

~~(3) at debtor's place of employment if licensee knows or has reason to know that debtor's employer prohibits debtor from receiving such communication.~~

~~(b) **Communication with third parties.** Except as provided in 160:70-11-2, without the prior written consent of debtor given directly to licensee, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, licensee may not communicate, in connection with the collection of a debt, with any person other than debtor, his attorney, a consumer reporting agency if otherwise permitted by law or licensee's attorney.~~

~~(c) **Ceasing communication.** If debtor notifies licensee in writing that debtor refuses to pay a debt or that debtor wishes licensee to cease further communication with debtor, licensee shall not communicate further with debtor with respect to such debt, except:~~

- ~~(1) to advise debtor that licensee's further efforts are being terminated;~~
- ~~(2) to notify debtor that licensee may invoke specified remedies which are ordinarily invoked by licensee; or~~
- ~~(3) where applicable, to notify debtor that licensee intends to invoke a specified remedy.~~

~~(d) **Debtor defined.** For the purpose of this rule, debtor includes the debtor's spouse, parent (if debtor is a minor), guardian, executor or administrator.~~

### 160:70-11-4. Harassment or abuse [REVOKED]

~~A licensee may not engage in any conduct the nature consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:~~

- ~~(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.~~
- ~~(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.~~

- (3) The publication of a list of debtors who allegedly refuse to pay debts, except to a consumer reporting agency.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number.
- (6) Except as provided in 160:70-11-2, the placement of telephone calls without meaningful disclosure of the caller's identity.

**160:70-11-5. False or misleading information [REVOKED]**

A licensee may not use any false, deceptive or misleading representations or means in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

- (1) The false representation or implication licensee is vouched for, bonded by or affiliated with the United States or any State, including the use of any badge, uniform or facsimile thereof.
- (2) The false representation of:
  - (A) the character, amount or legal status of a debt; or
  - (B) any services rendered or compensation which may be lawfully received by licensee for the collection of a debt.
- (3) The false representation or implication that any person is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment or sale of any property or wages of any person unless such action is lawful and licensee intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause debtor to:
  - (A) lose any claim or defense to payment of the debt; or
  - (B) become subject to any practice prohibited by this subchapter.
- (7) The false representation or implication that debtor committed any crime or other conduct in order to disgrace debtor.
- (8) Communication or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.
- (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, official or agency of the United States or any State, or which creates a false impression as to its source, authorization or approval.

- (10) The use of any false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning debtor.
- (11) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (12) The false representation or implication that documents are legal process.
- (13) The use of any business, company or organization name other than the true name of licensee's business, company or organization.
- (14) The false representation or implication that documents are not legal process forms or do not require action by debtor.
- (15) The false representation or implication that licensee operates or is employed by a consumer reporting agency.
- (16) Designing, compiling, and furnishing any form knowing that such form would be used to create the false belief in debtor that a person other than licensee is participating in the collection of or in an attempt to collect a debt such debtor allegedly owes such

**160:70-11-6. Unfair practices [REVOKED]**

A licensee may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

- (1) The collection of any amount (including any interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) Presenting an instrument for payment more than two (2) times if it causes the debtor to be charged any additional fees.
- (3) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
- (4) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:
  - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
  - (B) there is no present intention to take possession of the property; or
  - (C) the property is exempt by law from such dispossession or disablement.
- (5) Communicating with debtor regarding a debt by post card.
- (6) Using any language or symbol, other than licensee's address, on any envelope when communicating with debtor by use of the mails or by telegram, except that licensee may use his business name if such name does not indicate that the communication relates to the collection of a debt.

## **Expedited Rule Repeals**

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### **160:70-11-7. Multiple debts [REVOKED]**

If debtor owes multiple debts and makes any single payment to licensee with respect to such debts, licensee shall apply such payment in accordance with debtor's directions.

### **160:70-11-8. Administrative enforcement [REVOKED]**

(a) A violation of any requirement imposed under this subchapter may be deemed to be a demonstration of incompetency

or untrustworthiness to engage in the business of making deferred deposit loans.

(b) The Administrator may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any authorized action.

*[OAR Docket #22-618; filed 7-13-22]*

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# Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

## TITLE 1. EXECUTIVE ORDERS

**1:2022-16.**

### EXECUTIVE ORDER 2022-16

I, J. Kevin Stitt, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m., on Thursday, August 4, 2022, to honor the life and legacy of former state lawmaker Michael Donald Johnson.

Former Kingfisher lawmaker Michael Johnson had an extraordinary record of leadership and knowledge that exemplified his steadfast and honorable lifetime commitment to service as a family man, entrepreneur, and state senator. Former Senator Johnson was honored to have been elected to the State Senate in 1998 where he served for 12 years. He became the state's first Republican chairman of the Senate Appropriations Committee. A man of faith, he leaves behind his loving wife of more than 55 years, Judy, their two sons, David and Rob, their spouses, and 14 grandchildren. Former Senator Johnson was preceded in death by his daughter, Lori. The former lawmaker's Mass of

Christian Burial will be held at 10:00 am on Thursday, August 4<sup>th</sup>, 2022.

This executive order shall be forwarded to the Division of Capital Assets Management, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, on this 3<sup>rd</sup> day of August, 2022.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:  
Brian Bingman  
Secretary of State

*[OAR Docket #22-702; filed 8-3-22]*

